MPBalekar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3388 OF 2026

Prem Sinha … Petitioner

V/s.

Divisional Joint Registrar
Co-Op. Societies Konkan Division
and Ors. … Respondents

Mr. S. Deshpande a/w S. Gujar for the petitioner.
Mr. A.A. Alaspurkar, AGP, for the State.
Adv. Namita Bipin Tripathi for Respondent No.3.

CORAM : AMIT BORKAR, J.

DATED : MARCH 18, 2026

P.C.:

1. The challenge in the present writ petition arises from an order passed by the authority under the Maharashtra Co-operative Societies Act, 1960 in exercise of powers under Section 82(4) of the said Act. By the said order, the authority has proceeded to disqualify the petitioner who was holding the post of Secretary of the society, along with the Chairman and the Treasurer.

2. On perusal of the impugned order, it appears that the authority has recorded a finding that the society and the members responsible for submission of the audit rectification report failed to submit such report within the prescribed period of three months. The authority has referred to the audit for the financial year 2022–2023 and has proceeded on the footing that there was non compliance with the requirement of filing a rectification report under Section 82 of the Act. According to the authority, such failure itself was sufficient to attract action under Section 82(4) and therefore disqualification of the office bearers came to be ordered. The reasoning in the order indicates that the authority has treated the non submission of the rectification report as a default under the Act without examining the nature of the audit observations or whether any irregularity was actually recorded in the audit.

3. However, when the Audit Report submitted under Section 81 of the Act is carefully perused, the position which emerges is somewhat different. The audit report does not record any specific irregularity, defect, or financial impropriety in the functioning of the society. No finding is recorded in the audit which points out that the accounts of the society suffer from defects or that the management of the society has committed any violation which requires correction. The report, on its plain reading, does not contain any recommendation pointing out such irregularity. In this situation, the mere mention that a rectification report should be submitted cannot by itself assume the character of a statutory default. Section 81 of the Act contemplates that the audit should identify defects, irregularities, or lapses in the working of the society. It is only when such findings are recorded that the question of rectification arises. In the absence of any such finding in the audit report itself, the direction to submit a rectification report remains only a formal statement. It cannot automatically lead to consequences such as disqualification of elected representatives of the society.

4. A further perusal of the impugned order shows that the authorities under the Act have proceeded mainly on the basis of the statement contained in the audit report directing submission of a rectification report within the prescribed time. The order does not record any independent finding that the society failed to rectify any particular defect or irregularity as contemplated by the provisions of the Act. The scheme of Sections 81 and 82 indicates that these provisions operate together as a structured process. First, the audit under Section 81 must identify specific irregularities or defects in the working of the society. Thereafter, under Section 82, the society is required to take steps for rectification of those defects and submit a report regarding compliance. Section 82 also specifies the nature of irregularities or defects which may require correction. These are broadly set out in clauses (i) to (ix) of the provision. Therefore, before invoking the power of disqualification under Section 82(4), it must first be shown that the audit had recorded such irregularities and that the society or the responsible office bearers failed to rectify them within the statutory period.

5. In the present case, such a foundation is absent. The audit report itself does not record any defect or irregularity falling within the categories contemplated under Section 82. In the absence of such finding, the requirement of submitting a rectification report loses its significance. A mere statement in the audit report asking the society to submit a rectification report cannot be treated as equivalent to a finding of irregularity under the Act. If the authority proceeds to disqualify elected office bearers without first establishing the existence of such irregularities, the action becomes unsupported by the statutory scheme. Disqualification affects the democratic rights of elected members. Such power therefore must be exercised strictly in accordance with the conditions laid down in the Act. When the basic requirement of establishing irregularity or defect is missing, the action taken by the authority cannot be sustained in law.

6. In these circumstances, the impugned order suffers from a fundamental defect. The authority has assumed the existence of a default without examining whether the audit had in fact pointed out any irregularity as contemplated under the statute. The disqualification of the petitioner is therefore based on a premise which is not supported by the material on record. Consequently, the impugned order passed by the authorities under the Act cannot be allowed to stand.

7. The writ petition therefore deserves to be allowed to the limited extent concerning the petitioner. Rule is made absolute in terms of prayer clause (a) insofar as the petitioner is concerned.

8. The writ petition stands disposed of accordingly.

(AMIT BORKAR, J.)