

**(2021) 10 BOM CK 0095**  
**In the Bombay High Court**  
**Case No : Writ Petition No.11658 Of 2019**

Santosh Hari Gavas And Another

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

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**Date of Decision : 21-10-2021**

**Acts Referred:**

Constitution Of India, 1950 — Article 227

Maharashtra Cooperative Societies Rules. 1961 — Rule 60, 60(8), 60(10)

Maharashtra Cooperative Societies Act, 1960 — Section 2, 2A, 3, 75, 75(1), 75(5), 81

**Citation : (2021) 10 BOM CK 0095**

**Hon'ble Judges : N.J. Jamadar, J**

**Bench : Single Bench**

**Advocate : Niranjan Mogre, Hitesh Mutha, P.P. Pujari**

**Final Decision : Dismissed**

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## Judgement

N.J.Jamadar, J

1. Rule. Rule made returnable forthwith and, with the consent of the counsels for the parties, heard finally.

2. This petition under Article 227 of the Constitution of India takes exception to the judgment and order passed by the Divisional Joint Registrar, Cooperative Societies, Mumbai Division, Mumbai dated 16th August, 2018 in Revision Application No. 117 of 2018 whereby the revision application preferred by the petitioners herein came to be dismissed confirming the order dated 27th March, 2018 passed by the Dy. Registrar, Cooperative Societies, Mumbai Western Suburbs, Mhada, Mumbai disqualifying the petitioners from being elected and being any officer or member of the committee under section 75(5) of the Maharashtra Cooperative Societies Act, 1960 (the Act, 1960) for the default in convening a general body meeting of Navratna CHS Limited (the society) of which the petitioner Nos. 1 and 2 were the President and Secretary, respectively.

3. The petition arises in the backdrop of the following facts:-

a] Navratna CHS Limited is a Society registered under the Act, 1960. The petitioner Nos. 1 and 2 were elected as the President and Secretary of the society for the term 2015-2019.

b] The Annual General Body Meeting (AGBM) of the society for the year 2017 was convened on 24th September, 2017 vide notice dated 9th September, 2017. The agenda for the meeting included, inter alia, approval to the audited balance sheet and audit report for the financial year 2016-2017 and appointment of an auditor for the financial year 2017-2018.

c] The petitioners claim that, a day before the scheduled date of meeting, a communication was received from the members of the society, seeking postponement of the said AGBM as religious and cultural programmes were being held on account of Navratri festival from 20th September, 2017 to 30th September, 2017. Nonetheless a meeting was held on 24th September, 2017. However, only 13 members attended the said meeting. Thus, having regard to the dismal attendance and the communication received from the members, dated 23rd September, 2017, it was decided to adjourn the meeting.

d] On 23rd October, 2017 the respondent No. 3 Subhash Mane and other members of the society addressed a letter to the Dy. Registrar, Cooperative Societies for initiation of action against the office bearers of the society for default in holding the AGM within the statutory period. A show cause notice was issued to the office bearers of the society under section 75(5) of the Act, 1960, on 4th January, 2018. After considering the explanation furnished by the petitioners/ office bearers, the Dy. Registrar, by an order dated 6th March, 2018 appointed an authorized officer to hold the AGM for the year 2016-2017 and, by a separate order dated 27th March, 2018 held that the petitioners committed default in holding the meeting in conformity with the provisions of the Act, 1960 and, thus, incurred disqualification under section 75(5) of the Act, 1960.

e] Being aggrieved, the petitioners preferred a revision before the Divisional Joint Registrar. By the impugned order, the Divisional Joint Registrar dismissed the revision concurring with the view of the Dy. Registrar. Being further aggrieved, the petitioners have invoked the writ jurisdiction.

4. I have heard Mr. Mogre, learned counsel for the petitioners, Mr. Poojari, learned AGP for the State and Mr. Mutha, learned counsel appointed to espouse the cause of respondent No.3. With the assistance of the learned counsels for the parties, I have carefully perused the material on record.

5. The core question which crops up for consideration in this petition is whether the petitioners have incurred the disqualification under section 75(5) of the Act, 1960 for default in convening and holding AGBM of the society. For exploring an answer, it may be imperative to note, at the outset, the relevant provisions of section 75 of the Act, 1960. Sec.75 reads as under:

75. Annual General Body Meeting.-

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

[Provided that, where such meeting is not called by the society, the Registrar or any officer authorised by him may call such meeting in the member prescribed and that meeting shall be deemed to be a general body meeting duly called by the society] and the Registrar may order that the expenditure incurred in calling such a meeting shall be paid out of the funds of the society or by such person or persons who in the opinion of the Registrar, were responsible for the refusal or failure to convene the general meeting.

(2) .....

(2A) .....

(3) .....

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

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

6. The phraseology of section 75 peremptorily prescribes the time for getting the books of accounts audited and calling the AGBM of the society. Sub section (1) mandates that the society is enjoined to get its books of accounts audited within a period of four months after the close of the financial year and call the AGBM of its members within six months after the close of the financial year. The proviso to sub section (1) vests the Registrar with the authority to call AGBM in the event of failure on the part of the society to call such meeting.

7. Section 2, 2A and 3 enumerate the documents which must be placed before

the society in its AGM. The appointment of an auditor for auditing the accounts of the society is to be approved by the AGBM. Section (4) specifically provides that the audited balance sheet, audited profit and loss account, audited report for the financial year submitted by the auditor appointed under section 81, the rectification report of the earlier audit and the committee's report shall be placed for adoption in every AGBM. Additionally, such other business, as is permissible under the bye-laws, may be transacted in the AGM.

8. The legislative intent in prescribing the time limit for getting the books of accounts audited and calling the AGBM of the society, wherein the audited balance sheet and other statutory report are to be mandatorily placed before the AGBM is to ensure transparent, prudent and efficient management of the affairs of the society.

9. From this stand point, holding of the AGM within the statutorily prescribed period assumes critical significance. Non compliance thereof is visited with the consequence of disqualification for being an officer and member of the committee of the society for a period not exceeding five years. Such stringent penalty underscores the legislative intent.

10. The issue raised in this petition thus deserves to be considered in the light of the aforesaid statutory prescription and legislative intent.

11. Mr. Mogre, learned counsel for the petitioner would urge that the Dy. Registrar as well as the Divisional Joint Registrar committed a manifest error in holding that the petitioners incurred disqualification under section 75(5) of the Act, for failure to call and hold AGBM within 30 days of 24th September, 2017, the day the scheduled AGM could not be held. Laying emphasis on Rule 60 of Maharashtra Cooperative Societies Rules. 1961, Mr. Mogre would urge that under the said Rule, there is no obligation on the office bearers to convene a postponed meeting within 30 days. This erroneous view of the authorities vitiated the impugned orders, urged Mr. Mogre.

12. In order to bolster up this submission, Mr. Mogre placed a strong reliance on a Division Bench judgment of this Court in the case of Jagannath Badhu Badgujar vs. The District Deputy Registrar, Co-Op. Societies, Dhulia and Another 1966 C.T.D. (H) 7 and another judgment of the learned single judge in the case of Lourdes Chandrahas Shetty and Another vs Vishal Konkan Co-Operative Housing Society Ltd. And Others 2005(4) Bom. C.R. 41.

13. As against this, Mr. Mutha learned counsel for respondent No. 3 submitted that the petitioners are not only guilty of deliberate default in calling AGBM but also of fabricating the record to show that there was a requisition for postponement of the meeting, dated 23rd September, 2017 and on 24th September, 2017 meeting was, in fact, held. Inviting the attention of the Court to a letter dated 28th September, 2017 addressed by the Secretary and Treasurer of the society to the Registrar of Cooperative Societies, forwarding therewith audited financial accounts and audit report for the year ending 31st March, 2017,

it was submitted that the petitioners falsely claimed the accounts and audit report were approved in the meeting dated 24th September, 2017 in which the petitioners claimed that no business was transacted. In the face of this ambivalent stand of the petitioners, according to Mr. Mutha, the petitioners do not deserve any relief in exercise of extraordinary writ jurisdiction.

14. Mr. Poojari, learned AGP, for respondent No.1-State supported the impugned orders.

15. In the order dated 27th March, 2018 the Dy. Registrar has observed that it was necessary to convene AGM within 30 days of the date, on which the meeting stood adjourned. Since, AGBM was not convened within the said period of 30 days, the petitioners incurred disqualification. The Divisional Joint Registrar has also adverted to the said fact though not expressly. In this backdrop, the thrust of the challenge on behalf of the petitioners, revolves around on the legal requirement of convening the adjourned meeting within 30 days.

16. In order to properly appreciate the aforesaid challenge, it may be imperative to note sub Rule (8) to (10) of the Rule 60 of Rules, 1961. They read as under:

60. General meetings: - ..... ..

.....

(8) If all the business in the agenda cannot be transacted on the date on which the general meeting is held, the meeting may be postponed to any other suitable date not later than thirty days from the date of the meeting as may be decided by the members present at the meeting.

(9) The remaining subject or subjects on the agenda shall be taken up for consideration at the postponed meeting.

(10) If the general meeting cannot be held for want of quorum, it shall be adjourned to a later hour on the same day as may have been specified in the notice calling the meeting or to a subsequent date not earlier than seven days and at such adjourned meeting the business on the agenda of the original meeting shall be transacted whether there is a quorum or not.

17. Mr. Mogre, learned counsel for the petitioners, comparing and contrasting the text of sub rule (8) and (10), submitted that sub rule (8) would come into play where some business is transacted in the general meeting on the scheduled date and postponement is warranted. In that event, the meeting may be postponed to any other suitable date not later than 30 days. However, if the general meeting cannot be held for want of quorum as per sub rule (10) such meeting can be held on the same day in terms of the notice calling the meeting or it can be adjourned to subsequent date not earlier than 7 days.

18. In the case at hand, according to Mr. Mogre, sub rule (8) of Rule 60 had no application at all and thus the authorities fell in error in holding that failure to call the meeting within 30 days of the scheduled date of meeting amounted to

default within the meaning of section 75(1) and entailed the disqualification under sub section (5) thereof.

19. Mr. Mogre placed a very strong reliance on the Division Bench judgment in the case of Jagannath (supra). In the said case, the Division Bench was confronted with a question as to whether default in fixing the date in holding the adjourned general meeting and in convening such meeting would attract the provision of sub section (5) of section 75 of the Act, 1960. After adverting, to section 75 and the provisions contained in Rule 60, the Division Bench answered the question as under:

"5] .....It may be noted that sub-rule (10) of rule 60 does not merely say that if the general meeting cannot be held for want of quorum it shall be adjourned. It states that in such a case it shall be adjourned to a later hour on the same day as may have been specified in the notice calling the meeting or to a subsequent date not earlier than 7 days. This sub-rule (10), therefore, clearly implies that the date on which the adjourned meeting is to be held must be specified at the time when the meeting is adjourned for want of quorum. There is not provision either in the sub-rule or in any other rule or bye-law stating as to who is to fix the date of the adjourned meeting. The conduct of the general meeting is, however, in the hands of the person who presides over the meeting. Consequently, it seems to us that in the absence of any provision to the contrary, it would be the duty of the presiding authority to fix the date of the adjourned meeting at the time when the meeting is adjourned for want of quorum. The petitioner had presided over the general meeting which was held on 29th September, 1963. It was therefore, his duty to fix the date on which the adjourned meeting was to be held at the time when he adjourned the meeting. The default on his part, therefore, consists in not fixing the date of the adjourned meeting and in not convening such a meeting within a reasonable time after the meeting was adjourned on 29th September, 1963. Action for such a default cannot, however, be taken under sub-s(4) of S. 75 of the Act for the reasons which I have given above."

20. The aforesaid pronouncement was followed by the learned single Judge in the case of Lourdes Shetty (supra). In the later case, the petitioners therein had convened the AGM on 4th August, 2001, in conformity with the statutory prescription. However, on that day only one subject could be discussed and subsequent meeting could not be proceeded with, because of the disturbance created and, thereafter, the meeting had to be called off. When the petitioners therein were sought to be disqualified for default in convening the adjourned meeting, the learned single Judge, after opining that the sub rule (8) of Rule 60 had no application to the facts of the said case, held that the petitioners could not have been disqualified. The observations in paragraph Nos. 20 and 21 are material and hence extracted below:

20. However, the other contention of the petitioners is required to be accepted. There was admittedly no default committed by the petitioners in holding the

annual general meeting within the stipulated period on 4-8-2001. There is no grievance in that regard by the members of the respondents as already held by me. The findings of the Divisional Joint Registrar that there was no sufficient 15 days notice are uncalled for. Because that was not a dispute before him and no such submission was made before me by any of the advocates in that regard, i.e. regarding want of proper and adequate 15 days notice. Therefore, what is clear is that, so far as holding of annual general meeting on 4-8-2001 is concerned, the petitioners have not committed any default. The meeting could not be completed on that day because of the disturbance and, in that regard also no contradictory submission was made by any of the advocates for the respondents. Rule 60(8) which was relied upon by the counsel for the respondents is again reproduced as under :-

"Rule 60(8):-- If all the business in the agenda cannot be transacted on the date on which the general meeting is held, the meeting may be postponed to any other suitable date not later than 30 days from the date of meeting as may be decided by the members present at the meeting."

A perusal of the aforesaid Rule shows that the Rule is very clear and, if as per that Rule if all the business in the agenda cannot be transacted on the date of annual general meeting, meeting may be postponed to any other suitable date not later than 30 days from the date of meeting as may be decided by the members present in the meeting.

21. The wording of Sub-rule (8) of Rule 60 clearly shows that the said Rule does not apply to the facts of the present case. Firstly because the meeting held on 4-8-2001 came to be adjourned because of disturbance and, secondly Sub-rule (8) of Rule 60 requires that next suitable date of the meeting has to be fixed as decided by the members present at the meeting. If the members present were not in a mood to allow the business to be completed smoothly, then there was nobody to fix the date and, secondly, Sub-rule (8) does not give any power to the petitioners i.e. the chairman and secretary to fix the date of their choice. The date has to be fixed as decided by the members present. It is true that the Division Bench's judgment of Chief Justice Chinnani and Justice Gokhale has referred to Sub-rule (10) of Rule 60, as rightly argued by the counsel for the respondents, it applies to general meeting which could not be held for want of quorum. In this case that question does not arise. Therefore, ultimately what becomes clear is, as held by the Division Bench, there is no statutory provision either in the Act or in the Rule fixing the time limit within which the adjourned meeting is to be held. The petitioners had held annual general meeting within the statutory period and had to comply to Sub-section (1) of Section 75. They had written letters to the Registrar seeking their intervention for holding the adjourned annual general meeting. There was no response from the registrar. Thereafter the meeting was held and successfully completed and, therefore, in this view of the matter, all the impugned orders are required to be set aside.

(emphasis supplied)

21. On a careful perusal of the judgments in the aforesaid cases, it becomes evident that the pronouncements were rendered in the peculiar facts of those cases. In the case of Jagganath (supra), the question arose in the context of failure to convene and fix the date for next AGM as meeting could not be held for want of quorum. The issue therein was covered by sub rule(10). Evidently, sub rule (10) does not prescribe the limit of 30 days. In that view of the matter, it was held that the failure to fix the date when the general body meeting is adjourned for want of quorum, would not entail action under section 75(5).

22. In the case of Lourdes Shetty (supra), on the other hand, the AGM was in fact held, within the statutory period. However, the entire business could not be transacted as there was commotion after one subject was discussed. In that context, sub rule (8) of Rule 60 was sought to be resorted to, to contend that it was necessary to convene the postponed meeting within 30 days. Negating the contention, this Court held that sub rule (8) of Rule 60 was not attracted in such a case as the meeting was required to be postponed due to disturbance and, secondly, the date of the postponed meeting was to be decided by the members present at the general meeting and, therefore, the office bearers could not have been held to have incurred the disqualification.

23. None of the aforesaid situations, is presented by the facts of the instant case. It is the claim of the petitioners that, the AGBM of the society was called on 24th September, 2017 vide notice 9th September, 2017. On 23rd September, 2017, a requisition was received from the members of the society to adjourn the meeting as Navratri festival was being celebrated in the society. Petitioners, however, claimed that meeting was, in fact, held on 24th September, 2017. This claim of petitioners warrants critical evaluation.

24. From the perusal of the copy of the minute book (Exhibit C to the petition) dated 24th September, 2017, it becomes evident that the petitioners claimed that in the said meeting, it was decided to adjourn the meeting without transacting any business. From the intrinsic evidence of the said resolution, two things become clear. On the one hand, the names of all the members, who allegedly attended the said meeting do not find mention therein. On the other hand, even the total number of members, who allegedly attended the meeting, is left blank. To add to this, the resolution proceeds on the line that on account of the very low presence of the members and the communication dated 23rd September, 2017, it was decided to adjourn the meeting. The resolution, however, does not in terms record that the AGM was required to be postponed for want of quorum.

25. The situation which thus obtains is that no business was transacted in the meeting allegedly held on 24th September, 2017. Sub rule (8) of Rule 60 has, thus, no application at all. Conversely, the situation is governed by sub rule (10) which regulates the conduct of the meeting where the meeting can not be held for want of quorum. It would be contextually relevant to note the notice of the meeting dated 9th September, 2017 (Exhibit A to the petition). The notice

specifically provided that if the general meeting cannot be held for want of quorum, it would stand adjourned to half an hour on the same day and, in that event, there would be no requirement of quorum. Consequently, in the facts of the case at hand, if the meeting could not be held for want of quorum in conformity with sub rule (10), it was incumbent upon the petitioners to hold meeting on same day, in accordance with the stipulation in the notice dated 9th September, 2017.

26. In the aforesaid backdrop, the submission of Mr. Mogre that the authorities were not justified in resorting to sub rule (8) of Rule 60, appears well grounded in facts. However, the said submission and the authorities relied upon by Mr. Mogre do not advance the cause of the petitioners.

27. At this stage, the intrinsic evidence of the resolution coupled with inconsistent stand of the petitioners, as refected in the communication dated 28th September, 2017 submitting therewith the audited accounts with audit report, assumes significance. Though an effort was made to demonstrate before the Court that no business could be transacted in the meeting held on 24th September, 2017, yet to wriggle out of the situation which might have arisen on account of non-compliance with the statutory provisions, representation was made to the authorities under the Act that the audit accounts and audit report for the year 2016-2017 were approved. In view of the specific provisions, adverted to above, for placing audited accounts and audit report before the AGM of the society, those documents could have been submitted before the authorities, only after the approval of the society in its AGM. This incongruity in the stand of the petitioners, cannot be said to be immaterial or inconsequential.

28. Moreover, it is pertinent to note that no effort was made by the petitioners to hold the AGM till the show cause notice was issued by the Dy. Registrar on 4th January, 2018. The reply dated 21st February, 2018 also sheds light on the stand of the petitioners. In the said reply, the petitioners contended that since the meeting could not be held on 24th September, 2017 for low attendance and the requisition dated 23rd September, 2017, an authorized officer be appointed to hold the meeting in accordance with the provisions contained in section 75(1) of the Act, 1960. Implicit in the said response is an admission that the meeting could not be held within the stipulated period.

29. In the totality of the circumstances, through the authorities have held that there was default in not convening the meeting within 30 days of the adjourned meeting, yet, the fact remains that there was default in convening and holding the meeting within the period prescribed under section 75(1) of the Act, 1960. The material on record does not indicate that the meeting could not be held for want of quorum. Even otherwise, in terms of the notice of the meeting dated 9th September, 2017 it was obligatory to hold the AGM on the very day after half an hour, and for which there would have been no requirement of quorum.

30. Lastly, the reason assigned for not holding the meeting on 24th September,

2017 (Navratri festival from 20th September, 2017 to 30th September, 2017) does not allure credence as it was neither an unannounced development nor an emergent situation. The approach of the Court is expected to be such as would advance the object of the statutory provision. The AGBM of the society is of immense significance in the management of the affairs of the society. Calling and holding the AGM is the essential function of the President and Secretary of the society. If the office bearers of the society fail to convene and hold the AGM, within the statutory period, for a reason which cannot be said to be beyond their control, to condone such lapse would run counter to the object of the statutory provisions. Viewed through this prism, in the facts of the case at hand, the authorities cannot be said to have committed an error in holding that, the petitioners incurred the disqualification.

31. For the foregoing reasons, in exercise of the extraordinary writ jurisdiction, no interference is warranted in the impugned order.

Hence, the following order.

ORDER

a] The petition stands dismissed.

b] Rule discharged.