

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

**CIVIL REVIEW APPLICATION NO.4 OF 2024
IN
WRIT PETITION NO. 607 OF 2023**

NOELLA FERNANDES ...APPLICANT
Versus
ASSISTANT REGISTRAR OF
CO-OPERATIVE SOCIETIES AND 4 ORS. ... RESPONDENTS.

Mr. Nigel Da Costa Frias, Advocate for the applicant.

Mr. Deep Shirodkar, Additional Government Advocate for respondent
No.1.

Respondent Nos. 3 and 4 present in person.

CORAM:- BHARAT P. DESHPANDE, J.

DATED :- 2nd May, 2024

P.C:

1. Heard Mr. Nigel Da Costa Frias, learned Counsel for the applicant, Mr. Deep Shirodkar, learned Additional Government Advocate for respondent No.1 and Respondent Nos. 3 and 4 present in person.
2. Respondent No.5 is served but absent.
3. This is an application for review of the judgment passed by this Court on 05/02/2024 in Writ Petition No.607 of 2023.
4. Mr. Costa Frias appearing for the applicant firstly would submit that the observations of this Court in paragraph No.33 that the statement of

accounts were not audited and were not received by the society from the auditor, is apparently a mistake on the face of record. He submits that this is one of the grounds on which the impugned order was passed. He submits that the petitioner in paragraph no.9 of the petition specifically deposed that the audited reports were prepared before September 2022 however they could not be placed before the Annual General Body Meeting for the reasons disclosed therein. Accordingly, Mr. Costa Frias submits that such findings need to be reviewed.

5. Mr. Frias so far as second ground is concerned would submit that observations of this Court in paragraph Nos.28 to 30 concerned are based on a judgment in the case of **Inland Water Transport Employees Coop. Credit Society Ltd. v/s. State of Goa** [2016 SCC Online Bom5232] wherein the learned Single Judge of this Court while dealing with unamended provision of the Maharashtra Act observed that disqualification is automatic. He submits that the Goa Act was amended wherein the word “shall” is now replaced with the word “deemed”. According to him, observations of this Court with regard to the said decision requires a review.

6. The third ground on which Mr. Costa Frias submits that the review is required for the fact that three administrators were appointed by the order dated 22/08/2023. One of the Administrators is himself a member of the society and defaulter.

7. Mr. Costa Frias fairly submitted that though the ground was raised with regard to challenge such an order dated 22/08/2023, it was not argued while arguing the petition on merit. However, he submits that such ground goes to the root of the matter.

8. Mr. Shirodkar appearing for respondent No.1 while objecting to such review would submit that the last ground regarding appointment of Administrator cannot be now raised since no arguments were advanced at the time of deciding the Writ Petition. Mr. Shirodkar further submits that the observations of this Court in paragraph 33 must be read along with other findings as such observations are not the only findings for arriving at the final conclusion. He submits that admittedly the audited report was not placed before the Annual General Body meeting on or before the last date as provided in Section 61 of the said Act. Besides, he submits that such findings nowhere shows any miscarriage of justice so as to consider the request for review.

9. Mr. Shirodkar then would submit that the principle laid down in the decision relied upon by him in the case of Inland Water (supra) was culled out by this Court and even if the word “shall” is now inserted with the word “deemed” meaning is the same.

10. Mr. Shirodkar placed reliance in the case of **Mofil Khan and another v/s. State of Jharkhand** [(2021) 20 SCC 162] in support of his contention that the review can be considered only when it is shown

that there is miscarriage of justice due to the mistake cropping up in the impugned order.

11. First of all, it is clear from the records that the audited reports were not placed before the General Body Meeting for the purpose of approval. It is now claimed that in paragraph 9 of the petition, a statement was made that the audited reports were completed by August, 2022 and such reports were circulated amongst the members in early September, 2022, cannot be said to be found in paragraph 33 of the impugned judgment.

12. This Court has observed in paragraph 33 that the petitioner has clearly admitted that even the statement of accounts were audited and the same were not received from the society from their auditors during the said period. This statement, otherwise also is not going to affect the final outcome since it is the fact that such audited statements were not placed before the General Body Meeting which was supposed to be conducted on or before 30/09/2022. The meaning of paragraph 33 could be read with the admitted position is that the audited statements were not placed before the Annual General Body Meeting on or before 30/09/2022.

13. The second ground which has been raised is in connection with the principles which are culled out from the judgment in the case of **Inland Water**(supra). The observations of the learned Single Judge are quoted and only thereafter this Court has observed that once the default is made, there is no other option but to disqualify the member but discretion

remains with the authority is to consider the period of disqualification.

14. It is an admitted fact that by way of amendment the word “shall” is replaced with the word “deemed” in Section 61 of the Goa Act. The meaning of the word “shall” is again required to be considered as mandatory qua the disqualification and only discretion remains with the authorities is in connection with the period of disqualification. Therefore, the observation of the learned Single Judge in the case of **Inland Water** (supra) in paragraph 13 would still apply and on that count alone, the question of request of review cannot be accepted.

15. The third ground which has been raised with regard to appointment of three administrators vide order dated 22/08/2023, it is clear from the record that though ground was taken in the petition, it was never argued and thus such contention cannot be now permitted to be argued in the review petition.

16. However clarification could be given to the effect that no finding is rendered by this Court on the said issue and thus the petitioner is at liberty to approach the concerned authority for the purpose of review of such order.

17. In the case of **Mofil Khan** (supra), the Apex Court has laid down principles for the purpose of review. It is settled law that even though there is error apparent on the face of record the review cannot be allowed except when such error is going to affect the findings causing miscarriage

of justice.

18. The first observation in paragraph 33 of the order will not in any way affect the observations or the findings regarding disqualification as such order is passed on other findings. Besides, such an observation is already corrected by giving the above reasons.

19. Having said so, the review application cannot be considered as having merit and therefore the same needs to be rejected.

20. Review stands rejected accordingly.

BHARAT P. DESHPANDE, J.

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VISHAL BHOIR

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MEENA VISHAL BHOIR
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