MPBalekar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 18799 OF 2024

Sayyad Tayanoor Yakub and Anr. … Petitioners
V/s.
The Divisional Joint Registrar and Ors. … Respondent

ATUL GANESH KULKARNI
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Date: 2025.12.16 19:39:09 +0530

Mr. Prithviraj S. Gole along with S. R. Pednekar for the petitioners.

Kavita N. Solunke, Addl.G.P. along with S. L. Babar, AGP for the State – Respondent Nos. 1 & 2.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 16, 2025

P.C.:

1. **Rule.** Rule is made returnable forthwith.

2. By the present writ petition, the petitioners call in question the order dated 25 September 2024 passed by respondent No.2 and the judgment and order dated 5 November 2024 passed by respondent No.1.

3. The factual backdrop is not in dispute. In March 2022, the Corporation demolished the building of the society. An Administrator was thereafter appointed on 31 May 2022. For the year 2022–2023, the Administrative Board nominated certain respondents as members of the managing committee. The petitioners came to be elected as committee members on 17 September 2023. They assumed charge of the affairs of the society on 4 October 2023. The first meeting of the newly elected committee was held on 9 October 2023.

4. On 8 May 2024, the respondents instituted a complaint under Section 75 of the Maharashtra Cooperative Societies Act, 1960, alleging non-compliance for the financial year 2022–2023. On the basis of the said complaint, the petitioners were held disqualified. The revision preferred by the petitioners challenging the said disqualification also came to be dismissed.

5. Mr. Gole, learned Advocate for the petitioners, submitted that the alleged non-compliance pertains to the statutory obligations under Section 75 of the MCS Act, namely, completion of audit of accounts within four months from the close of the financial year and holding of the annual general meeting within six months from the end of the financial year. He submitted that the petitioners were elected only on 17 September 2023. Therefore, failure to conduct the audit or to hold the annual general meeting for the year 2022–2023 could not be attributed to them so as to invite disqualification. He further pointed out that although the petitioners were elected on 17 September 2023, they actually took charge on 4 October 2023 and convened a meeting on 9 October 2023.

6. He further submitted that these material facts were specifically brought to the notice of the revisional authority but were not considered. He contended that during the relevant period, the Administrator had appointed respondent Nos.3 and 4 along with one Mr. S. C. Kanojiya as committee members. According to him, the responsibility for compliance during the financial year 2022–2023 rested with them and not with the petitioners.

7. It is not in dispute that the petitioners have been disqualified on the ground of alleged non-compliance with Section 75 of the Maharashtra Cooperative Societies Act, 1960. The said provision requires that the books of accounts of the society be audited within four months from the close of the financial year and that the annual general meeting be held within six months from the end of the financial year.

8. The complaint admittedly relates to the financial year 2022–2023. The statutory period of four months for completion of audit would thus expire in July 2023. The period of six months for holding the annual general meeting would expire in September 2023. These timelines are fixed by statute and admit of no dispute on facts.

9. The record shows that the petitioners were elected as members of the managing committee on 17 September 2023. They assumed charge of the affairs of the society on 4 October 2023. Both these dates fall after the expiry of the statutory periods prescribed under Section 75 for the financial year 2022–2023. Therefore, the obligation to comply with Section 75 for that financial year had already matured and lapsed before the petitioners entered office.

10. A person can be held responsible only for acts or omissions which fall within the period of his authority and control. The petitioners could not have conducted an audit or convened an annual general meeting for a period when they were neither elected nor in charge of the society. To fasten such liability upon them would amount to imposing an obligation retrospectively, which the statute does not contemplate.

11. Significantly, the allegation is not in respect of the financial year 2023–2024. Had the default pertained to that period, the petitioners, being in charge of the society, could have been examined for responsibility under Section 75. However, the complaint confines itself only to the financial year 2022–2023. On admitted facts, the petitioners were appointed after the statutory deadlines had already expired. Prima facie, therefore, the disqualification could not have been attracted against them.

12. Section 75(5) of the MCS Act further makes it clear that disqualification is not automatic. The provision uses the expression "may", thereby conferring discretion upon the Registrar. Such discretion is required to be exercised judiciously and not mechanically. When discretion is vested by statute, the authority must consider the defence of the affected party and apply its mind to the relevant facts.

13. In the present case, the dates of election and assumption of charge by the petitioners are admitted and borne out by the record. These facts constituted the core of the defence raised by the petitioners. Once such defence was placed before the Registrar, it was incumbent upon him to examine whether, in view of these undisputed facts, the discretion ought to have been exercised in favour of the petitioners. The failure to undertake such examination vitiates the decision-making process and renders the order of disqualification unsustainable in law.

14. The learned Advocate for the contesting respondent has filed affidavit-in-reply, however, he is not present.

15. In my opinion, therefore, for the reasons stated above, the writ petition deserves to be succeeded. Hence, Rule is made absolute in terms of prayer clause (a).

16. The writ petition stands disposed of.

(AMIT BORKAR, J.)