

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.583 OF 2024**

Nikhil Shamgonda Patil

Age: 29 Yrs., Occupation- Agriculture,

R/at Takawade, Tal.- Shirol,

Dist- Kolhapur, Pin- 416 121.

..Petitioner

Versus

1. Divisional Joint Registrar,
Co-operative Societies, Kolhapur Division,
Kolhapur.

2. Assistant Registrar, Co-operative Societies,
Tal- Shirol.

3. Bapuso Patil Bharat Gramin Bigarsheti
Sahakari Pat Sanstha Ltd. & Anr.
Having Office at Takawade, Tal-Shirol,
Dist- Kolhapur, Pin- 416 121.

4. Sambhaji Maruti Mane,
Age- Adult; Occu-Agriculture,
R/at Takawade, Tal – Shirol,
Dist.- Kolhapur, Pin 416 121.

..Respondents

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Mr. Surel Shah, Senior Advocate a/w Mr. N. B. Patil a/w Ms. Gayatri Kulkarni a/w Ms. Shivani Veer i/by Ms. Vrushali Maindad, Advocate for Petitioner.

Mr. Sanjay D. Rayrikar, AGP for Respondent No.1.

Mr. Manoj A. Patil, Advocate for Respondent No.3.

Mr. Chetan G. Patil, Advocate for Respondent No.4.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 12th SEPTEMBER, 2025.

PRONOUNCED ON : 17th SEPTEMBER, 2025.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matters are taken up for final hearing at admission stage.

2. The petitioner impugns order dated 10.08.2022 passed by learned Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur in Revision Application No.73/2022 as well as order dated 27.10.2021 passed by learned Assistant Registrar, Co-operative Societies, Taluka Shirol, thereby declining to disqualify respondent no.4 on account of resignation from post of Director of Society in terms of provision of Section 73 (CA) (1)(i)(b) of Maharashtra Co-operative Societies Act, 1960 (for the sake of brevity hereinafter referred as 'MCS Act, 1960').

3. The respondent no.3 is Co-operative Society registered under MCS Act, 1960. The petitioner was member of Managing Committee of respondent no.3 in last term. The respondent no.4 was also member of Managing Committee for term 2015-16 to 2020-21. On 06.12.2018, petitioner had filed complaint before learned Deputy Registrar, Co-operative Societies, Tal. Shirol contending that respondent no.4 has incurred disqualification and ceased to be member of Managing Committee of respondent no.3-Society in terms of Section 73-CA (1)(i) (b) of MCS Act, 1960 and liable to be removed from office. The respondent no.4 and his family members had availed loan from Society, but have defaulted in repaying loan installments on time. The learned Deputy Registrar took up enquiry into complaint, called say of respondent no.4 and after hearing parties, pleased to declare respondent no.4 as disqualified.

4. The respondent no.4 filed Revision Application bearing No.263/2019 before learned Divisional Joint Registrar, Co-operative Societies assailing order dated 29.05.2019 passed by learned Deputy Registrar. The learned Divisional Joint Registrar, partly allowed Revision Application and remanded matter back to Assistant Registrar vide his order dated 29.09.2020. While matter was pending for adjudication before learned Assistant Registrar, respondent no.4 tendered his resignation from post of member of Society, which was in turn accepted by Society vide Resolution dated 04.01.2021. In wake of resignation by respondent no.4, on 27.10.2021 learned Assistant Registrar disposed of proceeding of disqualification observing that, since resignation tendered by respondent no.4 is accepted by respondent no.3, he ceased to be member of Society. Thus, disqualification proceeding needs to be disposed of as infructuous. The petitioner assailed said order by filing Revision Application No.73/2022 before learned Divisional Joint Registrar under Section 154 of MCS Act, 1960. However, learned Divisional Joint Registrar concurred with order passed by Assistant Registrar, eventually, rejected Revision Application vide his order dated 10.08.2022.

5. Mr. Surel Shah, learned Senior Advocate appearing for petitioner would submit that once petitioner has incurred disqualification in terms of 73-CA (1)(i)(b) of MCS Act, 1960, his resignation would not amount to revival of disqualification. The respondent no.4 cunningly

tendered resignation while he was facing disqualification proceeding in pursuance to application submitted by petitioner. Although Society accepted his resignation, disqualification incurred by him would not cease to operate. The respondent-Authority erroneously dropped proceeding of disqualification, merely on ground of acceptance of resignation tendered by respondent no.4 to Society. In support of his contention he relies upon observations of this Court in case of ***Shri Yuvraj Datajirao Patil Vs. District Deputy Registrar Co-op. Societies, Kolhapur & Ors. (Writ Petition No.1516/2019*** decided on ***17.11.2022***).

6. Per contra, Mr. Chetan Patil, learned Advocate appearing for respondent no.4 submits that proceeding of disqualification was not concluded. It was mere allegations of petitioner that respondent no.4 has suffered disqualification. By inviting attention of this Court to communication given by Society he submits that respondent no.4 or his family members were never defaulters. Mr. Patil would further submit that although in previous round learned Deputy Registrar passed order dated 29.05.2019 disqualifying respondent no.4, his finding on the basis of misconception that respondent no.4 was responsible to repay monthly installments of loan. Further such finding was not supported by relevant material. In that view of matter, learned Divisional Joint Registrar had rightly set aside order of Deputy Registrar and remanded matter back for reconsideration. Mr. Patil would further submit that on expiry of term of Managing Committee, respondent no.4 has been re-

elected. The present Writ Petition is belatedly filed assailing order dated 10.08.2022. The inordinate delay of about 16 months is not explained. As such, Writ Petition deserves dismissal on ground of delay and laches. In support of his contention he relies upon observations of Supreme Court of India in case of *Karnataka Power Corporation Ltd through its Chairman and Managing Director and Another Vs. K. Thangappan and Another*¹ as well as observations of this Court in case of *Arun Waman Khadtale Vs. Union of India and Another*².

7. Having considered submissions advanced by learned Advocates appearing for respective parties, firstly this Court requires to delve into issue of delay and laches, which is preliminary objection raised on behalf of respondents. Apparently, learned Divisional Joint Registrar was pleased to remand back matter for fresh consideration after setting aside order of disqualification dated 29.05.2019 passed by Deputy Registrar. After remand, during pendency of proceeding before Assistant Registrar, respondent no.4 tendered his resignation of membership of Society. Eventually, learned Assistant Registrar disposed of proceeding observing that in view of acceptance of resignation of respondent no.4 by Society, proceeding for disqualification need not be continued against. Aggrieved petitioner filed Revision Application No.73/2022 before learned Divisional Joint Registrar, who rejected application vide his order dated 10.08.2022.

¹ (2006) 4 SCC 322.

² 2017 (5) Mh.L.J. 959.

The present Writ Petition impugns such order. The Writ Petition has been filed in month of January 2024 after 16 months of passing impugned order. The Supreme Court in case of **Karnataka Power Corporation Ltd** (supra) observed thus:

*“Delay or laches is one of the factors which is to be borne in mind by High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of applicant to assert his right as taken in conjunction with lapse of time and other circumstances, causes prejudice to opposite party. Even where fundamental right is involved matter is still within discretion of Court as pointed out in **Durga Prashad Vs. Chief Controller of Imports and Exports**³. Of course, discretion has to be exercised judicially and reasonably.”*

In paragraph no.9 relying upon observations in case of **State of M.P. Vs. Nandlal Jaiswal**⁴ Supreme Court observed that *“if there is inordinate delay on the part of petitioner and such delay is not satisfactorily explained, High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors”*.

8. Further in case of **Arun Waman Khadtale** (supra), Division Bench of this Court observed that *“not having financial capacity to engage Advocate is not sufficient ground to condone delay”*.

9. The observations of Supreme Court in case of **Karnataka Power Corporation Ltd** (supra) are in wake of challenge to order raised after 20 long years. Similarly, Division Bench of this Court in case of **Arun**

³ (1969) 1 SCC 185.

⁴ (1986) 4 SCC 566.

Waman Khadtale (supra) was dealing with unexplained delay of three and half years. In this background, in facts of case where Writ Petition is filed after 16 months, this cannot term delay as inordinate, so as to decline exercise of jurisdiction under Article 226 of Constitution of India, unless serious prejudice is shown to have been caused to respondents. There is nothing to depict that delay was deliberate or intentional.

10. In present case, issue raised for consideration is regarding erroneous exercise of jurisdiction by Statutory Authority, which needs to be examined by this Court under Article 227 of Constitution of India. As rightly pointed out by Mr. Surel Shah, learned Senior Advocate, question as to whether resignation of membership of Committee and acceptance thereof would terminate disqualification proceeding or obviate disqualification incurred by him so that he can contest next election falls consideration before Court.

11. In case of **Shri Yuvraj Datajirao Patil** (supra), this Court observed that Section 73 (CA) of MCS Act, 1960 is independent of other provisions of Act in relation to disqualification of being a member of committee. Once member suffers cessation of membership on account of having incurred disqualification, is not eligible to be re-elected or re-co-opted for period of next term. As per Section 73 CA (1)(i)(b) of MCS Act, 1960 default of member in payment of any installments of loan granted to him by terms lending society, he incurs disqualification

and not eligible for being appointed, nominated, elected or co-opted for member of Committee till expiry of period of next term of five years of committee from date on which he has so ceased to be a member of committee. In light of aforesaid legal position, observations of this Court in paragraph no.22 are relevant, which reads thus:

“The plain reading of this sub-section with Sub-section (3) implies, that a member who has incurred disqualification, other than disqualification under Sub-section (A1) and Clauses (i) to (ix) of sub-section (1), shall be eligible to be renominated or re-co-opted as a member of the committee as soon as such disqualification ceases to exist. In the case at hand, Petitioner has incurred disqualification under Clause (i) of Sub-Section (1) of Section 73CA and therefore, having incurred, disqualification on account of default, it would not cease to exist, either by tendering resignation of membership or making good arrears of dues. For this reason, the contention of the petitioner that pending proceedings since he had tendered the resignation and thereby, ceased to be a member of a committee and, therefore, a further cessation was uncalled for is illogical and contrary to scheme of Section 73CA of the Act and thus, rejected. That even otherwise, Section 73CA does not provide for resignation of membership of the committee as provided for under Section 78(3) of the Act.”

12. In light of aforesaid observations, this Court holds that impugned orders are contrary to Scheme of Section 73 (CA) of MCS Act, 1960. In result, Writ Petition deserves to be partly allowed and matter needs to be relegated back to learned Deputy Registrar/Assistant Registrar for enquiry as to disqualification of respondent no.4. Hence, following order:

ORDER

a. Writ Petition is partly allowed.

- b. The impugned order dated 10.08.2022 passed by learned Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur in Revision Application No.73/2022 as well as order dated 27.10.2021 passed by learned Assistant Registrar, Co-operative Societies, Shirol are quashed and set aside.
- c. The matter is relegated back for fresh decision of Deputy Registrar/Assistant Registrar, Co-operative Societies, Taluka Shirol on application tendered by petitioner seeking disqualification of respondent no.4 under Section 73 (CA) (1) (i) (b) of MCS Act, 1960.
- d. Parties to appear before learned Deputy Registrar/Assistant Registrar, Co-operative Societies, Shirol on 08.10.2025.
- e. On appearance of parties, learned Deputy Registrar/Assistant Registrar shall decide proceeding expeditiously and in any case, within period of twelve (12) weeks from date of appearance of parties.
- f. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE