IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 19539 OF 2024

Smt. Hemalatha Arunkumar Kagalkar
and anr. ....*Petitioners*

V/s.

The State of Maharashtra & Ors. ....*Respondents*

Mr. Rahul S. Kadam, *for the Petitioners.*

Mrs. Savita A. Prabhune, *for the Respondent Nos.1 to 3-State, Div.Joint Registrar and Dy. Registrar, Pune.*

Mr. Bhushan Raut, *for Respondent No.5.*

CORAM : SANDEEP V. MARNE, J.

Date : 7 January 2025.

P.C. :

1) The petition challenges the order dated 25 November 2024 passed by the Divisional Joint Registrar, Co-operative Societies, Pune dismissing Revision Application No. 402/2024 and confirming the order dated 10 October 2024 passed by the Deputy Registrar, Co-operative Societies, Pune City (4), Pune. The Deputy Registrar has cancelled membership of Chairman, Secretary and Treasurer of the Managing Committee and has further declared them ineligible for contesting elections or remaining members of the Managing Committee for a period of 2 years.

2) Out of the said three removed Managing Committee members, the present petition is filed by the Secretary, Smt. Hemlata Arunkumar Kagalkar and Treasurer, Mr. Mihir Jha. It appears that the disqualified Chairman, Smt. Dayanand has not challenged the order dated 10 October 2024 either before the Divisional Joint Registrar or before this Court.

3) I have heard Mr. Kadam, the learned counsel appearing for the Petitioners, Mr. Raut, appearing for Respondent No.5 and Mrs. Prabhune, the learned AGP appearing for Respondent Nos.1 to 3.

4) After having heard the learned counsel appearing for the parties and after perusal of the records of the case filed alongwith the petition, as well as the additional Affidavit, it is seen that under the provisions of Section 82 of the Maharashtra Co-operative Societies Act, 1960 (**M.C.S. Act**), the Petitioners, who are Managing Committee members, were under obligation to submit audit rectification report to the Registrar and in the meeting of the annual general body of the Society in the manner prescribed under Section 82 of the M.C.S. Act, which has undergone amendment w.e.f. 28 March 2022, and which provides thus :

> **82. Rectification of defects in accounts**
>
> (1) If the result of the audit held under the last preceding section discloses any defects in the working of a society, the society shall within three months from the date of the audit report, explain to the Registrar the defects or the irregularities pointed out by the auditor or auditing firm, and take steps to rectify the defects and provide remedy to irregularities, and report to the Registrar the action taken by it thereon and place the same before the next general body meeting. The Registrar may also make an order directing the society

or its offices to take such action, as may be specified in the order to remedy such defects, within the time specified therein.

(2) The Registrar or the person authorised by him shall scrutinise the audit rectification report and accordingly inform the society about such report within six months from the date of receipt thereof.

(3) It shall be the responsibility of the auditor or auditing firm concerned to offer his or its remarks, as the case may be, on the rectification report of the society, itemwise, till entire rectification is made by the society and submit his or its report to the Registrar.

(4) If, the society fails to submit the audit rectification report to the Registrar and to the annual general body meeting, the Registrar may by an order declare that any officer or member of the committee, as the case may be, whose duty was to submit the audit rectification report to the Registrar and the annual general body meeting, and who without reasonable excuse failed to do the aforesaid act, shall be disqualified for being elected or 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 upon him a penalty of an amount not exceeding five thousand rupees :

Provided that, before making such 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 against him.

5) Thus under the provisions of sub-section (4) of Section 82, in the event if the Society fails to submit the audit rectification report to the Registrar and in the annual general body meeting, the Registrar can declare the Managing Committee members, responsible for submitting audit rectification report to the Registrar and to the annual general body meeting, as disqualified for being elected or for being any officer or member of the committee for such period not exceeding five years. In the present case, it appears that the audit rectification report for the year 2022-23 was not placed before the annual general body meeting of

the Society held on 9 September 2023. Mr. Kadam would invite my attention to the minutes of the meeting of annual general body held on 9 September 2023 in which the relevant Resolution passed relating to report of the Auditor is as under :

> AG/Res No.03/2023
> Accounts audited by the statutory auditor for the year 2022-23
> The income expenditure account and balance sheet audited by the statutory auditor Mr. Vinod Deshmukh was placed in the general body for approval. The General Body was informed that this year there was a surplus. The Managing Committee has utilized the society fund very carefully and inspite of low maintenance the society had managed to make a profit without compromise in services.
> Unanimously passed.

6) The above Resolution does not indicate, in any manner, as to whether the 'audit rectification report' was indeed placed before the annual general body of the Society. Mr. Kadam would urge before this Court that the provisions of Section 82 have been newly amended and the Petitioners, being laymen, were not expected to be careful to couch the annual general body meeting resolution so as to reflect placing of the 'audit rectification report' before the General Body. Even if the contention of Mr. Kadam is to accepted as correct, the least that was required to be done by the Petitioners was to raise a specific contention in their reply filed before the Deputy Registrar that the audit rectification report for the year 2022-23 was indeed placed before the annual general body in the meeting held on 9 September 2023. However, neither in the reply filed before the Deputy Registrar nor in the memo of the Revision Application filed before the Divisional Joint Registrar, Petitioners ever contended that the audit rectification report was placed before the general body. Mr. Kadam would rely upon

ground clause (e) in the memo of the Revision Application filed before the Divisional Joint Registrar, which reads thus :

> (e)It ought to have been seen that the not a single contention are raised in the pleading about the ratification report of the 2023. In fact the ratification is already submitted to the office of the deputy registrar on 05.09.2023. same fact is not considered by the respondent No.1.

7) In my view, even ground clause-(e) does not contain any specific averment that the audit rectification report was placed before the annual general body meeting held on 9 September 2023.

8) In my view, therefore the Deputy Registrar and Divisional Joint Registrar have rightly held the Chairman, Secretary and Treasurer responsible for failure to place the audit rectification report before the annual general meeting.

9) Mr. Kadam would then urge that it is not mandatory that in every case, an order of disqualification must be passed against the members of the Managing Committee under the provisions of Section 82(4) and that the Deputy Registrar was required to exercise discretion considering the unique facts and circumstances of the present case. He would therefore submit that the Managing Committee members of all societies are yet to acquaint themselves with the newly introduced provisions of amended Section 82 of the Act which have come into effect on 28 March 2022 and considering the short time gap between 28 March 2022 and the date of the annual general meeting of 9 September 2023, the order of disqualification of the Petitioners is required to be set aside. His submission is referrable to use of the expression '*without reasonable excuse*' in subsection (4) of Section 82 of the Act. I am however unable to agree. If the provisions of unamended Section 82 are taken into consideration, the same appear to be harsher than the

amended provisions. Under the unamended Section 82, in the event of failure on the part of the Society to place the audit rectification report before the annual general meeting, the entire Managing Committee committed an offence under the provisions of Section 146 and became liable for imposition of penalty under Section 147 of the M.C.S. Act. Now the consequences are diluted and are limited to only such members of the Managing Committee who are actually responsible for non-placement of the audit rectification report before the annual general meeting. This is the reason why the disqualification action is not taken against all Managing Committee members but only against the Chairman, Secretary and Treasurer. Furthermore instead of provision for commission of offences under Section 146 and imposition of punishment under Section 147, the amended provision prescribe only the consequences of disqualification from being a member of the Managing Committee for a period upto 5 years. In the present case, by exercising the discretion, the Deputy Registrar has limited the period of disqualification only to 2 years. I therefore do not find any palpable error in the order passed by the Deputy Registrar as confirmed by the Divisional Joint Registrar.

10) Mr. Kadam would lastly invite my attention to the notice issued by the Deputy Registrar under the provisions of Section 77A of the M.C.S. Act, whereby steps are being initiated for appointment of Administrative Committee for managing the affairs of the Society. It appears that there were 13 Managing Committee members for the Society, out of which 10 members were elected. Three members are disqualified by order dated 10 October 2024 and out of the remaining 7 members, 3 Managing Committee members tendered their resignations. On account of this position, only 4 members of the Managing Committee remain as of now, on account of which the Deputy Registrar

has initiated action under the provisions of Section 77A for appointment of Administrative Committee from amongst the members of the Society. I am not inclined to interfere in the impugned order dated 10 October 2024 only because the same has indirect consequence of appointment of Administrative Committee on the Society. The Administrative Committee, if appointed would not only ensure management of day-to-day affairs of the Society but shall also ensure that the elections to the Managing Committee are conducted in a timely manner.

11) I am therefore not inclined to interfere in the impugned orders. The Writ Petition, being devoid of merits, is **rejected.**

NEETA SHAILESH SAWANT

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Date: 2025.01.08 11:32:38 +0530

[SANDEEP V. MARNE, J.]