

Sayali Upasani

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7358 OF 2014

1. Adhyatma Bandhu Gupta,
Age-66 Years, Chairman,
Hatkesh Co-operative Housing
Society Ltd, 2nd Floor, 51 Jaihind
Co-operative Housing Society Ltd.,
N.S. Road No. 1, JVPD Scheme, Vile
Parle (W) Mumbai-400 049.

2. Gaurishankar Saraf
Age-70 Years, Secretary,
Hatkesh Co-operative Housing
Society Ltd, 2nd Floor, 51 Jaihind
Co-operative Housing Society Ltd.,
N.S. Road No. 1, JVPD Scheme, Vile
Parle (W) Mumbai-400 049. **PETITIONERS.**

VERSUS

1. Division Joint Registrar,
Co-Operative Societies,
Mumbai Division, Mumbai,
Malhotra House, 6th floor, Opp.
G.P.O. Fort, Mumbai- 400 001.
2. The Deputy Registrar, C.S. K/West Ward,
Grahnirman Bhavan, Room No.69-A,
Ground Floor,Bandra (E),Mumbai-400 051.
3. Mr. Natwarlal Agarwal,
Plot No.58, Hatkesh Co-operative
Housing Society Ltd, N.S. Road No.7
JVPD Scheme, Vile Parle (W) Mumbai.
4. Hatkesh Co-operative Housing Society Ltd
Vishnu Prasad Bhavan, V.L. Mehta Road,
JVPD Scheme, Nr. Mithibai College,
Vile Parle (W) Mumbai-400 056 and
2nd Floor, 51 Jaihind Co-operative Housing
Society, N.S. Road No.11, JVPD Scheme,
Vile Parle (W) Mumbai- 400 049.RESPONDENTS

Mr. Shivanand A. Mishra, for Petitioners.

Mr. C.D. Mali, AGP for State- Respondent Nos. 1 and 2.

Ms. Rujuta Patil and Hasan Mushabber i/b Negandhi Shah
and Himayatullah, or Respondent No. 3.

CORAM:- N. J. JAMADAR, J.

RESERVED ON:- 9th MARCH, 2023

PRONOUNCED ON:- 5th JUNE, 2023

JUDGMENT:-

- 1) Rule. Rule made returnable forthwith and with the consent of the learned Counsel for the parties heard finally.
- 2) The challenge in this Petition is to the judgment and order dated 9th July, 2014, passed by The Divisional Joint Registrar, Co-operative Societies, Mumbai, in Revision Application No.61 of 2014, whereby the application preferred by the petitioners came to be dismissed by affirming an order dated 31st January, 2014, passed by the Deputy Registrar Co-operative Societies, removing the petitioners from the post of Chairman and Secretary of Hatkesh Co-operative Housing Society Ltd- respondent No. 4 and disqualifying them from being elected and becoming an officer or member of the committee for a term of five years, under Section 75 (5) of the Maharashtra Co-operative Societies

Act, 1960 (“the Act, 1960”), for having committed default in holding the Annual General Meeting (AGM) of the respondent No. 4 - Society for the year 2012-2013.

3) Shorn of unnecessary details, the background facts can be stated as under:-

(a) Hatkesh Co-operative Housing Society Ltd – respondent No. 4, is a Society registered under the Act, 1960. The petitioner No. 1 was elected as the Chairman and petitioner No. 2 the Secretary, of the said Society. Annual General Body Meeting of the said Society was to be held on or before 30th September, 2014. In view of the legislative change brought about consequent to 97th Constitutional Amendment, it was not possible for the petitioners, to hold the AGM before 30th September, 2014. Thus, the committee of respondent No. 4 passed a Resolution on 10th August, 2013 to postpone the AGM and make an application to Deputy Registrar, seeking an extension for a period of 90 days for holding the said meeting. On 12th August, 2013 an application was submitted to the Deputy Registrar, seeking extension of time of three months to hold the AGM along with a copy of the Resolution.

(b) In the meanwhile, the respondent No. 3, a member of the Finance Committee of the Society, made a complaint to the Deputy Registrar. The petitioners and the Society were called upon to furnish an explanation. The petitioners furnished explanation on 4th December, 2013. However, on 12th December, 2013, a notice was addressed to the petitioners to show cause as to why action for default in holding Annual General Body Meeting of the Society, as contemplated under Section 75 of the Act, 1960, be not taken.

(c) The petitioners gave suitable reply on 27th December, 2013. It was, *inter alia*, pointed out that the AGM could not be convened as, in view of the legislative change, the Auditors of the Society were required to be changed and the accounts could not be finalised as the Manager of the Society had left the employment and the accountant was sick. Draft accounts were circulated to the Managing Committee in the first week of July. Moreover, there was no clarity in the legal regime on account of the legislative change brought about by 97th Constitutional Amendment. In any event, the Annual General Body Meeting of the Society was duly convened and held on 10th November, 2014.

4) After considering the explanation, the District Deputy Registrar was persuaded to pass an order on 31st January, 2014, holding that the members of the committee had committed default in holding AGM of the Society, for the year 2012-2013, on or before 30th September, 2013, which was the statutory requirement. Since the proviso to Section 75 (1) of the Act, 1960, which empowered the Registrar to extend the time to hold the meeting, stood deleted by Act No. XVI of 2013, with effect from 6th February, 2013, the application of the Society for extension of time did not deserve to be considered. Holding thus, the District Deputy Registrar ordered the removal of petitioner Nos. 1 and 2 from office of Chairman and Secretary, respectively, of the Society and further disqualified them from being elected or nominated as an Officer or Member of the committee for a term of five years.

5) Being aggrieved the petitioners preferred Revision Application No. 61 of 2014 before the Divisional Joint Registrar. By the impugned order, the Divisional Joint Registrar concurred with the view of the District Deputy Registrar opining, *inter alia*, that petitioners were aware of change brought about by 97th Constitutional Amendment and, therefore, duty bound to hold

the Annual General Body Meeting on or before 30th September, 2013.

6) Being further aggrieved the petitioners have invoked the writ jurisdiction of this Court. When the matter was listed before the Court on 11th August, 2014, this Court directed that the status quo ante as on the date of expulsion of the petitioners be maintained.

7) The Deputy Registrar, respondent Nos. 2 and 3 the original complaint-respondent No. 3 have resisted the Petition by filing affidavits-in-reply.

8) Respondent No. 2 has endeavored to justify the impugned order. The respondent No. 3 contends that the impugned order has already been implemented as in place of the petitioners, the Society had appointed new Chairman and Secretary and, thus, the Petition had been rendered infructuous. Respondent No. 3 asserts that the petitioners had committed default in holding the Annual General Body Meeting of the Society and there was no cause for not holding the said meeting and, therefore, the District Deputy Registrar was justified in passing the order under Section 75 (5) of the Act, 1960. The application submitted by the petitioners to the Deputy Registrar, seeking extension of

time was stated to be wholly misconceived as the District Deputy Registrar had no power to extend the time in view of deletion of the first proviso to Section 75 (1) of the Act. 1960.

9) I have heard Mr. Shivanand A. Mishra, the learned Counsel for the petitioners, Ms. Rujuta Patil, the learned Counsel for the respondent No. 3 and Mr. Mali, the learned AGP for respondent Nos. 1 and 2, at some length. I have also perused the pleadings and material on record.

10) Mr. Mishra submitted that the impugned orders have been passed by the authorities under the Act, 1960, in breach of fundamental principles of natural justice. The District Deputy Registrar as well as the Divisional Joint Registrar completely lost sight of the fact that the legal regime was uncertain when the petitioners had sought extension of time. Respondent No. 2 never apprised the committee that the extension, as was then sought by the committee, could not have been granted. In any event, according to Mr. Mishra, the authorities committed a grave error is not at all appreciating the cause ascribed by the petitioners for not holding the meeting before the scheduled date. The authorities were enjoined to consider the justifiability

of the cause assigned by the petitioners. Failure to do so renders the impugned order legally unsustainable, urged Mr. Mishra.

11) In the alternative, Mr. Mishra would urge it was the responsibility of petitioner No. 2 alone, in the capacity of the Secretary of the Society, to convene the AGM and, thus, the petitioner No. 1, the then Chairman, could not have been disqualified as it was not the duty of the Chairman to call AGM.

12) The learned AGP, on the other hand, supported the impugned orders. It was submitted that the provisions contained in Section 75 (5) of the Act, 1960, are of mandatory nature and once there is a default in holding the meeting, within the prescribed period, the action thereunder is inevitable.

13) Ms. Patil would urge that the ground of uncertainty of law now sought to be urged is a subterfuge. Taking the Court through the documents, Ms. Patil submitted that the material on record would indicate that the petitioners were fully aware about the legislative change and, yet, persisted with the course of seeking extension of time as an excuse for not holding the Annual General Body Meeting.

14) I have carefully considered the submissions canvassed across the bar. In the context of the challenge, the time line assumes significance. The committee, or for that matter, the petitioners were alive to the fact that the Annual General Body Meeting of the Society was to be conducted by 14th August, 2013. Asserting that it was not possible to hold the meeting by the said date, it seems, on 10th August, 2013, the committee of respondent No. 4 – Society passed the Resolution to postpone the 66th AGM on account of delay in auditing the accounts. The committee further resolved to authorise the Secretary to make an application to the District Deputy Registrar to seek extension of 90 days for holding the meeting. Accordingly, an application was duly made on 12th August, 2013.

15) It seems that the respondent No. 3 addressed a complaint dated 12th October, 2013, containing multiple grievances including the failure to hold the AGM on or before 30th September, 2013. An explanation was sought by the District Deputy Registrar. After considering the explanation dated 4th December, 2013, the Deputy Registrar issued a notice calling upon the petitioners to show cause as to why action for default in holding the AGM, as contemplated under Section 75 (5) of the

Act, 1960 be not taken. Post reply, the District Deputy Registrar passed the order dated 31st January, 2014.

16) In the backdrop of the aforesaid rather uncontroverted facts, the legality and validity of the impugned orders deserve to be tested. At the outset, it is pertinent to note that as of the date of the passing of the Resolution dated 10th August, 2013 and submitting application for extension of time, the first proviso to Section 75 (1), as it then stood, empowered the Registrar to extend the time for holding the meeting by a period not exceeding three months. The first proviso to Sub Section (1) of Section 75 then read as under:-

“ Provided that, the Registrar may, by general or special order. Extend the period for holding such meeting for a further period not exceeding three months, however, in the case of the specified societies and urban Co-operative banks such extension shall be granted only after recording the reasons in writing and after obtaining the previous approval of the Government for granting such extension.”

17) It would be imperative to note that in view of the provisions contained in Section 42 of the Maharashtra Act No. XVI of 2013, the aforesaid first proviso to Section 75 (1) came to be deleted, with effect from 14th February, 2013. The Maharashtra Co-operative Societies Amendment Act, 2013, was

notified on 13th August, 2013. However, by virtue of Section 1 (2) of the said Act No. XVI of 2013, the provisions of the said Act were deemed to have come into force on 14th February, 2013.

18) In the aforesaid view of the matter, the submissions on behalf of the petitioners that they had sought an extension of time to hold AGM while the governing law was in a state of flux, can not be brushed aside completely. Undoubtedly, the first proviso to Section 75 (1) which empowered the Registrar to extend the time by three months, came to be deleted with effect from 14th February, 2013. Yet, the fact that the Society had sought extension of time to hold the AGM indicates, in the least, a *bona fide* pursuit of the then available remedy.

19) Nonetheless, I am inclined to test the validity of the impugned orders on a more substantive ground. Section 75 (5), which provides the consequences of default in holding the AGM in conformity with the provisions contained in Sub Section (1) of Section 75 reads as under:-

“...(5) If default is made, in calling a [general body meeting within the period] prescribed under sub-section (1) or in complying [with sub-section (2), (2A) (3) or (4), the Registrar may by order declare any officer or member of the committee whose duty it was to call such a meeting or comply [with sub-section (2), (2A) (3) or (4) and who without reasonable excuse failed to comply

with any of the aforesaid sub-sections disqualified for being elected and for being elected and for being any officer or member of the committee for such period [not exceeding five years], as he may specify in such an order and, if the officer is a servant of the society, impose a penalty on him to [pay] an amount not exceeding [five thousand rupees]. Before making an order under this sub-section, the Registrar shall give, or cause to be given, a reasonable opportunity to the person concerned of showing cause against the action proposed to be taken in regard to him....”

20) A plain reading of the aforesaid section would indicate that in the event of default in holding the meeting within the period prescribed under Sub Section (1), or in complying with Sub-Section (2), (2A) (3) or (4) of the said Section, the Registrar may by order declare any Officer or member of the committee whose duty it was to call such a meeting or comply with Sub Section (2), (2A) (3) or (4) to be disqualified for being elected or for being any officer or member of the committee for such period not exceeding five years, and also impose a penalty not exceeding five thousand rupees if the officer happened to be the servant of the society.

21) Evidently, the Registrar has to first arrive at a finding that a default has been committed in compliance with the mandatory provisions contained in Section 75 and, thereafter, pass an order of disqualification of the officer or member of the

committee, who was in default or impose the penalty, as the case may be. The said power is, however, not unregulated or uncannalised. The expression, “who without any reasonable excuse failed to comply with any of the aforesaid Sub Sections” is of critical significance. It envisages an opportunity to the person, who is allegedly in default, to show cause. Simultaneously, if a cause is shown, there is a corresponding duty on the Registrar to ascertain as to whether the cause so assigned constituted a reasonable excuse. Default *per se* does not entail disqualification. Registrar is statutorily enjoined to arrive at a finding that there was no reasonable excuse. In a given case, if the officers or members of the committee are in a position to demonstrate that there was reasonable excuse for not holding the AGM, the Registrar would be justified in not visiting such officer or member with the consequence of disqualification or penalty.

22) The aforesaid nature of the power under Section 75 (5) of the Act, 1960, was adverted to by this Court in the case of **Dilip Bhagwantrao Ingole and Others Vs. Commissioner of Co-operation and Registrar of Co-Operative Societies Maharashtra State, Pune and Others**¹. The learned Single Judge of this

¹ 2009 (2) Mh.LJ 471

Court, on an analysis of the provisions contained in Sub Section (4) and (5) of Section 75, enunciated the principles of natural justice with which the aforesaid provisions are informed. The relevant observations read as under:-

“....6. In view of the provisions of Section 75(4) it is clear that balance sheet, profit and loss account, audit memorandum submitted by the auditor with the managing committee report shall be placed for adoption before the annual general meeting. In view of the provisions of Section 75(5) if there is a failure in calling the annual general meeting or any compliance with the provisions of Sections (2), (3) and (4) of Section 75, the Registrar may by order declare a Member of the Committee whose duty it was to comply with the said provisions, who without any reasonable excuse failed to comply with the same, disqualified for being elected or for being a member of the committee for such period not exceeding three years. This is an administrative action which may be taken by the Registrar and as per this administrative action the concerned members of the committee may be declared disqualified for being elected or for being a member of the committee for a period not exceeding three years due to failure to comply with Section 75(4). However, the section also makes it clear that for taking the action the Registrar must come to the conclusion that the concerned members of the committee had failed to comply with the provisions without any reasonable excuse and to find out whether there was any reasonable excuse for non compliance of that direction, the Registrar is expected to give reasonable opportunity to the person concerned of showing cause against the action proposed to be taken with regard to him. It means opportunity has to be given to the concerned member of the society to explain as to why he could not follow the relevant provisions and if the Registrar comes to the conclusion that the concerned member had reasonable excuse or justifiable reasons for not

complying the provisions, he may not take any action under Section (5) if after giving an opportunity he finds that there was no reasonable excuse, he may take action as per the provisions of sub section (5). Therefore it is necessary to give reasonable opportunity to the person to explain the reasons for non compliance, without which action cannot be taken.....”

(emphasis supplied)

23) Another learned Single Judge of this Court in the case of **Gaurav K. Desai Vs. The State of Maharashtra and Others in Writ Petition No.11699 of 2014**, expounded the nature of exercise of power by the Registrar under Section 75 as under:-

“...8. The scheme of Section 75 needs to read not in isolation. All the sub-clauses are connected and interlinked. There are certain connected obligation of the authorities also (Registrar) in case no meeting convened or able to take decisions. No such steps were taken even by the authorities within the prescribed period. also (Registrar) Sub-section(5) of Section 75 itself provides that irrespective of earlier provisions of Sub-sections (1), (2), (2A), (3) and (4) in case of default, before imposing any penalty, reasonable opportunity needs to be given to the concerned parties. This section itself provides that the authority must give all the opportunities and ask for an explanation for the failure to comply with the provisions if any. This section itself provides the concept of natural justice - “who without any reasonable excuse” fail to comply with the mandate of the provisions. It is also a mandate of Sub-section (5) of Section 75 that the authorities should give an opportunity to explain “reasonable excuse” even if any officer/servant fails to comply with the provisions. This itself follows that if a reasonable excuse and/or reasonable case is made out, the authority irrespective of earlier provisions of Section 75, may pass an appropriate order and/or may reduce

penalty/punishment so proposed, and/or may impose “nil”punishment or “nil” penalty. The principles of natural justice, therefore,which are otherwise inherent in any such provisions of law, specifically when it comes to taking any action or deciding civil rights of the parties,must be followed. In the present case, Sub-section (5) of Section 75 is very clear about the principles of natural justice to be followed in the strict sense.

.....

11. Reasonable cause and/or sufficient reason needs to be considered in the facts and circumstances of the case but in situation like this where the third person/parties are involved and when the petitioners/officers at the relevant time took steps within the prescribed period but unable to fulfill the same within the statutory period for the ground so referred, that itself cannot be the reason for the punishment of this nature. I am inclined to observe that if “sufficient cause” is made out,it is not the mandate of the provisions that the authority should impose the maximum punishment in every such default. The discretion and the power need to use/utilize in accordance with law. Reasonable and fair approach is required, if sufficient cause is made out and/or where there was no intentional delay and/or intended inaction to breach provisions,which are brought into with effect from 15.2.2013 and no prior steps/ intimation/ circular issued to the society in advance, about such mandate....”

24) A fair reading of the provisions contained in Section 75 (5) of the Act, 1960, thus justifies an inference that the opportunity of hearing before an officer or member of committee is visited with disqualification or penalty, as case may be, is implicit at two stages. First, the Registrar must provide an opportunity to the person affected to show as to whether there was a

reasonable cause for not holding AGM. Second, the Registrar must also weigh the justifiability of the reason ascribed by such person and record a finding. The reason ascribed by the affected person may bear upon the action, which the Registrar may be persuaded to take. Convinced with the reasonability of the excuse, the Registrar may not pass any order of disqualification or penalty or the Registrar may be persuaded to determine the measure of the remedial action. It is imperative to note that the legislature has used the expression, “for such period not exceeding five years”. Thus, disqualification need not necessarily be for full five years. Having regard to the nature of the default as well as the reasons ascribed for the same, the Registrar may disqualify the person in default for a lesser period.

25) On the aforesaid touchstone, reverting to the facts of the case, the order passed by the District Deputy Registrar removing the petitioners from the committee and declaring them to have incurred the disqualification for a term of five years, singularly lacks consideration on the aspect of the reasonability of the excuse offered by the petitioners. In fact, the District Deputy Registrar has not at all considered the justifiability of

the cause ascribed by the petitioners. On the contrary, the District Deputy Registrar has proceeded on the premise that the application of the petitioners for extension of time to hold the AGM was not required to be considered as the first proviso to Section 75 (1) stood deleted. No other reason was ascribed by the District Deputy Registrar.

26) The situation which thus obtains is that the District Deputy Registrar did not delve into the justifiability of the cause and arrive at a finding that there was no reasonable excuse. The fact that the committee had passed the Resolution to seek extension of time on account of impossibility of holding the meeting due to delay in finalising the accounts for the absence of Manager and sickness of the accountant as well as the change in the auditors, was not at all considered by the District Deputy Registrar. Had the District Deputy Registrar considered the reasons assigned by the petitioners and, thereafter, come to a conclusion that those were not sufficient reasons for not holding the meeting, different considerations could have come into play. In the absence thereof, an inference become inescapable that the order passed by the District Deputy Registrar suffers from a

manifest error in not considering the reasonability of the excuse.

27) The Divisional Joint Registrar also did not advert to the said aspect of the matter and simply proceeded to concur with the view of the District Deputy Registrar based on the premise of the legislative change brought about by 97th Constitutional Amendment. In my view, in the peculiar facts of the case, the contention of the petitioners that they had an incomplete impression of the legal regime, which then prevailed, could not have been thrown overboard.

28) In any event, the Registrar was informed that the AGM was duly convened and held on 10th November, 2013. Undoubtedly, there was delay. However, the authorities could have considered the said factor had they examined the justifiability of the reason assigned by the petitioners for not holding the AGM. Non-consideration of this vital aspect, in my view, constitutes a jurisdictional error in passing the order of disqualification for a term of five years.

29) Ordinarily, in a situation of this nature, this Court would have considered it appropriate to remit the matter back to the authorities under the Act, 1960. However, having regard to the

time lag of more than 9 years, since the passing of the order of disqualification by District Deputy Registrar, no fruitful purpose would be served in remitting the matter back to the District Deputy Registrar. In the totality of the circumstances, it may be expedient in the interest of justice to allow the Petition.

30) Hence, the following order.

:-ORDER:-

- i) The Petition stands allowed.
- ii) The impugned order passed by the Divisional Joint Registrar and the order dated 31st January, 2014, passed by the District Deputy Registrar, Co-operative Societies, stand quashed and set aside.
- iii) Rule made absolute in the aforesaid terms.
- iv) No costs.

[N. J. JAMADAR, J.]