

IN THE HIGH COURT OF BOMBAY AT GOA**W. P. No. 5 of 2021****and****W. P No. 108 of 2021****Writ Petition No. 5 of 2021**

Mr. Nagesh Mukund Shet Daivajna,
 72 years of age,
 Son of Mukund Shet Daivajna,
 Resident of House No. M/26,
 Housing Board Colony,
 Gogol, Margao – Goa. Petitioner

V e r s u s

- 1) The Assistant Registrar,
 Co-operative Societies, Quepem Zone,
 Having Office at House No.14,
 Quepem- Goa.
- 2) Registrar of Co-operative Societies,
 Government of Goa,
 Having office at
 Sahakar Bhavan, Patto Plaza,
 Panaji, Goa and 9 others. Respondents

Mr. A. D. Bhobe, Advocate for the Petitioner

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

Writ Petition (F) 108 of 2021

- 1) Eknath Babal Naik Tari,
 Major of age,
 Son of Babal Naik Tari,
 having office at the
 The Sangam Urban Co-op. Credit Society Ltd.
 At Ugeum, Sanguem-Goa and 7 others. Petitioners

V e r s u s

- 1) The Assistant Registrar,
 Co-operative Socialites,
 Quepem Zone,
 Having office at House No.14,
 Quepem - Goa

2) Registrar of Co-operative Societies,
Government of Goa,
Having office at
Sahakar Bhavan, Patto Plaza,
Panaji, Goa and 2 others.

..... Respondents.

Mr. A. Arsekar, Advocate for the Petitioners.

Mr. M. Salkar, Government Advocate for the Respondents.

CORAM: DAMA SESHADRI NAIDU, J.

DATE: 24th FEBRUARY 2021.

ORAL ORDER:

Writ Petition No. 5 of 2021

Petitioner Nagesh Mukund Shet Daivajna is one of the eleven directors of the respondent no.11-Society. On 10/1/2020, the first respondent wanted all the directors to show cause why they should not be disqualified under section 61 of the Goa Co-operative Societies Act. The disqualification is said to be for their violating section 72 of the Act. To be specific, the Board of Directors has not held the Annual General Body Meetings (AGMs) for the years 2016-2017, 2017-2018, and 2018-2019 within the stipulated time; no audit reports have been submitted on time during these three years.

2. On 23 January 2020, on the date of hearing, all the directors, except Nagesh, appeared before the Assistant Registrar and orally submitted their response to the show cause notice. Nagesh absented himself on account of his illness. After taking note of Nagesh's absence, the Assistant Registrar considered the response of the other Directors, including the Chairman, and passed an order on 24/1/2020, disqualifying all the directors.

3. To be precise, the first respondent assessed the statutory impact of the alleged default committed by the Board of Directors because section 61 of the Act provides for deemed disqualification. Aggrieved, Nagesh and other Directors have approached the Goa Co-operative Tribunal. Later, they realized that the Tribunal had no jurisdiction, so they withdrew the appeal. Nagesh has filed this writ petition, whereas the other Directors filed Writ Petition No.108/2021. With

the consent of the counsel for the respective parties, I have taken up both the writ petitions for disposal.

Writ Petition No. 108 of 2021

4. In this Writ Petition, the facts are identical with those in Writ Petition No.5/2021. The only difference is that the other directors of the Board than Nagesh have filed this Writ Petition.

Submissions:

Petitioners:

5. Shri A. D. Bhobe, the learned counsel for the petitioner in Writ Petition No.5/2021, has taken me through the statutory provisions; especially section 61 and section 72 of the Act and Rule 49 of the Goa Co-operative Societies Rules, 2003. To begin with, Shri Bhobe has contended that the impugned order suffers from the vice of violating the principles of natural justice. The Assistant Registrar, according to Shri Bhobe, has not given sufficient opportunity to Nagesh, whose illness that authority duly recorded in the order. So, this Court may remand the matter for fresh adjudication because Nagesh has never had an opportunity of placing his defence on record.

6. Then advertent to the merits, Shri Bhobe has submitted that on neither count is there any violation. To elaborate, he has submitted that the Board of Directors did conduct the AGMs on time, for the years 2016-2017 and 2017-2018. To that extent, he stresses that there is no dispute. The AGM for the year 2018-2019 was held on 3/11/2019, instead of before September of that year. On this count, Shri Bhobe points out that even section 72 of the Act mandates that the AGM should be held as the byelaws determine. Then, he has drawn my attention to byelaw 20, according to which the Society must hold its AGM in nine months.

7. But Shri Bhobe has fairly submitted that in 2014, section 72 underwent an amendment, and the period of nine months was reduced to that of six months. The corresponding Rule, that is Rule 49 of the Rules, as well as the byelaws have remained unchanged. Therefore, until the Rule has been statutorily amended and the corresponding byelaw has been altered, the Assistant Registrar ought to have taken the maximum period as nine months, rather than six months.

8. As to the Society's failure to have the audit reports placed before the AGM on time, Shri Bhobe submits that for the first two years, the Board of Directors appointed one Mr. V. Naik to conduct the audit, as he was one of the empaneled auditors. But because of his illness, the auditor could not complete the task. He also points out that even the auditor appointed by the Assistant Registrar could not complete the task, again, because of his illness. In this context, Shri Bhobe further points out that as the auditing was not complete for the first two years, the Society could not proceed with the auditing for the next two years. It is, he stresses, only a consequence. Therefore, for all the years concerned, the Assistant Registrar ought to have concluded that there is no statutory infraction to the extent of audit.

9. In fact, certain assertions of Nagesh during the arguments lacked foundation in the pleadings. So he volunteered to file an affidavit attesting to those assertions. And he did file one, along with supporting documents; it was to justify his assertion that the Board of Directors has not been remiss in discharging their duties and that the disqualification is uncalled for.

10. Shri A. Arsekar, the learned counsel for the petitioners in Writ Petition No.108 of 2021 has adopted the arguments advanced by Shri A. D. Bhobe, the learned counsel for the petitioner in Writ Petition No.5/2021.

Respondents:

11. On the other hand, Shri M. Salkar, the learned Government Advocate, has submitted that section 61 is a deeming provision. According to him, that section requires no further specific order from the authority concerned about any disqualification. The moment there is infraction, for example, of section 72 of the Act, the disqualification operates itself. So, through the impugned order, the Assistant Registrar has only acknowledged the statutory effect of section 72—disqualification—rather than disqualify the Board of Directors for the first time.

12. Shri Salkar has also pointed out that the Chairman and the other nine directors, who were present before the Assistant Registrar, have only pleaded their ignorance as defence. Nor has Nagesh sought any extension of time from the Assistant Registrar to place his defence on record. He has, the learned Government Advocate stresses, simply absented himself. Therefore, according to him, there is no violation of principles of natural justice.

13. In the end, Shri Salkar has also submitted that Nagesh cannot belatedly supply any justification in the absence of his reply before the Primary Authority and also in the face of admission by the Chairman of the Board that they did violate section 61. Therefore, he has urged this Court to dismiss the writ petition.

Discussion:

14. Indeed, these two Writ Petitions involve certain disputed facts; so, I required the learned Government Advocate to produce the record. Today, an officer of the Respondent Department did submit the records. But my inspecting them has been obviated because neither party disputed the other's version of the narrative. On his part, Shri Bhobe has ensured that Nagesh has filed an affidavit with supporting documents, so that there would be no controversy on the facts. And the respondent officials did not join the issue on that count. What remains to be adjudicated here is the statutory impact on the admitted facts. Nothing more.

15. First, about the violation of the principles of natural justice. Indeed on 23/1/2020, Nagesh was absent. And the Assistant Registrar did record in the impugned order that absence. The reason assigned was Nagesh's illness. To that extent, it is fair and square. But Nagesh did not seek any extension of time from the Assistant Registrar either to place his defence on record or to impress upon that authority that section 61 does not get attracted. In the absence of any such specific request, it is difficult for me to conclude that the first respondent has violated any principles of natural justice. That said, I have decided to consider the matter on the merits as well because, to the credit of both the parties, they have placed all the material before me, thus, inviting adjudication on the merits, too.

16. As the issue hinges on sections 61 and 72, it pays to examine those provisions:

61. 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 the 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.*

72. Meetings and minutes.— (1) The bye-laws of the society shall specify the frequency of and the manner in which the meetings of the board shall be held, so however that the board shall meet at least once in every three months.

(2) Every society shall in each co-operative year hold, in addition to any other meetings or general meetings, its *annual general meeting within nine months from the close of the co-operative year* and not more than fifteen months shall elapse between the date of an annual general meeting and that of the next.

(3) The board shall convene a general meeting within thirty days of receipt of requisition for convening a general meeting signed by at least one-tenth of the members of the society or one tenth of the representatives of a representative general body of the society constituted under section 69 of the Act and any such requisition shall contain the proposed agenda and the reasons why the meeting is felt necessary.

(4) Where the board fails to convene the annual or requisitioned general meeting within due time, it shall be competent for the Registrar to convene the requisitioned or annual general meeting, as the case may be.

(5) Every society shall record in separate minute books, minutes of all proceedings of every general meeting, every meeting of its board of directors and every committee meeting.

(6) Such minutes shall be communicated to all persons invited for the meeting within
forty five days of the conclusion of the meeting.

(7) The minutes of the board meetings so recorded shall be signed by the person who chaired the said meeting, or by the chairman of the succeeding meeting, and minutes of the general meeting shall be signed by the person who chaired the meeting within thirty days from the date of the meeting or in the event of his unwillingness or inability, by a director duly authorized by the Board for the purpose.
(italics supplied)

17. In the light of the statutory mandate as extracted above, let us first examine whether the Board of Directors has failed to conduct the AGM on time in those three years, that is between 2016-2017 and 2018-2019. Undoubtedly, for the cooperative years 2016-2017 and 2017-2018, the Society had its AGM before 30th September, the last date of each year. But in 2018-2019, it was held on 3/11/2019. True, the Society's Byelaw 18 requires the Society to hold the AGM in nine months from the closure of the co-operative year. According to Shri Bhobe, by that reckoning the AGM should have been before 31/11/2019. He has

also pointed out that Rule 49 of the Rules still reflects the maximum allowable period as nine months. Of course, in this context, he has also contended that unless the Rules and the bylaws have been properly amended, the period of reckoning must be nine months.

18. If a statute gives power to a Government or other authority to make rules, the rules so framed have the force of statute and are deemed to have been incorporated as a part of the statute. That principle, however, does not apply to bye-laws, say, of a co-operative society. Those bye-laws merely govern the internal management, business, or administration of that society. They may be binding between the persons affected by them, but they do not have the force of a statute. The bye-laws of a society are similar to the Articles of Association of a Company incorporated under the Companies Act. And such Articles of Association have never been held to have the force of law. (see *Co-operative Central Bank Ltd. v. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad*, AIR 1970 SC 245)

19. The principal legislation such as an Act or the subordinate legislation such as Rules may set the bounds for the bye-laws to operate. Within those boundaries, the bye-laws will have a free reign. Pithily put, a bye-law cannot allow what the law prohibits, nor can it prohibit what the law allows. But it can either allow or prohibit what has not been addressed by the law. It can be eloquent wherever law is silent. And unless any law expressly imposes limitations, the breadth of bye-laws cannot be cut down by implication. Bye-laws are the law parties made for themselves. They fill the gaps, supply the flesh and blood to the skeletal frame of law in a given area. They have all the vigour and rigour of law—it is deemed law—so long as it does not conflict with the substantive law or subordinate law. Here, they conflict with the law.

20. I am afraid the petitioners' submission on that count needs to be stated only to be rejected. It is too well established to be reagitated that when there is any conflict, apparent or real, between the principal legislation and the

subordinate legislation, it is the former that prevails. Hierarchically, a bye-law must yield to a Rule, and a Rule to a Section if there is any conflict. True, the amendment to section 72 of the Act in 2014 has not led to a corresponding change in Rule 49. Even then, what prevails is the time frame fixed by section 72 rather than rule 49. That apart, the byelaws ought to be always subservient to the statutory mandate. And any conflict between them makes the byelaws untenable. It needs no reiteration. Thus, it is evident that for the cooperative year 2018-19, the respondent Society could not hold its General Body Meeting on time.

21. Now, we will turn our attention to the allegation the Board of Director faces about its not having the audit completed within the given time frame during all those four years.

22. Here, too, the Society did appoint one Mr. M.V. Naik as the auditor. For the first two years—2016-2017 and 2017-2018—the Board appointed him on time. Now, the petitioners have also placed on record the auditor's reply, dated 24/2/2020. He has supplied his justification for his failure to conduct the audit on time during those two years. He says he was ill. The statute mandates that the responsibility of Board of Directors does not cease with a mere appointment of the auditor. It also should ensure that the auditing has been completed and the report is placed on record for the AGM's perusal. Here, from 2016 until 2020, when the auditor submitted his reply, the Board does not seem to have taken any steps about the inordinate delay.

23. When the Board did not get the audit report for the cooperative year 2015-2016, it ought not to have reappointed the same auditor for the next cooperative year without checking why he had not completed the auditing for the previous year. And indisputably for the years 2017-2018 and 2018-2019, the

Society did not appoint any auditor. It is, indeed, besides the point that even the Assistant Registrar, too, could not get the auditing completed, though that authority assigned the task to another auditor. Here, we are confining ourselves to the disqualification.

24. As pointed out by the learned Government Advocate, the disqualification is automatic. The deeming provision operates itself. Once it is evident that the Society or the Board of Directors has infringed, say, section 72, the disqualification occurs automatically. It needs no order to that effect. Here, the Assistant Registrar's impugned order only acknowledged that disqualification; in other words, it is not an order of disqualification *per se*; it is rather an order acknowledging that disqualification.

Under these circumstances, despite the sincere efforts made by the petitioners' counsel, the Court is unable to accept the petitioners' point of view. As a result, both the Writ Petitions fail. No order on costs.

DAMA SESHADRI NAIDU, J.

AP/-

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PEREIRA** Digitally signed
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