

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

WRIT PETITION NO.17844 OF 2024

Kshitija V. Moreshwar & Ors.

....Petitioners

V/S

The State of Maharashtra & Ors.

....Respondents

Mr. Rajeev Chavan, Senior Advocate i/b Ms. B.R. Mangale *for the Petitioners.*

Mr. Y.D. Patil, AGP *for Respondent Nos.1 to 3 / State.*

Mr. S.S. Panchpor with Mr. Aashay Rabade, Mr. Nakashtra Mahadik *for Respondent Nos.5 and 6.*

Ms. Pratibha J. Gavhane *for Respondent No.7.*

CORAM: SANDEEP V. MARNE, J.

DATE : 19 MARCH 2025.

ORAL ORDER:

1. **Rule.** Rule is made returnable forthwith. With the consent of the learned counsel appearing for the parties, the Petition is taken out for hearing and final disposal.

2. The Petition challenges order dated 18 October 2024 passed by the Divisional Joint Registrar, Co-operative Societies, Pune, dismissing Revision Application No.360 of 2024 filed by the Petitioners and confirming the order dated 30 August 2024 passed by the Deputy Registrar. By his order dated 30 August 2024, the Deputy Registrar has disqualified the Petitioners for a

period of one year as and from being elected as managing committee members of the Society under provisions of sub-section 5 of Section 75 of the Maharashtra Co-operative Societies Act, 1960 (**MCS Act**).

3. I have heard Mr. Chavan, the learned senior advocate appearing for the Petitioners and Mr. Panchpor, the learned counsel appearing for Respondent Nos.5 and 6, Mr. Gavhane, the learned counsel appearing for Respondent No.7 and Mr. Patil, the learned AGP appearing for the Respondent Nos.1 to 3/State. I have gone through the findings recorded by the Deputy Registrar and the Divisional Joint Registrar and have also considered various documents placed on record alongwith the Petition and the Affidavit-in-Reply.

4. The first ground for disqualification of Petitioners is violation of provisions of sub-section (1) of Section 75 of the MCS Act, under which every Society is mandated to hold Annual General Body (**AGM**) Meeting within six months after close of the financial year to transact its business. It appears that the AGM for the year 2021-22 was required to be held by 30 September 2022. However, in the relevant year, an extension was granted and the AGM could held upto 31 December 2022. It appears that the AGM was held on 30 September 2023. Both Deputy Registrar as well as Divisional Joint Registrar have held Petitioners responsible for violation of provisions of sub-section (1) of section 75 of the MCS Act on account of non-holding of AGM prior to 31 December 2022.

5. Perusal of orders passed by the Dy. Registrar and Divisional Joint Registrar would indicate that non-holding of AGM before 31 December 2022 is the main reason why Petitioners' disqualification has been ordered. It appears that in pursuance of the complaint filed by the Respondent Nos.5 and 6, a show-cause notice was issued to the managing committee members on 19 May 2023 which *inter alia* included allegation of non-holding of AGM under provisions of Section 75(1) of the MCS Act within the stipulated period of 31 December 2022. Petitioners filed Reply to the said show-cause notice on 15 June 2023 and placed before the Deputy Registrar the reasons for non-holding of the AGM upto 31 December 2022. Disqualification under Section 75(5) of the Act for non-holding of AGM within stipulated time is not automatic and the noticee is entitled to put forth reasonable excuse for non-holding of AGM. Accordingly Petitioners pleaded reasons for non-holding of AGM before 31 December 2022. It is an admitted position that after submission of Reply dated 15 June 2023, the Deputy Registrar did not take the show-cause notice dated 19 May 2023 to its logical end. It will therefore have to be necessarily inferred that the same was dropped. Thus, the explanation presented by the Petitioners for non-holding of AGM before 31 December 2022 was apparently accepted by the Deputy Registrar by not taking further action in pursuance of the show-cause notice dated 19 May 2023.

6. It appears that an Enquiry Officer was appointed by the Deputy Registrar by order dated 10 October 2023 under provisions of Section 89A of the MCS Act, who conducted

enquiry and submitted his report dated 18 March 2024. In his enquiry report, the Enquiry Officer highlighted the aspect of non-conduct of AGM before 31 December 2022. The defects pointed out by the Enquiry Officer in his report became the premise for issuance of a fresh show cause notice under Section 75(5) of the MCS Act on 17 May 2024. In that notice, the Deputy Registrar again took up the issue of non-holding of AGM for the year 2021-22 before 31 December 2022. In my view, once the show cause notice dated 19 May 2023 issued under provisions of Section 75(5) of the MCS Act was dropped, it was impermissible for the Deputy Registrar to issue fresh show-cause notice at least *qua* the ground of non-holding of AGM for the year 2021-22 before 31 December 2022. Therefore, the reason of violation of provisions of sub-section (1) of Section 75 of the MCS Act included in the impugned order of the Deputy Registrar dated 30 August 2024 is clearly erroneous. Having once accepted the justification presented by the Petitioners for non-holding of AGM for the year 2021-22 before 31 December 2022 by not proceeding ahead with the show-cause notice dated 19 May 2023, it was beyond the jurisdiction of the Deputy Registrar to issue a fresh show-cause notice for the very same cause merely because the Enquiry Officer appointed under Section 89-A of the MCS Act highlighted the said issue in his report. Therefore, to the extent of inclusion of reason of violation to provisions of sub section (1) of Section 75 of the MCS Act, the impugned order dated 30 August 2024 passed by the Deputy Registrar suffers from a serious jurisdictional error.

7. So far as the other reasons recorded by the Deputy Registrar for ordering disqualification of Petitioners is concerned, careful perusal of the order passed by the Deputy Registrar would indicate that under the heading '*Observations*', he has recorded findings with regard to violation of provisions of clauses (ii), (iii), (vii) and (viii) of sub section (2) and of sub-section (2B) of Section 75 of the MCS Act. However in the ultimate analysis, under the heading '*Conclusion*', only two reasons are recorded for ordering disqualification viz. (i) non-holding of AGM before 31 December 2022 and (ii) circulation of agenda for the AGM of 30 September 2023 one day before on 29 September 2023. Mr. Panchpor would attempt to salvage the situation by contending that the Deputy Registrar, being a mere quasi-judicial authority, lacks the necessary expertise of couching the order carefully so as to include the findings relating to various violations under the heading '*Conclusion*'. Instead of being too technical, I accept the Mr. Panchpor's contention and proceed to examine whether the Petitioners' disqualification could at all have been ordered on the ground of violation of provisions of clauses (ii), (iii), (vii) and (viii) of Section 75(2) and Section 75 (2B) of the MCS Act. Section 75 of the MCS Act provides thus:

"75. Annual general body meeting

(1) Every society shall, within a period of four months after the close of the financial year, get its books of accounts audited and within six months after the close of financial year, to transact its business as may be provided in this Act, call the annual general body meeting of its members:

Provided that, the Registrar may, in exceptional circumstances such as infectious diseases, pandemic, flood, heavy rains, droughts or earthquake, by general or special order, extend the above referred period not exceeding three months;

Provided further that, for the financial year 2019-2020 and year 2020-2021, the society may get its books of accounts audited within nine months from the close of its financial year and call the annual general body meeting within twelve months from the close of its financial year.

Provided also that, where such meeting is not called by the society, the Registrar or any officer authorised by him may call such meeting in the manner prescribed and that meeting shall be deemed to be a general body meeting duly called by the society, and the Registrar may order that the expenditure incurred in calling such a meeting shall be paid out of the funds of the society or by such person or persons who in the opinion of the Registrar, were responsible for the refusal or failure to convene the general meeting.

(2) At every annual general body meeting of a society, the committee shall lay before the society, —

(i) a statement showing the details of the loans, if any, given to any of the members of the committee or any member of the family of any committee member, including a society or firm or company of which such member or members of his family is a member, partner or director, as the case may be; the details of repayment of loan made during the preceding year and the amount outstanding and overdue at the end of that year;

(ii) annual report of its activities;

(iii) plan for disposal of surplus;

(iv) list of amendments of the by-laws of the society, if any;

(v) declaration regarding date and conduct of its election of its committee, when due;

(vi) audit report of the preceding financial year;

(vii) rectification report of earlier audit;

(viii) annual budget for next year;

(ix) any other information required by the Registrar in pursuance of any of the provisions of the Act and rules; and

(x) such other business will be transacted as may be laid down in the by-laws and of which due notice has been given.

Explanation 1.- For the purposes of this sub-section, the expression "family" means a wife, husband, father, mother, brother, sister, son, daughter, son-in-law or daughter-in-law;

Explanation II.- In the case of a society not carrying on business for profit, an audited income and expenditure account shall be placed before the society at the annual general body meeting instead of audited profit and loss account, and all references to audited profit and loss account, and to "profit" or "loss" in this Act, shall be construed in relation to such society as references respectively to the "excess of income over expenditure", and "excess of expenditure over income".

(2A) Every society shall, appoint an auditor or auditing firm from a panel approved by the State Government in this behalf in its annual general body meeting having such minimum qualifications and experience as laid down in section 81, for the current financial year and shall also file in the form of return to the Registrar, the name of the auditor appointed and his written consent for auditing the accounts of the society within a period of thirty days from the date of the annual general body meeting:

Provided that, the same auditor shall not be appointed for more than three consecutive years by the annual general body meeting of the same society.

(2B) The Committee shall, in the financial year 2020-2021 and year 2021-2022, have the power to decide on the disposal of surplus and annual budget for the next year and to appoint an auditor or auditing firm from a panel approved by the State Government in this behalf having such minimum qualifications and experience as laid down in section 81. The decisions of the Committee in respect of the above matters shall be laid in the annual general body meeting of a society held thereafter for ratification.

3) There shall be attached to every balance sheet laid before the society in general meeting, a report by its committee with respect to (a) the state of the society's affairs, (b) the amounts, if any, which it proposes to carry to any reserve either in such balance sheet, or any specific balance sheet, and (c) the amounts, if any, which it recommends, should be paid by way of dividend, bonus or honoraria to honorary workers. The committee's report shall also deal with any charges, which have occurred during the year for which the accounts are made up, in the nature of the society's business. The committee's report shall be signed by its Chairman, or any other member authorised to sign on behalf of the committee.

(4) At every annual general body meeting the audited balance sheet, the audited profit and loss account, audit report of the preceding financial year submitted by the auditor appointed under section 81, rectification report of earlier audit and the committee's report shall be placed for adoption and such other business will be transacted as may be laid down in the by-laws, and of which due notice has been given.

(5) If default is made, in calling a general body meeting within the period 'prescribed under sub-section (1)' or in complying with sub-section (2), (2A), (3) or (4) the Registrar may by order declare any officer or member of the committee whose duty 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) Any penalty imposed under sub-section (5) or under section 76, may be recovered in the manner provided by the Code of Criminal Procedure, 1973, for the recovery of fines imposed by a Magistrate, as if such fine was imposed by the Magistrate himself."

8. Thus, the Petitioners are accused of failure to lay before AGM of the Society, the annual report of its activities (*clause ii*), plan for disposal of surplus (*clause iii*), rectification report of earlier audit (*clause vii*) and annual budget for the next year (*clause vii*). Additionally, the Petitioners are accused of not deciding on the disposal of surplus for the year 2021-22 under provisions of sub-section (2B) of Section 75 of the MCS Act.

9. Mr. Chavan would submit that the case presents unique circumstance, where an Administrator was appointed on the Society on 31 August 2020 who continued handling affairs of the Society till the elected Managing Committee took over charge on 30 April 2022. It is the complaint of the Petitioners that despite repeatedly writing both to the Administrator as well as to the Deputy Registrar, there was no complete handover of records and accounts of the Society by the Administrator. It is Petitioners' contention that the Administrator belatedly submitted audit report for the financial year 2021-22 to them only on 23 July 2023. Thus, the case involves unique circumstance where the Administrator was managing the affairs of the Society for a long time and the Managing Committee had taken over the charge only in April 2022 and was not provided with due assistance in the form of the entire reports of the Society. The issue is whether shortcomings on the part of the members of the Managing Committee to comply with mandatory provisions of Section 75(2) (ii), (iii), (vii) and (viii) and Section 75 (2B) of the MCS Act would automatically entail their disqualification under sub section (5)

of the Section 75 of the MCS Act. Careful perusal of provisions of sub-section 5 of Section 75 of the MCS Act would indicate that disqualification of member of the managing committee upon commission of any act contrary to the provisions of sub-sections (1), (2), (2A), (3) or (4) of Section 75 of the MCS Act is not automatic and a managing committee member facing disqualification proceedings can present before the Deputy Registrar a reasonable excuse for failure to comply the mandatory provisions of the Act. Here reliance by Mr. Chavan on judgment of Coordinate Bench of this Court in ***Gaurav K Desai vs. State of Maharashtra***, 2015 SCC OnLine Bom 3449 would be apposite. This Court held in paragraphs 9 to 13 as under:

“9. The scheme of Section 75 needs to read not in isolation. All the sub-clauses are connected and interlinked. There are certain connected obligation of the authorities also (Registrar) in case no meeting convened or able to take decisions. No such steps were taken even by the authorities within the prescribed period. also (Registrar) Sub-section (5) of Section 75 itself provides that irrespective of earlier provisions of Sub-sections (1), (2), (2A), (3) and (4) in case of default, before imposing any penalty, reasonable opportunity needs to be given to the concerned parties. This section itself provides that the authority must give all the opportunities and ask for an explanation for the failure to comply with the provisions if any. This section itself provides the concept of natural justice "who without any reasonable excuse" fail to comply with the mandate of the provisions. It is also a mandate of Sub-section (5) of Section 75 that the authorities should give an opportunity to explain "reasonable excuse" even if any officer/servant fails to comply with the provisions. This itself follows that if a reasonable excuse and/or reasonable case is made out, the authority irrespective of earlier provisions of Section 75, may pass an appropriate order and/or may reduce penalty/punishment so proposed, and/or may impose "nil" punishment or "nil" penalty. The principles of natural justice, therefore, which are otherwise inherent in any such provisions of law, specifically when it comes to taking any action or deciding civil rights of the parties, must be followed. In the present case, Sub-section (5) of Section 75 is very clear about the principles of natural justice to be followed in the strict sense.

10. The word "officer" is defined in Section 2(20), which is reproduced below:

"S.2(20) "officer" means a person elected or appointed by a society to any office of such society according to its bye-laws; and includes (any office bearer such as a chairperson, vice-chairperson, president, vice-president, managing director, manager, secretary, treasurer, member of the committee and any other person, by whatever name called, elected or appointed under

this Act, the rules or the bye-laws, to give directions in regard to the business of such society;"

11. Word "servant" of the society is not defined in the MCS Act. In this case, We are concerned with the "officer" and the "member of the committee". The concept Managing Committee' 2(7) is defined under the Act and so also its role. There is no issue that the General Body of members of the society and its resolution, is final and binds on all members. The annual meeting was called and decision was taken to appoint auditors and to complete the formality of S.154 of the MCS Act. The postponement for reasons by the General body just cannot be overlooked. The Managing Committee is bound by it. S. 75(4) however used to punish only some officers and not all other. The society is not made party to such proceedings. The society is a necessary party, as its elected committee members have been debarred and/or intended to debar for a minimum and/or maximum period of five years. The provision is also silent about dissecting the each committee member/s from other for punishment/debarment. In such situation also hearing and opportunity need to be given to all the concerned, as the respondents authority if wants to punish some or all of the managing committee members and/or servants, who acted as per the general body decision, in the present case.

12. Any co-operative society itself means its members and/or officers including third agency like auditor, chartered accountants and servants, etc. Even otherwise those are requirements of law in case the society falls within the ambit of the requirements. The mandate so required was not for the earlier period/years. It appears that the society took sometime to initiate proceedings/steps to comply with the provisions. However, in the present case, for some reason they were unable to complete the stated formalities. This fact was very well known to the society as well as to the complainants/other respondents. They participated and agreed to postpone to take essential steps but ultimately, appointed an auditor. **However, for the reason beyond their control they were unable to complete the procedure, which was based upon auditor's report/action. They have placed on record the material to say that the auditor was ill and unable to complete the accounting in time as required. This itself means that society/officers/members were not in a position to control the situation as they were definitely relying upon the third person/agency i.e. auditor to complete the formalities within the prescribed period. Office bearers and/or individual members, in such a situation, as helpless, cannot be punished in such a way of debarring the secretary for five years as done in the present case and/or insisted by the complainants for the other office bearers also.**

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 the 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.”

(emphasis added)

10. In my view, the Petitioners had a reasonable excuse for not strictly complying the provisions of Section 75(2), (ii), (iii), (vii), (viii) and (2B) of the MCS Act on account of unique circumstance of non-availability of complete records of the Society due to non-co-operation by the Respondent No.4-Administrator. Petitioners after all are democratically elected managing committee members and if they are prevented from complying with the statutory provisions on account of non-co-operation by third party, they cannot automatically attract disqualification under provisions of Section 75(5) of the MCS Act. Both the Deputy Registrar as well as the Divisional Joint Registrar have not even considered the issue as to whether the justification put-forth by the Petitioner would fall within the meaning of the expression 'reasonable excuse' used under provisions of sub-section (5) of Section 75 of the MCS Act. The impugned orders passed by the Deputy Registrar and the Divisional Joint Registrar thus suffer from gross non-application of mind.

11. In my view therefore, the impugned orders suffer from twin vices of jurisdictional error *qua* violation of provisions of Section 75(1) and non-application of mind *qua* violation of provisions of Section 75(2) and (2B) of the MCS Act. The impugned orders are unsustainable and are liable to be set aside.

12. The Petition succeeds accordingly. Order dated 30 August 2024 passed by the Deputy Registrar and order dated 18 October 2024 passed by the Divisional Joint Registrar are set aside. The Petition is **allowed** in above terms. Rule is made absolute. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)

Digitally signed
by
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