

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.688/2019

Mr. Ganpat Gaonkar,
son of late Pandurang Gaonkar,
aged about 48 years, married,
Advocate by Profession,
Indian National and r/at H.No.18,
Kumbharkhand, Sattari, Goa. Petitioner.

Versus

1. State of Goa,
through Chief Secretary,
having office at Secretariat,
Alto, Porrima, Bardez, Goa,

2. Registrar of Co-operative Societies,
Having Office at Sahakar Sankul,
4th & 5th Floor, EDC Complex,
Patto, Panaji, Goa.

3. Assistant Registrar of Co-operative
Societies, Bicholim Zone,
Siddivinayak Apartment,
Pratapnagar, Sanquelim, Goa. Respondents.

Mr. Deepak Gaonkar, Advocate for the Petitioner

Mr. Manish Salkar, Government Advocate for the Respondents.

Coram : M.S. Sonak &
M.S. Jawalkar, JJ.

Reserved on: 6th January 2021

Pronounced on: 8th January 2021

JUDGMENT: - (Per M.S. Sonak, J.)

Heard Mr. Deepak Gaonkar for the Petitioner and Mr. Manish Salkar, Government Advocate for the Respondents.

2. The challenge in this Petition is mainly to the order dated 10th January 2019, made by the Assistant Registrar of Co-operative Societies, Bicholim, disqualifying the Petitioner to continue as the Director on the Board of Directors of Sattari Taluka Farmers Service Co-operative Society Ltd. (Society), by invoking the provisions of Section 60(i)(e) and Section 59(11) of the Goa Co-operative Societies Act, 2001 (said Act).

3. The Petitioner, by amending the Petition has also challenged the inquiry report dated 15th May 2018 submitted by the Senior Auditor/Inspector, which report has been taken into consideration by the Assistant Registrar whilst making the impugned order dated 10th January 2019.

4. Mr. Gaonkar, the learned Counsel for the Petitioner, at the outset, submits that the impugned order dated 10th January 2019 is in breach of the principles of natural justice because the Petitioner was not heard by the Assistant Registrar before making the impugned order. He submitted that the impugned order incorrectly states that the Petitioner was heard and even proceeds to record certain

submissions allegedly made by the Petitioner when, in fact, an oral hearing was given to the Petitioner. He submits that the provisions of Section 59(11) of the said Act specifically contemplate grant of an opportunity of being heard before any order is made to disqualify the Directors of the Society. He submits that on this ground alone, the impugned order dated 10th January 2019 is required to be set aside.

5. Mr. Gaonkar submits that in any case, the material on record does not establish that the Petitioner was either a salaried employee of the Society or holding any office of profit under the Society. He submits that the record, at the highest, indicates that the Petitioner appeared as an Advocate on behalf of the Society, but, further, there is nothing on record to indicate that the Petitioner earned any profits on account of such appearances on behalf of the Society. He submits that the record indicates that it is the Society which was profited by the appearance of the Petitioner on his behalf. He submits that the record indicates that on account of the services rendered by the Petitioner, the Society was able to recover amounts from the defaulting borrowers. He submits that even the most reasonable fees charged by the Petitioner were not directly paid by the Society, but debited from the loan accounts of the defaulting borrowers in terms of the prevailing contracts or trend. For all these reasons, Mr. Gaonkar submits that the provisions of Section 60(i)(e) of the said Act were not at all attracted and the disqualification based thereon is *ex facie* null and void.

6. Mr. Gaonkar submits that the inquiry report dated 15th May 2018 is itself incorrect and, based on the same, no action should have been taken under Section 59(11) of the said Act. In any case, he submits that the report does not record any categorical findings of discrepancies in the working of the Society or the Petitioner indulged in any irregular, illegal acts detrimental to the interest of the Society. For all these reasons, Mr. Gaonkar submits that the impugned order dated 10th January 2019 is liable to be set aside.

7. Mr. Gaonkar relies on a decision of the Hon'ble Supreme Court in the case of *State Election Commissioner, Bihar, Patna and ors. vs. Janakdhari Prasad and ors.*¹ to point out that a candidate holding the post of Assistant Government Advocate in the panel of Assistant Government Advocates, was not disqualified for contesting the elections under the Bihar Panchayat Raj Act, 1993. He submits that based upon the ratio of this decision, the disqualification of the Petitioner is also liable to be set aside.

8. Finally, Mr. Gaonkar submits that the General Body of the Society has itself passed a resolution rejecting the proposal for disqualification of the Petitioner. He submits that this resolution dated 23/9/2019 has merely required the Petitioner to no longer appear as an Advocate on behalf of the Society but has specifically

¹ (2018) 8 SCC 1

rejected the plea for the Petitioner's disqualification.

9. Mr. Gaonkar relies on the provisions in Rule 42 of the Goa Co-operative Societies Rules, 2003 (said Rules) to submit that either the impugned order dated 10th January 2019 made by the Assistant Registrar should now be forwarded to the Board of Directors for deciding whether the Petitioner ought to be disqualified or the Petitioner ought to be exonerated in the light of the resolution of the General Body dated 23/9/2018. Mr. Gaonkar submits that this is yet another ground to set aside the impugned order dated 10th January, 2019.

10. Mr. Salkar, the learned Government Advocate defends the impugned order based on the reasoning reflected therein. He submits that the procedure under Rule 41 of the said Rules applies only when the Society itself wants to disqualify any of its Directors. He submits that the impugned order has been made under Section 59(11) of the said Act which vests powers in the Registrar, which includes Assistant Registrar in the matter of disqualification of the Director or continuance of the Director on the Board of Directors of the Society.

11. Mr. Salkar submits that an opportunity of hearing was indeed granted to the Petitioner and the Petitioner ought not to be allowed to challenge the record of the Assistant Registrar, a quasi-judicial authority, directly before this Court, without having

approached such authority to correct the record. He submits that in any case, the Petitioner, in his reply to the show-cause notice, has virtually admitted the charges against him and, therefore, this is not at all a case of any breach of the principles of natural justice or fair play.

12. Mr. Salkar submits that there is no infirmity whatsoever in the inquiry report dated 15th May, 2018 made by the Inquiry Officer and the record clearly indicates that the Petitioner indulged into the acts which were irregular, illegal and detrimental to the interest of the Society. He submits that the Petitioner, by appearing on behalf of the Society and charging substantial fees, had incurred disqualification by holding any office of profit and this was a clear case of conflict between the Petitioner's duty towards the Society as its Director and his pecuniary interest as a practicing Advocate. Mr. Salkar relies on *Sakhawant Ali vs. State of Orissa*²; *Amol alias Amolkumar Gajanan Naik vs. Director of Municipal Administration, Goa and ors.*³ and *Murlidhar Bhaulal Malu and ors. vs. Sudhakar Honaji Patil and ors.*⁴ in support of his submissions.

13. Mr. Salkar submits that there is no infirmity in the impugned order and, therefore, this Petition may be dismissed.

² AIR 1955 SC 166

³ 1987 (3) Bom. C.R. 721

⁴ 1987 (3) Bom. C.R. 550

14. Rival contentions now fall for our determination.

15. In this case, based upon some complaints, the Office of the Registrar of Co-operative Societies appointed a Senior Auditor/Inspector from the Office of Registrar of Co-operative Societies to inquire into the functioning of the Society and submit an inquiry report. Such a report was submitted on 15th May 2018. The report concludes that several irregularities were observed in the functioning of the Society in general and the role of three of its Directors, including the Petitioner herein which were found to be detrimental to the interest of the Society. The report also noted that the Society was suffering losses on account of such irregularities and illegalities and urgent steps were necessary to safeguard the interest of the members of the Society in particular and that of the Society in general.

16. The Petitioner has thrown a challenge to this report dated 15th May 2018. However, according to us, the report is based upon the inquiries held by the Senior Auditor, as well as the documentary evidence referred to by him. Therefore, there is no case made out to set aside this report as was faintly urged by Mr. Gaonkar, learned Counsel for the Petitioner. At least, in so far as the Petitioner is concerned, key allegations against him have been substantially admitted by him in his response dated 27th August, 2018 to the show cause notice dated 13th August, 2018, issued to him by the Assistant

Registrar before making the impugned order dated 10th January, 2019.

17. Based upon the report, a show-cause notice dated 13th August 2018 was issued to the Petitioner by the Assistant Registrar of Co-operative Societies, giving the Petitioner a clear idea as to the nature of allegations against him concerning his role as a Director of the Society. The Petitioner, without complaining of any vagueness in the show cause notice, submitted a detailed response dated 27th August 2018, to the Assistant Registrar.

18. The Petitioner, in his response dated 27th August 2018, no doubt, contended that it is the Society which had benefited from the acts of the Petitioner and therefore, there was no reason to invoke the provisions of Section 60(i)(e) or Section 59(11) of the said Act. The response refers to the suggestions made by the Petitioner for recovery of loans from the defaulting borrowers and proceeds to state that an amount of almost Rs.26,00,500/- was recovered on account of the Petitioner filing several cases against the defaulting borrowers under the provisions of Section 130 of the Negotiable Instruments Act.

19. In paragraphs 6 and 7 of the response dated 27/8/2018, the Petitioner initially suggested that he did not charge any fees from the Society for the services rendered by him to the Society. However, in paragraphs 12 and 14, the Petitioner admitted having charged the

fees from the Society for the legal services rendered by him to the Society. By way of defence, however, the Petitioner urged that the fees charged by him were '*very reasonable fees*' or '*very less fees*'. Further, by way of defence, the Petitioner even urged that these amounts of fees were in fact '*deducted from the loanee account without any burden on the society account*'.

20. The Petitioner, in his response dated 27th August 2018 also pointed out that he had attended more than 60 monthly meetings, but had not taken sitting fees for more than 50 meetings. On this basis, the Petitioner submitted that he had been '*thereby contributing about Rs.15,000/- towards the society*'.

21. The record also indicates that the Society, based upon the inquiry report dated 15th May 2018 had proceeded to disqualify the Petitioner. However, the Petitioner appealed against such disqualification to the Office of the Registrar of Co-operative Societies, which held that such disqualification by the Board of Directors was not proper.

22. On due consideration of the Petitioner's response dated 27th August 2018, the Assistant Registrar made the impugned order dated 10th January 2019.

23. Mr. Gaonkar, the learned Counsel for the Petitioner is quite

right in submitting that Section 59(11) of the said Act does contemplate grant of an opportunity of being heard to the Directors who were proposed to be disqualified. The Petitioner contended that no such opportunity was afforded to him. However, if the impugned order dated 10th January 2019 is perused, then, it clearly states that the Petitioner appeared before the Assistant Registrar on 27th March 2018 and made his submissions in the matter. The impugned order dated 10th January 2019 also records that adequate opportunities were given to the Petitioner and the two other Directors, to submit their clarification and also personal hearing. There is no dispute that the Assistant Registrar in making the impugned order has acted in a quasi-judicial capacity.

24. Since the impugned order records in more than one place that opportunity of hearing was given to the Petitioner, it is not possible for us to doubt the record before the quasi-judicial authority, based on the Petitioner's assertion to the contrary made for the first time before this Court. The record before the quasi-judicial authority as to what transpired before it has to be normally accepted. In case any party wishes to challenge the same, the party is required to first move before the same authority with a plea to correct the record. The statements reflected in the impugned order or the Roznama, cannot be challenged for the first time in an appeal or a writ petition, in this manner.

25. In *Ram Bali vs. State of U.P.*⁵ Hon'ble Supreme Court has held that the statement recorded in a judgment is conclusive and cannot be contradicted by an affidavit or by other evidence. A party believing that the happenings in the Court have been erroneously recorded in the Judgment should promptly approach the Judges who have made the record while the matter is still afresh, for necessary rectification. That is the only way to have the record corrected.

26. In *D.P. Chadha vs. Triyugi Narain Mishra and ors.*⁶ Hon'ble Supreme Court held that the record made by a Court is sacrosanct and doubt cannot be cast on it casually. Where steps have not been taken for rectification before the Court which made the record, no other Court can entertain a challenge to the correctness of facts recorded in the order sheet.

27. In *Jagvir Singh and ors. vs. State (Delhi Admn.)*⁷ the Hon'ble Supreme Court held that happenings in Court as recorded in the judgment are conclusive of the facts so stated and cannot be contradicted by affidavit or other evidence. The appellant ought to have, while the matter was still fresh in the minds of the judges, called the attention of the very Judge who has made the record and have the record corrected.

⁵ (2004) 10 SCC 598

⁶ (2001) 2 SCC 221

⁷ (2007) 5 SCC 359

28. In *State of Maharashtra vs. Ramdas Shrinivas Nayak and anr.*⁸ it was held that statements of fact as to what transpired at the hearing, recorded in the Judgment of the Court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in Court have been wrongly recorded in a Judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very judges who have made the record to the fact that the statement made concerning his conduct was a statement that had been made in error. This is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there.

29. Therefore, we are not prepared to accept Mr. Gaonkar's contention that no opportunity of hearing was granted to the Petitioner before the impugned order was made. Not only does the impugned order record that such an opportunity was granted to the Petitioner but, further the impugned order proceeds to take into consideration the submissions made by the Petitioner who, himself, is an Advocate, in the course of such personal hearing. Therefore, the ground of any alleged breach of the principles of natural justice or fair play fails.

30. In any case, there is nothing like a mere technical breach of the principles of natural justice. A party who alleges such breach is required to further establish some prejudice on account of non-compliance. In the present case, one of the main charges against the Petitioner was that he appeared or continued to appear as an Advocate on behalf of the Society even after he became the Director of the Society. A further charge was that the fees of the Petitioner were paid by directly debiting the same from the accounts of the loanees. The Senior Auditor's report has commented that this was most irregular and detrimental to the interest of the members of the Society in particular and the Society in general. This is what was also set out in the show-cause notice. The report, as well as the show cause notice, clearly makes out a case that the Petitioner indulged in acts that created a conflict between his duties and interests.

31. Though the Petitioner complains of failure of natural justice, the Petitioner's categorical response to the show cause notice, dated 27th August 2018, virtually admits these material charges leveled against him vide the Senior Auditor's report dated 15th May 2018 and the show cause notice dated 13th August 2018. Earlier the Petitioner admitted that he continued to appear as an Advocate for the Society even after becoming the Director of the Society. The response admits that the Petitioner charged fees from the Society which were deducted from the loanees' accounts. The Petitioner's

defence that the fees were very less, is hardly some defence in law, to warrant any interference with the impugned order. So also the Petitioner's charity in not claiming the sitting fees in some instances is not some ground in law to interfere with the impugned order. Since the material charges were virtually admitted by the Petitioner, it is futile for the Petitioner to complain about any failure of principles of natural justice or fair play in this matter.

32. The impugned order, no doubt, refers to the provisions of Section 60(i)(e) and Section 59(11) of the said Act. Section 59(11) speaks about the discrepancy in the working of the Society or commission or omission of acts by the Directors which may be irregular, illegal in nature, and detrimental to the interest of the society. Now, in this case, the Petitioner by acting as an Advocate for the Society of which he was a Director, has indulged into actions which resulted in conflict between his duties as a Director of the Society and his pecuniary interest, as an Advocate appearing on behalf of the Society.

33. In *Sakhawant Ali* (supra), the Hon'ble Supreme Court has held that the provisions which go to the extent of disqualifying a candidate from being elected as a Councillor, if he is employed as a paid legal practitioner on behalf of the municipality or appears in any matters against the municipality, are to achieve purity in public life.

The Hon'ble Supreme Court has held that the object would be thwarted if there arose a situation where there was a conflict between interest and duty. The possibility of such a conflict can be easily visualized because if a municipal councilor is employed as a paid legal practitioner on behalf of the multiplicity, there is a likelihood of his misusing position to obtain municipal briefs for himself and persuade the municipality to sanction unreasonable fees. Similarly, if he was acting as a legal practitioner against the municipality, he might in the interest of his client misuse any knowledge which he might have obtained as a councilor through his access to the municipal records or he might sacrifice the interest of the municipality for those of his clients. No doubt, having regard to the best traditions of the profession very few legal practitioners would stoop to such tactics, but the legislature in its wisdom thought it desirable to '*eliminate any possibility of a conflict between interest and duty and aimed at achieving this object or purpose by prescribing the requisite disqualification*'.

34. The Division Bench of this Court, in *Amol Gajanan Naik* (supra), upheld the disqualification of a councilor who had continued his engagement as an Advocate in a case for or against the Council even after being elected as the councilor. This Court also reiterated that such provisions are made to stress upon purity in public life and there may not be a clash between the professional interest of a lawyer

and his duty as a councilor.

35. To the same effect are the observations in *Murlidhar Bhaulal Malu* (supra) where, in the context of the provisions of the Maharashtra Co-operative Societies Act, 1960, the Division Bench of this Court held that such provisions are founded on the imperative need for neutrality and impartiality. Such provisions are also enacted for avoiding the likelihood of conflict between interest and duty. Such a conflict between interest and duty can arise only qua the same society, or qua a federal society. Such provisions take into account not cases of actual conflict, but even the likelihood of conflict.

36. Applying the aforesaid principles to the fact position as emanating from the record, it is not possible to hold that the acts indulged by the Petitioner were not irregular or illegal and detrimental to the interest of the Society. The subsequent resolutions whether of the Board of Directors or the General Body purporting to exonerate the Petitioner can hardly be determinative in such matters. Based upon such subsequent resolutions, it will not be proper to interfere with the impugned order which is quite consistent with the provisions of Section 59(11) of the said Act. Besides, if the Petitioner asserts that there was nothing even irregular in his continuing to act as an Advocate on behalf of the Society after he became its Director, then, it is a little surprising that the General Body directed the

Petitioner to refrain from continuing as an Advocate for the Society and the Petitioner accepting this direction without any demur. In any case, such subsequent resolutions are not some legal grounds for interference with the impugned order made under Section 59(11) of the said Act.

37. Since the impugned order is liable to be sustained by resort to the provisions of Section 59(11) of the said Act, there is no necessity to go into as to whether the Petitioner, in the facts of the present case, held the office of profit under the Society. Even assuming that the Petitioner may not have held the office of profit under the Society by continuing to act as an Advocate on behalf of the Society despite being appointed as its Director, the impugned order is liable to be sustained by resort to the provisions of Section 59(11) of the said Act.

38. At least, *prima facie*, however, we cannot turn down the contention of Mr. Salkar that this was a case where the Petitioner can be said to have held the office of profit by appearing on behalf of the Society in his professional capacity before Courts of law and by receiving fees for such appearances from the Society. Provisions of Section 60(i)(e) of the said Act are to avoid even likelihood of conflict between '*duty*' and '*interest*' and to cut out the misuse of the official position to advance private benefit. These provisions are incorporated to eliminate or to reduce the risk of conflict between the interest and

duty since it is well accepted that such conflicts will be detrimental to the interest of the Society and its members.

39. Now, the expression '*office of profit*' has not been defined under the said Act or for that matter, even under the Constitution of India, though the Constitution provides for disqualification of elected members to hold the office of profit under the Government.

40. In *McMillan vs. Guest*⁹ Lord Wright speaking for the House of Lords, held that the word '*office*' is of indefinite content. Its various meanings cover four columns of the *New English Dictionary*, but, the most relevant in the context of the case before it, was the following: "*A position or place to which certain duties are attached, especially one of a more or less public character.*".

41. The aforesaid observations of Lord Wright in *McMillan vs. Guest* (supra), were quoted with approval by the Hon'ble Supreme Court in *Mahadeo vs. Shantibhai*¹⁰ where the question arose whether a lawyer had incurred disqualification on account of holding any office of profit under the Government. The lawyer was kept on the panel of Railway Pleaders for conducting suits filed against the Union of India in the Courts of Ujjain. One of the terms of his appointment expected him to watch cases coming up for hearing

⁹ 1942 AC 561 (HL)

¹⁰ (1969) 2 SCR 422

against Railway in various Courts in UJB and give timely intimation of the same to the Railway Office. It further provided that if no instructions regarding any particular case were received, he would be expected to appear in the Court and obtain adjournments to save the *ex parte* proceedings against the Railway. It was also provided that the lawyer would be paid Rs.5 for every such adjournment if he was not entrusted with the conduct of the suit later on.

42. The Hon'ble Supreme Court in *Mahadeo vs. Shantibhai*¹¹, by quoting the observations of Lord Wright as to the contextual meaning of the word '*office*' held that if by '*office*' is meant the right and duty to exercise an employment or a position to which certain duties are attached then, it is difficult to see why the engagement of the lawyer in the case before it would not amount to the lawyer's holding an office. By the term of appointment, the lawyer had accepted certain obligations and was required to discharge certain duties. He was not free to take a brief against the Railway Administration. There was a duty cast upon him to appear in the court and obtain an adjournment, to protect the interests of the Railway. The duty or obligation was a continuing one so long as the Railway did not think it proper to remove his name from the panel of Railway lawyers or so long as he did not intimate to the Railway Administration that he desired to be free from his obligation to render service to the Railway. It was true that he would get a sum of

¹¹ (1969) 2 SCR 422

money only if he appeared, but the possibility that the Railway might not engage him. is a matter of no moment. An office of profit means an office in respect of which a profit may accrue. It is not necessary that a holder of an office of profit must earn a profit or that he was bound to get a certain amount of profit irrespective of the duties discharged by him.

43. In *Shibu Soren v. Dayanand Sahay*¹², the Hon'ble Supreme Court noted that the expression “*office of profit*” has not been defined either in the Constitution or in the Representation of the People Act. Analysing further, the Court proceeded to state that “*in common parlance, the expression 'profit' connotes an idea of some pecuniary gain. If there is really some gain, its label — 'honorarium' — 'remuneration' — 'salary' is not material. It is the substance and not the form which matters and even the quantum or amount of 'pecuniary gain' is not relevant. What needs to be found out is whether the amount of money receivable by the person concerned in connection with the office he holds, gives to him some 'pecuniary gain', other than as 'compensation' to defray his out-of-pocket expenses, which may have the possibility to bring that person under the influence of the executive, which is conferring that benefit on him. Eventually, the Court held that: (SCC p. 447, para 36)*

“36. The question whether a person holds an office of profit, as already noticed, is required to be interpreted in a

¹² (2001) 7 SCC 425

realistic manner having regard to the facts and circumstances of each case and relevant statutory provisions. While “a strict and narrow construction” may not be adopted which may have the effect of “shutting off many prominent and other eligible persons to contest the elections” but at the same time “in dealing with a statutory provision which imposes a disqualification on a citizen it would be unreasonable to take merely a broad and general view and ignore the essential points”. The approach which appeals to us to interpret the expression “office of profit” is that it should be interpreted with the flavour of reality bearing in mind the object for enactment of Article 102(1) (a), namely, to eliminate or in any event to reduce the risk of conflict between the duty and interest amongst members of the legislature by ensuring that the legislature does not have persons who receive benefits from the executive and may thus be amenable to its influence.”

The aforesaid passage emphasises on the purpose of disqualification, the approach of the Court while appreciating the expression and to reduce the risk of conflict of interest between the duties and interest.”

44. In *Jaya Bachchan vs. Union of India*¹³ the issue arose whether the petitioner was holding an office of profit. She was appointed as Chairman of the Uttar Pradesh Film Development Council and was entitled to certain benefits. The Court analysing the law enunciated in *Gatti Ravanna vs. G.S. Kaggeerappa*, AIR 1954 SC 653 and *Shibu Soren* (supra), opined that it is well settled that where the office carries with it certain emoluments or the order of appointment states that the person appointed is entitled to certain

¹³ (2006) 5 SCC 266

emoluments, then it will be an office of profit, even if the holder of the office chooses not to receive/draw such emoluments. What is relevant is whether a pecuniary gain is “receivable” regarding the office and not whether a pecuniary gain is, in fact, received or received negligibly.

45. The rulings in *Mahadeo vs. Shantibhai* (supra), *Shibu Soren* (supra), and *Jaya Bachchan* (supra) were quoted with approval in *State Election Commissioner vs. Janakdhari Prasad* (supra) upon which reliance has been placed by Mr. Gaonkar. This decision, according to us, does not assist the case of the Petitioner, rather to some extent, goes against the contentions raised by and on behalf of the Petitioner.

46. In paragraph 30 of the *State Election Commissioner vs. Janakdhari Prasad* (supra), the Hon'ble Supreme Court pointed out that under the Bihar Panchayat Raj Act, 1993, the disqualification was of a candidate '*in service of Central or State Government*'. The Hon'ble Supreme Court noted that the legislature in enacting the Bihar Panchayat Raj Act, 1993 had not provided for any disqualification on the ground of the candidate holding '*office of profit*'. In absence of such a provision in the primary legislation, the candidate could not have been disqualified by equating the expression '*in service of the Central Government or the State Government*' and

'office of profit'. This means that if 'office of profit' had been provided as the ground for disqualification then, by following the above-referred cases the candidate in question, could have been disqualified. In our case, the legislature has clearly provided for disqualification on the ground of the Director holding office of profit under the Society. Therefore, the ruling in *State Election Commissioner vs. Janakdhari Prasad* (supra) cannot be of any assistance to the Petitioner, but rather the same is against the contentions put up by and on behalf of the Petitioner.

47. According to us, there is no merit in the contentions based upon Rule 42 of the said Rules. This is because this is not a case where the Society has disqualified or intends to disqualify the Petitioner. This is a case where the Assistant Registrar of Cooperative Societies has disqualified the Petitioner by invoking the provisions of Section 59(11) of the said Act. Reference to the provisions of Section 60(i)(e) is really to hold that the Petitioner has indulged into acts which were irregular, illegal, and detrimental to the interest of the Society.

48. The Petitioner was co-opted as a Director way back in the year 2015 and there is no dispute that the term for which the Petitioner was co-opted, has also concluded.

49. For all the aforesaid reasons, we see no good ground to interfere with the impugned order dated 10th January 2019, or for that matter, the report dated 15th May 2018.

50. This Petition is, therefore, liable to be dismissed and is, hereby, dismissed. Rule discharged. There shall be no order as to costs.

M.S. Jawalkar, J.

M.S. Sonak, J.