

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (ST.) NO.98568 OF 2020

Michael Ferreira and ors.

....Petitioners

v/s.

The State of Maharashtra and ors.

.... Respondents

Mr. Joel Carlos along with Mr. Zishan Quazi for the Petitioners.

Mr. A.B. Kadam, AGP for the State.

Mr. Clive D'Souza for Respondent No.8.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 06th JANUARY, 2021.

P. C. :-

. The Petitioners herein have challenged the order dated 04/11/2020 whereby learned Divisional Joint Registrar, Co-operative Society, Mumbai Division, Mumbai has remanded the matter to the Deputy Registrar, Co-operative Society, H/W-ward, Mumbai for fresh consideration. The reasons for remand are essentially that notice as required under Section 75(5) of The Maharashtra Co-operative Societies Act, 1960 was not issued and that the reply filed by Respondent Nos.4 to 7 was not considered.

2. Mr. Joel Carlos, learned counsel for the Petitioners states that the findings recorded in the order dated 04/11/2020 that no notice was

issued under Section 75(5) of the M.C.S. Act, are erroneous. He draws my attention to the notice dated 03/01/2020 and states that that there was sufficient compliance mandate to Section 75(5). He further states that the contesting Respondents had also filed their reply and that they were aware of the contents of the complaint lodged by the Petitioners. He submits that there was substantial compliance with the requirement of notice.

3. Per contra, learned counsel for Respondent No.8 states that Section 75(5) of the Act contemplates giving a reasonable opportunity to the person concerned of showing cause against the action proposed to be taken against him. He states that the show cause notice dated 03/01/2020 does not meet the said requirement and that by the said notice, the Respondents were only called upon to give their say on factual aspects of the matter as regards the allegations made in the complaint lodged by the Petitioners.

4. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

5. Before adverting to the factual aspects, it is apposite to refer to

Section 75(5) of the Maharashtra Co-operative Societies Act, 1960 which reads thus :-

“ Annual General Body Meeting :-

(5) If default is made, in calling a general body meeting within the period 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 any reasonable excuse failed to comply with any of the aforesaid sub-sections disqualified 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. A plain reading of this Section indicates that before the Officer or Member of the Committee is disqualified under sub-section 5 of Section 75 of the Act, the Registrar is required to give a show cause notice and a reasonable opportunity of hearing to the person concerned to show cause against the action proposed to be taken against him. In the

instant case, the records reveal that the Petitioners herein had lodged a complaint and that vide notice dated 03/01/2020, the Deputy Registrar of Co-operative Societies had notified the Respondents about the complaint lodged by the Petitioners alleging non-compliance of provisions under Section 75(2)(VI)(VII) and 81(1)(a) and (c) and 82 and had called upon the Respondents to remain present on 27/01/2020 with their explanation so as to understand the factual position. The notice does not record *prima facie* satisfaction about non-compliance of the above referred statutory provision. The notice also does not indicate the action proposed to be taken and further does not call upon the Respondents to show cause against the action proposed to be taken against them. Suffice it to say that every order whether judicial, quasi-judicial or administrative which entails civil consequences, must be consistent with the rules of natural justice. The said notice does not meet the said requirement. Hence, there is no manifest error in the impugned order. The Petition has no merits and is accordingly dismissed. The Deputy Registrar of Co-operative Societies, Mumbai is directed to comply with the order dated 04/11/2020 and decide the matter afresh as expeditiously as possible.

7. This order shall be digitally signed by the Private Secretary /

Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(SMT. ANUJA PRABHUDESSAI, J.)