



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

WRIT PETITION NO.14371 OF 2022

- | | |
|---------------------------------|---|
| 1. Sandesh Baccharam Bhapkar, |] |
| Age – 40 years, |] |
| 2. Satish Sarjerao Bhagat, |] |
| Age – 42 years, |] |
| 3. Jalinder Vishnu Bhapkar, |] |
| Age – 59 years, |] |
| 4. Tanaji Pandurang Bhapkar, |] |
| Age – 54 years, |] |
| 5. Rohidas Dnyandev Gaikwad, |] |
| Age – 51 years, |] |
| 6. Balu Vishnu Jhanjhane, |] |
| Age – 52 years, |] |
| 7. Vijay Gulabrao Golande, |] |
| Age – 48 years, |] |
| 8. Rajendra Narayan Pawar, |] |
| Age – 55 years, |] |
| 9. Amol Ananda Kamble, |] |
| Age – 40 years, |] |
| 10. Rukhmini Dattatray Bhapkar, |] |
| Age – 62 years, |] |
| 11. Sangeeta Tukaram Rangole, |] |
| Age – 45 years, |] |
| 12. Yunis Mohammad Tamboli, |] |
| Age – 65 years, |] |
| 13. Kisan Lavha Ghopade, |] |
| Age – 48 years, |] |

All Adults, Occupation – Agriculturists.]
 All R/o. Sayambachiwadi, Post : Loni Bhapkar] ... Petitioners
 Taluka : Baramati, District : Pune.]

Versus

1. State of Maharashtra]
 Through Secretary,]
 Ministry of Cooperation, Mantralaya,]
 Mumbai – 400 001.]
2. The Registrar,]
 Coop. Societies, State of Maharashtra,]
3. Maharashtra State Election Authority,]
 Maharashtra State Cooperative Association]
 Building, 1st Floor, 5, B. J. Road, Pune – 1.]
4. The District Cooperative Election Officer Cum]
 District Deputy Registrar Cooperative]
 Societies, Pune, Maharashtra State]
 Cooperative Association Building,]
 1st Floor, 5, B. J. Road, Pune – 1.]
5. Taluka Cooperative Election Officer Cum]
 Assistant Registrar Cooperative Societies,]
 Taluka – Baramati, District – Pune.]
6. Nilesh Jagtap,]
 Age – Adult, Occupation – Agriculturist,]
 Member of Swayambhunagar Vividh]
 Karyakari Seva Sahakari Sanstha Maryadit,]
 Sayambachiwadi, Taluka – Baramati,]
 District – Pune.]
7. Nilesh Mahadev Golande,]
8. Yashwant Sarjerao Golande,]
9. Ankesh Gulabrao Jagtap,]
10. Kailas Narayan Jagtap,]
11. Rangnath Gujaba Bhagat,]
12. Pratap Atmaram Bhapkar,]

13. Patilbua Jaysing Bhapkar,	]	
14. Prakash Murlidhar Yadav,	]	
15. Vishnu Laxman More,	]	
16. Kalpana Diliprao Jagtap,	]	
17. Nanda Bhauso Jadhav,	]	
18. Bhimrao Krushna Pawar,	]	
19. Nathyaba Namdev Dhaygude,	]	
Nos.14 to 26 all Adults,	]	
Occupation – Agriculturist,	]	
All R/o. Sayambachiwadi, Post – Loni,	]	
Bhapkar, Taluka – Baramati, District – Pune,	]	...Respondents

Mr. Shailendra S. Kanetkar for Petitioners.

Mr. Vishwajit P. Sawant, Senior Advocate i/b Mr. Veerdhaval Kakade for Respondent No.6.

Pooja Deelip Patil, Advocate i/b Deelip Patil Bankar, Chief Standing Counsel for Respondent No.3 - SCEA.

Mr. A. P. Vanarse, AGP for State – Respondent Nos.1, 2, 4 & 5.

CORAM :- SANDEEP V. MARNE, J.

DATE :- 27 SEPTEMBER, 2023

JUDGMENT :-

1. Existence of alternate remedy of filing Revision under Section 154 of the Maharashtra Co-Operative Societies Act, 1960 against an Order passed by the Registrar disqualifying member(s) of committee of a cooperative society under Rule 66 of the Maharashtra Co-Operative Societies (Election to Committee) Rules, 2014, is the issue that I have been tasked upon to answer in this Petition. If indeed such remedy exists, whether this Petition can be entertained in the

peculiar facts and circumstances of the case, is also connected issue that arises for determination.

2. **Rule.** With the consent of the learned counsel for the parties, rule is made returnable forthwith and called out for hearing.

3. The issues arises in the context of challenge set up by Petitioners to the Order dated 15th November 2022 passed by the District Cooperative Election Officer-cum-District Deputy Registrar of Cooperative Societies, Pune (Rural), Pune, disqualifying Petitioners under the provisions of Rule 66 of The Maharashtra Co-Operative Societies (Election to Committee) Rules, 2014 (**Election Rules**).

4. Shorn of unnecessary details, facts of the case are that Swayambhunagar Vividh Karyakari Seva Sahakari Sanstha Maryadit (**Society**) is a cooperative society registered under the provisions of The Maharashtra Co-Operative Societies Act, 1960 (**Act of 1960**). The process of conducting elections to the Managing Committee of the society was initiated in February 2022. Petitioners and Respondent Nos. 7 to 19 contested the elections. Election results were declared on 05/04/2022, in which Petitioners were elected as the members of the Managing Committee, while Respondent Nos. 7 to 19 were defeated. The Assistant Registrar of Cooperative Societies, Baramati, passed order on 11/04/2022 constituting the Managing Committee of the Society in pursuance of the elections so held. Petitioners claim that they filed accounts of election expenses with the Returning Officer on 14/06/2022. A complaint was filed on 13/07/2022 by Respondent No.6 with the District Cooperative Election Officer, Pune, alleging that the Petitioners failed to file accounts of election expenses within a

period of 60 days as provided under Rule 66 and 67 of the Election Rules. Upon receipt of complaint from Respondent No.6, the District Cooperative Election Officer sent a communication dated 27/07/2022 to the Taluka Cooperative Election Officer soliciting his report. The Taluka Cooperative Election Officer-cum-Assistant Registrar of Cooperative Societies, Baramati, submitted report dated 08/10/2022 opining that the Petitioners filed accounts of election expenses beyond the stipulated period of 60 days from the date of declaration of results of elections. The District Cooperative Election Officer issued notice dated 25/08/2022 to Petitioners calling for their explanation. Petitioners filed a reply in pursuance to a show cause notice. The District Cooperative Election Officer thereafter proceeded to pass order dated 15/11/2022 disqualifying the Petitioners as members of the Managing Committee for a period of 3 years under the provisions of Rule 66 of the Election Rules. The Petitioners have filed the present Petition challenging the order dated 15/11/2022.

5. Mr. Kanetkar, the learned Counsel appearing for Petitioners would submit that the order passed by the District Cooperative Election Officer is without jurisdiction as only Registrar is empowered to take a decision under Rule 66 for disqualification of elected member. He would further submit that Respondent No.6 did not have any locus to file a complaint to seek disqualification of elected member. That, Respondent No.6 did not contest the elections and only candidate contesting the elections can file a complaint seeking disqualification of elected member. Under Rule 66, any other person could challenge election only by filing an election petition under Section 91 of the Act of 1960.

6. Mr. Kanetkar would further submit that the District Cooperative Election Officer had erroneously held that there is no provision for condonation of delay beyond 60 days under Rule 66 of the Election Rules. That, the registrar has been empowered under clause (b) of Rule 66 to accept the justification for failure to lodge accounts of election expenses within the time limit. That, though the Petitioners submitted valid justification for delay in filing the accounts of election expenses, the said justification has not at all been considered by the District Cooperative Election Officer.

7. Mr. Sawant the learned senior advocate appearing for Respondent No.6 would raise preliminary objection of maintainability of the Petition. He would submit that the Petitioners have an alternate and equally efficacious remedy of filing Revision either before the Registrar or before the State Government under the provisions of Section 154 of the Act of 1960. So far as merits are concerned, he would submit that the Deputy Cooperative Election Officer is vested with jurisdiction to decide the disqualification proceedings and that there is an admitted violation of mandatory provisions under Rule 65 read with Rule 67 to lodge accounts of election expenses within a period of 60 days from the date of declaration of election results. That the results of the elections were declared on 05/04/2022 and the accounts of election expenses were then lodged by the Petitioners on 14/06/2022 i.e. after a period of 68 days. That on account of admitted violation of provisions of Rules 65 and 67, the Petitioners have rightly been disqualified by the District Cooperative Election Officer under Rule 66. That, the justification sought to be given for late lodging of accounts of election expenses by the Respondents was vague, warranting rejection. He would further submit that in

pursuance of the order dated 15/11/2022, an Administrator has been appointed for looking after the affairs of the society by order dated 21/11/2022. He would pray for dismissal of the Petition.

8. Ms. Patil, learned counsel appearing for the State Cooperative Election Authority, would submit that the Registrar has been empowered under Rule 66 to take a decision of disqualification of post of a Managing Committee. She would invite my attention to the Notification dated 11/09/2012, under which District Deputy Registrar, Cooperative Societies, Pune (Rural) has been delegated with the powers of Registrar in respect of Baramati Taluka. That therefore the District Deputy Registrar has exercised the power of Registrar in the present case. She would submit that since the order is passed by the District Cooperative Election Officer while exercising powers of a Registrar, Revision under Section 154 of the Act of 1960 would lie before the State Government.

9. Mr. Vanarse, learned AGP appearing for State Government, would also oppose the Petition contending that the Petitioners have alternate remedy of filing Revision under Section 154 of the Act of 1960. He would justify the jurisdiction exercised by the District Cooperative Election Officer in disqualifying the Petitioners. He would submit that the District Cooperative Election Officer is not empowered to condone the delay in lodging accounts of election expenses. That the impugned order has been passed after grant of opportunity of hearing to Petitioners and therefore no interference is warranted in the impugned order.

10. Rival contentions of the parties now fall for my consideration.

11. An objection as to maintainability of the present Petition has been vehemently raised by the learned Counsel appearing for Respondent No. 6 on the ground of availability of alternate remedy of filing Revision under Section 154 of the Act of 1960. Mr. Kanetkar, on the other hand, would urge that since the impugned order is passed under the provisions of Elections Rules by an Election Authority, the remedy of filing Revision under Section 154 would not be available. He would submit that a separate machinery for conducting election of society has been created comprising of various authorities such as Taluka Cooperative Election Officer, District Cooperative Election Officer and State Cooperative Election Authority. It would therefore be necessary to first set out the statutory framework under which a decision to disqualify elected member(s) of committee of a Society can be disqualified for failure to lodge accounts of election expenses. Section 73CB has been added to the Act of 1960 by amendment w.e.f. 14-02-2013, which provides for constitution of State Cooperative Election Authority (**SCEA**) for superintendence, direction and control of preparation of electoral roll and conduct of elections of cooperative societies. In exercise of powers under Section 165 of the Act of 1960, the Election Rules have been framed. Part-III of the Election Rules deals with provisions relating to election expenses. Rules 65 to 67 provide thus:

PART – VIII
ELECTION EXPENSES

65. Account of election expenses.—(1) Every candidate at an election shall either by himself or by his Election Agent keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his Election Agent between the date of the order calling

the election and the date of declaration of the result thereof, both dates inclusive within the period of thirty days from the date of declaration of the result.

(2) The account shall contain such particulars as are specified in rule 67.

(3) The total of the said expenditure shall not exceed such amount as may be notified by the SCEA.

(4) Every contesting candidate at an election shall, lodge with the District Co-operative Election Officer through the Returning Officer an account of his Election expenses within the time and in the manner in rule 67.

66. Disqualification for failure of lodge account of election expenses.—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, the District Co-operative Election Officer shall, by order published, in the Official Gazette, 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.

67. Particulars of account of election expenses.—(1) The account of election expenses to be kept by a candidate or his election Agent under rule 65 shall contain the following particulars in respect of each item of expenditure from day to day, namely :—

(a) The date on which the expenditure was incurred or authorized ;

(b) the nature of the expenditure (as for example, travelling, postage or Printing and the like) ;

(c) the amount of the expenditure :—

(i) the amount paid ;

(ii) the amount outstanding ;

(d) the date of payment;

(e) the name and address of the payee ;

(f) the serial number of voucher, in the case of amount paid ;

(g) the serial number of bills, if any, in case of amount outstanding ;

(h) the name and address of the person to whom the amount outstanding is payable.

1A) Every contesting candidate shall lodge an account of election expenses within the period of 60 days from the date of declaration of the result of the election with the Returning Officer.

(2) All vouchers shall be lodged alongwith the account of election expenses, arranged according to the date of payment and serially numbered by the candidate or his Election Agent and such serial numbers shall be entered in the account under item (f) of sub-rule (1).

(3) It shall not be necessary to give the particulars mentioned in item (c) of sub-rule (1) in regard to items of expenditure for which vouchers have not been obtained.

12. Thus under Rule 65 of Election Rules, it is mandatory for every candidate to lodge accounts of election expenses as per particulars prescribed under Rule 67 within a period of 60 days from the date of declaration of result of the election. Rule 66 provides for consequences for failure to lodge account of election expenses.

13. The initiation of proceedings under Rule 66 is by the District Cooperative Election Officer who first needs to record a satisfaction that there is failure in lodging the account of election expenses within time and as per particulars specified in Rule 67. The term 'District Cooperative Election Officer' has been defined under Rule 2(8) of the Election Rules which read thus :

“2(8) “District co-operative Election Officer” means an officer or officers approved by the SCEA not below the rank of the Deputy Registrar, Co-operative Societies of the district to assist the SCEA in performance of its function for the conduct of elections of societies in the District under the supervision and control of the SCEA.”

Thus, the Election Rules contemplate appointment of District Cooperative Election Officer who cannot be below the rank of Deputy Registrar, Cooperative Societies, for assisting the SCEA in performance of its functions for conducting of elections of societies in the district. Rule 3 empowers the State Cooperative Election Authority to appoint various officers for conduct of elections. Clause (i) of Rule 3 reads thus:

3. Powers of State Co-operative Election Authority (SCEA).—In order to conduct the elections of the co-operative societies, the SCEA shall have the following powers, namely :—

(i) to appoint any officer or employee of the State Government, or any Co-operative Society, or any Local Body on any post with such designation and duties for the purpose of conducting the elections; and it shall be obligatory on every officer or employee so appointed, to perform the duties assigned

to him, failing which he shall be liable for prosecution for having committed contempt of the lawful authority of the public servant within the meaning of Chapter 'X' of the Indian Penal Code, 1860 :

Provided that, the State Co-operative Election Authority may by general or special order direct any officer or employee of the State Government not below the rank of District Deputy Registrar to exercise its powers under this clause :

Provided further that, such officer or employee shall work under the general superintendence and control of the State Co-operative Election Authority ;

14. The Election Rules thus contemplate appointment of District Cooperative Election Officer as approved by the SCEA. Thus theoretically, the Deputy Registrar, Cooperative Societies appointed by the State Government to exercise powers under the Act of 1969 and the District Cooperative Election Officer appointed under the Election Rules could be two separate and distinct officers. The power of initiation of proceedings under Rule 66 is conferred on the District Cooperative Election Officer. Under the provisions of Election Rules, no remedy is provided in respect of a decision taken by the District Cooperative Election Officer. To this extent, the submission of Mr. Kanetkar about the absence of any remedy in respect of decision taken by the District Cooperative Election Officer appears to be correct.

15. However, First Proviso to clause (i) of Rule 3 empowers the SCEA to direct that any employee or officer of the State Government would exercise powers under the clause. It is under this provisions Rule 3(i) read with 3(8) of the Election Rules that the Deputy Registrar exercises powers of District Cooperative Election Officer.

16. However under Rule 66, though the District Cooperative Election Officer is empowered to record a satisfaction that there is failure by a candidate to lodge the account of election expenses within time and as per particulars specified in Rule 67, the ultimate jurisdiction of taking the decision of disqualification is vested in the Registrar. Thus there is transfer of proceedings from SCEA machinery to the Registrar appointed under the Act of 1960 within Rule 66. The jurisdiction of District Cooperative Election Officer is restricted to recording of satisfaction about failure to lodge and examining the reasons / justification for delay in lodging the account of election expenses. He has to thereafter make a report to the Registrar, who alone is empowered to make a declaration of disqualification.

17. In the present case the Order of disqualification is passed by the Deputy Registrar-cum-District Cooperative Election Officer and not by the Registrar. There is a specific challenge to the decision on the ground of jurisdiction contending that only Registrar is empowered to decide disqualification proceedings. Though in ordinary course, the issue of jurisdiction of Deputy Registrar-cum-District Cooperative Election Officer to make a declaration of disqualification could be an independent issue for determination and need not be missed with the issue of availability of alternate remedy, in my view that issue also needs to be answered to find an answer as to whether there is alternate remedy of Revision. If the impugned decision is of District Cooperative Election Officer, there is no alternate remedy of Revision under Section 154. However, the impugned decision is of Registrar, there is a remedy of filing revision before the State Government under Section 154 of the Act of 1960.

18. I therefore proceed to examine as to who exactly has taken the impugned decision of making a declaration of disqualification. Ms. Patil has taken a stand on behalf of SCEA that the powers of Registrar have been delegated in favour of Deputy Registrar by the State Government. She has placed reliance of Notification dated 11/09/2012 under which, Deputy Registrar, Cooperative Societies, Pune (Rural) has been authorized to exercise all powers of Registrar under the Act, excepting the specific excluded powers. The relevant portion of the Notification reads thus :-

“Notification No.CSL 2012/CR-269/15-C, dated the 11th September 2012. Maharashtra Co-operative Societies act, 1960.

In exercise of the powers conferred by section 3 of the Maharashtra Co-operative Societies Act, 1960 (Mah. XXIV of 1961), State Government has created 7 new posts of Deputy Registrars as District Deputy Registrar, Co-operative Societies, Mumbai-4, District Deputy Registrar, Co-operative Societies, Pune Rural, Deputy Registrar, Co-operative Societies, R-South Ward, Mumbai, Deputy Registrar, co-operative Societies, Dombivali, Taluka Kalyan, Deputy Registrar, Co-operative Societies, Pune City-5, Deputy Registrar, Co-operative Societies, Pune City-6, Deputy Registrar, Co-operative Societies, Nagpur City-3 vide GR No.RJS/1008/C.R.538/5-C, dated 5th May 2011. Hence in partial modification of the areas of jurisdiction and powers delegated by the earlier notifications (1) GO. No.CSL-1493/1162/C.R. 47/15-C, dated 7th August 1993, (2) GN. No.CSL-1493/1162/C.R. 47/15-C, dated 13th October 1993, (3) GO.- No.CSL-2008/C.R. 540/15-C, dated 17th March 2009 and (4) GO. No.CSL-1009/C.R. 741/15-C, dated 5th January 2012 to Deputy Registrars, Co-operative Societies of Mumbai District, Mumbai Suburban, Pune District, Kalyan, Nagpur City areas and Government of Maharashtra hereby,---

(i) Appoints officers specified in column 2 of the Schedule hereto annexed to assist the Registrar in the areas specified in column 3 thereof; and

(ii) Confers on them the powers of the Registrar specified against them in column 4 of the said Schedule.

Schedule

Sr.No.	Officers	Area	Powers
(1)	(2)	(3)	(4)
6.	District Deputy Registrar, Co-operative Societies, Pune (Rural)	Talukas in Pune Districts including Junnar, Khed, Ambegaon, Maval, Mulashi, Velhe, Bhore, Purandar, Baramati, Indapur, Daund and Shirur. Societies with the area of operations extending over Pune District and the Registered Office of which is located in his jurisdiction, including all Pimari Agriculture Credit Co-op. Societies, Dist. Central Co-op. Bank and Dist. Co-op. Agriculture and Rural Multipurpose Development Bank.	All powers of the Registrar under the Act and the Rules not being powers under,--- (a) Section 9(4), 12(3) Explanation-2 to sub-section (3) of section 29, proviso to sub-section (3) of section 44, proviso to sub-section (2) of section 66, 75(2), 90(2), 134(2), 142, 148(3), 152, 153, 154 and 159 of the Act and (b) Rules 2(c), 11, 22(2), 42, 43(2), 46-A, proviso to sub-rule (1) of rule 62, proviso to sub-rule (1) of rule 69 and explanation-2 thereto, 69(7) and (8) 74, 84, 85(9), sub-rules (10) and (11) or rule 93, 95, 97, sub rule (1) and (4) of rule 1000 (in so far as they relate to sale by Maharashtra State Co-operative Agriculture and Rural Multipurpose Development Bank), sub-rule (2) of rule 102 so far as it relate to the Maharashtra State Co-operative Agriculture and Rural Multipurpose Development Bank, 103(2), sub-rules (2), (3) and (5)(b) of rule 107 in so far as they relate to scale of deposits for execution of decree.

19. Thus under the Notification dated 11/09/2012, the Deputy Registrar, Cooperative Societies, Pune (Rural) is delegated the powers of acting as Registrar in respect of Baramati Taluka. In the present case thus, the order is passed by the Deputy Registrar in

exercise of powers of Registrar under the Notification dated 11/09/2012. He has not exercised power in his capacity as District Cooperative Election Officer.

20. As observed above, under Rule 66 of the Election Rules, the Registrar is empowered to take a decision of disqualification of member of a Committee. Thus, the Deputy Registrar has exercised powers as Registrar under Rule 66 while passing the order dated 15/11/2022. It is thus Registrar's decision and not of District Cooperative Election Officer.

21. Mr. Kanetkar did attempt to canvass that delegation of general powers exercisable by Registrar under the Act of 1960 and Rules of 1961 made under Notification dated 11 September 2012, that too before coming into force of Election Rules in 2014, would not amount to delegation of powers exercisable by Officers under the Election Rules. I am unable to agree. As observed above the decision to disqualify a candidate under Rule 66 is taken by the Registrar appointed under Section 3 of the Act of 1960 and not by the District Cooperative Election Officer appointed under the Election Rules. Once a delegation is made in respect of powers exercisable by Registrar by the Notification issued under Section 3 of the Act of 1960, the Deputy Registrar would be empowered to do each and every act that a Registrar can do both under the Act of 1960, Rules of 1961 as well as Election Rules. It is not necessary to issue a fresh Notification each time a new power is conferred on a Registrar by amending the Act or by framing new Rules. Also of relevance is the fact that the Notification is couched in such a manner that 'all powers of the Registrar' can be exercised by Deputy Registrar 'not being powers

under' the specified Sections and Rules. Thus, if the State Government intended to exclude power of disqualification under Rule 66 of Election Rules from the scope of delegation, column 4 of the Notification would have been amended by including Rule 66 therein. This is not done after coming into force of Election Rules in the year 2014. This would leave no modicum of doubt that Registrar's power of making a declaration of disqualification stands delegated to the Deputy Registrar by the Notification. The contention therefore deserves to be rejected.

22. Having meandered a bit on the issue of jurisdiction, it is time to revert to the issue of availability of alternate remedy. Under Section 154 of the Act of 1960, a Revision can be filed before the State Government against decision of a Registrar. Sub-section (1) of Section 154 reads thus:-

"154. Revisionary powers of State Government and Registrar

(1) The State Government or the Registrar, suo motu or on an application, may call for and examine the record of any inquiry or proceedings of any matter, other than those referred to in sub-section (9) of section 149, where any decision or order has been passed by any subordinate officer, and no appeal lies against such decision or order for the purpose of satisfying themselves as to the legality or propriety of any such decision or order, and as to the regularity of such proceedings. If in any case, it appears to the State Government, or the Registrar, that any decision or order so called for should be modified, annulled or reversed, the State Government or the Registrar, as the case may be, may, after giving the person affected thereby an opportunity of being heard, pass such orders thereon as to it or him may seem just."

23. A conclusion is already recorded that the decision of making deliration of Petitioners' disqualification is taken by the Deputy Registrar in exercise of delegated powers of Registrar. I am therefore of the view that a Revision under Section 154 would be

maintainable against decision taken by a Registrar (or by Deputy Registrar of Cooperative Societies while exercising delegated powers of the Registrar) under Rule 66 of the Election Rules. This answers the first issue.

24. Faced with the situation that Petitioners have alternate remedy under Section 154 of the Act of 1960, Mr. Kanetkar would contend that the manner in which the jurisdiction is exercised by the District Deputy Registrar under Rule 66 of the Election Rules is so gross that interference by this Court is warranted rather than relegating Petitioners to an alternate remedy. That the order suffers from patent illegality and therefore mere existence of alternate remedy would not be a bar for this Court to entertain the present Petition. Mere illegality in an order is no answer to the objection of availability of alternate remedy. Therefore in ordinary circumstances, this Court would be loathe in going into merits of the decision once alternate remedy is available to a party to challenge the same. However while examining the issues of alternate remedy and jurisdiction, it is noticed that the Deputy Registrar has not exercised the jurisdiction vested in him under Rule 66 in examining the correctness or adequacy of reasons/justification for delay in lodging the accounts of election expenses.

25. The Deputy Registrar, Cooperative Societies, has held in para 4 of his order that there is no provision under the Rules to condone the delay in lodging accounts of election expenses. The relevant finding is reproduced thus :-

"४. निवडणूक खर्च दाखल करण्यास झालेला उशीर माफ करण्याबाबत कोणतीही तरतूद निवडणूक नियमांमध्ये नाही. त्यामुळे या कार्यालयास विलंब माफ करता येणार नाही. जाब देणार यांनी दाखल केलेला न्यायनिवाडा हा ग्रामपंचायत कायद्यामधील तरतुदी संदर्भात असून निवडणूक नियमांमध्ये विलंब माफ करण्याची

तरतूद नाही म्हणून प्रस्तुतचा न्यायनिवाडा या ठिकाणी लागू होणार नाही असे मत आहे.”

26. However, perusal of Rule 66 of the Election Rules shows otherwise. Rule 65 mandates lodging of accounts of election expenses as specified under Rule 67, which mandates lodging of such account within a period of 60 days from the date of declaration of results of the election. Rule 66 deals with a situation where there is failure on the part of any person to lodge accounts of election expenses within the time specified in Rule 67. To initiate proceedings under Rule 66, the District Cooperative Election Officer is required to first satisfy himself that a person has failed to lodge accounts of election expenses within the time limit. Once he reaches to satisfaction about failure to lodge accounts within 60 days, he is required to examine whether such a person had any good reason or justification for such failure. After examining the justification offered by such person, the District Cooperative Election Officer or the Taluka Cooperative Election Officer is required to submit his report to the Registrar. The Registrar is thereafter required to provide an opportunity of hearing to the person concerned before proceeding to pass an order of disqualification. There is a statutory scheme under Rule 66.

27. Thus under clause (b) of Rule 66, the District Cooperative Election Officer is empowered to examine the reasons and justifications pleaded by the person accused of delay in lodging accounts of election expenses. The fact that the District Cooperative Election Officer is empowered to examine the reasons or justifications for delay would also mean that he is empowered to accept the reasons/justification for delay. In a given case therefore, even though there might be a delay in lodging accounts of election expenses, the

District Cooperative Election Officer may find that the person has given cogent reasons or justification for failure to lodge accounts within stipulated time. It therefore cannot be stated that there is no provision for condonation of delay under Rule 66. In ***Janabai w/o Gondu Mahajan Vs. District Co-Operative Election Authority and Divisional Joint Registrar, Co-Operative Societies, Nashik and others***¹, this Court has negated the contention of absence of power to condone delay under Rule 66. This Court held in paras 11, 12 and 13 of the Judgment as under :-

“11. The bare perusal of the above Rules would indicate that every candidate has to keep a separate and correct account of all the election expenditure as per the particulars provided in Rule 67 and that the expenditure has to be submitted within time (60 days) from the date of the elections. In the event of delay, the petitioner has to explain satisfactorily to the authority, entitled to receive the explanation election expenditure, as to why the delay has occurred. The Returning Officer, to whom the election expenditure was submitted, has submitted a Report, stating therein, that the explanation given by the petitioner should be accepted. Along with explanation, he has filed the report respondent no.1.

12. In this case, the Limitation Act is not made applicable, since, the Election Rules, 2014 itself provides that the expenditure, if, submitted belatedly, can be accepted, if, it is supported by good reasons.

13. The Judgment of Ganesan (supra) relied upon by respondent No.3 is not applicable in the instant case as Rule 66(1) (b) of the Election Rules, 2014 specifically provides for the acceptance of election expenditure after the stipulated period if good reason is shown for submitting the expenditure beyond the stipulated period.”

28. Thus the finding recorded by the Deputy Registrar-cum-District Cooperative Election Officer in para 4 of his order is patently wrong. On account of recording of such erroneous finding, the authority concerned has failed to examine whether the reasons or justifications advanced by the Petitioners to condone the delay are valid or not. There is thus failure on the part of the Deputy Registrar-

¹ [2023(3) Mh.L.J.] 386

cum-District Cooperative Election Officer in exercising jurisdiction conferred upon him under Rule 66. There is thus jurisdictional error in the decision of Deputy Registrar-cum-District Cooperative Election Officer.

29. In ordinary course, since this error on the part of Deputy Registrar / Registrar is capable of being corrected in Revision filed before the State Government, this Petition could be disposed of relegating Petitioners to the alternate remedy of revision. However, since this Court is of the view that the Deputy Registrar is first required to exercise jurisdiction vested in him in law by examining the correctness and/or sufficiency of reasons/justification for delay in lodging accounts of election expenses, it would be appropriate to direct him to do so rather than granting liberty to Petitioner to file Revision. If in Revision, the State Government condones the delay in lodging of accounts of election expenses, it would amount to the Revisional Authority, in exercise of regionary jurisdiction, taking a decision for the first time, which is supposed to be taken by the Deputy registrar. This course of action would not be appropriate. The other and proper course of action for the State Government would be to remand the proceedings to the Deputy registrar to take a decision. Therefore, instead of directing the parties to take a circuitous route, it is appropriate that this Court remand the proceedings to the Deputy Registrar for his decision. Such course of action would save time and expenses in litigating one round before the State Government in Revision. I am of the view that the proceedings deserve to be remanded to the Deputy Registrar-cum-District Cooperative Election Officer for examining the reasons/justifications given by the Petitions for delay in lodging accounts of election expenses.

30. Therefore, though there is an alternate remedy available for the Petitioners to file Revision under Section 154 of the Act of 1960 before the State Government, considering the peculiar facts and circumstances of the case where reasons or justifications given by the Petitioners for failure to lodge accounts of election expenses within 60 days have not at all been examined by the Deputy Registrar-cum-District Cooperative Election Officer, the proceedings are required to be remanded rather than relegating Petitioners to alternate remedy of Revision under Section 154 of the Act of 1960. These directions are issued in peculiar facts and circumstances of the present case and shall not constitute a binding precedent that in every case, this Court can entertain Writ Petition filed against decision of Deputy Registrar-cum-District Cooperative Election Officer without filing of a Revision under Section 154 of the Act of 1960.

31. Accordingly, the Writ Petition is partly allowed. The order dated 15/11/2022 passed by the Deputy Registrar disqualifying the Petitioners is set aside. The proceedings are restored on the file of the Deputy Registrar-cum-District Cooperative Election Officer for being decided afresh for the purpose of examining the reasons or justifications given by the Petitioners for failure to lodge the accounts of election expenses within the stipulated period. The Deputy Registrar-cum-District Cooperative Election Officer shall decide the proceedings on its own merits without being influenced by his previous order dated 15/11/2022 or by the observations made in the present order. Since the order dated 15/11/2022 is set aside, consequential action in the form of appointment of an Administrator is rendered superfluous.

32. With the above direction, Writ Petition is partly allowed.
Rule is partly made absolute.

(SANDEEP V. MARNE, J.)