

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

WRIT PETITION NO. 11348 OF 2021

Pravin Indarchand Jain
Age; 45 years, Occ; Service
R/o. 89-B, Ganesh Colony, Chopda,
Tq. Chopda, District; Jalgaon.

...PETITIONER

V E R S U S

1. The State of Maharashtra,
Through its Commissioner,
Co-Operative Department Pune.
2. The Divisional Joint Registrar,
Co-Operative Societies, Nashik Division,
Nashik.
3. The District Deputy Registrar,
Co-Operative Societies, Jalgaon,
Tq. & Dist. Jalgaon.
4. Shantilal Tarachand Bothra,
Age; 70 years, Occ; Business,
R/o; Bazarpeth, Chopda,
Tq. Chopada, Dist. Jalgaon.
5. Rerkha Shantilal Bothra,
Age; 65 years, Occ; Household,
R/o; Bazarpeth, Chopda,
Tq. Chopada, Dist. Jalgaon.
6. Sharmila Sudhir Jain,
Age; 55 years, Occ; Business,
R/o; Gandhi Chowk, Chopda,
Tq. Chopda, Dist. Jalgaon.
7. Pandurang Vanji Sonwane,
Age; 66 years, Occ; Agril,
R/o; Hated (Bk.)
Tq. Chopda, Dist. Jalgaon.

...RESPONDENTS

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Advocate for the petitioner : Mr.Patil Vijay B.
AGP for the Respondent Nos. 1 to 3 : Mr. K.N.Lokhande
Advocate for Respondent Nos.4,6 and 7 : Mr. M.V. Salunke h/f
V.D.Salunke
Advocate for Respondent No. 5 : Mr.R.N.Dhorde (Senior Counsel) a/w
Mr.P.S.Dighe and Mr.V.R.Dhorde
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CORAM : SANDEEP V.MARNE, J.

RESERVED DATE : 11.10.2022
PRONOUNCEMENT DATE : 14.10.2022

JUDGMENT : [PER : SANDEEP V. MARNE, J.]

1. Rule. Rule made returnable forthwith. With the consent of the learned Advocates for the respective parties, heard finally at the state of admission.

THE CHALLENGE

2. Petitioner assails the order dated 29.04.2021 passed by the Divisional Joint Registrar of Co-Operative Societies, Nashik, Division Nashik (for short the 'DJR') passed in Appeal A-30/2020, by which the DJR has set aside the order dated 01.12.2020 passed by the District Deputy Registrar (for short the 'DDR') disqualifying respondent Nos. 4 to 7 as representatives of Managing Committee of Mahavir Nagari Sahakari Patpedhi Maryadit Chopda (for short 'Mahavir Society').

FACTUAL MATRIX

3. Mahavir Society is a registered Co-Operative Society under the provisions of the Maharashtra Co-Operative Societies Act, 1960 (for short the 'Act 1960'). Petitioner claims to be a member of the Mahavir Society. He filed complaints before the DDR on 30.01.2020 and 06.03.2020 seeking disqualification of respondent Nos. 4 to 7, *inter-alia* on the ground that they were defaulters. A show cause notice was issued to respondent Nos. 4 to 7 on 26.08.2020, calling upon them to explain as to why they should not be disqualified. After hearing parties, DDR passed order dated 01.12.2020 disqualifying respondent Nos. 4 to 7 as being member of the Managing Committee.

4. Respondent Nos. 4 to 7 filed appeal bearing No. A-30/2020 before DJR. By order dated 20.01.2021, DJR stayed the order passed by DDR. Petitioner filed Writ Petition No. 2952 of 2021 challenging the interim order dated 20.01.2021. The Writ Petition was disposed of by this Court by order dated 01.03.2021 directing DJR to dispose of the appeal within two months. After hearing parties, DJR was pleased to allow the appeal by order dated 29.04.2021 and set aside the order passed by DDR on 01.12.2020. Petitioner is challenging the order dated 29.04.2021 passed by DJR.

SUBMISSIONS ON BEHALF OF PETITIONER

5. Appearing for petitioner Mr. Vijay Patil, the learned Counsel

would invite my attention to the provisions of Section 73CA of the Act, 1960 and contend that the provisions contemplates disqualification of a member if he /she is a defaulter of any Society. He relies upon the reports of the Assistant Registrar and the Deputy Registrar dated 27.02.2020 and 25.08.2020 respectively to contend that the reports conclusively proved that Respondent No. 4 Mr. Shantilal Tarachand Bothra had defaulted on the credit facilities extended to him. He invited my attention to the findings recorded by DDR in order dated 01.12.2020, to demonstrate the exact amounts of defaults by Respondent Nos. 4 to 7.

6. Mr. Patil would then invite my attention to the various findings recorded by the DJR while passing the impugned order dated 29.04.2021. He fairly concedes to the position that the defaults in respect of Multi State Co-Operative Credit Society would not be covered under the provisions under Section 73CA of the Act, 1960. He would therefore concentrate only on defaults committed by respondent Nos. 4 to 7 in Mahavir Society. Mr. Patil raises strong objection to the findings recorded by the DJR about respondent No. 6 (Sharmila Sudhir Jain) being a coborrower, is not covered by the definition of the term 'defaulter'. He would submit that even a coborrower is covered by the definition of the term defaulter. Mr. Patil would further submit that even though in respect of respondent No. 7, finding is recorded by the DJR that he has committed default in respect of loan amount of Rs. 7 Lakhs, he is erroneously let off by the DRJ on twin grounds of (i)-not

following the procedure of Rule 58 of the Maharashtra Co-Operative Societies Rules, 1961 (for short 'Rules 1961') and (ii) non-consultation with the Federal Society as provided for in Section 78A of the Act, 1960. So far as, the first ground is concerned, Mr. Patil would submit that the provisions of Rule 58 of the Rules, 1961 cannot be construed to mean that, on expiry of period of 60 days of issuance of show-cause notice, notices would be automatically absolved of the consequent disqualification under Section 73CA. Inviting my attention to the order passed by the DDR, Mr. Patil, would contend that respondent Nos. 4 to 7 had sought adjournments from time to time which led to the order being passed beyond a period of 60 days. He would submit that respondent Nos. 4 to 7 cannot be permitted to take the benefit of their own wrongs. So far as the second ground is concerned, Mr. Patil would contend that the provisions of Section 78A of the Act, 1960 have no application as the same applies for suspension of a committee. Therefore for disqualification of member under Section 73CA of the Act, 1960, there would be no requirement of consult of Federal Society. Lastly, Mr. Patil would contend that even though, the tenure of respondent Nos. 4 to 7 as the members of Managing Committee was during the years 2015-20, that tenure has been extended from time to time on account of non-holding the elections due to Covid-19 Pandemic. He would further submit that once respondent Nos. 4 to 7 are disqualified, the consequences of disqualification would remain operative for further period of 5 years. He therefore, submits that the petitioner is still interested in seeking qualification of respondent Nos. 4

to 7.

7. Mr. Patil, relies upon the following judgments in support of his contentions :

1. Pundlik Kadhav Vs.District Deputy Registrar, Co-Operative Societies, Chandrapur and others [1990(2) Mh.L.J.925].
2. Narayan Gulabrao Bhoyar Vs. Yeotmal Zilla Parishad Karmachari Sahakari Path Sanstha Maryadit & Anr. 2009 (6) Mh.L.J.500.
3. Damodar Shamrao Pande Vs State of Maharashtra and Others 2017 (1) All M.R. 822.

SUBMISSIONS ON BEHALF OF RESPONDENT NO. 5

8. Mr. R .N. Dhorde, the learned Senior Advocate appearing for respondent No. 5 submits that the intention and object of the petitioner in seeking disqualification of respondent Nos. 4 to 7 is far from bonafide. He would submit that the petitioner is an ex-employee of the Society who has committed misappropriation of the huge amounts leading to filing of the FIR No. 131 of 2020 against him. He would then contend that even though the term of the office of respondent Nos. 4 to 7 was during 2015-20, the petitioner chose to initiate disqualification proceedings only in the year 2020 after lodging of the FIR against him. He would therefore submit that initiation of disqualification proceedings is a counterblast to the Society's action of lodging FIR against him.

9. Mr. Dhorde would then invite my attention to the show cause notice dated 26.08.2020 to contend that the only allegations

against respondent No. 5 in the show cause notice was about the alleged defaults being committed in respect of the Bhaichand Hirachand Raisonni Multi State Co-Operative Credit Society, Ltd., Jalgaon. The petitioner has fairly conceded the position that defaults of Multi-state Co-Operative Society would not be covered under the provisions of Section 73-CA of the Act, 1960. Mr. Dhorde would contend that respondent No. 5 therefore could not have been disqualified. Mr. Dhorde then invited my attention to the complaint filed by the petitioner before the DDR to contend that respondent No. 5 was shown as mere guarantor and that therefore the guarantor cannot come within the definition of term defaulter. In support of his contention Mr. Dhorde would rely upon the decision of this Court in **Utrane Vividh Karyakari Seva Sahahari (V) Society Ltd. & Others Vs. Laxman Dalpat Patil & Others** 1990 (1) Bom.C.R.217 to contend that there was a provision for disqualification of a member committing default in his capacity as guarantor, which came to be deleted by way of amendment on 16.10.1987, after which date a guarantor cannot be disqualified as member of the Committee.

10. Inviting my attention to the order passed by the DDR, Mr. Dhorde would contend that the order is cryptic, unreasoned and without any discussion on the various issues raised by respondent No. 5. In support of his contention that the DDR could not travel beyond the scope of the grounds stated in the show cause notice. Mr. Dhorde, would rely upon the decision of the Apex Court in **Mohinder Singh**

Gill and another Vs. The Chief Election Commissioner, New Delhi and others AIR 1978 SC 851. Mr. Dhorde, also relied upon the decision of the Apex Court in **Ravi Yashwant Bhoir Vs. District Collector, Raigad & Ors.** 2012 DGLS (SC) 143, in support of his contention that the elected member cannot not be removed from the office in a casual manner.

SUBMISSIONS ON BEHALF OF RESPONDENTS 4,6 & 7

11. Mr. Salunke, the learned Counsel appearing for respondent Nos. 4,6 and 7 has adopted the submissions of Mr. Dhorde. In addition, he has submitted that petitioner did not raise any specific ground in his complaints dated 06.03.2020, the allegations therein were vague. Since the show cause notice was based on those complaints, there is denial of reasonable opportunity of defence. Mr. Salunke invited my attention to letter dated 24.12.2020 issued by the Mahavir Society to respondent No. 6 certifying that the Society had not granted any credit facility in her name and she was described as a joint borrower only because she had offered her property as security. Referring to the order passed by the DDR, Mr. Salunke would contend that the order passed by the DDR himself has based his order on Section 78A of the Act, 1960 and that therefore the DJR cannot be faulted for relying upon that provision. Referring to the provisions of Rule 58 of the Rules 1961, Mr. Salunke would lay stress on the words 'after giving an opportunity of being heard'. He would submit that on account of absence of necessary allegations in the show cause notice, respondent Nos. 4,6

and 7 were denied proper opportunity of being heard in the matter.

REASONING AND ANALYSIS

12. It is undisputed that respondent Nos. 4 to 7 were elected as members of Managing Committee of Mahavir Society for the year 2015-2020. The petitioner commenced his tirade against respondent Nos. 4 to 7 only towards the end of their tenure. This conduct of the petitioner is sought to be attributed to lodging of the FIR for taking action by Mahavir Society against him for alleged misappropriation of funds and lodging FIR against him. Though I do not wish to delve any further in this direction, I would only take notice of the fact that the proceedings for disqualification of respondent Nos. 4 to 7 were initiated towards the end of their tenure.

13. Perusal of complaints made by the petitioner on 30.01.2020 and 06.03.2020 would show that the same were absolutely vague and lacked material particulars. DDR took cognizance of such vague complaints filed by him for the purpose of issuance of show cause notice dated 26.08.2020. The show cause notice refers to the complaints dated 30.01.2020 and 06.03.2020. It alleges that respondent No. 4 (Shantilal) and respondent No. 5 (Rehka) obtained credit facilities from Bhaichand Hirachand Rasoni Multi State Co-Operative Credit Society, Ltd., Jalgaon and they were defaulters as on 30.01.2020. The notice further alleged that respondent No. 6

(Sharmila) had obtained the credit facilities from Mahavir Society and she was a defaulter. It was further alleged that respondent No. 7 (Pandurang) also obtained credit facilities from Mahavir Society and he was a defaulter.

14. So far as respondent Nos. 4 and 5 are concerned, the allegations in the show cause notice were restricted to obtaining credit facilities from the Bhaichand Hirachand Rasoni Multi State Co-Operative Credit Society, Ltd., Jalgaon. Mr. Patil has fairly conceded that the defaults committed in respect of credit facilities availed from a Multi-state Co-Operative Credit Society would not be covered by the provisions of Section 73-CA of the Act, 1960. In view of this position, I need not labour more on this aspect. Suffice it to hold that there was no allegation of commission of default by respondent Nos. 4 and 5 in respect of credit facilities extended by the Society which is covered by Section 73-CA of the Act, 1960.

15. So far as, respondent Nos. 6 and 7 are concerned, the allegations in the show cause notice were vague. It has been subsequently proved that respondent No. 6 (Sharmila) was never extended any credit facility by Mahavir Society for herself and that she was treated as a coborrower merely because she had offered her property as security to the credit facility availed by Sudhir Book Depot, Chopda. This aspect was not taken into consideration while issuance of the show cause notice, nor while passing of the order by the DDR.

About respondent No. 7 show cause notice did not specify any details of credit facility availed or alleged default committed by him. Thus, the show cause notice issued to respondent Nos. 4 to 7 was quite vague and lacked of material particulars. The DDR, while passing the order on 01.12.2020 has arrived at a conclusion that respondent Nos. 4 to 7 were defaulters of Mahavir Society by specifying the amounts of defaults against their names. These allegations however, were totally absent in the show cause notice. In the notice, respondent Nos. 4 and 5 were accused of committing default in respect of credit facilities availed from Bhaichand Hirachand Rasoni Multi State Co-Operative Credit Society, Ltd., Jalgaon, however in the final order, DDR has held that respondent No. 4 is the defaulter of Mahavir Society of the amount of Rs. 50 Lakhs and 20 Lakhs and respondent No. 5 is defaulter of Mahavir Society in respect of loan amount of Rs. 17 Lakhs, Rs. 68 Lakhs and 3 Crore. The findings of committing default in respect of credit facilities from Mahavir Society by Respondent Nos. 4 and 5 are thus without any notice to them, thereby falling foul of the principles of natural justice.

16. In addition to the improvements made in the final order dated 01.12.2020, the manner in which that order was passed by DDR is also free from blemish. I find that the order did not record detailed reasons for arriving at a conclusion that respondent Nos. 4 to 7 were defaulters. After mentioning the figures of the alleged defaults against the names of respondent Nos. 4 to 7, DDR has vaguely observed that

the complainant had produced all the documents with his explanation, that respondent did not produce explanation/documents to prove that they are not defaulters and that the Society did not submit its reply. What was the exact material that was taken into consideration by DDR for arriving at a finding that Respondent Nos. 4 to 7 were defaulters of Mahavir Society is unknown. Even though Mr. Patil has laid great stress on reports of the Assistant Registrar and the Deputy Registrar dated 27.02.2020 and 25.08.2020, DDR has not relied upon them for arriving at his findings. Assuming that the reports were relied upon by the Petitioner before DDR, he ought to have discussed contents of the same in his order. There is absolutely no discussion by DDR on any of the issues emerging before him. On the basis of these vague findings, the DDR proceeded to disqualify respondent Nos. 4 to 7. One must bear in mind that the DDR was removing elected members of committee of a society and ought to have been extremely careful while taking decision having consequences of ouster of an elected member. In this regard, reliance of Mr. Dhorde on decision of Apex Court in **Ravi Yashwant Bhoir** (supra) is apposite. The Apex Court has held thus:

“70. Thus, the instant case has been a crystal clear-cut case of legal malice and therefore, the impugned orders are liable to be quashed. **The duly elected member/Chairman of the Council could not have been removed in such a casual and cavalier manner without giving strict adherence to the safeguards provided under**

the statute which had to be scrupulously followed.

(emphasis supplied)

Emphasising the need to record reasons in support of orders, the Apex Court held thus:

“42. In S.N. Mukherjee v. Union of India [(1990) 4 SCC 594 : 1990 SCC (Cri) 669 : AIR 1990 SC 1984] , it has been held that the object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action. The expanding horizon of the principles of natural justice provides for requirement to record reasons as it is now regarded as one of the principles of natural justice, and it was held in the above case that except in cases where the requirement to record reasons is expressly or by necessary implication dispensed with, the authority must record reasons for its decision.

43.*In Krishna Swami v. Union of India [(1992) 4 SCC 605 : AIR 1993 SC 1407] this Court observed that the rule of law requires that any action or decision of a statutory or public authority must be founded on the reason stated in the order or borne out from the record. The Court further observed : (SCC p. 637, para 47)*

“47. ... Reasons are the links between the material, the foundation for their erection and the actual conclusions. They would also demonstrate how the mind of the maker was activated and actuated and their rational nexus and synthesis with the facts considered and the conclusions reached. Lest it would be arbitrary, unfair and unjust, violating Article 14 or unfair procedure offending Article 21.”

44. *This Court while deciding the issue in Sant Lal Guptav. Modern Coop. Group Housing Society Ltd. [(2010) 13 SCC 336 : (2010) 4 SCC (Civ) 904] , placing reliance on its various earlier judgments held as under : (SCC pp. 345-46, para 27)*

“27. It is a settled legal proposition that not only administrative but also judicial orders must be supported by reasons recorded in it. Thus, while deciding an issue, the court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the court to record reasons while disposing of the case. The hallmark of order and exercise of judicial power by a judicial forum is for the forum to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of the justice delivery system, to make it known that there had been proper and due application of mind to the issue before the court and also as an essential requisite of the principles of natural justice.

‘3. ... The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind.’ [Ed.: As observed in State of Rajasthan v. Sohan Lal, (2004) 5 SCC 573, p. 576, para 3.]

The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Recording of reasons is the principle of natural justice and every judicial order must be supported by reasons recor-

ded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected must know why his application has been rejected."

45. *In Institute of Chartered Accountants of India v. L.K. Ratna [(1986) 4 SCC 537 : (1986) 1 ATC 714 : AIR 1987 SC 71], this Court held that on charge of misconduct the authority holding the inquiry must record reasons for reaching its conclusion and record clear findings. The Court further held : (SCC p. 558, para 30)*

"30. ... In fairness and justice, the member is entitled to know why he has been found guilty. The case can be so serious that it can attract the harsh penalties provided by the Act. Moreover, the member has been given a right of appeal to the High Court under Section 22-A of the Act. To exercise his right of appeal effectively he must know the basis on which the Council has found him guilty. We have already pointed out that a finding by the Council is the first determinative finding on the guilt of the member. It is a finding by a Tribunal of first instance. The conclusion of the Disciplinary Committee does not enjoy the status of a 'finding'. Moreover, the reasons contained in the report by the Disciplinary Committee for its conclusion may or may not constitute the basis of the finding rendered by the Council. The Council must, therefore, state the reasons for its finding."

46. *The emphasis on recording reason is that if the decision reveals the "inscrutable face of the sphinx", it can by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in*

adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind of the authority before the court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out the reasons for the order made, in other words, a speaking out. The inscrutable face of the sphinx is ordinarily incongruous with a judicial or quasi-judicial performance."

17. I have therefore no hesitation in concluding that DDR's order disqualifying Respondent Nos. 4 to 7 was in gross violation of principles of natural justice. His cryptic order having the effect of removing elected members of committee cannot stand the tests laid down by the Apex Court in **Ravi Yashwant Bhoir** (supra).

18. There is yet another flaw in the show cause notice issued by DDR. In addition to the provisions of Section 73CA of the Act, 1960, DDR has also invoked the provisions of Section 78A of the Act, 1960 while passing the order dated 01.12.2020. However, the show cause notice was issued only under the provisions of Section 73CA of the Act, 1960 and the same did not refer to the provisions of Section 78A of the Act, 1960. Under Section 78A of the Act, 1960, a member of the Committee who stands disqualified for being a member of the Committee, can be removed after consultation with the federal society. Under Section 73CA, a member can acquire disqualification for being a

member and under Section 78A and the Registrar can remove him from the Committee. Show cause notice was issued only under the provisions of Section 73CA. However, while passing final order, the DDR invoked powers under Section 78A as well and removed respondent Nos. 4 to 7 from the Managing Committee. This is yet another illegality committed by DDR. This is the reason why the DJR was required to be examine the provisions of Section 78A of the Act, 1960 and record a finding that consultation with the federal society was mandatory before removing respondent Nos. 4 to 7 from the Managing Committee.

CONCLUSION :

19. I am therefore of the opinion that the order passed by DDR disqualifying respondent Nos. 4 to 7 and removing them from the Managing Committee was palpably illegal and was required to be set aside. The DJR has set it aside by his order dated 29.04.2021. I do not find any error being committed by the DJR in doing so. Therefore, I do not deem it necessary to examine other grounds of challenge raised by Mr. Patil by invoking the provisions of Section 58 of Rule of 1961 or treating respondent No. 6 (Sharmila) as non-defaulter for being mere co-borrower, or whether a guarantor can be termed as a defaulter, etc. The judgments relied on by Mr. Patil, in **Pundlik** (supra), **Narayan** (supra) and **Damodar** (supra) is of no assistance to the petitioner in view of finding arrived at by me that the order passed by the DDR was patently illegal.

20. Petition filed by the petitioner is thus devoid of any merits.
It is dismissed without any orders as to the costs. Rule is discharged.

(SANDEEP V. MARNE)
JUDGE

mahajansb/