

**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO. 989 OF 2023 (F)**

1. Shri Vithoba Datta Dessai,  
Age : 62 years, The Board of Director of  
The Goa State Co.oP. Milk Producer's  
Union Ltd., Curti, Ponda-Goa
2. Shri Gurudas Keshav Parab,  
The Board of Director of  
The Goa State Co.oP. Milk Producer's  
Union Ltd., Curti, Ponda-Goa  
(Registered Addresses) ...Petitioners

Versus

1. The Registrar of Cooperative Societies,  
Government of Goa, Panaji Goa,  
Having office at Registrar of Cooperative  
Societies, Sahakar Sankool 4<sup>th</sup> and 5<sup>th</sup> Floor,  
EDC Complex Patto-Plaza, Panjim-Goa
2. State of Goa,  
Through its Chief Secretary.  
Porvorim, Goa (Registered Addresses) ...Respondents

....

Mr. S.S. Kantak, Senior Advocate a/w Mr. Parikshit Sawant, Mr. Preetam Talaulikar, Ms. Neha Kholkar, Advocate for the Petitioners.

Mr. Deep Shirodkar, AGA for the Respondents.

Mr. J.A. Lobo a/w Ms. A. Nanodkar, Advocate for Intervenor.

....

**WITH**  
**WRIT PETITION NO. 1010 OF 2023 (F)**

1. Rajesh K. Faldesai S/o Krishna Faldesai,  
Age : 40 years, R/o Balli, Quepem, Goa
2. Ajay S/o Laxmikant Desai,  
Age : 57 years R/o. Kurpas Bandora Ponad Goa

3. Babu S/o Narhari Komarpant,  
Age : 75 years, R/o Devbag, Palolem  
Canacona Goa
  4. Aselmo Furtado,  
Age : 54 years, R/o. Carmona  
Salcete Goa
- ...Petitioners

Versus

1. The Registrar of Cooperative Societies,  
Having his office Sahakar Sankool  
Patto-Plaza, Panjim-Goa
  2. The Goa State Milk Producers Union Ltd.,  
a Federal Co-operative Society registered under  
the Maharashtra Co-operative Societies Act, 1960  
and now governed under the provisions of  
Goa Co-operative Societies Act, 2001  
Having its office at Curti, Ponda, Goa  
represented thr. Its I/C Managing Director,  
Shri. Yogesh Rane,  
Age : Major, having his office at Curti,  
Ponda-Goa
  3. Shri Rajesh Parwar,  
Assistant Registrar of Co-operative Societies,  
Age : Major, having his office at Sahakari  
Sankul, Patto-Plaza, Panaji-Goa
- ...Respondents

....

Mr. S.D. Lotlikar, Senior Advocate a/w Mr. Omkar Kulkarni, Advocate  
for the Petitioners.

Mr. Manish Salkar, AGA for the Respondents.

Mr. J.A. Lobo a/w Ms. A. Nanodkar, Advocate for Intervenor.

....

**WITH**  
**WRIT PETITION NO. 982 OF 2023 (F)**

1. Vijaykant S/o Vithoba Gaonkar  
Age : 47 years, R/o H.No.136, Jackem,  
Netravali, Sanguem, Goa
  2. Ulhas S/o. Pandurang Sinari,  
Age : 47 years, R/o. H. No.136, Jackem,  
Netravali Sanguem, Goa ...Petitioners

Versus

1. State of Goa,  
Through its Chief Secretary,  
Secretariat, Porvorim, Goa 403521
  2. The Registrar of Cooperative Societies,  
Having office at Sahakar Sankool 4<sup>th</sup> and  
5<sup>th</sup> Floor, EDC Complex Patto-Plaza,  
Panjim-Goa ...Respondents

Mr. Mr. Amey Kakodkar, Advocate for the Petitioners.

Mr. Neehal Vernekar, AGA for the Respondents.

Mr. J.A. Lobo a/w Ms. A. Nanodkar, Advocate for Intervenor.

• • • •

**WITH**  
**WRIT PETITION NO. 991 OF 2023 (F)**

- Madhav S/o. Atmaram Sahakari,  
Age : 74 years, R/o. H. No.47-1,  
mestawada, Curti Ponda Goa Petitioner

Versus

1. The Registrar of Cooperative Societies,  
Department of Co-operation, Office of  
Registrar of Co-op. Societies, Government  
of Goa, Sahakar Sankool 4<sup>th</sup> Floor,  
Patto-Plaza, Panjim-Goa  
E-mail ID : reg-orcs.goa@nic.in

2. Shri. Dhananjay Nandba Dessia,  
Age : Major, Board of Director of the  
Goa State Co-op. Milk Producer's Union  
Ltd., Curti, Ponda, Goa
3. Shri. Madhavrao Shivajirao Dessai,  
Age : Major, Ex-Board of Director of the  
Goa State Co-op. Milk Producer's Union  
Ltd., Curti, Ponda, Goa
4. Shri. Vithoba Datta Dessai,  
Age : Major, Board of Director of the  
Goa State Co-op. Milk Producer's Union  
Ltd., Curti, Ponda, Goa
5. Shri. Baburao Shrikant F. Dessai,  
Age : Major, Board of Director of the  
Goa State Co-op. Milk Producer's Union  
Ltd., Curti, Ponda, Goa
6. Shri. Vijaykant Vithoba Gaonkar,  
Age : Major, Ex-Board of Director of the  
Goa State Co-op. Milk Producer's Union  
Ltd., Curti, Ponda, Goa
7. Shri. Gurudas Keshav Parab,  
Age : Major, Board of Director of the  
Goa State Co-op. Milk Producer's Union  
Ltd., Curti, Ponda, Goa
8. Shri. Shivanand Babulo Pednekar,  
Age : Major, Ex-Board of Director of the  
Goa State Co-op. Milk Producer's Union  
Ltd., Curti, Ponda, Goa
9. Shri. Rajendra Yeshwant Sawal,  
Age : Major, Board of Director of the  
Goa State Co-op. Milk Producer's Union  
Ltd., Curti, Ponda, Goa
10. Shir. Ulhas Pandurang Sinari,  
Age : Major, Ex-Board of Director of the  
Goa State Co-op. Milk Producer's Union  
Ltd., Curti, Ponda, Goa

11. Dr. N.C. Sawant (Retired),  
Age : Major, Managing Director of the  
Goa State Co-op. Milk Producer's Union  
Ltd., Curti, Ponda, Goa
  12. Shri. Rajesh K. Phaldessai,  
Age : Major, Board of Director of the  
Goa State Co-op. Milk Producer's Union  
Ltd., Curti, Ponda, Goa
  13. Shri. Ajay Laxmikant Dessai,  
Age : Major, Board of Director of the  
Goa State Co-op. Milk Producer's Union  
Ltd., Curti, Ponda, Goa
  14. Shri. Babu Narhari Komarpant,  
Age : Major, Board of Director of the  
Goa State Co-op. Milk Producer's Union  
Ltd., Curti, Ponda, Goa
  15. Shri. Aselmo Furtado,  
Age : Major, Board of Director of the  
Goa State Co-op. Milk Producer's Union  
Ltd., Curti, Ponda, Goa
  16. Shri. Shrikant Pandurang Naik,  
Age : Major, Ex-Board of Director of the  
Goa State Co-op. Milk Producer's Union  
Ltd., Curti, Ponda, Goa
  17. Shri. Naresh Dharma Malik,  
(since deceased) Board of Director of the  
Goa State Co-op. Milk Producer's Union  
Ltd., Curti, Ponda, Goa
  18. Shri. Vijakumar S. Patil,  
Age : Major, Board of Director of the  
Goa State Co-op. Milk Producer's Union  
Ltd., Curti, Ponda, Goa
- ...  
...Respondents

Mr. Ashwin D. Bhobe a/w Ms. Shaizeen B. Shaikh, Advocate for the Petitioner.

Mr. Suhas Parab, Addl. Govt. Advocate for the Respondents.

Mr. J.A. Lobo a/w Ms. A. Nanodkar, Advocate for Intervenor.

•

**WITH  
WRIT PETITION NO. 492 OF 2023 (F)**

Shri. Baburao Shrikant F. Dessai,  
Age : 65 years, Indian National, Married,  
R/o. House No.50, bansai, Kakoda,  
Churchorem, Goa

...Petitioner

Versus

1. The Registrar of Cooperative Societies,  
Government of Goa, having office at Registrar  
of Cooperative Societies, Sahakar Sankool,  
4<sup>th</sup> Floor & 5<sup>th</sup> Floor, EDC Complex, Patto-Plaza,  
Panjim-Goa
  2. State of Goa,  
Through its Chief Secretary,  
Having office at Secretariat,  
Porvorim, Goa ...Respondents
  3. Ramesh S/o Sadashiv Naik,  
Age : 51 years, Married, Dairy Farm,  
R/o H. No.850-B, Bakora, Curtorim,  
Salcete, Goa ...Intervenor

• • •

Mr. Iftikhar Agha a/w Ms. Valencia Fernandes, Mr. L, Fernandes, Advocate for the Petitioner.

Ms. Simone Correia Maria, AGA for the Respondents.

Mr. J.A. Lobo a/w Ms. A. Nanodkar, Advocate for Intervenor.

1

**WITH**  
**WRIT PETITION NO. 1985 OF 2023 (F)**

Mr. Shivanand Pednekar,  
Age : 51 years, R/o H. No.1255 dable Wada  
Harvalem, Sankhalim Bicholim-Goa ...Petitioner

## Versus

The Registrar of Cooperative Societies,  
having his office at Sahakar Sankul,  
Patto-Plaza, Panjim-Goa ...Respondent

• • •

Mr. Vivek Rodrigues a/w Mr. Siddharth Malik, Advocate for the Petitioner.

Mr. Manish Salkar, Government Advocate for Respondents.

Mr. J.A. Lobo a/w Ms. A. Nanodkar, Advocate for Intervenor.

•

**CORAM** : PRAKASH D. NAIK, J.  
**RESERVED ON** : 28<sup>th</sup> SEPTEMBER, 2023.  
**PRONOUNCED ON** : 25<sup>th</sup> APRIL, 2024.

## JUDGMENT :

1. The Petitioners have invoked the jurisdiction of this Court under Article 226 and 227 of the Constitution of India. The Petitioners are primarily aggrieved by Order dated 21<sup>st</sup> April, 2023 passed by Registrar of Cooperative Societies (for short ‘R.C.S.’) and Ex-Officio Joint Secretary (Cooperation Government of Goa, Panaji, Goa) under Section 59(11) of Goa Cooperative Societies Act. Some of the Petitioners have also taken exception to Order dated 21<sup>st</sup>

April, 2023 passed by Registrar of Cooperative Societies under Section 67-A of the Goa Cooperative Societies Act.

2. The brief facts necessary for adjudicating the issues involved in this proceedings are as under :

i. The Goa State Cooperative Milk Producers' Union Ltd. Curti-Ponda is registered under the erstwhile the Maharashtra Cooperative Societies Act, 1960 made applicable to the State of Goa and now deemed to be a society registered under the Goa State Cooperative Societies Act, 2001.

ii. The main object of Goa State Cooperative Milk Producers' Union Ltd. are to carry out activities conducive to the economic and socioeconomic development of milk producers by organizing effective production, processing and marketing of commodities, organizing new milk producers cooperative societies and developed affiliated societies to the utmost. The objective includes undertaking and or a encouraging production of milk, growing fodder, agricultural products and cattle feed and to provide veterinary and artificial insemination services and other technical inputs for milk production and enhancement and medicines for prophylactic preventive purposes and several other objectives as laid down

in its by laws.

iii. The Goa Cooperative Societies Act, 2001 was passed by legislative assembly of Goa on 29<sup>th</sup> March, 2004 and assented to by the Governor of Goa on 18<sup>th</sup> May, 2001. The Act was enacted to consolidate and amend the law relating to the cooperative societies in the State of Goa. The preamble of the Act indicate that it is enacted with a view to providing for the orderly development of cooperative societies as the people's institutions based on self-help and mutual aid in the State of Goa, in accordance with the cooperative principles, it is expedient to consolidate and amend the law relating to the cooperative societies in the State.

iv. Goa Dairy has around 179 primary Dairy Cooperative Societies as its members which are aggregating milk produced by their member dairy farmers and supplying it to Goa Dairy on daily basis. The Goa Dairy is running a milk processing and packing plant at Curti-Ponda, Goa which is leased by the Government to Goa Dairy for a nominal lease rent. The Goa Dairy is also running a cattle feed manufacturing plant situated at Usgaon, Ponda, Goa which is also owned by the Government and is leased to Goa Dairy at nominal rent.

v. As per the by laws of Goa Dairy, the Supreme Authority of the society is vested in the general body meeting, subject to the Act, the Rules and the bye laws. The Board of Directors of Goa Dairy consists of 15 Directors out of which 12 are directly elected, one is nominated by R.C.S. and one nominated by NDDB and the Managing Director of the Society is Ex-Officio Director and the member secretary.

vi. Shri. Ramesh S. Naik, Chairman of Curtorim Milk Society, filed a complaint dated 11<sup>th</sup> September, 2019 with the Chief Minister of Goa and it was presented under inward no.5549/C on 10<sup>th</sup> September, 2019 in the officer of the Chief Minister, Secretariat, Porvorim, Goa. The complaint was forwarded to the R.C.S. on 13<sup>th</sup> September, 2019 with marginal remarks 'may examine and put up'. This complaint with marginal remarks was received in the office of the cooperative societies R.C.S. on 18<sup>th</sup> September, 2019.

vii. The R.C.S. issued an order dated 11<sup>th</sup> March, 2020 appointing Shri. Raju Magdum, Cooperative Officer to conduct inquiry into the functioning of the Goa Dairy. Subsequently, another order dated 12<sup>th</sup> May, 2020 was issued by the R.C.S., appointing Shri. Rajesh Parwar, Assistant Registrar to conduct

the said inquiry in place of Shri. Raju Magdum.

viii. Shri. Rajesh Parwar, Assistant Registrar, conducted the inquiry and submitted inquiry report to Registrar on 18<sup>th</sup> June, 2020. This inquiry report was forwarded to Goa Dairy vide letter dated 3<sup>rd</sup> August, 2020 for taking necessary action. The Managing Director of Goa Dairy vide letter dated 26<sup>th</sup> December, 2020 informed the R.C.S. that Goa Dairy vide resolution dated 25<sup>th</sup> November, 2020 has proposed to issue notices to the concerned persons who are held responsible for the irregularities, accountable for the loss caused to the Union.

ix. The Registrar issued show cause notice dated 7<sup>th</sup> July, 2021 under Sub-section (11) of Section 59 of the Act calling upon to show cause in writing within a period of one month from the date of receipt of show cause notice and fixing the personal hearing on 29<sup>th</sup> July, 2021. The show cause notice alongwith copy of Inquiry Report dated 18<sup>th</sup> June, 2020 and all its enclosures was served upon all 18 Respondents therein through the Managing Director of Goa Dairy.

x. Reply was filed by the parties facing show cause notice and pleaded their defence. Parties appeared either personally or through their Advocates. Inspection was allowed to parties

of documents and records.

xi. In exercise of powers conferred under Sub-section (11) of Section 59 of the Goa Cooperative Societies Act, 2001 and all other powers enabling him in that behalf the Registrar of Cooperative Societies disqualified Shri. Madhav A. Sahakari, Chairman, Shri. Baburao S.F. Dessai, Director, Shri. Vithoba D. Dessai, Director, Shri. Madhavrao S. Desai, Director, Shri. Gurudas K Parab, Director, Shri. Rajendra Y. Sawal, Director, Shri. Dhananjay N. Dessai, Director, Shri. Ulhas P. Sinari, Director, Shri. Shivanand B. Pednekar, Director, Shri. Vijaykant V. Gaonkar, Director to continue on the Board of Goa Dairy since by adopting resolution no.7 dated 7<sup>th</sup> April, 2017 they acted in a manner detrimental to the interest of Goa Dairy thereby causing loss to Goa Dairy. The Registrar in exercise of same powers disqualified Shri. Madhav Sahakari, Chairman, Shri. Baburao S.F. Dessai, Director, Shri. Vithoba d. Dessai, Director, Shri. Gurudas K Parab, Director, Shri. K. Faldessai, Director, Shri. Ajay L. Dessai, Director, Shri. Babu N. Komarpant, Director, Shri. Rajendra Sawal, Director and Shri. Aselmo Furtado, Director to continue on the Board of Goa Dairy since by adopting resolution no.1 dated 12<sup>th</sup> June, 2017

they acted in a manner detrimental to the interest of Goa Dairy thereby causing loss to Goa Dairy.

xii. The proceedings initiated by show cause notice dated 7<sup>th</sup> June, 2021 against Shri. Shrikant Pandurang Naik and Shri. Vijaykumar S. Patil were dropped. The proceedings initiated vide show cause notice dated 7<sup>th</sup> July, 2021 against Shri. Naresh Dharma Malik were dropped since he had expired.

xiii. Goa Dairy was directed to submit report to conduct separate proceedings under Section 59(9) and Section 82 of the Act against Dr. Navso C. Sawant for recovery of loss caused to Goa Dairy due to his conduct as Managing Director in respect of all three charges mentioned in show cause notice dated 7<sup>th</sup> July, 2021 which amounted to negligence and dereliction in duty. It was clarified that in accordance with the explanation below Section 59 of the Act, the expression ‘to continue on the board’ shall mean disqualification against such Directors to hold the post of Director forever and therefore disqualified Directors shall continue to be disqualified forever.

xiv. The R.C.S. then passed a separate order dated 21<sup>st</sup> April, 2023 under Section 67-A of the Goa Cooperative Societies Act,

2001 and superseded the existing Minority/Defunct of Goa State Cooperative Milk Producers Union Ltd. and appointed the committee of Administrators. It was directed that the term of the committee of Administrator shall be for initial period of six months from the date of issue of the order. The committee to take over the complete charge of the assets, books and records of the society by preparing inventory/charge, transfer certificate. The committee was directed to take immediate steps to hold fresh election in accordance with provision of the Act, Rules and by laws.

3. Learned Senior Advocate Mr. Lotlikar, appearing for the Petitioners in Writ Petition No.1010 of 2023 submitted as under :

- i. The show cause notice dated 7<sup>th</sup> July, 2021 is in violation of Articles 14, 19 and 21 of the Constitution of India.
- ii. The show cause notice is contrary to Section 76-A of the Goa Cooperative Societies Act, 2001.
- iii. The inquiry officer did not afford opportunity of hearing to the Petitioners.
- iv. The Registrar has disqualified the Petitioners for act or omission committed by the previous Board of which the

Petitioners were not members.

v. The Petitioners were Directors of Respondent No.2 being elected on the Board of Directors for a term of five years from 2017-2022. The Petitioner No.1 was further elected for the term of from 2022 to 2027.

vi. The Respondent No.1 issued show cause notice under Section 59(1) to the Petitioners calling upon them to show cause as to why they should not be held responsible for the decision taken during their tenure. The Respondent No.1 did not give any opportunity to the Petitioners to show cause as to why the report of the Respondent No.3 should not be accepted or rejected. The Petitioners were not Directors on the Board of Respondent No.2 when the decisions were taken.

vii. Vide show cause notice dated 7<sup>th</sup> July, 2021, the Petitioners were asked to appear before Respondent No.1. The Petitioners filed a reply to the show cause notice. The Respondent No.1 without application of mind proceeded with inquiry as if it was an inquiry under Section 76-A (I) of the Act.

viii. When an inquiry is conducted under Section 76-A (ii) of

the Act, it is mandatory that an opportunity is afforded of being hearing. Since the inquiry was initiated on the basis of a written complaint received from Shri. Ramesh Naik, the inquiry ought to have been under Section 76-A (2) and not under Section 76-A (1) of the Act. The difference between these two provisions is that under Section 76-A (2) an opportunity has to be afforded to the opponents before initiating an inquiry. This opportunity was not afforded to the Petitioners.

ix. Even if the Respondent No.1 initiates *suo motu* action under section 76-A (1) of the Act, the inquiry would be illegal since the Registrar and other officers who have various obligations under the Act who had bound to take into the affairs of the society from time to time. The Registrar can take note of information so received and may of his own proceed to hold the inquiry. Therefore, it was necessary that such application or complaint should be supported by one-third of the members of the society. The complaint was not supported by one-third of the members of the society.

x. The Petitioners were absolved from first and third charge mentioned in the show cause notice. They were disqualified

for confirming the purchase of milk by the previous Board. The previous Board had resolved to purchase the milk on 7<sup>th</sup> April, 2017 and had started procuring the milk much before the Petitioners became Directors on the Board of Respondent No.2. The Petitioners cannot be made responsible for the act or omission of the Board of which they were no the members.

xi. For the first time in the impugned order, it was recorded that proceedings were initiated *suo motu*. This was to get over the objection to the effect that there could not be any proceedings pursuant to complaint made by single individual.

The action is in violation of Section 76-A(1) of the Act.

xii. There is no document to show that the proceedings were initiated *suo motu*. The proceedings were initiated on the complaint of Ramesh Naik. By no stretch of imagination, it can be accepted that the proceedings were *suo motu*.

xiii. There is violation of principle of natural justice.

4. Mr. Lotlikar has relied upon the following decisions :

i. ***Gorkha Security Services V/s. Government (NCT of Delhi) And Others<sup>1</sup>***

---

<sup>1</sup> (2014) 9 SCC 105

*ii. Sadashiv s/o. Ganpatrao Mahajan V/s. The Hon'ble Minister for Co-operation and Textile & Ors.<sup>2</sup>*

*iii. Ravi Yashwant Bhoir V/s. District Collector, Raigad And Others<sup>3</sup>*

5. Learned Senior Advocate Mr. Kantak appearing for the Petitioners in Writ Petition No.989 of 2023 urged following grounds:

i. The show cause notice is defective. It does not put on notice that the inquiry is to disqualify.

ii. The Petitioners were given clean chit in respect to first and third charge. However, they have been held guilty of second charge i.e. purchase of milk at a higher rate.

iii. The show cause notice dated 7<sup>th</sup> July, 2021 issued under Section 76-A (1) has been issued without fulfilling the criteria prescribed under Section 76-A (1). In view of which the Registrar ought not to have proceeded with the inquiry.

iv. In terms of Section 76-A (1) the Registrar may inquire into the affairs of the societies if the same has been pointed out to him by not less than one-third members of total number

---

<sup>2</sup> 2012(6) ALL MR 128

<sup>3</sup> (2012) \$ SCC 407

of members of the Directors or not less than one-fifth of total number of members of the society or *suo motu*. The present inquiry was initiated on a complaint dated 11<sup>th</sup> September, 2019, addressed by one member of Goa State Cooperative Milk Producers Union and on this ground the impugned order is required to be set aside.

v. The contention of Respondent No.1 is that the inquiry was *suo motu* action and it is not pursuant to the complaint which came to be registered by complainant Mr. Ramesh Naik. Respondent No.1 has relied upon the purported material pursuant to which the action has been initiated against the Petitioners. The letter which is in the form of material relied upon by Respondents makes it clear that there was no material before the R.C.S. to take *suo motu* cognizance.

vi. The annexure enclosed to the letter dated 15<sup>th</sup> February, 2020 mentions that as per the records, there is no correspondence from Food and Drugs Administration (for short 'FDA') reference to purchase of buffalo and cow from outside Goa. But during their visit to dairy plant, they had collected the information about testing procedure from outside milk tankers from their dairy plant and the witnessed

physically. They were not aware if any letter or correspondence with reference to above is received at the office of Managing Director, Goa Milk Union during the period. With reference to black listing of buffalo and cow milk supplier. It is submitted that since 2015 till date no parties were black listed but the party namely Mahakali Milk Dairy was blocked from participating from e-tender process in the year 2018-2019 due to Administrative reasons.

vii. The Respondents have relied upon one line from the letter to say that there were no correspondence from FDA particularly with reference to purchase of buffalo and cow milk from outside Goa. The Respondents had skipped the rest of the paragraph which clearly states that the Assistant Dairy Manager was not aware whether there was any correspondence which was subsequently made pursuant to the testing which was carried out by FDA. FDA recommendation refers to the fact that the statement of account showing milk rejection, the testing panel has rejected consignments of milk based on the findings recorded in the report.

viii. The recommendation of Directors of FDA was received by Goa Dairy on 14<sup>th</sup> March, 2017. The recommendation was

binding on Goa Dairy and in view of recommendation and categorical findings made by FDA, the Goa Dairy took policy decision to purchase milk from reputed dairy and not to purchase milk milk supplier against whom there were previous complaints.

ix. The material relied upon by the Respondent No.1 cannot be used against the Petitioners for initiating inquiry under Section 76-A.

x. The Petitioners had filed reply dated 13<sup>th</sup> July, 2023 to the show cause notice giving reasons and explanation to the allegation made against the Petitioner with regard to charge no.2 i.e. purchase of milk at higher rate. The explanation tendered by the Petitioners was not taken into consideration by Respondent No.1. There were several complaints against Mahakali and other bidders.

xi. The impugned Order was passed without giving any findings of whatsoever nature in respect to the explanation given by the Petitioners. There were several complaints against Mahakali and other bidders who participated at the relevant point of time and as such the rate quoted by Mahakali and other lower bidder at the relevant point of time was

ignored by the Board.

xii. The show cause notice dated 7<sup>th</sup> July, 2021 is bad in law, because it does not clearly state the Registrars intent to disqualify the Petitioners if the charges in the notices are proven.

xiii. Show cause notice dated 7<sup>th</sup> July, 2021, does not reflect anyway that the Registrar intended to disqualify the Petitioners and others members of Board of Directors. However, the final order passed in terms of Section 59(11) disqualifies the Petitioners from the Board of Directors of Goa State Cooperative Milk Producers Union.

xiv. The alleged irregularities sought to be relied upon by the Registrar in terms of show cause notice dated 21<sup>st</sup> July, 2021 was in respect to the irregularities which had taken place for the financial year 2017-2018, which term has expired. The Petitioners came to be elected for a period of five years for previous term from 2017-2022 and subsequent to the inquiry of the term in the year 2022 fresh elections were conducted and the Petitioners were elected in 2022 for a period of five years i.e. from 2022 to 2027. The Petitioners cannot be disqualified based on the actions of the previous term.

xv. The R.C.S. has not complied with Section 76-A (5) of Goa Cooperative Societies Act. The report relied upon by the inquiry officer has not been forwarded to the society and the recommendation and opinion of the society have been taken pursuant to passing the impugned order dated 21<sup>st</sup> April, 2023 which is sought to be challenged in this Petition.

xvi. The Petitioners have taken a decision to purchase milk from Samarth Dairy. It cannot be said that there was any ill motive to purchase milk from the said dairy by ignoring other bidder. IN the absence of any prove of any illegal gratification, it cannot be said that the decision was bad in law.

xvii. There is no finding by Respondent No.1 with regards to commission of Rs.4 per liter and therefore the question of illegal gratification does not arise.

xviii. The charge no.2 refers to purchase of buffalo milk from highest bidder by accepting commission of Rs.4 per liter thereby causing loss of Rs.60,00,000/-. There is no finding on the issue of commission and therefore, there was no illegal gratification. The Petitioners had submitted enough material to show that the milk procured from highest bidder was in view of categorical finding of FDA and in view of decision

taken by Goa Dairy at the relevant time after considering milk which has been procured in small quantity from all other bidders and after recording the finding in that regard with respect to complaints which were received of other bidders. There were no complaints about quality in respect to Samarth Dairy who was the highest bidder. The Board to concise decision to procure milk from Samarth Dairy although they were the highest bidder.

xix. The order dated 21<sup>st</sup> March, 2023 passed under Section 59(11) by the R.C.S. is not appealable and no appeal is provided under Section 114-A of the Goa Cooperative Societies Act, 2001. If the Petitioners are able to satisfy the Court, the impugned order is bad in law and deserved to be set aside, the subsequent order which has been passed under Section 67-A for appointing Administrative Committee to take charge of the Goa Dairy will have to be set aside.

6. Mr. Kantak has placed reliance upon following decisions.

- i. *UMC Technologies Pvt. Ltd. V/s. Food Corporation of India and Another, (2021) 2 SCC.*
- ii. *Vithalnagar Cooperative Housing Society V/s. Divisional Joint Registrar and Ors., 2015 (6) BOM. C.R. 176.*

*iii. Jeevan Niwas Cooperative Housing Society Ltd. and Anr.*

*V/s. State of Maharashtra (Writ Petition No.1953 of 2007)*

*dated 17<sup>th</sup> March, 2016.*

*iv. Indian Railway Construction Co. Ltd. V/s. Ajay Kumar,*

*(2003) 4 SCC 579*

*v. State of Punjab V/s. Bandeep Singh and Others, (2016)*

*1 SCC 724.*

7. Learned Advocate Mr. Amey Kakodkar, appearing for the Petitioners in Writ Petition No.982 of 2023 submitted he is adopting argument advanced by the learned counsels appearing in the aforesaid Petitions. In addition, it is submitted that the Petitioners were not on Board of Directors of Goa Dairy from 2017-2022. The resolution no.7 dated 7<sup>th</sup> April, 2017 was passed barely few days before the Petitioners term came to an end. The Petitioners term was from 2012 to 2017. The Petitioners had no control or say at the time of confirming the resolution at a subsequent meeting on 12<sup>th</sup> June, 2017. As far as resolution no.7 dated 7<sup>th</sup> April, 2017 is concerned it indicate that it was decided to purchase the pasteurized buffalo milk from Shantinath Dairy Kothali, Kolhapur at the rate of Rs.41.50 per liter on trial basis upon supply of good quality of milk by Shantinath Dairy, Kothali,

Kolhapur it should be continued. The enforcement of the purchase of milk on trial basis from Shantinath Dairy was beyond the power or control of the Petitioners. The purchase orders were placed during the tenure of new managing committee. The Petitioners are not Directors of Goa Dairy during the implementation of resolution no.7. The impugned order does not take into consideration the fact that the Petitioners were not Directors on the Board of Goa Dairy at the meeting held on 12<sup>th</sup> June, 2017 and that the resolution no.7 passed on 7<sup>th</sup> April, 2017 records that the milk was to be purchased on trial basis. Mr. Kakodkar has relied upon the decision of the Supreme Court in the case of *Laxmibai V/s. Collector, Nanded And Others*<sup>4</sup>.

8. Learned Advocates representing the Petitioners in the other Petitions adopted the arguments of learned counsels referred to hereinabove.

9. The contention of the Petitioner in Writ Petition No.991 of 2023 is that he was elected as Director to the Board of Goa Dairy in 2022. He resigned from the Board of Directors on 15<sup>th</sup> February, 2023. The alleged irregularities had occurred during the period from 2017 to 2022. The Petitioner in Writ Petition No.492 of 2023

---

<sup>4</sup> (2020) 12 SCC 186

has contended that he was the Director of the Goa State Cooperative Milk Producers Union. He was elected in June, 2022 for a period of five years from June, 2022 till 2027. There is no material to incriminating the Petitioner in charge no.3. The Petitioner in Writ Petition No.1985 of 2023 contends that he was elected on the Board of Directors for a term of five years from 2012-2017. The Respondent No.1 has disqualified the Petitioner for an act committed by the Board of which the Petitioner was not the member of the confirming body.

10. The Petitioners in all the Petitions has contended that the resolution to purchase milk was taken in meeting dated 7<sup>th</sup> April, 2017. The Board of Directors wanted to purchase the best milk that quality milk could be supplied. There were complaints against Mahakali who was the lowest bidder and therefore inspite of being lowest bidder the milk was purchased from Samarth. There were complaints against Mahakali at Belgaum. FDA had given instructions to charge suppliers of milk from outside State of Goa.

11. Learned Government Advocate Mr. Manish Salkar, appearing for Respondents submitted as under :

i. The order passed under Section 67-A of the Goa Cooperative Societies Act, 2001 cannot be challenged in this

proceedings as there is alternate remedy under Section 114-A of the Act which provides for an appeal before the Cooperative Tribunal.

ii. The contention of the Petitioners that the inquiry under Section 76-A of the Act is not *suo motu* and based on complaint of Ramesh Naik is devoid of merits. The Registrar may by himself or by person duly authorized by him undertake inspection and inquiry into the Constitution, working and financial condition of the society. On a request made by a creditor or federal institution, or a request made by not less than one-third of the total number of members of the Board of Directors or not less than one-fifth of the total number of members of the society or of his own motion (*suo motu*). The inquiry initiated in the present proceeding is *suo motu*. Chief Minister received a complaint from Ramesh Naik alleging irregularities in the working of the society and requested action be initiated. The Chief Minister forwarded the complaint to R.C.S. with direction to examine and report. On receipt of the copy of the complaint, the R.C.S. wrote to the society and sought comments and explanation. The society replied to the Registrar with comments and details and

documents. The Registrar after perusing the complaints and independent application of mind decided to initiate inquiry under Section 76-A of the Goa Cooperative Societies Act, 2001. The Registrar had substantial material before him to initiate *suo motu* inquiry. The Registrar has independently applied his mind while taking the decision to initiate inquiry.

iii. The contention of the Petitioners is that inquiry officer was replaced at the behest of complainant which shows that the inquiry was initiated at the instance of complainant. The submission is baseless. The Petitioners came into picture after the show cause notice under Section 59(11) was received by them.

iv. The Registrar is entitled to initiate inquiry on the basis of complaint which was forwarded by the Chief Minister and after perusing reply from the society including the audit reports, annual reports from Goa Dairy to which the Registrar has access *suo motu* inquiry was conducted.

v. It has been contended by the Petitioners that the 97<sup>th</sup> Constitutional Amendment Act, 2011 introduced the chapter for Cooperative Societies Regulation, should lead to limited State control over the societies. However, without challenge

to the provisions of the Goa Cooperative Societies Act, 2001 on Constitutional ground the argument is not tenable.

vi. Section 76-A(1) of the Act is designed to oversee and investigate Cooperative Societies operations, particularly in cases involving, allegations of fraud or misconduct.

vii. The submission that the Registrar should have proceeded under Section 76-A Sub-Section (2) of the Act is devoid of merits. The proceedings under Section 76-A (2) could have been initiated if a complaint had been made to the Registrar under that provisions, following the format in Rule 114-A of the Cooperative Societies Rules, 2003. Section 76-A(1) and 76-A (2) represent different modes of supervision and means to address financial irregularities. The Registrar rightfully ordered an inquiry using *suo motu* powers because there was relevant material available related to the charges and complaint of Ramesh Naik didn't qualify as a statutory complaint under Section 76-A.

viii. Another ground urged by the Petitioners is that the show cause notice is defective as it does not indicate that the Petitioners are liable to be disqualified. It was argued that the show cause notice merely states that the parities should

should show cause why the managing committee should not be held responsible for decision taken during the tenure. The submission has no merits. The show cause notice dated 7<sup>th</sup> July, 2021 stated that the Petitioners were called upon in terms of under Section 59(11) of the Goa Cooperative Societies Act, 2001, why action should not be taken. Section 59(11) clearly states that the Registrar may take cognizance of such irregularities or illegalities and after giving due opportunities to the Directors have been heard may disqualify them to continue on the Board. The Petitioners were aware that the notice was under Section 59(11) of the Act and it is for disqualification. It cannot be said that the Petitioners were not put to notice about disqualification. The provision clearly mentions that it is to disqualify to continue on the Board. It does not use the word the term. The amendment to Section 59(11) clarifies that it means forever. The validity of the amendment is not under challenge.

ix. Section 60(1)(f) of the Goa Cooperative Societies Act, 2001 refers to disqualification for being Director. The said provisions stipulates that in addition to such criteria as may be specified in the bye laws, a person shall be ineligible for being

chosen as a Director if he has at any time, incurred any other disqualification under this Act or the Rules made thereunder. The show cause notice clearly state that the notice is under Section 59(11) of the Act and the said section contemplated disqualification and nothing else. The explanation to authority to disqualify after hearing the Petitioners is clear and therefore the notice is not defective. In view of Section 60(f) it is clear that if a Directors suffers disqualification, he is ineligible to be Director corroborating that disqualification under Section 59(11) would be forever. If a Director is disqualified then he cannot be a Director and Section 60(1)(f) makes him ineligible to be a Director.

x. One of the contention of some of the Petitioners is that the action was initiated in 2017 and the said term has expired. No action could be taken against the current Directors. The inquiry was held itself after the term has expired. The submission cannot be accepted as it would mean that inquiry could ever be held for the earlier term. Section 59(11) indicates that the Director would be disqualified to continue on the Board. It does not anywhere State that the Director would not continue on the Board for the term. The

disqualification under the Act cannot be compared to disqualification under the representation of people act wherein it is specified the term of the disqualification. The disqualification contemplated under the Goa Cooperative Societies Act is forever. It was also contended by the Petitioners that the Registrar could not initiate action under Section 59(11) of the Act without an opinion or recommendation from the general body of the federal society. Section 78(1) of the Maharashtra Cooperative Societies Act requires consultation with the affiliated federal society before removing a committee member. Section 76-A(5) of the Goa Act does not required opinion from the federal society before exercising power under Section 59(11) of the Act. Section 79 of the Goa Act mentions that without prejudice to any civil or criminal proceedings to give meaning to presenting the report under Section 76-A(5) before the general body. The provision aims to recover losses incurred due to the actions of erring Directors but does not prohibit action under Section 59(11) of the Act.

xi. The Petitioner No.1 in Writ Petition No.1010 of 2023 has contended that there he not a Director during the period when

the decision was taken. The resolution to purchase milk was taken in a meeting dated 7<sup>th</sup> April, 2017. He was not Director during that term. Though the said Petitioner was not Director during the aforesaid period, he has voted in favour to confirm the minutes of that meeting. Section 59(10) provides for a opportunity to the members to express dissenting opinion which has to be recorded in the proceedings of the meeting. The Petitioner had confirmed the resolution of the earlier meeting and endorse the decision of the previous Board making them liable.

xii. The submission of some of the Directors is that the decision to purchase from Samarth Milk Producers Ltd. was justifiable. It was contended that the Board wanted to purchase the best milk. It is submitted that the minutes of the Board of Directors does not reflect the reason which is tried to be given by the Petitioners. There was no sufficient evidence to show that the milk was best amongst supplier. The process of tender was not necessary. Buying milk from highest bidder without cogent reasons indicate that an adverse inference can be drawn that it was for extraneous reasons. There were ten bidders. There were bidders between Mahakali and Samarth.

However, the Board decided to award tender to the highest bidder. No explanation is given as to why nobody from between the highest and the lowest bidder is considered. The Union was already suffering losses and inspite of that the highest bidder was avoided contract from milk supply causing further loss. No discussion is recorded in the minutes of the meeting of the Board that there were complaint against Mahakali. That there were complaints against Mahakali. Even otherwise there were other bidders who were between Mahakali and Samarth from whom milk could have been procured. The issue of complaints against Mahakali is not reflected in the minutes.

xiii. According to Petitioners the FDA had given instructions to change suppliers of milk from out side State of Goa. However, the FDA report relied upon by the Petitioners do not suggest any change in milk suppliers. Even assuming that FDA suggested change in milk suppliers, there is no reason why tender was not avoided to other eight bidders who bidden between Samarth and Mahakali.

12. Mr. Salkar has relied upon the following decisions;

i. *Muslim Co-operative Bank Ltd. V/s. Assistant Registrar of Co-operative Societies*<sup>5</sup>

ii. *Bangalore Grain Merchants Association V/s. The District Registrar for Societies and Another*<sup>6</sup>

iii. *Jeevan Niwas Co-operative Housing Society Ltd. And Another V/s. State of Maharashtra and Others*<sup>7</sup>

13. Learned AGA, Mr.Deep Shirodkar submitted that the Order under which the Registrar has exercised jurisdiction is not challenged. It cannot be challenged now. There is no infirmity in the impugned order. The Petitioners have urged vague challenge. The action initiated by Registrar was *suo motu*. Section 79 of the Goa Co-operative Societies Act contemplate action on special audit or inquiry report or inspection report.

14. learned Advocate for the invervenor Mr. Lobo submitted that the Registrar had considered the report of the person appointed and not of the complainant which is evident from the observations made in paragraph no.9 of the order. The Petitions are devoid of merits.

15. Complaint was forwarded by Shri. Ramesh S. Naik, Chairman of Curtorim Milk Society to the office of Chief Minister

---

5 1990 SCC OnLine Kar 304

6 2001 SCC OnLine Kar 20

7 2016 SCC OnLine Bom 3927

against the Board of Directors of Goa Dairy alleging vague substandard material used in place of cotton seed extraction and purchase by changing purchase specification, purchase of buffalo milk from highest bidder taking Rs.4 per liter of milk commission thereby causing loss of Rs.60,00,000/- to Goa Dairy and use of urea through feed supplement by purchasing urea with name Optigen and incorporating unnecessarily thereby putting cattle field plant in further loss. Urea is available at Rs.29 per kg. but the material was purchased for Rs.150 per kg. fetching huge commission. The complaint was forwarded to the Registrar. Show cause notice was issued to the Directors of Goa Dairy Board dated 7<sup>th</sup> July, 2021. It was stated that the office of Registrar had received the complaint dated 11<sup>th</sup> September, 2019 addressed to Chief Minister Goa by Shri. Ramesh Naik regarding function of Goa State Cooperative Milk Producers Union Ltd. And accordingly vide order dated 12<sup>th</sup> May, 2020 Shri. Rajesh Parwar, Assistant Registrar Cooperative Societies has been appointed to conduct the inquiry vide Section 76-A (1) of the Goa Cooperative Societies Act into the function of Goa State Cooperative Milk Producers Union Ltd. on the basis points mentioned in the complaint. It was further stated that the inquiry officer has conducted detail inquiry and submitted report dated 18<sup>th</sup> June, 2020. The inquiry officer has stated that he is of

the opinion that the Managing Director/Finance Manager was negligent and cotton seed extraction was used for cattle feed production by violating norms laid down by NDDB and bills were cleared/settled without raising any objection. The Board had purchased buffalo milk from Nageshwar Dairy Project who had not taken part in bidding. Board approval was not found to purchase buffalo milk from other parties other than Samarth Dairy Agro, Kolhapur. Purchase order was not given to any supplier and bills were settled without purchase order and without quality report by finance (Manager Account Department), no agreements were executed to any party during the tenure. The Board had resolved to buy pasteurized buffalo milk from Samarth Dairy and Agro Product Pvt. Ltd. which quoted highest in the bid at the rate of Rs.44.50 per liter then Mahakali Milk Dairy, Belgavi and Shir Nath Milk Dairy, Belgavi. The Managing Director issued note to production section to accept buffalo milk from Samarth Dairy and Agro Product Pvt. Ltd. In the previous year no party was black listed by quality control section or production section as per the statement of concerned staff. Loss suffered due to purchase of buffalo milk from highest bidder in the year 2017-2018 at the rate of Rs.44.50 per liter instead of lowest bidder who quoted Rs.41 per liter. The Goa Milk Union has suffered loss due to non purchases of

buffabro milk from lowest bidder is 50,79,827.50/-. The Optigen was analyzed by in charge, cattle feed plant in laboratory and chemist submitted analysis report and as per his report optigen contains 256% protein and urea contains 280% protein. It was reported that in cattle feed plant maximum 1% urea incorporated in feed is permissible. Urea was added with some raw material and his material was supplied giving name of optigen and same material was purchase at very high rates specially optigen i.e. Rs.1.40 lakh per ton when urea incorporated was costing very less. The notice indicated that the parties name in the notice are called upon in terms of sub-section 11 of Section 59 of the Goa Cooperative Societies Act, 2001 to show cause in writing within a period of one month from the date of receipt of the notice as to why the Managing Committee should not be held responsible for the decision taken during the tenure.

16. The Petitioners in Writ Petition No.989 of 2023 submitted their reply to the show cause notice and contended that the show cause notice was issued without jurisdiction while appointing inquiry officer under Section 76-A was not complied. The authority has not taken into consideration any new material apart from the complaint lodged by Ramesh Naik nor the Registrar has carried out

any independent inquiry before appointing the inquiry officer. In terms of Section 59(11) the Director can be qualified to continue to be on the Board for the relevant period during which illegalities were committed. The disqualification is only with respect to the relevant tenure and Section 59(11) nowhere prescribed to disqualify or bar the members from contesting further election. When the notice dated 7<sup>th</sup> July, 2021 was issued, the said Petitioners were elected as Director for the period from 2017 to 2022. The Petitioners now cannot be roped into incurred disqualification for the subsequent period. Although the Registrar had claimed that the inquiry was conducted *suo motu*, it was based on the complaint of Ramesh Naik. He was the inquiry officer was changed at the behest of Ramesh Naik. The inquiry cannot be termed as *suo motu* hence, the inquiry would stand vitiated for not complying Section 76-A of the Goa Cooperative Societies Act.

17. The Petitioners in Writ Petition No.1010 of 2023 forwarded their reply to the show cause notice. It was contended by them that they were not members of the previous Board of Directors and were elected only May, 2017. They cannot be saddled with responsibilities of taking Board resolutions and decision prior to May, 2017. They should be dropped from the proceedings. The

other grounds urged by said Petitioners were similar to the grounds referred to in the reply filed by the Petitioners in Writ Petition No.989 of 2023.

18. The Petitioner in Writ Petition No.991 of 2023 also submitted reply to the show cause notice and contended that he was elected in the elections held in 2022 and resigned from the Board w.e.f. 15<sup>th</sup> February, 2023. It was contended that no case is made out to invoke provisions of Section 59 or Sub-section 11 of Goa Cooperative Societies Act, 2001.

19. The Petitioners in Writ Petition No.982 of 2023 submitted their reply to the show cause notice and urged that the notice was without complying the criteria under Section 76-A(1) of the Act. Both the terms in which the transactions executed were over, action cannot be taken at this stage. The said Petitioners were not on the Board of Directors for the tenure from July, 2017 to July, 2022. In terms of Section 59(11) the Director can be qualified to continue in the Board of Directors for the relevant period during which the illegalities have been committed.

20. The Petitioner in Writ Petition No.492 of 2023 has taken a stand in his reply to the show cause notice that the show cause notice is without jurisdiction. The inquiry was not *suo motu*. The

show cause notice dated 7<sup>th</sup> July, 2021 pertains to transactions of 2016, 2017, 2018 and 2019. The terms were completed. There is fresh committee which has been elected for the tenure from 18<sup>th</sup> June, 2022 to 18<sup>th</sup> June, 2027. The action cannot continue. Section 59(1) can at the most disqualify the Board of Director to continue on the Board for the relevant period during which illegalities have been committed. The Petitioner was elected as Director from 2017 to 2022. The tenure has ended in 2022.

21. From the tenor of impugned order dated 21<sup>st</sup> April, 2023, it is evident that hearing was given to all the parties. The show cause notice with inquiry report and all enclosures were served to all the parties and they had sought repeated adjournments to file reply to the show cause notice. The inspection of the record and proceedings was allowed to all the parties allowing them to compare the show cause notice and enclosures served upon them with documents forming the record and proceedings. Respondent Nos.2, 3, 8 and 11 were remaining absent for hearing intermittently. As an alternate mode of service notice of hearing was published in newspapers dated 10<sup>th</sup> February, 2023 and 11<sup>th</sup> February, 2023. All the respondents had appeared in the proceedings personally and through their Advocates and they were

heard. During the proceedings, directions were issued to Managing Director of Goa Dairy and full fledged inspection was arranged of all documents and records available at Goa Dairy which were desired by the parties. The inspection of documents at office of Goa Dairy was allowed in the presence of officer of Registrar's office who was deputed to ensure compliance. The inspections were allowed on 21<sup>st</sup> January, 2023, 22<sup>nd</sup> February, 2023 and 1<sup>st</sup> March, 2023 by allowing time slots to each of the Respondents therein. The hearing was fixed at the office of Goa Dairy on 2<sup>nd</sup> March, 2023 only for the purpose of inspection of documents by the R.C.S. in the presence of Respondents. Some Respondents attended the hearing at Goa Dairy for witnessing inspection of records and documents by R.C.S. Respondent No.10 had sought additional time to inspect documents stating that time slots allotted to him was not sufficient and hence one entire day of 1<sup>st</sup> March, 2023 was allotted to Respondent No.10 in the said proceedings to carry out inspection of all original documents of Goa Dairy at Curti. The authority dealt with in detail the reply filed by the Respondents therein. After analyzing the reply filed by the parties, the learned Registrar has analyzed the oral arguments of the parties. Some of the parties were represented by their Advocate. The impugned order reproduces in great details the arguments of parties who had

appeared in person as well as the argument advanced by the Advocates representing the respective parties. The order then refers to the findings on preliminary objections and maintainability of the proceedings. It was observed that upon careful perusal of original complaint dated 11<sup>th</sup> September, 2019 filed by Ramesh Naik, it is seen that the complaint was addressed to the Chief Minister and same was presented under inward no. 5549/C on 10<sup>th</sup> September, 2019 in the office of Chief Minister. The Chief Minister has put up marginal remark ‘may examine and put up’ on the said complaint marking it to Registrar of Cooperative Societies on 13<sup>th</sup> September, 2019. Thus, the complaint with the marginal remark of Chief Minister was received at involved in the office of Registrar on 18<sup>th</sup> September, 2019. It was further observed that Ramesh Naik had not filed any formal complaint under Section 76-A(1) of the said Act to the Registrar, based on which the proceedings could have been initiated under Section 76-A(1) of the Act. It is a fact that complaint was addressed to the Chief Minister bringing to his attention the illegalities and corruption in the management of Goa Dairy and demanding for full inquiry and several other reliefs relation to some employees of Goa Dairy and also suggesting to hand over temporary charge of Managing Director to Dr. Anil Fadte to bring Dairy on track and expose corruption. Upon reading the

whole contents of the letter dated 11<sup>th</sup> September, 2019 addressed to Chief Minister, it is seen that in the said complaint there is not even a mention a statutory provision of Section 76-A of the Act or for that matter any other legal provision of the Act. From the language and contents of the said complaint, there is absolutely no scope to treat it as statutory application filed under Section 76-A(1) of the Act. Thus, the complaint dated 11<sup>th</sup> September, 2019 was a public grievance addressed to the Chief Minister which was marked to the grade of the department for necessary action. Upon perusal of the documents on record, it is clear that Ramesh Naik by addressing complaint dated 11<sup>th</sup> September, 2019 to the Chief Minister has merely acted as whistle blow to bring to the attention of the Chief Minister. The various irregularities and illegalities in Goa Dairy Management. The Registrar in pursuance of complaint and upon going through the matter has invoked *suo motu* powers under Sub-section 1 of Section 76-A of the Act appointing officer of conducting an inquiry into the function of Goa Dairy. Learned Registrar has minutely considered the records available in the office with regards to complaint dated 11<sup>th</sup> September, 2019 which was followed by the order passed by the Registrar appointing inquiry officer. The impugned order makes reference to the subsequent order appointing Shri. Rajesh Parwar to conduct the inquiry. Both

the orders nowhere mentions that the action based on complaint filed by Ramesh Naik or it is *suo motu* action by the Registrar. Merely, because the recital of the order or the reference at the beginning of the said order is made to a complaint dated 11<sup>th</sup> September, 2019 by itself cannot lead to presumption that the action is not *suo motu* action. The learned Registrar then observed that the findings are on the basis of records available in the office, whereby periodic audit report/annual reports of Goa Dairy was scrutinized and review taken of the function of Goa Dairy. It is based on all the material that the R.C.S. exercised is *suo motu* powers to order inquiry under Section 76-A(1) of the Act. The Section by Registrar can never be treated as action on a private statutory complaint by Ramesh Naik mainly because of the fact that there is no formal application by Ramesh Naik under Section 76-A of the Act. The letter dated 11<sup>th</sup> September, 2019 which was marked to the Ex-Chief Minister to the Registrar also does not mention anything about Section 76-A of the Act nor there is prayer to conduct an inquiry into the functioning of Goa Dairy by appointing officer under Section 76-A of the Act and the prayers contend therein as such that they can never be correlated to provisions of Section 76-A of the Act. Thus, apart from the aforesaid observations the learned Registrar has in detail dealt with

all the aspects of the matter and passed the impugned order dated 21<sup>st</sup> April, 2023. The said order was followed by another order dated 21<sup>st</sup> April, 2023 under Section 67-A of the Goa Societies Cooperative Societies Act appointing the committee of Administrator initially for period of six months.

22. It would be appropriate to reproduce Section 59(11) and Section 76-A (1) & (2) are as under :

**“59. Board of directors – (1)** The management of every society shall vest in a board which shall exercise such powers and perform such duties as may be conferred or imposed by this Act, rules and bye-laws.

**(11) -** If the Auditor, Enquiry Officer or Inspecting Officer during the course of audit or enquiry or inspection has found certain discrepancies in the working of the society which are irregular, illegal in nature and detrimental to the interest of the society, the Registrar may take the cognizance of such irregularities or illegalities and after giving due opportunity to the Directors concerned of being heard, may disqualify him to continue on the board.”

**“76-A. Enquiry and/or Inspection of societies – (1)** The Registrar may, on the request made by a creditor or federal Institution or not less than one third of the total number of members of the board of directors or not less than one fifth of the total number of members, of a society, [or of his own motion, by himself, or by a person duly authorized by him in writing in this behalf, undertake inspection] and inquiry into the constitution, working and financial condition of such

society and submit a report thereon.

(2) Where a complaint is made by a member of society in writing about the affairs of a society or board of directors, the Registrar or any person authorized by him in this regard who shall be not below the rank of Deputy Registrar is prima facie satisfied, after affording an opportunity of being heard, that an inquiry is required to be instituted, he may, order an inquiry to be made by a person not below the rank of Co-operative Officer or special auditor.”

23. Thus, the complaint was submitted to the office of Chief Minister by Ramesh Naik which was forwarded for appropriate action by the office of Chief Minister to the office of Co-operative Societies. As rightly observed by the learned Registrar while passing the impugned order, the complaint dated 11<sup>th</sup> September, 2019 does not refer to Section 76-A of the Goa Co-operative Societies Act nor the complaint seeks action under the said provisions. The complainant had grievance against the Board of Directors and employees of Goa Dairy. The show cause notice also indicate that it was a *suo motu* action. Merely because there was reference of the compliant dated 11<sup>th</sup> September, 2019 it will not absolve the status of the present proceedings as *suo motu*. Pursuant to the complaint being submitted from the office of the Registrar explanation was called for and on the basis of material available before the concerned authority, show cause notice was issued to the

persons against whom action was initiated. Thus, the contention of the Petitioner that the impugned proceedings are not *suo motu* is devoid of merits. I do not find any reason to deviate from the view expressed by the R.C.S. in impugned order dated 21<sup>st</sup> April, 2023.

24. In the show cause notice dated 7<sup>th</sup> July, 2021, it was stated that the office has received the complaint from Ramesh Naik and accordingly the office has appointed Shri. Rajesh Parwar, Assistant Registrar under Section 76-A (1) of the Goa Co-operative Societies Act to conduct inquiry into the function Goa State Co-operative Milk Producers Union Ltd. on the basis of points mentioned in the compliant and that the inquiry officer has conducted detail inquiry and submitted his report. The Registrar had not treated a complaint as a statutory compliant filed by Ramesh Naik under Section 76-A (1) of the Act. The proceedings initiated are *suo motu* and not on a complaint by Ramesh Naik.

25. The inquiry officer has dealt with the points referred to for inquiry. The first charge relates to allegation of use of substandard raw material for manufacture of cattle feed in violation of guidelines issued by National Dairy Development Board. The second charge pertains to allegations of purchasing milk from the highest bidder at the rate of Rs.44.50 per liter when the

lowest bidder had quoted Rs.41.00 per liter thereby incurring loss due to difference in price. The third charge pertains to allegations that optigen was used if the manufacture of cattle feed costing Rs.140 per kg. and in reality urea was purchased at the rate of Rs.29 per kg. and shown as optigen. The consumption cost was increased by Rs.135.45 lakhs.

26. As far as first charge of using substandard raw material by violating NDDB guidelines, the learned Registrar had opined that he could not find any decision by the Board of Directors on this issue and held that the Managing Director and the Chairman/Administrator of Goa Dairy who are responsible for this deviation from NDDB guidelines. The Managing Director and the Chairman were looking after the day to day Administration of Goa Dairy. The Managing Director has a vital role to play on this count and therefore the Respondent No.13 Dr. N.C. Sawant was held liable and responsible for causing loss to Goa Dairy in respect of charge no.1. The other Respondents were absolved of any wrong doing in respect to charge no.1. As regards charge no.2 i.e. purchasing milk for the highest bidder. The learned Registrar while dealing with charge no.2 has held that the Board of Directors in their meetings held on 7<sup>th</sup> April, 2017 took a decision under

resolution no.7 from the proceedings book of Goa Dairy, it is seen that the Directors namely Shri. Madhav A. Sahakari, Chairman, Shri. Baburao S.F. Dessai, Director, Shri. Vithoba D. Dessai, Director, Shri. Gurudas K Parab, Director, Shri. Rajendra Y. Sawal, Director, Shri. Dhananjay N. Dessai, Director, Shri. Naresh Malik, Director, Shri. Shivanand B. Pednekar, Director, Shri. Vijaykant V. Gaonkar, Director, Shri. Pankaj Marathe, Director and Dr. N.C. Sawant, Managing Director and Member Secretary. The Board of Directors held detail discussion on agenda item no.7 during the meeting and the resolution was passed in a routine casual manner. From the discussion in the meeting spreading to about two pages of proceedings books it is brought out clearly that the Board of Directors consciously and after thorough discussion have taken to decision to purchase milk from Samarth Dairy and Agro Products Pvt. Ltd. who was the highest bidder amongst total ten bids that were received. The resolution for purchasing from highest bidder was proposed by Mr. Vithoba Dessai and second by Mr. Naresh Malik as a same was passed unanimously. The only reasons found for rejecting remaining nine bids and accepting the single highest bid M/s. Samarth Dairy was that the FDA had recommended the change all the existing suppliers and secondly the complaints were received from consumers. Apart from these two reasons, there is no

reasons cited for accepting the highest bidder. Inviting sealed tenders the lowest bid has been accepted unless there are good reasons for rejecting the lowest bid and accepting highest bid. If the reasons for taking such a decision are found to be good and cogent then such a decision could be termed as in the interest of the organization society. Learned Registrar has observed that the first reason given by Vithoba Dessai was irrelevant because the complaint referred to work of quality of finish product manufactured by Goa Dairy which was sold to the customers and the milk that was sought to be purchased for the raw material which has to be possessed at Goa Dairy plant for manufacturing finish product. There is procedure for testing raw milk received at Goa Dairy plant and only after it is approved by quality control, the consignment is accepted. This milk consignment is pasteurized process to manufacture various milk products. The finish product manufactured by Goa Dairy is tested for quality and it goes for marketing. The reason given by Madhav Sahakari that FDA has advised to change the existing milk supplies is vague and factually incorrect. The decision of the Board of Directors to purchase milk from highest bidder was arbitrary, illegal and detrimental to the interest of Goa Dairy. Thus, the Directors who are present for the Board meeting held on 7<sup>th</sup> April, 2017 are responsible for causing

loss to Goa Dairy and attract disqualification under Sub-Section 11 of Section 59 of the Act, further acting detrimental to the interest of society. The Goa Dairy faces a challenge to survive because procuring milk from out side the State involves high cost and the profit margin is very narrow and many a times it is in loss. Most of the dairies in Indian, bank upon their own local procurement of milk but Goa Dairy is dependent on out side State milk procurement because the local milk is not sufficient. All Directors were fully aware that if milk from out side State is procured at a higher rate it would have adverse impact on profitability on Goa Dairy. The resolution dated 7<sup>th</sup> April, 2017 was confirmed during the subsequent Board of Directors meeting held on 12<sup>th</sup> June, 2017 which was attended by Shri. Madhav A. Sahakari, Shri. Baburao S.F. Dessai, Shri. Vithoba D. Dessai, Shri. Gurudas K Parab, Shri. Rajesh Faldessai, Shri. Ajay Dessai, Shri. Babu Komarpant, Shri. Dhananjay N. Dessai, Shir. Vijaykumar Patil, Shri. Naresh Malik, Shri. Rajendra Sawal, Shri. Aselmo Furtado, Shri. Pankaj Marathe and Dr. N.C. Sawant. During the meeting held on 12<sup>th</sup> June, 2017, the proceedings or earlier meeting dated 7<sup>th</sup> April, 2017 were read and confirmed. However, Shri. Vijaykumar Patil has stated that since has been newly elected, he may not be included while confirming the minutes of earlier meeting. This resolution was

proposed by Shri. Vithoba Dessai and seconded by Shir. Gurudas Parab and passed unanimously excluding Shri. Vijaykumar Patil who had abstain. Some of the Petitioners have contended that they were not party to the first resolution dated 7<sup>th</sup> April, 2017. It is pertinent to note that the Directors who are present on 12<sup>th</sup> June, 2017 had a choice of abstaining from confirming the resolution as exercised by Shri. Vijaykumar Patil. They did not choose to so.

27. Thus, the decision of the Registrar is based on sound reasoning and material which does not call for interference.

28. The learned Registrar has then dealt with Section 59 of the Goa Cooperative Societies Act and after analyzing the said provision has observed that Sub-section 10 of Section 59 of the Act indicate that the responsibility/liability cannot be fastened if the Director has dissented from resolution while passing it or was absent when the resolution was passed or confirmed. Hence, the Respondents who have unanimously adopted resolution no.7 as well as those Directors who have confirmed the said resolution on 12<sup>th</sup> June, 2017 are liable under Section 59 of the Act. Shri. Vijaykumar Patil who abstained while confirming the resolution cannot be held responsible in view of Section 59(10) of the Act. However, those who are absent or not on 7<sup>th</sup> April, 2017, but have

ratified confirmed the resolution dated 7<sup>th</sup> April, 2017 at subsequent meeting held on 12<sup>th</sup> June, 2017 are liable. The Respondent No.12 Mr. Ulhas P Sinari was present in the meeting on 7<sup>th</sup> April, 2017 and supported the resolution accepting highest bid and just because he was not a member of the Board at subsequent meeting held on 12<sup>th</sup> June, 2017 will not absolve him from his detrimental acts at previous meetings. Any Director entails responsibility and liability when he either passes resolution or confirm seat. Both the conditions are not required to be fulfilled simultaneously but they are in the alternative. Mr. Shashikant Naik was not present in both the meetings and therefore he was not liable.

29. The learned Registrar then examined the decision to accept highest bid of M/s. Samarth Dairy and Agro Product Pvt. Ltd. There was no situation for warranting such decision. The Goa Dairy was always accepting the lowest bid and it was unusual to accept the highest bid on 7<sup>th</sup> April, 2017. The reasons assigned by the Petitioners for accepting highest bid are flimsy. In any case their version is not reflected in the minutes of the meeting. The resolution does not reproduce the reasons for accepting highest bid. It is pertinent to note that there were some grievances about

Mahakali Milk Supplier and there could be reason for not accepting the bids of the said supplier. However, there were eight other bidders who had quoted in the range between the lowest and the highest and in such eventuality there was no explanation is to how the highest bidder was chosen by the Board of Directors. Thus, it is rightly observed by the learned Registrar that there was no rational to presume that mere accepting highest bid would stop all illegalities at Goa Dairy. The decision was arbitrary, illegal and detrimental to the interest of Goa Dairy which has cause losses to dairy.

30. The third charge was regarding use of optigen or using area in the manufacture of cattle feed by falsely showing it as optigen. The resolution dated 31<sup>st</sup> December, 2015 was adopted by Board of Directors on the proposal mode by officials of Goa Dairy and as on 31<sup>st</sup> December, 2015, it was projected as beneficial to dairy as it would have reduced the cost, improved the health of animals and increased the milk production in Goa. If the material received was actual optigen, as per the records available with Goa Dairy, the decision to use optigen was not supported by any research or economic viability. The Directors who had passed the resolution dated 31<sup>st</sup> December, 2015 and who letter confirmed this

resolution. In subsequent meeting cannot be held accountable under Section 59(11) of the Act because they had accepted the proposal moved by Goa Dairy Administration in good faith and no changes were effected in the proposal by Board of Directors as it was placed before them by the official of Goa Dairy. However, a clean chit can never be given on this charge because suspicious activities and buying optigen from single agency without supporting documents of holding patent for that product and without carrying out any research and study. The liability would rest with Chairman, Managing Director and concerned officials involved in initiating this proposal. The learned Registrar therefore held that Baburao Dessai who was the Chairman, Dr. N.C. Sawant who was the Managing Director and Dr. Raghunath Dhuri who was the concerned Manager were jointly and severally responsible and liable under Section 59 (9) of the Act. However, Dr. Raghunath Dhuri and other officials were not joint as a party in the proceedings and no adverse findings were given against them.

31. The learned Registrar then passed the order in exercise of powers under Sub-section 11 of Section 59 and all other powers enabling him in that behalf and disqualified Shri. Madhav A. Sahakari, Shri. Baburao S.F. Dessai, Shri. Vithoba D. Dessai, Shri.

Madhavrao Desai, Shri. Gurudas K Parab, Shri. Rajendra Sawal, Shri. Dhananjay Dessai, Shri. Ulhas P. Sinari, Shri. Shivanand Pednekar and Shri. Vijaykant Gaonkar were disqualified to continue on the Board of Goa Dairy. It was further directed that in exercise of powers under Section 59(11) of the Act. The Registrar disqualified Shri. Madhav A. Sahakari, Shri. Baburao S.F. Dessai, Shri. Vithoba D. Dessai, Shri. Gurudas K Parab, Shri. Rajendra Faldessai, Shri. Ajay Dessai, Shri. Dhananjay Dessai, Shri. Babu Komarpant, Shri. Rajendra Sawal and Shri. Aselmo Furtado to continue on the Board of Goa Dairy.

32. Thus, there was sufficient material on record which has been minutely analyzed by the learned Registrar while passing the impugned order.

33. Show cause dated 7<sup>th</sup> July 2021 clearly stated that the petitioners are called upon in terms of section 59(11) of The Goa Cooperative Societies Act, why action should not be taken. Section 59(11) clearly states that the Registrar may take cognizance of such irregularities and after giving due opportunity to the Directors Concern of being hard, may disqualify him to continue on the Board. The petitioners were aware that the notice is under 59(11) of the Act and it for disqualification, therefore, the Petitioners

cannot take a stand that they were not put to notice to disqualify as Directors. The section mentions “to disqualify for him to continue on the Board” it does not mention for “the term”. The amendment to the said section 59(11) clarifies that it means forever. Section 59(11) contemplates only disqualification and therefore it cannot be submitted by the petitioners that they were not put to notice that the show cause is for action of disqualification. Section 60 (1) (f) of the Goa Cooperative Societies Act. Section 60 (1) (f) reads as follows ;

- 60. Disqualification for being Director .-** (1) In addition to such criteria as may be specified in the bye laws, a person shall be ineligible for being chosen as a Director if he -
- (a) has at any time ....
  - (f) has incurred any other disqualification under this Act or the rules made thereunder.

34. The Show cause notice under challenge clearly state that the notice is under section 59 (11) of the Goa State Cooperative Societies Act and the section only contemplated disqualification and nothing else. Therefore, the intention of the authority to disqualify after hearing the petitioners is clear and therefore the notice is not defective. Section 60 (f) is clearly state that if a Director suffers disqualification, he is ineligible to be a Director corroborating that disqualification under

section 59 (11) would be forever, even in the absence of the amendment. If a Director is disqualified, then he cannot be a Director and section 60 (1)(f) makes him ineligible to be Director. The inquiry held was itself after the term has expired. If the argument of the petitioner is considered then it would mean that no inquiry could ever be held for the earlier terms. Section 59(11) indicates that the director would be disqualified to continue on the Board. It does not anywhere state that “would not continue on the board for the term. The disqualification under the Goa Cooperative Societies Act cannot be compared to Disqualification under The Representation of India Act, Wherein it specifies the term of the disqualifications. The disqualifications under The Goa cooperative Societies Act is clear that the disqualification is forever.

35. Some of Petitioners contended that resolution to purchase milk from Samarth milk producers Ltd. at a higher price was due to various reasons being the BOD wanted to purchase the best milk so that quality milk could be supplied. The minutes of the BOD meeting do not reflect this reasons. Assuming that the milk was purchased at a higher price from Samarth for best quality there was no sufficient evidence to show that the milk was best among the suppliers. If that was the case than the process of tender was not

necessary. Buying milk from the highest bidder without cogent reasons indicate that inference can be drawn that it was for extraneous reasons. There were ten bidders. There were bidder between Mahakali and Samarth, however, the BOD decided to award tender to the highest bidder. No explanation is given as to why nobody from between the highest and the lowest bidder is considered. This makes it amply clear that the highest bidder was given the tender for extraneous considerations. It was argued that there were complaints against Mahakali who was the lowest bidder therefore inspite of being the milk was procured from Samarth. No such discussion is recorded in the minutes of meeting of the BOD that there were complaints against Mahakali. There were other bidder who are there between Mahakali and Samarth from whom the milk could have been procured. It is also contended that FDA had given instructions to change suppliers of milk from outside State of Goa. The FDA report relied upon by the Petitioners do not suggest any change in milk suppliers. Therefore to contend that FDA suggested change in milk suppliers cannot be accepted. Even assuming that FDA suggested change in milk suppliers, there is no reason why tender was not awarded to the other 8 bidder who bided between Samarth and Mahakali.

36. There is no doubt that the inquiry was *suo motu*. The complaint was received by the office of Chief Minister from Mr. Ramesh Naik alleging irregularities in the working of the society and requested for action. It was forwarded to the Registrar of RCS. Comments were called from the society. Comments were received by RCS with documents. RCS decided to initiate inquiry under Section 76-A of the Goa Cooperative Societies Act. The RCS had substantial material before him to initiate *suo motu* inquiry. The RCS has independently applied his mind while taking the decision to initiate inquiry. The RCS is empowered to initiate inquiry on the basis of a complaint forwarded to it by office of Chief Minister and after received the information from the society including audit reports, annual reports the inquiry was initiated. Section 76-A(1) of the Act is designed to oversee and investigate cooperative societies operations in cases involving fraud or misconduct. Proceedings under Section 76-A(2) could have been initiated if a complaint had been made to the Registrar under that provision following the format in Rule 114-A of the Act. Section 76-A(1) and 76-A(2) represent different modes of supervisions and means to address financial irregularities. The Registrar has correctly ordered an inquiry using *suo motu* powers as there was material available relating to the charges. The complaint made by Ramesh Naik was

not a statutory complaint under Section 76-A. Section 60(f) stipulates that if a Director suffers from disqualification he is ineligible to be a Director as a disqualification under Section 59(11) would be forever. The submission that the action was in respect to earlier term which had expired and no action can be initiated against the present Directors lacks merit. The inquiry was held after the expire of term. Section 59(11) contemplate that the Director would be disqualified to continue on the board. It is not stated that the Director would not continue on the board for a term. The contention that the Registrar cannot initiate action under Section 59(11) of the Act without opinion or recommendation of the General Body of the Federal Society is devoid of merits. Section 78(1) Maharashtra Societies Act requires consultation with the Affiliated Federal Society before removing a committee member. However, Section 76-A(5) of the Goa Act does not necessitated obtaining an opinion from the federal society before exercising powers under Section 59(11) of the Act. Section 79 of the Goa Act uses the word “without prejudice to any civil or criminal proceedings” to give meaning to presenting the report under Section 76-A(5) before the General Body. The object of the Section is to recover losses incurred due to the actions of Directors. Although some of the Directors were not a Director during the

period when the decision of taken, it is evident that he has voted in favour to confirm the minutes of that meeting. It is pertinent to note that one of the Director had recused or abstained from confirming the minutes. Such Directors are equally responsible for the decision where loss was caused to the society. Section 59(10) of the Act makes the provision for expressing descending opinion which has to be recorded in the proceedings of the meetings. There is no reason to set aside the impugned order. The Petitioners had an alternate remedy to challenge the order under Section 67-A of the Act. In any case, the impugned order dated 21<sup>st</sup> April, 2023 passed under Section 59(11) does not call for interference.

37. In the case of *Gorkha Security Services (supra)*, the Apex Court has observed that the issue pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind service show cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require to statement of imputations detailed out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement is the nature of action which is proposed to be taken for such breach. That should be stated so at the noticee is able to point out that

proposed action is not warranted in the given case, even if the default complained of are not satisfactorily explained. When it comes to blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is the harshest possible action.

38. In the case of *Sadashiv s/o. Ganpatrao Mahajan (supra)*, it was observed disqualification of Respondent as a Director was to be done in consultation with federal society. The show cause notice and reply were forwarded to federal society. It was not clear if material was placed before the committee of the federal society. Record did not disclosed resolution by the members of managing committee of federal society with authority seeking consultation. The Court set aside the order of removal for non-compliance of the said provision.

39. In the case of *Ravi Yashwant Bhoir (supra)*, it was observed that the democratic set up of the country is basic feature of the constitution. Mere error of Judgment resulting in doing negligent act does not amount of misconduct. Removal of elected officials as serious repercussions as it casts stigma and takes away their valuable rights as well as rights of people of their respective constituencies to be represented by all of them.

40. In the case of ***UMC Technologies Private Limited V/s. Food Corporation of India and Another***<sup>8</sup>, it was held that the show cause notice has to be specific. The show cause notice to constitute the valid basis of a blacklisting order. Such notice must spell out clearly or its contents be such that it can be clearly inferred therefrom, that there is intention on the part of the issuer of the notice to blacklist the noticee. Such clear notice is essential for ensuring that the person against whom whom the penalty of blacklisting is intended to be imposed, has an adequate, informed and meaningful opportunity to show cause against his possible blacklisting.

41. In the case of Vithalnagar Co-operative Housing Society V/s. Divisional Joint Registrar & Ors.<sup>9</sup>, this Court had held that the power of *suo motu* cannot be read and referred to mean the basic provisions which required that the 150/one third members to file such application to initiate such inquiry just cannot be overlooked but need to be dissected for all the purposes. The Court did not accept the order passed by the Divisional Joint Registrar by observing that the material placed on record even by a member of public can be taken note of to initiate such inquiry against private

---

<sup>8</sup> (2021) 2 SCC 551

<sup>9</sup> 2015(6) Bom. C.R. 176

society.

42. In the case of Vithoba Datta Dessai And 5 Ors. V/s. The Registrar of Cooperative Societies, Govt. of Goa And Anr., the order passed by the Registrar of Cooperative Society under Section 76-A(1) and 77(2) and 59(11) of Goa Cooperative Societies Act, 2001 was under challenged. The Petitioners were disqualified to hold the position of Directors. It was observed that *prima facie* it appears that action of the Registrar was on the basis of complaints made by two Directors of the Board of Directors. One of which was the Chairman. Section 76-A of the Act provides that Registrar may on the request made by creditor or federal institution or not less than one third of the total number of members of the Board of Directors or not less than one fifth of the total number of members of a society or on his own motion by himself or by person duly authorized by him in writing undertake inspection and inquiry into constitution, working and financial condition of society. The provisions indicate that the Registrar may exercise powers of his motion or *suo motu*. In the facts of the case it was difficult to accept that the Registrar invoked *suo motu* powers. The Petition was admitted by this Court vide Order dated 4<sup>th</sup> October, 2019 and the impugned order was stayed.

43. In the case of *Jeevan Niwas Co-operative Housing Society Ltd. And Another (supra)*, this Court referred to Section 83 of the Maharashtra Co-operative Societies Act, which relates to the inquiry by the Registrar. It was observed that complaint may have been made by some member not constituting the requisite percentage of members does not oust the jurisdiction of the Registrar to order inquiry as a *suo motu* or on the basis of special report. However, before exercising *suo motu* powers there has to be material on record warranting exercise of such powers.

44. In the case of *Indian Railway construction Co. Ltd. V/s. Ajay Kumar<sup>10</sup>*, it was observed that judicial review is open in case of failure to exercise discretion and excess or abuse of discretionary power or illegality, irrationality and procedural impropriety. Non-consideration or non-application of mind to relevant factors renders exercise of discretion manifestly erroneous calling for judicial interference. Discretion must be exercised reasonably.

45. In the case of *State of Punjab V/s. Bandeep Singh and Others<sup>11</sup>*, it was observed that the administrative decision must be judged by reasons stated in the decision. Subsequent explanation or reasons cannot be accepted.

---

10 (2003) 4 SCC 579

11 (2016) 1 SCC 724

46. In the case of *Muslim Co-operative Bank Ltd. (supra)*, the division bench of Karnataka High Court as referred to the circumstances of *suo motu* exercise of power left to the Registrar. It was held that the Registrar under the Societies Act and Registrar of Co-operative Societies in the case of Karnataka Cooperative Societies Act have undoubted powers to initiate inquiry into a society as the case may be *suo motu*. This power is independent of not only the power but also the duty to hold an inquiry when it is demanded in writing by the requisite number of persons named in Section 25(1) of the Societies Act. In respect of a society.

47. In the case of *Bangalore Grain Merchants Association (supra)*, the Court considered the precondition for the exercise of power of holding inquiry by the Registrar in to the Constitution, working and financial condition of a Registered Society and whether the Registrar could be said to have exercised power on his own motion. When such power is exercised on the basis of complaint made by less than one-third of the members of the Society. The matter was decided by the Full Bench which did not accept the contention of the Petitioner that the powers of the Registrar are circumscribed by tow preconditions envisaged in Section 25(1) that complaint should have been made by majority

group of members of Governing Body or by not less than one-third of the members of the society and the *suo motu* power cannot be exercised once a complaint is made by less than the number of members mentioned therein and the concept of *suo motu* power excludes an action based on representation or complaint.

48. In the light of the discussion as above, I am of the opinion that there is no illegality in the impugned order passed by the learned Registrar Cooperative Societies. The grounds urged by the Petitioners are devoid of merits. The Petitioners are not entitled for any relief hence, the Petitions are required to be dismissed.

### **ORDER**

i. Writ Petitions are dismissed and disposed off.

**(PRAKASH D. NAIK, J.)**

49. At this stage, learned Advocate for the Petitioners requested for extension of interim relief for a period of eight weeks. Request is strongly opposed by learned Advocate for Respondents. Considering the fact that, interim order is in operation, the same is extended for a period of eight weeks.

**(PRAKASH D. NAIK, J.)**