



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 1495 OF 2025

Shashikant Balkrushna Gaikwad, Aged about 57 years, Occu.
Service, R/o Maratha Nagar, Akola, Tah.and District Akola.

PETITIONER

VERSUS

1. The Hon'ble Minister, Co-operation Department,
Government of Maharashtra, Mantralaya, Mumbai-32.
2. The Divisional Joint Registrar, Cooperative Societies,
Amravati, Tah. and District Amravati.
3. District Deputy Registrar of Cooperative Societies,
Akola, Tah.and District Akola.
4. Nilesh Vasantrao Kale, Aged Major,
R/o Akot, Tah. Akot, Distt. Akola.
5. Akola Zilla Parishad Prathamik Shikshak Sahakari Pat
Sanstha Ltd., Akola, Near Maheshwari Bhawan, Akola,
Tq. and Distt. Akola.
6. Maroti Laxmanrao Warokar, Aged:Major, R/o Leelai
Sankul, Dairy Road, Dwarka Nagri, Akola, Distt.Akola.

RESPONDENTS

Shri M.G. Bhangde, Senior Advocate with Shri R.D. Karode, Counsel for the petitioner.
Ms PC. Bawankule, Assistant Government Pleader for the respondent nos.1 to 3.
Shri C.S. Kaptan, Senior Advocate with Shri A.M. Ghare, Counsel for the
respondent no.4.
Shri A.D. Gabhane, Counsel for the respondent no.5.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE ON WHICH ARGUMENTS WERE HEARD : SEPTEMBER 29, 2025

DATE ON WHICH JUDGMENT IS PRONOUNCWED : NOVEMBER 04, 2025

JUDGMENT

Heard Shri M.G. Bhangde, learned Senior Advocate for the petitioner,
Ms PC. Bawankule, learned Assistant Government Pleader for the respondent
nos.1 to 3, Shri C.S. Kaptan, learned Senior Advocate for the respondent
no.4 and Shri A.D. Gabhane, learned counsel for the respondent no.5.

2. While advancing submissions on the application for vacation of
interim relief, the counsel for the respective parties have advanced their
arguments for final disposal of the writ petition at the stage of admission.

Hence, **RULE.** Rule made returnable forthwith.

3. The controversy in the present petition arises from the challenge to disqualification of the petitioner as a Member of respondent no.5–Akola Zilla Parishad Prathamik Shikshak Sahakari Pat Sanstha Ltd., Akola (for short, ‘the respondent no.5-Society’) incurred under Section 73A of the Maharashtra Cooperative Societies Act, 1960. The issue is whether the petitioner stood disqualified on the ground that that he has tendered his resignation from the post of Director of the Managing Committee of Dr. Babasaheb Ambedkar Zilla Parishad Magasvargiya Karmachari Sahakari Pat Sanstha Ltd., Akola-Washim, after the stipulated period i.e. after ten days from the date on which the result of the last election was declared.

4. The writ petition raises a challenge to the order passed by the respondent no.1-Hon’ble Minister who has upheld the orders passed by the District Deputy Registrar and the Divisional Joint Registrar holding the petitioner to be disqualified from being Member of the respondent no.5-Society. The controversy revolves around disqualification incurred on two separate counts; under Section 73A(1) and under Section 73CA of the Maharashtra Cooperative Societies Act, 1960 (for short, ‘the Act of 1960’).

5. Shri M.G. Bhangde, learned Senior Advocate for the petitioner primarily submitted that there is no basis for any disqualification under Section 73A and that provisions of Section 73A of the Act of 1960 are not at all attracted since the petitioner has never acted as a ‘designated officer’ of two societies at a time. He, therefore, submitted that the impugned orders are grossly unsustainable being passed without considering the purport of Section 73A of the Act of 1960.

6. To delve into the controversy, the background facts with particular reference to the dates are succinctly put as under:-

- i. On 26.12.2021, the election of Managing Committee of Dr.Babasaheb Ambedkar Zilla Parishad Magasvargiya Karmachari Sahakari Pat Sanstha Ltd. Akola-Washim were held and the petitioner was elected as Member of the Managing Committee in the said election.
- ii. On 10.01.2022, the petitioner came to be elected as a Director of Managing Committee of the respondent no.5-Society.
- iii. On 23.01.2022, the petitioner was elected as Chairman of the respondent no.5-Society.
- iv. On 24.01.2022, the petitioner resigned from the post of Member of the Managing Committee of Dr.Babasaheb Ambedkar Zilla Parishad Magasvargiya Karmachari Sahakari Pat Sanstha Ltd. Akola-Washim.
- v. On 21.03.2022, the respondent no.6 sought disqualification of the petitioner alleging that the petitioner had incurred disqualification on two counts, viz. (1) disqualification under Section 73A for failure to submit the resignation within ten days; and (2) disqualification for breach of Rule F-1.4 of the bye-laws of the respondent no.5-Society since the balance service left was less than five years.
- vi. The District Deputy Registrar issued a show cause notice dated 10.05.2022 to the petitioner calling upon him to show cause as to why he should not be disqualified under Section 73A(2) of the Act of 1960. Pertinently, the show cause notice is with respect to disqualification under Section 73A of the Act of 1960 only.
- vii. On 12.12.2022, the petitioner filed his reply to the show cause notice with respect to disqualification on both the grounds.

viii. On 15.12.2022, District Deputy Registrar passed an order declaring the petitioner as disqualified under Section 73A of the Act of 1960.

ix. Feeling aggrieved by this order, the petitioner filed an appeal under Section 152 of the Act of 1960 before the Divisional Joint Registrar. During the pendency of the appeal, an interim order was passed staying the effect of disqualification and the petitioner continued on his post. The respondent no.4 herein, Mr.Nilesh Kale, filed an application for intervention in the said appeal which was allowed.

x. On 18.06.2024, the Divisional Joint Registrar passed final order and held that the petitioner stood disqualified under Section 73A and also under Section 73CA of the Act of 1960.

xi. The petitioner then filed revision application before the respondent no.1-Hon'ble Minister challenging the orders passed by the District Deputy Registrar and the Divisional Joint Registrar.

xii. By order dated 14.02.2025, the revision application filed by the petitioner came to be rejected.

xiii. The petitioner has challenged the orders passed by the District Deputy Registrar, the Divisional Joint Registrar and the Hon'ble Minister by way of instant writ petition.

7. On 24.03.2025, this Court had passed an interim order thereby granted stay to all the three impugned orders and resultantly, the petitioner is holding the post of Director of the respondent no.5-Society.

8. On 26.03.2025, the respondent no.4 had filed an application for vacation of the *ex-parte* interim order passed in this writ petition to which the petitioner has filed reply dated 29.03.2025.

9. Both learned Senior Advocates for the respective parties advanced elaborate arguments by inviting attention to the relevant documents filed on record and the relevant provisions of the Act of 1960. The crucial issue involved in the petition is whether the petitioner stands disqualified as member of respondent no.5-Society.

10. Shri M.G. Bhangde, learned Senior Advocate for the petitioner vehemently submitted that the impugned orders passed by the District Deputy Registrar, the Divisional Joint Registrar and the Hon'ble Minister are unsustainable in law being passed by misreading the provisions of Section 73A of the Act of 1960. He submitted that the authorities have held the petitioner to be disqualified under Section 73A of the Act of 1960, without considering the most crucial fact that the petitioner was never a designated officer of two societies at a time, which is a primary requirement for incurring disqualification. He submitted that the petitioner was elected as Member of the Managing Committee of the first Society on 26.12.2021 and he was elected as Member of the Managing Committee of the second Society, i.e. the respondent no.5, on 10.01.2022. The petitioner was thereafter elected as Chairman of the respondent no.5 on 23.01.2022 and immediately on next day i.e. on 24.01.2022, he tendered his resignation from the post of Member, Managing Committee of the first society.

11. He adverted my attention to definition of the term 'designated officer' as stated in sub-Section 1 of Section 73A of the Act of 1960 and submitted that the said Section is not at all attracted in the instant case. In order to understand the submission, the said sub-Section is reproduced below:-

“73A. Disqualification for being designated officer simultaneously of certain categories of societies.

(1) In this Section, ‘a designated officer’ means the Chairman and the President, and includes any other officer of the society as may be declared by the State Government, by notification in the Official Gazette, to be a designated officer, but does not include, any officer appointed or nominated by the State Government or by the Registrar.”

He thus submitted that the petitioner was never a Chairman or President of any two societies at a time and as such he has not at all incurred any disqualification under Section 73A of the Act of 1960. He also submitted that the Authorities have erroneously concluded that the resignation tendered by the petitioner was after a period of more than 10 days and therefore he has incurred disqualification under sub-Section 2 of Section 73A of the Act of 1960. It is submitted that since the petitioner was not actually holding any post to be categorised as ‘designated officer’ of two societies at a time, the tendering of resignation was in fact inconsequential and in any case could not have been considered as a factor to disqualify the petitioner under Section 73A of the Act of 1960. To buttress his submissions that the petitioner be restored to his post, he placed reliance on the judgment in ***Baby Samuel Versus Tukaram Laxman Sable*** [1996(1) Mh.L.J. 9]. He thus submitted that the impugned orders being passed without considering the purport of provisions of Section 73A of the Act of 1960 are unsustainable in law and prayed that the petition be allowed by confirming the interim order.

12. Per contra, learned Assistant Government Pleader as well as learned counsel for the respective respondents made elaborate arguments to justify the impugned orders. They submitted that the Authorities have

concurrently held that the petitioner has incurred disqualification and there is no perversity with the impugned orders.

13. Shri C.S. Kaptan, learned Senior Advocate appearing for the respondent no.4 advanced elaborate arguments to demonstrate that the petitioner stood disqualified in accordance with the provisions of the Act of 1960. As regards the disqualification of the petitioner under Section 73A of the Act of 1960, the learned Senior Advocate candidly submitted that the petitioner was not holding the post of 'designated officer' of two societies at a time and therefore restrained himself from advancing submissions about disqualification under Section 73A of the Act of 1960. He however, strenuously submitted that the petitioner has already incurred disqualification under Section 73CA of the Act of 1960 as ordered by the Divisional Joint Registrar and since the said findings are not challenged by the petitioner, it has attained finality and therefore in any case the petitioner stands disqualified.

14. He would point out that in C.A.W. No.767 of 2025 for vacation of stay, the respondent no.4 has specifically raised this ground that the petitioner had incurred disqualification under Section 73CA of the Act of 1960 as held by the appellate authority and that the said order had attained finality. By inviting attention to the grounds raised in the memorandum of the instant petition, he would also submit that the petitioner has not raised any challenge to the findings rendered by the Divisional Joint Registrar in order dated 18.06.2024 holding the petitioner to be disqualified under Section 73CA of the Act of 1960.

15. While elaborating his submissions, the learned Senior Advocate for the respondent no.4 submitted that the initial complaint dated 21.03.2022 filed by the respondent no.6 before the District Deputy Registrar has sought the petitioner's disqualification on both the counts i.e. under Section 73A as well as under Section 73CA of the Act of 1960. By inviting attention to the original complaint, he submitted that the complainant has categorically raised an issue that the petitioner was not eligible to contest the election of the respondent no.5-Society as he was not fulfilling the requirement of Clause F-1.4(3) of the bye-laws which required that the candidate contesting the election must have more than five years of balance service and by considering the date of birth of the petitioner as 13.04.1968, the petitioner's balance service was less than five years.

16. It is submitted that the disqualification of the petitioner was thus sought on both the counts viz. Section 73A and Section 73CA of the Act of 1960. He submitted that the petitioner was aware about the fact that the disqualification was sought on both the counts and therefore the petitioner has submitted his reply to the show cause notice and tried to give justification to avoid disqualification either under Section 73A and under Section 73CA of the Act of 1960. Even though the District Deputy Registrar held the petitioner as disqualified only under Section 73A, while raising challenge to this order by way of appeal under Section 152 of the Act of 1960, the petitioner has raised grounds with respect to the disqualification under both the counts. He submitted that the appellate authority i.e. the Divisional Joint Registrar passed final order on 18.06.2024, and while dismissing the appeal held that the petitioner has incurred disqualification under Section 73A and also under Section 73CA of the Act of

1960. He therefore submitted that the petitioner filed revision application before the Minister and the grounds were raised only with respect to challenge to the disqualification under Section 73 A of the Act of 1960. By inviting attention to the final order passed by the Hon'ble Minister, he submitted that the Minister has recorded inference about disqualification under Section 73A of the Act of 1960 only and upheld the orders passed by the authorities, holding the petitioner as disqualified. He submitted that since the petitioner has himself raised grounds with respect to Section 73A of the Act of 1960, the Hon'ble Minister dealt with those grounds. Further, having found the petitioner to have incurred disqualification under Section 73A of the Act of 1960, there was no necessity to further deal with the issue of disqualification under Section 73CA of the Act of 1960.

17. He therefore submitted that the order passed by the Divisional Joint Registrar holding the petitioner as disqualified under Section 73CA of the Act of 1960 has attained finality and even in the instant petition, the petitioner has not raised any challenge to the said findings and as such, in any case, the petitioner stands disqualified under Section 73CA of the Act of 1960.

18. To counter the arguments advanced by the learned Senior Advocate for respondent no.4, the learned Senior Advocate appearing for the petitioner submitted that **firstly**, the show cause notice issued by the District Deputy Registrar was with respect to disqualification on only one count i.e. under Section 73A of the Act of 1960 and as such, there was no notice to the petitioner with respect to the issue of disqualification under Section 73CA of the Act of 1960; **secondly**, Section 78A(1) of the Act of

1960 refers to the 'charges mentioned in the notice' and it requires 'consultation' with the federal society and hence in absence of any consultation with the federal society with respect to the alleged disqualification under Section 73CA, there can't be any disqualification on the said count; **thirdly**, the appellate authority has acted beyond the scope of appeal and passed the order without jurisdiction dealing with the issue of disqualification under Section 73CA and hence the same cannot be a basis to disqualify the petitioner; **fourthly**, it is submitted that at the stage of submitting nomination papers this issue was raised and after the petitioner's nomination form was rejected and appeal was carried to the office of District Deputy Registrar, the same was allowed holding the bye-law no.F-1.4(3) to be inconsistent with provisions of Maharashtra Cooperative Societies Rules, 1961 and since the said order is not challenged, the petitioner cannot be said to have incurred any disqualification; and **lastly**, he submitted that the order passed by the District Deputy Registrar and the Divisional Joint Registrar got merged with the order passed by the Minister and therefore the orders passed by the District Deputy Registrar and the appellate authority, do not subsist.

19. In support of his submissions, he has replaced reliance on the following case laws:-

- i. *Jyoti Anil Ganeshpure Versus State of Maharashtra* [2006(2) Mh.L.J. 173].
- ii. *Chintapalli Agency Taluk Arrack Sales Cooperative Society Ltd. & Others Versus Secretary (Food and Agriculture) Government of Andhra Pradesh & Others* [(1977) 4 SCC 337].

- iii. *Union of India & Others Versus A.K. Pandey* [(2009) 10 SCC 552].
- iv. *Hemchandra Madhukar Shaligram & Others Versus Sonal Sanjeeva Shetty & Others* [2019 SCC OnLine Bom 1877].
- v. *Satya Prakash Dwivedi Versus Munna Alias Chandrabhan Yadav & Others* [(2025) 5 SCC 525].
- vi. *Somnath Sahu Versus State of Orissa & Others* [(1969) 3 SCC 384].
- vii. *Bazaloni Group Ltd. Versus Commissioner of Income-tax* [(2005) 272 ITR 11].

20. To counter the petitioner's submissions and to buttress his own submissions, Shri C.S. Kaptan, learned Senior Advocate for respondent no.4 submitted that in absence of any challenge to the specific findings recorded by the Divisional Joint Registrar, while deciding the appeal, the findings about the petitioner's disqualification under Section 73CA of the Act of 1960 have attained finality. He submitted that since the petitioner has challenged the impugned orders by raising grounds only with respect to disqualification under Section 73A of the Act of 1960 and the challenge to the findings with respect to disqualification under Section 73CA of the Act of 1960 stands relinquished, there is no question of merger as alleged by the counsel for the petitioner.

In support of these submissions, learned counsel for respondent number 4 has relied upon the following case laws:-

- a. *Rafique Bibi (Dead) by LRS. Versus Sayed Waliuddin (Dead) by LRS & Others* [(2004) 1 SCC 287].
- b. *Balvant N. Viswamitra & Others Versus Yadav Sadashiv Mule (Dead) through LRS & Others* [(2004) 8 SCC 706].

- c. *Executive Engineer & Another Versus Moreshwar Mahadeorao Wakhare & Others* [(2001) 3 Bom CR 838].
- d. *Pundalik Versus District Deputy Registrar, Co-operative Societies, Chandrapur & Others* [(1991) 2 SCC 423].
- e. *Assistant General Manager State Bank of India & Another Versus Tanya Energy Enterprises through Its Managing Partner Shri Alluri Lakshmi Narasimha Varma* [Civil Appeal No.11134 of 2025].
- f. *Dnyaneshwar Patiram @ Ratiraj Shirbhiye Versus Divisional Commissioner, Nagpur* [(2012) 3 Mh.L.J. 253].
- g. *Premanand Chawadikar Versus Registrar of Cooperative Societies, Government of Goa & Others* [2022 SCC OnLine Bom 11].
- h. *Hiralal Versus State of Maharashtra* [2022 SCC OnLine Bom 3045].
- i. *K.K. John Versus State of Goa* [(2003) 8 SCC 193].

21. In the backdrop of the above above mentioned factual and legal aspects, rival contentions now fall for my consideration.

22. Although the controversy raised in the petition is with respect to disqualification of the petitioner under Section 73A of the Act of 1960, however, in view of the submissions advanced by the learned Senior Advocate for the respondents fairly choosing not to oppose the contentions in that regard, the hotly contested issue which emerged for my consideration is as to whether the petitioner has incurred disqualification under Section 73CA of the Act of 1960.

23. Pertinent to note, the petitioner's disqualification was sought on two counts; firstly the disqualification under Section 73A(2) and (4) of the Act of 1960 on the ground that the resignation tendered by the

petitioner from one society was after stipulated period of 10 days; and secondly the disqualification under Section 73CA-1(f)(iv) of the Act of 1960 was for breach of bye-laws due to shortage of period of service being less than five years.

24. In order to delve into the issue, it is beneficial to refer to the relevant provisions of Section 73CA of the Act of 1960, which are reproduced below:-

“73CA. Disqualification of committee and its members

(A1) In the case of a society, which gives loans to members for purchasing machinery, implements, equipments, commodities or other goods, or which deals in such goods, no member, who or whose member of a family is a dealer in such goods or is a director of a company or a partner in a firm carrying on business in such goods, in the area of operation of the society shall be eligible for being elected or nominated as a member of the committee of such society:

Explanation.— For the purposes of this sub-section, the expression ‘family’ shall have the same meaning as explained in the Explanation 1, to sub-section (2) of section 75.

(1) Without prejudice to the other provisions of this Act or the rules made thereunder in relation to the disqualification of being member of a committee, no person shall be eligible for being appointed, nominated, elected, co-opted or, for being a member of a committee, if he—

73CA(1)(f)(iv). has incurred any disqualification under this Act or the rules made thereunder or by-laws of the society;”

25. The interesting issue involved in the instant petition is, in view of the peculiar facts of the instant case, whether the petitioner can be held to be disqualified under Section 73CA of the Act of 1960. On the basis of rival contentions advanced by the learned counsel for the respective parties, the further issue which needs to be focused is whether the petitioner was aware about the issue being involved in the proceedings

before the lower authorities and further whether the order passed by the Divisional Joint Registrar can be said to have been merged and not in subsistence.

Let us deal with each of these aspects separately.

26. In order to ascertain whether the petitioner was aware about the issue of his disqualification under Section 73CA being raised, the following crucial aspects need to be noted.

(i) It has to be noted that the original complaint dated 21.03.2022 filed by the respondent no.6 herein, sought for petitioner's disqualification on both the grounds, viz. under Section 73A and Section 73CA of the Act of 1960.

(ii) However, the show cause notice dated 10.05.2022 issued by the District Deputy Registrar was with respect to disqualification under Section 73A of the Act of 1960 only.

(iii) Pertinent to note, the petitioner has submitted his reply/explanation dated 12.12.2022 and gave his reply/explanation with respect to disqualification on both the counts. It is interesting to note that the subject mentioned in the reply referred to provision of Section 73CA of the Act of 1960, which deals with disqualification incurred under bye-laws.

(iv) The District Deputy Registrar passed order dated 15.12.2022 and considered arguments of both the parties with respect to disqualification on both the counts, however, passed the final order, declaring the petitioner as disqualified under Section 73A only.

(v) Interestingly, the petitioner filed appeal dated 16.12.2022, under Section 152 before the Divisional Joint Registrar and raised grounds with

respect to disqualification on both the counts i.e. under Section 73A as well as Section 73CA of the Act of 1960. Pertinent to note, the petitioner's prayer in the said appeal is regarding the 'proceedings concluded under Section 73CA and Section 78A(1) of the Act of 1960.

(vi) The Divisional Joint Registrar dismissed the appeal holding that the petitioner has incurred disqualification under both the counts i.e. under Section 73A and Section 73CA of the Act of 1960.

(vii) In his revision application under Section 154 before the Minister, the petitioner raised grounds only with respect to disqualification under Section 73A and thus it is clear that the petitioner has not challenged the findings of disqualification under Section 73CA which were recorded by the Divisional Joint Registrar. At this juncture, it is also crucial to note that the respondent no.3 to the appeal - Mr. Nilesh Kale (respondent no.4 herein) has submitted his reply to the revision application and raised issue about disqualification of the petitioner on both counts i e. under Section 73A and Section 73CA of the Act of 1960. Similarly, the respondent no.5- Society also filed its separate reply and raised the issue about disqualification under Section 73CA of the Act of 1960.

(viii) The Hon'ble Minister rejected the revision application by order dated 14.02.2025. It is also crucial to note that there is a reference to the arguments with respect to disqualification on both the counts, however, the inferences are recorded only about disqualification under Section 73A of the Act of 1960.

26.1 Thus, it is clear that the petitioner was aware that the issue about his disqualification under Section 73CA of the Act of 1960 with respect to

bye-laws of the society was very much raised and contested by the parties. The petitioner has not taken any steps to challenge the findings of the Divisional Joint Registrar with respect to his disqualification under Section 73CA either by amending the revision application or by filing any separate revision application.

Thereafter, even while filing the instant petition the petitioner was aware that the issue about his disqualification under Section 73CA was very much raised by the respondents and still the grounds raised in the instant petition are with respect to disqualification under Section 73A and the findings of the Divisional Joint Registrar are not at all challenged by way of the instant petition.

26.2. On careful consideration of the above mentioned aspects, it becomes amply clear that the petitioner was very much aware about the fact that his disqualification was sought on both the counts viz. disqualification under Section 73 on the ground that he had tendered the resignation from one society after the stipulated period of 10 days and second disqualification under Section 73CA of the Act of 1960 for breach of bye-laws due to shortage of period being less than five years. Thus, even though the show cause notice referred to disqualification only on one count, the petitioner has submitted his explanation with respect to disqualification on both the counts. Even while filing appeal under Section 152 before the Divisional Joint Registrar, the petitioner has raised grounds with respect to disqualification on both the counts. The memorandum of the instant petition also shows that the petitioner has raised grounds only to challenge the findings about disqualification under Section 73A of the Act of 1960 and has stated that the petitioner has never

been 'a designated officer' of two societies at a time. Therefore, the petitioner cannot escape from the findings recorded by the Divisional Joint Registrar holding him to be disqualified under Section 73CA of the Act of 1960.

27. As regards the submissions advanced by the counsel for petitioner that the orders passed by the District Deputy Registrar and the appellate authority do not subsist in view of the doctrine of merger, it has to be noted that the grounds raised by the petitioner in the instant petition are with respect to challenge to the disqualification under Section 73A of the Act of 1960 only. There are no grounds to challenge the findings of the appellate authority about disqualification of the petitioner under Section 73CA of the Act of 1960. It can thus be seen that the petitioner has himself relinquished the challenge to the findings about his disqualification under Section 73 CA, even though the petitioner had raised several grounds before the appellate authority in that regard.

27.1 Learned Senior Advocate for petitioner has placed reliance upon the judgments in *Somnath Sahu* and *Bazaloni Group Ltd.* (supra) and submitted that the order passed by the lower authorities got merged in the order passed by the Appellate Authority and it is the appellate decision alone which subsists and is operative in law and is capable of enforcement. By inviting attention to the observations of the Hon'ble Supreme Court, it is submitted that when the doctrine of merger applies, the decision rendered by the superior Court is final judgment and it is operative and binding. It is therefore submitted that the petitioner is required to challenge only the order passed by the last authority in hierarchy.

In this regard, the position of law laid down in this judgment is not disputed. However, the position of law with respect to merger of orders passed by authorities in hierarchy is attempted to be applied to the independent findings which are not at all challenged even though the petitioner was aware that the specific issues were raised and the independent findings are rendered against him. The position of law laid down in these judgments does not deal with the aspect of merger as canvassed in the instant petition.

27.2 While dealing with the legal position about the doctrine of merger, the Hon'ble Supreme Court has elucidated the legal position in the landmark judgment in *Kunhayammed & Others Versus State of Kerala & Another* [(2000) 6 SCC 359]. Paragraph 12 of the same reads as under:-

*“12. The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior court has disposed of the lis before it either way – whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below. **However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view.**”*

27.3 Thus, in view of the position of law laid down by the Hon'ble Supreme Court, it has to be seen that in absence of any challenge to the

independent findings of the Divisional Joint Registrar which was the appellate authority, the petitioner's challenge only to the order passed by the Hon'ble Minister with respect to other findings cannot be considered to be a challenge to the findings of the Divisional Joint Registrar. The argument canvassed by the petitioner that the challenge to the order passed by the Minister includes a challenge to the order passed by the Divisional Joint Registrar, in absence of any grounds in that regard, cannot be accepted.

27.4 The contentions with respect to the doctrine of merger of orders passed by authorities in a hierarchy are sought to be advanced, to contend that even the grounds to challenge one order by the higher authority with respect to different findings be considered as grounds to challenge the independent findings of earlier order, are not found convincing and cannot be accepted.

28. The contentions are also raised by the petitioner that the issue about petitioner's ineligibility in view of the clause F-1.4(3) of the bye-laws was earlier raised at the time of rejection of his nomination form, and since the same was decided in his favour by the District Deputy Registrar by order dated 17.12.2021 and therefore, the said issue cannot be raised again for disqualifying the petitioner. In this regard, it has to be noted that the issue raised by the petitioner in his appeal challenging the rejection of his nomination form was about legality of the rejection of nomination form. Nobody has raised challenge to the bye-law no. F-1.4(3) of the bye-laws, neither the parties were called upon to submit arguments on the issue of legality of the said bye law. A perusal of the said order passed by the District Deputy Registrar shows that the appellant therein

had argued that the bye-laws do not have force of law. Thus, the observations of District Deputy Registrar about the bye-law being not in consonance with Rule 74 of the Rules of 1961 are based on unilateral inferences, in the said summary proceedings. In absence of any challenge to bye-law no.F-1.4(3) and in absence of any issue being raised, the said observations about bye-law being contrary to Rule 74 of the Rules of 1961 is of no consequence. Further, it is pertinent to note, the operative portion of the said order dated 17.12.2021 only directed that the appeals were allowed and the nomination forms of the appellant be accepted.

29. Pertinently, nowhere in the memorandum of the instant petition, the petitioner has stated that the disqualification for breach of bye-law no.F-1.4(3) is illegal on account of the said bye-law being declared to be illegal. The entire petition deals only with the challenge to disqualification of petitioner under Section 73A of the Act of 1960. As such, although there is no challenge to the order dated 17.12.2021 passed by the District Deputy Registrar, in view of the reasons mentioned above, I am of the view that the said observations about bye-law no.F-1.4(3) being contrary to Rule 74 of the Rules of 1961 cannot be the basis to conclude that the disqualification incurred by the petitioner under Section 73CA of the Act of 1960 is redundant or inconsequential.

30. Reliance is placed by the learned Senior Advocate for the petitioner on the judgment in *Jyoti w/o Anil Ganeshpure, Chintapalli Agency Taluk Arrack Sales Cooperative Society* and *A.K. Pandey* (supra) to submit that submission of a reply/explanation by the petitioner would not absolve the authorities from giving notice with respect to the particular issue about

disqualification. By pointing out various paragraphs from these judgments, it is submitted that it was mandatory on the part of the respondents to issue the show cause notice with respect to the alleged disqualification on both the counts.

31. In this regard, considering the fact that the petitioner has submitted his explanation with respect to the alleged disqualification on both the counts and more particularly considering the grounds raised by the petitioner in his appeal under Section 152 of the Act of 1960 with respect to both the disqualifications and also mentioning of the contentions in the revision application under Section 154, it cannot be an acceptable contention that the petitioner was not at all aware about the disqualification being sought on both the counts. It is not the petitioner's case that only on the basis of one show cause notice the final orders are passed and the petitioner was deprived from knowing the issues raised by the original complainant. Having regard to all these factual aspects, I am of the considered opinion that the petitioner was very much aware about his disqualification being sought under Section 73A and Section 73CA of the Act of 1960. As such, the judgments relied upon by the petitioner are of no assistance.

32. As regards the argument about mandatory consultation of the federal society under Section 78 and Section 78A of the Act of 1960, the learned Senior Advocate for the petitioner submitted that in absence of any consultation with the federal society about the disqualification under Section 73CA, the petitioner cannot be held to have incurred any disqualification. In support of the submissions, reliance is placed on the

judgment of learned Single Bench of this Court, in ***Hemchandra Madhukar Shaligram*** (supra). As regards the proposition of law that the consultation is mandatory, there is no dispute. However, in this regard, it has to be noted that the petitioner has raised this issue for the first time only during the course of arguments of the instant petition. At no point of time in the earlier reply to show cause notice, memorandum of appeal and revision application so also memorandum of the instant petition, the petitioner has raised this issue. Apart from this, in view of my inference about the petitioner having knowledge about the disqualification being sought on both the counts for the reasons mentioned above, this contention cannot be given weightage to outweigh the entire conduct of the petitioner. Therefore, the petitioner cannot take any advantage of the legal position in this regard.

33. Having regard to the above mentioned factual and legal aspects, I am of the considered opinion that no indulgence is warranted under Article 227 of the Constitution of India. The petitioner has failed to raise any grounds to challenge the disqualification under Section 73CA of the Act of 1960 ordered by the Divisional Joint Registrar by the impugned order dated 18.06.2024. The impugned orders, therefore, do not need any interference. The writ petition deserves to be dismissed. Hence, the following order is passed:-

- I. The writ petition is dismissed.
- II. The civil application bearing C.A.W. no.767 of 2025 is allowed and disposed of.

34. Rule stands discharged. No order as to costs.

(PRAFULLA S. KHUBALKAR, J.)

APTE

At this stage, learned counsel for the petitioner makes a request for continuation of the interim relief, which was granted by this Court and which operated during the pendency of the instant petition. The request for continuation of the interim relief is strongly opposed by the learned counsel for the respondent no.4, who submits that the petitioner already stood disqualified under Section 73CA of the Act of 1960 and in view of the dismissal of this petition, the petitioner is not entitled to work as Chairman of the respondent no.5-Society.

Having regard to the fact that the interim relief was operating during the pendency of the instant petition, same is continued for a period of three weeks from today, however, subject to condition that the petitioner will not be entitled to take any major decision as Chairman of the respondent no.5-Society, either by holding annual general meeting or otherwise. The continuation of interim relief shall cease to operate on expiry of the period of three weeks.

(PRAFULLA S. KHUBALKAR, J.)

APTE