Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.392 OF 2026
WITH
INTERIM APPLICATION NO. 333 OF 2026

Mavji Ravji Patel … Petitioner

V/s.

Government of Maharashtra & Ors. … Respondents

Mr. Shailesh Naidu a/w Mr. Mehul Shah i/b Mr. Bharat Joshi, for the Petitioner.

Ms. Snehal S. Jadhav, AGP, a/w Mrs. M. S. Srivastava, AGP, for the State – Respondent No.1 to 3.

Mr. Drupad Patil i/b Shivraj Patne, Aditya A. Joshi, for Respondent No.5.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 16, 2026

P.C.:

1. The petitioner, who was serving as the Secretary of the respondent housing society, has been disqualified for a period of four years in exercise of powers under Section 75(5) of the Maharashtra Co-operative Societies Act, 1960 (“the MCS Act”). The said disqualification was imposed by the Deputy Registrar of Co-operative Societies and was confirmed by the Revisional Authority. The petitioner has challenged the said orders in the present writ petition.

2. The disqualification rests on four alleged lapses. These relate to placement of: (i) a plan for disposal of surplus under Section

75(2)(iii). (ii) the audit report for the previous financial year under Section 75(5)(vi). (iii) the rectification report under Section 75(2)(vii). (iv) the annual budget under Section 75(2)(viii). The statutory scheme requires the Annual General Body Meeting to transact certain business. It is therefore necessary to determine whether each alleged lapse is borne out by record and whether such lapse attracts the penal consequence of disqualification.

3. The record shows that the audit report for the immediately preceding financial year stood placed before the Annual General Body Meeting. An earlier audit report had disclosed defects under Section 82. The audit report relevant for the period in question disclosed no such defects. The requirement of placing a rectification report under Section 75(2)(vii) arises only when the auditor has pointed out defects or irregularities. Where the audit report is clean, the obligation to place a rectification report is otiose. The law does not compel performance of a redundant act. The Revisional Authority did not examine this statutory condition.

4. This Court in *Kailash Maheshwari and others versus State of Maharashtra and others (Writ Petition No. 10587 of 2025 decided on 25 September 2025)* has considered the nature of compliance expected under Section 75(2). In paragraph 26 of the said judgment, this Court has held that placement of the audit report, audited accounts, and rectification report constitutes core compliance. The plan for disposal of surplus and the annual budget were regarded as ancillary. The reasoning proceeds on the nature and object of each item. Housing societies generally do not generate surplus of commercial character. Consequently, nonplacement of a plan for disposal of surplus or budget does not by itself amount to serious default warranting the extreme consequence of disqualification. The principle laid down is one of proportionality between the nature of default and the statutory penalty.

5. In the present case, compliance with Section 75(5)(vi) stands satisfied. The audit report disclosed no defects. In such circumstances, compliance with Section 75(2)(vii) was unnecessary in law. The remaining lapses are ancillary in character, as held in *Kailash Maheshwari*. The authorities below treated ancillary non-compliance at par with core non-compliance. Such approach fails to appreciate the legislative scheme and the judicial exposition placed thereon. The essential condition for invoking Section 75(5) did not exist. The disqualification therefore lacks a sustainable foundation.

6. The learned Advocate for the complainant argued that the audit for the year 2025 has revealed serious irregularities. Subsequent material cannot cure the jurisdictional defect. Section 75(5) contemplates examination of compliance with statutory duties as they stood at the relevant Annual General Body Meeting. Any later audit may give rise to independent remedies under the Act. It cannot retrospectively validate an order of disqualification rendered without existence of core default.

7. In view of the above analysis, the impugned orders are unsustainable. The order dated 17 January 2025 passed by the Deputy Registrar, as confirmed by the Divisional Joint Registrar on

12 February 2025 in Appeal No. 32 of 2025, and by the Minister for Co-operation on 29 May 2025 in Revision Application No. 119 of 2025, are set aside to the extent they impose disqualification under Section 75(5).

8. The petitioner shall be entitled to exercise all rights as member of society - Khimji Palace co-operative housing society Ltd.

9. All contentions of both sides on other issues are kept open to be pursued before the competent forum in accordance with law.

10. The writ petition stands disposed of. The interim application does not survive. It stands disposed of.

(AMIT BORKAR, J.)