

Meena

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.607 OF 2023
WITH
CIVIL APPLICATION NO.111 OF 2023
IN
WRIT PETITION NO.607 OF 2023

Mrs. Noella Fernandes
Aged 50 years,
Resident of 101-A Block,
Infinity Enclave Street-I, Lane – 2,
Nagalli Hills Colony, Dona Poula, Goa

... Petitioner

Versus

- 1 Assistant Registrar of Co-operative Societies,
Central Zone, Sahakar Bhavan,
Opp. Municipal Market, Panaji, Goa.
- 2 The Infinity Enclave Co-operative Housing
Maintenance Society Ltd.
Through The Administrator Adv. Anant C.
Pansekar,
S-4, 2nd Floor, Fatima Chamber, Panaji, Goa.
- 3 Shri Rajendra L. Kamat,
Chairman of Committee of Administrator,
Resident of 2AT/3, Milroc Temple Towers,
Opp. Swami Samarth Mutt, Mercedes-Chimbel
Road, Mercedes, Goa-403 005
- 4 Shri Antonio Sergio Costa,
Resident of 401-B Block, Infinity Enclave,
Nagali Hills Colony, Street 1, Lane 2, Dona
Paulo, Tiswadi, Goa – 403 004.
- 5 Shri Gautam G. Talaulikar,
Member of Committee of Administrator,
Jt Auditor/Inspector, O/o. Asstt. Registrar of
Co-operative Societies, Central Zone, Panaji-
Goa.
(Amendment carried out as per order dated
13/09/2023)

...Respondents

Mr. Nigel Da Costa Frias with Ms. Barbara Andrade, Advocates for the Petitioner.

Mr. Deep Shirodkar, Additional Government Advocate for Respondent No.1.

Mr. Rajendra L. Kamat, Respondent No.3- Present.

Mr. Antonio Costa, Respondent No.4 – Present.

CORAM: BHARAT P. DESHPANDE, J

RESERVED ON: 25th January, 2024

**PRONOUNCED 5th February, 2024
ON:**

JUDGMENT:

1. Rule. Rule is made returnable forthwith.
2. Heard the matter finally at the admission stage with consent.
3. The petitioner who is one of the Board of Directors of the respondent No.2- Society and working as Secretary, preferred present petition thereby challenging the impugned order passed by the respondent No.1 dated 06/07/2023 and corrigendum dated 08/08/2023.
4. By the impugned order dated 06/07/2023, respondent No.1 disqualified the petitioner for a period of 4 years for being chosen as Directors and she was held ineligible to continue as Secretary of

respondent No.2- Society. The respondent No.1 vide separate order dated 06/07/2023 appointed an Administrator to look after the day to day affairs of the society.

5. Mr. Nigel Da Costa Frias appearing for the petitioner would submit that the society was duly registered having its bye-laws approved. The only three members of the said society were elected as Directors including the petitioner. The said three Directors acted as Chairman, Treasurer and Secretary of the said society. The Treasurer resigned on 12/07/2020. On 13/07/2022, the Chairman resigned. There was only the petitioner being the Secretary who could not have convened a meeting of the general body within time for the financial year 2021-2022. Such Annual General Meeting was supposed to be convened on or before 22/09/2022.

6. Mr. Costa Frias would then submit that the petitioner addressed a letter to respondent No.1 seeking extension of time to convene the Annual General Meeting by disclosing sufficient reasons. There was no response from the office of respondent No.1. Suddenly somewhere in September, 2022 respondent No.1 intimated the petitioner that such time cannot be extended.

7. Mr. Costa Frias would submit that for convening the Annual General meeting, 14 days clear notice to all the members is must. Since

there was no such time left from the date of receipt of letter from respondent No.1, the meeting could not be convened on or before 22/09/2022. He submits that such Annual General Meeting was held on 06/11/2022 and audited statements of account were placed and proved. The intimation was given to respondent No.1. However, after such intimation was received by respondent No.1 along with the minutes of the Annual General Meeting, suddenly a Show Cause Notice was issued to the petitioner as to why she should not be disqualified from the post of Director. The petitioner filed a detailed reply objecting to such Show Cause Notice and convening to the Registrar about the grounds for delay of such meeting. However, respondent No.1 failed to consider such grounds and passed the impugned order.

8. Mr. Costa Frias would submit that it was beyond the control of the petitioner to convene the Annual General Meeting prior to 22/09/2022 since the Chairman was not available and no other member was ready to co-opt to the post of Chairman. He submits that the Secretary alone could not have convened or summoned a meeting and therefore the impugned order suffers from illegality and arbitrariness.

9. He would further submit that grounds of disqualification found in the impugned order show arbitrariness on the part of the officer who

failed to consider reasons disclosed in the reply to the Show Cause Notice.

10. Mr. Costa Frias would submit that the Chairman of the Board is empowered to summon the Annual General Board Meeting and in absence of the chairman, it was the duty of the Registrar himself either to elect the Chairman or to convene the meeting. He would submit that there was no deliberate or malafide intention on the part of the petitioner not to convene such a meeting. He submits that the discretion available for respondent No.1 has not been judiciously exercised.

11. *Per contra*, Shri Shirodkar, learned Additional Government Advocate has claimed that it is mandatory for the society to conduct the meeting within the specified time and on failure, the Board of Directors are bound to incur disqualification, it is automatic since the word deemed disqualification is used in Section 61 of the Co-Operative Societies Act. He would submit that in this case the disqualification on two counts, firstly failure to conduct Annual General Meeting within Six months of closure of the societies accounting year and secondly failure to place audited accounts for the presiding co-operative year before the General body.

12. Mr. Shirodkar would therefore submit that once it is found that the Directors who are duty bound to convene Annual General Body Meeting, failed to do so, the disqualification is automatic. He submits that the Registrar is not entitled to go into the aspect of the reasons for not convening such a meeting. Mr. Shirodkar would then submit that reasons disclosed by the petitioner for not convening such a meeting were flimsy reasons and if such reasons are accepted, would create difficulty in implementing the provision of the Co-operative Societies Act. The only aspect which the Registrar has to look into as to whether there is compliance of mandatory provisions. He would submit that the petitioner along with the Treasurer of the said society was even disqualified for a period of four years. The Treasurer did not challenge such an order. Only the petitioner who worked as a Secretary of the said society challenged the impugned order however failed to show any ground for the purpose of interference.

13. Mr. Shirodkar while pointing out to the duties of the Directors including that all the Secretary, would submit that even the Secretary was entitled to convene a meeting by getting approval of the agenda.

14. Rival contentions fall for determination.

15. Respondent No.2 society is registered with respondent No.1 in October 2016. Their bye-laws are also approved for the year 2016 itself.

The said respondent No.2 society is in fact a co-operative housing maintenance society consisting of 16 members. Bye-laws of the society provides a board of Directors comprising of three members i.e. Chairperson, Secretary and Treasurer. Term of the Board of Directors is for five years. The elections of the board of Directors of the society were held on 23/03/2019 during which the petitioner along with two others were elected as Directors. The other Director who was designated as Treasurer by name Anil Nair resigned w.e.f. 12/07/2020. Accordingly one Mr.Fedrick Pinto was co-opted as Treasurer on 16/07/2020 as provided under Bye-laws 106.

16. The Chairman by name Anit Coutinho resigned from the post of Director w.e.f. 13/07/2022 and on his place Dr. Alan Andrade was co-opted as Chairman on 18/10/2022.

17. The respondent No.2 society was supposed to hold Annual General Body Meeting for the financial year 2021-2022, on or before 31/09/2022. However, it is the contention of the petitioner that since the Chairman Mr. Aneet Coutinho resigned on 13/07/2022 whereas the Treasurer by name Mr. Frederick Pinto was unwell due to medical emergency, the petitioner being the Secretary was unable to convene such a meeting. A letter dated 01/09/2022 was addressed to respondent No.1 to grant additional time to conduct Annual General Board Meeting i.e. till the month of December 2022. However, respondent No.1 vide his

letter dated 22/09/2022 intimated the society that the meeting has to be convened within a period of six months from the date of closure of co-operative year and thus the request for grant of additional time was rejected. Since there was no further time to give notice of 14 days to the members for convening Annual General Body Meeting, the same was held on 06/11/2022 and in the said meeting even the audit report along with the statements of accounts were placed and approved.

18. With these factual matrixs of the matter, the impugned order as well as provisions of Co-operative Societies Act will have to be gone into.

19. Section 72 of the Goa Co-operative Societies Act 2001 in Chapter VII dealing with Management of Societies provides as to how the meetings and minutes of the society shall be conducted. Section 72 reads thus :

“72. Meetings and minutes.— (1) The bye-laws of the society shall specify the frequency of and the manner in which the meetings of the board shall be held, so however that the board shall meet at least once in every three months.

[(2) Every society shall hold the annual general body meeting of its members within six months from the close of the co-operative year. At every annual general meeting of a society, the board shall lay before the society an audited

balance sheet and profit and loss account for the year in the manner specified by the Registrar by general or special order in this behalf.

Explanation:— In the case of a society not carrying on business for profit, an income and expenditure account shall be placed before the society at the annual general meeting instead of profit and loss account; and all the references to “profit and loss account”, “profit” and “loss” in this Act, shall be construed in relation to such society as references, respectively, to the “income and expenditure account”, “income over expenditure” and “excess of expenditure over income.”;

*(3) The board shall convene a general meeting within thirty days of receipt of requisition for convening a general meeting signed by at least one-tenth of the members of the society 102[***]and any such requisition shall contain the proposed agenda and the reasons why the meeting is felt necessary.*

(4) Where the board fails to convene the annual or requisitioned general meeting within due time, it shall be competent for the Registrar to convene the requisitioned or annual general meeting, as the case may be.

(5) Every society shall record in separate minute books, minutes of all proceedings of every general meeting, every meeting of its board of directors and every committee meeting.

(6)[***]

(7) The minutes of the board meetings so recorded shall be signed by the person who chaired the said meeting, or by the chairman of the succeeding meeting, and minutes of the general meeting shall be signed by the person who chaired the meeting within thirty days from the date of the meeting or in the event of his unwillingness or inability, by a director duly authorised by the board for the purpose.

20. The above provision also deals with bye-laws of the society which shall specify, frequency of and the manner in which the meeting of the society shall be held. However sub-section 2 as quoted above substituted by amendment Act of 2014 mandate that every society shall hold an Annual General Body Meeting of its members within six months from the close of the co-operative year. In such Annual General Body Meeting, the board shall lay before the society an audited balance sheet and profit and loss account for the year in the manner specified by the Registrar by general or special order in this behalf. Thus, it is a mandate of Section 72(2) of the Act that every society shall hold Annual General Body Meeting of its members within six months from the close of the co-operative year and lay before the members an audited balance sheet and profit and loss account for the year.

21. Section 2(17) defines “co-operative year” which means a year or period ending on the thirty-first day of March. It means that after the

close of co-operative year i.e. on thirty-first day of March, the society shall hold Annual General Body Meeting within a period of six months from the close of such co-operative year.

22. Section 72(4) deals with eventuality when the board fails to convene the annual or requisitioned general meeting within due time, it shall be competent for the Registrar to convene the requisitioned or annual general meeting, as the case may be.

23. Section 58 of the Act of 2001 deals with the general body and its functions whereas Section 59 deals with the Board of Directors. It provides that the management of every society shall vest in a board of Directors constituted in accordance with this Act, the rules and bye-laws, which shall exercise such powers and perform such duties as may be conferred or imposed by this Act, the rules and the bye-laws. The term of office of the elected members of the board and its office shall be five years from the date of its election and the terms of office bearer shall be conterminous with the term of the board. It further provides that the board may fill a casual vacancy on the board by nomination out of the same class of members in respect of which the casual vacancy has arisen, if the term of office of the board is less than half of its original term.

24. In the present matter Section 61 of the Act of 2001 is relevant which reads thus:

“61. [Disqualification of all directors of the board—Notwithstanding anything contained in the foregoing section, all the Directors of the Board shall incur disqualification not exceeding six years as may be decided by the Registrar after giving an opportunity of being heard, if during their term as Directors of the Society—

(a) they did not conduct the annual general meeting within six months of closure of the society’s accounting year;

(b) they did not conduct a requisitioned general meeting within the specified time;

(c) they did not place the audited accounts for the preceding co-operative year before the general body at its annual general meeting;

(d) they willfully allow any of the disqualified directors to continue on the board;

(e) they did not file the returns within stipulated time as provided under section 81;

(f) they are held responsible for not providing the information as required under section 32 of the Act:

Provided that if it is proved that the aforesaid omission or commission was with the consent or connivance of or is attributed to any gross negligence on the part of any Auditor, Director, Chief Executive, Managing Director or any other officer of the society, such Auditor, Director, Chief Executive, Managing

Director or any other officer of the society shall be guilty and shall be liable for disqualification or misconduct, as the case may be and for penalty which shall not be less than rupees one hundred but not exceeding rupees twenty-five thousand.]”

25. The above section starts with a non-obstante clause. It thus provides that notwithstanding anything contained in the foregoing section, all the Directors of the Board shall incur disqualification. It means that the disqualification which is contemplated under Section 60 cannot be looked into together with a motion of no confidence as provided in Section 59(A) of the said Act.

26. The wordings in Section 61 are mandatory in nature. The Registrar has to ascertain the reasons/clauses/defaults by the Directors of the society to exercise powers under section 61. Clauses (a) to (e) are the reasons for which disqualifications of the board of Directors shall be incurred. Only for that purpose the opportunity of being heard is contemplated to the Directors.

27. The learned Counsel Mr. Costa Frias would submit that even under Section 61, the Registrar is entitled to go into the reasons/explanation given by the board for not convening the meeting within a period of six months and if he is satisfied with reasons disclosed by the Directors are genuine and were beyond their control, he

could exercise his discretion by accepting such reasons and refusing to disqualify the Directors.

28. As against this Mr. Shirodkar, learned Additional Government Advocate would submit that once a ground mentioned in Section 61 of the said Act is established the disqualification is automatic and the Registrar is not having any authority or jurisdiction to go into the reasonable cause for non-compliance of such provisions. He would submit that the provisions of Section 61 are clear and mandatory in nature and whenever there is default in holding Annual General Meeting or placing accounts of the preceding co-operative year before Annual General Meeting, the disqualification is automatic.

29. In this regard Mr. Shirodkar placed reliance in the case of ***Inland Water Transport Employees Coop. Credit Society Ltd. v/s. State of Goa*** [2016 SCC OnLine Bom 5232]. In that matter, the Registrar while exercising powers under Sections 61(a) and 72(2) declared the board of Directors of the petitioner society, having incurred disqualification for a period of five years, was challenged by the society on the ground that there were sufficient reasons for not holding the Annual General Meeting within a stipulated time of six months and that it was beyond the control of the board for getting the accounts audited and file the reports. The learned Single Judge (C.V. Bhadang,J) after

considering the provisions of Sections 61 and 71 of the said Act observed in paragraph 13 as under:

“13. It can, thus, be seen that sub-section (5) of Section 75 of the Maharashtra Act provides that if a default is made, in calling a General Meeting within a period or as the case may be ‘extended period’ prescribed under subsection (1) or not complying with sub-sections (2), (3) and (4), the Registrar may, by an order, declare any officer or member of the Committee, whose duty it was to call such a meeting or comply with subsections (2), (3) and (4) and who “without any reasonable excuse failed to comply with any of the aforesaid sub-sections” disqualified for being elected and for being any officer and member of the Committee for such a period not exceeding three years as he may specify. It can, thus, be seen that Section 61 of the Act does not provide for such default being without a reasonable cause as a basis for disqualification. The provisions of Section 61 are clear and mandatory in nature, whereunder once there is a default in holding AGM or placing the accounts of the preceding co-operative year before the AGM, the disqualification is automatic.”

30. There is no material which has been brought to my notice together with any other decision, to take any other view than one taken by this Court in the earlier petition.

31. The matter in hand clearly goes to show that the petitioner being the Secretary of the said society was entitled to call for general body

meeting within the time frame. Resignation of the Chairman or ill health of the Treasurer cannot be considered as grounds for not calling the Annual General Meeting within the stipulated time. The purpose of Section 61 of the said Act is to regulate the procedure and conduct meetings and more specifically the Annual General Meeting in order to inform the members about the audited statement and the activities carried out by the board. Section 58 of the Act deals with the general body and its powers. Sub section 3 deals with the matter which shall be dealt with by the general body in its meeting. Various powers are given to the general body which include annual audited financial statement of the society, auditors report and audit rectification report, annual operational plan and budget etc. if these procedures are not followed scrupulously, the mandatory provision of Section 61 comes into operation. The power under Section 72(4) of the Registrar to convening meetings is only in an eventuality of the board failing to convene the general body meeting within due time. Thus it cannot be said that if the board fails to have the meeting within stipulated time the Registrar is duty bound to do it and that too within six months as provided under Section 72(2). Thus the contention of Mr. Costa Frias that the Registrar failed to convene the meeting when he found that the board committed default and therefore the blame cannot be put only on the board of Directors, cannot be accepted. The powers under Section 71(4) can be exercised by the Registrar only on failure of the board to convene

Annual General Body Meeting within the stipulated period of six months. Such power of the Registrar cannot be considered as diluting the duty of the board of Directors to convene the General Body Meeting within a period of six months from the closure of the co-operative year.

32. The reasons disclosed that due to resignation given by the Chairperson, the Secretary alone was not competent to call for a meeting, is again an excuse which cannot be looked into for the simple reason that society was very much entitled to co-opt another member as Chairperson in place of the person who resigned. Similarly, the ill health of the Treasurer is against another excuse which cannot be accepted to dilute the mandatory provision for the simple reason that such Treasurer could have instructed any other member to attend the meeting for the purpose of presentation of the accounts.

33. The petitioner has clearly admitted that even the statement of accounts were not audited and the same were not received by the society from their auditor, during the said period. There is no reason disclosed as to why the statements were not audited within the specified time.

34. The bye-law of the petitioner society disclosed the functions and powers of the board which include the powers of the Chairman and the Secretary. Clause 109(m) of the bye-laws specified functions of the Secretary of the society wherein at Sr.No.9, it provides to issue notice

and agenda of all meetings of the general body. Similarly at Sr. Nos. 11 and 12 further provides for the issue of notices of all the meetings of the board. Thus, the petitioner being the Secretary of the said society was very much competent and entitled to summon/convene a General Body Meeting within a period of six months from the close of the co-operative year. This fact has been observed by the learned Registrar in the impugned order. Admittedly and as observed in the case of **Inland Water Transport Employees Co-Op Credit Society Ltd** (supra), once it is found that there is a default on any of the clauses found in Section 61(1), disqualification is automatic. In this case, the default is found at clause (a) and clause (c) of Section 61 i.e. the board did not conduct the Annual General Body Meeting within six months of the closure of the society's accounting year and did not place the accounts of the preceding co-operative year before the general body.

35. The petitioner was heard before passing of the impugned order. However, the reasons given by the petitioner for not convening the meeting within the stipulated time, cannot be looked into once it is found that there is a default as Section 61 mandate for disqualification is automatic.

36. In the present matter admittedly the meeting was summoned on 06/11/2022 and the audited accounts were placed before the general body which were proved.

37. The discretion of the Registrar is only restricted to the disqualification not exceeding six years, once it is found that there is a default. Thus while exercising such discretion of imposing disqualification, the Registrar has to consider the reasons and the fact that such a meeting was convened within a short time and the accounts were placed before the Annual General Meeting. In this case, the due date for holding Annual General Meeting on 30/09/2022 whereas the Annual General Meeting was called/convened on 06/11/2022 and the audited accounts were placed for approval. Thus, it further shows that the meeting was called within a period of one month from the due date and the accounts were placed before the board. Considering the said factual matrix, the Registrar had a discretion to impose a disqualification. In this case, the learned Registrar has imposed the period of disqualification on the petitioner for a period of about four years. It is no doubt true that such disqualification for four years is within the powers of the said Registrar. However, there is absolutely no discussion as to why such disqualification of four years is imposed.

38. While exercising discretion, the Registrar is duty bound to look into the circumstances and the reasons given by the Board of Directors for the default. If the default is not committed intentionally and that within a short time the remedy is provided, the disqualification could be of a lesser period so as to protect the interest of the members of the society as well as the object of the co-operative movement.

39. To my mind, disqualification of the petitioner for four years is quite harsh on the ground that within a period of one month from the due date, the Annual General Meeting was convened and the audited reports were placed as well as approved by the members.

40. Since there are no other allegations against the petitioner while working as a Secretary of the said society, the Registrar ought to have considered such factors while imposing the period of disqualification.

41. Only the aspect of imposition of four years of disqualification could be considered in the present petition since it is found that disqualification is automatic once the fact is brought to the notice of the Registrar. Giving opportunity to the board or the members of the board is only to justify the period for which disqualification could be imposed.

42. The contention of Mr. Costa Frias are therefore devoid of merits as far as the grounds raised in the present petition. The Registrar cannot look into reasons disclosed by the board or the members of the board for the purpose of explaining the defaults. The only discretion that the Registry is to consider such reasons for imposing the period of disqualification.

43. The impugned order as far as disqualification of the petitioner for not holding the meeting within the stipulated period and not placing the audited reports, cannot be interfered with for the above reasons.

44. However, the period of disqualification imposed by the Registrar and that too without any reasons, needs interference. Since the petitioner or the board convened the meeting within a period of one month from the due date and placed the audited reports before the members for approval, imposing disqualification for four years would be too harsh. Accordingly, the period of disqualification imposed by the Registrar as modified to one year. Only with this modification in connection with the period of disqualification, other grounds raised in the petition are devoid of merit.

45. The petition is partly allowed. While maintaining the order of disqualification, the period is reduced to one year.

46. Rule is made absolute in the above terms.

47. Writ petition as also Civil Application stand disposed of accordingly.