

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

**WRIT PETITION NO.5591 OF 2024
WITH
INTERIM APPLICATION NO.13245 OF 2024
IN
WRIT PETITION NO.5591 OF 2024**

Ganga Vishnu Heights and Ors.

...Petitioners

V/s.

Ajay Vidyadhar Tamhankar and
ORs.

...Respondents

Mr. Dnyaneshwar G. Adsul, *Petitioner in person present for
Petitioner Nos.1 and 2.*

Mr. Abhishek R. Avachat *for the Petitioner Nos.3 to 6.*

Mr. Sujay P. Joshi *with Mr. Harshavardhan R. Bhende i/b. M/s.
Regulus Advocate and Consultants for Respondent No.1.*

Mr. S.D. Rayrikar, *AGP for Respondent Nos.2 to 4-State.*

CORAM : SANDEEP V. MARNE, J.

Dated : 4 March 2025.

P.C. :

1) Petition challenges order dated 1 April 2024 passed by the Divisional Joint Registrar, Co-operative Societies, Pune Division, Pune, in Revision Application No.109 of 2024 filed by the Petitioners and confirming the order dated 11 March 2024 passed by the Deputy Registrar, Co-operative Societies, Pune

City(1). By order dated 11 March 2024, the Deputy Registrar has disqualified the Petitioners from being members of the managing committee for a period of 5 years under the provisions of sub-section (5) of Section 75 of the Maharashtra Co-operative Societies Act, 1960 (**MCS Act**).

2) I have heard Mr. Dnyaneshwar Adsul, Petitioner No.2 in person. As a matter of fact, the Petition is presented to this Court through Advocate Mr. Abhishek Avachat. However, when it came to arguing the Petition, Mr. Adsul, Petitioner No.2 has conveniently separated himself from rest of the Petitioners and insisted that he be permitted to argue the Petition in-person while Mr. Avachat would continue to represent Petitioner Nos.1 and 3 to 6. On behalf of Mr. Avachat, the learned proxy counsel is present in the Court, who would submit that Petitioner Nos.1 and 3 to 6 would adopt submissions canvassed by Petitioner No.2 appearing in-person. This Court does not appreciate this practice of splitting of the Petitioners and arguing the Petition by one of the Petitioners in-person while retaining vakalatnama on behalf of rest of the Petitioners by an Advocate. Nonetheless, I have heard Petitioner No.2 in-person and have considered the submissions canvassed by him. I have also heard Mr. Joshi, the learned counsel appearing for Respondent No.1 and Mr. Rayrikar, the learned AGP for Respondent Nos.2 to 4-State.

3) Perusal of the impugned orders passed by the Deputy Registrar would indicate that one of the main reasons why the

Petitioners are disqualified under the provisions of sub-section (5) of Section 75 is failure on their part to present before the general body, rectification reports submitted by the auditor. Petitioner No.2 in-person submits that rectification report of the auditor was in fact placed before the Deputy Registrar. He would submit that it was the duty of the said auditor to advise the managing committee to place copy thereof before the general body as well. He would submit that lapse on the part of the managing committee in not placing the report of the rectification before the general body is unintentional, for which Petitioners cannot be disqualified for a maximum permissible period of five years under sub-section (5) of Section 75 of the MCS Act. It is also sought to be contended by Petitioner No.2 appearing in-person that Petitioner is not given reasonable opportunity of hearing as exact allegations, on the basis of which their disqualification was proposed, were made known to them vide show cause notice dated 26 December 2023. He has placed reliance on judgment of this Court in ***Gaurav K. Desai V/s. State of Maharashtra and others***¹ and ***Norbert Joseph Rodrigues V/s. Divisional Joint Registrar of co-operative Societies Mumbai Division and others***².

4) So far as the allegation of violation of principle of natural justice is concerned, there is no denial of the fact that notice dated 26 December 2023 issued by the Deputy Registrar was served on the Petitioners. Said notice specifically alleged

1 2015 SCC OnLine Bom 3449

2 2023 DGLS(Bom.) 2538

violation of provisions of Section 75 of the MCS Act by the managing committee members in respect of years 2021-22 and 2022-23. Petitioner has also annexed copy of application filed by Respondent No.1-Complainant before the Deputy Registrar. The said application contained in-depth pleadings about the exact violations committed by managing committee members. It therefore cannot be contended, by any stretch of imagination, that Petitioners were not made aware about the exact ground on which disqualification proceedings were conducted and heard by the Deputy Registrar. So far as the aspect of failure to present the rectification report before the general body is concerned, the allegation appears to be not seriously disputed. It is not Petitioner's case that rectification report was submitted before the general body meeting held on 25 September 2022 and 20 August 2022. It is however, sought to be contended that the lapse is unintentional and has occurred on account of lack of knowledge on the part of the managing committee members, who believed submission of rectification report before the Deputy Registrar was sufficient compliance. In this regard reliance is placed by the Petitioner No.2 on **Gourav K. Desai** (supra) where this Court held in paragraphs 13 to 15 as under:-

13. Reasonable cause and/or sufficient reason needs to be considered in the facts and circumstances of the case but in situation like this where the third person/parties are involved and when the petitioners/officers at the relevant time took steps within the prescribed period but unable to fulfil the same within the statutory period for ground so referred, that itself cannot be the reason for the punishment of this nature. I am inclined to observe that if "sufficient cause" is made out, it is not the mandate of the provisions that the authority should impose the

maximum punishment in every such default. The discretion and the power need to use/utilize in accordance with law. Reasonable and fair approach is required, if sufficient cause is made out and/or where there was no intentional delay and/or intended inaction to breach provisions, which are brought into with effect from 15.2.2013 and no prior steps/intimation/circular issued to the society in advance, about such mandate.

14. There is no material placed on record that there was any intentional default committed by the petitioners and the society. Normally such new provisions need to be advertised, elaborated, crystalized, simplified and duly circulated by the concerned departments so that people at large be aware of the mandate and effect of the non-compliance of the same. Assume for a moment, being declared provisions of law, concerned person, including the authorities, should be aware of the procedure and mandate. The authorities still cannot read the provisions to use and utilize the power to the maximum extent by punishing the stated defaulter members of the society. debarring them for five years.

15. The plain reading of Sub-section (5) of Section 75 itself shows that it has foundation of "discretion to be exercised by the authority" after the show-cause no and/or provides a "reasonable opportunity" to the person concerned and specifically before the proposed action to be taken in this regard. Admittedly, there was no prior notice given, except the notice/show-cause notice dated 28.2.2014. The show-can notice was given based upon the concluded facts. The explanation or the reasons called for non-compliances and straight away mentioned about the concluded 5 yea punishment. A statement is made by learned Senior Counsel appearing for petitioners that before issuing show-cause notice, there was no enquiry made whatsoever nature and/or not inspected the record by the concerned department. Tenor of this show-cause notice itself shows that the concerned authority has involved Section 75(5) of the MCS Act and concluded to impose the maximum punishment. The punitive action by the registering authority was contemplated even prior to amendment of 2013. The managing committee could not have forwarded the audit report to the authority concerned unless approved by the General body. The power and function of the managing committee cannot be against the general body decision. Therefore, also such a drastic punishment of curtailing their tenure by five year arbitrary, unjust, unfair, unrealistic, unsustainable. The punishment could have been nil to maximum 5 years ban or monetary penalty as prescribed. The authority

has pre-judged the issue and decided to impose maximum punishment, since the inception of the proceedings itself.

5) In my view, since the allegation of failure to submit report of rectification before the managing committee is not seriously disputed, Petitioners cannot contend that no action can be taken against them under the provisions of sub-section (5) of Section 75 of the MCS Act. The only issue is whether the Registrar could have selected the maximum possible penalty of disqualification by five long years under sub-section (5) of Section 75 of the MCS Act. Sub-section (5) of Section 75 of the MCS Act provides thus:-

75. Annual general body meeting

...

(5) If default is made, in calling a general body meeting within the period 'prescribed under sub-section (1)' or in complying with with sub-section(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 any 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) Thus, under the provisions of sub-section (5) of Section 75, the Registrar can disqualify a member of the managing committee for such a period not exceeding 5 years as may be specified in his order. Registrar thus, has a discretion of ordering disqualification for a period less than 5 years as well. In the

present case, considering the discrepancies committed by the members of the managing committee, in my view the same is not of serious nature. Therefore, disqualification of Petitioners for a period of 5 years was clearly unwarranted. This is the limited extent to which there is a warrant for interference in the impugned order dated 11 March 2024 passed by the Deputy Registrar. Considering the facts and circumstances of the present case, in my view period of disqualification of the Petitioners can be reduced to two years instead of 5 years as ordered by the Deputy Registrar.

7) I accordingly proceed to pass the following order

- (i) Petition is partly allowed.
- (ii) Order dated 1 April 2024 passed by the Divisional Joint Registrar, Co-operative Societies, Pune Division, Pune and order dated 11 March 2024 passed by the Deputy Registrar, Co-operative Societies, Pune City (1) are modified to the extent that period of disqualification in respect of all the 8 members of the managing committee shall stand reduced from 5 years to 2 years.

8) With the above directions, Petition is partly allowed and disposed of. There shall be no orders as to costs.

9) Interim Application stands disposed of.

[SANDEEP V. MARNE, J.]