

Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1747 OF 2026

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Nigam Vohra & Ors. ... Petitioners
V/s.
Samkama Samdeep More & Ors. ... Respondents

Mr. M. P. Vashi a/w Ishta Ranka, Duhita Garate i/b M. P. Vashi Associates, for the Petitioners.

Mr. Douglas Jose A. Lopez, for Respondent Nos.1 and 2.

Mrs. Savina R. Crasto, AGP, for the State – Respondent Nos.3 and 4.

CORAM : AMIT BORKAR, J.

DATED : MAY 6, 2026

P.C.:

1. The present petition arises out of a challenge to the order passed by the Registrar in exercise of powers under Section 154B-23 of the Maharashtra Co-operative Societies Act, 1960 (“the MCS Act”), whereby the Petitioners have been disqualified for a period of five years. As a consequence of the said order, a further order came to be passed under Section 77A of the MCS Act on the premise that the constitution of the Committee had fallen below the minimum strength prescribed under the Act. Though elaborate submissions were advanced on various issues by the learned counsel appearing for the Petitioners as well as the contesting Respondents, in my view, the controversy can be appropriately

addressed in the limited context of the initiation of proceedings, particularly the validity of the show cause notice.

2. It is by now settled principle of law that before an elected representative is visited with drastic consequence of disqualification, the authority exercising such power is under legal obligation to strictly follow and observe principles of natural justice in form and substance. Such compliance cannot be treated as procedural requirement only for formal satisfaction of statute. The requirement goes to root of legality of decision making process. An elected office bearer derives authority through democratic process and by confidence reposed in him by electorate. Therefore, once statute confers power upon authority to unseat such elected representative, corresponding duty is cast upon authority to ensure that proceedings are conducted with complete procedural fairness and strict compliance to statutory safeguards. Before such representative is deprived of elected office by disqualification, he must be informed regarding allegations levelled against him, statutory provisions allegedly violated and nature of consequences. Unless these particulars are communicated, the opportunity of hearing ceases to remain effective.

3. The object behind issuance of show cause notice is not only to inform person regarding pendency of proceedings but to afford adequate opportunity to defend himself. Such opportunity can become meaningful only when person concerned knows case he is required to meet. If allegations are vague or consequences are left uncertain, noticee would naturally be unable to place proper

defence, relevant documents or mitigating circumstances before authority. In such situation, hearing itself loses value because defence would proceed on incomplete understanding of proceedings. It is true that, minor defects or imperfections in drafting of notice may not vitiate proceedings, particularly where surrounding circumstances establish that noticee was otherwise conscious about allegations and likely consequences. However, such latitude cannot be extended to cases where notice itself is completely silent regarding penal consequence like disqualification and simultaneously fails to furnish sufficient particulars of allegations. A defect of such nature cannot be regarded as irregularity. It strikes at foundation of proceedings because proceedings initiated without proper notice are unfair. Consequently, any action founded upon such defective notice becomes unsustainable and liable to be set aside.

4. In present case, careful examination of show cause notice reveals that Petitioners were called upon to explain as to why action under Sections 154B-8 and 147P-2 of the Maharashtra Co-operative Societies Act, 1960 should not be taken against them and why monetary penalty of Rs.5,000/- should not be imposed. The tenor of notice assumes importance because notice forms foundation of entire proceedings. A reasonable person receiving such notice would understand proceedings only in manner reflected from language employed therein. The Petitioners were informed about possibility of fine and penal action of monetary nature. However, nowhere does notice indicate that authority was contemplating action of disqualification under Section 154B-23 of

the Act. This distinction assumes importance because monetary penalty and statutory disqualification operate in different fields and carry different consequences.

5. Section 154B-8 read with Section 154B-27 undoubtedly enables Registrar to impose fine in cases of default. Such consequence is financial in nature. However, disqualification contemplated under Section 154B-23 is different and severe statutory consequence. Disqualification results in removal from elected office, interruption of democratic representation and disability in relation to management of society. Once elected representative stands disqualified, his continuation in office comes to end and body represented by him loses representation. Therefore, where show cause notice only refers to imposition of fine and does not even remotely indicate proposed disqualification, a reasonable person would naturally proceed on footing that authority intends to impose only monetary consequences. In such circumstances, noticee cannot be expected to anticipate another statutory action which is neither mentioned nor implied in notice. Hence, Petitioners were justified in restricting their explanation only to allegations relating to proposed fine and default referred in show cause notice.

6. The record further discloses that reply submitted by Petitioners was confined only to explanation concerning proposed monetary penalty. A careful reading of reply does not indicate anywhere that Petitioners were conscious that proceedings could culminate into order of disqualification under Section 154B-23 of the Act. No defence was raised touching proposed disqualification.

No attempt was made to place mitigating circumstances relating to continuance in elected office. This circumstance is important because had Petitioners been aware regarding possible disqualification, their defence would naturally have been more detailed and specifically directed towards avoiding such serious consequence. They may have placed additional factual material, legal submissions or explanations relevant for retaining elected office. Absence of such defence itself probabilises that Petitioners proceeded on understanding that proceedings were confined only to question of levy of fine.

7. Thus, from cumulative consideration of material on record, it becomes clear that show cause notice did not indicate consequence of disqualification and Petitioners were also not otherwise aware regarding such proposed action at relevant time. Therefore, opportunity granted to Petitioners cannot be regarded as meaningful opportunity. Mere issuance of notice by itself is not sufficient compliance with principles of natural justice. What law requires is meaningful opportunity based upon disclosure of allegations and consequences. If noticee is unaware about consequence contemplated by authority, then hearing becomes incomplete. Such proceedings cannot satisfy requirements of procedural fairness.

8. The aforesaid legal position stands reinforced by law laid down by Supreme Court in *Sadashiv H. Patil v. Vithal D. Teke*, (2000) 8 SCC 82. The Supreme Court while interpreting provisions relating to disqualification under Maharashtra Local Authority Members' Disqualification Act, 1986 has held that provisions

concerning disqualification are required to be construed strictly. The rationale underlying such interpretation is clear. Disqualification of elected representative does not affect only individual office bearer. It equally affects democratic representation available to electorate which elected him. Once elected member is unseated, constituency itself is deprived of representation through person chosen by democratic process. Therefore, proceedings having such serious civil and democratic consequences cannot be permitted to rest upon incomplete compliance with statutory safeguards. Strict construction of such provisions becomes necessary so that elected office is not disturbed except by observance of procedure established by law.

9. The Supreme Court has emphasized that where statute provides for consequence of disqualification, compliance with principles of natural justice and statutory procedure becomes mandatory in character. The Court has repeatedly observed that compliance with statutory requirements must be affirmatively demonstrated before authority can sustain order of disqualification. Such insistence upon compliance arises because consequences flowing from disqualification are grave. Apart from personal stigma attached to such order, elected representative suffers civil consequences affecting legal rights and reputation. Simultaneously, functioning of local body itself becomes affected because composition of elected committee undergoes alteration. Therefore, statutory safeguards are incorporated with object of ensuring fairness before such drastic action is taken.

10. The Supreme Court in paragraph 14 of aforesaid judgment has specifically observed that finding of disqualification results in unseating elected representative from office obtained through democratic process and thereby affects constituency represented by him. The Court further observed that considering penal consequences flowing from such disqualification and its repercussions upon functioning of local authority, provisions relating to disqualification are required to be construed strictly and rigorous compliance with statutory provisions and Rules must be demonstrated. These observations of Supreme Court indicate that procedural safeguards in such matters constitute substantive protections intended to preserve democratic fairness in functioning of elected bodies.

11. Applying aforesaid principles to facts of present case, this Court finds that show cause notice suffers from fundamental defect. The notice completely fails to indicate that Petitioners were exposed to consequence of disqualification under Section 154B-23 of the Act. Entire tenor of notice conveys only proposed action relating to levy of monetary penalty. In absence of disclosure regarding proposed disqualification, Petitioners cannot be said to have been afforded fair and meaningful opportunity to defend themselves against such serious consequence. Proceedings culminating into impugned order therefore stand vitiated on account of breach of principles of natural justice.

12. In considered opinion of this Court, therefore, order passed under Section 154B-23 of Maharashtra Co-operative Societies Act disqualifying Petitioners for period of five years cannot be

sustained in law. The very initiation of proceedings being defective on account of invalid show cause notice, consequential adjudication founded thereupon also becomes legally unsustainable. Once foundation itself is rendered infirm, ultimate order passed on basis thereof cannot independently survive.

13. Impugned order passed under Section 77A of the Act is evidently consequential in nature. Said order has been passed solely because Petitioners came to be disqualified and consequently strength of managing committee allegedly fell below statutory minimum prescribed under law. Therefore, order under Section 77A does not possess independent existence separate from order of disqualification. Once foundational order of disqualification is set aside, consequential order automatically loses foundation upon which it rests. It is settled principle that when foundation is removed, superstructure erected thereupon cannot survive. Consequently, order passed under Section 77A also deserves to be quashed and set aside.

14. At this stage, learned senior counsel appearing on behalf of Petitioners submitted that considering lapse of time and surrounding circumstances, proceedings may now be brought to quietus. On other hand, learned counsel appearing for Respondents submitted that if Court finds defect in show cause notice, liberty may nevertheless be reserved in favour of competent authority to initiate fresh proceedings in accordance with law by issuing proper and valid show cause notice. Submission advanced on behalf of Respondents appears to proceed on footing that defect noticed by Court is procedural in nature and does not completely

extinguish statutory authority vested in competent officer to proceed afresh in accordance with law.

15. At this juncture, learned senior counsel for Petitioners fairly submitted that Petitioners would be satisfied if impugned orders are set aside with liberty reserved to authority to issue fresh show cause notice mentioning proposed consequence of disqualification. Statement made by learned senior counsel appears reasonable. Such course would protect procedural rights of Petitioners while simultaneously preserving statutory powers of authority to proceed afresh in accordance with law. On one hand, Petitioners would receive effective opportunity contemplated under principles of natural justice. On other hand, competent authority would not be deprived of statutory jurisdiction merely because earlier proceedings suffered from procedural defect.

16. In these circumstances, following order would meet ends of justice:

(i) The impugned orders dated 1 March 2023 and 2 May 2023, as confirmed by Appellate and Revisional Authorities, are quashed and set aside.

(ii) Respondent No.3 shall be at liberty to issue fresh show cause notice to Petitioners clearly indicating proposed action including action of disqualification under Section 154B-23 of Maharashtra Co-operative Societies Act, 1960.

(iii) Upon issuance of such notice, proceedings shall thereafter be concluded expeditiously and in any case within period of eight weeks from date of issuance of notice.

17. The writ petition accordingly stands disposed of in aforesaid terms. There shall be no order as to costs.

18. Pending interlocutory application(s), if any, stands disposed of.

(AMIT BORKAR, J.)