

Disqualification of Society Committee Members

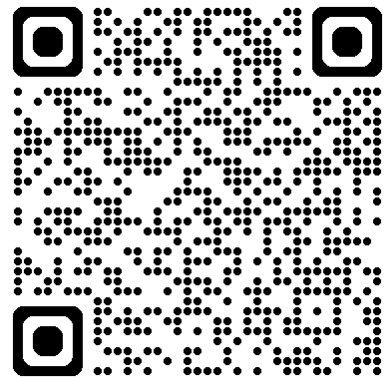
Case Name: Ivan Mendonca v. Divisional Joint Registrar, Co-Operative Societies, Mumbai Division, Mumbai

Citation: 2024:BHC-AS:38761

Act: Maharashtra Co-operative Societies Act, 1960.

Case Brief & MCQs on this case is available in the eBook:

["Bombay High Court Cases in October 2024"](#)



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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13483 OF 2023

- | | | | |
|----|--|---|-------------------------------|
| 1) | Ivan Mendonca, |] | |
| | Senior Citizen, Aged 72 years, |] | |
| | residing at Mendonca Villa, |] | |
| | Convent Road, |] | |
| | Bandra West, Mumbai 400050. |] | |
| 2) | Cornel K. Gonsalves, |] | |
| | Senior Citizen, Aged 64 years, |] | |
| | residing at F/2, Annette, St. Paul Road, |] | |
| | Bandra West, Mumbai 400050. |] | <u>...Petitioners.</u> |

Versus

- | | | | |
|----|---|---|--|
| 1) | The Divisional Joint Registrar, |] | |
| | Co-operative Societies, |] | |
| | Mumbai Division, Mumbai |] | |
| | having his office at Malhotra House, |] | |
| | 6 th floor, Opp. G.P.O., |] | |
| | Walchand Hirachand Road, |] | |
| | Fort, Mumbai 400001. |] | |
| 2) | Dy. Registrar, Co-operative Societies, |] | |
| | H-West Ward, 2 nd Floor, CTS No. F-1297, |] | |
| | Opp. BEST Bus Depot, |] | |
| | Bandra (W), Mumbai – 400050. |] | |
| 3) | The Salsette Catholic CHS Ltd, |] | |
| | A society deemed to be registered |] | |
| | under the Maharashtra Co-operative |] | |
| | Societies Act, 1960, having its |] | |
| | registered office at 42, |] | |
| | St. Andrew Road, |] | |
| | Bandra (W), Mumbai 400050. |] | |
| 4) | Michael Ferreira, |] | |
| | residing at Rest Harrow, |] | |
| | Plot No. 187/B, D'Monte Park Road, |] | |
| | Banda (West), Mumbai 400050. |] | |
| 5) | Bronwyn Aguiar, |] | |
| | residing at St. Annes Rest, |] | |
| | 5, St. Francis Road, |] | |
| | Bandra West, Mumbai 400050. |] | |

- | | | |
|----|---------------------------------------|---|
| 6) | Ravi Pereira, |] |
| | residing at 79, Carter Road, |] |
| | 1 st floor, Bandra (West), |] |
| | Mumbai 400050. |] |
| 7) | Marilyn Gonsalves, |] |
| | residing at 24, Shantivanam, |] |
| | Manuel, Gonsalves Road, |] |
| | Bandra West, Mumbai 400050. |] |
| 8) | Godfrey Rodrigues, |] |
| | residing at Grey Villa, |] |
| | 117 Leo Road, Bandra West, |] |
| | Mumbai 400050. |] |
- ...Respondents.**

Mr. Ashish Kamat, Senior Advocate along with Mr. Aseem Naphade, Brian Dlima, Raphael D'souza for the Petitioner.

Dr. Abhinav Chandrachud and Mr. Clive D'souza for the Respondent No. 3.

Mr. Nimay Dave, Mr. Siddhant Dhavale and Mr. Shubro Dey i/b Sutapa Saha for the Respondent No. 4 to 6.

Ms. Savita prabhune, AGP for the Respondent-State.

Coram : Sharmila U. Deshmukh, J.

Reserved on : August 13, 2024.

Pronounced on : October 1, 2024.

Judgment :

1. ***Rule.*** Rule made returnable forthwith and with consent taken up for final hearing.

CHALLENGE:

2. By the impugned order of the Appellate Authority dated 16th January, 2023 dismissing the Revision Application No 723 of 2021, the order dated 13th December 2021 passed by the Respondent No. 2 has been upheld whereby the Petitioners and the Respondent Nos.7 and 8 were removed from the Managing Committee of Respondent No.3

Society and were held ineligible to contest the elections for the next two years.

FACTUAL MATRIX:

3. The Respondent No 3 Society primarily comprises of plot-holders, sub-societies and flat-holders. On 10th August 2019, notice was issued for the 101st Annual General Meeting of Respondent No.3 which was to be held on 7th September 2019. The relevant agenda of the 101st Annual General Meeting (AGM) setting out the business to be transacted in the AGM were as under:

“(1)....

(2) To receive and adopt the Report of the Managing Committee and the Statement of Accounts for the year 31 March, 2019.

(3) To appoint an Internal Auditor for the Financial Year 2019-2020 and to fix their remuneration.

(4) To appoint statutory auditors for the financial year 2019 through 2022 and to fix their remuneration.

(5) Resolved that the Statutory Audit Report to be presented by RSVA & Co and the Audit Rectification Report under Section 82/87 of the MCS Act 1960 and Rule 73 of MCS Rules 1961 for the year 2018/2019 which will be submitted to the Deputy Registrar once completed be and is hereby approved.

4. During the AGM, Agenda Item Nos. 1 to 4 were approved which included Item No.2 which was to receive and adopt the Report of the

Managing Committee and statement of accounts for the year ending 31 March, 2019. Agenda Item No. 5 regarding the resolution to approve the statutory audit report of RSVA & Co and audit rectification report for the year 2018-2019 when put to the vote, was not passed with 67 voting against the proposed resolution and was adjourned to bring it back to the General Body subsequently.

5. On 17th September 2019, Respondent No.3's Managing Committee received a complaint signed by 17 members raising a grievance *inter alia* about the non placing of statutory audit report for the year ending 31st March 2019 in Form "N" and audit rectification report in Form "O" for the year ending 31st March 2018 and the overruling of the objections in violation of Rule 60(3) of The Maharashtra Co-operative Societies Rules, 1961 (For short" Rules of 1961").

6. On 4th October 2019, the complaint was replied clarifying that the audited accounts alongwith the internal auditor report was in Form "N" and adopted under Agenda Item No 2 and that after obtaining certification from statutory auditors and the rectification report, it will be filed with the Registrar and put to General Body for adoption.

7. On 23rd December 2019, the Respondent Nos.4 to 6, out of the 17 member complainants, filed complaint before Respondent No. 2 seeking action against the Petitioners and Respondent Nos.7 and 8 under Section 75(5) of the MCS Act. Notices were issued for the hearing

on 27th January 2020 by the Respondent No.2. After hearing the parties vide order dated 13th March 2020, the Respondent No. 2 barred the Petitioners and Respondent Nos.7 and 8 from the membership of Respondent No.3's managing committee and from contesting the elections for 2 years. The said order came to be challenged by filing Revision Application No.118 of 2020 for the reason that show cause notice has not been issued which came to be allowed by the Respondent No. 1 and the matter was remanded to the Respondent No. 2 vide order dated 4th November, 2020. The order of remand was challenged by the Respondent Nos.4 to 6 by filing a writ petition before this Court which came to be dismissed vide order dated 6th January, 2021 and the order of remand was upheld.

8. In the interregnum, pending the hearing before Respondent No.2 after remand, on 21st March 2021 the Respondent No.3's 102nd Annual General Meeting was held on-line and one of the Agenda items was to ratify the statutory audit report for the year 2018/2019 circulated vide letter dated 14th December, 2020 and statutory audit report of the year 2019/2020 circulated with the Agenda of 102nd meeting, which was approved by majority. In the 102nd meeting, Agenda Item No 1 which was to ratify the proceedings of 101st Annual General Meeting held on 7th September, 2019 was kept in abeyance.

9. A special general meeting was held on 18th April, 2021 and the

single motion to confirm the proceedings of the 101st Annual General Meeting held on 7th September 2019 was also approved.

10. On 29th September 2021, the Respondent No.2 issued show cause notice to the Petitioners and Respondent Nos.7 and 8 calling upon them to show cause on violation of Section 75(2)(vi) and (vii) of the MCS Act to which reply was filed by the Petitioners and Respondent Nos 7 and 8.

11. After hearing the parties, vide impugned order dated 13th December 2021 the Respondent No. 2 disqualified the petitioners and Respondent Nos.7 and 8 for a period of 2 years for violation of Section 75(2)(vi) and (vii) and and section 75(4) of the MCS Act.

12. Findings of the Respondent No. 2 can be broadly summarised as under:

[A] The Society has held the AGM on 7th September, 2019 and complied with Section 75(1),(2A) and(3) of MCS Act.

[B] As per Section 75(5) and Section 154B-1(19) the Society's Chairman, Secretary, Joint Secretary, Treasurer can be held responsible for non compliance of Section 75(2) to (4).

[C] The argument that as per the system adopted by the Society, the annual report of the Committee and the independent audit report of the internal auditors was being tabled before AGM for approval, however, the statutory audit report and rectification report of the last audit were not being

placed before the AGM as neither the members nor Registrar pointed out the deficiency to the Society, cannot be accepted as ignorance of law is no excuse.

[D] Despite discussion in the meeting of 7th September 2019 pointing out that the statutory audit report of preceding financial year as well as the rectification report of the earlier audit were required to be placed before the general body, no action was taken by the committee members.

[E] As Agenda No.5 was not approved, the Committee members had the option to call for AGM after one month and get the resolution approved. However, the Committee Members kept the subject before the next AGM. The action of committee members cannot be said to be bonafide and the committee members have violated the provisions of Section 75(2)(vi) and (vii) of the MCS Act.

[F] The committee members have not brought to the notice any provision in the MCS Act that the audit report of internal auditor appointed by the society can be placed before the AGM.

[G] As per Section 81 of the MCS Act the Society is expected to get its accounts audited under Section 75(2A) of the MCS Act from the auditor appointed in its general body

meeting and it is expected to keep the said audit report for approval before the AGM. As such the contention that under Section 75(2)(vi) of MCS Act there is no provision for submitting the statutory audit report is liable to be rejected.

[H] As there is default in compliance with the provisions of Section 75(2)(vi) and (vii) and Section 75(2) of the MCS Act, it will be appropriate to impose a bar for a period of two years from remaining on the post or contesting the elections.

13. Against the order dated 13th December, 2021 passed by the Respondent No 2, Revision Application No 723 of 2021 came to be filed before Respondent No.1 alongwith an application for stay which came to be allowed. The said order was challenged by the Respondent No. 4 to 6 before this Court and the petition came to be disposed of vide order dated 29th March, 2022 recording the statement on behalf of the Petitioners and the Respondent Nos.7 and 8 that they would not take any monetary policy decision pending the hearing of revision application.

14. In the meantime, the election to Respondent No.3's managing committee were held on 7th May, 2022 which were contested by the Petitioners and the Respondent Nos.7 and 8 to which there was no objection from the Respondent No. 4 to 6 and the Petitioners came to be elected.

15. On 16th January 2023, the impugned order was passed by the Respondent No.1 dismissing the revision application and upholding the order dated 13th December 2021 passed by the Respondent No. 2. The Respondent No.1 held that the Applicants have not placed the statutory audit report for the year 2018-19 before the Annual General Meeting as well as the audit rectification report for the year 2017-18 before the Annual General Meeting and thus there is violation of statutory provisions of Section 75 of the MCS Act for which there is no satisfactory explanation.

SUBMISSIONS:

16. Mr. Kamat, learned Senior Advocate appearing for the Petitioners would submit that the impugned order passed by the Revisional Authority is a non reasoned order. He draws attention of this Court to the notice of AGM dated 7th September 2019 and points out agenda item No.2 regarding adoption of the statement of accounts for the year ending 31st March 2019 and agenda item No.5 for approval of the resolution that the statutory audit report to be prepared by RSVA & Co., and the audit rectification report to be submitted to the Deputy Registrar once completed. He submits that the Society has adopted a practice of having two audit reports. He submits that there is no reason to hold that audit report of RSVA and Co., is the statutory audit report required to be tabled before the general body as the reference in

Section 75 of the MCS Act is only to an audit report and there is no mention of statutory audit report. He submits that it is pertinent to note that agenda item No.2 which was to adopt the report of managing committee and the statement of accounts for the year ending 31st March 2019 was approved by the general body and therefore the provisions of Section 75(2)(vi) of MCS Act were complied with. He submits that there was no rectification report of the earlier year audit as there were no defects. He would further submit that after agenda item No.5 was not passed due to majority voting against the proposed resolution, the same was placed for consideration of the general body in the next Annual General Meeting and thus even otherwise there is compliance.

17. He submits that Section 75 of the MCS Act do not mandate compulsory disqualification and discretion has been vested in the Registrar, which is evident from use of expressions “may” and the “reasonable excuse” used in Section 75, to disqualify the committee member if the Registrar finds that there is no reasonable excuse for non compliance with the statutory provisions and thus the penalty imposed is harsh and disproportionate.

18. He would submit that the only requirement is that the accounts are required to be audited by a qualified empaneled person which has been done in the Annual General Meeting of 7th September 2019. He submits that as on the date when the show-cause notice was issued by

Respondent No.2 on 29th September 2021 there was no cause for grievance as on 21st March 2021 the audit report for the year ending 31st March 2019 was already circulated to the general body which was approved. In support he relies upon the following decisions:

- [a] ***Chetan Mehta v. State of Maharashtra [2022 SCC OnLine Bom 8139];***
- [b] ***Dilip v. Commissioner of Co-operation [2009(2) Mh.L.J. 471];***
- [c] ***Gaurav K. Desai v. State of Maharashtra [2015 SCC OnLine Bom 3449]***

19. Dr. Chandrachud, learned counsel appearing for the Respondent No.3 would support the submissions advanced by Mr. Kamat by submitting that the order of Appellate authority would indicate two violations; firstly office bearers have not placed the statutory audit report for the financial year 2018-19 before the Annual General Meeting and secondly the Petitioners have not placed the audit rectification report for the year 2017-18. He submits that under the provisions of Section 75(2)(vi) of the MCS Act what is required to be placed before the Annual General Meeting is the audit report and the Section does not speak of any statutory audit report. He points out the affidavit-in-reply filed by the Respondent No.3 and would point out the notice given for 101st Annual General Meeting listing the agenda and would submit that the Annual General Meeting was for the purpose of adopting the report of managing committee and the statement of accounts for the year

ending 31st March 2019. He would further point out the audit report of Harish Hegde & Co., annexed at page 464 of affidavit-in-reply and would submit that the statement of accounts for the year ending 31st March 2019 was placed before the Annual General Meeting. He would further submit that the report of Harish Hegde & Co. was part of booklet circulated to the members which was a report on the financial statement and thus there was compliance of Section 75 of the MCS Act.

20. *Per contra*, Mr. Dave, learned counsel appearing for the Respondent Nos. 4 to 6 would submit that what was required to be submitted was statutory audit report. He would point the provisions of Section 81 of the MCS Act and submits that the requirement is that the accounts had to be audited at least once in each financial year and to be completed within a period of four months from the close of financial year and thereafter to be placed before the Annual General Meeting. He submits that the agenda for the 101st Annual General Meeting, item No.3 was in respect of appointment of internal auditor for the financial year 2019-20 and item no.5 was for a resolution that the statutory audit report be presented by RSVA & Co., and the audit rectification report for the year 2018-19 which will be submitted to the Deputy Registrar once completed be and hereby approved. He submits that it is the Society itself who has termed the statutory audit report to be submitted to be one which will be prepared by RSVA & Co. He submits that the audit

report placed before the Annual General Meeting was not prepared by RSVA & Co., but was prepared by Harish Hegde & Co. He submits that 101st Annual General Meeting was held on 7th September 2019 and the statutory audit report was prepared by RSVA & Co., on 27th September 2019. He submits that it is therefore clear that the statutory audit report was not placed before the Annual General Meeting. He points out to the audit memo at page 382 which states that the audit commenced on 23rd September 2019 and was completed on 26th September 2019 and the audit memo was submitted on 27th September 2019. He submits that there was no meeting of managing committee between 23rd September 2019 and 27th September 2019. He therefore submits that the statutory audit report submitted to the Registrar was not placed before the Committee. He would further point out that the agenda item no.5 was not passed as the same was opposed by majority members. He submits that despite thereof the Petitioners still went ahead and filed the statutory audit report in September 2019 without tabling it before the Annual General Meeting. He submits that on 30th October 2019, the statutory audit report was presented to the Registrar. He would submit that there was no such practice of preparation of two audit reports. He submits that the Assistant Registrar has given cogent reasons while passing the order of disqualification. He submits that the judgments relied upon by learned counsel for the Petitioner were

interim orders and there was no final determination. He relies upon the decision of ***Santosh Hari Gavas v. State of Maharashtra [2021 SCC OnLine Bom 3579]***.

21. In rejoinder Mr. Kamat would submit that requirement of tabling the audit report was met as the report of Harish Hegde & Co. was tabled before the committee which was agenda item no.2. He would further point out the audit memo and submit that there is a specific reference to the internal audit done by Harish Hegde & Co. and there was proper co-ordination between the statutory auditor and the internal auditor. He would submit that the report of RSVA & Co., was not tabled before 26th September 2019 and agenda item no.5 did not go through and it was passed at a subsequent date. He submits that there is no difference in the reports of Harish Hegde & Co. and RSVA & Co. He submits that in the first authority's order there is no consideration of the submissions raised by the Petitioner.

ISSUE FOR CONSIDERATION:

22. Whether the placing of the internal audit report of Harish Hegde & Co. before the General Body constitutes sufficient compliance of Section 75 (vi) of MCS Act when viewed in light of the practice adopted by the Society of appointing a Statutory Auditor to audit the Society's accounts in addition to the appointment of an internal auditor. If not so, whether there is sufficient explanation for the non compliance of the statutory

provisions and therefore the discretion should have been exercised by the Assistant Registrar in favour the Petitioner.

REASONS AND ANALYSIS:

23. Before proceeding, it will be beneficial to visit the relevant provisions of MCS Act and the Rules governing the provisions of audit.

STATUTORY FRAMEWORK:

24. Section 75 of MCS Act governs the process of holding of AGM and prescribes the mandatory business to be transacted therein. The provisions governing Audit of the accounts are contained in clause (a) of Sub-Section (1) of Section 81 which finds place in Chapter VIII of MCS Act and, Rule 62 of Rules of 1961 prescribes the form for balance sheet and profit and loss account and Rule 69(1) which reads thus :

"75. Annual General body meeting.

(1) Every society shall, within a period of four months after the close of the financial year, get its books of accounts audited and within six months after the close of financial year, to transact its business as may be provided in this Act, call the annual general body meeting of its members:

Provided that, the Registrar may, in exceptional circumstances such as infectious diseases, pandemic, flood, heavy rains, droughts or earthquake, by general or special order, extend the above referred period not exceeding three months;

Provided further that, for the financial year 2019-2020 and year 2020-2021, the society may get its books of accounts audited within nine months from the close of its financial year and call the annual general body meeting within twelve months from the close of its financial year.

Provided also that, where such meeting is not called by the society, the Registrar or any officer authorised by him may call such meeting in the manner prescribed and that meeting shall be deemed to be a general body meeting duly called by the

society, and the Registrar may order that the expenditure incurred in calling such a meeting shall be paid out of the funds of the society or by such person or persons who in the opinion of the Registrar, were responsible for the refusal or failure to convene the general meeting.

(2) At every annual general body meeting of a society, the committee shall lay before the society,—

(i) a statement showing the details of the loans, if any, given to any of the members of the committee or any member of the family of any committee member, including a society or firm or company of which such member or members of his family is a member, partner or director, as the case may be; the details of repayment of loan made during the preceding year and the amount outstanding and overdue at the end of that year;

(ii) annual report of its activities;

(iii) plan for disposal of surplus;

(iv) list of amendments of the bye-laws of the society, if any;

(v) declaration regarding date and conduct of its election of its committee, when due;

(vi) audit report of the preceding financial year;

(vii) rectification report of earlier audit;

(viii) annual budget for next year;

(ix) any other information required by the Registrar in pursuance of any of the provisions of the Act and rules; and

(x) such other business will be transacted as may be laid down in the by-laws and of which due notice has been given.

Explanation I.—For the purposes of this sub-section, the expression “family” means a wife, husband, father, mother, brother, sister, son, daughter, son-in-law or daughter-in-law;

Explanation II.—In the case of a society not carrying on business for profit, an audited income and expenditure account shall be placed before the society at the annual general body meeting instead of audited profit and loss account, and all references to audited profit and loss account,

and to "profit" or "loss" in this Act, shall be construed in relation to such society as references respectively to the "excess of income over expenditure", and "excess of expenditure over income".

(2A) Every society shall, appoint an auditor or auditing firm from a panel approved by the State Government in this behalf in its annual general body meeting having such minimum qualifications and experience as laid down in Section 81, for the current financial year and shall also file in the form of return to the Registrar, the name of the auditor appointed and his written consent for auditing the accounts of the society within a period of thirty days from the date of the annual general body meeting:

Provided that, the same auditor shall not be appointed for more than three consecutive years by the annual general body meeting of the same society.

(2B) The Committee shall, in the financial year 2020-2021 and year 2021-2022, have the power to decide on the disposal of surplus and annual budget for the next year and to appoint an auditor or auditing firm from a panel approved by the State Government in this behalf having such minimum qualifications and experience as laid down in section 81. The decisions of the Committee in respect of the above matters shall be laid in the annual general body meeting of a society held thereafter for ratification.

(3) There shall be

(4) At every annual general body meeting the audited balance sheet, the audited profit and loss account, audit report of the preceding financial year submitted by the auditor appointed under Section 81, rectification report of earlier audit and the committee's report shall be placed for adoption and such other business will be transacted as may be laid down in the by-laws, and of which due notice has been given.

(5) If default is made, in calling a general body meeting within the period prescribed under sub-section (1), or in complying with sub-section (2), (2-A), (3) or Section (4), the Registrar may by order declare any officer or member of the committee whose duty it was to call such a meeting or comply with sub-section (2), (2A), (3) or (4), and who without reasonable excuse failed to comply with any of the aforesaid sub-sections disqualified for being elected and for being any officer or member of the committee for such period not exceeding five years, as he may specify in such an order and, if the officer is a servant of the society, impose a penalty on him to pay an amount not exceeding five thousand rupees. Before making an

order under this sub-section, the Registrar shall give, or cause to be given, a reasonable opportunity to the person concerned of showing cause against the action proposed to be taken in regard to him.

(6) Any penalty imposed"

"81. Audit.

(1)(a) The society shall cause to be audited its accounts at least once in each financial year and also cause it to be completed within a period of four months from the close of financial year to which such accounts relate by auditor or auditing firm from a panel prepared by the Registrar and approved by the State Government or an authority authorised by it in this behalf, possessing required qualifications and experience as may be prescribed, to be eligible for auditing accounts of societies, appointed by the general body of a society, as provided in sub-section (2A) of section 75 and shall lay such audit report before the annual general body meeting. In case of apex society, the audit report shall also be laid before both Houses of the State Legislature, in such manner, as may be prescribed :."

"69. Procedure for appointment of auditors and for conducting audit.

(1) (a) The audit of accounts of the societies shall be conducted by the auditor or auditing firm appointed by the society in its annual general body meeting within the period specified in the Act, from the panel of auditing firms or auditors whose names are listed as on the date of annual general body meeting and is approved by the State Government or authority authorized in this behalf.

Explanation. - For the purpose of this rule, Audit shall include annual, test, cost or performance, special and re-audit.

(b) Audit of the society shall be completed within four months from the close of the financial year and the report, also in Compact Disc shall be submitted to the society and the Registrar as specified in sub-section (5B) of section 81 of the Act, and also Part A of audit report, audit certificate and audited financial statements shall be uploaded by auditor on official website of Co-operation Department:

Provided that, Apex Societies shall submit copies of audit report as specified by the Registrar to be laid before the State Legislature.

(c) Every apex society shall submit to the Registrar, required copies of audit memorandum in both Marathi and English, in print and compact disk form within sixty days from receipt of audit memorandum from the auditor of the society for each financial year. The Registrar shall submit these copies of audit memorandum received from such society to the State Government to be laid before the State Legislature :

Provided that, if any apex society fails to submit required copies of audit memorandum as mentioned in clause (c) of this sub-rule in due time, the said society shall submit reasons thereof in writing to the Registrar. The Registrar shall submit reasons in writing received from the said society to the State Government to be laid before the State Legislature.

(d) Before appointing the auditor or the auditing firm, the society shall ensure that, the auditor or the auditing firm proposed to be appointed for conducting its audit has not accepted the societies for audit exceeding the limit prescribed under the Act.

(e) Qualifications and experience of the auditor shall be as specified in Explanation - I to sub-section (1) of section 81.

(f) The Registrar shall prepare, declare and maintain the panel of auditors and auditing firms from time to time in the following manner,-

(i) the Registrar shall call applications before the specified date as declared in the notice for empanelment from eligible auditors and auditing firms by a public notice to be displayed on the official website of the State Government and in any other mode, if required. Such notice shall also be published on the notice board of the office of the Registrar and District Deputy Registrars.

(ii) Every applicant shall submit only one application to the office of the concerned District Deputy Registrar of the District, where he ordinarily resides.

(iii) Applications received shall be scrutinized by the Committee presided over by the District Deputy Registrar consisting of the District Special Auditor of the District, representative of the Chartered Accountants of the District representative of the Certified Auditors of the District as members and the Assistant Registrar (Administration) of the District shall function as Member Secretary of the said committee.

(iv) After scrutiny, the District Deputy Registrar shall submit list of eligible applicants to the Registrar along with their

applications and documents. The Registrar may scrutinize the applications recommended by the District Committee.

(v) Any aggrieved applicant may approach to the Grievance Redressal Committee headed by the Divisional Joint Registrar, Divisional Joint Registrar (Audit), as member and Divisional Deputy Registrar of the Division shall function as Member Secretary of the said Committee and the decision of the Committee shall be final.

(vi) The Registrar shall cause to display a approved list of auditors and auditing firms panel on the official website of the Government.

(vii) the Registrar shall classify the societies and auditors for the purpose of audit in the following manner, namely :-

25. It will also be apposite to refer to Section 81(5B) and 82(1) of MCS

Act and Rule 73 of the Rules of 1961 which reads thus :

“(5B) The auditor shall submit to the society his audit report within period of one month from its completion and in any case before the issuance of notice of the annual general body meeting and to the Registrar in such form as may be specified by the Registrar, on the accounts examined by him and on the balance sheet and profit and loss account as on the date and for the period upto which the accounts have been audited, and shall state whether in his opinion and to the best of his information and according to the explanation given to him by the society the said accounts give all information required by or under this Act and present the true and fair view of the financial transactions of the Society.

Provided.....”

“82. Rectification of defects in accounts.-- (1) If the result of the audit held under the last preceding section discloses any defects in the working of the society, the society shall within three months from date of audit report, explain to the Registrar the defects or the irregularities pointed out by the auditor or auditing firm, and take steps to rectify the defects and provide remedy to irregularities, and report to the Registrar the action taken by it thereon and place the same before the next general body meeting. The Registrar may also make an order directing

the society or its officers to take such action, as may be specified in the order to remedy such defects, within the time specified therein.”

Rule 73: Form of Rectification Report: On receipt of an order, directing a society or its officers to rectify the defects and remedy the irregularities, issued by the Registrar under Section 82 and on receipt of an order issued by the Registrar under Section 87, the society, shall, subject to the provisions of sub-sections (2) and (3) of Section 87, submit to the Registrar and the auditor concerned, a rectification Report in Form ‘O’. The society shall continued to submit such rectification reports to the Registrar and the auditor concerned till all the defects are rectified or the irregularities are remedies to the satisfaction of the Registrar”.

26. The statutory scheme governing the audit of the Society emerging from the conjoint reading of the above provisions is that the accounts of the Society are required to be audited by an approved auditor once in each financial year, which audit has to completed within four months from the close of every financial year and in any case before the issuance of notice of holding of AGM. The AGM has to be called within six months from close of every financial year in which the audit report of the preceding financial year and the rectification report of earlier audit is required to be placed for approval. The auditor is required to submit to the Society his audit report and to the Registrar in the specified form as per the Rules, on the accounts examined by him and on the balance sheet and profit and loss account as on the date and for the period upto which the accounts have been audited. Whereas Section 81(5B) requires

the auditor to submit his audit report to the Registrar and the Society, Section 82 read with Rule 73 places the burden on the Society to submit the Rectification Report to the Registrar in prescribed form.

27. Coming to the present case, irrespective of the long standing practice of having two audit reports, the real issue is whether the audited report of an approved auditor appointed under Section 75(2A) has been placed before the AGM, which audit report has been completed within four months from date of close of financial year. On the issue of submission of rectification report of earlier audit, it is submitted that there was no rectification report which is not seriously disputed by Mr. Dave and the entire debate is on compliance of Section 75(2)(vi) of MCS Act.

28. The relevant time line in the present case is the financial year 2018-2019 and the audited accounts thus for the year ending 31st March, 2019. The audit had to be completed by 31st July, 2019 and in any case before the issuance of notice for AGM and the AGM had to be held before 30th September, 2019. The notice for holding the 101st AGM was given on 10th August, 2019 and the Agenda reads as under:

- “(1) To confirm the proceedings of the 100th Annual General Meeting held on 2 September 2018.
- (2) To receive and adopt the Report of the Managing Committee and the Statement of Accounts for the year 31 March, 2019
- (3) To appoint an Internal Auditor for the Financial Year 2019-2020

and to fix their remuneration

(4) To appoint statutory auditors for the financial year 2019 through 2022 and to fix their remuneration

(5) Resolved that the Statutory Audit Report to be presented by RSVA & Co and the Audit Rectification Report under Sections 82/87 of the MCS Act 1960 and Rule 73 of MCS Rules 1961 for the year 2018/2019 which will be submitted to the Deputy Registrar once completed be and is hereby approved.

(6) To consider the Motions of the Managing Committee as mentioned on page 22 of the Annual Report.

(7) To consider any other business that may be brought forward in accordance with Bye-law 38(6)."

29. Alongwith the notice of the AGM, the booklet which was circulated to the members of the Society included the independent auditor's report of one M/s Harish Hegde and Company accompanied by the financial statements. It is not disputed that the Society had appointed Harish Hegde and Company as the internal auditors for the year ending 31st March, 2019 with the approval of the General Body. There is also no dispute that the audit of Harish Hegde & Co alongwith the statement of accounts was tabled before the AGM and the minutes of meeting of 101st AGM discloses that there was discussion on Agenda Item No 2 regarding the accounts and the report which was put to vote and approved by majority.

30. From the discussion on Agenda Item No.5 as regards the

resolution to approve the statutory audit report to be presented by RSVA & Co, the minutes of the meeting indicates that the clarification given by the Committee members is that procedure adopted by the Society is that after the audited accounts are approved, it is submitted to the statutory auditor for auditing the accounts and for the Society to prepare Form "O" thereafter.

31. The provisions of Section 81(5B) of MCS Act makes it clear that it is for the auditor to submit to the Society and the Registrar his audit report in the specified form. From the statutory enactment, it is not pointed out to this Court that there was any obligation upon the Society to submit to the Registrar the audit report and/or the statement of accounts. Apart from Section 81(5B), I do not find any provision under which the obligation is cast upon the Society to submit the audit report and the statement of accounts. Findings of the Assistant Registrar does not indicate that there was no audit report submitted to the Registrar as required under Section 81(5B) and the Assistant Registrar has only taken into consideration the allegation that the audit report of RSVA & Co., was not tabled before the general body of the Respondent No. 3 society. There is no consideration by the Assistant Registrar as to whether the audit report of Harish Hegde & Co tabled before the general body was sufficient compliance of Section 75(2)(vi) or not. The Assistant Registrar only considered the non approval of Agenda Item No

5 without noticing that Agenda Item No 2 was approved by majority.

32. The requirement of Section 75 (2)(vi) is to place before the AGM the audit report of the preceding financial year. The appointment of Harish Hegde and Company as internal auditor meets the requirement of sub Section 2A of Section 75. The audit report submitted by Harish Hegde and Company is the report which is required to be submitted by the auditor to the Society under sub section (5B) of Section 81. It is the duty of the auditor to submit to the Registrar in prescribed form the audit report. The Committee members are imposed with the obligation to place before the AGM the audited report of the appointed auditor which has been complied with. The time line of the report being submitted to the Society before issuance of the notice of the AGM stands satisfied in view of the audited report and the financial statements circulated alongwith the notice for AGM. The said report of Harish Hegde and Company being placed for consideration before the AGM, in my view, is sufficient compliance of Section 75(2)(vi) of MCS Act.

33. A distinction is sought to be made out by Mr. Dave between an internal auditor and statutory auditor when none exists as per Section 75(2)(vi) of MCS Act. The audit report of RSVA & Company may be an additional audit report termed as statutory audit report according to the long standing practice of the Society, the non compliance of which cannot be said to be violation of the statutory requirements. Sub Section

2A of Section 75 speaks of appointment of an auditor from a panel approved by the State Government possessing such qualification and experience as laid down in Section 81 of MCS Act. The said provision does not mandate the appointment of dual auditors i.e. an internal auditor and a statutory auditor. It only requires appointment of an approved auditor. Where the audited report of an approved appointed auditor has been placed before the AGM, there is sufficient compliance of Section 75(2)(vi) irrespective of whether the auditor is described in the AGM as an internal auditor. Even if the audited report of RSVA and Company was not approved in the 101st AGM , the audited report of Harish Hegde and Company was approved which meets the requirement of Section 75(2)(vi) of MCS Act.

34. The submission that the audit report of Harish Hegde and Company is not in Form “N” cannot be accepted as the deviation is not demonstrated from the financial statements on record. That apart, Rule 62 of Rules of 1961 provides that the financial statements shall *ordinarily* be in Form “N”. Even if it is accepted that the audit report is required to be submitted in Form “N”, it was for the auditor to submit the report in the prescribed form. A perusal of the audit report of Harish Hegde & Co. which is annexed at page 523 of the Petition would indicate that the comprehensive audit report including the balance sheet and income and expenditure account was prepared by Harish

Hegde & Co. and the same was placed before the Annual General Meeting which has been approved. Even if it is accepted that the balance sheet and profit and loss account was not in Form "N", it would not lead to a conclusion that the audited report is not one contemplated under Section 75(2)(vi). That apart, there are no consequences provided for non submission of the financial statements in Form "N" which would render the provision directory.

35. In the complaint filed by the Respondent Nos. 4 to 6 it was contended that in the Annual General Meeting of 7th September 2019, the managing committee has not submitted the statutory audit report and the accounts in Form "N" and has not submitted the rectification report of the discrepancies and thus there is violation of statutory provisions. This is sought to be explained by the Committee members by contending that in the past, the society which is more than 100 years old society was following the practice of placing the audit report prepared by the independent auditor and the annual report of the managing committee before the managing committee and after the same is adopted by the committee, the annual report is printed and the notice for Annual General Meeting along with the report is distributed to the members. While distributing the copy of annual report to the members, copy is also sent to the office of concerned Registrar. It was contended that as per the practice there was report prepared by the internal

auditor and the second auditor was appointed. The practice adopted by the society is demonstrable from the agenda of the AGM.

36. The exercise to be carried out by the Assistant Registrar was to examine whether the audit report of duly approved appointed auditor was placed before the AGM within the prescribed timeline. The Assistant Registrar has glossed over the audit report of Harish Hegde and Company and was swayed by the fact that the audit report of RSVA & Company was termed as statutory audit report which statutory audit report was not approved and came to approved in the 102nd AGM. The Assistant Registrar construed the audit report of Harish Hegde and Company as an internal audit report and RSVA & Co's audit report as statutory audit report and found non compliance of Section 75(2)(vi) which is unsustainable.

37. What has become a matter of debate is the audit report of RSVA & Co., which was not approved in the the 101st Annual General Meeting of Respondent No.3 society whereas what has not been considered is the audit report of Harish Hegde & Co. who was an auditor from the panel of government approved auditors was tabled before the general body.

38. Even if there was a practice adopted by the society that after the audit report of auditor appointed by the society submits its audit report which is placed by the committee before the general body and the same is approved and adopted by the general body, a separate audit report is

prepared by another auditor the same does not deviate from the fact that by placing the audit report of Harish Hegde & Co. before the general body which was adopted satisfied the requirement of Section 75(2)(vi) of the MCS Act.

39. As far as the rectification of earlier audit report is concerned, nothing has been pointed out that there was any rectification report prepared in respect of the earlier audit and in the absence of any finding to that effect that there was a rectification report of the earlier audit which has not been placed before the Committee, the Assistant Registrar has held that there is non compliance of Section 75(2)(vi) and (vii) of MCS Act, which is unsustainable.

40. Although the significance of placing the audited accounts before the general body for its adoption and for submission to the Registrar cannot be undermined, the provisions itself provide for discretion to be exercised by the Registrar under Sub-Section (5) of Section 75 of MCS Act. Subsection (5) of Section 75 provides that in case of any default in complying with Sub-Section (2) of Section 75 of the MCS Act, the Registrar may by an order declare that such committee member who has without reasonable excuse failed to comply with the said sub Section ineligible for being member of the committee for such period. The Assistant Registrar failed to take note of the fact that subsequently, the report of RSVA & Co., was tabled before Annual General Meeting in the

next meeting and was in fact adopted.

41. There is no discussion and no finding of the Assistant Registrar on the audit report prepared by Harish Hegde & Co. and adopted by the general body leading to a conclusion that the Assistant Registrar has failed to consider the explanation tendered by the office bearers of Respondent No.3-society. The Appellate authority while dealing with the revision has failed to consider the explanation tendered by the Petitioners in its proper perspective and has dismissed the revision by a very cryptic order.

42. In the case of *Dilip v. Commissioner of Co-operation* (supra) learned Single Judge of this Court has analysed the provisions of Section 75(5) of the MCS Act and has held that before the action is taken by the Registrar, the Registrar has to come to a conclusion that there is no reasonable excuse or justifiable reason for not complying with the provisions. In the present case, there is no such finding by the Assistant Registrar.

43. In the case of *Gaurav K. Desai v. State of Maharashtra* (supra), learned Single Judge of this Court has held that considering the discretion vested in the Registrar, the Registrar may reduce the penalty or punishment proposed or may impose nil punishment or penalty. It was further held that for exercise of discretion and power, reasonable and fair approach is required if sufficient cause is made out and when

there is no or intending inaction to breach the provisions.

44. Applying the law laid down by this Court as discussed above to the facts of present case, it can be seen that there was compliance of Section 75(2) of the MCS Act as the report of Harish Hegde & Co., was placed before the Annual General Meeting. Even if the audit report of RSVA & Co., was not placed before the 101st Annual General Meeting, the same was subsequently placed before the 102nd Annual General Meeting and was accepted. Assuming for the sake of argument that it is the report of RSVA & Co., which would constitute an audit report of society, the fact remains that the audit report was placed for consideration in the next Annual General Meeting and maximum what can be considered is that there was a delay. It is nobody's case that no audit report was tabled before the general body and the submission is that the audit report of RSVA & Co., was not tabled before the general body, which is termed as statutory audit report.

45. Considering the peculiar facts of present case where one report was tabled and another report was tabled subsequently and it is not shown by the Respondent No. 4 to 6 that there is any discrepancy in those two reports or that there are any financial irregularities which have been brought to fore by the subsequent report of RSVA & Co., in my opinion, the Assistant Registrar ought to have exercised the discretion in favour of the society and ought to have imposed Nil penalty

even if it is found that the same is required to be imposed.

46. In my opinion, considering the above observation, based on assumption that it is the report of RSVA & Co., which was required to be tabled, there is sufficient compliance warranting exercise the discretion in favour of the Petitioners.

47. Coming to the decision of *Santosh Hari Gavas v. State of Maharashtra* (supra) relied upon by Mr. Dave, the learned Single Judge has emphasized the legislative intent in prescribing the time limit for getting the books of accounts audited as well as the mandatory requirement of placing the same before the Annual General Meeting to ensure the transparency, proficiency and efficient management of society. There is no quarrel with the said proposition. However, the facts are clearly distinguishable for the reason that in that case the office bearers of society failed to convene and hold the Annual General Meeting within the statutory period for the reason which cannot be said to be beyond their control and has therefore held that to contend such lapse would run counter to the statutory provisions. Facts of the case are clearly distinguishable are not applicable to the present case.

CONCLUSION:

48. The requirement of Section 75(2)(vi) is to table the audit report of the preceding financial year in the Annual General Meeting. The provision refers to an “audit report” and not to an “internal audit report”

or “statutory audit report”. The impugned orders carves out separate classes of audit report when none exists in the relevant provision. The long standing practice of the Society of having dual auditors termed as internal auditor and statutory auditor will not have any bearing as what is required to be considered is whether the requirement of Section 75(2) (vi) is met. In the instant case, the audit report of Harish Hegde and Company with the financial statements were tabled before the general body and approved.

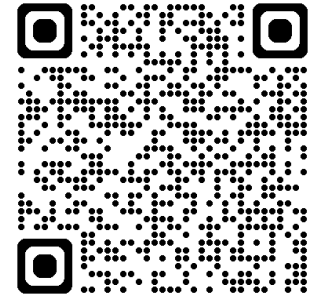
49. Even *assuming arguendo* that it was the report of RSVA & Co which was required to be tabled before the general body, the same was placed in the subsequent AGM and approved by the Society. Nothing has been demonstrated to show financial irregularities by the Committee Members or any discrepancy between the reports of Harish Hegde and Co. and RSVA and Co. This was therefore a fit case where if the authorities under the MCS Act found non compliance of Section 75, the discretion ought to have been exercised in favour of the Committee Members and Nil penalty ought to have been imposed.

50. In the light of above, the impugned order dated 13th December 2021 and the order dated 16th January 2023 are hereby quashed and set aside. Resultantly, Petition succeeds. Rule is made absolute.

[Sharmila U. Deshmukh, J.]

Case Brief & MCQs on "Ivan Mendonca v. Divisional Joint Registrar, Co-Operative Societies, Mumbai Division, Mumbai" (2024:BHC-AS:38761) is available in the eBook:

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