

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1516 OF 2019**

Shri Yuvraj Datajirao Patil

.....Petitioner

V/s.

District Deputy Registrar Co-op.
Societies, Kolhapur & Ors.

....Respondents

Mr. Y.S.Jahagirdar, Senior Advocate with Mr. S.S.Shah for the
Petitioner.

Mrs. M.S.Srivastava, AGP for State.

Mr. Prashant Bhavake with Mr. Utkarsh Desai for the Respondent
No.2.

CORAM : SANDEEP K. SHINDE, J.
RESERVED ON : 13TH OCTOBER, 2022.
PRONOUNCED ON: 17TH NOVEMBER, 2022

JUDGMENT :

Rule. Rule made returnable forthwith. With consent
of the parties, petition is taken up for final hearing.

2 By impugned orders, Petitioner was held ineligible, to
be re-elected, re-co-opted or re-nominated as a, member of
Managing Committee of Shetkari Sahakari Sangh, Respondent
No.4, for a term of five years. Thus, this Petition under Article
227 of the Constitution of India.

3 In brief, facts of the case are like this;

 In the year, 2015, Petitioner was elected as member of Board of Directors, of Shetkari Sahakari Sangh (Respondent No.4). Though Respondent No.2 had contested the election, he was defeated. On 5th May, 2017, Respondent No.2 moved an application to seek disqualification of the Petitioner, on the ground that the Petitioner and his son had obtained loan of Rs.15 Lakhs on 27th March, 2012 from Kolhapur District Co-operative Agriculture and Rural Development Bank but defaulted installments of the loan. He produced recovery certificate dated 4th May, 2017, issued under Section 137(1) of the Maharashtra Co-operative Societies Act, 1960 ('MCS Act' for short) against the petitioner and his son. Whereupon, the District Deputy Registrar issued show-cause notice on 11th May, 2017 purportedly under the provisions of the Section 73CA(1)(i) (b) of the MCS Act, by which petitioner was called upon to show-cause as to why he should not be declared as defaulter, within the meaning of Section 73CA(A-1)(1)(i) of the MCS Act. Petitioner denied the allegations of 'default', and contended that, in terms of compromise decree drawn in Regular Civil Suit

No.103 of 2017 on 12th June, 2017, he could not be held 'defaulter'.

4 The District Deputy Registrar, vide order dated 29th June, 2017, held that the petitioner, being 'defaulter', has incurred disqualification in terms of the provisions of Section 73CA(A1)(1)(i) of the MCS Act and further held that he ceased to be member of the committee and further ordered that, in view of the disqualification incurred, Petitioner shall not be eligible to be re-elected, re-co-opted or being re-nominated as member of the committee till expiry of the period of next term of five years of the committee from the date on which he ceased to be a member of the committee. In revision, Divisional Joint Registrar, confirmed the order passed by the District Deputy Registrar and dismissed the Revision vide order dated 19th July, 2017.

5 Being aggrieved and dissatisfied by the said orders, petitioner filed Writ Petition No.843 of 2017.

6 Pending Writ Petition, Petitioner without prejudice to his rights and contentions, paid all dues, which were allegedly defaulted by him. In view thereof, on 21st March, 2018, this Court set aside the orders passed by the District Deputy Registrar and Divisional Joint Registrar and restored the proceedings to file of District Deputy Registrar with direction to pass order afresh in accordance with law.

7 Pursuant thereto, District Deputy Registrar issued notice to the petitioner on 11th April, 2018. Pending proceedings, on 29th August, 2018, Petitioner tendered resignation of his membership of the Board of Sangh. Taking note of the resignation, District Deputy Registrar vide order dated 30th August, 2018 held that the proceedings in pursuance to the notice dated 11th May, 2017 disqualifying the petitioner under Section 73(CA)(1)(i)(b) were rendered infructuous but held that, in terms of Section 73CA(3) of the MCS Act, petitioner is not eligible to be re-elected, re-co-opted or re-nominated as member of the committee from the date on which he ceased to be member of the committee.

8 Being aggrieved by the order dated 30th August, 2018, Petitioner filed revision. Divisional Joint Registrar dismissed the revision and confirmed the order dated 30th August, 2018 passed by the District Deputy Registrar.

9 Feeling aggrieved by the order passed by the Divisional Joint Registrar, this Petition is preferred under Article 227 of the Constitution of India.

10 Heard Mr. Jahagirdar, the learned Senior Counsel for the Petitioner, Ms. M.S.Srivastava, learned Assistant Government Pleader for the State and Mr. Prashant Bhavake, learned counsel for the Respondent No.2.

11 Mr. Jahagirdar, learned Senior Counsel for the Petitioner would contend that, the cessation of membership of the committee, under Section 73CA(2) of the Act, is not automatic, and it was necessary to take action and pass an order under Section 78A(1)(b) of the Act in accordance with Rule 58 of the MCS Rules. However, since, order has not been passed under Section 78A(1)(b) of the Act, impugned order is

illegal. Mr. Jahagirdar nextly submitted that, since petitioner had resigned, he ceased to be member of the Committee for a term, for which, he was elected. Therefore, once, Petitioner ceased to be a member of the committee, again, there cannot be cessation on account of 'default'. Mr. Jahagirdar, submitted that since, petitioner's resignation was accepted, in August, 2018, he ceased to be member on account of 'resignation' and not on account of being disqualified as 'defaulter'. Mr. Jahagirdar submitted, there is no prohibition under the Act to resign the membership of the committee, while proceedings are pending under Section 73A, 78 or 78A of the MCS Act. Mr. Jahagirdar relied on provisions of Section 78(3) of the Act. Mr. Jahagirdar, thus argued, since petitioner ceased to be a member of the committee on account of his, resignation and not being declared as disqualified under Section 73(CA)(1)(i)(b) of the MCS Act, impugned order holding, petitioner ineligible to be re-elected, re-co-opted or re-nominated as member of the committee for the period of next term of five years of the committee purportedly passed under Section 73(CA)(3) of the MCS Act is illegal.

12 Mr. Bhavake, learned counsel, appearing for the Respondent No.2, on the other hand, would contend that, since petitioner defaulted installments of the loan, followed by recovery certificate issued against him under Section 137(1) of the MCS Act in May, 2007, Petitioner had incurred disqualification under Section 73CA(1) of the Act, followed by cessation of membership of the committee. Mr. Bhavake submitted, payment of arrears of dues, following disqualification would not remedy and/or set aside the disqualification. Mr. Bhavake, therefore, seeks dismissal of the Petition.

13 Learned counsel for the parties relied upon the judgments of the Full Bench of this Court in the case of **Narayan Bhoyar 2009 (6) Bombay CR 277, Pundlik v. District Deputy Registrar, Co-op. Societies, Chandrapur 1991 (2) SCC 423 and Narayan Samundre 2003(3) All MR 554.**

14 I have carefully considered rival submissions, perused the impugned orders and decision of the Full Bench in the case of **Narayan Bhoyar (Supra).**

15 The questions for consideration are;

- (i) Whether payment of dues, following, 'disqualification', would retrieve and/or remedy the disqualification;
- (ii) Whether order declaring, that the petitioner ceased to be a member of Board of Directors, after his resignation of Board's membership, would be an order within the meaning of Section 73CA(2) of the MCS Act;
- (iii) Whether cessation of membership under Section 77CA(2) of the MCS Act is automatic or whether it is necessary to take action under Section 78A of the MCS Act, 1960 ?

16 The decision of the Full Bench in the case of **Narayan Bhoyar (Supra)** squarely answers third (iii) question; however, before adverting to the said decision, it may be noted that;

- (i) Section 73FF of the MCS Act was re-numbered as Section 73CA by Act 16 of 2013 dated 13th August, 2013; which refers to the disqualification of committee and its members;

(ii) Section 78 was substituted by Act 16 of 2013 dated 13th August, 2013 and

(iii) Section 78A was inserted by Act 16 of 2013 dated 13th August, 2013.

Discussion - Reasons:

17 Here, petitioner incurred disqualification for defaulting payment of installments of loan granted to him by the Kolhapur District Co-operative Agriculture and Rural Development Bank, followed by order passed under Section 73CA(2) and (3). In terms of Section 73CA(2) a member who has incurred any disqualification under Sub-section (1), shall cease to be a member of the Committee and his seat shall thereupon be deemed to be vacant; whereas Sub-section (3) of Section 73CA, provides that, member, who has incurred disqualification under Sub-section (1) shall not be eligible to be re-elected, re-nominated as a member of Committee for a period of next term of five years. Identical provisions were contained in Sections 73FF(2) and 73FFF(3); which were renumbered as Section 73 CA. The Full Bench decision in **Narayan Bhoyar** interpreted,

analysed and examined scope of Section 73FF (renumbered as Section 73CA) in view of the facts therein. In the said case, petitioner, Narayan Bhoyar elected Managing Committee of Yavatmal Zilla Parishad Sahakari Karmachari Sahakari Sanstha had incurred disqualification, for not re-paying amount of advance within 15 days. Petitioner had challenged the disqualification before the Co-operative Court. Pending dispute, Co-operative Court and the Appellate Court, both refused interim injunction. The view taken by these two Courts was that disqualification under Section 73FF of the Act operate automatic. Correctness and legality of the order of the Co-operative Court was questioned by the petitioner by filing Writ Petition, by primarily contending that provisions of Section 73FF of the Act do not operate automatically and order for removal in terms of Section 78 of the Act has to be passed by the Competent Authority. When the Writ Petition came up for hearing before the learned Single Judge, divergent views taken by different Division Benches of this Court was brought to the notice of the Single Judge. One view, was Section 73FF(2) of the MCS Act, does not operate automatically so as to result in incurring disqualification and person does not cease to be a

member of the Managing Committee unless an action is taken under Section 78 of the MCS Act. Another view was that provisions of Section 73FF of the MCS Act were independent of the provisions of Section 78(1) of the Act, and that, disqualification sustained by the member of the Committee under Section 73FF(1) is 'discontinuation' of the membership and under the provisions of Section 78(1)(b), there is a removal coupled with the appointment of a person as a member of such committee, in his place.

18 In view of the divergent views expressed by the co-ordinate benches, following issues were referred to the larger Bench for its decision; "whether cessation of membership under Section 73-FF(2) is automatic or whether it is necessary to take action and pass an order of removal under Section 78 of the MCS Act."

Full Bench answered the reference as under;

"(A) Provisions of Sections 73FF and 78 are independent provisions and operate in their respective fields on the stated grounds and their consequences are distinct and different. They are not even indispensably interdependent.

(B) The declaration of a defaulter resulting in disqualification as contemplated under Section 73FF(1) has to be made by minimum compliance to the principles of natural justice which will have to be

read into the provisions of Section 73. The Competent Forum would be expected to issue a notice / intimation calling upon the member of the committee to show cause as to why he be not declared as a defaulter. Considering his reply, if any submitted, a declaration shall be made.

(C) Once such a declaration is made in compliance with the provisions of Rule 58, the provisions of Section 73FF(2) will come into play automatically and there shall be cessation of membership of the Committee of that member and his seat shall be deemed to have fallen vacant, obviously not affecting his primary membership of the Society adversely unless otherwise removed / expelled from such membership in accordance with law.

(D) We make it clear that passing of an order of removal as postulated under Section 78(1) is not a sine qua non to invocation of the provisions for cessation of membership of the Committee in terms of Section 73FF (2) of the Act.

(E) Consequences of disqualification incurred by a member of a Committee stated under Section 73FF(1) are certainly distinct and different than the consequences flowing from an order made for removal under Section 78(1) of the said Act. In a case under Section 73FF, upon earning disqualification, there is cessation of membership of the Committee and automatic vacation of seat for the period as regulated under the provisions of Section 73FFF. While the order of removal passed under Section 78(1) would remain in force unless disturbed/set aside by the Competent Authority under the provisions of the Act.”

19 Thus, it could be seen from the decision in **Narayan Bhoyar** that, since provisions of Sub-section(1) of Section 73CA, open with words “without prejudice to the other provisions of the Act”, relatable to disqualification, they must be read independent of Section 78A of the Act. Precisely for this reason, the Full Bench has held that provisions of Section 73FF

(renumbered as 73CA) and Section 78 are independent provisions operating in their respective fields on the stated grounds and their consequences are distinct and different. Thus, contention of the Petitioner that, it was necessary to take action under Section 78A of the Act, before holding petitioner disqualified under Section 73CA(1) of the Act, requires no consideration. It is rejected. Anyhow, in the case at hand, before issuing order, that Petitioner ceased, to be a member of the Committee, he was given an opportunity of being heard, as required under Rule 58 of the MCS Rules. It is evident from the proceedings, that the District Deputy Registrar as well as the Divisional Joint Registrar heard the Petitioner before rendering finding of fact that petitioner defaulted payment of installment of loan granted to him. Therefore, contention of the petitioner that it was necessary to take action under Section 78A in accordance with Rule 58 of the MCS Rules before passing impugned order, is rejected.

20 Scheme of Section 73CA(1) of the Act, suggests the moment, member defaults payment of any installment of loan, he incurs the disqualification and ceases to be a member of the

committee and his seat thereupon be deemed to be vacant. Therefore, the moment, a member defaults loan installment, he stands disqualified. In the case at hand, certificate dated 4th May, 2017 issued under section 137 (1) of the MCS Act against the petitioner fortifies the fact, that the Petitioner incurred disqualification being defaulter. Therefore, having incurred disqualification on default of loan installment, it cannot be retrieved simply by paying dues, following the disqualification. Moreover, the act does not provide for making good the disqualification and, therefore, though the petitioner had paid the dues, that, in itself would not remedy the disqualification incurred by him. Therefore, contention of the petitioner that since he had paid the dues, the disqualification stands retrieved is rejected.

21 The main contention of the petitioner is that pending proceedings before the Deputy Registrar, his resignation to the membership of the committee was accepted and as a result, he ceased to be a member of the committee. As such, once he ceased to be a member of the committee, there cannot be further cessation, having defaulted the payment of installment

of loan granted to him. To appreciate, the case of the petitioner, it would be appropriate, to reproduce provisions of Section 73CA(1),(2) and (3); thus;

“Section 73CA(1) Without prejudice to the other provisions of this Act or the rules made thereunder in relation to the disqualification of being a member of a committee, no person shall be eligible for being appointed, nominated, elected, co-opted or, for being a member of a committee, if he—

(i) is a defaulter of any society ;
Explanation.—For the purposes of this clause, the term “defaulter” includes—

(a) in the case of a primary agricultural credit society, a member who defaults the repayment of the crop loan on the due date;

(b) in the case of term lending society, a member who defaults the payment of any instalment of the loan granted to him ;

(c) in the case of any society,—
(i) a member who has taken anamat or advance; or
(ii) a member who has purchased any goods or commodities on credit or availed himself of any services from the society for which charges are payable; and fails to repay the full amount of such anamat or advance or pay the price of such goods or commodities or charges for such service, after receipt of notice of demand by him from the concerned society or within thirty days from the date of withdrawal of anamat or advance by him or from the date of delivery of goods to him or availing of services by him, whichever is earlier ;

(d) in the case of non-agricultural credit societies, a member who defaults the payment of any instalment of the loan granted;

(e) in the case of housing societies, a member who defaults the payment of dues to the society within

three months from the date of service of notice in writing served by post under certificate of posting demanding the payment of dues ;

1[(f) in the case of District Central Co-operative Bank or of the State Co-operative Bank, a member, if he,—

(i) is a person who represents a society other than a primary agricultural credit co-operative society on the board of a District Central Co-operative Bank or the State Co-operative Bank, if the society to whom he represents has committed a default towards the payments of such Bank for a period exceeding ninety days;

(ii) is a person who is a defaulter of a primary agricultural credit co-operative society or is an office bearer of a defaulting primary agricultural co-operative credit society ;

(iii) is a person who represents a society whose Managing Committee is superseded.]

(ii) has, in the opinion of the Registrar, deliberately committed breach of co-operative discipline with reference to linking up of credit with co-operative marketing or co-operative processing; or

2[(ii-a) has been classified as non-active member under sub-section (2) of section 26 ; or

(iii) has been held responsible under section 79 or 88 or has been held responsible for payment of costs of inquiry under section 85;

or

(iv) has incurred any disqualification under this Act or the rules made thereunder; or

3[(v) carries on business of the kind carried on by the society either in the area of operation of the society or in contravention of the provisions of 4[clause (b) of sub-section (A1); or]]

(vi) is a salaried employee of any society (other than a society of employees themselves) or holds any office of profit under any society, except when he holds or is appointed to the office of a Managing Director or any other office declared by the State Government by general or special order not to disqualify its holder or is entitled to be 1[or is nominated as functional director on the committee of a society under sub-section (2) of section 2[73AAA]] ;

3[(vii) has more than two children :
Provided that, a person having more than two children
on the date of commencement of the Maharashtra Co-
operative Societies(Second Amendment) Act, 2001
(hereinafter in this clause referred to as “ the
date of such commencement ”), shall not be
disqualified under this clause so long as the number of
children he had on the date of such commencement
does not increase:

Provided further that, a child or more than one child
born in a single delivery within the period of one year
from the date of such commencement shall not be
taken into consideration for the purpose of
disqualification mentioned in this clause.
Explanation.—For the purposes of this clause,—

(a) where a couple has only one child on or after the
date of such commencement, any number of children
born out of a
single subsequent delivery shall be deemed to be one
entity;

(b) “ child ” does not include an adopted child or
children.]

4[(viii) is held guilty for any offence under section 146
and convicted under section 147 ; or

(ix) is convicted with imprisonment of not less than
one year for an offence under the provisions of any
law for the time being in force.]

(2) A member who has incurred any disqualification
under sub-section(1), shall cease to be a member of
the committee and his seat shall thereupon be
deemed to be vacant.

5[(3) A member of a committee who has ceased to be
a member thereof, on account of having incurred
disqualification under sub-section
(A1) and clauses (i) to (ix) of sub-section (1) shall not
be eligible to be re-elected, re-co-opted or re-
nominated as a member of the committee till
the expiry of the period of next term of five years of
the committee from the date on which he has so
ceased to be a member of the committee.”

This contention is to be rejected for more than one reason. The first reason is that Section 73CA is independent of other provisions of the Act in relation to disqualification of being a member of the committee. Therefore, it is code in itself. It provides for cessation of membership on account of having incurred disqualifications under Sub-section (A1) and clauses (i) to (ix) sub-section (1) and shall not be eligible to be re-elected, re-co-opted for the period of next term of five years. However, Sub-section (4) provides for cessation of disqualification. It reads as under;

“73CA(4): A member of a committee who has ceased to be a member thereof, on account of having incurred any disqualification other than disqualifications, referred to in sub-section (3) shall, unless otherwise specifically provided in this Act, be eligible to be re-nominated, re-co-opted or re-elected as a member of the committee as soon as such disqualification ceases to exist.”

22 The plain reading of this sub-section with Sub-section (3) implies, that a member who has incurred disqualification, other than disqualification under Sub-section (A1) and Clauses (i) to (ix) of sub-section (1), shall be eligible to be renominated or re-co-opted as a member of the committee as soon as such

disqualification ceases to exist. In the case at hand, Petitioner has incurred disqualification under Clause (i) of Sub-Section (1) of Section 73CA and therefore, having incurred, disqualification on account of default, it would not cease to exist, either by tendering resignation of membership or making good arrears of dues. For this reason, the contention of the petitioner that pending proceedings since he had tendered the resignation and thereby, ceased to be a member of a committee and, therefore, a further cessation was uncalled for is illogical and contrary to scheme of Section 73CA of the Act and thus, rejected. That even otherwise, Section 73CA does not provide for resignation of membership of the committee as provided for under Section 78(3) of the Act. Thus, in context of Scheme of Section 73CA, which is relatable to disqualification of member to be committee member, being independent of Section 78 and/or 78A, recourse to provisions of Section 78(3) read with 78A(2) could not have been taken to. The provisions of Section 78(3) of the Act, suggests, resignation by a committee or member thereof, after issuance of notice under Section 78(1) by the Registrar for suspension of Committee. Whereas, provisions of Section 78A(2), implies that member of a committee, may tender

resignation, once, proceedings in relation to supercession of committee or removal of member of committee are initiated AND not in relation to cessation. For all these reasons, the contention of the petitioner that following his resignation, the Deputy Registrar and the Divisional Joint Registrar could not have issued order of cessation of membership under Section 73CA(2) of the Act stands rejected. All questions are answered accordingly.

23 In the result, petition is dismissed. Rule is discharged.

24 Petition is disposed of.

(SANDEEP K. SHINDE, J.)