

(2009) 11 DEL CK 0151

In the Delhi High Court

Case No : Writ Petition (C) 2859 of 2008

Col. Suresh Chand (Retd.) and Another

APPELLANT

Vs

Delhi Co-operative Tribunal and Others

RESPONDENT

Date of Decision : 19-11-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Bonus Act, 1965 — Section 34

Citation : (2009) 11 DEL CK 0151

Hon'ble Judges : Veena Birbal, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Mala Goel, for the Appellant; Ruchi Sindhwani and Bhupendra Singh Chauhan, for the Respondent

Judgement

Badar Durrez Ahmed, J.—In this writ petition, the following reliefs have been prayed for:

(i) Appropriate Writ/Directions to quash and set aside the order dated 14.2.2008 passed by the Delhi Cooperative Tribunal, dismissing the review and the appeal filed by the petitioners and declaring the elections of Panch Shila Cooperative House Building Society Ltd., held on 11.3.2007 to be valid and legal;

(ii) Appropriate Writ/Directions to quash and set aside the election of Panch Shila Cooperative House Building Society Ltd., held on 11.3.2007;

(iii) Appropriate Writ/Directions to debar the respondent Nos. 5 to 17 from standing for elections of the said society as being ineligible and for deliberately making false statements regarding their eligibility for the elections held on 11.03.2007;

(iv) Appropriate Writ/Directions to appoint administrator for management of Panch Shila Cooperative House Building Society Ltd., till fresh elections are held;

(v) Any other appropriate writ/directions against the respondents as deemed fit

and proper in the circumstances and costs be awarded.

2. As will be apparent from the reliefs sought, the petitioners are essentially challenging the validity of the elections held on 11.03.2007 of the office bearers of the Managing Committee of the respondent No. 3 society. The petitioners claim that respondents 5 to 17 were disqualified from contesting the elections. We may point out, at this juncture, that during the pendency of the writ petition, respondent Nos. 14 and 24 passed away and the learned Counsel for the petitioner has dropped them from the array of parties. The learned Counsel for the petitioners has taken up two grounds in support of the claim that the respondents 5 to 17 were disqualified from contesting the elections held on 11.03.2007. The first ground taken is that the said respondents were members of the previous Managing Committee and that the said Managing Committee had not completed the audit of accounts of the society within the time stipulated. Therefore, according to the learned Counsel for the petitioner, the said respondents incurred the disqualification set out in Section 35(7)(d) of the Delhi Co-operative Societies Act, 2003 (hereinafter referred to as "the said Act"). The second point urged on behalf of the petitioners is that the said respondents stood disqualified by virtue of bye-law 24 (b) of the bye-laws of the respondent No. 3 society.

3. The petitioners had filed an appeal u/s 112 of the said Act taking, inter alia, the aforesaid pleas, before the Delhi Co-operative Tribunal. The respondent No. 3 society and the other respondents had taken the plea of maintainability of an appeal u/s 112 before the said Tribunal. The Delhi Co-operative Tribunal rejected the plea of maintainability raised by the respondents in the following words:

As regards the maintainability of appeal u/s 112, it is true that the appellants are not challenging an order of any authority but are challenging the election as provided in Clause (d) of Section 112 read with Section 35. This Tribunal has held in many cases that the Act provides for two remedies for challenging elections, one u/s 70 and the other u/s 112(d) and accordingly this Tribunal has the jurisdiction to entertain this appeal.

4. On the merits of the matter, as regards the point that the audit of accounts had not been conducted within the time stipulated under the Act and thereby some of the respondents had incurred the disqualification u/s 35(7)(d) of the said Act, the Tribunal, rejecting such a plea, held as under:

As regards the objection of the appellants regarding the past managing committee members being disqualified to contest the election because of their failure to get the audit of their accounts audited in time this appears to be incorrect. We have checked up the position of audit from the RCS Office and it is understood that the audit for the year 2004-05 was completed on 20.08.2006 whereas the audit for the year 2005-06 was completed on 11.09.2006. Since the election had taken place on 11.03.2007, the audit for the year 2006-07 is not relevant which has also since been completed on 30.07.2007. Though the R.O.

has not given these details in his report, he has stated in his report that the objectors and the candidates were allowed their say and then he had over ruled the objection. Now from the details available from the RCS Office, we also feel that his action was right. There is another reason for this action of the R.O. Section 35(7)(d) does lay down that a person shall be disqualified for election -

if he is an officer of a co-operative society which has not got its statutory audit completed within the statutory period prescribed in this Act, but the Act is not clear as to who will decide the issue of disqualification of such a members. We feel that only the RCS is the competent authority who can decide such a disqualification after issuing notices and hearing the parties. This exercise is necessary to ensure that such members were in reality responsible for the delay and not the RCS office, which is required to prepare a panel of auditors and then accept the audit reports conducted by the auditors on the panel. There is a possibility that there is a delay in this process or by the auditor and, therefore, without a proper inquiry, the delay cannot be attributed to the managing committee. The R.O. had ensured that the audits were conducted and this was enough for his purposes.

5. As regards the objection with regard to violation of bye-law 24(b) of the bye-laws of the respondent No. 3 society, the Tribunal once again rejected the plea of the petitioners and held as under:

The second objection of the appellants against such members was that they had previously completed two terms as office bearers and, therefore, they were not qualified to contest for the third term in view of the provisions of the bye-law 24(b) of the society. Here also we do not agree with the appellants. It needs to be pointed out that the election in the society has taken place as per the provisions of the new DCS Act, 2003 in which this provision does not exist and, therefore, the said bye-law has become redundant. This Act provides that whatever is not consistent with the provisions of this Act shall become redundant w.e.f. the date when this Act came into force. Section 131(1) reads as follows:

131(1) - Every existing co-operative society which had been registered under the Co-operative Credit Societies Act, 1904 or under the Co- operative Societies Act, 1912, or under the Bombay Co-operative Societies Act, 1925, as was in force in Delhi, or the Delhi Co-operative Societies Act, 1972 shall be deemed to be registered under the corresponding provisions of this Act and rules framed thereunder and bye-laws thereof shall, so far as the same are not inconsistent with the express provisions of this Act, continue in force until altered or rescinded." This new Act does not put a ban on the candidate contesting for third term and in view of this position, it is clear that the said bye-law 24(b) has become redundant and is not applicable now. In fact, the society should have amended its bye-laws when the new Act came into force." Thus, we find that on the plea of maintainability of an appeal u/s 112 of the said Act, the Tribunal held in favour of the petitioners and found that such an appeal was maintainable. However, insofar as the merits are concerned, both the pleas, sought to be raised

before us by the petitioners, were rejected by the Tribunal.

6. At the outset, the learned Counsel for the respondent society has drawn our attention to a decision of a Division Bench of this Court in the case of Narender Kumar Jain v. Government of NCT of Delhi 2008 (X) AD (Delhi) 105. In that decision, one of the questions which came up for consideration was:

Whether an appeal u/s 112 of the Delhi Co- operative Societies Act, 2003 was maintainable or whether the aggrieved parties ought to have taken recourse to Section 70 of the said Act which provided for arbitration." The Division Bench considered various provisions of the said Act and concluded as under:

Having given the controversy careful cogitation, our conclusion is that matters relating to the elections would stand covered by Section 70 of the DCS Act. Disputes of this category must, therefore, be decided through arbitration.

Thus, in view of the categorical decision of the Division Bench of this Court, the Tribunal was clearly wrong in entertaining the appeal u/s 112 of the said Act. The obvious consequence of which would be that the order dated 14.02.2008 passed by the Delhi Co-operative Tribunal would be liable to be set aside and all the findings recorded therein would be set at naught.

7. However, the mere setting aside of the order dated 14.02.2008 does not address all the prayers made in the petition. The petitioners have also prayed for quashing and setting aside the elections held on 11.03.2007 and also directing the debarment of the respondents 5 to 17 on the ground that they were disqualified on account of the disqualification incurred in terms of Section 35(7) (d) and bye-law 24(b) of the Bye-Laws of the respondent No. 3 society. There is also a prayer for appointment of an administrator for management of the society till fresh elections are conducted. Since the Division Bench in Narender Kumar Jain (supra) has concluded the issue with regard to maintainability of an appeal u/s 112 of the said Act with regard to conduct of elections, the only remedy available to the petitioners under the statute would be to seek an arbitration of its disputes u/s 70 of the said Act. Normally, when writ petitions are filed seeking directions and / or writs under Article 226 of the Constitution of India, High Courts relegate the parties to pursue their alternative remedies. But this is not an absolute principle. High Courts normally do so because the alternative remedy is an equally efficacious remedy which is available to the parties and which has been provided under a statute. In *State of H.P. and Ors. v. Gujarat Ambuja Cement Ltd and Anr.* 2005 (6) SCC 499, the Supreme Court held:

17. We shall first deal with the plea regarding alternative remedy as raised by the appellant State. Except for a period when Article 226 was amended by the Constitution (Forty- Second Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution.

At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extra-ordinary jurisdiction.

8. In the present case, although the remedy of Section 70 is available to the petitioners, we feel that it would not be as equally efficacious as that of the present writ petition. The reason is clear. The elections for the Managing Committee of the society were held on 11.03.2007 and the tenure and term of the present Managing Committee would, in any case, come to an end by March, 2010. There is hardly any time left before the next elections are to be conducted and it would not be fair or proper to relegate the petitioners to seek the remedy of arbitration u/s 70 of the said Act, which may ultimately result in a subsequent appeal u/s 112 against the arbitrator's award and further proceedings. It is in these circumstances that we feel that, although the Tribunal was not within its rights to entertain the appeal u/s 112, we ought to decide the issue on merits.

9. The first point taken by the petitioners is that, admittedly, the audit for the year 2004-05 was completed on 20.08.2006 and for the year 2005-06, it was completed on 11.09.2006. Section 2(i) of the said Act defines the "co- operative year" to end on the 31st of March each year. Section 60 of the said Act stipulates that the audit must be completed within 90 days of the close of the co-operative year. In other words, the audit for the year 2005-06, which ended on 31.03.2006, ought to have been completed within 90 days, i.e., by 29.06.2006. But the audit, admittedly, was completed only on 11.09.2006. Section 35(7) reads as under:

35. Election and nomination of members of committee.-

(1) xxx xxx xxx xxx

(2) xxx xxx xxx xxx

(3) xxx xxx xxx xxx

(4) xxx xxx xxx xxx

(5) xxx xxx xxx xxx

(6) xxx xxx xxx xxx

(7) Notwithstanding anything contained in this Act, a person shall be disqualified for election of office in a committee-

(a) if he holds any such office on a committee of another co-operative society of the same type;

(b) if he holds any such office on the committees of three or more co-operative

societies of a different type or types;

(c) if he has been held guilty of any of the offences as enumerated in Section 118;

(d) if he is an officer of a co-operative society which has not got its statutory audit completed within the statutory period prescribed in this Act;

(e) if he fails to give a declaration on oath about his eligibility for contesting election as prescribed.

10. A plain reading of the said provision makes it clear that, first of all, it is a non-obstante provision and, secondly, a person is mandatory disqualified for election to an office in a Committee if he is an officer of a co-operative society which has not got its statutory audit completed within the statutory period "prescribed" in the Act. Section 2(v) defines the word "prescribed" to mean prescribed by rules made under the Act. Section 60(1) of the said Act stipulates that a co-operative society shall get its accounts audited annually by an auditor selected from a panel prepared by the Registrar of Co-operative Societies in the prescribed manner within the period of 90 days (this has been changed to 120 days w.e.f. 13.01.2007) from the prescribed date for making up its account for the year. Thus, reading the provisions of Section 35(7)(d) alongwith the provisions of Section 60 of the said Act and other related provisions, it is clear that a person, who is a member of a Managing Committee which does not complete the audit within the stipulated period of 90 days from the end of the co-operative year, would be disqualified for the purposes of contesting an election in the succeeding elections to the Managing Committee.

11. In the present case, it is clear that the audit in respect of the year 2005- 06 was completed beyond the stipulated time and, therefore, all the members of the Managing Committee, which was in place in the year 2005-06 and immediately thereafter, would not be eligible for contesting the election which was held on 11.03.2007. We find that six of such persons were re- elected in the elections held on 11.03.2007. The said persons being Mr. Rajinder Rai, Mr. S.C. Kohli, Mr. D.R. Bahl, Capt. Suresh Vasudeva, Mrs. Nargis Raj Kumar and Mrs. Pami Singh. It is obvious that these persons had incurred the disqualification u/s 35(7)(d) of the said Act. That being the position, the aforesaid members of the Managing Committee stand disqualified and cannot continue as the members of the present Managing Committee.

12. With regard to the objection concerning bye-law 24(b), the learned Counsel for the petitioners submitted that despite the fact that the new Act, i.e., the Delhi Co-operative Societies Act, 2003 is somewhat different from the earlier Act, i.e., the Delhi Co-operative Societies Act, 1972, it would have no effect on bye-law 24(b) which continues to operate. The learned Counsel appearing on behalf of the respondent society submitted that in view of the provisions of Section 11 of the new Act, the bye-laws have to be consistent with the provisions of the Act and the rules made thereunder.

13. The learned Counsel appearing for the Registrar of Co-operative Societies also submitted that there has been a change in law as the provisions of Section 31(5)(a) of the Delhi Co-operative Societies Act, 1972 (hereinafter referred to as "the old Act") had been done away with in the new Act. Under the old Act, there was an embargo placed on a member from contesting a third consecutive election in case the said member was an elected member in the previous two elections. In other words, a person could not run for a third consecutive term of office. It is in consonance with that provision that bye-law 24(b) was framed. According to the learned Counsel for the Registrar of Co-operative Societies, the said provision under the old Act does not find place in the new Act and, now, there is no embargo on any member contesting any number of times. Therefore, the said bye-law 24(b) would be inconsistent with the provisions of the new Act and would be inapplicable.

14. In rejoinder, the learned Counsel for the petitioners drew our attention to the provisions of Section 131(1) of the said Act and submitted that the old bye-laws would have to give way only to the extent they are inconsistent with the express provisions of the Act. She submitted that the fact that no embargo has been placed by the Act does not mean that the bye-laws cannot place any embargo. She referred to the decision of the Supreme Court in the case of Zoroastrian Co-operative Housing Society Limited and Another Vs. District Registrar Co-operative Societies (Urban) and Others, .

15. Section 31 of the Old Act deals with the election and nomination of members of the Committee. Sub-section (5) of Section 31 of the old Act was as under:

31. Election and nomination of members of committees.-

(1) xxx xxx xxx xxx

(2) xxx xxx xxx xxx

(3) xxx xxx xxx xxx

(4) xxx xxx xxx xxx

(5) Notwithstanding anything contained in this Act, a person shall be disqualified for election as, or for being, the president, vice-president, chairman, vice-chairman, managing director, secretary, joint secretary or treasurer of a committee,-

(a) if he has held any such office on that committee during two consecutive terms, whether full or part;

(b) if he holds any such office on a committee of another co-operative society of the same type;

(c) if he holds any such office on the committees of three or more co-operative societies of a different type or different types:

Provided that nothing contained in this Sub-section shall be deemed to disqualify

any such person for election as, or for being, a delegate of a society or a member of another committee.

Explanation 1. - Where any person holding any office as aforesaid at the commencement of this Act is again elected to any such office after such commencement, he shall for the purpose of this Sub-section be deemed to have held that office for one term before such election. Explanation 2. - A person who has ceased to hold any such office as aforesaid continuously for one full term shall again be qualified for election to any of those offices.

(6) xxx xxx xxx xxx

It is apparent that by virtue of Section 31(5)(a), a person was disqualified for election to the office of the president, vice-president, chairman, vice- chairman, managing director, secretary, joint secretary or treasurer of a committee, if he had held any such office in that committee during two consecutive terms, whether full or part. In other words, an office bearer of the committee was prohibited from seeking re-election for the third consecutive term. The registered bye-laws of the Panchshila Co-operative

House Building Society Ltd deal with various issues. Chapter VIII deals with the Managing Committee. Bye-law 24(b) reads as under:

24. (a) xxx xxx xxx xxx;

(b) Committee members shall be elected and hold office for a term of three years. One third members of the committee shall retire every year by rotation. They shall be eligible for re-election but no member including President, Vice-President, Chairman, Managing Director, Secretary, Joint Secretary and Treasurer shall hold office not exceeding six cooperative years spread over two consecutive terms whether full or part. These office- bearers shall also not be eligible to hold such offices on a Committee of another cooperative society of the same type or on the committee of more than three different types of Societies.

(Provided that during the first two years, the retirement will be by draw of lots. The names of President, Vice- President, Chairman, Vice-Chairman, Managing Director, Secretary, Joint Secretary and Treasurer would be pooled along with the Managing Committee members taking draw to ascertain the members to retire during the first two years.)

(c) xxx xxx xxx xxx;

(d) xxx xxx xxx xxx;

(1) xxx xxx xxx xxx

16. The aforesaid bye-law 24(b) also makes it clear that no member, including the president, vice-president, secretary, joint secretary and treasurer, shall hold office not exceeding six cooperative years spread over two consecutive terms, whether in full or in part. It is apparent that bye-law 24(b) of the bye-laws of the

society was in consonance with Section 31(5)(a) of the old Act. Thus, there was consistency between the old Act and the registered bye-laws of the society. Section 9(1)(c) of the old Act required that the proposed bye-laws, should not be contrary to the provisions of the Act and the Rules made thereunder. It is only if the Registrar was satisfied that the bye-laws were not contrary to the provisions of the Act and the Rules, that the Registrar was to register the society and its bye-laws. There is no denying that the present bye-laws, which include bye-law 24(b), are registered and were so registered under the provisions of the old Act.

17. The old Act was replaced by the Delhi Co-operative Societies Act, 2003. Section 35 of the 2003 Act deals with election and nomination of members of the committee. In effect, Section 35 of the 2003 Act replaced the provisions of Section 31 of the old Act. It may be recalled that Section 31(5)(a) stipulated that a person shall be disqualified for election to the office of the president, vice-president, etc., if such person held any such office in that committee during two consecutive terms, whether in full or in part. Such a disqualification, which was there under the old Act, does not find place in the new Act and, particularly, in Section 35(7) thereof. In other words, under the 2003 Act, there is no bar on the number of times a person can contest for an office in the Managing Committee, whether consecutively or not.

18. We now have to look at two other provisions of the 2003 Act. Section 11(1) of the 2003 Act stipulates that every co-operative society may make its bye-laws consistent with the provisions of the said Act and the Rules made thereunder. We may also note that in Section 11(2) of the 2003 Act, it is provided that, in particular and without prejudice to the generality of the power to make bye-laws under Sub-section (1), such bye-laws may provide for all or any of the matters enumerated in Sub-clauses (a) to (zj). None of the matters so stipulated deal with disqualification of a person from seeking consecutive re-elections.

19. Apart from this, Section 131(1) is also relevant and the same reads as under:

131. Saving of existing co-operative societies. - (1) Every existing co-operative society which had been registered under the Co-operative Credit Societies Act, 1904 or under the Co-operative Societies Act, 1912, or under the Bombay Co-operative Societies Act, 1925, as was in force in Delhi, or the Delhi Co-operative Societies Act, 1972 shall be deemed to be registered under the corresponding provisions of this Act and rules framed thereunder and bye-laws thereof shall, so far as the same are not inconsistent with the express provisions of this Act, continue in force until altered or rescinded.

(2) xxx xxx xxx xxx xxx

This provision stipulates that on the coming into force of the 2003 Act, the existing bye-laws of the existing co-operative societies would continue in force until altered or rescinded, but only to the extent that the same are not "inconsistent" with the express provisions of the 2003 Act.

20. Thus, in view of the fact that the old Act has been replaced by the 2003 Act and the fact that the 2003 Act does not contain any such disqualification as was contemplated u/s 31(5)(a) of the old Act, it has to be examined as to whether the bye-laws, which were framed and registered under the old Act, have now become inconsistent with the prevalent Act, that is the 2003 Act. The Supreme Court in the case of Basti Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Another, , in the context of Section 34 of the Payment of Bonus Act, 1965 and Section 3(b) of the U.P. Industrial Disputes Act, 1947, observed as under:

... The basic condition for nullification of Section 3(b) of the U.P. Act is that, when it enters the area of bonus, it is inconsistent with the provisions of the Bonus Act. "Inconsistent", according to Black's Legal Dictionary, means "mutually repugnant or contradictory; contrary, the one to the other so that both cannot stand, but the acceptance or establishment of the one implies the abrogation or abandonment of the other". So we have to see whether mutual co-existence between Section 34 of the Bonus Act and Section 3(b) of the U.P. Act is impossible. If they relate to the same subject- matter, to the same situation, and both substantially overlap and are co-extensive and at the same time so contrary and repugnant in their terms and impact that one must perish wholly if the other were to prevail at all-then, only then, are they inconsistent. In this sense, we have to examine the two provisions.

21. In the light of the Supreme Court observations in Basti Sugar Mills (supra), we have to examine as to whether the provisions of Section 35(7) of the 2003 Act and the provisions of bye-law 24(b) can co-exist. If they cannot, then the two provisions would be inconsistent. It is obvious that Section 35(7) does away with the disqualification of a person running for three consecutive terms of office which was a disqualification u/s 31(5)(a) of the old Act. However, bye-law 24(b), which was in sync with the old Act, continues to carry the said disqualification. It is obvious that the two provisions cannot co-exist. There cannot be a situation whereby the Act contemplates no disqualification while the bye-laws carry one in regard to the same issue. If there is inconsistency between bye-law 24(b) and the 2003 Act, it is obvious that the bye-law would have to give way. This has also been made explicit by the provisions of Section 131(1) of the 2003 Act. What is permitted by the Act cannot be prohibited by the bye-laws.

22. The Supreme Court decision in Zoroastrian Co-operative Housing Society (supra), which has been strongly relied upon by the learned Counsel for the petitioner, would not be applicable to the case at hand. First of all, the said decision was in the context of the Gujarat Co-operative Societies Act, 1961 and the Co-operative Societies Act, 1912, where the provisions were different from those of the Delhi Co-operative Societies Act, 1972 and, particularly the Delhi Co-operative Societies Act, 2003. Secondly, the fact situation was entirely different in the case before the Supreme Court. The Supreme Court was concerned with the question as to whether there existed a provision in the Act or the Rules which prevailed over bye-law 7 of the society, confining membership in it to only a

person who is a Parsi. The Supreme Court came to the conclusion that they did not find anything in the Act which precluded a society from prescribing a qualification for membership based on a belief, a persuasion or a religion for that matter. The Supreme Court also held that there was nothing in the Act which prevented the society from refusing membership to a person who did not qualify in terms of bye-law 7 of the said society. The Supreme Court observed that:

22. The validity of a bye-law, that too an approved bye-law, has to be tested in the light of the provisions of the Act and the rules governing co-operative societies. In so testing, the search should be to see whether a particular bye-law violates the mandate of any of the provisions of the Act or runs counter to any of its provisions or to any of the rules....

The Supreme Court had found as a fact that bye-law 7 in that case did not run counter to the governing Act or the Rules. However, in the present case, we have already indicated that bye-law 24(b) of the society's bye-laws runs counter to the provisions of the 2003 Act and, in particular, to Section 35(7) thereof. We have already stated that what is permitted by the Act cannot be prohibited by the bye-laws. Thirdly, in *Zoroastrian Co-operative Housing Society (supra)*, the bye-laws in question were the approved bye-laws and continued to be in force unaltered. The Supreme Court observed:

So long as the approved bye-law stands and the Act does not provide for invalidity of such a bye-law or for interdicting the formation of co-operative societies confined to persons of a particular vocation, a particular community, a particular persuasion or a particular sex, it could not be held that the formation of such a society under the Act would be opposed to public policy and consequently liable to be declared void or the society directed to amend its basic bye-law relating to qualification for membership.

It would be apparent from the above observations of the Supreme Court that it was impressed by the fact that the approved bye-laws continued to be in force and that the Act did not provide for any invalidity of such a bye-law. However, in the present case, we find that bye-law 24(b) is inconsistent with the provisions of the 2003 Act and the inconsistency arose because the disqualification, which was provided under the old Act, had been done away with under the 2003 Act. Section 131(1) of the 2003 Act specifically provides that the existing bye-laws would continue to be in force until altered or rescinded, so far as the same are not inconsistent with the express provisions of the 2003 Act. In other words, if the bye-laws were inconsistent with the 2003 Act, they would not, to the extent of the inconsistency, in view of the provisions of Section 131(1) of the 2003 Act itself, continue in force. In such a case, there was no further requirement of altering or rescinding the bye-laws. The inconsistency between the bye-laws and the 2003 Act would automatically put an end to the inconsistent bye-law. This feature of the present case, of there being a change in the law by way of a repeal of an old Act and substitution by a new Act, was also not in contemplation in the case before the Supreme Court. For all these reasons, the decision of the

Supreme Court in Zoroastrian Co-operative Housing Society (supra) would be of no assistance to the petitioner.

23. The conclusion, therefore, with regard to the submissions in respect of bye-law 24(b) is that the said bye-law, after the 2003 Act came into force, would not be operative and the disqualification which was there prior to the 2003 Act would cease to operate upon the 2003 Act coming into force.

24. Be that as it may, in view of our conclusion with regard to the disqualification incurred u/s 35(7)(d) of the 2003 Act, the net result of the aforesaid discussion is that, at least, six members of the present Managing Committee stand disqualified. This reduces the strength of the Managing Committee to less than seven. The requirement under the bye-laws itself is that the Managing Committee shall not consist of less than seven members. Since the number of members of the erstwhile Managing Committee has dropped below the statutory requirement of seven, in law, there does not exist any Managing Committee at the moment. It is now for the Registrar of Co-operative Societies to take action in accordance with law to see that the affairs of the respondent No. 3 society are conducted on a day-to-day basis and that fresh elections are conducted as early as possible and preferably within six weeks. The action that the Registrar of Co-operative Societies may take would include the appointment of an Administrator, in the meantime, till the next elections.

The writ petition stands allowed to the aforesaid extent.