



Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 7 OF 2025

Mohammad Nizar

... Petitioner

V e r s u s

The State of Goa, Thr. The Chief Secretary & 4 ... Respondents
Ors.

Mr. Rohit Bras De Sa, Advocate *with Mr. J. Pinto, Advocate for the Petitioner.*

Ms. Sapna Mordekar, Additional Government Advocate *for Respondent Nos. 1 and 5.*

Mr. Nishkar Raut Desai, Advocate *for Respondent Nos. 2 and 4.*

**CORAM: BHARATI DANGRE &
 NIVEDITA P. MEHTA, JJ.**

DATE: 27th March, 2025

ORAL ORDER *(Per Bharati Dangre, J.)*

1. At the outset, the learned Counsel for the Petitioner seeks leave to amend the Petition by raising a challenge to the Order dated 03.03.2025 by inserting a prayer clause. Amendment is allowed to be carried out forthwith.

2. By defying all norms involving the democratic process in electing the office bearers of “ANJUMAN THOUHEED UL MUSLIMEEN, CHIMBEL AND NURANI MASJID’ at Chimbhel, Goa, a Society registered under the Societies Registration Act established with an object set out in its Bye laws, the Chairman of the Society is elected. The Bye laws of the Association has curled out its objects in Article III and it has also set out the condition of its membership, by prescribing that upon making a written request addressed to the President of the Association, the membership of the Association shall be granted subject to payment of admission fee as well as monthly subscription.

Upon the membership being granted, a member shall continue to abide by the Rules and Regulations of the Association and shall enjoy equal right as set out in the bye laws.

3. The office bearers of the Association as per Article V include the President, Vice President, General Secretary, Joint Secretary/Treasurer and six members and the bye laws even set out the qualifications of the office bearers.

Article 7 provides for “elections” of the office bears to be conducted every three years and the manner in which the election shall be conducted is also set out therein. It however clarify that the office bearers for the Managing Committee should be selected by the General

Body and the election of the Joint Secretary/Treasurer shall be done by the Managing Committee in accordance with the election programme that is declared.

4. In utter ignorance of the aforesaid bye laws, a grievance raised in the Petition is, that the election of the Managing Committee and the Chairperson was held on 27.02.2023 when Mr. Rashid Badrapur, was elected as President who was not even the member of the Committee. After resignation of Rashid Badrapur, Mr. Molali Ali came to be nominated as the President, as he addressed a communication to the District Registrar, Inspectorate of General of Societies on 07.08.2023 claiming himself to be the Chairperson/President and a request was therefore made for taking appropriate action.

5. The grievance of the Petition is to the effect that whether it is Respondent no. 3 or 4, if they are to be appointed as President, the appointment should come through the mechanism prescribed in Bye law which is democratic process and co-option/nomination is at all permissible. It is urged that the only manner of choosing the President was by way of election process and not by way of appointment as per Article VII of the Bye laws.

6. Learned Counsel appearing for Respondent nos. 2 and 4 however submit that as far as Respondent no. 4 is concerned, his father was a

member, he was nominated as the President of the Society, having resigned on 20.07.2023, the members of the Committee co-opted him into the Managing Committee with an object of enhancing the capabilities and expertise of the Committee. Subsequently, upon an urgent meeting called, he was appointed as President of the Society. Both the aforesaid documents are placed on record at annexure A and E of the reply filed by the Respondent and surprisingly on the resolution/ the meeting in which the Respondent no. 4 is appointed as President, even there is no mention of any date.

7. The Petitioner make a grievance that either the co-option of the Petitioner in the managing Committee and his subsequent appointment to the post of President of the Society is not in accordance with the Bye laws which are binding on the Society and upon all its members. With this grievance when he approached the Inspector General of Societies, upon granting hearing to the contenders, an Order came to be passed on 03.03.2025 which was placed before us and pursuant to which we have permitted the Petitioner to formally amend the Petition and raise a challenge to the said Order.

8. On perusal of the Order, we find that the authority has exercised the power under Section 20A of the Societies Registration Act, 1860 and a direction is given to the Vice President to call up a special General

Body meeting within 45 days with a single agenda, “for proving majority vote in his favour. When this grievance was taken to Registrar, he declared that if Mr. Moulali Shaikh is able to secure majority votes he would be declared elected and continue to hold post till the completion of the terms. However, if the majority votes against him then he should step down and hand over the charge to the Vice President of the Society and thereafter in such a situation, the General Body may fill up the post of vacant member after following the democratic procedure as laid down in the Bye laws and once the said post is filled in, the Committee members shall decide as to who shall hold the post of President.

9. When we have perused the impugned Order, we find it to be an utter misuse of powers exercised by the said authority as Section 20A in the Act of 1860 is a specific provision of investigation in the affairs of the Society and the relevant provision read thus :

“20A. Investigation of affairs of society. (1) Where, on information received under section 4A or otherwise, or in circumstances referred to in section 12D, the Inspector-General is of the opinion that there is apprehension that the affairs of the society registered under this Act, are being so conducted as to defeat the objects of the society or that the society or its governing body, by whatever name called, or any officer thereof in actual effective control of the society is guilty of mismanaging its affairs or of any

breach of fiduciary or other like obligations, the Inspector-General may, either himself or by any person appointed by him in that behalf, inspect or investigate into the affairs of the society or inspect any institution managed by the society.”

10. The Respondent-Authority was not confronted with the issue of any irregularities or the mismanagement by the Managing Committee or Government Body of a Society but the Petitioner’s grievance before the Inspector General of Society was about the Respondent no. 4 holding the post of President without adhering to the manner in which the President has to be elected as per the Bye laws.

The impugned Order categorically records that no material was placed to support the case of nomination and the argument put forth was there was no bar for cooption and therefore the nomination was proper and legal.

The Authority also considered the fact that the Committee consists of eleven members and in fact they do not oppose the name of the current President and rather supported his candidature and on the other hand it was only the complainant who was opposing the said move and therefore we deem it appropriate and equal opportunity should be given to the complainant as well as elected President to prove majority.

11. We are afraid that such a course of action is at all available to the authority as we find that if a post has to be occupied in a manner which is set out in the Bye laws, then the post will be filled in only in that manner in no other way. The Bye laws are very clear to that effect that elections shall be conducted further after every three years and the office bearers of the Managing Committee would be selected by the General Body and the election for the post of President shall be amongst the members of the Managing Committee. It also contemplates communication of elections atleast 15 days prior to the election date for the post of President and even an Election Officer shall be appointed to conduct the elections.

By completely ignoring the said mechanism prescribed, if the Respondent no. 4 has been elected to the post of President and hence he is not, according to our opinion entitled to hold the office and the mechanism that has been set out by the Inspector General of Societies is not a mechanism which is permissible in the wake of the Bye laws of the Society.

12. At this stage, learned Counsel for Respondent no. 4 make a statement that he shall resign from the post of President, upon which the post shall be declared as vacant. Thereafter, it is open to the Respondent no. 2 to elect the President amongst its members or it may

permit the Vice President to assume the charge of the President till the elections to the post of President are conducted.

13. With this directions the Writ Petition is disposed of.

NIVEDITA P. MEHTA, J.

BHARATI DANGRE, J.