

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 3557 OF 2021

Hiralal s/o Ganpatrao Bangadkar, : **PETITIONER**
Aged 57 years, Occu. Business,
r/o Shivaji Ward, Near Pinglie Mata
Mandir, Shukrawari, Bhandara 441 904

VERSUS

- 1 State of Maharashtra through its Minister : **RESPONDENTS**
for Co-operation & Marketing,
Maharashtra State, Mantralaya, Mumbai-
32
- 2 The Divisional Joint Registrar Co-
operative Societies, Nagpur. Office at
Dhanwate Chambers, behind Hotel
Hardeo, Near Bhide Girls High School,
Sita Buildi, Nagpur
- 3 The Bhandara Urban Cooperative Bank
Ltd., Bhandara, through its Chief
Executive Officer. Having Head office at
Gandhi Chowk, Bhandara
- 4 Jayant s/o Vasantrao Vairagade,
aged 65, occu. Legal Practitioner
r/o Plot No.11 & 12, Vidarbha Housing
Colony Board, Takiya Ward, Bhandara
441904

WITH

WRIT PETITION NO. 3559 OF 2021

Hiralal s/o Ganpatrao Bangadkar, : **PETITIONER**
Aged 57 years, Occu. Business,
r/o Shivaji Ward, Near Pinglie Mata
Mandir, Shukrawari, Bhandara 441 904

VERSUS

- 1 State of Maharashtra through its Minister for Co-operation & Marketing, Maharashtra State, Mantralaya, Mumbai-32 : **RESPONDENTS**
- 2 The Divisional Joint Registrar Co-operative Societies, Nagpur. Office at Dhanwate Chambers, behind Hotel Hardeo, Near Bhide Girls High School, Sita Buildi, Nagpur
- 3 The Bhandara Urban Cooperative Bank Ltd., Bhandara, through its Chief Executive Officer. Having Head office at Gandhi Chowk, Bhandara
- 4 Ramdas s/o Jagannath Shahare, aged 72 years, Occu. Retired, r/o Santaji Ward, Shastri Chowk, Bhandara 441904

WITH
WRIT PETITION NO. 3560 OF 2021

Hiralal s/o Ganpatrao Bangadkar, : **PETITIONER**
Aged 57 years, Occu. Business,
r/o Shivaji Ward, Near Pinglie Mata
Mandir, Shukrawari, Bhandara 441 904

VERSUS

- 1 State of Maharashtra through its Minister for Co-operation & Marketing, Maharashtra State, Mantralaya, Mumbai-32 : **RESPONDENTS**
- 2 The Divisional Joint Registrar Co-operative Societies, Nagpur. Office at Dhanwate Chambers, behind Hotel Hardeo, Near Bhide Girls High School, Sita Buildi, Nagpur
- 3 The Bhandara Urban Cooperative Bank Ltd., Bhandara, through its Chief Executive Officer. Having Head office at

Gandhi Chowk, Bhandara

- 4 Jyoti Poonamchand Bawankar,
aged 45, Occu. Household,
r/o Plot No. 3, Shastri Nagar, Gurunanak
Ward, Bhandara 441 904

WITH
WRIT PETITION NO. 3558 OF 2021

Hiralal s/o Ganpatrao Bangadkar, : **PETITIONER**
Aged 57 years, Occu. Business,
r/o Shivaji Ward, Near Pinglie Mata
Mandir, Shukrawari, Bhandara 441 904

VERSUS

- 1 State of Maharashtra through its Minister : **RESPONDENTS**
for Co-operation & Marketing,
Maharashtra State, Mantralaya, Mumbai-
32
- 2 The Divisional Joint Registrar Co-
operative Societies, Nagpur. Office at
Dhanwate Chambers, behind Hotel
Hardeo, Near Bhide Girls High School,
Sita Buildi, Nagpur
- 3 The Bhandara Urban Cooperative Bank
Ltd., Bhandara, through its Chief
Executive Officer. Having Head office at
Gandhi Chowk, Bhandara
- 4 Dinesh s/o Murlidhar Girhepunje,
aged 45 years, Occu. Business,
r/o Ward No.6, Near Hanuman Mandir,
Lakhani, District Bhandara.

Mr. Akshay A. Naik, Advocate for petitioner in all petitions
Mr. N.R. Rode, AGP for respondent Nos.1 & 2 in all petitions
Mr. P.S. Tidke, Advocate for respondent No.3 in all petitions
Mr. A.M. Ghare, Advocate for respondent No.4 in all petitions

CORAM : MANISH PITALE, J.

RESERVED ON : 07/09/2022

PRONOUNCED ON: 29/09/2022

JUDGMENT

Rule. Rule is made returnable forthwith. Heard finally with the consent of learned counsel appearing for the rival parties.

2. The question that arises for consideration in these petitions is, as to whether the petitioner is justified in claiming that the fourth respondents in these petitions had incurred disqualification from continuing as Members of the Executive Committee / Board of Directors of the respondent No.3 – Bhandara Urban Co-operative Bank Limited, by operation of Bye-law Nos. 40 and 45 of the Bye-laws of the said Co-operative Bank.

3. On a complaint lodged by the petitioner, who himself was elected as Member of the Executive Committee and Director of the respondent No.3 – Co-operative Bank, on 07/07/2015, for a period of five years, the respondent No.2 – Divisional Joint Registrar, Co-operative Societies, held that the fourth respondents in these petitions had incurred disqualification and accordingly

passed orders disqualifying them from continuing as Members of the Executive Committee / Directors. Aggrieved by such orders passed by the respondent No.2, the fourth respondents in these petitions filed revision petitions before the respondent No.1 – State. The revision petitions were allowed and the orders of disqualification were quashed and set aside.

4. Aggrieved by the said orders passed by the Hon'ble Minister for the State of Maharashtra, the petitioner filed these petitions, wherein notices were issued for final disposal. The respondents entered appearance through counsel and the petitions were taken up for hearing.

5. The petitioner and fourth respondents in these petitions were elected on 07/07/2015, as Members of the Executive Committee / Directors of the respondent No.3 – Co-operative Bank for a period of five years. The aforesaid period expired in July, 2020, but, by operation of Section 73(AAA)(3) of the Maharashtra Co-operative Societies Act, 1960 (Act of 1960), the elected members continued as members and office bearers of the Committee. It was during such period that the petitioner

submitted representations / applications before the respondent No.2 – Divisional Joint Registrar of Co-operative Societies for disqualification of the fourth respondents in these petitions, for having incurred disqualification under the bye-laws of respondent No.3 – Co-operative Bank. Upon the fourth respondents in these petitions being put to notice, they appeared before the respondent No.2. The contention of the petitioner against the fourth respondents was that since they had fallen foul of bye-law 45(1)(n) of the bye-laws of the respondent No.3 – Co-operative Bank, they had incurred disqualification, as they had failed to maintain deposits as per bye-law No. 40 of the aforesaid bye-laws. The petitioner had also claimed that the fourth respondents had incurred disqualification for having failed to join monthly board meetings. But, in the present petitions, the said ground is not the bone of contention and the only ground pressed on behalf of the petitioner pertains to disqualification incurred by the fourth respondents under bye-law No. 45(1)(n) of the said bye-laws.

6. In terms of the replies filed by the fourth respondents and the material placed on record before the respondent No.2, it was

found that at the relevant point in time the fourth respondents had indeed failed to maintain deposits as specified in bye-law No.40 of the aforesaid bye-laws. Although later the short fall was made good, it was found that the fourth respondents had incurred disqualification. On this basis, by orders dated 19/03/2021, the respondent No.2 disqualified the fourth respondents from continuing as Members of the Executive Committee / Directors of the respondent No.3 – Co-operative Bank.

7. Aggrieved by the said orders passed by the respondent No.2, the fourth respondents filed revision petitions before the respondent No.1 - State, which were taken up for consideration by the concerned Minister. By the impugned orders dated 05/07/2021, the Minister allowed the revision petitions and set aside the orders of disqualification passed by respondent No.2. It was held that even if the fourth respondents had indeed failed to maintain the deposits as mandated under bye-law No. 40 of the aforesaid bye-laws, since they had immediately made good the shortfall, it could not be said that disqualification was incurred. On this basis, the revision petitions stood allowed. According to

the petitioner, the impugned orders passed by the Minister of the concerned Department are wholly unsustainable and deserve to be set aside.

8. Mr. Akshay Naik, learned counsel appearing for the petitioner in all the petitions submitted that a perusal of bye-law No.40 of the bye-laws of the respondent No.3 – Co-operative Bank, would show that for a Member of the Executive Committee / Director, it was mandatory to maintain model share amount of Rs.10,000/- and model deposit amount of Rs.50,000/-. The note appended to the aforesaid bye-laws mandated that the elected Directors shall keep the said deposits for the entire tenure of the Board. Emphasis was also placed on bye-law No.45(1)(n) of the said bye-laws, contending that if the elected Director withdraws eligible deposits as per bye-law No.40, at any time before the completion of the entire tenure of the board, such Director would incur disqualification.

9. Thereupon, the learned counsel appearing for the petitioner invited attention of this Court to the material on record to demonstrate that by specific applications filed by the fourth

respondents, such model share capital in the case of the petitioner in Writ Petition No.3557/2021 and model deposits in the cases of the fourth respondents in Writ Petition Nos.3558/2021, 3559/2021 and 3560/2021, were withdrawn, as a result of which disqualification was instantly incurred under bye-law No. 45(1)(n) of the said bye-laws.

10. It was submitted that even though the fourth respondents thereafter made good the shortfall by replenishing the amounts, the disqualification already incurred could not be undone. The learned counsel emphasized upon Section 73CA (1) (f) (iv) of the Act of 1960, as it stood prior to the amendment dated 28/03/2022, read with Rule 58 of the Maharashtra Co-operative Societies Rules, 1961 (Rules of 1961), to contend that disqualification was incurred and that, therefore, the respondent No.2 had correctly passed orders of disqualification against the fourth respondents. It was submitted that the Minister was not justified in reversing the orders passed by the respondent No.2 and allowing the Revision petitions of the fourth respondents, by simply stating that although the mandatory deposits were inadvertently withdrawn, they were

later made good.

11. The learned counsel appearing for the petitioner further submitted that although the term of the Executive Body had expired in July, 2020, by operation of provisos to Section 73AAA (3) of the Act of 1960, the term was extended and, therefore, it could not be said that disqualification proceedings could not be initiated as the five year term was already over. The learned counsel appearing for the petitioner relied upon judgment of the Hon'ble Supreme Court in the case of **Rajendra Singh Rana and others Vs. Swami Prasad Maurya and others** reported in (2007) 4 SCC 270 and judgments of this Court in the cases of **Sambha s/o Gangaram Pikale Vs State of Maharashtra and others** reported in 1996(2) Mh.L.J. 182 and **Pundlik Kadhav Vs. District Deputy Registrar, Co-operative Societies, Chandrapur and others**, reported in 1990 Mh.L.J. 925

12. On the other hand, Mr. A. M. Ghare, learned counsel appearing for the contesting fourth respondents in all these petitions submitted that the disqualification proceedings were themselves stillborn, because the five year term of the elected body

was admittedly over in July, 2020 itself. It was submitted that the petitioner filed the complaints / representations after the expiry of the five year term and show cause notices were also issued by the respondent No.2 after the said term had expired. By referring to proviso to Section 73AAA(3) of the said Act, it was submitted that merely because the Executive Committee was deemed to have been continued and the fourth respondents continued as members till the new committee was duly constituted, it could not be said that disqualification proceedings could be initiated against them.

13. On the aspect of attracting disqualification by operation of bye-law Nos.40 and 45(1)(n) of the said bye-laws, it was submitted that the material on record clearly indicated that the deposits stood withdrawn due to the mistake of the Manager and when the same was realized, the fourth respondents immediately made good the shortfall in the deposits, thereby showing that no disqualification was incurred. It was submitted that the situation created by such inadvertent withdrawal of deposits was curable and this could be inferred from the provisions pertaining to a member classified as non-active member, again becoming an active member upon

making good the deficiency. In this context, reference was made to Section 73CA(1)(ii-a) read with Section 26(2)(b) of the said Act, as they stood prior to the amendment brought into effect on 28/03/2022.

14. It was further submitted that the amendment made effective from 28/03/2022, for the first time introduced the words “or bye-laws of the Society” in Section 73CA(i)(f)(iv) of the said Act and since the proceedings for disqualification in the present cases were initiated prior to the amendment, disqualification could have been incurred only under the provisions of the Act and Rules. It was submitted that reliance placed on Rule 58 of the aforesaid Rules was completely misplaced because the Rule could not override the substantive provision of the Act, as it existed at the relevant point in time. On this basis, it was submitted that when the concerned Minister had allowed the revision petitions, based on a reasonable and proper interpretation of the Act, Rules and the bye-laws of the respondent No.3 – Co-operative Bank, no case was made out for exercise of writ jurisdiction to set aside the said orders passed by the concerned Minister.

15. Mr. Tidke, learned counsel appeared on behalf the respondent No.3 – Co-operative Bank and supported the contentions raised by Mr. Ghare, learned counsel for the fourth respondents in these petitions. Mr. N.R. Rode, learned Assistant Government Pleader appeared on behalf of the respondent Nos.1 and 2 and submitted that since no relief had been claimed against the said respondents, this Court may pass appropriate orders in the light of the provisions of the aforesaid Act, Rules, as also the bye-laws of the respondent No.3 – Co-operative Bank.

16. Having heard the learned counsel for the rival parties, it would be appropriate to refer to the relevant provisions of the aforesaid Act and Rules, as they stood at the relevant time, as also the relevant bye-laws of the respondent No.3 – Co-operative Bank.

17. The relevant provisions of the Act read as follows:

“26 Rights and duties of members

(1) A member shall be entitled to exercise such rights as provided in the Act, rules and by-laws:

Provided that, no member shall exercise the rights, until he has made such payment to the society in respect of membership, or acquired such interest in the society, as may be prescribed and specified under the by-laws of the society, from time to time :

Provided further that, in case of increase in minimum contribution of member in share capital to exercise right of membership, the society give a due notice of demand to the members and give

reasonable period to comply with.

(2) It shall be the duty of every member of a society, -

(a) to attend at least one general body meeting within a consecutive period of five years :

Provided that, nothing in this clause shall apply to the member whose absence has been condoned by the general body of the society.

(b) to utilize minimum level of services at least once in a period of five consecutive years as specified in the by-laws of the society;

Provided that, a member who does not attend at least one meeting of the general body as above and does not utilise minimum level of services at least once in a period of five consecutive years, as specified in the by-laws of such society shall be classified as non-active member :

Provided further that, when a society classifies a member as a non-active member, the society shall, in the prescribed manner communicate such classification, to the concerned member within thirty days from the date of close of the financial year :

Provided also that, a non-active member who does not attend at least one meeting of the general body and does not utilise minimum level of services as specified in the by-laws, in next five years from the date of classification as non-active member, shall be liable for expulsion under section 35:

Provided also that, a member classified as non-active member shall, on fulfillment of the eligibility criteria as provided in this sub-section be entitled to be re-classified as an active member.

Provided also that, if a question of a member being active or non-active member arises, an appeal shall lie to the Registrar within a period of sixty days from the date of communication of classification.

Provided also that, in any election conducted immediately after the date of commencement of the Maharashtra Co-operative Societies (Amendment) Act, 2013, all the existing members of the society shall be eligible for voting, unless otherwise ineligible to vote.

73AAA Constitution of committee

(1) xxxx

(2) xxxx

(3) The term of the office of the elected members of the committee and its office bearers shall be five years from the date of election and the term of the office bearers shall be co-terminus with the term of the committee and on the expiry of the term of the committee, the members shall be deemed to have vacated their offices as members of the committee.

Provided that, if the term of office of the elected members of the committee and its office bearers has expired, and if the election to the committee of the society could not be held due to imposition of lockdown in the State in view of the Covid-19 pandemic, the orders issued by the Government, from time to time, or any reason not attributable to the members of the committee of the society, such members and office bearers of the committee shall be deemed to have continued as members and office bearers of the committee till new committee is duly constituted.

“73CA. Disqualification of committee and its members.

(1) Without prejudice to the other provisions of this Act or the rules made thereunder in relation to the disqualification of being 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) xxx

(a) xxx

(b) xxx

(c) xxx

(d) xxx

(e) xxx

(f) In the case of District Central Co-operative Bank or of the State Co-operative Bank, a member, if he, -

xxx

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

xxx

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

18. Rule 58 of the aforesaid Rules reads as follows:

“58. Disqualification of committee and its membership

When on communication by the Chief Executive Officer of society or otherwise, the Registrar comes to know that any member of the committee incurs disqualification as mentioned in section 73CA and the Bye-laws, the Registrar shall, after giving an opportunity of being heard, issue an order of cessation of membership of such member from the committee of the society:

Provided that, the Registrar shall decide the matter within sixty days from the date of such communication or otherwise.”

19. The relevant bye-laws of respondent No.3 – Co-operative Bank read as follows:

“40. ELIGIBILITY OF BOARD OF DIRECTORS:

To contest the election of Board of Directors, the active member should comply following model criteria depending upon the size of Banks

Sr. No.	Bank Category (Deposit in Cr.)	Model share Amt. (In Rs.)		Model Deposit Amt. (In Rs.)
1	Upto Rs.100 Cr.	5000	And	25000
2	Rs. 100.00 Cr. to Rs.50.00 Cr.	10000	And	50000
3	More than Rs.500.00 Cr.	15000	And	100000

(Note : The elected directors shall keep the above deposits for the entire tenure of the board)

The persons contesting from reserve seat under section 73B and 73C shall comply with 50% of the criteria required for general category.”

“45. DISQUALIFICATION FOR BEING A MEMBER OF THE BOARD

45(1) No member of the Bank shall be eligible for being elected, or for being a member of the Board if such member

xxx

(n) If he withdraws the eligible deposits as per Bye Law No.40 any time before the completion of the entire tenure of the board.”

20. The principal contention raised on behalf of the fourth respondents in all these petitions was that the orders of disqualification could not have been passed against them, for the reason that the five year term of the elected Executive Body of the respondent No.3 – Co-operative Bank was already over in July, 2020. As the term had expired, there was no question of initiation of disqualification proceedings on the basis of alleged violation of bye-laws Nos.40 and 45 of the bye-laws of respondent No.3 – Co-operative Bank. In this context, Section 73(AAA) of the aforesaid Act, relevant portion of which is quoted hereinabove, is significant. Subsection (3) of Section 73 (AAA) of the said Act, read with the first proviso thereto shows that when the term of the elected Executive Body of a Co-operative Society expired and elections could not be held due to the Covid-19 pandemic, the Members of such Executive Committee as Directors shall be deemed to have

continued as Members of the Committee till a new Committee stood duly constituted. Being a deeming fiction, which necessarily implies that a situation that factually does not exist is deemed to be existing, it indicates that although the five year term of the elected Executive Body of the respondent No.3 – Co-operative Bank had expired in July, 2020, by the operation of the aforesaid proviso to Section 73AAA(3) of the said Act, the fourth respondents were deemed to have continued as members and office bearers of the Committee. Even otherwise, the words used in bye-law No.40 and bye-law No.45(1)(n) of the said bye-laws to the effect “entire tenure of the Board” mandatorily requires adherence to the bye-laws throughout the “tenure” of the elected members of the Executive Body, in order to avoid disqualification.

21. Even if the contentions raised on behalf of the fourth respondents in these petitions is to be accepted that the “term” of the elected body of the Executive Committee was only five years, which expired in July, 2020 and proviso to Section 73AAA(3) of the said Act merely continued the fourth respondents as Members of the Executive Committee, such continuance clearly continued

the tenure of the elected board and the membership of the fourth respondents of such elected body / board. Therefore, there is no substance in the contention raised on behalf of the fourth respondents that since the five year term of the elected Committee / Board had expired in July, 2020, no proceeding for disqualification could be initiated against them under bye-law Nos.40 and 45 of the said bye-laws. By operation of proviso to Section 73AAA(3) of the said Act, when the fourth respondents were deemed to have continued as Members of the Executive Committee / Board and they enjoyed all the privileges of the same, it cannot be said that they would not incur disqualification by operation of bye-law Nos.40 and 45 of the aforesaid bye-laws.

22. In this backdrop, it needs to be examined as to whether the concerned Minister, while passing the impugned orders was justified in reversing the orders passed by the respondent No.2 – Divisional Joint Registrar. Bye-law No.40 read with 45(1)(n) of the said bye-laws shows that it mandatorily requires the elected members of the Executive Committee / Directors of the respondent No.3 – Co-operative Bank to necessarily keep the

deposits pertaining to model share amount and model deposits, alive throughout their tenure as Members of the Executive Committee / Directors of the Board. The moment such deposits fell short of the minimum prescribed in bye-law No.40, the concerned elected members immediately attracted disqualification.

23. In the present case, it is not disputed that insofar as the petitioner in Writ Petition No.3557/2021, is concerned, the model share amount fell short of the prescribed minimum in bye-law No.40 of the said bye-laws and insofar as petitioners in other writ petitions are concerned, model deposit amounts fell short and below the minimum prescribed under the said bye-laws. Such withdrawal of the amounts was approved by specific resolutions passed in meetings of the Board of Directors and there is no dispute about the same. This Court is of the opinion that the moment the said event occurred of the deposits falling below the minimum prescribed under bye-law No.40 of the said bye-laws, the fourth respondents incurred disqualification. Subsequent replenishment of the deposits to satisfy the bare minimum requirement of the bye-law No.40 of the said bye-laws would not

cure the defect or reverse the disqualification already incurred by the fourth respondents. The learned counsel appearing for the fourth respondents in these petitions is not correct in contending that the disqualification so incurred was curable.

24. The contention raised on behalf of the fourth respondents that the question as to whether they had incurred disqualification, in the facts of the present cases, ought to be examined at the time when the Divisional Joint Registrar considered the matters, is also a fallacious contention, for the reason that the aforesaid aspect has to be examined at the point in time when the fourth respondents had allegedly incurred disqualification under the bye-laws of the respondent No.3 – Co-operative Bank. In this regard, the learned counsel appearing for the petitioner is justified in placing reliance on the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of **Rajendra Singh Rana and others Vs. Swami Prasad Maurya** (supra). In the said case, one of the questions for consideration was, as to whether the aspect of a Legislator incurring disqualification was to be considered at the point when he or she defied the whip or the aspect was to be examined when

the Speaker at a subsequent point in time was considering the question of disqualification. In this context, the Hon'ble Supreme Court in the said case held as follows:

“34. As we see it, the act of disqualification occurs on a member voluntarily giving up his membership of a political party or at the point of defiance of the whip issued to him. Therefore, the act that constitutes disqualification in terms of paragraph 2 of the Tenth Schedule is the act of giving up or defiance of the whip. The fact that a decision in that regard may be taken in the case of voluntary giving up by the Speaker at a subsequent point of time cannot and does not postpone the incurring of disqualification by the act of the Legislator. Similarly, the fact that the party could condone the defiance of a whip within 15 days or that the Speaker takes the decision only thereafter in those cases, cannot also pitch the time of disqualification as anything other than the point at which the whip is defied. Therefore, in the background of Page 1013 the object sought to be achieved by the Fifty Second Amendment of the Constitution and on a true understanding of paragraph 2 of the Tenth Schedule, with reference to the other paragraphs of the Tenth Schedule, the position that emerges is that the Speaker has to decide the question of disqualification with reference to the date on which the member voluntarily gives up his membership or defies the whip. It is really a decision *ex post facto*. The fact that in terms of paragraph 6 a decision on the question has to be taken by the Speaker or the Chairman, cannot lead to a conclusion that the question has to be determined only with reference to the date of the decision of the Speaker. An interpretation of that nature would leave the disqualification to an indeterminate point of time and to the whims of the decision making authority. The same would defeat the very object of enacting the law. Such an interpretation should be avoided to the extent possible. We are, therefore, of the view that the contention that only on a decision of the Speaker that the disqualification is incurred, cannot be accepted. This would mean that what the learned Chief Justice has called the snowballing effect, will also have to be ignored and the

question will have to be decided with reference to the date on which the membership of the Legislature party is alleged to have been voluntarily given up.”

25. Applying the position of law laid down in the above quoted judgment, it becomes clear that in the present cases, even if the fourth respondents had subsequently replenished the deposits above the minimum required as per bye-law No.40 of the said bye-laws and before the respondent No.2 – Divisional Joint Registrar considered the question, it could not be said that they did not incur disqualification. This Court is of the opinion that disqualification once incurred in such a manner could not have been reversed by subsequent replenishment of the deposits and that the concerned Minister erred in passing the impugned orders in favour of the fourth respondents in these petitions, only because they did replenish the deposits above the minimum required at a subsequent point in time.

26. It was argued on behalf of the fourth respondents by relying upon unamended Section 73CA(1)(f)(iv) of the said Act, since the words “or bye-laws of the Society” were added only by the subsequent amendment which came into effect from 28/03/2022,

that the aforesaid provision as it stood when the question of disqualification of the fourth respondents came up for consideration concerned disqualification that could be incurred only under the Act and Rules and not the bye-laws of the Society. In this regard, reliance placed on Rule 58 of the aforesaid Rules on behalf of the petitioner is justified because the said Rule clearly provides for disqualification as mentioned in Section 73CA and the bye-laws of the concerned Society. The fourth respondents are not justified in contending that Rule 58 of the said Rules goes beyond what the Act provided at the relevant time and the same ought to be ignored because Rules framed under the Act cannot go beyond the substantive provisions of the main statute.

27. The position of law in this regard is clearly covered in favour of the petitioner as per the judgment of this Court in the case of **Sambha s/o Gangaram Pikale Vs State of Maharashtra** (supra), wherein it was held as follows:

“5. Shri Talekar submitted that since disqualifications have been prescribed under section 73-FF and section 73-FFF of the Act of 1960 and under Rule 58 of the Maharashtra Co-operative Societies Rules, 1961, no further qualifications can be laid down under the bye-laws. The argument is fallacious. What has been prescribed in the Act and Rules are the minimum things which

cannot be given go by any Co-operative Society. Therefore, disqualifications as are laid down in the Act and Rules cannot be watered down by the Society by framing bye-laws contrary to it. But it does not mean that the additional qualifications cannot be prescribed under the bye-laws. In many cases, qualification in respect of residence is prescribed. In many cases, number of shares which should be held by a member for being entitled for election as Director are also prescribed. It cannot be said that no additional qualifications can be prescribed under the rules. It would be within the jurisdiction of the Registrar to examine whether the bye-laws including such qualifications are proper and reasonable. Since the present bye-law is approved by the Registrar, it can well be presumed that the Registrar has accepted its necessity.”

28. Thus, the said contention raised on behalf of the fourth respondents is also rejected.

29. The contention raised on behalf of the fourth respondents by relying upon Section 26(2)(b) and the proviso appended thereto read with Section 73CA(1)(f)(ii-a) of the said Act is also not justified. It is contended that since it is specified under the aforesaid provisions that a non-active member can become an active member and such reclassification is permissible, the disqualification that may have been incurred by the fourth respondents under bye-law No.40 read with 45(1) of the aforesaid bye-laws, could be cured and the fourth respondents stood reclassified as members of the Executive Committee / Directors of

the Board. As noted hereinabove, once the disqualification stood incurred by operation of the aforesaid bye-laws and such a finding is found to be justified on facts, the said disqualification cannot be reversed, even if subsequently the petitioners replenished the deposits to the minimum required under bye-law No.40 of the aforesaid bye-laws. It is clear that the default on the part of the fourth respondents in maintaining the deposits mandatorily required under bye law No.40 of the bye-laws resulted in disqualification on the day such default happened. Therefore, there is no question of the said disqualification being reversed or cured by subsequent action of the fourth respondents. Reliance placed on behalf of the petitioner on the judgment of this Court in the case of **Pundlik Kadhav Vs. District Deputy Registrar, Co-operative Societies, Chandrapur** (supra) is also justified.

30. The concerned Minister in the impugned orders completely failed to appreciate the correct position of law and wrongly held that the deposits of the fourth respondents, which had inadvertently gone below the minimum required under the aforesaid bye-law, were subsequently made good and, therefore, it

could not be said that the fourth respondents had incurred disqualification. The said finding of the concerned Minister is found to be unsustainable and, therefore, the impugned orders deserve to be set aside.

31. In view of the above, the writ petitions are allowed.

32. The impugned orders passed by the respondent No.1 i.e. the concerned Minister of the State are quashed and set aside and the orders passed by the respondent No.2 – Divisional Joint Registrar, disqualifying the fourth respondents are restored. No costs.

33. Rule is made absolute in above terms. Pending applications, if any, stand disposed of.

JUDGE

Later on

On pronouncement of judgment, the learned counsel appearing for the fourth respondents in all these petitions requested for suspension of the order passed today by this Court. Since this Court has held that in the facts of the present cases, disqualification was incurred by the fourth respondents, the moment bye-law No.45(1)(n) came into operation read with bye-law No.40, this Court sees no reason to accept the prayer.

Hence, the prayer for suspension of the order is rejected.

JUDGE

MP Deshpande