

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.873 OF 2019**

Shri. Elvis Olegario Gomes,
s/o. late Menino Gomes,
aged 58 years, Indian National,
r/o. H. No.21, Gaundalim,
Colva, Salcete, Goa.

.... Petitioner.

V/s.

1. State of Goa,
through the Chief Secretary,
having Office at Secretariat,
Porvorim, Goa.
2. Department of Co-operation,
Office of the Registrar of
Co-operative Societies,
“Sahakar Sankul”, 4th & 5th Floor,
EDC Complex, Patto,
Panaji – Goa.
Through its Secretary.
3. Registrar of Co-operative Societies,
“Sahakar Sankul”, 4th & 5th Floor,
EDC Complex, Patto,
Panaji – Goa.
Through its Secretary.
4. Mr. Miguel Jose Rodrigues,
South Goa Mechanized Boat Owners,

Co-operative and Marketing
Society Ltd., Cutband Velim,
Salcete – Goa.

5. Mr. Joaquim Fernandes,
South Goa Mechanized Boat Owners,
Co-operative and Marketing
Society Ltd., Cutband Velim,
Salcete – Goa.
6. Mr. Deepak A. Naik Raikar,
South Goa Mechanized Boat Owners,
Co-operative and Marketing
Society Ltd., Cutband Velim,
Salcete – Goa.
7. Mr. Antonio Rodrigues,
South Goa Mechanized Boat Owners,
Co-operative and Marketing
Society Ltd., Cutband Velim,
Salcete – Goa.
8. Mr. Shivanand Lotlikar,
South Goa Mechanized Boat Owners,
Co-operative and Marketing
Society Ltd., Cutband Velim,
Salcete – Goa.
9. Mr. Cipriano Cardono,
South Goa Mechanized Boat Owners,
Co-operative and Marketing
Society Ltd., Cutband Velim,
Salcete – Goa.

10. Mr. Lislle Cardozo,
South Goa Mechanized Boat Owners,
Co-operative and Marketing
Society Ltd., Cutband Velim,
Salcete – Goa.
11. Mr. Jose Roque Dourado,
South Goa Mechanized Boat Owners,
Co-operative and Marketing
Society Ltd., Cutband Velim,
Salcete – Goa.
12. Mr. Dilip N. Gawas,
South Goa Mechanized Boat Owners,
Co-operative and Marketing
Society Ltd., Cutband Velim,
Salcete – Goa.
13. Mr. John Barreto,
South Goa Mechanized Boat Owners,
Co-operative and Marketing
Society Ltd., Cutband Velim,
Salcete – Goa.
14. Mr. Sanju Bhandari,
South Goa Mechanized Boat Owners,
Co-operative and Marketing
Society Ltd., Cutband Velim,
Salcete – Goa.
15. Mr. Antonio Rodrigues,
South Goa Mechanized Boat Owners,
Co-operative and Marketing
Society Ltd., Cutband Velim,

Salcete – Goa.

16. South Goa Mechanized Boat
Owners, Co-operative and
Marketing Society Ltd.,
Cutband Velim, Salcete – Goa.
Through its Secretary.

.... Respondents

Mr. Tanmai Gawas, Advocate for the petitioner.

Mr. Pravin Faldessai, Additional Government Advocate for the respondents no.1 to 3.

Mr. Shivan Dessai, Advocate for the respondents no.4, 5, 6, 8, 9, 10, 13, 14 and 15.

**Coram : M. S. SONAK &
SMT. M.S. JAWALKAR, JJ.**

Date : 31st January, 2020.

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

Heard Mr. Tanmai Gawas, the learned Counsel for the petitioner, Mr. Pravin Faldessai, the learned Additional Government Advocate for the respondents no.1 to 3 and Mr. Shivan Dessai, the learned Counsel for the respondents no.4, 5, 6, 8, 9, 10, 13, 14 and 15. The respondents no.7, 11 and 12 though served are not represented today. The respondent no.16, which is the South Goa Mechanized Boat Owners, Co-operative and Marketing Society Ltd.,

is also served but is not appearing through any representative or an Advocate.

2. By our Order dated 17.12.2019, itself this matter was posted to the week commencing from 20.01.2020, subject to overnight part heard. In these circumstances, it is not possible to adjourn this matter any further particularly now being that the elections to the Board of Directors of the respondent no.16, Society are scheduled on 19th February, 2020.

3. The respondent no.4 to 15 were elected as Directors to the Board of Directors of the respondent no.16, Society for a term which expired in March, 2015. The petitioner, had alleged that the said Directors, during the continuance of their term, were involved in several lapses and irregularities relating to the functioning of the Society.

4. Accordingly, inspection was ordered through Senior Auditor of the Co-operative Societies, South Zone, Margao. This Inspector submitted his Report highlighting the various lapses and irregularities in the functioning of the Society and the same have been transcribed in the paragraph 2 of the impugned Order dated 19.5.2017. They read as follows:

“2.The Asstt. Registrars of Coop. Societies, Margao vide Office Note No.24-88-2007/ADT/ARSZ/MKT/32 dated 4/4/2017 has allotted inspection of the aforesaid Society to Shri Subhas Gawas, Sr. Auditor of Coop. Societies, South Zone, Margao and he has submitted his inspection report on 13/4/2017 highlighting therein various lapses/irregularities in the functioning of the society. The Inspecting officer has observed some of the major lapses in the working of the said society which have been summarized as below:-

(1) Audit of the society is incomplete and completed upto 31/3/2008. The audit from 1/4/2008 to 31/3/2016 (8 yrs) has not been completed thereby violating the provision of section 74 (4) of the Goa Coop. Societies Act, 2001.

(2) Society has not conducted its AGM for the years 2011-12, 2012-13, 2013-14, 2014-15 & 2015-16 thereby violating the provision of section 72 of the Goa Coop. Societies Act, 2001.

(3) Society has failed to file annual returns within stipulated period which are required to be filled as per section 81 of the Goa Coop. Societies Act, 2001.

(4) Monthly meetings of Board of Directors of the Society are not held regularly.

(5) The Inspecting Officer has reported that the terms of Board of Directors has been expired in the month of March, 2015 and the society has failed to inform the Authority about the same.

(6) It has been further reported by the Inspecting Office that the society has not yet adopted the Bye Laws as per the Goa Coop. Societies Act, 2001 & Rules 2003.

(7) The Inspecting Officer has reported that as on 31/3/2017 the society has received Diesel subsidy from the Fisheries Department from the years 2015-16 amounting to Rs.1,38,17,404/-. Society has paid Diesel subsidy amounting to Rs.11,18,773/- to the members and as on 31/3/2017 an amount of Rs.1,26,98,631/- stands payable to the members out of which Rs.81,78,991/- diesel subsidy have been received in the month of March, 2017 of 3rd & 4th quarters of 2016 stands fully payable which have not been paid by the society”.

5. Based upon the Inspection Report, a Show Cause Notice was issued under Section 61 of the Goa Co-operative Societies Act, 2001 (said Act), requiring the Directors to show cause as to why they should not be disqualified.

6. Upon consideration of the cause shown and further,

upon affording the Directors an opportunity of hearing, the Registrar of Co-operative Societies has made the impugned Order dated 19.5.2017, the operative portion of which, reads as follows:

“1. In exercise to powers vested in me under section 67 A (1) of the of the Goa Coop. Societies Act, 2001, I Gurudas P. Pilernekar, Registrar of Coop. Societies Government of Goa, hereby appoint a committee of Administrators consisting of following two members to manage the affairs of the society for the period six months from the date of taking over the charge.

*1. Shri Mangesh Phadte, Sr. Auditor of Coop. Societies, South Zone, Margao
Chairman*

2. Shri Subhash Gawas, Sr. Auditor of Coop. Societies, South Zone, Margao Member

2. The committee of the Administrator shall streamline the affairs of the society including incompleteness of audit and holding of AGM and to conduct election within the stipulated period and handover the charge to the democratic elected body before expiry of the term.

Given under my hand and Seal of this office on this 19th day of May, 2017”.

7. Mr. Gawas, the learned Counsel for the petitioner submits that the Registrar having accepted that lapses and irregularities were indeed committed by the Directors, was duty bound to disqualify the Directors. He submits that Section 61 of the said Act, contemplates not mere disqualification but provides for the consequences of the disqualification as well. He submits that on the basis of such disqualification, the Directors are debarred from being chosen as Directors for a period of 5 years. He submits that such a disqualification also renders such Directors ineligible to continue as Directors of any other Society. He submits that on the sole ground that 9 out of 13 Directors had already resigned, the Registrar, could not have avoided disqualifying the Directors, thereby giving them an opportunity of wriggling out of the consequences provided in Section 61 of the said Act. Mr. Gawas submits that this is a clear case where the Registrar having failed to appreciate the full scope of import of the provisions in Section 61 of the said Act, has failed to exercise the jurisdiction which he was duty bound to exercise in the present case. Mr. Gawas submits that on these grounds the impugned Order, to the extent it fails to disqualify the Directors, is liable to be interfered with.

8. Mr. Faldessai, the learned Additional Government Advocate for the respondents no.1 to 3, defends the impugned Order

on the basis of reasoning reflected therein.

9. Mr. Shivan Dessai, the learned Counsel appearing for some of the respondents whilst opposing the contentions raised by Mr. Gawas, without prejudice submitted that in all such matters disqualification cannot be automatic but there is a discretion in the Registrar to examine whether the lapses and irregularities committed by the Directors indeed warrant disqualification. He submits that since, the Registrar has not disqualified the Directors, it is apparent the Registrar, after taking into consideration the facts and circumstances of the case has exercised discretion against disqualification.

10. Mr. Shivan Dessai, the learned Counsel for the respondents no.4, 5, 6, 8, 9, 10, 13, 14 and 15 submits that in any case the respondents whom now he represents are not contesting the election scheduled for 19th February, 2020. Mr. Dessai, clarifies that the respondent no.15 is Mr. Antonio Rodrigues, from Colva and is accordingly different and distinct from the respondent no.7. Mr. Dessai, submits that he is not appearing for the respondent no.7, who is also Mr. Antonio Rodrigues.

11. Rival contentions now fall for our determination.

12. Section 61 of the said Act reads as follows:

“Disqualification of all directors of the board:-

Notwithstanding anything contained in the foregoing section, all the directors of the board shall, be deemed to have incurred disqualification for a period of five years for being chosen as directors and (shall be ineligible to continue as directors of any society), if, during their term as directors of the society, -

(a) they did not conduct the annual general meeting within (six) months of closure of the society's accounting year;

(b) they did not conduct a requisitioned general meeting within the specified time;

(c) they did not place the accounts for the preceding co-operative year before the general body at its annual general meeting.

(d) they willfully allow any of the disqualified director to continue on the board”.

(Emphasis supplied)

13. Section 61 of the said Act, as aforesaid, creates a legislative fiction that the Directors shall be deemed to have incurred disqualification for a period of 5 years for being chosen as Directors

and shall be ineligible to continue as Directors of any Society, if, during their term as Directors of the Society, they are found to have committed the acts of omission or commission, as are referred to in sub clauses (a) to (d) of Section 61 of the said Act.

14. The aforesaid Section 61 of the said Act provides not just for disqualification but further provides that such disqualification shall extend for a period of 5 years for being chosen as Directors. The Section also provides that such disqualified Directors shall be ineligible to be the Directors of any other Society. The legislative intent is therefore that once disqualification is incurred under Section 61 of the said Act, such disqualified Director is to be barred for being chosen as a Director for a period of 5 years and further such disqualified Director is also rendered ineligible to be the Directors in any Society. These are the consequences of disqualification under Section 61 of the said Act, as have been clearly provided by the legislature.

15. The consequences as aforesaid cannot be avoided by a disqualified Director by simply resigning as a Director during the current term of the Board. Correspondingly, there is a duty cast upon the Registrar to determine whether the Directors have indeed incurred disqualification under Section 61 of the said Act, because, if

so, then, such disqualified Directors, will have to suffer the consequences of such disqualification as have been clearly set out in Section 61 of the said Act.

16. The Registrar, in the present case, could not have avoided giving on finding as to whether the Directors were indeed disqualified or not, on the spacious plea that 9 out of 13 Directors had already tendered their resignations as the Directors of the Board of the respondent no.16, Society. The issue before the Registrar, was to determine whether such Directors, before they had tendered their resignations, had committed the acts of omission and commission as referred to in sub clauses (a) to (d) of Section 61 of the said Act. In such circumstances, the contentions of Mr. T. Gawas deserve acceptance and it will have to be held that there is a failure on the part of the Registrar to correctly appreciate the scope of import of provisions of Section 61 of the said Act and further, to exercise the jurisdiction, which the Registrar was duty bound to exercise in the facts and circumstances of the present case.

17. Mr. Dessai, however contends that the disqualification as contemplated under Section 61 of the said Act is not automatic but discretion is vested in the Registrar, in terms of Section 61 of the said Act. Since in the present case, there is total failure on the part of the

Registrar to exercise jurisdiction, we propose to remit the matter to the Registrar to enable him to decide whether disqualification is indeed incurred by the Directors, prior to their resignation as Directors or rather during the period when they continued as Directors of the respondent no.16, Society. Whilst deciding this issue, the Registrar will also decide on the contention raised by Mr. Dessai that there is discretion vested in the Registrar in such matters.

18. Mr. Dessai has already made the statement that the Directors whom he represents, have no intentions and are not contesting the elections to the Board of Directors of the respondent no.16, Society now scheduled on 19th February, 2020. As such, there is no question of any restraint upon such Directors. Insofar as the other Directors are concerned, liberty is granted to the petitioner to apply for interim relief before the Registrar, in case Directors are contesting the election now scheduled for 19th February, 2020. If such application is made, we have no doubt that the Registrar will decide such application in accordance with law and on its own merits.

19. We clarify that we are not setting aside any of the findings recorded by the Registrar or the Order of Appointment of Committee of Administrators. The remand is only in order to enable

the Registrar to record a finding on the disqualification or otherwise of the Directors. For this purpose, the Registrar, as noted earlier, will consider Mr. Dessai's contentions regards discretion. We make it clear that we have not adjudicated on this contention about discretion and this point is left open for adjudication by the Registrar, in pursuance of this remand.

20. The petitioner and the Directors to appear before the Registrar on 7th February, 2020 and file an authenticated copy of this Judgment and Order. In case any of the Directors do not appear, the Registrar to issue them fresh notice, but the matter should not be delayed and it is expected the Registrar to dispose this matter as expeditiously as possible and in any case within a period of eight weeks from the date the parties appear and file the authenticated copy of this Judgment and Order.

21. The Registrar will have to afford opportunity of hearing to the petitioner and the Directors whose disqualification the petitioner seeks. If the law contemplates opportunity of hearing to any other parties, the Registrar will have to abide by such law. If the petitioner or the Directors wish to file any additional pleadings/affidavits, they are at liberty to do so within a period of 10 days from today without seeking any extension.

22. The Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

23. All concerned to act on the basis of an authenticated copy of the Order.

SMT. M.S. JAWALKAR, J. *M. S. SONAK, J.*
*af**