



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.1568/2024

PETITIONERS :

1. Prabhakar Uttamrao Zod
Aged 48 years, Occu. Service, 5
R/o 53, Gulmohar Colony, Devmali
Post Narayanpur, Tq. Achalpur,
Distt. Amravati 444 806.
2. Sanjay Tulshiram Nage, 10
Aged 48 years, Occu. Service,
R/o Gajanan Colony, Near Prabodhan
School, Sai Nagar, Daryapur, Tq. Daryapur,
Distt. Amravati. 15
3. Mangesh Arunrao Kherde,
Aged 50 years, Occu. Service,
R/o 1, 'Asha', Suraj Colony,
Tower Line Road, V.M.V. Premise,
Amravati, Tq. & Distt. Amravati. 20
4. Manoj Ramesh Anandrao Chaurpagar
Aged 53 years, Occu. Service,
R/o 'Leelai', Uttam Nagar, Benoda,
Amravati, Tq. & Distt. Amravati. 25
5. Gaurav Dhamodarpant Kale,
Aged 36 years, Occu. Service,
R/o Ambada, Tq. Morshi,
Distt. Amravati. 30

...VERSUS...

RESPONDENTS :

1. The State of Maharashtra,
through its Secretary for Co-operative
and Textiles Department, Mantralaya,
Mumbai. 35
2. The State of Maharashtra, through
its Secretary for Law and Judiciary
Department, Mantralaya, Mumbai.

3. The Registrar and Commissioner of Co-operative Societies, Maharashtra State, Pune.
 4. The Divisional Joint Registrar of Co-operative Societies, Amravati Region, Amravati. 5
 5. The Amravati Zilla Parishad Shikshak Sahakari Bank Ltd. Bearing registration ATI/BNK/116 through its Chief Executive Officer, Congress Nagar Road, Near Railway Bridge, Amravati, Dist. Amravati. 10
 - Res/Intervenor- 6. Umesh alias Uttam S/o Ramdas Chunkikar. 15
 7. Vijay S/o Pralhadrao Kothale. 20
- Both are major, Members of Executive Committee, Amravati Zilla Parishad Shikshak Sahakari Bank Ltd. Amravati having Office of Congress Nagar, Near Railway Bridge, Amravati -444601. 25
- (Added R-5 to 7 vide Court's order dtd. 22/3/24)

WITH

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WRIT PETITION NO.1163/2024

PETITIONERS :

1. Prabhakar Uttamrao Zod
Aged 48 years, Occu. Service,
R/o 53, Gulmohar Colony, Deomali
Post Narayanpur, Tq. Achalpur,
Distt. Amravati. 35
2. Mangesh Arunrao Kherde,
Aged @ 50 yrs, Occ – Service, R/o Plot No.1,
“Asha”, Suraj Colony, V.M.V. Premises,
Amravati, Tq. & Dist. Amravati. 40

3. Sanjay Tulshiram Nage,
Aged @ 48 years, Occu. Service,
R/o Gajanan Colony, Near Prabodhan
School, Sai Nagar, Daryapur, Tq. Daryapur,
Distt. Amravati. 5
4. Manoj Ramchandrarao Chourpagar
Aged @ 53 years, Occu. Service,
R/o Leelai, Uttam Nagar, Benoda,
Amravati, Tq. & Distt. Amravati. 10
5. Gaurav Damodarpant Kale,
Aged @ 36 years, Occu. Service,
R/o Ambada, Tq. Morshi,
Distt. Amravati. 15

...VERSUS...

- RESPONDENTS** :
1. The State of Maharashtra,
Through its Minister for Co-operative
Marketing and Textiles Department,
Mantralaya, Mumbai. 20
 2. The Divisional Joint Registrar,
Co-operative Societies,
Amravati Region, Amravati, Tq. &
Dist. Amravati. 25
 3. The District Deputy Registrar of
Cooperative Societies, Amravati
District, Amravati, Tq. & Dist. Amravati. 30
 4. The Amravati Zilla Parishad Shikshak
Sahakari Bank Ltd. bearing Registration
ATI/BNK/116
Through its Chief Executive
Officer, Congress Nagar Road, Near
Railway Bridge, Amravati, Dist.
Amravati. 35

WITH

WRIT PETITION NO.1437/2024**PETITIONERS :**

1. Virandrabhau Walmikrao Jagtap
Aged 61 years, Director of
Amravati DCC Bank, R/o At Post
Jawala, Tah. Chandur Rly. Distt.
Amravati. 5
2. Shrikant Bhimraoji Gawande,
Aged 56 years, Director of 10
Amravati DCC Bank, R/o Near
Vitthal Mandir, Dattapur, Tah. &
Distt. Amravati.
3. Aniruddha @ Bablubhau Subhanrao 15
Deshmukh, Aged 62 years, Director of
Amravati DCC Bank R/o At Post
Talwel, Tah. Chandur Bazar, Distt.
Amravati. 20
4. Ravindra Vitthalrao Gaigole
Aged 57 years, Director of Amravati
DCC Bank, R/o Wanoja, Post Chincholi,
Tah. Anjangaon Surji, Distt. Amravati. 25
5. Haribhau Yadaorao Mohod
Aged 63 years, Director of Amravati
DCC Bank, R/o At Post Asara,
Tah. & Distt. Amravati. 30
6. Dayaram Sanu Kale,
Aged 57 years, Director of Amravati
DCC Bank, R/o At Post Gaurkheda
Bazar, Chikhaldhara, Tah. & Distt.
Amravati. 35
7. Purushottam @ Balasaheb Babasaheb
Alone, Aged 62 years, Director of Amravati
DCC Bank, R/o At Post Wani
Belkheda, Tah. & Distt. Amravati. 40
8. Prakash Babarao Kalbahnde,
Aged 64 years, Director of Amravati

DCC Bank, R/o Near Court, Suyog
Colony Camp, Tah. & Distt. Amravati.

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| 9. | Balwant Baswantrao Wankhede
Aged 66 years, Director of Amravati
DCC Bank R/o At Post Lehgaon,
Daryapur Tah. & Distt. Amravati. | 5 |
| 10. | Sudhakar Narayanrao Bharsakle
Aged 62 years, Director of Amravati
DCC Bank, R/o At Post Shivajinagar
Banosa, Daryapur, Tah. & Distt.
Amravati. | 10 |
| 11. | Suresh Bapuraoji Sabale,
Aged 73 years, Director of
Amravati DCC Bank, R/o Ward
No.1, At Post Shendola (kh),
Tah. Tiwsa, Distt. Amravatia. | 15 |
| 12. | Monika Sanjayrao Wankhede
(Mardikar) Aged 58 years,
Director of Amravati DCC Bank,
R/o At Mardi, Post Tiwasa,
Tah. & Distt. Amravati. | 20
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| 13. | Sunil Gopalrao Warhade,
Aged 58 years, Director of
Amravati DCC Bank, R/o At
Post Kamujja, Tah. & Distt. Amravati. | 30 |
| 14. | Surekha Surendra Thakre,
Aged 63 years, Director of
Amravati DCC Bank, R/o At Post
Jawala Shahapur, Tah. Chandur Bazar,
Distt. Amravati. | 35 |

...VERSUS...

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| <u>RESPONDENTS</u> : | 1. Divisional Joint Registrar,
Cooperative Societies, Sahakar Sankul,
Kantanagar, Amravati. | 40 |
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2. Shri Shankar Kumbhar,
Div. Jt. Registrar, Amravati.
3. Amravati District Central Coop. Bank
Ltd. Amravati. 5

[Added Respondent Nos.4 to 8
(pg. 4A and 4B)]
4. Nareshchandra Panjabrao Thakre, 10
aged 71 years, Occ. Agri. R/o At
Post Haterna, Tq. Warud, Distt.
Amravati.
5. Anand Nandkumar Kale, 15
aged 36 years, Occ. Agri. R/o At Post
Kushtha Bk., Tq. Achalpur, Distt.
Amravati.
6. Ajay Shankarrao Mehkare, 20
aged 61 years, Occ. Agri. R/o At Post
Kasbegavhan, Tq. Anjangaon Surji,
Distt. Amravati.
7. Jayprakash Dayaramji Patel, 25
aged 61 years, Occ. Agri. R/o At Post
Zilpi, Tq. Dharni, Distt. Amravati.
8. Sau. Chitratai Prashantrao Dahane 30
age 48 years, Occ. Agri. R/o At Post
Adgaon, Tq. Morshi, Distt. Amravati.
- (Amended as per Court's order
dated 08.03.2024) 35

Mr. S.P. Dharmadhikari, Senior Counsel a/b. Mr. S.M. Vaishnav, Counsel for the petitioners
in WP No.1568/2024 & W.P. No.1163/2024

Mr. M.V. Samarth, Senior Counsel a/b. Mr. V.P. Ingle, Counsel for the petitioners in
WP No. 1437/2024 40

Mr. S.M. Ukey, Addl.G.P. for the respondents/State,
Mr. Sharad Thakare, Counsel h/f. Mr. S.J. Kadu, Counsel for respondent No.4 in
WP No.1163/2024

**CORAM : AVINASH G. GHAROTE AND
ABHAY J. MANTRI, JJ.**

Date of reserving the Judgment : 20/01/2025

Date of pronouncing the Judgment : 27/01/2025

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J U D G M E N T : (PER : AVINASH G. GHAROTE, J.)

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Counsels for the parties.

2. The respondent Nos.6 and 7, have filed a pursis on record dated 12/08/2024, in terms of which, it has been stated that they do not wish to contest the claim of the present petitioners and want their names to be deleted from the array of respondents, on account of which none appears for them.

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3. Writ Petition No.1568/2024 challenges the minutes of the special meeting dated 04/01/2024 (pg.138), in which the Motion of No Confidence raised in pursuance to a requisition given by the committee members has been passed and the petitioners have been removed as members of the Managing Committee on that count. It is also necessary to note that challenge to the constitutional validity of the provisions of the Maharashtra Co-operative Societies Act, 1960 as

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raised in this petition, the same was given up, which stands recorded in the order dated 06/08/2024.

4. Mr. S.P. Dharmadhikari, learned Senior Counsel with Mr. S.M. Vaishnav, learned Counsel for the petitioners invites our attention to the provisions of Section 73-1D(1) of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as the “MCS Act”), the language of which, according to him, would dis-entitle the Managing Committee from considering such a Motion of No Confidence. According to learned Senior Counsel, such a motion can only be considered by the electoral College, which has elected the petitioners to the Managing Committee and not otherwise. He specifically relies upon the phrase “who are entitled to vote at the election of such officer” occurring in Section 73-1D(1) of the MCS Act. He further submits, that such an argument is supported by the language of Rule 57-A of the Maharashtra Co-operative Societies Rules, 1961 (hereinafter referred to as the “MCS Rules”), which relates to Motion of No Confidence against the officers of the society. The learned Senior Counsel further submits, that since the election to the Managing Committee is from different constituencies, it is only that constituency which has elected a person to the Managing Committee, which would have the authority to consider the Motion of

No Confidence and none other, for which purpose he relies upon the declaration dated 07/07/2022 issued by the Election Office (pg. 32), which according to him, demonstrates that the petitioners have been elected to the Managing Committee from different constituencies as indicated therein, the names of the petitioners being at Sr. Nos.4, 7, 5 9, 18 and 19. The learned Senior Counsel also relies upon the definition of “Committee” as occurring in Section 2(7) of the MCS Act in support of his contention. He further submits, that since the election of a person to the Managing Committee is by a particular constituency, to contend that such a person can be removed only by 10 the Managing Committee members, by way of requisition, would not only be absurd but would negate the will of the constituency, which had elected him to the said post. There are 21 members in the Managing Committee as against which there are total 8174 members of the society, all of whom, vote to elect a person to the Managing 15 Committee based upon the constituency which are either open or reserved. It is, therefore, contended relying upon *Vipulbhai M. Chaudhary Vs. Gujarat Cooperative Milk Marketing Federation Limited and others (2015) 8 SCC 1*, paras 16, 18 to 20, that the Motion of No Confidence, which has been passed by the Managing 20 Committee, in fact, is legally infirm and cannot be sustained.

5. In Writ Petition No.1437/2024, Mr. M.V. Samarth, learned Senior Counsel for the petitioners submits, that the notice of No Confidence Motion which was moved by 14 out of 21 Managing Committee members, has been rejected to be put to vote by the Divisional Joint Registrar-respondent No.1 by the order dated 20/2/2024 (pg.41), on the ground that, it ought to have been moved not by the members of the Managing Committee, but by the Electoral College, which had elected the person to be a member of the Managing Committee (pg.44). Learned Senior Counsel by relying upon *Gokuldas s/o Shriramji Raut & Ors. Vs. The Divisional Joint Registrar Co-operative Societies, Amravati and others [Writ Petition No.2451/2023, decided on 09/11/2023 (pg.31)]* submits, that the issue has already been decided, by holding that the definition of the word “officer” as contained in Section 2(20) of the MCS Act would include a duly elected director of the Managing Committee and therefore, the provisions of Section 73-1D of the MCS Act would be equally applicable to him, on account of which, the order dated 20/02/2024 (pg. 41) passed by the respondent No.1 cannot be sustained.

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6. The learned Additional Government Pleader for the State submits, that if the language of Section 73-1D(1) of the MCS Act in

conjunction with Rule 57A of the MCS Rules is considered, it would be apparent that it is the Managing Committee members who would be entitled to move the Motion of No Confidence and consider it, either for accepting or rejecting it rather than the Electoral College, which has elected the members to the Managing Committee.

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7. The relevant provisions of the Maharashtra Co-operative Societies Act, 1960, which require consideration are quoted as under :

“Section 2(7) “committee” means the committee of management or board of directors or the governing body or other directing body of a co-operative society, by whatever name called, in which the management of the affairs of a society is entrusted;

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Section 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 chairman, vice-chairman, 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;

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Sec.73-1D. Motion of no-confidence against officers of societies

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(1) An officer who holds office by virtue of his election to that office shall cease to be such officer, if a motion of no-confidence is passed at a meeting of the committee by two-third majority of the total number of committee members who are entitled to vote at the election of such officer and his office shall, thereupon be deemed to be vacant.

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(2) The requisition for such special meeting shall be signed by not less than one-third of the total number of members of the

committee who are entitled to elect the officer of the committee and shall be delivered to the Registrar. The requisition shall be made in such form and in such manner as may be prescribed :

Provided that, no such requisition for a special meeting shall be made within a period of six months from the date on which any of the officers referred to in sub-section (1) has entered upon his office.]

(3) The Registrar shall, within seven days from the date of receipt of the requisition under sub-section (2), convene a special meeting of the committee. The meeting shall be held on a date not later than fifteen days from the date of issue of the notice of the meeting.

(4) The meeting shall be presided over by the Registrar or such officer not below the rank of an Assistant Registrar of Co-operative Societies authorised by him in this behalf. The Registrar or such officer shall, when presiding over such meeting, have the same powers as the President or Chairman when presiding over a committee meeting has, but shall not have the right to vote.

(5) The meeting called under this section shall not, for any reason, be adjourned.

(6) The names of the committee members voting for and against the motion shall be read in the meeting and recorded in the minute book of committee meetings.

(7) If the motion of no-confidence is rejected, no fresh motion of no-confidence shall be brought before the committee within a period of one year from the date of such rejection of the motion.

Rule 57A. Motion of no-confidence against the officers of the society –

(i) The requisition to call the special meeting of the committee of a society to consider a motion of no-confidence against the President, Vice-President, Chairman, Vice Chairman, Secretary, Treasurer or other officer of the society, by whatever designation called, who holds office by virtue of his elections to that office, shall be made in Form M-18. The requisition shall be accompanied by:-

(a) the grounds of no-confidence;

(b) the text of the motion of no-confidence to be moved;

(c) the name of the committee members who shall move the motion of non-confidence;

(d) a list of members of the committee specifying their full names, and address who are, for the time being, entitled to sit and vote at any meeting of the committee;

(e) signatures of the members of the committee who are signing the requisition duly attested by the Chief Executive Officer of the society or Special Executive Magistrate or Executive Magistrate or any Gazetted Officer of the Government.

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(2) The requisition referred to in sub-rule (1) shall be delivered in person to the Registrar. Such requisition or requisitions shall be delivered in duplicate in each case. The Registrar on ascertaining that the requisition or requisitions as the case may be, have been signed by not less than 1/3rd members of the committee who for the time being are entitled to sit and vote in any meeting of the committee of society;-

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(a) receive and acknowledge the requisition under his signature with date and time.

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(b) issue notice, within 7 days from the date of receipt of the requisition, convening, the special meeting for that purpose specifying therein place, date, time, name and designation of the officer who shall be presiding over such meeting, to all the members of the committee, the presiding officer and the Managing Director, General Manager, Manager, Paid Secretary, Group Secretary or such employee of the society, to whom the Registrar has directed to produce minute book of committee meetings of the society. This notice of no-confidence shall also be issued, to the Officer or officers against whom the motion of no-confidence is being moved, and shall be accompanied by the copy of the requisition alongwith enclosures and agenda.

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(c) The Registrar shall direct the Managing Director, General Manager, Manager, Paid Secretary, Group Secretary or any other employee to deliver in person the minute book Of the committee meetings on the date, time and place of the meeting, to the Presiding Officer.

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(d) The Registrar shall send a notice under certificate of posting, to all the persons concerned. However, he shall serve or cause to be served the notice on the officer or officers against whom the motion of no-confidence is proposed to be moved through the special messenger or the officer or officers, as the case may be, or in his or their absence on any adult member of his or their families at the place of residence. If for some reason it is not possible to serve the notice, the authorised person in this behalf, shall in presence of two

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witnesses, affix such notice on any conspicuous place of the residence.

(e) copies of this notice shall be displayed on the Notice Board of the Registrar, the Presiding Officer and the society. Such display of the notice on the notice board of the Registrar and the Presiding Officer shall be the conclusive proof that such notice has been served on all concerned.

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(3) Notwithstanding anything contained in the bye-laws of the society regarding the procedure for convening and holding meeting and recording of minutes, the procedure adopted by the Registrar, the Presiding Officer and the Authorised Officer under sub-rule (2), shall be deemed to be the proper procedure under the provisions of bye-laws of the society.

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(4) If the Registrar deems it necessary, he shall require any Officer of the society to furnish any information to him and it shall be obligatory on the part of such officer to furnish such information. On failure of the officer to furnish the information, the Registrar may get it through any person authorising in that behalf. This failure on part of the officer of the society shall be construed as non-compliance of provisions as contemplated under sub-section (1) of Section 79. However, in case of the officer of the society who holds that office by virtue of his election, including the member of the committee of management, it shall be construed as breach of provisions under sub-section (1) of Section 79 and negligence of performance of duties imposed by the Registrar as contemplated under subsection (1) of Section 78.

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(5) The time of the meeting shall be between Office hours of the authorised officer. The meeting shall be held either in the office of the society or at any other place which may, as far as possible, be public place or any other place specified by the District Deputy Registrar.

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(6) No other subject, except the motion or motions of no-confidence shall be kept on the agenda.

(7) The Registrar or the officer authorised to preside over the meeting shall,

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(a) announce or cause to be announced the commencement of the meeting,

(b) take possession of the minute book of the committee meetings from the officer of the society. However, for some reasons, if it is not possible for him to take possession of the minute book of the committee meetings of the society, at the commencement of the meeting, he shall record proceedings in

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the register kept for that purpose in his office. The text of the minutes of the meeting recorded in the minute book kept in the office of the Registrar shall be incorporated in the minute book of the society.

(c) record the date, time, place, names of members of the committee present at the commencement of the meeting, in the minute book of the society or kept by him, as the case may be, in his own hand and cause all the members of the committee who are present, to sign it and it shall be obligatory on their part to do so. The signature of the members on the minute book shall be the concrete proof of their attendance.

(d) not allow any other person to enter the place of meeting except the person or persons appointed to assist him, the officer of the society who has produced the minute book, the officer or officers against whom the motion of no-confidence is moved, the members of the committee who are for the time being entitled to sit and vote in any meeting of the committee, who are present at the commencement of the meeting and police officer or officers if called by him to maintain the law and order.

(e) record or cause to be recorded, the proceedings of the meeting and thereafter allow those members who desire to sign the proceedings. Signature of the members on the minute book shall be the conclusive proof of their attendance.

(f) not allow the discussions on any other subject than the subject on agenda.

(g) declare the motion or motions as rejected and take a note to that effect with reasons, in the minute book under the following circumstances;—

(i) if no member of the committee present;

(ii) none of the members of the committee, who are present refuse to sign the requisition;

(iii) 2/3rd members are not present at the commencement of the meeting (i) 2/3rd is fraction, it shall be rounded to next higher number.

(h) (i) read or cause to be read the text and grounds of no-confidence motion and allow any of the member, who have signed the requisition to move the motion and to speak in support of the motion.

(ii) allow the member against whom no-confidence motion is moved or any other member on his behalf to defend.

(i) put the motion to vote and declare the results as laid down in sub-section (6) of Section 73ID.

(j) the Presiding Officer shall not speak or give any decision on the merit or otherwise of no-confidence motion.

(k) issue certificate in Form M-19 in favour of the society.”

8. What is necessary to note is that Section 2(20) of the MCS Act defines the word ‘officer’, in an inclusive manner, and includes within its scope and ambit a person elected to any office of such society according to its bye-laws and includes any member of the committee also. Thus a member elected to the Managing Committee from any constituency or electoral college, whatsoever, would be an officer within the meaning of the word as defined in Section 2(20) of the MCS Act. 5 10

9. Section 73-1D of the MCS Act, speaks of a Motion of No Confidence against officers of societies, which would thus also mean a vote of no-confidence against a member of the Managing Committee, in view of the definition of the word ‘officer’, as contained in Section 2(20) of the MCS Act. Section 73-1D(1) of the MCS Act, uses the expression ‘An officer who holds office by virtue of his election to that office’, which expression would also include a person elected as a member of the Managing Committee, to which he is duly elected by the Electoral College of the constituency from which he has contested, for, a member elected to the Managing 15 20

Committee, would equally be an officer of the Society, within the meaning of the word ‘officer’, as defined in Section 2(20) of the MCS Act. Section 73-1D(1) of the MCS Act, further contemplates the passing of a Motion of No Confidence against such officer, at a meeting of the Managing Committee, by two-third majority of the total number of committee members. Section 73-1D(3) mandates the Registrar to convene a special meeting of the Committee, which would mean the Managing Committee, to consider such Motion of No Confidence against an officer of the Society. Further Section 73-1D (4) mandates that the Registrar has to preside over such meeting and while doing so, shall have the same powers as the President or Chairman when presiding over a Committee meeting has, vote. Section 73-1-D (6) then requires the reading of the names of the Committee members voting for and against the motion in the meeting and recorded in the minute book of committee meetings. All this would indicate that the Motion of No Confidence as contemplated by the provisions of Section 73-1D of the MCS Act, has to be moved by the Managing Committee members, considered and put to vote in the special meeting of the Managing Committee, to be held by the Registrar for this purposes and read and recorded in the minute book of the Committee meetings. This would unequivocally demonstrate that the meeting for no-confidence of a member of the Managing

Committee of the Society, in terms of the mandate of Section 73-1D of the MCS Act, has to be considered and voted for in the special meeting of the Managing Committee, itself and is not required to be put before or considered by the constituency or the electoral College, which had elected such 'officer', to be a member of the Managing Committee. 5

10. The above position is fortified by the language of Rule 57A of the MCS Rules which delineates how such Motion of No Confidence is to be considered. Rule 57A(1) provides that the Motion 10 of No Confidence is to be considered in the special meeting of the Committee of a Society, which in view of the definition of the word 'Committee', as occurring in Section 2(7) of the MCS Act, would mean the Managing Committee alone and none else. It further provides that such a requisition for no confidence against an officer of 15 the Society has to be accompanied by the names of the Committee members, who have moved the Motion of No Confidence [Rule 57A (1) (c) of the MCS Rules, 1961] ; a list of members of the Committee specifying their full names, address, who are for the time being entitled to sit and vote at any meeting of the Committee [Rule 57-A 20 (1)(d)]; signatures of the members of the Committee who are signing the requisition duly attested by the CEO of the Society [Rule 57A (1)

(e)]. Rule 57A (2) requires the Registrar to verify that the requisition have been signed by not less than 1/3rd members of the Committee, who for the time being are entitled to sit and vote in any meeting of the Committee of the Society. Rule 57A (2) (b) of the MCS Rules, 1961 requires the Registrar to issue notice for convening a special 5 meeting of the Committee, to be given to all members of the Committee and other officers as specified therein. Rule 57A (2)(c) empowers the Registrar to issue directions for delivery of the minute book of the Committee meetings to the Presiding Officer. Rule 57A (2)(d) requires the Registrar to send a notice to all concerned and 10 ensure its service. Rule 57A (3) gives precedence and validity to the procedure adopted under Rule 57A (2), over any procedure which may have been prescribed by the bye laws of the Society. Rule 57A (7)(c) enjoins on the Registrar to record the date, time, place, names of members of the committee present at the commencement of the 15 meeting in the minute book of the society and cause all members who are present to sign it, as proof of their attendance. Rule 57A (7)(d) enjoins upon the Registrar to ensure only the committee members and other persons as indicated therein to be present in such meeting to consider the no-confidence motion. 20

11. Thus, a combined reading of the provisions of Section 73-1D of the MCS Act and Rule 57-A of the MCS Rules would indicate that the Motion of No Confidence against an officer of the Society, who is a member of the Managing Committee, can only be considered and voted for in the special meeting of the Managing Committee of the Society and nowhere else. 5

12. Though Section 73-1D(1) also uses the expression 'who are entitled to vote at the election of such officer', based upon which, it is contended that such Motion of No Confidence can only be considered by the constituency or electoral college from which the officer/member came to be elected, We, however, find that the said expression has to be construed and understood in light of the scheme and purpose for which Section 73-1D of the MCS Act is enacted. As discussed above, the provisions of Section 73-1D of the MCS Act and Rules 57A of the MCS Rules, in clear and specific words indicate the intention of the Legislature that any Motion of No Confidence of an officer of the Society, has to be requisitioned, considered and passed or rejected in the special meeting of the Committee, the aforesaid expression, will have to be read in a harmonious and purposeful manner, in consonance with the intent and purpose for the removal of an officer by a no-confidence motion. It is equally necessary to bear in 10 15 20

mind that the no-confidence is for the purpose of removing the officer from the Managing Committee, to which such officer, has been elected and such a motion, therefore, has to be necessarily be considered by the Managing Committee and none else. To hold that such a motion, has to be considered by the Constituency or the Electoral College, from which such officer was elected to the Managing Committee, would mean that such removal has only to be on a referendum by such Constituency or the Electoral College, which is not the intent and purpose of Section 73-1D of the MCS Act and Rules 57 A of the MCS Rules, as is spelt out from a reading of the language of these provisions. Had it been so, the Legislature would not have repeatedly used the word 'committee' in Section 73-1D of the MCS Act and Rules 57 A of the MCS Rules, as it cannot be said to be oblivious of the definition of the word, as defined in Section 2(7) of the MCS Act.

13. Though Section 73-1D(2) of the MCS Act mandates that the requisition for such special meeting for considering the Motion of No Confidence has to be signed by not less than one-third (1/3rd) of the total members of the Committee, who are entitled to elect the officer of the committee, the same reasoning as is spelt out in para supra, while considering the expression 'who are entitled to vote at

the election of such officer', as occurring in Section 73-1D(1) will equally apply.

14. There is no other provision in the MCS Act or the Rules framed thereunder, which shed any light on the issue and support the contention raised by Mr. Dharmadhikari, learned Senior Counsel for the petitioners in Writ Petition No.1568/2024, which has been brought to our notice. 5

15. We have also perused the objects and reasons of the Maharashtra No.XX of 1986, by which Section 73-1D came to be inserted in the MCS Act, by virtue of Section 28 of the amending Act. It also supports our conclusion above, as it states that Section 73-1D makes provisions for removal of office bearers of the Societies on a Motion of No Confidence passed by the Committee. 10 15

16. Though reliance has been placed on ***Vipulbhai M. Chaudhary*** (supra) by Mr. Dharmadhikari, learned Senior Counsel for the petitioners in Writ Petition No.1568/2024, to contend that the Courts cannot add to or delete from the Statute, however, in ***Vipulbhai M. Chaudhary*** (supra) the Hon'ble Apex Court was considering a situation where there was absence of procedure in the 20

State law, for removal of a member on account of a Motion of No Confidence against such member, and therefore had issued the following directions :

“52.2. Having regard to the set-up in local self-governments prevailing in many of the States as above, we direct that in the case of cooperative societies registered under any Central or State law, a motion of no-confidence against an office-bearer shall be moved only after two years of his assumption of office. In case the motion of no-confidence is once defeated, a fresh motion shall not be introduced within another one year. A motion of no-confidence shall be moved only in case there is a request from one-third of the elected members of the Board of Governors/Managing Committee of the cooperative society concerned. The motion of no-confidence shall be carried in case the motion is supported by more than fifty per cent of the elected members present in the meeting.”

It is however equally necessary to note that at the same time, this is also what has been said :

“51. The cooperative society registered under the Central or the State Act is bound to function as a democratic institution and conduct its affairs based on democratic principles. Democratic functioning on democratic principles is to be reflected in the respective Acts or Rules or bye-laws both on the principle and procedure. If not, it is for the court to read the democratic principles into the Act or Rules or bye-laws. If a procedure is prescribed in any Act or Rule or bye-law regarding election of an office-bearer by the board, as defined under Article 243-ZH(b) of the Constitution of India, and for removal thereof, by way of a motion of no-confidence, the same procedure has to be followed. In case there is no express provision under the Act or Rules or bye-laws for removal of an office-bearer, such office-bearer is liable to be removed in the event of loss of confidence by following the same procedure by which he was elected to office.”

17. In the instant matter, we have in terms of Section 73-1D of the MCS Act and Rule 57-A of the MCS Rules a complete special procedure prescribed by the Statute and Rules for removal of an 'officer' by way of a Motion of No Confidence and therefore, such procedure, would have to be followed. 5

18. Though it is also contended that the decision dated 04/01/2024, by which the Motion of No Confidence has been accepted by the Committee, has been set aside by the General Body, in the Annual General Meeting said to have been held on 10 18/08/2024, by way of Resolution No.18/2, We find that neither the provisions of Section 73-1D of the MCS Act nor the procedure prescribed in Rule 57A of the MCS Rules, mandate any approval of the General Body for the acceptance of the Motion of No Confidence to be approved or accepted by the General Body, in any Annual or 15 Special Meeting. There is no Statutory mandate for this, in absence of which in our considered opinion, nothing turns upon the decision of the General Body as taken in the Annual General Meeting, dated 18/08/2024. In fact, Rule 57-A(3) of the MCS Rules mandates that the procedure as provided in Rule 57-A(2) of the Rules shall be 20 deemed to be the proper procedure under the provisions of the bye-laws of the Society, which, in turn would mandate that whatever is

done in terms of Section 73-1-D of the MCS Act and Rule 57-A of the MCS Rules will have an overriding effect over what has been stated in the bye-laws of the Society and will be the correct procedure for all purposes. This, in turn, necessarily mandates that what has been done in terms of the provisions of Section 73-1-D of the MCS Act and Rule 57-A of the MCS Rules, cannot be undone by the Society by following any procedure under its bye-laws. Thus, what we have said above regarding the decision of the General Body as taken in the Annual General Meeting, dated 18/08/2024, stands. The position in Writ Petition No.1163/2024 is also similar, as is evinced by the removal of petitioners by a No Confidence Motion passed in the meeting of the Committee.

19. We, therefore, find that the removal of the petitioners in Writ Petition No.1568/2024 and Writ Petition No.1163/2024, are after following the procedure as prescribed in terms of Section 73-1D of the MCS Act and Rule 57-A of the MCS Rules, which cannot be faulted with, in light of which, we do not see any reason to interfere in the minutes of the special meeting dated 04/01/2024 (pg.138), in which the Motion of No Confidence raised in pursuance to a requisition given by the Committee members has been passed and the petitioners have been removed as members of the Managing

Committee on that count. Writ Petition No.1568/2024 and Writ Petition No.1163/2024 are therefore dismissed.

20. Insofar as Writ Petition No.1437/2024, is concerned, the notice of No Confidence Motion which was moved by 14 out of 21 Managing Committee members, has been rejected to be put to vote by the Divisional Joint Registrar/respondent No.1 by the order dated 20/02/2024 (pg.41), on the ground that, it ought to have been moved not by the members of the Managing Committee, but by the Electoral College, which had elected the person to be a member of the Managing Committee (pg.44).

21. Though ***Gokuldas Shriramji Raut*** (supra), has been relied upon by Mr. Samarth, learned Senior Counsel for the petitioners in Writ Petition No.1437/2024, we find that it was decided on a different premise altogether, wherein the consideration was whether an elected Director of a Bank was an 'officer' within the meaning of the definition as contained in Section 2(20) of the MCS Act, which was answered in the affirmative. In the instant matter, that is not the controversy at all, on account of which, no benefit can be derived by Mr. Samarth, learned Senior Counsel from ***Gokuldas Shriramji Raut*** (supra).

22. However, in light of the discussion we have made above, in relation to Writ Petition No.1568/2024 and Writ Petition No.1163/2024 and the conclusion which we have arrived, that a Motion of No Confidence against an 'officer', of the Society, has to be considered and decided by the Committee as defined in Section 2(7) of the MCS Act, in view of the mandate of Section 73-1D of the MCS Act and Rule 57-A of the MCS Rules, the impugned order, dated 20/02/2024 (pg.41 of Writ Petition No.1437/2024)) by the respondent No.1, therein cannot be sustained and is hereby quashed and set aside and the respondent No.1 is directed to proceed with the consideration of the notice of no-confidence in terms of the provisions of Section 73-1D of the MCS Act and following the procedure as provided in Rule 57-A of the MCS Rules. Writ Petition No.1437/2024, is allowed in the above terms.

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23. Rule is made absolute in the aforesaid terms. Considering the circumstances, there shall be no order as to costs.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)

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