

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION NO.203 OF 2019

WITH

WRIT PETITION NO. 768 OF 2019

VITHOBA DATTA DESSAI AND 5 ORS.

... Petitioners

Versus

THE REGISTRAR OF COOPERATIVE
SOCIETIES, GOVT. OF GOA AND ANR.

... Respondents

Mr. S. G. Desai, Senior Advocate with Mr. Parikshit S. Sawant,
Advocate for the Petitioners.

Mr. M. Salkar, Government Advocate for Respondent Nos.1 and 2.

Mr. Vibhav Rajiv Amonkar, Advocate for Respondent No.3.

Mr. A. D. Bhobe and Ms. K. Govenkar, Advocates for Respondent
No.4.

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

Date:- 4th October, 2019

P.C.

Heard Mr. S. G. Desai, learned Senior Advocate alongwith
Mr. P. Sawant for the Petitioners.

2. Mr. Salkar, learned Government Advocate appears for
Respondent Nos.1 and 2, Mr. V. Amonkar appears for Respondent
No.3 and Mr. A. D. Bhobe appears for Respondent No.4.

3. According to us, the arguable issues are raised. Hence Rule.

4. Learned counsel for the respective Respondents waive service on Rule.

5. The challenge in this petition is to the impugned order dated 13.08.2019 made by the Registrar of Cooperative Societies purporting to exercise the powers under Sections 76(A)(1), 77(2) and 59(11) of the Goa Co-operative Societies Act, 2001 (the said Act) and the Rules made thereunder. By the impugned order, the Petitioners, have been disqualified to hold the position of directors of the Goa State Co-operative Milk Producers Union Limited (the said Society).

6. From the record placed before us, at least *prima facie*, it appears that the action of the Registrar both under Sections 76(A) and 77(2) of the said Act was on the basis of the complaints made by two of directors on the Board of Directors of the said Society, one of which was the Chairman of the Board of Directors. The Director and Chairman have been impleaded as Respondent Nos.3 and 4 in this petition.

7. Section 76(A) of the said Act *inter alia* provides that the Registrar may, on the request made by a creditor or federal Institution or not less than one third of the total number of members of the board of directors or not less than one fifth of the total number of members, of a society, or of his own motion, by himself, or by a person duly authorized by him in writing in this behalf, undertake inspection and

inquiry into the constitution, working and financial condition of such society and submit a report thereon. Further, Section 77(2) of the said Act provides that the Registrar may, of his own motion, and shall, on the application of a Federation to which the society concerned is affiliated, or of a creditor to whom the society is indebted or of not less than one-third of the directors, or of not less than one-tenth of the members, cause an inquiry to be made into the specific matter or matters relating to any gross violation of any of the provisions of this Act by the society.

8. The aforesaid provisions no doubt, indicate that the Registrar may exercise powers of his own motion or suo motu. However, in the facts of the present case, at least *prima facie* it is difficult to accept that the Registrar has invoked his suo motu powers. Rather, the documents produced on record very clearly refer to the exercise of powers on the basis of the complaints by two out of 15 directors which constitute the Board of Directors of the said society.

9. Both Sections 76(A) and 77(2) of the said Act refer to the complaint of "*not less than one third of the total number of members of the board of directors*" and "*not less than one third of the directors*". Therefore, *prima facie*, on the basis of the complaints of only two of the directors, the Registrar, had no jurisdiction to exercise the powers under Sections 76(A) and 77(2) of the said Act.

10. The ultimate order made under Section 59(11) relies almost entirely upon the result of the Registrar's action under Sections 76(A) and 77(2) of the said Act.

11. Mr. Desai, learned Senior Advocate for the Petitioners makes it clear that the Petitioners seek no relief at the interim stage with regard to the continuance of the Administrator who is already appointed to govern the affairs of the society. He however, submits that the order of disqualification at least qua the Petitioners may be stayed as otherwise, some of the Petitioners, including the Petitioner No.4 is even being precluded from contesting the election to the position of the director of the primary society.

12. The observations in the case of *Vithalnagar Cooperative Housing Society, Vile Parle (West), Mumbai Vs The Divisional Joint Registrar, CSMD & Ors.*, decided on 04.02.2015 in Writ Petition No.1609 of 2010, at least *prima facie* assist the contention of the Petitioners that no action of this nature could have been initiated on the basis of the complaints of the persons who were not even the members or directors of the society, much less the members or directors who fulfilled the prescribed numerical strength in terms of Section 83 of the Maharashtra Cooperative Societies Act, 1960.

13. Taking into consideration the aforesaid position, we stay the

disqualification of the Petitioners pending the hearing and final disposal of this petition. However, we clarify that the Administrator who is already appointed to govern the affairs of the society may continue to do so. On the basis of this stay, therefore, it shall not be open to the Petitioners to insist upon the reconstitution of the Board of Directors pending the hearing and final disposal of this petition.

14. We further clarify that this stay order is qua the Petitioners alone.

15. The main petition is now placed for final hearing on 21st November, 2019 subject to overnight part heard. The parties to complete their pleadings latest by 15th November, 2019.

16. Civil Application No.203 of 2019 is disposed of in the aforesaid terms.

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

NUTAN D. SARDESSAI, J.

M. S. SONAK, J.

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