

IN THE HIGH COURT OF BOMBAY AT GOA***WRIT PETITION NO. 478 OF 2018***

Shri Vijaykumar S. Patil,
major of age, Indian National,
Patil Farm, Nanus, Valpoi, Goa.

... Petitioner.

Vs.

1. The State of Goa,
through Secretary (Co-operation),
Government of Goa,
Secretariat, Alto Porvorim,
Bardez, Goa.
2. The Registrar of Co-operative
Societies,
Department of Co-operation,
Government of Goa,
Sahakar Sankul, Panaji, Goa.
3. Goa State Co-operative
Milk Producers Union Ltd.,
a registered co-operative Society
through its Managing Director,
Dr. N. C. Sawant, Major of age,
having office at Curti, Ponda, Goa.
4. Mr. Madhav A. Sahakari,
major of age, Indian National,
Chairman, Board of Directors,
Goa State Co-operative

Milk Producers Union Ltd.,
Curti, Ponda, Goa.

5. Mr. Baburao S. Fotto Dessai,
major of age, Indian National,
Member, Board of Directors,
Goa State Co-operative Milk
Producers Union Ltd.,
Curti, Ponda, Goa.
6. Mr. Vithoba Datta Dessai,
major of age, Indian National,
Member, Board of Directors,
Goa State Co-operative
Milk Producers Union Ltd.,
Curti, Ponda, Goa.
7. Mr. Gurudas Keshav Parab,
major of age, Indian National,
Member, Board of Directors,
Goa State Co-operative
Milk Producers Union Ltd.,
Curti, Ponda, Goa.
8. Mr. Rajesh K. Phaldessai,
major of age, Indian National,
Member, Board of Directors,
Goa State Co-operative
Milk Producers Union Ltd.,
Curti, Ponda, Goa.
9. Mr. Ajay L. Dessai,
major of age, Indian National,

Member, Board of Directors,
Goa State Co-operative
Milk Producers Union Ltd.,
Curti, Ponda, Goa.

10. Mr. Dhananjay N. Dessai,
major of age, Indian National,
Member, Board of Directors,
Goa State Co-operative
Milk Producers Union Ltd.,
Curti, Ponda, Goa.
11. Mr. Babu N. Komarpant,
major of age, Indian National,
Member, Board of Directors,
Goa State Co-operative
Milk Producers Union Ltd.,
Curti, Ponda, Goa.
12. Mr. Naresh Dharma Malik,
major of age, Indian National,
Member, Board of Directors,
Goa State Co-operative
Milk Producers Union Ltd.,
Curti, Ponda, Goa.
13. Mr. Rajendra Y. Sawal,
major of age, Indian National,
Member, Board of Directors,
Goa State Co-operative
Milk Producers Union Ltd.,
Curti, Ponda, Goa.

14. Mr. Aselmo Furtado,
major of age, Indian National,
Member, Board of Directors,
Goa State Co-operative
Milk Producers Union Ltd.,
Curti, Ponda, Goa.

15. Dr. N. C. Sawant,
major of age, Indian National,
Managing Director/Member/
Secretary, Board of Directors,
Goa State Co-operative
Milk Producers Union Ltd.,
Curti, Ponda, Goa.

... Respondents

Mr. A. F. Diniz with Mr. Nigel Fernandes, Advocates for the
Petitioner.

Ms. Sapna Mordekar, Addl. Government Advocate for Respondent
Nos. 1 and 2.

Mr. Shivan Dessai with Mr. P. Sawant, Advocates for Respondent No.
3 & 15.

Mr. A. D. Bhobe, Advocate for Respondent No. 4.

Mr. Nigel Da Costa Frias with Ms. I. Miranda, Advocates for
Respondent Nos. 5, 6, 8, 12 and 13.

Ms. K. Gaonkar, Advocate for respondent No.9.

WITH
STAMP NUMBER (APPLICATION) NO.3121/2019

Mr. V. Amonkar, Advocate for the Intervenor.

**Coram : M. S. Sonak &
Nutan D. Sardesai, JJ.**

Date : 4th September, 2019.

Oral Judgment : (M.S. Sonak, J)

Heard learned Counsel for the parties.

2. In this petition, Rule was issued on 11.09.2018 and this petition was directed to be heard alongwith Writ Petition No.901/2018. There is now no dispute that Writ Petition No. 901/2018 stands disposed of on the grounds which may not have any direct bearing on the issues which now survive in this petition.

3. Today, when the matter is taken up for final disposal, with the consent of and at the request of the respective parties, Mr. V. Amonkar, learned Counsel points out that one of the directors who was co-opted in the place of the petitioner has taken up Misc. Civil Application in STA No.3121/2019 seeking intervention. Although, from the application handed over to us, we find that such application was moved only today when we had made it clear that this matter would be taken for final disposal, we allow the intervention, without

in any manner accepting the various statements set out in the civil application.

4. Accordingly, the Misc. Civil Application in STA No.3121/2019 which is not on board is taken on board and allowed.

5. In this petition, the petitioner has challenged the vires of certain provisions of the Goa Co-operative Societies Rules, 2003. In addition, the petitioner has challenged the decision of the Board of Directors of the Goa State Milk Producers Union Limited in its meeting dated 09.04.2018 disqualifying the petitioner as the director of the board.

6. Mr. Diniz, learned Counsel for the petitioner without prejudice to the challenges raised in the petition, today submits that the petitioner will be satisfied if the petitioner is offered post decisional hearing in the matter by the administrator who is now appointed to govern the affairs of the society after the supercession of the Board of Directors.

7. Mr. Dessai, learned Counsel appears for the Chief Executive officer of the society i.e. respondent no. 15 and the erstwhile Board of Directors of the society. Mr. Amonkar appears for the director who has

been co-opted in the place of petitioner. He submits that the Board of Directors have been superseded and Administrator has been appointed. They point out that such action on the part of the State has already been challenged and the petition in respect of such challenge is due to come up before this Court for admission and interim relief shortly. They point out that the petitioner on one hand challenges the very authority of the Board of Directors to disqualify him and on the other hand, conceals for post disqualification hearing of the Board of Directors, who is nothing but a substitute for Board of Directors. They point out that since the petitioner approbate and reprobate, no relief may be granted to the petitioner.

8. We have perused the minutes of the meeting dated 09.04.2018. Without expressing any opinion, we feel that the interest of justice will be served if the petitioner, is offered post decisional hearing by the Administrator on the issue of his disqualification.

9. No doubt, if in the mean time, the appointment of administrator is stayed, or set aside, such post decisional hearing will have to be given by the Board of Directors. All contentions of the petitioner as well as the other respondents as to the authority of the Administrator or/and the Board of Directors can be kept open and are being kept

open to be decided at such post decisional hearing.

10. We accordingly direct the Administrator and/or the Board of Directors to grant the petitioner a post decisional hearing and to dispose of the issue of petitioner's disqualification finally within a period of three months from today.

11. The issue of the Board of Directors affording the petitioner a post decisional hearing will arise only in case the appointment of administrator is stayed or set aside.

12. The petitioner to file appropriate statement/representation within two weeks from today and furnish copies of the same to the learned counsel appearing for the respondents in this Court.

13. The parties, including the intervenor is at liberty to file response within a period of four weeks from the date of the receipt of such representation.

14. The Administrator and/or the Board of Directors, as the case may be to dispose of the issue of disqualification on its own merits and in accordance with law and as expeditiously as possible and in any

case, within 3 months from today.

15. The petitioner and the other parties to be afforded an opportunity of hearing by the Administrator and/or the Board of Directors, as the case may be.

16. The petitioner and such other parties to appear before the Administrator on the first instance on 16.09.2019 and obtain directions on the dates for personal hearing.

17. It is made clear that all the contentions of all parties are left open.

18. If the Administrator and/or the Board of Directors accepts the petitioner's case, then, the Administrator and/or Board of Directors to make suitable orders for revocation of the petitioner's disqualification as directed. This is more so because in this petition, it was made clear that any actions, which would include the action of the co-option of the intervenor was subject to the final outcome of the petition. This means that even co-option was to be subject to the final outcome of the proceedings before the Administrator and/or the board of Directors. This shall no doubt be subject to the rights of the other

parties to question such decision, in accordance with law.

19. Similarly, if the Administrator and/or the Board of Directors decide against the petitioner, all the petitioner's remedies are left intact.

20. This petition is disposed of on the aforesaid terms. There shall be no orders as to cost.

21. All concerned to act on the basis of the authenticated copy of this order.

NUTAN D. SARDESSAI, J.

M. S. SONAK, J.

MF/-