

(2001) 12 J&K CK 0009

In the Jammu And Kashmir High Court

Case No : Civil Writ Petition No. 820/2001 & O.W.P. No. 820 of 2001

Baldev Sharma

APPELLANT

Vs

Registrar, Co-operative Societies and others

RESPONDENT

Date of Decision : 31-12-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Jammu and Kashmir Co-operative Societies Act, 1989 — Section 174, 175, 29, 29(4), 69

Citation : AIR 2002 J&K 69

Hon'ble Judges : R.C. Gandhi, J

Bench : Single Bench

Advocate : M.K. Bharadwaj, for the Appellant; B.S. Manhas, Sr. A.G.A., for the Respondent

Final Decision : Allowed

Judgement

R.C. Gandhi, J.—Petitioner by means of this petition seeks to quash Order dated 27-9-2001 passed by J & K Special Tribunal.

Respondent No. 3. in Revision Petition, upholding the ex parte interim order dated 15-9-2001 passed by Respondent No. 1. in an Election

Petition, whereby Respondent No. 1 has restrained the duly elected Board of Management/Board of Directors of Jammu Central Co-operative

Bank Ltd., (hereinafter referred "the Bank") from conducting any business relating to the functioning of the Bank and entering the office on the

authority of Election Result. They also seek issuance of a writ of mandamus, commanding the respondents 4 and 5 to assign the election petitions,

challenging the election of the petitioner herein and other elected Directors, to any other Officer of the rank and status of the Registrar Co-

operative Societies/Additional Registrar Co-operative Societies for the reason

that Respondent No. 1 has disqualified himself to hear the election

petitions because of his continuous bias and misconduct shown during the conduct of election; and further a writ of prohibition to restrain

Respondent No. 1 from passing any order, interfering into the management of the elected Board of Directors for transacting the business of the

Society.

2. It is averred in the petition that Respondent No. 1 on 18-6-2001 appointed a Board of Management to manage the affairs of the Bank. It was

challenged by means of OWP No. 425/2001, wherein the following interim direction was passed:-

The impugned arrangement shall continue till the next date. Respondents shall Initiate the process of holding election to the Jammu Central Co-

operative Bank Ltd. taking Into consideration the time mandated' under provisions of S. 29(4). The Board of Management created by respondents

shall not take any policy decision till next date.

3. Pursuant to the aforesaid direction of the court. Respondent No. 1, vide his letter dated 18-7-2001 ordered holding of the election invoking S.

29 of the J & K Co-operative Societies Act, 1989, read with R. 14-A of the J & K Co-operative Societies Rules, 1968 framed under the old Act

to be held on 21-9-2001, under the overall control of the Deputy Commissioner/ Assistant Commissioner(R) District Jammu. The Election

Authority nominated by Respondent No. 1 appointed Tehsildar Agrarian Reforms as Returning Officer, to hold the election. Election was held

under the Authority nominated by Respondent No. 1 and declared the election result of the Board of Management/Managing Committee

(hereinafter ""Board of Management"") on 3-9-2001. The duly elected Board of Management convened a meeting and elected its Chairman and

Vice Chairman in terms of the bye-laws of the Society and commenced its functioning.

4. Respondent No. 1 started interfering with the Board of Management for the reason that the Board superseded by him has again come into

existence. He illegally assumed the jurisdiction and declared the election as null and void vide order dated 8-9-2001 allegedly in exercise of the

power vested in him under S. 70(2)(3) of the Cooperative Societies Act, 1989 and restored his earlier appointed Board vide order under

endorsement No. BK/50/169-78 dated 9-6-2001, challenged in OWP No. 425/2001 and directed holding of fresh election. The relevant portion

of the order reads as:

1. The Board of Management appointed vide order issued under endorsement No. BK/50/169-78 dated 9-6-2001 will continue to be operative

till their term expired or elections are held, whichever be earlier.

2. Any action taken/order Issued by the Board of Directors constituted through unfair/illegal elections shall be null and void and In case any such

decision Is implemented, the Managing Director shall be liable (sick) proceedings as laid down under S. 69 of the J & K Co-operative Societies

Act, 1989.

Fresh election to the Management body shall be held on 9-11-2001 under the control of Deputy Commissioner, Jammu. He will appoint the

Returning Officer/Presiding Officer for smooth conduct of the election on the scheduled date and communicate the result to this office in duplicate.

He will ensure that no official of the Jammu Central Co-operative Bank Ltd. is involved in the conduct of election process as could influence the

outcome of results in any way.

5. This order has been stayed on 12-9-2001 In Revision Petition filed by the Board of Management before Respondent No. 3.

6. On 15-9-2001, one of the voters i.e. J & K Co-operative Union Ltd. Vir Marg, Jammu challenged the election of the elected Board of

Management before the Registrar J & K Co-operative Society, who has competence to hear It under S. 70(2) of the Cooperative Societies Act

1989. The Registrar therein passed the following order:-

Presented today by the Learned Counsel for the petitioner. Heard. Issue notice to the other side in CMP also and call for the record from the

election authority and Returning Officer. In the meanwhile the order of the Returning Officer declaring the respondents elected is stayed with further

direction that the respondents No. 1 to 14 shall not conduct any business relating to the functioning of the Jammu Central Co-operative Society

Ltd. They are also restrained from entering the premises of the bank on the authority of election result which have been stayed. Put up on 18-10-

2001.

7. This order was challenged before the J. & K. Special Tribunal In Revision Petition on the ground that Respondent No. 1 has no Jurisdiction to

pass such an interim order in Election Petition, which has been dismissed vide impugned order dated 27-9-2001, maintaining the order of the

Registrar, assigning the reasons that election dispute can be heard by the Registrar u/s 70 of the Act and he can pass such interim orders also

though he is not expressly vested with the power under the Statutes. The Tribunal also observed that the court which can adjudicate the dispute

has the power to pass interim directions also.

8. Order of the Tribunal, has been challenged on the grounds that Respondent No. 1 was neither competent to pass impugned order nor to

interfere with the election process or restrain the duly elected Board of Management. Respondent No. 1 is biased against the Board of

Management. He has already declared the election as null and void, vide order dated 8-9-2001- Therefore, it Is futile attempt to hear the election

petition by Respondent No. 1. The duly elected members, who had started functioning cannot be prevented by any such interim order, having the

effect of undoing the election. The Registrar has himself nominated the election authority, in exercise of the power u/s 29 read with Rule 24-A and

himself cannot find fault with his own created authority that it is not created in accordance with law. The election has been conducted under the

overall control of the Deputy Commissioner and unless it is finally set aside. Respondent No. 1 has no jurisdiction to undo the Board of

Management. Respondent No. 1 has written letter dated 4-9-2001 to postpone the election, knowing well that the result of the election has been

declared on 3-9-2001. It exhibits the biased mind of the Registrar. He suo motu declared the election as null and void on 8-9-2001. This exhibits

the biased and prejudiced mind of Respondent No. 1. He, by his such acts has disqualified himself as an authority to hear the election petitions.

The order of the Revisional Court is not sustainable as it has also the effect of declaring the election as null and void and taking away the public

office from the elected Board of Directors. The order passed by respondent No. 1 is without jurisdiction.

9. Respondents have filed the counter affidavit stating therein that petition is not maintainable as all the 14 elected members are not pursuing the

litigation and they should have been arrayed as party respondents. The petitioner cannot challenge the impugned order as the election stood

declared null and void vide order dated 8-9-2001. The election was held in violation of the Rules of the Co-operative Society and the by-laws of

the Bank, therefore, respondent No. 1 was justified in passing the order of declaring the election as null and void and restraining the entry of the

duly elected Board of Management in the public office. The election was to be conducted under the control of Deputy Commissioner in terms of

Rule 14-A of the Rules of 1968 but the Assistant Commissioner (Revenue) has taken up this exercise, which is illegal and unauthorised.

Respondent No. 1 requested the Deputy Commissioner vide his communication dated 31-8-2001 to extend the date of election but the Deputy

Commissioner has not paid any heed. The meeting was convened on 4-9-2001 wherein petitioner was elected as Chairman, is illegal. The result of

election declared on the date of withdrawal of the nomination forms i.e. 3-9-2001. is illegal as it could not have been declared till the scheduled

date of election.

10. Heard Learned Counsel for the parties and perused the record.

The admitted facts are that:-

(i) The Board of Directors was removed by the Respondent No. 1 in exercise of his power under S. 29 of the Act, vide order dated 9-6-2001,

which was challenged in OWP No. 425/2001 and this Court directed for issuing process of election:

(ii) The Respondent No. 1 invoking his power under S. 29 of the J & K Co-operative Societies Act 1989 read with Rule 14-A, ordered election

of the Board of Management to be held on 21-9-2001. under the overall control of Deputy Commissioner/Assistant Commissioner (Revenue)

District, Jammu;

(iii) Nominated authority by Respondent No. 1, appointed Tehsildar as Returning Officer and election was held under the control of the Deputy

Commissioner.

(iv) Board of Management came to be elected and their result was declared by the Returning Officer on 3-9-2001, which was the date of

withdrawal of the papers, as no seat remained vacant for holding election;

(v) The Registrar declared the election as null and void on 8-9-2001, which has been stayed by Respondent No. 3.

(vi) The election has been challenged by means of Election Petition on 15-9-2001 and the Registrar on taking cognizance of the petition, vide

impugned order dated 15-9-2001 restrained the duly elected Body from attending and participating in the functioning of the Bank and further

restrained them from entering the premises of the Bank on their authority of having been elected.

(vii) Lastly, there is no express provision in the Act or the Rules vesting power with the Respondent No. 1 to pass interim order in Election

Petition.

11. Mr. M.K. Bhardwaj, Learned Counsel for the petitioner has submitted that the order passed by Respondent No. 1 and confirmed by

Respondent No. 3 is bad in the eyes of law as it has the effect of granting the main relief of quashing the election without finally deciding it and also

the effect of taking away their existence in toto vis-a-vis public institution has been made to halt at the cost of public interest. The Board of

Management is pivotal for running the management of the Bank. The action of the Registrar is not only arbitrary but patently mala fide as it depicts

and exhibits his biased and prejudiced mind for the reason that Respondent No. 1 has already declared the election null and void and this biased

mind is revealed from the impugned order, which restrained the entry of the duly elected members. It, in no circumstances could have been

directed as an interim measure. Election has been held to a public office and not to a private or personal office of a citizen. Preventing entry of the

duly elected Board of Management to a public office or a place where the public business is transacted or the affairs of the management are dealt

with, is arbitrary and illegal.

12. Mr. B.S. Mannas, learned Senior Additional Advocate General in rebuttal has submitted that the authority which is vested with the power to

decide the election dispute impliedly has the power to grant interim direction also. The election dispute can be heard by Respondent No. 1 u/s 70

of the Act. The authority who has power to adjudicate the dispute of election has the jurisdiction to pass interim directions and keeping in view the

circumstances and the public interest, the impugned order has been passed by

the Respondent No. 1 and confirmed by Respondent No. 3, which does not suffer from any illegality or arbitrariness.

13. The questions to be seen are whether under such circumstances elected Board of Management has come into existence and whether

Respondent No. 1 is justified in passing orders or deciding the election petition and that Respondent No. 1's order dated 15-9-2001, is justified

and could the result of election be declared on 3-9-2001?

14. The Election Officer was appointed by Respondent No. 1, The candidates contesting as members of the Board of Management stood

declared elected on 3-9-2001. They held meeting and elected its Chairman and Vice-Chairman.

15. The Registrar can hear Election Petition and declare it null and void. Assuming any illegality has been committed by any authority during the

process of election, it can be looked into and examined in an election petition. The Legislature has created a system and procedure to run the

management of the Bank through Society, headed by duly elected Board of Management. The Registrar is not expected to act in a manner to undo

the election and assume the powers of taking away the Institution created and adopted by a particular procedure provided by law. If the Board of

Management is permitted to work, what public interest is going to suffer, is not divulged and that is how the duly elected Board of Management

will be playing with the management of the Bank. The Respondent No. 1 vide his letter dated 18-7-2001 has authorised the Deputy

Commissioner/Assistant Commissioner (Revenue) to hold the election and it does not lie in his mouth to object it being an author of it. This reveals

the biased mind of Respondent No. 1 to re-open this issue with a view to declare the election as null and void as he did on 8-9-2001. Assuming

there is any irregularity, the authority which has committed irregularity cannot be heard of complaining rather he should have corrected it, if any,

before issuance of process of election, which he did not. This also exhibits his biased mind for ulterior motive. Not only this, from his conduct, it

appears that from the very beginning, he has adopted an approach to tinker with the election process and even after the election, with the affairs of

management of the Managing Committee. He kept certain alleged lacuna which he started exploiting. He vide his order dated 18-7-2001 vested

the authority with the Assistant Commissioner (Revenue) also. It is not expected that he has not read the provisions before making this order. He

wrote a letter to the Deputy Commissioner on 4-9-2001 for postponing the election while he was aware that election stood conducted and result

declared on 3-9-2001. Having not been successful, he declared the election as null and void on 8-9-2001. From the above, it appears that

Respondent No. 1 from the very beginning had biased intentions of tinkering with the process of election and with this biased and prejudiced mind,

he has passed an order dated 8-9-2001, which was stayed relegating the duly elected Board to its original position. To ensure it again that the

Board does not work, on 15-9-2001, when the election petition was presented, he again passed interim order not only to the same effect but

further restrained the duly elected Board of Management from entering the premises. Such an interim direction should not have been passed as

interim measure as it takes away the existence of the duly elected Board. The interim orders are required to be passed to maintain balance

between the parties. This interim order has not maintained it but made the balance topsy turby. It has not only given the whole relief by an interim

order but also restrained the Board of Management from entering the premises. Where the dispute is of public office and particularly manned by

elected representatives, courts must be very slow while granting the relief of restraining the elected representatives. The courts also should not grant

the whole relief as an interim relief, as has been pronounced by the Supreme Court in case reported in Assistant Collector of Central Excise,

Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, , holding that (at page 333):-

5. We repeat and deprecate the practice of granting interim order which practically give the principal relief sought in the petition for no better

reason than that a prima facie case has been made out without being concerned about the balance of convenience, the public interest and a host of

other relevant considerations. Regarding the practice of some clever litigants of resorting to filing writ petitions in far away courts having doubtful

jurisdiction, we had this to observe:

.....Having regard to the fact that the registered office of the Company is at Ludhiana and the principal respondents against whom the primary relief

is sought are at New Delhi, one would have expected the writ petition to be filed either in the High Court of Punjab and Haryana or in the Delhi

High Court. The writ petitioners however, have chosen the Calcutta High Court as the forum perhaps because one of the interlocutory reliefs which

is sought is in respect of a consignment of beef tallow which has arrived at the Calcutta Port. An inevitable result of the filing of writ petitions

elsewhere than at the place where the concerned offices and the relevant records are located is to delay prompt return and contest. We do not

desire to probe further into the question whether the writ petition was filed by-design or accident in the Calcutta High Court when the office of the

Company is in the State of Punjab and all the principal respondents are in Delhi. But we do feel disturbed that such writ petitions are often

deliberately filed in distant High Courts, as part of a maneuver in a legal battle, so as to render it difficult for the officials at Delhi to move

applications to vacate stay where it becomes necessary to file such applications.

In *Union of India v. Jain Shudh Vanaspati Ltd.* (supra), Chandrachud, C.J., A.P. Sen, R.N. Misra JJ. allowed an appeal against an interim order

making the following observations:

After hearing Learned Counsel for the rival parties, we are of the opinion that the interim order passed by the High Court on Nov. 29, 1983., is

not warranted since it virtually grants to the respondents a substantial part of the relief claimed by them in their writ petition. Accordingly, we set

aside the said order.

We have come across cases where the collection of public revenue has been seriously Jeopardised and budgets of Governments, and Local

Authorities affirmatively prejudiced to the point of precariousness consequent upon interim orders made by Courts. In fact, instances have come to

our knowledge where Governments have been forced to explore further sources for raising revenue, sources which they would rather well leave

alone in the public interest, because of the stays granted by Courts. We have come across cases where an entire service is left in a state of flutter

and unrest because of Interim orders passed by Courts, leaving the work they are supposed to do in a state of suspended animation. We have

come across cases where buses and lorries are being run under orders of Court though they were either denied permits or their permits had been

cancelled or suspended by Transport Authorities. We have come across cases where liquor shops are being run under interim orders of Court.

We have come across cases where the collection of monthly rentals payable by Excise Contractors has been stayed, with the result that at the end

of the year the contractor has paid nothing but made his profits from the shop and walked out. We have come across cases where dealers in food

grains and essential commodities have been allowed to take back the stocks seized from them as if to permit them to continue to indulge in the very

practices which were to be prevented by the seizure. We have come across cases where land reform and important welfare legislations have been

stayed by Courts. Incalculable harm has been done by such interim orders. All this is not to say that interim orders may never be made against

public authorities. There are, of course, cases which demand that interim orders should be made in the interests of justice. Where gross violations

of the law and injustices are perpetrated or are about to be perpetrated, it is the bounden duty of the Court to intervene and give appropriate

interim relief. In cases where denial of interim relief may lead to public mischief, grave irreparable private injury or shake a citizen's faith in the

impartiality of public administration, a Court may well be justified in granting interim relief against public authority. But since the law presumes that

public authorities function properly and bona fide with due regard to the public interest, a Court must be circumspect in granting interim orders of

far reaching dimensions or orders causing administrative, burden some inconvenience or orders preventing collection of public revenue for no

better reason than that the parties have come to the Court alleging prejudice, inconvenience or harm and that a prima facie case has been shown.

There can be and there are no hard and fast rules. But prudence, discretion and circumspection are called for. There are several other vital

considerations apart from the existence of a prima facie case. There is the question of balance of convenience. There is the question of irreparable

injury. There Is question of the public interest, There are many such factors worthy of consideration. We often wonder why in the case (of) indirect

taxation where the burden has already been passed on to the consumer, any interim relief should at all be given to the manufacturer, dealer and the

like.

It is evident and manifest that respondent No. 1 is prejudiced of holding the elections though he initiated the process In terms of the Court directions. Thereafter he has tried to interfere at different stages of the process of election wherein he could not be successful and ultimately he passed an order of declaring the elections null and void arbitrarily and without jurisdiction. This exhibits his mind and approach who is also an authority under the Co-operative Societies Act to decide the election petitions. If he was not satisfied of vesting power under Rule 14-A to the Election Authority nominated by him, he would have withdrawn his such order. He did not do it. After the election he started finding fault on his own action. Taking all these circumstances into consideration the biased mind is apparent on the face of it. The Supreme Court while dealing with proposition of biased mind and whether the Presiding Officer of the Court who has already expressed his opinion in the same dispute or is biased, should have decided the said dispute, in State of West Bengal and Others Vs. Shivananda Pathak and Others, , has observed as under at page 2058:-

33. Bias, as pointed out earlier, is a condition of mind and, therefore, it may not always be possible to furnish actual proof of bias. But the Courts, for this reason, cannot be said to be in a crippled state. There are many ways to discover bias, for example, by evaluating the facts and circumstances of the case or applying the tests of "real likelihood of bias" or "reasonable suspicion of bias." de Smith in Judicial Review of Administrative Action. 1980 Edn., 262 264, has explained to outward appearances while "real likelihood" test focuses on the court's own evaluation of the probabilities.

34. In Metropolitan Properties Co. v. Lannon. (1968) 1 WLR 815, it was observed "whether there was a real like hood of bias or not has to be ascertained with reference to right minded persons, whether they would consider that there was a real like hood of bias." Almost the same test has also been applied here in an old decision, namely, in Manak Lal Vs. Dr. Prem Chand, . In that case, although the Court found that Chairman of the Bar Council Tribunal, appointed by the Chief Justice of Rajasthan High Court, to enquire into the misconduct of Manak Lal, an Advocate, on the complaint of one Prem Chand, was not biased towards him. It was held that he

should not have presided over the proceedings to give effect to the salutary principle that justice should not only be done, it should also be seen to be done in view of the fact that the Chairman, who, undoubtedly, was a senior advocate and ex-Advocate General, had, at one time, represented Prem Chand in some case. These principles have had their evolution in the field of Administrative Law but the Courts performing judicial functions only cannot be excepted from the Rule of Bias as the Presiding Officers of the Court have to hear and decide contentions with an unbiased mind. The maxim *Nepo Debet Esse Judex In Propria Sua Causa* and the principle "Justice should not only be done but should manifestly be seen to be done." Can be legitimately invoked in their cases.

35. x x x x x x x x x x x x x x

36. In view of these facts, we are constrained to observe that it was not competent for Mr. Justice Ajit Kumar Sengupta to have presided over the Bench in which the impugned judgment was passed as he had already expressed his opinion in the writ petition.....

16. The Registrar has appreciated the whole process of election on his own without hearing the parties and declared the election as null and void

which otherwise amounts to passing judgment. Therefore, it is unsafe to allow him again to decide the said dispute of election, which he has already

declared null and void. The proposition "Justice should not only be done but it should appear to have been done" applies with full force here.

Under these circumstances, and in the interest of justice it is unsafe to allow the present Registrar to deal with the Election Petitions and dispose of

the same, as he has already shown and exhibited his mind and decision.

17. However, I refrain to commit on authorisation extended by Respondent No. 1 vide his order dated 18-7-2001 to hold the election under

overall control of the Deputy Commissioner/Assistant Commissioner (Rev.) as it may be a ground taken in the election petition and, if commented,

may prejudice the cause of the parties therein.

18. Another argument of Mr. Manhas is that declaration of the result of the election is illegal as it could not have been declared on 3-9-2001, being

the date of withdrawal of the applications, therefore, the Respondent No. 1 was justified in passing the impugned order. In support of his

submission he has relied upon the judgment reported as *S.T. Muthusami Vs. K.*

Natarajan and Others, , wherein the Court has held at page 620:-

Even if there is any mistake committed by either the election authority or the Returning Officer in the allotment of symbol to the appellant the said

mistake can only amount to a non-compliance with the provisions of the Act or the Rules made thereunder. It is clear from Cl. (c) of R. 11 of the

Rules framed under S. 178(2) of T.N. Act entitled ""Decision of Election Disputes Relating to Panchayat Union Council,"" made for the purpose of

providing a machinery for the decision of election disputes relating to panchayat union councils that every action amounting to such non compliance

with the provision of the Act and the Rules made thereunder would not automatically vitiate an election. It is only when the election court on a

consideration of the entire material placed before it at the trial of an election petition comes to the conclusion that the result of the election has been

materially affected by such non-compliance with any of the provisions of the Act or the Rules made thereunder the election of the returned

candidate can be declared void.

This judgment is distinguishable on facts and law and is of no help to him.

19. So far as the plea as to whether Respondent No. 1 has the jurisdiction or is possessed of the power to grant interim relief in an Election

Petition is concerned, the Tribunal has held that the Court which can grant main relief has its inherent power to grant interim relief also. Admittedly.

Section 70(2)(c) of the Act empowers Respondent No. 1 to decide; ""any dispute arising in connection with the election of any office of the Society

but there is no provision contained in the Act or the Rules framed thereunder vesting any power with Respondent No. 1 to grant interim relief in

an Election Petition. The CPC has been made applicable by virtue of Section 174 of the Act in respect of the following matters namely:-

(a) Summoning and enforcing the attendance of any person and examining him on oath;

(b) Requiring the discovery and production of any document;

(c) Proof of facts by affidavits, and

(d) Issuing commission for examining of witnesses.

20. Section 175 places a bar on the jurisdiction of Civil Court, save as provided under the Act including a dispute referred to Registrar u/s 70 of

the Act. The inherent power of the Court is u/s 151 of the CPC and cannot be exercised while dealing with the matter under the provisions of Co-operative Societies Act. Respondent No. 1 has no power of the Civil Court while exercising the powers u/s 70 of the Act as the power of the Civil Court has been made applicable to the Act to a limited extent, as observed above. Therefore, Respondent No. 1 is not possessed of the inherent power to grant interim relief. This view of the Tribunal, thus, is erroneous. The Legislature while framing the scope and extent of jurisdiction to deal with the election dispute, cannot be said that it was not aware of this situation but has not vested such power. In the wisdom of the legislature, it may be that the dispute relates to a Public Office manned by an elected representative and the popular will is not required to be hindered to make it standstill or topsy-turby which may not be in the interest of Co-operative Society, created and functioning under the Act or for other various reasons.

21. Similar point was also considered by the Gauhati High Court in case titled *Md. Siraj Ahamed Vs. The State Election Commission and Others*, wherein the Tribunal rejected such application holding that it has no jurisdiction or power to entertain the application filed under the provisions of Manipur Panchayat Act. The order of the Tribunal was assailed before the High Court raising the plea that the Tribunal has erred in holding that Election Tribunal is not a Civil Court in such matters pertaining to grant of temporary injunction as it has the jurisdiction to pass appropriate orders under O. 39 or Section 151. CPC. It was also urged that Section 103 of the Manipur Panchayat Act conferred jurisdiction to deal with any other election matter and it impliedly granted the power of doing or deciding a matter pertaining to an application under Order 39 of CPC or Section 151, CPC but the Election Tribunal has failed to exercise jurisdiction conferred upon it. Controvert this plea the respondents' stand was that Election Tribunal u/s 103 of the Manipur Panchayat Act is not a Court but a creature of Statute and as such Election Tribunal has only such powers as conferred on it by Statute expressly or by necessary implications and it has none of the inherent powers of an ordinary Court.

Considering these pleas, the Court held in paras 4 and 5 of the judgment as under:--

4.....Power and jurisdiction to grant temporary injunction or, to grant it under Order 39, Rules 1, 2 and 3 entirely vests upon the competent

Civil Court but not to the Election Tribunal which is not a Civil Court as enshrined u/s 103 read with Section 106 of the Manipur Panchayati Raj

Act, 1994, and apart from it, an election dispute/context is not an action at law or a suit in equity but is a purely statutory proceeding unknown to

common law and the Election Tribunal do not possess common law power and jurisdiction but it has only such power as are conferred on it by

statutes expressly or by necessary implication and, it has no inherent powers of a Civil Court. There is also no provision under Manipur Panchayati

Raj Act and Rules conferring the Election Tribunal for grant of temporary injunction but only the Rule 71(1) of the Manipur Panchayati Raj

(Election) Rules, 1995 provides that every dispute relating to election shall be enquired into by the Election Tribunal as early as may be in

accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the Trial of Suit and it does not mean that all the provisions

laid down under CPC are applicable to the election dispute and apart from it in the absence of any express provisions under the related Act and

Rules, the Election Tribunal shall have no power and jurisdiction to invoke the provisions of law laid down under Order 39 or Section (sic)

C.P.C.....

Para 5 of the Judgment reads us under:-

5. It is true that where an Act confers a Jurisdiction, it impliedly also grants the power of doing all such Acts, or employing such means as are

essentially necessary to its execution. At this stage. I hereby recall the legal maxim namely. ""Cui jurisdictio data est ea quoque concessa esse

videntur, sine quibus jurisdictio explicari non potest"" meaning thereby, to whomsoever a jurisdiction is given, those things also are supposed to be

granted. Without which the jurisdiction cannot be exercised. The grant of jurisdiction implies the grant of all powers necessary to its exercise.

Here, in the instant case, the Election Tribunal can deal with election dispute and any other election matter borrowing or applying the required

procedure available in the CPC while dealing with an election petition and it should be noted that the word ""procedure"" shall never be interpreted

and it shall also cannot make the inclusion of the powers or provisions which are

not specifically conferred upon the Tribunal under the related Acts and Rules as discussed above. The power for grant of temporary injunction or not to grant of it are not essentially necessary while deciding an election petition on its merit inasmuch as such power or inherent powers are not provided in the related Acts and Rules and over above this, the Election Tribunal do not possess common law, power and that grant of those powers as discussed above are not necessary to its exercise or to its execution.

22. The view expressed by the Tribunal that Respondent No. 1 has the inherent or implied power to grant injunction is thus erroneous and cannot be maintained.

23. For the aforesaid reasons, the writ petition is allowed with the following directions:-

(I) Impugned orders dated 15-9-2001 and 27-9-2001 are set aside.

(II) The Board of Management, being duly elected representative body, Is at liberty to function in the Interest of the Bank but will not take any policy decision till the election petition(s) are decided:

(III) The Government is directed to appoint an Officer vesting with the power and authority to hear and decide the election petitions in terms of

Section 70 of the Co-operative Societies Act. Till then the Registrar will not proceed to adjudicate the dispute of election, pending before him.

24. No orders as to costs.