

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10757 OF 2021

Kashinath s/o Kundlik Dongare,
Age : 56 years, Occu-Business,
R/o 1514, Dwarka Rahane Mala,
Sangamner, Tq. Sangamner,
Dist.Ahmednagar

..PETITIONER

VERSUS

1. Ahmednagar Zilla Maratha Seva
Nagari Sahakari Patsanstha, Maliwada,
Ahmednagar, Through its General Manager.
2. Babasaheb s/o Chhagan Bhagat,
Age : Major, Occu:Business,
R/o. Balaji Travel, Kothi Road,
Ahmednagar.
3. The District Deputy Registrar,
Co-operative Societies,
Ahmednagar.
4. The Divisional Joint Registrar,
Co-operative Societies,Nashik.
5. The Hon'ble Minister for State,
Co-operation Department,
Mantralaya, Mumbai-32.

..RESPONDENTS

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Mr. S.T.Shelke,Advocate for the petitioner
Mr. S.S.Wagh, Advocate for respondent No.1
Mr.K.J.Suryawanshi,Advocate for respondent No.2
Mr. Y.G.Gujrathi, A.G.P. for respondent Nos.3 to 5.

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CORAM : MANGESH S. PATIL, J.

JUDGMENT RESERVED ON : 27.10.2021

JUDGMENT PRONOUNCED ON : 30.11.2021

JUDGMENT :-

Heard. Rule. The Rule is made returnable forthwith. The learned advocate Mr.Wagh waives service for respondent no.1, learned advocate Mr.Suryawanshi waives service for respondent no.2 and the learned A.G.P waives service for respondent nos.3 to 5. At the request of the parties, the matter is taken up for final decision at the stage of admission.

2] The petitioner is aggrieved by the order of respondent no.5 Minister allowing revision of the respondent no.2 under Section 154 of the Maharashtra Cooperative Societies Act, 1960 (hereinafter the Act) whereby the learned Minister confirmed the order passed by the respondent no.3 District Deputy Registrar of Cooperative Societies (D.D.R.) holding the petitioner to have incurred a disqualification from continuing as a Director of the respondent no.1 Credit Cooperative Society under the provisions of Section 73CA (4) read with by-law no.44 (5) of that Society, on the ground that in violation of the by-law he was already a Director of another Credit Cooperative Society. In doing so, the learned Minister has quashed and set

aside the order passed by the respondent no.4 Divisional Joint Registrar who had quashed and set aside the order of the D.D.R. and had dismissed the complaint of the respondent no.2.

3] Pursuant to the stand of the petitioner, learned advocate Mr.Shelke would assail the decision of the D.D.R. and the learned Minister on 2 counts. According to him, by-law no.44(5) of the respondent no.1 Society, is inconsistent with the provisions of Section 73A. When the legislature has laid down specific grounds for disqualification which do not contain any provision debarring a person from being a Director of two societies, bylaw no.44(5) laying down such a condition is clearly inconsistent and consequently illegal. In support of his submission he would place reliance on the decision of Supreme Court in the case of Babaji Kondaji Garad Versus Nasik Merchants Co-operative Bank Ltd. Nasik and others; (1984) 2 S.C.C. 50.

4] His second argument is that the petitioner had already tendered resignation from the Board of Directors of Respondent No.1 Society on 06/08/2019. Since there was no stipulation in the by-laws and the act as to the manner in which such a resignation is to be tendered and accepted, it unilaterally operated with immediate effect i.e. the date on which it was

tendered, and consequently when the dispute was raised before the D.D.R., he having already ceased to be the Director of respondent no.1 Society, there was no reason for passing any order of his disqualification by resorting to bylaw no.44(5). In support of his submission he would place reliance on the decisions in the cases of Arun Trivikramrao Rajurkar and others V/s Gowardhan Janardhan Khotre and others; 1982 Mh.L.J. 576 and Prakash Mahadeo Khot & Ors V/s Maruti Dada Khot & Ors; 2005 (4) Bom.C.R.568.

5] *Per contra*, the learned A.G.P and the learned advocate for the respondent no.2 would submit that bylaw no.44(5) merely provides for an additional ground for disqualification and cannot be said to be inconsistent with Section 73A of the Act. In this regard they would place reliance on the decision of this Court in the matter of Sambha S/o Gangaram Pikale Versus State of Maharashtra and others; 1996 (2) Mh.L.J. 182.

6] So far as tendering of resignation is concerned, the learned A.G.P and the learned advocate for the respondent no.2 would submit that it was a unilateral act of the petitioner. The resignation was never accepted by the respondent no.1 and he continued to hold the post of Director in the respondent no.1 Society even while he was a Director in Saraswati Gramin

Bigar Sheti Sahakari Patsanstha.

7] Section 73A of the Act lays down the provisions *inter alia* laying down various grounds on which a designated officer would incur disqualification. It provides for the definition of a 'designated officer' to mean the Chairman or the President and also any other officer as may be declared by the State Government. It lays down various conditions as to when a designated officer cannot continue to hold such post in more than one Society. It is apparent that the Director of a Society does not fit into the definition of designated officer as defined under Section 73A (1) of the Act. However, admittedly, the bylaw no.44(5) of the respondent no.1 Society lays down a provision debarring a member from holding a post of Director and provides that he should not be a Director of some other credit cooperative society. When Section 73A of the Act does not specifically lay down any provision in respect of eligibility of a member to hold the office of a Director, whereas bylaw no.44 of the respondent no.1 lays down such a provision, both operate in different spheres. It cannot be said that the bylaw is incompatible or inconsistent with the provision of Section 73A of the Act.

8] This is what has been concluded by this Court in the matter of Sambha

(supra). A similar argument in that matter was discarded with following observations :

“5] Shri Talekar, submitted that since disqualifications have been prescribed under section 73FF and section 73FFF of the Act of 1960 and under Rule 58 of the Maharashtra Cooperative Societies Rules, 1961, no further qualifications can be laid down under the by-laws. The argument is fallacious. What has been prescribed in the Act and Rules are the minimum things which cannot be given go-by by any Co-operative Society. Therefore, disqualifications as are laid down in the Act and rules cannot be watered down by the Society by framing by-laws contrary to it. But it does not mean that the additional qualifications cannot be prescribed under the by-laws. In many cases, qualification in respect of residence is prescribed. In many cases, number of shares which should be held by a member for being entitled for election as Director are also prescribed. It cannot be said that no additional qualifications can be prescribed under the rules. It would be within the jurisdiction of the Registrar to examine whether the by-laws including such qualifications are proper and reasonable. Since the present by-law is approved by the Registrar, it can well be presumed that the Registrar has accepted its necessity.”

9] It may be observed that Section 73FF of the Act which was in the statute book till passing of the Maharashtra Cooperative Societies (Amendment) Act 2013, was renumbered as Section 73CA and lays down the provisions relating to disqualification of committee and its members. This

provision of Section 73CA of the Act *inter alia* specifically lays down that a person shall not be eligible for being a member of a committee of a society if he has incurred any disqualification either under Act or the Rules made thereunder. Meaning thereby that even this provision clearly provides for disqualification of a member from continuing as a member of a committee of a society even according to its by-laws. Therefore, there is no substance in the submission of the learned advocate Mr.Shelke that bylaw no.44(5) is inconsistent with the provisions of the Act.

10] The decision of the Supreme Court in the case of Babaji Garad (supra) is not applicable to the facts and circumstances of the case. In that matter specific provision contained in the Act regarding reservation of seats for members of Scheduled Castes and Scheduled Tribes in the Board of Directors was under consideration. An attempt was made for filling such seats by other methods i.e. appointment and co-option rather than by resorting to election. The method adopted was held to be inconsistent with the object and purpose of the Act. The following observations from paragraph no.15 are eloquent to demonstrate that the fact situation in that matter was peculiar and was not akin to the one in the matter in hand :

“15] Section 73-B provides a legislative mandate. Rule 61 has a status of subsidiary legislation or delegated legislation. by-law of a co-operative society can at best have the status of an Article of Association of a company governed by the Companies Act, 1956 and as held by this Court in Co-operative Central Bank Ltd. V. Additional Industrial Tribunal, Andhra Pradesh the by-laws of a co-operative society framed in pursuance of the provision of the relevant Act cannot be held to be law or to have the force of law. They are neither statutory in character nor they have statutory flavour so as to be raised to the status of law. Now if there is any conflict between a statute and the subordinate legislation, it does not require elaborate reasoning to firmly state that the statute prevails over subordinate legislation and the by-law if not in conformity with the statute in order to give effect to the statutory provision the rule or by-law has to be ignored. The statutory provision has precedence and must be complied with. Further the opinion of the Deputy Registrar as expressed in his circular dated February 1, 1979 and his letter dated June 4, 1979 has no relevance because his lack of knowledge or misunderstanding of law as expressed in his opinion has no relevance. The High Court relying upon the aforementioned two documents observed as under :

There is no inconsistency between Section 73-B and the by-laws because even Government has construed Section 73-B in such manner that even though the by-laws are not amended and reserved seats remained unfilled by election the same can be filled up by co-option.

With respect, we find it difficult to subscribe to this untenable approach that a view of law or a legal provision expressed by a Government officer can afford reliable basis or even guidance in the matter of construction of a legislative measure. It is the function of the court to construe legislative measures and in reaching the correct meaning of statutory provision, opinion of

executive branch is hardly relevant. Nor can the court abdicate in favour of such opinion.”

11] This takes me to the second argument of learned advocate Mr.Shelke. No dispute has been raised by the respondents about the fact that the petitioner had tendered a resignation, copy of which is annexed to the petition (Exh.A). The stand of the respondent no.2 is only to the effect that though the petitioner has claimed to have resigned he continued to discharge the function as a member of the managing committee of the respondent no.1 society, even after passing of the order of his disqualification. Meaning thereby that as far as the factum of tender of the resignation, there is no demur.

12] The resignation (Exh.A) is dated 6/8/2019. It bears endorsements about its copy having been received by the respondent no.1 as well as the concerned office of the D.D.R. on the same date i.e. 6/8/2019. The respondents have not pointed out any specific provision contained in the Act or the by-laws of the respondent no.1 society as to the manner in which such a member can resign from the post of director. In the absence of which, the decision of this Court in the case of Arun (supra) which is subsequently followed in the case of Prakash (supra) would govern the fact situation. Paragraph no.5 from the decision in the case of Prakash summarizes the law

as under :

“5] In (Arun Trivikramrao Rajurkar V/s Gowardhan Janardhan Khotre), 1982 Mh.L.J. 576, a Division Bench held that a resignation tendered by a Chairman of a Cooperative Society operates from the date of its tender and that no acceptance of the resignation is necessary. The Division Bench held that there was no need of the acceptance of the resignation and even if the letter of resignation is so worded as to make a request of its being accepted that would not in any way affect the operation of the resignation when tendered. In (Moti Ram V. Param Dev), AIR 1993 SC 1662, the Supreme Court held that if the act of relinquishment is of a unilateral character, it comes into effect when such act indicating an intention to relinquish office is communicated to the Competent Authority. The authority to whom the act of relinquishment is communicated is not required to take any action and the relinquishment takes effect from the date of such communication where the resignation is intended to operate in praesenti. In (Union of India V. Gopal Chandra Misra), AIR 1978 SC 694 the Supreme Court held that the general principle regarding resignations is that in the absence of a legal, contractual or constitutional bar, a prospective resignation can be withdrawn at any time before it becomes effective and it becomes effective when it operates to terminate the employment or the office tenure of the resignor. “

13] When there is no other provision laying down the procedure to be followed for tender and acceptance of resignation, the petitioner having tendered his resignation on 6/8/2019, even before the order was passed by the D.D.R., there was no occasion or reason to reach to a conclusion that he

had incurred the disqualification under the aforementioned provisions.

14] It is pertinent to note that a specific plea was taken even before the D.D.R. about such tender of the resignation and still he has chosen to discard such a plea on the ground that no decision was taken on the resignation by the Board of Directors and that he still continued to function as such without referring to any provision of the Act or the bylaws.

15] To repeat, without there being any mandate of law requiring the resignation to be accepted by following some procedure, the act of tendering resignation which is a unilateral act, the relation of the petitioner as a member of the Board of Director would cease the moment he tendered the resignation. The fact that inspite of such resignation he continued and was allowed to continue as a Director of the respondent no.1, in my considered view is inconsequential. It may incur some other action by the authorities but that would not change the scenario.

16] The upshot of the above discussion, though the petitioner has failed to prove that bylaw no.44(5) of the respondent no.1 is inconsistent with the provision of the Act and cannot be invoked, since even before a decision was

taken by the D.D.R. he had already ceased to be a member of the Board of Director, the D.D.R. as also the learned Minister have grossly erred in reaching to the conclusion about he having incurred the disqualification. The Writ Petition, therefore, deserves to be allowed.

17] The Writ Petition is allowed. The judgment and order under challenge is quashed and set aside. The Rule is made absolute in above terms.

[MANGESH S. PATIL, J.]

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