

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 531 OF 2023

ABHIMANYU RAJ SINGH

.....PETITIONER

VS

UNIT INCHARGE III,
SPECIAL AUDITOR/CO-OP. OFFICER AND
2 ORS

.....RESPONDENTS

Mr. Abhishek Sawant, Advocate under Legal Aid Services for the
Petitioner.

Mr Pravin Faldessai, Additional Government Advocate for
Respondent Nos. 1, 2 and 3.

Ms. Sonadevi Nishad, Advocate for Respondent No.4.

CORAM: AVINASH G. GHAROTE

DATED: 6th March, 2024

ORAL ORDER:

1. Heard Mr. Abhishek Sawant, learned Counsel for the petitioner and Mr. Pravin Faldessai, learned Additional Government Advocate for respondent Nos.1, 2 and 3 and Ms. Sonadevi Nishad, learned Counsel for respondent No.4.

2. The petition questions the judgment dated 18/05/2023 passed by the respondent No.1 whereby in the exercise of the powers under Section 61 of the Goa Co-operative Societies Act, 2001 by which the

Board of Directors of the respondent No.4-Society has been held to have incurred a disqualification for a period of 5 years for being chosen as directors and have been held to be ineligible to continue as directors of respondent No.4-Society. The challenge is restricted to the disqualification of the petitioner.

3. Mr. A. Sawant, learned Counsel for the petitioner submits that this conclusion has been arrived at by the respondent No.1 on the basis of the record of an Annual General Meeting (AGM, for short) said to have been held on 31/01/2020, in which the petitioner is claimed to have been elected in the Board of Directors of respondent No.4 along with four other persons as named therein, who having not held the AGM thereafter for consecutive years are held to be disqualified to continue as directors. It is contended that no such meeting dated 31/01/2020, was ever held and the document on which the respondent No.1 has relied, is not worth of credence, as it does not bear the signature of any person, nor have the minutes of the meeting, preceded by the notice of the meeting and its confirmation have been placed on record, nor are indicated to have been verified by the respondent No.1 to determine the authenticity of the document dated 31/01/2020 so as to place reliance upon it for the purpose of disqualification. It is also contended that this document is not reliable for the reason that the copy of the same obtained by the petitioner

under the Right to Information Act (pg 109) also does not bear the seal of the society nor the signature of anyone. It is also submitted that the petitioner though was elected to the provisional Board of Directors at the time of the formation of the society on 30/12/2020 had immediately resigned in the said meeting itself which is accepted by the provisional Board of Directors for which reliance is placed upon the minutes of the meeting dated 30/12/2019 (pg 31 and 32) and thereafter since no Annual General Meeting was being held by the provisional body, upon the society being registered the petitioner had raised objection in that regard, finally, the Annual General Meeting was held on 13/10/2022 in which the petitioner came to be elected to the Board of Directors. It is therefore contended that the plea of not holding the Annual General Meeting for the earlier periods i.e. 2019-2020; 2020-2021, was clearly not available to the respondent No.1 for the purpose of disqualification of the petitioner. It is also contended that the document dated 31/01/2020, which is the purported minutes of the meeting of the same date in which the petitioner claimed to have been elected, was also not supplied to the petitioner before the respondent No.1 on account of which there is a denial of reasonable opportunity to controvert the same. It is therefore submitted that on this ground the impugned order cannot be sustained and is liable to be set aside.

4. Mr Faldessai learned Counsel for the respondent Nos.1 to 3 while supporting the impugned order contends, that the respondent No.1 has relied on the material placed before it by the respondent No.4 for the purpose of registration and thereafter as per the statutory requirement in that regard come to the conclusion that the meeting was held on 31/01/2020 in which the petitioner was elected and therefore along with the other persons was liable to hold the Annual General Meeting, for which he has been disqualified.

5. Ms. Sonadevi Nishad, learned Counsel for the respondent No.4 supports the impugned order.

6. Whatever is the position, regarding the provisional committee constituted before the registration of the respondent No.4-Society, what is necessary to note is that the respondent No.1 has relied upon the minutes of the meeting dated 31/01/2020 to hold that the petitioner has incurred the disqualification for not holding the Annual General Meeting for the earlier years. It is also not disputed that the petitioner has been elected to the Board of Directors of the respondent No.4 on 13/10/2022 for a period of 5 years. The impugned order has the effect of nullifying the election of the petitioner to the Board of Directors of the respondent No.4-Society.

7. Disqualifying the elected representative is a serious act which visits the person disqualified with serious consequences. It not only has the effect of indicating that his election is rendered naught, but also he is not a fit person to continue to occupy his post thereby bringing his competency for the said post, into disrepute. It is therefore necessary for respondent no.1 to have verified the factual position by summoning the records of respondent No.4 and upon perusal of the same satisfy itself as to whether the petitioner had indeed been elected to the Board of Directors of the respondent No.4 on 31/01/2020. This was specifically so, in the light of the fact that the provisions of the Act and the Rules framed thereunder including the bye-laws of the society would indicate that before holding an Annual General Meeting the date has to be fixed along with the agenda and notice to each and every member of sufficient period has to be issued consequent to which on the date of the meeting in case there is voting required to be done arrangement has to be made including the appointment of the Election Officer for the purpose of conducting the elections to the Board of Directors. The minutes of the meeting have to be recorded including the attendance of the number of members present. The information in that regard, is also required to be sent to the concerned Registrar. This would indicate that the factuality of the meeting dated 31/01/2020 was easily

ascertainable by the respondent No.1. This is more so in the light of the audit report (pg 88 and 89) which were already with the Registrar, which would indicate that the petitioner was not a person shown to have been elected to the Board of Directors of the respondent No.4 therein, for the relevant period.

8. Though the learned Counsel for respondent No.4 supports the impugned order, however, the reply of the respondent No.4 before the respondent No.1 dated 06/12/2022 (pg 43) also is categorical in nature in as much as it specifically in paragraph 5 states that in the meeting held on 30/12/2019, which obviously related to the election of the provisional Board of Directors, through the petitioner was elected, however on the ground of his resignation, which was tendered by him on the same date, consequent to his elections, he ceased to be a director. The reply thereafter states that on account of COVID-19 no Annual General Meeting was held and the Annual General Meeting was thereafter held on 16/08/2021 in which the petitioner was not present. This would, in fact, support the stand of the petitioner, that he was not a person who was the part of the Board of Directors of the respondent No.4-Society either provisionally or otherwise prior to 13/10/2022, and therefore had no objection to call the Annual General Meeting.

9. The respondent No.1, therefore in my considered opinion, failed in his duty to make a reasonable inquiry before disqualifying the petitioner, on account of which the impugned order in so far as it relates to the petitioner, cannot be sustained and is hereby quashed and set aside. The petition is accordingly allowed in the above terms. It is made clear that this order is limited to the challenge made by the petitioner and none else.

AVINASH G. GHAROTE, J