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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 221 OF 2024

VINOD VELLAPAN & 5 ORS. ... PETITIONERS
VS
ASSTT. REGISTRAR OF CO-
OPERATIVE SOCIETIES & 3 ORS. ... RESPONDENTS

Mr. Ashwin D. Bhobe with Ms. Shaizeen Shaikh, Advocates
for the Petitioners.

Mr. Manish Salkar, Government Advocate for Respondent
Nos. 1 and 4.

Mr. Arjun Naik, Advocate for Respondent Nos. 2 and 3.

CORAM: AVINASH G. GHAROTE, J.

DATED: 26th MARCH 2024

ORAL ORDER:

1. Heard learned Counsel for the respective parties.
2. The Petition challenges the order dated 31.01.2024 passed by the Assistant Registrar of Co-operative Societies, North Zone, Mapusa, whereby the Petitioners, who were elected to the Board of Directors of the Parra Tower Co-operative Housing Society Limited, in the elections held on 10.11.2017, for the period of 5

years, have been disqualified under Section 61 (a) & (c) read with Section 72(2) of the Goa Co-operative Societies Act 2001 (hereinafter referred to as the Co-operative Societies Act for short), for not holding the Annual General Meeting (AGM) within a period of 6 months of the closure of the Society's accounting year and not placing the audited accounts for the preceding year before the general body in its AGM. The impugned order, records that the AGM for 2018 and 2019 have not been held and on that count disqualifies Petitioner Nos. 1 and 3 to 5 from 01.10.2018 and Petitioner No. 2 from 01.10.2019 for a period of 6 years under Section 61 (a) and (c) of the Co-operative Societies Act. Though a case was also pleaded for disqualification on the same grounds for the co-operative year 2022, the plea has been turned down.

3. Mr. Bhobe, learned Counsel for the Petitioners contends that the impugned order, would not stand on the touchstone of Section 61(c) of the Co-operative Societies Act as what is mandated is a disqualification for not placing the audited accounts for the preceding co-operative year. It is contended that the Assistant Registrar has accepted that the meeting for the co-operative year 2022 was held within the time frame and the audited report was placed before the AGM. In light of the word “preceding” used in Section 61(c) of the Co-operative Societies Act,

the disqualification could not be attached on the Petitioners, on account of a plea that the Petitioners had failed to hold the AGM for the years 2018 and 2019 within the time frame stipulated therefor. It is therefore contended that the impugned order cannot be sustained and requires to be quashed and set aside.

4. He also contends that Section 61 of the Co-operative Societies Act confers a discretion upon the Registrar to impose a disqualification for a period not exceeding 6 years, which indicates, that the disqualification, for reasons to be recorded, could be upto 6 years and not for 6 years. According to him, the impugned order does not give any reasons whatsoever for imposing disqualification for a period of 6 years, on which count the quantum of disqualification imposed was unsustainable in law.

5. Mr. Arjun Naik, learned Counsel for Respondent Nos. 2 and 3 while opposing the same, submits that the conduct of the Petitioners in not holding the AGM, within the time frame stipulated, itself indicates that the disqualification imposed by the impugned order is justified. Relying upon ***Nagesh Mukund Shet Daivajna Vs. The Assistant Registrar Writ Petition No. 5 of 2021, decided on 24.02.2021*** with connected Petitions, it is contended that the disqualification is automatic and

all that the Assistant Registrar does in the proceedings before it, is to acknowledge that disqualification as Section 61 of the Co-operative Societies Act, is a deeming provision. He further submits, that the conduct of the Petitioners, is further reflected by the fact that for the year 2022, the records of the AGM, claimed to have been held on 25.09.2022, have been tampered with, to show the AGM to be held on the aforesaid date, as against which, it has been in fact held on 25.10.2022 and the finding rendered by Respondent No. 1 in this regard, is not justified. He, therefore, supports the impugned order.

6. Mr. Salkar, learned Government Advocate appears for Respondent Nos. 1 and 4 and supports the impugned order.

7. The co-operative year commences on 1st of April of each English Calendar year and ends on the succeeding 31st March of such year. It is not in dispute that the AGM for the co-operative year 2018 was held on 21.10.2018 in which the audited accounts of the Society were presented. It is also not disputed that the AGM for the co-operative year 2019 was held on 20.10.2019 in which also, the audited accounts of the Society were presented. Though there is a dispute regarding the date of holding of the AGM for the co-operative year 2022 as the Petitioners claim it to be held on

25.09.2022 as against which Respondent Nos. 3 and 4 claim it to be held on 25.10.2022, however, there is no dispute that the AGM was held and the audited accounts of the Society were presented in such AGM.

8. Since Respondent No. 1 has rendered a finding that the AGM of the co-operative year was held on 25.09.2022, and there is no challenge to this finding at the behest of Respondent Nos. 3 and 4, the finding rendered in this regard cannot be gone into, in absence of any challenge thereto.

9. The provisions of Section 72(2) of the Co-operative Societies Act mandate that an annual general body meeting shall be held within 6 months from the close of the co-operative year, which closes on 31st March and in every such AGM, 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 that behalf. By this mandate the AGM has to be held before 30th September of each year. The obligation to hold the AGM every year, within a period of 6 months from the close of the co-operative accounting year is under the provisions of Section 72(2) of the Co-operative Societies Act. Failure to hold the AGM and present the audited balance sheet and profit and loss

account, in such a meeting, incurs a disqualification under Section 61 of the Co-operative Societies Act, which starts with a *non-obstante clause*. Such disqualification, therefore, as held in ***Nagesh Mukund Shet Daivajna*** (supra) is automatic, and cannot be escaped from, as there is no discretion vested in the Registrar under Section 61 of the Co-operative Societies Act to do away with such disqualification in any manner. The only discretion, of the Registrar under Section 61 of the aforesaid Act is to determine the period for which the disqualification can be incurred.

10. Since it is not disputed that the AGM for the co-operative years 2018 and 2019 were held beyond the period of 6 months from the close of the co-operative year, considering that such meetings were held on 21.10.2018 and 20.10.2019, the Petitioners have indeed incurred the disqualification. The expression as contained in Section 61(c) of the Co-operative Societies Act, “for the preceding co-operative year”, cannot be given a strict construction, though the violations thereof indicate disqualification, for the reason that the provisions of Section 61(a) and 61(c) of the Co-operative Societies Act, have to be read together in conjunction with the obligation of the Board of Directors under Section 72(2) of the Co-operative Societies Act.

When the obligation upon the Board of Directors is to hold an AGM every year and in such AGM to present the audited accounts, for every meeting not held, the violation would be there. This would be more so, considering that Section 61(a) of the Co-operative Societies Act, does not use the word “preceding” with respect to the conduct of the AGM within 6 months of closure of the Society’s accounting year and since the obligation to place the audited accounts of the Society is in every such AGM, the contention therefore in this regard by the learned Counsel for the Petitioners is rejected.

11. That takes me to the contention of Mr. Bhobe, learned Counsel for the Petitioners that the disqualification under Section 61 of the Co-operative Societies Act, is *ipso facto* not for an entire duration of 6 years but could be upto a duration of 6 years. The language of Section 61 of the Co-operative Societies Act, uses the expression “shall incur disqualification not exceeding 6 years as may be decided by the Registrar”. This expression would categorically point out that the disqualification is not for 6 years but can be for any period from one day to six years, which is the maximum which can be imposed by the Registrar while exercising powers under Section 61 of the Co-operative Societies Act. Though ***Nagesh Mukund Shet Daivajna*** (supra) holds, and in my

considered opinion rightly so, that the disqualification is automatic, considering the non-obstante clause by which the provision commences, however, it also necessary to note that at the same time, it confers a discretion upon the Registrar to impose a disqualification, the outer limit of which does not exceed 6 years. This would clearly indicate that the discretion to impose the quantum is with the Registrar and the quantum of the disqualification can vary depending upon the reasons to be recorded by the Registrar.

12. In the instant case, there is no dispute regarding the holding of the AGM for all three years, 2018, 2019 and 2022, or for that matter, that the audited accounts of the Society for the preceding years were placed before the AGM. The disqualification has been incurred by the Petitioners only for the reason that the AGM has been held with a delay of 20 and 22 days for the year 2018 and 2019 and by 30 days if the contention of Mr. Naik, for Respondent Nos. 2 and 3 is to be accepted. It is a settled position of law that an elected representative, cannot be ousted in a manner, so as to nullify the will of the electorate, who has so elected him.

13. A perusal of the impugned order, however, does not disclose any reason whatsoever as to why the full period of 6 years has

been imposed upon the Petitioners, disqualifying them as the Board of Directors of Petitioner No. 6. In my considered opinion, Respondent no. 1, ought to have given reasons for imposing the maximum punishment, which is absent on which ground, the impugned order insofar it imposes the disqualification of the maximum period of 6 years, cannot be sustained.

14. Having said so, it was open for me to remand the matter back to Respondent No. 1 for deciding the quantum of disqualification, however, since the learned Counsel for the respective parties have addressed me on the quantum of disqualification also, the remand would be unwarranted.

15. As indicated above, this is not the case, in which the meetings have not been held at all or the case where the audited accounts of the Society have not been placed before the AGM. Mere delay in holding the AGM, ranging from 20 to 30 days in my considered opinion cannot attract the maximum period of disqualification, as doing so would have the effect of disqualifying the Petitioners from getting elected in subsequent terms of the Society too, apart from depriving them from continuing to represent the electorate, which had elected them. It is also trite law, that the punishment has to be in proportion to the offence.

The impugned order therefore, insofar as it imposes disqualification on the Petitioners for 6 years, cannot be sustained, for absence of reasons and disproportionality and is hereby quashed and set aside and it is held that the disqualification of the Petitioners, shall be for a period of one year from the dates as indicated in the impugned order. The Petition is accordingly partly allowed in the aforesaid terms. No costs.

AVINASH G. GHAROTE, J.

ESHA SAINATH
VAIGANKAR

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