

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

WRIT PETITION NO. 2206 OF 2024

Riyazuddin Shaikh (ex-chairman) And Ors. ...Petitioners

Versus

Rahamutalla Khamkar ...Respondent

....

Mr.Kishor Patil i/b Mr.Pratik Rahade for the Petitioners.

Mr.Rahamutalla Khamkar – Respondent No.1 -present in person.

Mr.S.D. Rayrikar, A.G.P for the Respondent Nos.3 and 4 – State.

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CORAM : AVINASH G. GHAROTE, J.

DATE : 2nd JULY 2024

P.C.:

1. Heard Mr.Patil, the learned counsel for the petitioners and the respondent no.1 in person. Learned AGP appears for respondent nos.3 and 4.

2. The petition questions the order dated 8.9.2023 (page 41) passed by respondent no.3, in exercise of his powers under Section 75 (5) of Maharashtra Co-operative Societies Act, 1960 (MCS Act), whereby the entire Managing Committee of respondent no.2 society has been disqualified for the period of five years on the ground of violation of provisions of Section 75 (1), (2),(2A) 3, and 4

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of the MCS Act and so also the order in revision dated 24.1.2024 (page 84), by which the challenge to the same has been dismissed.

3. Mr.Patil, the learned counsel for the petitioners by verifying to the language of Section 75 (5) of MCS Act submits, that before passing an order of disqualification, the respondent no.3 as a statutory authority is bound to render a finding as to which officer or member of the committee was responsible for the default / failure to comply with the statutory provisions of Section 75 (1) to (4) and cannot pass an omnibus order disqualifying the entire committee. He therefore submits that the impugned orders insofar as they do this, cannot be sustained.

4. Mr.Rahamutalla Khamkar – Respondent No.1 appearing in person submits that there has been consistent violation of the provisions of Sections 75 (1) to (4) as a result of which the finding rendered by respondent no.3 of all the committee members being responsible, is liable to be sustained.

5. The provisions of Section of 75 (5) of the MCS Act reads as under :-

“Section 75 – Annual General Body Meeting : -

1.

2.

3.

4.

(5) “If default is made, in calling a general body meeting within the period prescribed under sub-section (1) or in complying with sub-sections (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 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.”

6. A perusal of the language of Section 75(5) of the MCS Act would indicate that it is the obligation of the authority exercising the power thereunder to first find out whose duty it was to perform the act complained of and thereafter render a finding that the violation was without any reasonable excuse and then only to disqualify such person. The impugned order dated 8.9.2023, indicates that merely

because the petitioners, were the members of the managing committee, an omnibus order has been passed without rendering any such finding, which is necessary for an order under Section 75 (5) of the MCS Act to be sustained. That being the position, the impugned order dated 8.9.2023 passed by respondent no.3 and the one dated 24.4.2024 passed by respondent no.4 cannot be sustained and are hereby quashed and set aside. The matter is remitted back to respondent no.3, to make an enquiry in terms of the language, purport an intent of Section 75 (5) of MCS Act as indicated above and pass an order accordingly.

7. The petition is accordingly allowed in aforesaid terms. The petitioners and respondent no.1 shall appear before respondent no.3 on 15.7.2024 without any notice being required to be issued for that purpose.

(AVINASH G. GHAROTE, J.)