

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 643 OF 2019**

VITHOBHA DATTA DESAI AND 5 ORS.

... Petitioners

VersusTHE REGISTRAR OF CO-OPERATIVE
SOCIETY, GOVT. OF GOA AND ANR.

... Respondents

Mr. Vishnuprasad A. Lawande and Mr. Parimal S. Redkar, Advocates for the Petitioners.

Mr. D. Shirodkar, Addl. Government Advocate for the Respondents.

**Coram:- M. S. SONAK &
NUTAN D. SARDESSAI, JJ.**

Date:- 25th July, 2019

P.C.

Heard Mr. V. A. Lawande, learned counsel for the Petitioners and Mr. D. Shirodkar, learned Addl. Government Advocate for the Respondents.

2. The challenge in this petition is to the order dated 16th July, 2019 by which the Registrar of Co-operative Societies, who is adjudicating upon the issue of alleged disqualification of the Petitioners, has rejected the Petitioners' application dated 20th June, 2019 seeking leave to cross examine Shri Shridhar G.P. Vernekar, the Inquiry Officer.

3. Mr. Lawande, learned counsel for the Petitioners submits that the inquiry held by Shri Vernekar was a preliminary inquiry. In the

course of the inquiry, there was no notice issued to the Petitioners nor was afforded any opportunity to place their version in the matter. He submits that in the impugned order, the Registrar has noted that the inquiry report is not conclusive. However, this means that the Inquiry Officer proposes to rely upon the inquiry report for at least some purposes. Mr. Lawande submits that, that being the case the principle of natural justice and fair play demand that the Petitioners will have to afford an opportunity to cross examine the Inquiry Officer. He submits that the settled principle in such matters that if any adverse material is proposed to be used against the parties, then the parties, must have an opportunity to cross examine the maker of such adverse report. Mr. Lawande submits that otherwise, may be clarified that the inquiry report must not be taken into consideration for any purpose whatsoever. He relies upon the decision of the Supreme Court in the case of ***Nirmala J. Jhala Vs State of Gujarat and another***,¹ in support of his contention.

4. Mr. Shirodkar, learned Addl. Government Advocate points out that in paragraphs 13 and 14 of the impugned order, the Registrar has clarified the position that the report of the Inquiry Officer is no means by conclusive. He therefore submits that leave to cross examine the Inquiry Officer was quite correctly declined by the Registrar.

5. According to us, there is absolutely no case made out to seek

1 2013(4) SCC 301

any leave to cross examine the Inquiry Officer. The Inquiry Officer has only made a preliminary report, on the basis of which, the present proceedings have followed. In the present proceedings, the Petitioners, have been afforded all opportunities to prove their case or to answer the allegations against them. The impugned order itself notes that the inquiry report will not be conclusive. This in fact means that on the basis of the inquiry report itself, there will be no question of disqualification of the Petitioners or making any adverse order against them. The Registrar will have to decide the issue of disqualification on the basis of material placed before him in the course of the inquiry.

6. In the case of ***Nirmala J. Jhala*** (supra), all that the Hon'ble Apex Court has observed that the evidence which was led at the stage of preliminary inquiry cannot, be looked into *ipso facto* at the stage of final inquiry. In this case, it appears that this is being done.

7. Accordingly, no case is made out to grant the Petitioners an opportunity to cross examine the Inquiry Officer. There is no jurisdictional error in the impugned order.

8. Accordingly, this petition is dismissed. There shall be however no order as to costs.

NUTAN D. SARDESSAI, J.

M. S. SONAK, J.

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