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**(2000) 02 BOM CK 0018**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 856 of 2000**

Smt. Asha D. Udas

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

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**Date of Decision :** 17-02-2000

**Acts Referred:**

**Citation :** (2000) 102 BOMLR 160(1)

**Hon'ble Judges :** S.S. Parkar, J;A.V. Savant, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

. A.V. Savant, J.—Heard all the learned Counsel; Shri Naik for petitioner; Shri Deshpande, A.G.P. for Respondent Nos. 1 to 3; Shri Salunke for Respondent Nos. 6 to 8 and Shri Pai for Respondent No. 9.

2. What the petitioner challenges is the notice dated 8th February, 2000 (Ex. A page 38) issued by the third respondent convening a meeting of the members of the Managing Committee of Bindiya Co-operative Housing Society Ltd., - Respondent No. 4 - for the purpose of considering the No Confidence Motion against the petitioner who is the Secretary of the fourth respondent society. Admittedly, the requisition has been submitted u/s 73ID of the Maharashtra Co-operative Societies Act, 1960 (for short "the 1960 Act"). The said provision requires that requisition for convening a special meeting for considering the motion of No Confidence should be signed by not less than 1/3rd of the total number of members of the Committee who are entitled to vote at the election of the officer concerned. It may be noted at this juncture that, earlier Sub-section (2) of Section 73ID contained the word "signed by not less than one third of the total number of members of the Committee who are for the time being entitled to sit and vote at any meeting of the Committee. By Maharashtra Act 7 of 1997, an amendment has been effected and for the above quoted words, the words now inserted are "signed by not less than one third of the total number of members of the committee who are entitled to vote at the election of such

officer". The words "entitled to sit and vote "have been substituted by the words "entitled to vote". The relevant rules prescribing the procedure for submitting the requisition of "No Confidence" against an officer of the society and its consideration is laid down in Rule 57A of the Maharashtra Co operative Societies Rules, 1961 (for short "the 1961 Rules".)

3. The objection raised by Shri Naik on behalf of the petitioner is two fold (1) there is failure to comply with Rule 57A(1)(d) and (ii) failure to comply with Rule 57A(1)(e). Rule 57A(1) reads as under:

57A. Motion of no-confidence against the officers of the society -

(1) The requisition to call the special meeting of the committee of a society to consider a motion of no-confidence against the President, Vice-president, Chairman, Vice-Chairman, Secretary, Treasurer of the other officer of the society, by whatever designation called, who holds office by virtue of his elections to that office, shall be made in Form M-18. The requisition shall be accompanied by:-

(a) the grounds of no-confidence:

(b) the text of the motion of no-confidence to be moved;

(c) the name of the committee members who shall move the motion of no-confidence.

(d) a list of members of the committee specifying their full names, and address who are, for the time being, entitled to sit and vote at any meeting of the committee;

(e) Signatures of the members of the committee who are signing the requisition duly attested by the Chief Executive Officer of the society or Special Executive Magistrate or Executive Magistrate or any Gazetted Officer of the Government.

4. In short, the contention of Shri Naik is that the requisition is not accompanied by (i) a list of members of the committee specifying their full names and addresses, who are, for the time being entitled to sit and vote at any meeting of the committee; and (ii) signatures of the members of the committee who are signing the requisition duly attested by the Chief Executive Officer of the society or Special Executive Magistrate or Executive Magistrate or any Gazetted Officer of the Government.

5. Admittedly, the first respondent has 30 members. In accordance with its by-laws the Managing Committee consists of 5 elected members and 1 co-opted member falling u/s 73BBB dealing with reservation of seats on committees of societies for women members and elections thereto. The controversy before us centers round the capacity of respondent No. 9 Ms. Shah who claims to be a member of the Managing Committee entitled to sit and vote at any meeting of the committee. Respondent No. 9 represents the constituency u/s 73BBB being the woman member in the Managing Committee of the fourth respondent society. Respondent No. 9 was co-opted as a member falling under Sec, 73BBB.

However, her co-option was challenged u/s 91 of the 1960 Act in Case No. CCII/318/99 in the Co-operative Court, Mumbai by 16 members of the society - respondent No. 4. Interim order has been passed on 17th December, 1999 holding that the cooption of respondent No. 9 Ms. Shah was ab-initio void and, therefore, she has no right to work as a member of the Managing Committee, the disputants in the Cooperative Court were, therefore, held entitled to an injunction restraining respondent No. 9 (opponent No. 4 in the Co-operative Court) from participating in the affairs of the society as a member of the committee. The operative part of the order dated 17th December, 1999 is as follows:

1. Application for ad-interim injunction is allowed as under:
2. Opponent No. 4 is hereby restrained from participating in the proceedings of Managing Committee of Opponent No. 1 society and also from participating in the affairs of opponent No. 1 society as the Committee member till the final decision of present dispute. Costs to be caused in the cost of the cause.
6. Against the above order dated 17th December, 1999 respondent No. 9 Ms. Shah, petitioner Mrs. Udas and two other members filed Appeal No. 120 of 1999 before the Co-operative Appellate Court at Mumbai. By judgment and order dated 10th January, 2000, the Appellate Court came to the conclusion that the co-option of the 9th respondent was illegal and hence the appeal was dismissed.
7. The aggrieved party, namely, respondent No. 9 alone, had filed Writ Petition No. 815 of 2000 in this Court which was disposed of yesterday by the learned Single Judge in terms of the following order.

Coram : H.L. Gokhale, J. Dated : 15th February, 2000.

P.C.

1. Heard the learned Counsel for the parties.
2. Mr. Pai, learned Counsel for the Petitioner, seeks deletion of other Respondents,
3. After having heard the learned Counsel for the parties, it is felt desirable to hold election for the reserved seats for a woman member u/s 73BBB of the Maharashtra Co-operative Societies Act, 1960.
4. Mr. Dharge, learned Counsel appearing for Respondent No. 17 Society, is agreeable to hold election within four weeks.
5. Mr. Pai and Mr. Salunkhe, learned Counsel, have no objection for holding the said election.
6. That being the position, the statement of Mr. Dharge is accepted that election for the reserved seats for woman will be held within four weeks from today.
7. In the meanwhile, the Petitioner will continue to function as member of the society but she will have no right to vote or to take decision on any matters

which will come up before the Managing Committee.

8. Mr. Salunkhe states that he is agreeable and satisfied with the above arrangement and will not press the dispute which is pending in the Cooperative Court.

9. That being the position, the orders passed by the Courts below are not required to be retained any further.

10. The petition is disposed of in the aforesaid terms.

11. Parties to act on an ordinary copy of this order duly authenticated by the Personal Secretary of this Court.

Sd/- (H.L. Gokhale)

8. It will be clear from the above position that right from 17th December, 1999, when the Co-operative Court granted an order of injunction, 9th respondent Ms. Shah has ceased to be the member of the society who is entitled to sit and vote at any meeting of the committee. Assuming that the 9th respondent continues to be a member of the society now, pursuant to the order passed by this Court on 15th February, 2000, para 7 of the order passed by this Court makes it clear that Ms. Shah will have no right to vote or take decision on any matter which will come up before the Managing Committee. The requisition was submitted on 13th February, 2000 by respondent Nos. 6 to 8. On the day on which they submitted the requisition the order passed by the Co-operative Court on 17th December, 1999 and by the Appellate Court on 10th January, 2000 were in force. Under the two orders the 9th respondent was not entitled to sit and vote at any meeting of the Managing Committee of the 4th respondent society. In this view of the matter, the requisitionists were justified in not mentioning the name of the 9th Respondent in the list of members of the committee under Rule 57A(1)(d) of the rules quoted above. In our view, therefore, there is no failure on the part of the requisitionists to comply with the mandate of Rule 57A(1)(d). Omission to mention the name of respondent No. 9 was justified and does not vitiate the requisition as contended by Shri Naik. The first contention of Shri Naik is, therefore, rejected.

9. The second contention of Shri Naik is about the failure to comply with Rule 57(1)(c) of the 1961 Rules. The Annexure to the requisition shows that the requisition has been signed by 3 requisitionists - Respondent Nos. 5 to 8 and their signatures have been properly attested by Smt. Naik, Sr. Auditor an officer who is undoubtedly a Gazetted Officer of the State Government. There is no controversy about the competence of Smt. Naik attesting the signature. The contention of Shri Naik was that the attestation must appear on the same page on which the signatures appear below the requisition. A reading of Rule 57A(1) which we have reproduced in para 3 above does not support the said contention. All that is required is that the requisition should be accompanied by the signatures of the members of the committee who are signing the requisition duly

attested by the Chief Executive Officer of the society or Special Executive Magistrate or Executive Magistrate or any Gazetted Officer of the Government. In fact, the wording of the rule contemplates accompaniments in the form of Clauses (a), (b)(c), (d) and (e) of Sub-rule (1). While the requisition has to be signed by the 3 requisitionists, the signatures of requisitionists have to be attested on an accompaniment to the requisition. Requisitionists have complied with the mandate of Rule 57A(1) and the requisition is duly accompanied by the signatures of the requisitionists duly attested by the Gazetted Officer of the Government. In view of the above, the second contention of Shri Naik has also no merit.

10. It was then faintly suggested by Shri Naik that there is likely to be a failure to comply with Rule 57A(7)(g)(iii) of the 1961 rules, namely that there may not be 2/3rd members of the society present at the commencement of the meeting which is convened on 21st February, 2000 for considering the No Confidence Motion. In our view, the said contention is premature and hence, we express no opinion thereon at this stage.

11. In this view of the matter, there is not merit in the petition. Writ Petition is accordingly dismissed.