

Santosh

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

WRIT PETITION NO. 14608 OF 2022

**SANTOSH
SUBHASH
KULKARNI**

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Sumeet Bhatia

...Petitioner

Versus

State of Maharashtra and ors.

...Respondents

Mr. Kishor Patil, a/w Suhas Deokar, Chetan Alai and Rama
Somani, i/b Chetan Alai, for the Petitioner.

Mrs. V. S. Nimbalkar, AGP for the State/Respondent Nos.1 to
3.

Mr. Prashant Kshirsagar, a/w Anirudha Sanap, i/b Sarvadnya
Legal Asso., for Respondent Nos.4 to 10.

CORAM: N. J. JAMADAR, J.

DATED : 11th JULY, 2023

Order:-

1. Heard Mr. Kishor Patil, the learned Counsel for the petitioner, Mrs. Nimbalkar, the learned AGP for the State – respondent Nos.1 to 3 and Mr. Kshirsagar, the learned Counsel for respondent Nos.4 to 10.

2. The petitioner takes exception to an order passed by the Divisional Joint Registrar, Cooperative Societies, Pune Division, in Revision Application No.92 of 2022, whereby the said revision application came to be allowed by setting aside the order dated 17th March, 2022, passed by Deputy Registrar, Cooperative Societies, Pune City and Taluka Cooperative Returning Officer

under Rule 66 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 (“the Election to Committee Rules, 2014”), disqualifying respondent Nos.5 to 10 and the other committee members for the period of three years for failure to submit the account of election expenses within the time prescribed under Rule 67(1)(a) of the Election to Committee Rules, 2014.

3. The Election to the Committee of Omega Paradise Phase-1, respondent No.4 Society were held on 12th November, 2021. In the said election, respondent Nos.5 to 10 and other 9 were declared elected unopposed. Under Rule 65 read with Rule 67(1A) of the Election to Committee Rules, 2014, every candidate is enjoined to submit an account of election expenses within a period of 60 days from the date of declaration of the result of the election, to the Returning Officer. The elected candidates did not submit the account within the stipulated period of 60 days.

4. On 17th November, 2022, the petitioner sought information from the Returning Officer as to whether the accounts of election expenses were filed by the Committee members. Vide communication dated 20th January, 2022, the Returning Officer informed the petitioner that such accounts of election expenses

were not filed. Thereupon, the petitioner filed an application for disqualification, in accordance with Rule 66(1) of the Election to Committee Rules, 2014. The Deputy Registrar, Cooperative Societies, sought a report from the Returning Officer. In the meanwhile, on 31st January, 2022 respondent Nos.5 to 10 and rest of the committee members submitted the accounts of election expenses to the Returning Officer contending, *inter alia*, that there was slight delay in submitting the accounts on account of Covid-19 Pandemic.

5. The Deputy Registrar, Cooperative Societies, by an order dated 17th March, 2022, passed an order of disqualification under Rule 66(1)(b) of the Election to Committee Rules, 2014 opining that the cause assigned by respondent Nos.5 to 10 and the other committee members was not justifiable as respondent No.4 Society was not declared as Covid prohibited area by the local authority and the decision of the Supreme Court suspending the period of limitation did not apply to the submission of election expenses.

6. Respondent Nos.5 to 10 and rest of the committee members were thus disqualified for being and to become a member of the Committee for the period of three years

7. Being aggrieved, respondent Nos.5 to 10 carried the matter in revision before the Divisional Joint Registrar in Revision Application No.92 of 2022. By the impugned order the Divisional Joint Registrar was persuaded to set aside the order passed by the Deputy Registrar holding that the delay of 20 days was properly accounted for as respondent No.4 Society was declared a Containment Zone by an order dated 3rd January, 2022 issued by Pimpri-Chinchwad Municipal Corporation. The Divisional Joint Registrar was of the view that the order passed by the Supreme Court suspending period of limitation was also required to be taken into consideration.

8. Mr. Patil, the learned Counsel for the petitioner, would urge that the Divisional Joint Registrar transgressed the revisional jurisdiction in setting aside a well reasoned order of the Deputy Registrar. It was submitted that the reason sought to be assigned by the committee members for non submission of the accounts was a subterfuge. There was material to indicate that respondent No.4 Society was not severely affected during the relevant period. In any event, when the revision was preferred only by respondent Nos.5 to 10 the Divisional Joint Registrar could not have set aside the order in its entirety. Thus, an incongruous situation has arisen as there are only six

committee members and, resultantly, the affairs of respondent No.4 Society cannot be managed in conformity with the provisions of the Act and the Rules thereunder, submitted Mr. Patil.

9. Rule 66 of the Election to Committee Rules, 2014 reads as under:

“66. Disqualification for failure of lodge account of election expenses

(1) If the District Co-operative Election Officer is satisfied that a person:-

(a) has failed to lodge an account of election expenses within the time and in the manner required by the last preceding section, and

(b) has no good reason or justification for the failure, District Co-operative Election Officer [or Taluka or Ward Co-operative Election Officer, as the case may be, shall submit report to the Registrar and after receipt of such report, the concerned Registrar after providing an opportunity of being heard] shall by order [* * *], declare him to be disqualified for being elected as, and for being, a member of the committee of any society, and any such person shall be disqualified for a period of three years from the date of the order.”

10. On a plain reading, it becomes abundantly clear that an action to disqualify a person who fails to submit the account of election expenses for being elected as and being a member of the committee of any Society can be taken only when there is no good reason or justification for the failure. These expressions imply that a candidate, who commits default in submission of the account within stipulated period, cannot be visited with the consequences of disqualification, if there is a reasonable cause for non-submission of account of election expenses.

11. In the case at hand, there is not much controversy over facts. Accounts of election expenses were submitted after about 20 days of the stipulated period. There is material to indicate that a number of residents of respondent No.4 Society were notified to have been infected by the virus and respondent No.4 Society was declared a major Containment Zone.

12. In the exigency of the situation, which then prevailed, apart from suspension of period of limitation, a number of concessions and exemptions were granted in the matter of various statutory/regulatory compliances. The authorities could not have been oblivious of the situation which then prevailed. From this stand point, the Divisional Joint Registrar was justified in taking a view that the failure on the part of the Committee members to submit the accounts was justifiable. The Deputy Registrar had taken a very rigid view of the matter especially in the backdrop of the then exigency of the situation. The Divisional Joint Registrar, therefore, justifiably corrected the error which the Deputy Registrar had fallen in.

13. Mr. Patil's challenge to the impugned order on the count that revision application was preferred by respondent Nos.5 to 10 only and, therefore, the said order cannot have the effect of setting aside the disqualification of rest of the committee

members does not merit countenance. It is imperative to note that the Joint Registrar is empowered under Section 154 of the Act, 1960 to exercise the revisional jurisdiction *suo motu* as well. Since the election expenses were furnished by all the committee members vide letter dated 31st January, 2022, with a common explanation for the delay, and the said explanation found favour with the Divisional Joint Registrar, the order of disqualification can only be said to have been set aside in its entirety and even in respect of the committee members, who had not joined in the revision application. Any other view would lead to an anomalous situation.

14. Resultantly, the petition does not deserve to be entertained.

15. Hence, the petition stands rejected.

16. No costs.

[N. J. JAMADAR, J.]