



IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 87 OF 2025

1. Shri. Vithal S. Vernekar
Aged 68 years,
Indian National,
Office at Bicholim V. K. S. S.
Society, Bicholim – Goa.

2. Shri. Ramakrishna Parab
Aged 74 years, Indian National,
Office at Mulgao – Shirgao
V. K. S. S. Society,
Asnora, Bicholim – Goa

3. Shri. Sakha Nanda Malik
Aged 60 years, Indian National
Office at Mahalaxmi V. K. S. S.
Society, Kudne, Bicholim – Goa.

4. Shri. Prakash Naik
Aged 68 years, Indian National,
Office at Navodit Veling,
Priol V. K. S. S. Society, Ponda – Goa.

5. Shri. Kanta Gaonkar
Aged 65 years, Indian National,
Office at Gawane-Group V. K. S. S.
Society, Gawane Sattari, Goa

6. Shri. Govind Narvekar
Aged 52 years, Indian National
Office at Raia Rachol Co-operative
Society, Raia, Salcete-Goa.

... Petitioners

Versus

1. Shri. Sandesh Mandrekar,
s/o Narayan Mandrekar,
Age 38 years, Indian National,
r/o 223/1, S. B. B. Road,
Alto Porvorim, Bardez – Goa

2. The Registrar of
Cooperative Societies,
Department of Co-operation,
Government of Goa,
5th Floor, Sahakar Sankul,
Patto, Panaji, Goa.

3. The Returning Officer
Election to the Board of Directors of
Goa State Co-operative Marketing
and Supply Federation Ltd.,
Office of Asst. Registrar &
Asst. Election Officer of
Co-operative Societies,
Office at Central Zone,
Sahakar Bhavan, Near Municipal
Market, Panaji – Goa.

4. The Goa State Cooperative
Marketing and Supply
Federation Ltd.
Through the Managing
Director/Administrator,
P. O. Box No. 294, Sahakar
Bhavan, Near Municipal
Market, Panaji, Goa.

...Respondents

Mr. Girish Sardessai with Mr. Prasanna Chawdikar and Ms. Smrati Bangera, Advocates for the Petitioner.

Mr. Shivan Desai with Mr. Aniroodh Sardesai and Ms. Maria Viegas, Advocates for Respondent No.1.

Mr. Deep Shirodkar, Additional Government Advocate for the Respondent Nos.2 and 4.

CORAM : VALMIKI MENEZES, J.

RESERVED ON : 24TH MARCH, 2025.

PRONOUNCED ON : 16th APRIL, 2025.

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. With the consent of the learned Advocates for the parties, the petition is heard finally and disposed of.

2. The Petitioners impugn herein Judgment dated 13.12.2024 allowing Cooperative Appeal No.23/2021 of the Respondent No.1 under Section 83 of the Goa Cooperative Societies Act, 2001 (the Act). By the impugned Judgment, the Cooperative Tribunal has set aside an order dated 05.03.2021 passed by the Respondent No.2 (Registrar of Cooperative Societies) rejecting the nomination paper of the Respondent No.1; the impugned Judgment, as a consequence of holding the nomination paper of Respondent No.1, has set aside the

election of the Petitioner Nos.1 to 6 and Respondent No.5 herein (Respondent Nos.4 to 10 before the Tribunal), to the post of Directors to the Board of Directors of Respondent No.4 for the period 2021 to 2026. The Tribunal has further directed Respondent Nos.2 and 4 herein to declare a fresh election, for the post of Directors to the Board of Directors of Respondent No.4 within 60 days from the order, and to cause the election to be held in accordance with law.

3. The facts relevant to the decision of this petition are as under:

- a. The Respondent No.4 is a Class B Cooperative Federal Society, whose primary members are other Consumer Cooperative Societies within the State of Goa, registered under the Act. For the purpose of elections and representation, every constituent Consumer Cooperative Society member of the Respondent No.4 is required to elect/nominate a delegate, who has the right to file his nomination to various elected posts in the Board of Directors of the Respondent No.4.
- b. The Respondent No.1/Original Appellant before the Tribunal is a delegate of Shri Mahalsa Consumer Cooperative Society, which is a Class B member of

the Respondent No.4 Federation. Pursuant to the election program for the Board of Directors of Respondent No.4 being published by the Respondent No.3, the Respondent No.1 submitted his nomination form for which scrutiny was held between 03.03.2021 and 05.03.2021. On 03.03.2021, the Petitioner No.1 filed objections to the nomination of Respondent No.1, alleging that he was not eligible to stand for elections being disqualified by the provisions of Section 60(1)(d) of the Act. Along with the objections, a certificate dated 01.03.2021 issued by A.M. Mulgaonkar and Co., Chartered Accountants, was annexed. The objections were opposed by the Respondent No.1 by filing a reply dated 04.03.2021, disputing the documents produced by the Petitioner No.1, despite which the Respondent No.2 published a list of valid nominations, wherein the name of the Respondent No.1 did not find inclusion.

- c. By the impugned order of 05.03.2021, relying upon the contents of the certificate issued by the aforementioned Chartered Accountant, the Respondent No.3 rejected the nomination of Respondent No.1 holding that the proprietor of one

Vedant Paints and Vedant Stationery was a family member of the Respondent No.1, and undertook a business of similar kind as carried out by the Respondent No.4 Federation. The nomination was rejected on the ground that the Respondent No.1 stood disqualified from being a Director in terms of Clause (d) of Sub-Section 1 of Section 60 of the Act.

- d. Subsequently, elections came to be held without the nomination of the Respondent No.1, who was precluded from contesting these elections by the rejection of his nomination through the impugned order; pursuant to the elections held, the Petitioners and Respondent No.5 were declared elected to the Board of Directors of the Federation.
- e. On an appeal being filed before the Tribunal, the impugned order was set aside, and as a consequence, the entire election process was also set aside and a direction was issued calling for fresh elections after including the Respondent No.1 as a nominee. The Tribunal has proceeded to hear the challenge to the impugned order as an election dispute under Section 83(1) of the Act.

4. The following questions are to be determined in this petition:

- (a) Whether the interpretation given by the Tribunal to the provisions of Clause (d) of Sub Section 1 of Section 60 of the Act, that where the business carried out by the family of the member of a Society, covers only a few of the products/services carried on by the Society, there can be no disqualification incurred by that member, is a correct interpretation?
- (b) Whether the Tribunal has committed any error in holding that the Petitioners had not proved that the Respondent No. 1 had incurred a disqualification under Clause (d) of Sub Section 1 of Section 60 of the Act?

SUBMISSIONS

5. Shri. Girish Sardessai, learned Advocate appearing for the Petitioners, makes the following submissions:

- (a) That the Tribunal has arrived at an incorrect legal interpretation of Clause (d) of Sub Section 1 of Section 60 of the Act and given a restrictive meaning to the provision; the Tribunal has

committed error of law by holding that since the business conducted by the brother of Respondent No. 1 was that of sale of stationary items, ice cream and some retail items was in the nature of a retail shop, was different from the business carried out by the Respondent No. 4/Federation whose business in the nature of super markets/Department Stores, which is extensive, not limited to stationary business and carried out over the entire State of Goa.

- (b) It was submitted that the Tribunal had further committed an error of law in interpreting that the Returning Officer was required to carry out a detailed inquiry into the allegations levelled against the Respondent No. 1, to disqualify him; he submits that the process of considering objections against a nomination, is summary in nature, and in the present case, the Returning Officer has acted within the bounds of the jurisdiction conferred upon him under Section 60. He relies upon a Judgment of the Supreme Court in *N. T. Veluswami Thevar V/s G. Raja Nainar* (AIR 1959 SC 422) to contend that the enquiry which is made by the Returning Officer is summary in character and a challenge to rejection

or acceptance of a nomination paper would be required to be done by an Election Petition and not by an Appeal under Section 83.

- (c) He further submits that the Tribunal has exceed the jurisdiction vested in it by not only setting aside the order rejecting the nomination, but setting aside the entire election.

6. Learned Advocate Shri. Shivan Dessai, appearing for Respondent No. 1, supports that impugned Judgment and advances the following submissions:

- (a) That though the matter before the Administrative Tribunal was registered as a co-operative Appeal, the Tribunal, has proceeded on the basis that it was an election disputes under Section 83(1) of the Act and has infact, exercised jurisdiction under that provision; the order setting aside the disqualification order passed by the Returning Officer and consequent setting aside of the election is within the powers of the Tribunal, whilst deciding an election dispute.
- (b) Whilst supporting the broader interpretation rendered by the Tribunal to Clause (d) of Sub Section 1 of Section 60 of the Act, learned Counsel

for Respondent No.1 has placed reliance on a Judgment of this Court in *Nanaji Bhokre V/s Commissioner* reported in *AIR 1994 Bombay, 204*, to contend that there was no material allegation as required by the provisions of Section 60 made in the objections to permit the Returning Officer to reject the nomination.

- (c) Learned Advocate for the Respondents submits that the objections to a nomination are required to be clearly pleaded with supporting evidence that would enable the Returning Officer to summarily decide whether the disqualification is incurred, in the present case the pleadings are totally vague and the documents, a certificate of Accountant produced to support the objections, does not even disclose the source for the conclusions stated therein. It was submitted that where the documents were disputed, the same could not be considered at all for deciding the objections for disqualifying the Respondent No. 1.

7. For deciding the questions formulated above, for determination in this petition, it would be apposite to first quote

the provisions of Clause (d) of Sub Section 1 of Section 60 of the Act.

*“60. Disqualification for being director.—
(1) In addition to such criteria as may be specified in the bye-laws, a person shall be ineligible for being chosen as a director, if he,—*

.....

(d) carries on business of the kind carried on by the society, either in his name or in the name of any member of his family or he or any member of his family is a partner in a firm or a director in a company which carries on business of the kind carried on by the society;”

8. There is no ambiguity in the explanation to clause (d), which specifies who are the family members referred to in the clause. The only question is whether if such member or a family member of his family conducts a business of the kind carried on by the Society should give such a meaning, as to include even a single product or service which is part of the business of the Society/Federation. The intent, it appears from the provision, is to avoid any serious competition by a member or a member of his family, operating a similar business within the area of operation of the Society's business. This would necessarily require the provision to be interpreted from case to

case, more so considering the expanse and reach of the Society or Federation's business and the specific products or services that its business sells or provides.

9. According to the reply filed by the Respondent No. 1 to the objections to his nominations, the Federation runs a Department Store or Supermarket for retail sale of a wide range of products. The Respondent contends that the categories of products that the Federation deals with and their corresponding HSN No. as per GST website are entirely different from HSN No. of the products sold by the family member of Respondent No. 1. According to the reply, the classification of the two businesses are completely different and distinct as also the area where the retail business of the Federation is carried out is at Panaji, while that of the family member is at Porvorim.

10. In paragraph 16 of the petition, the Petitioners pleads that subsequent to the passing of the order, from information gathered by them, the business of the family member of the Respondent No. 1 under the name and style of "Vedant Stationary and Agencies" is not only for stationary items such as notebooks, but was also selling umbrellas, raincoats, ice creams, LED bulbs and other items which are also sold by Respondent No.4/Federation.

Therefore, assuming that a few of the class of products dealt with in the business of the family member of the Respondent No. 1 are also sold, amongst a vast number of other products forming part of the business of Respondent No. 4, which runs a Department Store/Supermarket, could this be considered as a business of the *kind* carried out by the Society.

11. The purpose of clause (d) is to disqualify a member of the Federation, who on his own or through a family member carries out a competing business. The business carried out by him should be of similar nature, extent and width in terms of the products or services as the one carried out by the Federation or Society of which he is a member. If the business of the member or his family is such that it deals with one or a few of the products or services which may be carried out by the business of federation, that by itself would not render a member disqualified from a nomination for elections. The nature or class of business, as a fact, would have to be demonstrated by the objector to be, *prima facie*, similar and of the kind that could be termed a competing business, in its territory of operation and the range of products and services. Merely because some of the products or services dealt with by the business of the member or his family are similar in nature, this, *ipso facto* would not render the member disqualified.

12. Section 73-FF(v) of the Maharashtra Co-operative Societies Act 1960, is somewhat pari material with the provisions of Clause (d) of Sub Section 1 of Section 60 of the Goa Act. These provisions came up for interpretation and found that they would be applied in terms of their interpretation and scope of summary inquiry to be conducted by the Returning Officer in *Nanaji Bhokre* (supra). The relevant paragraphs of the Judgment are quoted below:

“8. Coming to the merits of the order, unfortunately it seems that both the Returning Officer and the Divisional Commissioner have not bothered to go into the language of S. 73-FF(V) of the Act. This is how the section goes:

"S. 73-FF. (1) Without prejudice to the other provisions of this Act or the rules made thereunder in relation to the disqualification of being a member of a committee, no person shall be eligible for being appointed, nominated, elected, co-opted or, for being a member of a committee, if he—

...

(v) carries on business of the kind carried on by the society either in his name or in name of any member of his family or he or any member of his family is a partner in a firm or a director in a company which carries on business of the kind carried on by the society;

Explanation: - For the purposes of this clause, the expression "family" means a

wife, husband, father, mother, brother, sister, son, daughter, son-in-law or daughter-in-law."

It is undoubtedly true that the brother of the petitioner is running a shop in his own name. It is further undoubtedly true that the said business is akin to the business of the society. However, what is really absent is that this business which is being run by the brother is not being carried for and on behalf of the petitioner. The look at the language would show that the disqualification is invited when the said business carried, on by the person who wishes to be elected or wants to continue as a member of the Managing Committee either in his name or surreptitiously in the name of some other relative. Therefore, there has to be an allegation against the person that fact it is the business of such person and the same is being run in the name of the brother or a relative. Merely because a member of the family is running the business that by itself will not draw the disqualification. It will have still to be proved that there is some nexus between the concerned person and that business. The business if it is run by any of the member of the family of the person concerned ipso facto will not invite the disqualification. Now considering the complaint, it is nowhere suggested that the said brother is carrying on the business in fact on behalf of his brother, i.e., the present petitioner Or that it is in fact the business of the petitioner and, therefore, the petitioner should stand disqualified.

9. *Shri Madkholkar, the learned Asstt. Govt. Pleader, however, drew my attention to the words that if such person is or any member of his family is a partner in a firm or a director in a company which carries on such business, then also that fact by itself would draw the disqualification. Here the situation is entirely different. "Firm" is defined under Sec. 2(14) of the Act which says that the "firm" means a firm registered under the Indian Partnership Act, 1932. There is no allegation that there is in existence any such firm or that the brother of the petitioner is a partner in such firm. There is further no allegation that there is any company and that the brother of the petitioner is a director in such company. Shri Madkholkar questions the position and contends that it is really anomalous that if the brother merely remains a partner in the firm it is sufficient to draw the disqualification while if the brother actively does a business as a proprietor will not draw such disqualification. It is not for this Court to question the wisdom of the Legislature but the real reason appears to be the business as a proprietor may not be as wide or as substantial as that of a firm or a company and, therefore, probably if the brother or any member of a family carries on business on his own and without being connected or without having any nexus with the concerned person, no disqualification would ipso facto follow. The Divisional Commissioner has completely ignored this aspect and has chosen to stamp the order of the Returning Officer as a correct order*

merely on the ground that there is in fact such business going on in the name of the brother. The essential finding that it is the petitioner who is carrying on the business in the name of his brother is wanting. Since the relevant finding is wanting the order passed by the Divisional Commissioner must be held to be incorrect. For the same reasons, the order passed by the Returning Officer must also be held to be incorrect. The objection is also completely silent. In fact if the last part of the objection is read, it will be seen that the section has been completely misunderstood even by the objector who was under the impression that if the business is being carried on by any of the family members then that by itself would draw the disqualification under the section. In short, there being no such material allegation as required under Section 73-FF(v) of the Act, it must be held that the Election Officer was in error in rejecting the nomination paper and the Divisional Commissioner was also in error in confirming the said order. Both the orders will have, therefore, to be set aside.”

13. The interpretation rendered by me to the provisions of clause (d) of the Goa Act find support from the interpretation given to similar provision in a similar fact situation by the Judgment of this Court in **Nanaji Bhokre** (supra). For the aforementioned reasons, no fault can be found with the interpretation given by the Tribunal to the scope of the

provisions of clause (d) and the application of this interpretation to the facts of the present case, as can be found in paragraph 20 of the impugned Judgment. The Tribunal has rightly held that the nature and scope of the business carried out by the Federation, from the facts on record is much wider and more extensive than the business carried out by the family members of the Respondent No. 1, which is a mere retail shop. I therefore hold that the first point for determination in the affirmative.

14. In the present case, the allegations in the complaint/objections dated 03.03.2021 only state that the candidates do not fulfil Section 60(d) of the Act and are disqualified from being Directors. The objections do not state the nature of the business carried out, products or services dealt with in the business or in what manner they compete with the products and services, or the area of operation of the business of the Federation. Apart from the objections being vague and devoid of materials particular for the Returning Officer to make a summary inquiry and decide, reliance placed on a disputed certificate issued by an Accountant, not even supported by an affidavit, could not even be considered as evidence of such competing business. Apart from this there is no other material on record to verify the nature of the business in terms of

products and services that the Federation indulges in or even the Territory within which it operates such Department Stores.

15. The Returning Officer ought to have rejected the objections of the Petitioners at the threshold, since the objections were vague and totally devoid of any specific allegations to support a case for disqualification under Clause (d) of Sub Section 1 of Section 60 of the Act. Reliance on a certificate of Chartered Account which was disputed and not even supported by an affidavit would certainly not be considered as proof of allegations and much less, when there was no material whatsoever before the Returning Officer to compare the nature of the business of the Respondent No. 1 or his family member with that of the Federation. On going through the entire record, the nature of the business of the federation was never placed before the Returning Officer, nor does he make any reference to the material which forms basis for his conclusion that the business run by the member through his family member was of the kind run by the Federation. The findings of the facts rendered in the order of the Returning Officer dated 05.03.2021 are therefore without any foundation.

16. In *Nanaji Bhokre* (supra), this Court has taken a view that where the objections are completely silent and make no material allegations as are required by the section, it must be

held that the Returning Officer was in error in rejecting the nomination paper. The Judgment further holds that where there is no allegations in the objections, that even if such business is similar, it is being run by the family member for and on behalf of the member of the Federation, the objections ought to be rejected.

17. The facts in the present case are exactly similar to the one dealt with by this Court whilst rendering Judgment in *Nanaji Bhokre* (supra).

The objections do not make any factual allegation, much less allege that the business of the family member was run on behalf of the Respondent No. 1 or even that business is of the kind run by the Federation. All that the objections state is that the candidate (Respondent No. 1) does not fulfil the requirements of Section 60(d) and is disqualified from being a Director. The objections are devoid of any reference to the nature of business, products dealt with or area of business or make any reference to the similar products dealt with in the business of the Federation. The objections also do not alleged that the business was carried out on behalf of the Respondent No.1, who was the member of the Federation. Merely because, the brother of the Respondent No. 1 carries out a similar business, it would not render the Respondent No. 1

disqualified, unless the objections specifically aver that the brother's business was carried out on behalf of the Respondent No. 1 himself. The objections are devoid of such an allegation.

18. A perusal of the Tribunal's order would reveal that it has reached the finding that there was no allegation in the objections that the Respondent No. 1 was carrying out a business of the kind carried out by the Federation and nor there are averments in the objections or allegations to prove that the business of the family member was carried out in the name of and on behalf of the Respondent No. 1. It is also held that there is no material on record or even allegation made that the Respondent No. 1, was a partner in the firm or the Director of the company carrying out the business of the kind carried out by the Federation. The findings on this issue which are in paragraphs 21 and 22 of the order are based on the record and cannot be termed to be perverse. The Tribunal has correctly applied the law on the subject to the facts of the case and its Judgment on this aspect cannot be termed either illegal or suffering from any legal infirmity. I therefore, hold the second point for determination, i.e. whether the Tribunal has committed any error in holding that the Petitioners had not proved that the Respondent No. 1 had incurred a disqualification under Clause (d) of Sub Section 1 of Section 60 of the Act, in the negative.

19. Referring to the Judgment of *N. T. Veluswami* (supra), which deals with the scope of the inquiry to the objections to the nominations and the remedy against grant or rejection of the same, it would be necessary to quote the following paragraph from that Judgment.

“9. It was contended for the respondent that the proceedings before the Tribunal are really by way of appeal against the decision of the Returning Officer, and that, therefore, the scope of the enquiry in the election petition must be coextensive with that before the Returning Officer, and must be limited to the ground taken before him. It was argued that a decision could be said to be improper only with reference to a ground which was put forward and decided in a particular manner by the Returning Officer, and that therefore the expression improperly rejected would, in its true connotation, restrict the scope of the enquiry before the Tribunal to the ground taken before the Returning Officer. We are unable to agree with this contention. The jurisdiction which a Tribunal exercises in hearing an election petition even when it raises a question under Section 100(1)(c) is not in the nature of an appeal against the decision of the Returning Officer. An election petition is an original proceeding instituted by the presentation of a petition under Section 81 of the Act. The respondents have a right to file written statements by way of reply to it; issues have to be framed, and subject to the provisions of the Act, the provisions of the

Civil Procedure Code regulate the trial of the petition. All the parties have the right to adduce evidence, and that is of the essence of an original proceeding as contrasted with a proceeding by way of appeal. That being the character of the proceedings, the rule applicable is that which governs the trial of all original proceedings; that is, it is open to a party to put forward all grounds in support of or negation of the claim, subject only to such limitations as may be found in the Act.

It should be noted in this connection that if a petition to set aside an election on the ground of improper rejection of a nomination paper is in the nature of an appeal against the decision of the Returning Officer, then logically speaking, the decision of the Tribunal must be based only on the materials placed before the Returning Officer given with respect to the ground which was urged before him, and no fresh evidence could be admitted before the Tribunal except in accordance with Section 41, Rule 27. The learned Judges in the court below, however, observe that though the enquiry before the Tribunal is restricted to the particular ground put forward before the Returning Officer, it is not restricted to the material placed before him, and that all evidence bearing on that ground could be adduced before the Tribunal. This, in our view, is quite correct. The enquiry which a Returning Officer has to make under Section 36 is summary in character. He may make "such summary enquiry, if any, as he thinks necessary"; he can act suo motu. Such being the nature of

the enquiry, the right which is given to a party under Section 100(1)(c) and Section 100(1)(d) (i) to challenge the propriety of an order of rejection or acceptance of a nomination paper would become illusory, if the Tribunal is to base its decision only on the materials placed before the Returning Officer.”

20. In the present case, the Tribunal has, in fact, treated the matter before it as an election Petition and proceeded on the basis and in line with what has been held by the Supreme Court in ***N. T. Veluswami*** (supra), that the scope of its jurisdiction was co-extensive with that of the Returning Officer. The Tribunal has proceeded to consider all evidence having a bearing on the case and has arrived at a conclusion that the nomination was erroneously rejected. In fact, further in line with what has been held by the Supreme Court, the Tribunal has rightly set aside the election on the ground of improper rejection of a nomination paper. No separate Election Petition is required to be filed for that purpose and the election could be set aside on the ground of improper rejection of nomination alone.

21. The impugned Judgment does not call for any interference in the supervisory jurisdiction of this Court under Article 227 of the Constitution of India and is therefore rejected. No costs.

22. Rule discharged.

VALMIKI MENEZES, J.