

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.168 OF 2019

Ramchandra G. N. Mule ..Petitioner

versus

The State of Goa through the
Chief Secretary and 2 Ors. ..Respondents

.....

- Mr. Nitin Sardessai, Senior Advocate with Mr.Gaurang D. Panandiker, Advocate for the Petitioner.
- Mr. Pravin Faldessai, Additional Government Advocate for the Respondent Nos.1 and 2.

CORAM : C. V. BHADANG, J.

RESERVED ON: 4th JULY, 2019

PRONOUNCED ON: 11th DECEMBER, 2019

P.C. :

1. The challenge in this petition is to the impugned letter dated 26/2/2018 and the order dated 30/11/2018 passed by the second respondent by which the second respondent has held that the petitioner ceases to hold the post of Chairman of the Goa State Co-Operative Union Ltd., (Union for short).

2. The brief facts are that the petitioner was first elected

as a Chairman of the Union, from amongst the Board of Directors, on 7/1/2008. The term of the Board of Directors of Union came to an end on or about 30/5/2010 and a new set of Directors was elected in the elections held on 30/5/2010. The petitioner was again elected as a Chairman of the Union on 8/6/2010.

3. On completion of the term of the Board of Directors elections to elect the office bearers of the said Union were held on 15/1/2016 and the petitioner was again elected as a Chairman of the said Union on 15/1/2016.

4. The Goa Co-Operative Societies Act 2001 (Act for short) was amended by Act No.20/2014, with effect from 30/9/2014. Subsequently, by Act No.18/2015 the Act came to be further amended with effect from 4/11/2015. By virtue of the amendment of the year 2014, it is provided that the Chairman of a Society cannot hold office for consecutive period of more than 10 years.

5. On 10/1/2018, the second respondent addressed a

letter to the petitioner stating that the petitioner being covered by Section 59(6) of the said Act has ceased to be the Chairman of the said Union. It appears that the petitioner sent a reply to the said letter on 18/1/2018. However, the second respondent by the impugned letter / order dated 26/2/2018 has again intimated that the petitioner has ceased to hold post of Chairman of the Union from the date of receipt of the said letter.

6. The petitioner challenged the said letter before this Court in Writ Petition No.338/2018 which was disposed of by this Court on 26/10/2018 giving liberty to the petitioner to make a representation before the second respondent who was directed to pass appropriate orders after granting opportunity of hearing, to the petitioner.

7. Pursuant to this, petitioner filed a detailed reply alongwith documents and the second respondent after hearing the petitioner has passed the impugned order dated 30/11/2018 confirming letters dated 10/1/2018 and 26/2/2018. The net result is that the petitioner has been

held to have ceased to hold the office of the Chairman of the Union by virtue of section 59(6) of the Act.

8. I have heard Mr. Sardessai, the learned senior counsel for the petitioner and Mr. Faldessai, the learned Additional Government Advocate respondent Nos.1 and 2.

9. It is submitted by Shri. Sardessai, the learned Senior counsel for the petitioner that the petitioner is not covered within the ambit of section 59(6) of the said Act as the petitioner has not been the Chairman of the said Union for a consecutive period of more than 10 years. It is submitted that the second respondent was in error in holding that the case of the petitioner is covered by section 59(6) of the Act on the premise that the petitioner has completed consecutive period of more than 10 years as a Chairman.

10. It is submitted that the Union was receiving grant in aid, from the Government, in support of which the petitioner has produced a letter dated 30/1/2015. It is therefore submitted that as per section 66(2) of the Act, there is no

automatic extension of the term of office bearers and the members of Board of Directors. It is pointed out that the second respondent has found on fact that the petitioner was not the Chairman of the Union from 30/5/2015 to 15/12/2015 and therefore the petitioner could not have been held to have completed 10 years as on 10/1/2018, when the first letter was issued by the second respondent. It is submitted that the reliance placed by the second respondent on the letter dated 6/11/2015 (wrongly mentioned as 6/11/2018) and the audited report for the year 2015-2016, is entirely misplaced.

11. Mr. Faldessai, learned AGA has supported the impugned order. It is submitted that the petitioner having completed more than 10 years as a Chairman is clearly disentitled to hold the office of the Chairman by virtue of section 59(6) of the Act and therefore, the impugned order does not call for any interference.

12. I have considered the circumstances and the submissions made. The relevant dates are not in dispute. It

is thus undisputed that the petitioner was first elected as a Chairman on 7/1/2018 and continued to be so till 30/5/2015. The election for the Board of Directors was held on 30/5/2010, when new set of directors was elected for a period till 30/5/2015, during which also the petitioner was elected as a Chairman. After the expiry of the tenure on 30/5/2015, the elections for electing the Board of Directors was held on 15/12/2015 and the petitioner again came to be elected as a Chairman on 7/1/2016. The second respondent has found that the petitioner was not Chairman of the Union from 30/5/2015 to 15/12/2015. However, the second respondent has placed reliance on letter dated 6/11/2018 which was addressed by the petitioner in the capacity as a Chairman, to the Secretary Co-operation for the celebration of Co-operative week from 14/11/2015 to 20/11/2015. Further reliance is placed on the fact that the petitioner had signed the audit report for the year 2015-2016 as a Chairman of the Union. Thus, the second respondent has found that the petitioner continued to act as a Chairman, even during the intervening period and thus has completed 10 years tenure as a Chairman.

13. In order to appreciate the rival contentions, it is necessary to re-produce section 59(6) and section 66 to the extent relevant...

section 59(6) -

The Board shall have a chairman and such other officer bearers as may be provided in the bye-laws who shall be elected from amongst the elected directors/appointed directors in terms of section 67A of this Act, in the manner provided in the bye-laws:

Provided that, member of the board shall file the return about their loan transactions and their dealings with the society in the form specified by the Registrar from time to time depending upon the type of society.

Provided further that, no person shall be, or shall continue to be, chairman and (office bearer of a Apex Society or Federal Society), for a consecutive period of more than ten years and at the expiration of that period any

such persons shall cease to be chairman and or the office bearer of that society, and shall not be eligible for being re-elected or reappointed as a Chairman or office bearer, until a period of five years has elapsed after expiry of the aforesaid period of ten years ;

Provided also that, should be administrator be appointed or the Chairman and other office bearers are removed by no confidence motion or resigned voluntarily within twenty four months before the date on which the consecutive period of ten years would, but for such appointment or removal or resignation have been completed, the Chairman or office bearers shall be deemed to have completed the period of ten years on appointment of administrator or removal or resignation of Chairman or office bearers, as the case may be :

Provided that no member shall hold the post of directors of more than one Apex Society or Federal Society or two other societies.

Section 66-

(1) The election of a board shall be conducted before the expiry of the term of the board so as to ensure that the newly elected members of the board assume office immediately on the expiry of the office of members of the outgoing board.

(2) Where the Registrar or authority or body, responsible for conduct of election, fails to hold election to the board of a society where there is no Government shareholding or Government loan or Government financial assistance or any guarantee given by the Government in respect of loans raised, the term of office of the members of the board of

that society shall be deemed to have been extended till the date immediately preceding the date of the first meeting of the newly elected board.

14. It can thus be seen that as per second proviso to section 59 of the Act, no person can continue to be a chairman or office bearer of a Apex Society or Federal Society for a consecutive period of more than ten years and at the expiration of said period, any such person shall cease to be the chairman and or the office bearer of that society, as the case may be.

15. In order to get over the effect of the said proviso, the petitioner has placed reliance on section 66, sub-section (2) of the Act which provides that where the society or the Union is not having any Government shareholding or Government loan or Government financial assistance or any guarantee given by the Government, in respect of loans raised, the term of office of the members of the board of that society shall

be deemed to have been extended, till the date immediately preceding, the date of the first meeting of the newly elected board. The contention is that the Union having received the grant in aid from the Government, there would be no such automatic extension, as a result of which the term of office of the office bearers and consequently that of the petitioner as a Chairman came to an end on 30/5/2015 and therefore, the intervening period from 30/5/2015 to 15/12/2015 cannot be counted for reckoning the continuous period of 10 years, as envisaged under the second proviso to sub-section (6) of section 59 of the Act. The contention in my considered view cannot be accepted. The object of section 66 is to ensure that the election of a Board of Directors shall be conducted before the expiry of the term of the Board, so as to ensure that the newly elected members of the Board assume office immediately on the expiry of the office of members of the outgoing board. Sub-section (2) in turn provides for a contingency where said elections are not held before the expiry of the term of the Board of

Directors. It is evident that sub-section (2) applies to a society where there is no Government assistance or shareholding or guarantee given by the Government in respect of any loans raised by the society. However, the fact remains that principal object of section 66 is to ensure that the elections to the Board of Directors are held timely so as to ensure that the new Board of Directors assumes office immediately on the expiry of the existing one. If the reliance is placed on behalf of the petitioner on section 66(2) is accepted, it would lead to a result where the Chairman of the society having no Government shareholding or assistance would be at a disadvantage (as he would be deemed to have completed period of 10 years on account of automatic extension) than the Chairman of society which receives Government in aid or the Government shareholding or is getting financial assistance from the Government if any, is concerned. However, I do not propose to lay down any binding precedent on the interplay of section 59(6) and section 66(2) for the reason that in the present case, even on facts, the

second respondent has noted that the petitioner continued to act as a Chairman of the Union which is evident from the letter dated 6/11/2015 and the audit report for the year 2015-16.

16. In that view of the matter, I do not find that any case for interference is made out. The petition is without any merit and is accordingly dismissed with no order as to costs.

(C. V. BHADANG, J.)