
(2012) 02 BOM CK 0173

In the Bombay High Court

Case No : Writ Petition No's. 8765, 8767, 8768, 8769, 8770, 8782, 8785, 8786, 8787 and 8788 of 2009 with Civil Application No's. 320, 321, 322, 323 and 2481 of 2010, Writ Petition No. 8783 of 2009 with Civil Application No. 2480 of 2010, Writ Petition No. 8784 of

Dr. Suresh Choudhari

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 28-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Co-operative Societies Act, 1960 — Section 13, 13(1), 13(1A), 13(1B), 13(2)
Maharashtra Co-operative Societies Rules, 1961 — Rule 144E, 29, 29(2), 58, 58(1)

Citation : (2012) 3 ALLMR 33 : (2012) 5 BomCR 593 : (2012) 114 BOMLR 979 : (2012) 3 MhLj 945

Hon'ble Judges : Chandiwal, J

Bench : Single Bench

Advocate : Deelip Patil Bankar holding for Shri. Pradeep B. Salunke, for the Appellant; S.S. Thombre, Advocate (in W.P. Nos. 8767/09 to 8770/09), Shri V.H. Dighe, AGP for State/Respondent Nos. 1 to 3, Shri. S.S. Choudhary, Advocate h/f Shri. P.D. and D.N. Suryawanshi for (R4), Advocate, Shri. S.B. Jadhav, Advocate h/f Shri. C.R. Thorat and Shri. A.B. Munde, for the Respondent

Judgement

K.U. Chandiwal, J.—Heard finally. Rule, made returnable forthwith.

2. Mr. Deelip Bankar Patil, learned Counsel argued the matter for the petitioners. Mr. S.S. Chaudhari, learned Counsel for the contesting respondents has covered the defense submissions as he was holding for learned Counsel for other respondents in respective writ petitions. Mr. V.H. Dighe, learned AGP, argued for respondent Nos. 1 to 3.

3. All the matters are heard together as common question of law is involved, the facts are also identical, Petitions are disposed of accordingly.

4. Elections to respondent No. 4 Sharad Sahakari Sakhar Karkhana Ltd. (for

short, "Karkhana") were declared for electing its Directors by virtue of declaration dated 30th Nov., 2009, through the Collector, Aurangabad. The nomination forms were to be filled in up to 7.12.2009, the scrutiny and legality thereof was fixed on 9th Dec., 2009 and 10th Dec., 2009. The final list of candidates was to be published on 20th Dec., 2009. The elections were to be held on 12th Jan., 2010. The Returning Officer, in terms of Rule 13 declared elections to the 17 posts of Directors, un-opposed, by declaration dated 28.12.2009, however, it was clarified that such un-opposed declaration of the returned candidates (respondents in respective writ petitions) is subject to outcome of the present writ petitions and orders of this Court dated 26.12.2009.

5. There is no contest that the petitioners had filed nomination forms for contesting the elections of the Karkhana and the same were rejected on the ground of individual petitioner, or their seconder were defaulters, in paying amended share price.

6. The grievance of the petitioner is that it is a meticulously planned act of malfeasance at the behest of the controlling persons of the Karkhana. The faith in the election system has been shattered, with attitude of disdain to the rivals (petitioners), for participating in the process of election. The rejection of the forms by the Returning Officer was questioned before the appellate authority and the appellate authority has, by the impugned order, in the appeal, has rejected the appeal on 23.12.2009.

7. The principal question in the matter for consideration is whether the nomination forms of the petitioners, for contesting elections as Directors of the respondent Karkhana could have been rejected by the Returning Officer or by the appellate authority on the ground that petitioners are defaulters in part payment of share amount relying on the bye-laws of the Karkhana amended on 6.7.2009.

8. Learned Counsel for the petitioners submit that Section 144-E of the Maharashtra Cooperative Societies Act, 1960 (for short, "Societies Act"), Section 73-FF, Rule 58 of Rules of 1961, Section 78 and Section 144-T are to be considered. The effect of Sections 13 and 14 of the Societies Act will have decisive bearing.

9. Mr. Bankar-Patil submits, whether orders of the Commissioner of Sugar, issued u/s 79-A of the Societies Act, would have binding effect, by-passing the procedure under the Societies Act, the bye-laws of the Karkhana and the established principles of election process.

10. According to him, Section 13 of the Societies Act and bye-law No. 29(2)(g) and 68 of the Karkhana demonstrate that the bye-law will take effect from its amendment and approval by Registrar in tune with Section 13 of the Societies Act. It cannot be said to be a mere formality. He criticized alleged service of notices of demand/default to the petitioners sent Under Posting Certificate. He submits that it should have been a personal service or by Registered Post Ack. Due, however, showing such service by U.P.C. more leans to be a farce than real

intention to communicate.

11. The bye-laws, prior to the amendment, provided share capital of Rs. 3,000/- and initially a member has to deposit Rs. 250/- and the residue is to be deposited within a period of one year. This Rule 7 of the bye-laws, since sought to be amended, and given effect in such amendment, effective from 6.7.2009, will have to be read prospective after 6.7.2009 and could not be given effect before a year of the lapsing period mentioned in even amended bye-laws. This is more so, as the amended bye-laws provide initial deposition of Rs. 500/- by a member of the Karkhana and balance Rs. 4500/- to be paid within a year. Learned Counsel submits, such being the position, declaring the petitioners as defaulters, prior to expiration of one year, is a betrayal to the recognized system and Rules and Act under the Societies Act. Reliance could not have been placed to the amended bye-law No. 7 of the Karkhana by Returning Officer to reject the nomination forms of the petitioners.

12. Learned A.G.P. submits that, on the basis of the record, since balance amount was not deposited by the petitioners, their nomination forms were rightly rejected. The alternate remedy u/s 144-T of the Act is available to the petitioners.

13. Mr. Chaudhari for the contesting respondents submits, the petitions have raised several disputed questions of facts and hence writ petition warrants dismissal. The directives dated 7.3.2000 are issued by the Government enhancing share amount from Rs. 3,000/- to Rs. 5,000/- and, consequent thereto, the bye-laws are amended, of which the petitioners were aware but did not raise objection. The order of Government dated 16th Jan., 2001, was effective immediately for all the sugar factories in the State of Maharashtra, directing to raise the share capital from Rs. 3,000/- to Rs. 5,000/-. Such directives being in terms of Section 79-A of Societies Act carries force of law and has binding effect. There is remedy of election petition, writ petitions need to be dismissed. He has placed reliance to Rule 73, Rule 81 and also the judgment reported in Ramesh Pail and others Vs. Shivaji Kachru Patil and others, providing that only remedy is, to file election petition. He has also placed reliance to the judgment reported in Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others, and particularly, para 12 thereof to impress the effect of Section 144-T of the Societies Act. Also, to the judgment in the matter of Bhaiyyaji Sitaram Kannamwar Vs. Assistant Registrar and Others, .

14. Section 13 deals with amendment of bye-laws of the society. It lays, no amendment of the bye-laws of the society shall be valid until registered under this Act. For the purpose of registration of an amendment of the bye-laws, a copy of the amendment passed, in the manner prescribed, at a general body of the society, shall be forwarded to the Registrar. Section 13(1A) informs of failure on the part of the Registrar to dispose of such application within a period of two months from the date of its receipt, the Registrar shall within a period of fifteen days from the date of expiration of that period, refer the application to the next

higher officer and where the Registrar himself is the registering officer, to the State Government who, as the case may be, shall dispose of the application within two months from the date of its receipt and on failure of such higher officer or the State Government, to dispose of the application within that period, the amendment of the bye-laws shall be deemed to have been registered. Section 13(1B) conceive, no amendment of the bye-law which is repugnant to the policy directive issued by the State Government u/s 4, shall be deemed to have been registered, giving effect to Section 13(1A) of the said Act.

15. Section 13(2) of the said Act conceives,

(2) When the Registrar registers an amendment of the bye-laws of a society [or where an amendment of the bye-laws is deemed to have been registered] he shall issue to the society a copy of the amendment certified by him, which shall be conclusive evidence that the same is duly registered.

The orders passed u/s 13 of the Societies Act are appealable by virtue of subsection (1) of Section 152 of the Act. Section 14 contemplates power to direct amendment of the bye-laws as under:

Section 14-Power to direct amendment of bye-laws:

(1) If it appears to the Registrar that an amendment of the bye-laws of a society is necessary or desirable in the interest of such society, he may call upon the society, in the manner prescribed, to make the amendment within such time as he may specify.

(2) If the society fails to make the amendment within the time specified, the Registrar may, after giving the society an opportunity of being heard add after consulting such State federal society as may be notified by the State Government, register such amendment, and issue to the society a copy of such amendment certified by him. With effect from the date of the registration of the amendment in the manner aforesaid, the bye-laws shall be deemed to have been duly amended accordingly; and the bye-laws as amended shall, subject to appeal (if any), be binding on the society and its members.

16. Power u/s 14 of the Societies Act can be used only if it is established that the amendment of the bye-laws was desirable and was in the interest of the society. It has been observed by the Division Bench of this Court, the State Government had no authority or jurisdiction to give direction to the Registrar to amend the bye-laws to admit existing society on its plot (Karvenagar Sahakari Griha Rachana Sanstha Maryadit, Pune v. State of Maharashtra, 1989 Mh.L.J. 320).

17. Section 2(5) of the Societies Act speaks that "bye-law" means bye-laws registered under this Act; and for the time being in force and includes registered amendments of such bye-laws. Section 144E contemplates Disqualifications for membership. Clause (e) thereof informs, if he so disqualified by or under any other provision of this Act.

18. Section 73FF of the Act informs of disqualification for membership of committee, which includes, a defaulter of any society. Section 78 contemplates, power of removal of committee or member, thereof, which reads as under,-

(1) If, in the opinion of the Registrar, the committee of any society or any member of such committee makes default, or is negligent in the performance of the duties imposed on it or him by this Act or the rules or the bye-laws, or commits any act, which is prejudicial to the interests of the society or its members, or willfully disobeys directions issued by the State Government, or by the Registrar for the purposes of securing proper implementation of co-operative policy and development programme approved or undertaken by the State Government or is otherwise not discharging its or his functions properly and diligently or where a situation has arisen in which the committee or any member of such committee refuses or has ceased to discharge its or his functions and the business of the society has or is likely to come to a stand-still or where any member of such committee stands disqualified by or under this Act for being a member, the Registrar may, after giving the committee or the member, as the case may be, an opportunity of stating its or his objections, if any, within 15 days from the date of receipt of notice and after consultation with the federal society to which the society is affiliated, by order-

(a) (i) remove the committee, and

(ii) appoint a committee consisting of three or more members (who shall not be the members of the committees so removed) of the society in its place, or appoint one or more Administrators who need not be the members of the society, but who shall not be the members of the committee so removed, to manage the affairs of the society for a period not exceeding six months, which period, at the discretion of the Registrar, be extended by a further period not exceeding three months so, however, that the total period does not exceed nine months in the aggregate,;

Provided that the Registrar shall have the power to change the committee or any member thereof or the Administrator or Administrators appointed under paragraph(ii) at his discretion even before the expiry of the period specified in the order made under this sub-section:

(b) remove the member and appoint any person as member of such committee in his place, or direct the society to elect or appoint a member in his place, for the remainder of the term of office of the member so removed.

Provided that, the member who has been so removed, shall not be eligible to be re-elected re-appointed, re-nominated or re-co-opted, as a member of the Committee till the expiry of the period of next one full term of the committee from the date on which he has been so removed or till such lesser period as may be laid down under the provisions of Section 73FFF or 144E, as the case may be;

Provided further that, the supersession or removal of the committee of the

District Central Co-operative Bank or the State Cooperative Bank under this subsection shall not be done without prior consultation with Reserve Bank of India;....

19. Rule 58 of the Rules of 1961 deals with disqualification for membership of committee, as under:

58. Disqualification for membership of committee.

(1) No person shall be eligible for appointment, or election or nomination or co-option or being continued as member of the committee or District Loan Committee of State Land Development Bank, if he is in default to any society, in respect of any dues from him either as borrower or is a defaulter within the meaning of Section 73FF or has incurred disqualification under clauses (ii), (iii), (iv), (v) and (vi) of sub-section (1) of Section 73FF.

(2) When any member incurs disqualification as mentioned in sub-rule (1) the Chief Executive Officer or whatsoever name called, shall communicate, the members, that he has ceased to be a member of the committee, under certificate of posting. The Chief Executive Officer shall also report along with a copy of communication to the Registrar and also affix a copy thereof on the notice board of the society. The publication of such copy of the notice of the receipt of such copy of the notice in the office of the Registrar, shall be the conclusive proof of the fact that the person has duly received the communication. When any member ceased to be a member of the committee, the seat of such member shall be deemed to have fallen vacant from the date of such communication. The society shall not allow such persons to exercise any powers, enjoy any rights and privileges and perform functions as member of the committee, under the Act and the rules and bye-laws made thereunder. If the Chief Executive Officer fails to take action as contemplated above, the Registrar shall after giving an opportunity to the person disqualified, issue communication of cessation of membership of such person from the committee of the society under certificate of posting and also by publishing a copy on the notice board of his office.

20. Thus, the import of above legal position is, the bye-laws in terms of Section 2(5) need to be registered under the Societies Act. Section 13(1) provides for amendment and Section 13(2) provides for registration of amendment of bye-laws of the society. There is no eventuality of amendment of bye-laws by virtue of deeming position informed in Section 13(1A). The powers to the Registrar u/s 79A, to which much emphasis was given by the respondents, will have to be read in juxtaposition to the procedure in the frame of Sections 2(5), 13(1) and 13(2) of the Societies Act. There cannot be a quarrel that Government has powers to give direction in public interest by exercise of powers u/s 79A. It also conceive, that such powers are to be exercised in public interest or for the purposes of securing proper implementation of cooperative production and other development programmes approved or undertaken by Government or to secure

the proper management of the business of the society generally, or for preventing the affairs of the society being conducted in a manner detrimental to the interests of the members or of the members of the society. The powers do not provide unfettered rights to change entire script of the Act or the democratic process of elections and to whittle out right of audience.

21. The bye-laws of the society originally approved, referred earlier in Rule 7 fixed the share price at Rs. 3,000/-, Advance as Rs. 300/- to be paid and after being enrolled as a member, balance Rs. 2,700/- are to be deposited with the Karkhana within a year. It also specifies that the remittance of Rs. 2,700/- would also be subject to deductions from supply of sugarcane to the Karkhana. The amendment sought in the bye-laws on 6.7.2009, to repeat, has enhanced share price from Rs. 3,000/- to Rs. 5,000/-, advance Rs. 300/- to Rs. 500/- and balance of Rs. 4,500/- to be deposited within a year from admitting such applicant as a member. The submission, that amendment in the bye-laws dated 6.7.2009 will have to be read prospectively, generates positive thought as the amendment in the bye-laws provide period of one year for remittance of balance amount of Rs. 4,500/- is after the amendment and naturally, such one year could be expiring on 6.7.2010. This follows that the position as prevalent prior to carrying out the amendment in the bye-laws will hold the field and the petitioners could not be branded to be defaulters.

22. The prospectiveness of the amendment is quite natural as for all purposes earlier the share capital was Rs. 3,000/- the case of the petitioners would not be within the sweep of amended bye-laws. The amendment to bye-laws always operates prospectively unless made retrospectively. I quite see, by way of General Body Resolution, there is no procedure prescribed for disqualification of a member/petitioner. It is curious, the resolution of General Body of amending the bye-laws, has not been translated into the Act or the Rules or has not been registered, as required u/s 13(2) of the Societies Act. The Returning officer could not have given a flavour to accept the amended bye-laws to cause oppression to the contesting petitioners, that too, detrimental to their legitimate rights to contest the election.

23. It is a sorry state of affairs that in the affidavit of Managing Director of the Karkhana? Namdeo Vithobha Bawadkar, in paragraph 10, factually a false statement is made. Paragraph 10, relevant portion reads, as under:

10. I say that, the amendment in the bye-laws for share value of Rs. 5,000/- though moved on 27.1.2001, it was pending before the competent authority, therefore, again it was moved on 5.6.2007, however, it was returned by letter dated 7.7.2007 and as such, again the proposal was submitted on 7.6.2009 and accordingly, the amendment in bye-laws approved on 6.7.2009. I say that the General Body is the supreme authority of the society and, therefore, the share value of Rs. 5,000/- is made applicable from the date of General Body Meeting dated 12.6.2000

The anomaly is cleared in the additional affidavit filed by the Regional Joint Director (Sugar), Aurangabad?Shri Dnyndeo s/o Balu Mukane, pursuant to the directions of this Court dated 15.12.2011. It has been denied by the affiant of receiving any letter/communication, as stated above, sent on behalf of the Karkhana to the Joint Director (Sugar), Aurangabad. The affiant says, he has inspected the Inward Register record pertaining to the year 2001. As per the record, the deponent did not find entry of said letter dated 27.1.2001 to the office of the deponent. Further the deponent inspected the record of Amendment register. There was no entry of such amendment as per the so-called proposal dated 27.1.2001. he has further clarified, - "in view of the above position, it is clear that the deponent's office did not receive any proposal from Sharad Sahakari Sakhar Karkhana Ltd., alleged to be submitted on 27.1.2001. There is no question of taking decision on said proposal dated 27th January, 2001. Thus, calculatedly a false statement on oath was made by the Managing Director of the Karkhana to favour the respondents, contrary to the official record.

24. The reference to the General Body meetings dated 4.10.2002; 30.2.2004 or 13.2.2006 by the Managing Director, is inconsequential as the bye-laws allegedly approved on 6.7.2009, could not be given retrospective effect from 12.6.2000, i.e. the date of General Body meeting. The language of Rule 7 or Rule 29 of the bye-laws of the Karkhana will have to be strictly read in the same tune and no extraneous material can be added or subtracted to it. From any angle, even if the amendments have come into force on 6.7.2009, it will be travesty of justice to treat it having a effect from 12.6.2000, that too and without there being any legal authority to do so, nor there being any compliance in terms of Section 13 of the Societies Act.

25. The effect, tried to be given to letter dated 16.1.2001 (page 127) , issued by Joint Secretary from Cooperation and Textile Department, u/s 79A, does not mean that the share capital of Rs. 5,000/- to be collected from the members are to be without following prescribed procedure under the law. The letter indeed suggests to increase share capital, which has thus to be followed in tune to procedure. Again, this letter was of general communication, is not addressed to the Karkhana. The amendment in the bye-laws will have to be in terms of Section 13 or Section 14 of the Societies Act.

26. The letter dated 8.1.2001 addressed to the Karkhana by the Commissioner of Sugar indicate that Karkhana was informed by letter dated 7th March, 2000; 15.9.2000, to carry amendment in the bye-laws. However such bye-laws are not amended. Thus, there could not be a decision on 12.6.2000 in General Body or same was not remitted to Authorities u/s 13. By the letter, it was informed, to convene a General Body meeting, wherein the share capital to be raised from Rs. 3,000/- to Rs. 5,000/- and such amendment in the bye-laws is to be approved from the Regional Joint Director of Sugar. Failure to carry amendment, action u/s 14(2) of the Act was to be initiated by the Government to carry such amendment in the bye-laws. It is thus clear, letter dated 8th January, 2001, has to be given

effect prospectively and could not mean to read that such amendment in the bye-laws would be effective from any earlier date of general body meeting or in particular from 12.6.2000, as the Managing Director of the Karkhana desires to impress upon.

27. The contention of Mr. Choudhari that the letter dated 27th January, 2001 was addressed to the Director of Sugar and, therefore, a deeming position is available in terms of Section 13(1A) of the Societies Act, is difficult to accept, as the letter of the Director, specifically informs to get approval to such proposal of bye-laws from the Regional Joint Director (Sugar), Aurangabad. The Karkhana, being a specified society, there would not be any other Rule or procedure than giving effect of Section 73FF, 78 or Rule 58(2) or 144E(e) of the Act. These rules do not cover a case of disqualification in terms of General body resolution or by efflux of Section 79(A).

28. Rule 29(2)(g)(ii) of the bye-laws speak that a candidate should not be in default of demanded share installment. Reading it plainly, it relates to the candidates (petitioners) and would not apply to the proposer. Said Rule does not demonstrate a mandatory force. This is more so, Respondent No. 4 can also recover installment from sugarcane supply. A duty is cast on the Karkhana in terms of bye-law No. 7(4) to collect share installment from sugarcane supplier. However, there is no effort nor any systematic authority by the Karkhana to collect such share from sugarcane supplier. When law provides a prescribed procedure, it has to be rigidly followed in tune and other ways of performance are forbidden.

29. In the matter of Dalsing Rajput Vs. State of Maharashtra and Others, , the Division Bench has held, - "Election Petition can not be efficacious remedy as the candidate was held not eligible to contest the election to the society by the Returning officer. It will be absurd and ridiculous to allow a person not eligible to contest the election then start process of dislodging him. The Court can, in interest of justice, prevent him from contesting election without disturbing the election process."

30. The petitioners could not in legal sense point out in election petition that the bye-laws or amendments therein have been carried in accordance with law. Thus, conducting election on non-existing rules, primarily would be illegal. Rule 81 of the Societies to Election Committee Rules, provide for grant of declaration of results of the elections. The validity of bye-laws cannot be gone into by the Tribunal. Consequently, the petitioners have no other option to prefer a writ as the amendment of the bye-laws are not in conformity with law.

31. In the matter of Ramesh Pail and others Vs. Shivaji Kachru Patil and others, , the Division Bench noticed that the learned Single Judge seemed to have exercised jurisdiction with unlimited prerogative under Article 226 of the Constitution of India and consequently, the judgment of the learned Single Judge was set aside. Mr. Choudhari has placed reliance to paragraph 10 of the

judgment, which reads as under:

10. It may be sated that as seen from the impugned order, the Secretary of the Society respondent No. 7 who was present in the Court, was called in Chamber and in the presence of the learned Advocates for the respective parties, the learned Single Judge appears to have made certain queries with him and in answer, he appears to have stated that the returning officer had directed him to issue receipts for payment of the amount and he accordingly, issued the receipts and, therefore, there was compliance of the relevant bye-laws and the Rules. In our considered opinion, the evidence on the basis of which the petition was allowed in the above form is risky to be accepted. The fact, therefore, remains that the returning officer rejected the nomination forms as they were not properly submitted. Quite apart, it is clear from the arguments advanced by Mr. Talekar that these respondents were in arrears of society's funds and they have cleared their arrears only on 5.5.1997. That means, it does not appear that any one of them were sincere in purchasing the nomination forms on 30.4.1997. Therefore, their theory of denial of opportunity to purchase nomination forms by the returning officer on 30.4.1997 does not appear to be reliable. This aspect appears to have been overlooked by the learned Single Judge. Therefore, there is no substance in the contention of the respondents Nos. 1 to 10 that they have been prevented to participate in the election and, therefore, there is no alternative remedy for them to challenge the said action. We are of the view that it is a simple case of rejection of nomination forms and it is well settled that the only remedy is to file election petition against the rejection of nomination papers. Therefore, the petition should have been dismissed on that ground alone.

With due respect, I do not see that the Judgment in the matter of Ramesh Patil (cited supra), in any way accelerates the case of the respondent.

32. In the matter of Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others, , the Hon''ble Lordships, dealt with effect of Section 144T of the Societies Act in relation to election of cooperative society. In the said case, there was election schedule published and challenge was that electoral roll was not prepared and finalized in accordance with the Rules. The Hon''ble Lordships observed, - "...as the preparation of electoral roll, being an intermediate stage in the process of election of the Managing Committee of a specified society, proper remedy is Election Petition." Such eventuality is not projected in the facts of the present case. Here, the case revolves to giving impetus to amended bye-laws though they are not in tune to Section 13 of the Societies Act or not approved and registered as prescribed therein.

33. The Hon''ble Supreme Court in the matter of Sau. Laxmi Verma Vs. State of Maharashtra (Civil Appeal No. 411-3412 of 2010 dated April 19, 2010), gave emphasis to the term "(election subject to decision of the writ petition)". This suggest that the decision of the Returning Officer or the Appellate Authority and declaration in prescribed form-5 on 28.12.2009 by the Returning Officer, will

have tinge, impulse and effect of orders in the present writ petition. Curiously, the Returning Officer could not have on 28.12.2009 declared the respondents as elected unopposed, as the election results were to be declared as per the Election programme on 14.1.2010. This undue haste by the Returning Officer speaks volume of his conduct.

34. The notice of default to be communicated to the petitioner/members was mandatory. There is no primary proof to establish that notices were even dispatched by under posting certificate (UPC) when the expected procedure was to send such notices by Registered post AD or to ensure personal service. This conduct on the part of the Karkhana calls for condemnation and gives an impression that, in a systematic network by a designed plan, to gain political supremacy and domain to the affairs of the Karkhana, tenacious courage is adopted. Thereby, legitimate rights of the petitioners to contest the election are squeezed and deflated.

35. The Returning officer went off on a tangent in interpreting the amended bye-laws, retrospectively, accepting its force, which he should not have done. He should not have shrugged off his responsibilities and showcased a violent streak jerking faith in the electoral system. This system is enriched by vintage values and need not be abruptly curtailed as the learned Returning Officer has done.

36. The Division Bench in the matter of Omprakash Gowardhandas Singhania Vs. G.V. Koimattur - 1966 Mah.L.J. 514, held, - "...the bye-laws of a society must not be contrary to the act or the Rules. The bye-laws cannot take effect until it is registered...."

The amended bye-laws are not established to be registered in terms of Section 13(2) of the Act. Thus, the amended bye-laws have not been carried out in accordance with law and hence on this count, Writ Petition is maintainable.

37. The Division bench of Allahabad High Court in the matter of Dudh Utpadak Sahakari Samiti Ltd. Vs. Aayukta/Nibhandhak, Dugdh Sahakari Samitiyan Dugdhashala Vikas, U.F. Lucknow (C.M.W.P. 28351:2001) has held, that Registrar has not been given any power to make any amendment in the bye-laws, giving effect to such bye-laws retrospectively. In paragraph 4, it is observed as under,-

4) The core question is whether the amendment can be made with retrospective effect. The members are to participate in the election after expiry of term of the present committee of management. The unamended bye-law No. 65 did not provide that a member should have supplied 500 liters of milk in a cooperative year. The only condition was that such member should have supplied milk for 180 days. If the amendment is given retrospective effect it will deprive the members to cast then votes in the ensuing election of the members and office bearers of the committee of the management...

These provisions are *pari materia* to Maharashtra Cooperative Societies Act, 1950

38. In the result, Rule is made absolute with costs. The orders of learned

Divisional Commissioner, Aurangabad, dated 23.12.2009 in the appeal and of the Respondent No. 3 are quashed and set aside. The orders of Returning Officer dated 28.12.2009 are set aside. The petitioners be permitted to contest the elections of the Karkhana and necessary arrangements in this behalf be made by learned Collector, Aurangabad or by Returning officer/Sub Divisional Officer, Aurangabad, within a time-bound schedule of 2 months from 12th March, 2012.

39. All the Civil Applications, seeking amendments and other consequential reliefs, are disposed of.

40. Heard Mr. Surwanshi PD. The orders are stayed up to 12th March, 2012.