
(2015) 07 RAJ CK 0144

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 7465, 6286, 7261, 7607, 7660, 7664, 7665, 7666, 7667, 7668, 7672, 7703, 7704, 7705, 7707, 7725, 7726, 7728, 7729, 7754, 7755, 7763, 7765, 7766, 7767, 7768, 7775, 7776, 7777, 7778, 7779, 7780, 7783, 7784, 7788, 7797, 7807, 7808, 78

Hari Ram Bishnoi and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 24-07-2015

Acts Referred:

Rajasthan Co-operative Societies Act, 1965 — Section 148, 149, 34, 34(4)

Citation : AIR 2015 Raj 203

Hon'ble Judges : Sangeet Lodha, J

Bench : Single Bench

Advocate : Rajesh Joshi, Pritam Solanki, Sushil Bishnoi, Suresh Charan, Rahul Bathi, R.S. Choudhary, Ajay Vyas, B.S. Sandhu, N.R. Budania and Mahesh Joshi, for the Appellant; P.S. Bhati, Additional Advocate General assisted by S.S. Rathore, Kusum Rao, P.P. Choudhary

Final Decision : Allowed

Judgement

Sangeet Lodha, J—These writ petitions assailing the validity of bye-law Nos. 20.1(2), 20.1(4), 20.2(7) and 20.2(9) of the Bye-laws of various District Milk Producer Cooperative Union Limited dealing with disqualification of the Chairperson representing Primary Milk Producer Cooperative Society, for contesting the election of Board of Directors of District Milk Union or continue as member of the Board of Directors thereof, based on identical questions of facts and law, were heard together and are being disposed of by this common judgment.

2. Bereft of unnecessary details, precisely stating the relevant facts are that the dairy activity in the State of Rajasthan developed on cooperative basis, is a three tier structure consisting of Primary Milk Producers Cooperative Society (for short "Primary Society") at the village level, District Milk Producers Cooperative Union (for short "District Milk Union") at district level and Rajasthan State Cooperative

Dairy Federation Limited (for short "State Federation") at the State level. This three tier structure as aforesaid is an integrated cooperative structure under which Primary Societies are linked with District Union and State Federation. At the village level any milk producer can become member of a Primary Society by buying shares and committing to sale milk only to the Society. The District Milk Union at the district level have two categories of member namely, ordinary member and nominal member. The Primary Society falls within the definition of "ordinary member". At the State level, all the District Milk Union affiliated to the State Federation are members thereof.

3. The Executive Committee/Board of Directors at all the three levels are democratically elected bodies wherein the members thereof are entitled to participate in the election process as provided for under the Rajasthan Cooperative Societies Act, 2001 (for short "the Act of 2001"), the Rules made thereunder and the Bye-laws of the respective bodies, functioning at the different level.

4. The controversy in the present petitions relates to election of Board of Directors of various District Milk Union wherein the Primary Societies are the members.

5. The functions of the District Milk Union are regulated by a set of Model Bye-laws adopted by various District Milk Union duly registered under the Act of 2001. As per the provisions of Section 20 of the Act of 2001, where a Cooperative Society is a member of another Cooperative Society, its Chairperson or in his absence Vice Chairperson shall subject to any rules made under the Act of 2001, represent to cast vote on its behalf in the affairs of that another Society. In this view of the matter, the Chairperson or the Vice Chairperson, as the case may be, of the Primary Societies are entitled to exercise the right to vote and contest the election of Board of Directors of the District Milk Union. The Chairpersons of the Primary Societies which are members of the District Milk Union are the members of the General Body of the District Milk Union constituted as provided for by Bye-law 14 of the Bye-laws of the District Milk Union.

6. The petitioners before this court are the Chairpersons of the Primary Societies which are members of different District Milk Union engaged in dairy activity in different districts.

7. Precisely, the grievance of the petitioners is that the right of the representatives of the Primary Societies to exercise their franchise and contest the elections of the Board of Directors of the District Milk Union is regulated by the provisions of the Act of 2001 and the Rules made thereunder and the same cannot be permitted to be restricted or taken away by framing any bye-law which runs contrary to the provisions of the Act of 2001 and the Rules. According to the petitioners, the bye-laws of the District Milk Union i.e. 20.1 (2), 20.1 (4), 20.2 (7) and 20.2 (9), as framed, restrict the statutory rights of the representatives of Primary Societies to exercise the franchise and contest the elections of Board of

Directors of District Milk Union, apparently, in contravention of the provisions of Section 19, 20 and 28 of the Act of 2001. It is contended that the bye-laws under challenge, as framed are beyond the Bye-laws making power vested in a Cooperative Society by virtue of Section 8 of the Act of 2001. The bye-law 20.1 (2), 20.1 (4), 20.2 (7) and 20.2 (9) of the Bye-laws of District Milk Union and Section 8, 19, 20 and 28 of the Act of 2001, which are relevant for adjudication of the controversy raised may be beneficially quoted:

Bye-laws

Sections

8. Bye-laws-(1) Subject to the provisions of this Act and the rules, functions of every co-operative society shall be regulated by a set of bye-laws registered under this Act, the subject matter of which is enclosed as Schedule B; and no amendment therein shall be valid unless such amendment has been registered by the Registrar under the provisions of this Act.

(2) An amendment of the bye-laws of a co-operative society shall, unless it is expressed to come into operation on a particular day, come into force on the day, on which it is registered.

19. Votes of members-Every member, other than a nominal and an associate member, of a co-operative society, shall be entitled to cast one vote.

20. Manner of exercising votes-(1) Every member of a cooperative society shall exercise his vote in person and no member shall be permitted to vote by proxy.

(2) Notwithstanding anything contained in sub-section (1), where-

(a) a co-operative society is a member of another cooperative society, its Chairperson or, in his absence Vice-Chairperson shall, subject to any rules made under this Act, represent to cast vote on its behalf in the affairs of that another society;

(b) the Government or a local authority or a body is a member of a co-operative society, it may nominate a representative to cast vote on its behalf, in the affairs of such society.

28. Disqualification of membership etc. of committees-(1) No person shall, at the same time, be a Chairperson of more than one apex societies, or more than one central societies.

(2) If a person, on the date of his election or appointment as a chairperson of an apex or a central society as aforesaid, is already a chairperson of another apex or central society, his later election or appointment shall be deemed to be void on the expiry of a period of fourteen days from the above election or appointment, unless he resigns from the chairpersonships of one of the above two apex or two central societies, as the case may be, within such period.

(3) No person shall be eligible for being elected or appointed as a member of a

committee or for continuing as member on the committee if he is in default to the society or to any other society, in respect of any loan or loans taken by him for such period as is specified in the bye-laws of the society concerned or in any case for a period exceeding three months:

Provided that this disqualification shall not apply on a member society.

(3-A) Notwithstanding anything contained in sub-section (3), no person shall be eligible for being elected, co-opted, nominated, or otherwise appointed, or for continuing as a member of the committee of a Central Co-operative Bank or the Apex Co-operative Bank, if he-

(i) represents a society other than a primary agricultural credit society and such society is in default to such bank, in respect of any loan or loans taken by it for a period exceeding ninety days;

(ii) is a person who is defaulter of a primary agricultural credit society or is a representative of a defaulting primary agricultural credit society for a period exceeding one year unless the default is cleared; and

(iii) is a person, who represents a society whose committee is superseded or has ceased to be a member on the committee of his own society.

(4) No money lender as defined in the Rajasthan Money Lenders Act, 1963 (Act No. 1 of 1964), shall be eligible for being elected or appointed as an officer of a service cooperative society, as classified under the rules, and where an officer of such society as aforesaid starts money lending business, he shall, thereupon, cease to be an officer of such society.

(5) No member of a committee, who has been removed under section 30, shall be eligible for election or appointment as a member of the committee for a period of five years from the date of such removal.

(6) No person against whom an order under Section 57 has been passed, such order not having been set aside, shall be eligible for election or appointment as a member of a committee until the expiry of a period of five years from the date he repays or restores the money or other property or part thereof with interest or pay contribution and costs or compensation in satisfaction of such order.

(7) No person shall remain both a Chairperson of a committee and a member of the Union Council of Ministers or the State Council of Ministers or the Pramukh of a Zila Parishad or the Pradhan of a Panchayat Samiti and, if already a member of the Union Council of Ministers or the State Council of Ministers or Pramukh of a Zila Parishad or Pradhan of a Panchayat Samiti, he shall, at the expiration of a period of fourteen days from the date he becomes a Chairperson of such committee, cease to be such Chairperson of such committee unless, before such expiration, he resigns his seat in the Union Council of Ministers or the State Council of Ministers or the office he holds in the Zila Parishad or the Panchayat Samiti, as the case may be:

Provided that a person who is already a Chairperson of a committee is appointed or elected as a member of the Union Council of Ministers or the State Council of Ministers or Pramukh of a Zila Parishad or Pradhan of a Panchayat Samiti, then at the expiration of fourteen days from the date of being appointed or elected as a member of the Union Council of Ministers or the State Council of Ministers or Pramukh of a Zila Parishad or Pradhan of a Panchayat Samiti, as the case may be, he shall cease to be such Chairperson of the committee unless he has previously resigned his seat in the Union Council of Ministers or the State Council of Ministers or the office he holds in the Zila Parishad or the Panchayat Samiti, as the case may be:

Provided further that he may become member of the committee or a Director.

(8) No person shall be eligible for election as a member of the Committee if he has more than two children:

Provided that a person having more than two children shall not be disqualified under this sub-section for so long as the number of children he had on 10.7.1995 does not increase.

Explanation: For the purpose of this sub-section, where the couple has only one child from the earlier delivery or deliveries on 10.7.1995 and thereafter, any number of children born out of a single subsequent delivery shall be deemed to be one entity.

(8A) No member of a committee, which has failed to provide the required information or assistance to the State Cooperative Election Authority under Chapter V shall be eligible for election or appointment as a member of the committee for a period of five years from the date of such failure.

(9) Any question as to whether a member of the committee has become subject to any of the disqualifications mentioned under this section or the rules shall be decided by the Election Officer during the process of elections and by the Registrar at all other times."

(emphasis supplied)

8. These writ petitions were filed by the petitioners when the elections of District Milk Union were being conducted in the year 2010. In the first instance, in some of the matters interim orders were passed, directing the respondents not to reject the nomination forms of the petitioners intending to contest the elections for any office of the concerned District Milk Union on the count of the bye-law 20.1(2), 20.1(4), 20.2(7) and 20.2(9) of the Bye-laws. However, taking into consideration the fact that the process of election has already started, in the cases taken up subsequently, the court declined to pass the interim order in the terms indicated above and rather, ordered that the elections of the District Milk Union concerned shall be subject to final disposal of the writ petition. It was clarified that the interim order passed shall in no manner preclude the State Government from considering at its own level the relaxation of eligibility qua the

Primary Society.

9. Learned counsel appearing for the petitioners, Mr. Rajesh Joshi, contended that the disqualification of members for being elected as member of Executive Committee/Board of Directors is governed by the provisions of Section 28 of the Act of 2001 and the members who are not disqualified to exercise their franchise or to be elected to any office of a Cooperative Society in terms of provisions of Section 28 cannot be declared disqualified by framing the bye-laws which run contrary to or are beyond, the provisions of Section 28 of the Act of 2001. Learned counsel submitted that Section 28, nowhere prescribes the disqualification for the Primary Society as member of District Milk Union or the Chairpersons representing the Primary Society, as specified under the various bye-laws of the District Milk Union, validity whereof is questioned by way of these petitions and thus, the said bye-laws which run contrary to the provisions of Section 28 are non est and deserves to be ignored. In support of the contention, learned counsel has relied upon Bench decisions of this court in the matter of "Pukhraj Mehta vs. State of Rajasthan & Ors.", 1995 (2) WLC, 140 and "Devi Chand vs. State of Rajasthan & Ors.", 1995 (2) WLC, 281. Drawing the attention of this court to the provisions of Section 19 of the Act of 2001, learned counsel submitted that every member other than a nominal and an associate member of a Cooperative Society is entitled to cast one vote. It is submitted that by virtue of provisions of Section 20, where a Cooperative Society is a member of another Cooperative Society, its Chairperson or in absence Vice Chairperson subject to any rules made under the Act of 2001, is entitled to cast vote on its behalf in the affairs of the another Society and that cannot be restricted by way of bye-laws. While referring to rule making power of the State Government as provided for under Section 123 of the Act of 2001, learned counsel would submit that by virtue of provisions of clause (v), (xxvi) and (xxvii) of sub-section (2) of Section 123 further qualification or disqualification relating to membership of a Cooperative Society or a Committee or the condition in which a member of a Cooperative Society may be disqualified from voting, can only be prescribed by the State Government by framing the rules. Referring to Rule 16 of the Rajasthan Cooperative Societies Rules, 2003 (for short "the Rules"), framed by the State Government in exercise of the power conferred under Section 123 of the Act of 2001, learned counsel submitted that no disqualification as provided for by the aforesaid Bye-laws, is incorporated in Rule 16 of the Rules and therefore, the bye-laws as framed run contrary to the provisions of Rule 16 of the Rules as well. Learned counsel would contend that by virtue of provisions of Section 8 of the Act of 2001, subject to provisions of the Act of 2001 and the Rules made thereunder, the Cooperative Societies are entitled to frame the bye-laws for regulating its function only in respect of subject matters as specified in Schedule B appended to the Act. Drawing the attention of the court to the Schedule B, learned counsel submitted that none of the subjects specified permits a Cooperative Society to frame the bye-laws governing the qualification/disqualification of the members of a Cooperative Society or the Executive

Committee thereof and therefore, the bye-laws as framed by various District Milk Union duly registered with the Registrar, Cooperative Societies under the provisions of the Act of 2001, are beyond the bye-laws framing powers conferred upon a Cooperative Society or the Registrar, as the case may be. Learned counsel would further contend that the matter with regard to qualification and disqualification of a member being covered by the provisions of the Act of 2001 and the Rules, no bye-law can be framed by a Cooperative Society. In support of the contention, learned counsel has relied upon decisions of the Hon'ble Supreme Court in the matter of Babaji Kondaji Garad Vs. Nasik Merchants Co-operative Bank Ltd., Nasik and Others, AIR 1984 SC 192 : (1983) 2 SCALE 696 : (1984) 2 SCC 50 : (1984) 1 SCR 767 : (1984) 16 UJ 239 and Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, AIR 1970 SC 245 : (1970) 40 CompCas 206 : (1969) 19 FLR 56 : (1970) LabIC 285 : (1969) 2 LLJ 698 : (1969) 2 SCC 43 : (1970) 1 SCR 205 . Learned counsel would submit that as a matter of fact, the bye-laws as framed are absolutely without guidelines and confers unbridled power at the hands of the State Government in determining the A, B and C category of the Societies on the basis of the audit report. Drawing the attention of the court to bye-law 20.2(9), learned counsel would submit that the power conferred upon Board of Directors under the said bye-laws is being misused, by determining the minimum quantity of milk supplied by the Cooperative Society at the end of the year, at their whims and fancy so as to debar the members representing the Primary Societies from participating in the elections of the District Milk Union. Lastly, learned counsel submitted that though the elections of the various District Milk Union conducted by the respondents are made subject to the decision of the writ petitions but since, the term of the elected bodies is bound to expire shortly, the court may not set aside the elections of the Board of Directors of the various District Milk Union conducted on the basis of the voter list prepared based on aforesaid bye-laws, which are ultra vires the provisions of the Act of 2001 and the Rules, but then, the validity of these bye-laws needs to be adjudicated upon inasmuch as, the fresh elections of the District Milk Union are to be held shortly obviously, on the basis of the voter list to be prepared based on the aforesaid bye-laws.

10. On the other hand, Dr. Pushpendra Singh Bhati, learned Additional Advocate General, appearing on behalf of the State of Rajasthan, contended that none of the Primary Societies have approached this court questioning the legality of the bye-laws rather, the petitioners, the Chairpersons of the Primary Societies, who are not members of District Milk Union as such, have approached the court in their individual capacity and therefore, the writ petitions preferred by them are not maintainable. Learned AAG submitted that the bye-laws as framed restricting the right of the member Primary Society to exercise its franchise through its Chairperson/Vice Chairperson have been incorporated with the sole object that the management of the District Milk Union should be in the hands of the persons who are actually participating in the integrated cooperative dairy activity and therefore, the bye-laws framed in conformity with the objects of the Act cannot

be faulted with. Learned AAG would submit that bye-laws as framed in no manner run contrary to or are inconsistent with, the provisions of Section 28 of the Act of 2001 inasmuch as, Section 28 deals with disqualification of natural persons and not a member Cooperative Society, the juristic person and therefore, the bye-laws as framed providing for the disqualification of a member Cooperative Society cannot be construed to be ultra vires the provisions of the Act of 2001. Drawing the attention of the court to sub-clauses (e), (i) and (w) of clause (1) of Schedule B appended to the Act, which deals with subject matter of Bye-laws, learned AAG would submit that the subject "qualification and condition of admission of members and their rights and liabilities" includes in it the power to provide for qualification and disqualification of the members for participating in the elections of the Executive Committee of any Cooperative Society under the Act of 2001 and therefore, by no stretch of imagination it can be said that the bye-laws under challenge as framed, travel beyond the Bye-laws making power of a Cooperative Society. Learned AAG submitted that the decisions of this court in Pukhraj and Devichand's cases (supra) deal with the disqualification of the individual members of a Cooperative Society under the provisions of the Rajasthan Cooperative Societies Act, 1965 (for short "the Act of 1965") and not the Cooperative Society as a member of another Cooperative Society and thus, the ratio decidendi of the said cases has no applicability to the present cases.

11. Mr. P.P. Choudhary, learned Senior Advocate contended that the petitioners who are not individual members of the District Milk Union cannot maintain the petitions questioning the validity of the bye-laws framed by the District Milk Union in exercise of the power conferred under Section 8 of the Act of 2001. Learned counsel submitted that even a Primary Society, which is member of the District Milk Union, is not entitled to question the validity of the bye-laws inasmuch as, the representatives of the said Society has participated in the proceedings taken by concerned District Milk Union while framing the Bye-laws. Learned counsel submitted that by virtue of provisions of Section 24, the final authority in a Cooperative Society subject to the provisions of the Act of 2001 and the Rules vests in the general body of the members and therefore, an individual member cannot be permitted to question the validity of the bye-laws adopted/framed by a Cooperative Society. Learned counsel submitted that the provisions of Section 28 are referable to individual/natural members and not to a member Society which is a juristic person. Drawing the attention of the court to Section 16 of the Act of 2001, which deals with "Cessation of Membership" of a Cooperative Society, learned counsel submitted that a person shall ceased to be a member of a Cooperative Society on his resignation from the membership thereof being accepted or on his death, removal or expulsion from membership or on his incurring any disqualification specified in the Act, Rules or the bye-laws of the Society and therefore, the challenge of the petitioners to the validity of the bye-laws on the strength of Section 28, is totally unfounded. Learned counsel would submit that in exercise of the power conferred under Section 8 read with sub-clauses (e), (i), (v) & (w) of Clause (1) of the Schedule B appended to the

Act, the bye-laws can be framed even for restricting the right to vote. Learned counsel submitted that the decision of this court in Pukhraj and Devichand's case (supra) deals with disqualification of natural persons and cannot form precedents so as to govern the disqualification of a Cooperative Society which is member of another Cooperative Society.

12. Mr. D.K. Parihar, learned counsel submitted that the disqualification can always be elaborated by bye-laws and the bye-laws as framed cannot be said to be ultra vires the provisions of the Act of 2001.

13. Mr. B.C. Mehta, learned counsel would submit that the categorisation of A, B and C category of the Societies are made on the basis of the marks awarded under various heads namely, Milk Supply, Balanced Cattle Feed, Other Facilities etc., as per the audit report and therefore, the categorisation made applying a uniform criteria on the basis of account of the Cooperative Society concerned, audited in terms of provisions of Section 54 of the Act of 2001, cannot be said to be irrational and without guidelines. Learned counsel would submit that the bye-laws framed are operating for last so many years and therefore, the belated challenge to the bye-laws must fail.

14. I have considered the rival submissions and perused the material on record.

15. At the outset, it will be appropriate to consider the objection of the respondents regarding maintainability of the writ petitions assailing the validity of the bye-laws as aforesaid, preferred by the Chairpersons of Primary Societies in their individual capacity.

16. Indisputably, as per the provisions of sub-section (2) of Section 20 of the Act of 2001, where a Cooperative Society is a member of another Cooperative Society, the Chairperson or in absence Vice Chairperson shall subject to any Rules made under the Act represent the Cooperative Society to cast vote on its behalf in the affairs of another Society. Thus, it is a statutory right conferred upon the Chairperson or the Vice Chairperson, as the case may be, representing a Cooperative Society, which is a member of yet another Cooperative Society, to cast the vote and contest the elections for membership of the Executive Committee/Board of Directors and therefore, it does not stand to reason that the petitioners who are entitled to represent the respective Primary Societies and contest the elections of the Board of Directors of District Milk Union, have no locus standi in the matter and are not entitled to question the validity of the bye-laws of the District Milk Union, which directly relates to qualification, disqualification of a member Primary Society, represented by them. It is pertinent to note that as per bye-law 14 of the Bye-laws, the General Body of the District Milk Union consists of the Chairpersons of member Primary Societies and the members nominated by the Board of Directors. That apart, as per bye-law 19.1(1), 11 members of the Board of Directors of a District Milk Union are required to be elected from amongst the Chairpersons of the concerned Primary Societies. In this view of the matter, in the considered opinion of this court, the

objection raised on behalf of the respondents as to locus standi of the petitioners to maintain the petitions questioning the validity of bye-laws of various District Milk Union, is not sustainable in the eyes of law and deserves to be rejected.

17. Coming to the validity of bye-laws Nos. 20.1(2), 20.1(4), 20.2(7) and 20.2(9), the model Bye-laws framed/adopted by the various District Milk Union to regulate its functions, it is to be noticed that bye-law No. 20.1(2) provides that the Chairperson of a Primary Society, which is represented by him, shall be entitled to participate in the election of the Board of Directors and to continue as a member thereof, which is categorised as "A" and "B" category Society in the preceding audit, but, the State Government may taking into consideration the milk movement in the State, grant relaxation and even permit the Societies falling in "C" category as well for participation in the election process. It further provides that the Societies which are not classified under any category in the preceding audit shall not be entitled to participate in the election. Bye-law 20.1(4) restricts the right of the Cooperative Society to participate in the election in case it has remained closed for 90 days except in case of natural calamity. Bye-law 20.2(7) restricts the right of a Chairperson of a Primary Society to participate in the election unless the Primary Society to which he represents has supplied milk minimum for 270 days to the District Milk Union in the preceding year. Similarly, Bye-law 20.2(9) restricts the right of the Chairperson of a Primary Society from participating in the election process of the Board of Directors in case the Primary Society has failed to supply the minimum quantity of the milk fixed in the preceding year by the Board of Directors of the concerned District Milk Union.

18. It is not disputed before this court that the qualification/disqualification as provided for under the bye-laws in question as aforesaid, are not incorporated in Section 28 of the Act of 2001 or for that matter, under any other provisions of the Act of 2001 and the Rules made thereunder. Thus, the precise question which needs to be examined by this court is as to whether any qualification/disqualification not provided for under the provisions of the Act of 2001 or the Rules made thereunder, is permissible to be prescribed by way of bye-laws framed by a Cooperative Society under the provisions of Section 8 of the Act of 2001, which restricts the right of an individual member or a Cooperative Society represented by its Chairperson, relating to participation in the election process of Executive Committee/Board of Directors of another Cooperative Society.

19. Indubitably, Section 28 of the Act of 2001, deals with disqualification of membership etc. of the Executive Committee of a Cooperative Society. It is also not in dispute that the disqualifications of a member Primary Society and the Chairperson representing it, in the situations detailed in the impugned bye-laws are not the disqualifications provided for under Section 28 of the Act of 2001. As a matter of fact, the contention of the respondents is that Section 28 deals with the disqualification of individual members/natural persons and it in no manner covers the disqualification of a Cooperative Society, which is member of another

Cooperative Society. It is true that as per proviso to sub-section (3) of Section 28, the disqualification provided under sub-section (3), holding a person not eligible for being elected or appointed as member of a Committee, does not apply to a member Society. But then, wherever the legislature in its wisdom considered it appropriate to provide for the disqualification in respect of a member Society, specific provision in this regard has also been incorporated in Section 28 of the Act of 2001. In this regard, the provisions of sub-section (3A) of sub-section 28 are self explanatory, which specifically provides for the disqualification of the persons representing a Cooperative Society in a Central Cooperative Bank or the Apex Cooperative Bank. Thus, apparently, Section 28 of the Act of 2001 deals with the disqualification of an individual member as also the persons representing a Cooperative Society, which is member of yet another Cooperative Society. In this view of the matter, the contention of the respondents that Section 28 of the Act of 2001 exclusively deals with the disqualification for membership of only individual/natural member, is devoid of any merit.

20. The next question which comes for consideration of this court whether any qualification/disqualification for an individual member or a Chairperson of a member Cooperative Society, representing the said Cooperative Society in yet another Cooperative Society, regarding exercise of the franchise or for contesting the election to any office in another Cooperative Society, which is not provided for under the provisions of Section 28 of the Act of 2001, are permissible to be provided by way of the Rules or Bye-laws framed under the Act of 2001.

21. As per provisions of Section 123 of the Act of 2001, the State Government is empowered to frame the Rules for whole or any part of the State or for a class of Cooperative Societies to carry out the purposes of the Act of 2001. Sub-section (2) of Section 123, specifies the matters in respect whereof the State Government is empowered to frame the Rules without prejudice to generality of its power vested in it by virtue of provisions of sub-section (1) of Section 123 of the Act of 2001. As per clause (v) of sub-section (2), the State Government is empowered to provide for qualification or disqualification relating to members of a Cooperative Society. Similarly, clause (xxvi) of sub-section (2), deals with the power of the State Government to provide for the qualification or disqualification for membership of a Committee. Further, by virtue of clause (xxvii) of sub-section (2) of Section 123, the State Government is empowered to frame the Rules laying down the conditions in which a member of a Cooperative Society may be disqualified from voting. Thus, the legislature has conferred upon the State Government the ample power to provide for qualification or disqualification, regarding the eligibility of persons to become a member of a Cooperative Society or to be elected as member of the Committee by general body of a Cooperative Society as also to provide for conditions wherein a member of the Society shall stand disqualified from voting. In this view of the matter, in the considered opinion of this court, the power of the State Government to provide for the qualification/disqualification for membership of a Committee of a Cooperative Society, in addition to the qualification or disqualification as provided for under

the provisions of Section 28 or any other provisions of the Act of 2001, cannot be doubted. But then obviously, in exercise of the power conferred by Section 123 of the Act of 2001, the State Government cannot frame the Rules providing for additional qualification and disqualification in derogation of or inconsistent with, the qualification/disqualification prescribed under the provisions of the Act of 2001.

22. This takes the court to consider whether a Cooperative Society on its own or at the instance of Registrar, Cooperative Societies, is entitled to frame the bye-laws providing for such qualification or disqualification for its members or the persons representing a member Cooperative Society, regarding the exercise of the right to vote or contesting the election of Executive Committee of another Cooperative Society of which a Cooperative Society represented by him is a member, which are not specifically provided for under the provisions of the Act of 2001 or the Rules made thereunder.

23. Admittedly, the powers of a Cooperative Society to frame the bye-laws to regulate its functions are governed by Section 8 of the Act of 2001. As per the said provision, a Cooperative Society is entitled to frame the bye-laws to regulate its functions, subject to the provisions of the Act of 2001 and the Rules made thereunder, in respect of subject matters, enumerated under the Schedule B appended to the Act of 2001. It goes without saying that in exercise of the Bye-laws making power, a Cooperative Society is not entitled to frame the bye-laws in respect of the matters not specifically incorporated in the Schedule B, appended to the Act of 2001. By necessary implication, a Cooperative Society is precluded from making the provisions by way of bye-laws in respect of the subjects, which stand delegated and are to be exclusively dealt with by the State Government in exercise of its rules making power under Section 123 of the Act of 2001. It is well settled that where power is given under a statute to do certain things in a certain way, the things must be done in that way or not at all and that other methods are necessarily forbidden. (vide *Taylor vs. Taylor*, (1876) 1 Ch.D. 426 , *State of Uttar Pradesh Vs. Singhara Singh and Others*, AIR 1964 SC 358 : (1964) 4 SCR 485 and *Balaji Kondaji Garad's case*, supra). Indisputably, the power with regard to provide for additional qualification/disqualification for a member of a Cooperative Society or the membership of Executive Committee of a Cooperative Society stands delegated to the State Government by virtue of Section 123 of the Act of 2001 and therefore, without there being any indication in any of the provisions of the Act of 2001 contrary that even a Cooperative Society is entitled to frame the bye-laws restricting the right to vote of a member or his qualification/disqualification for membership of a Committee, it cannot transgress the provision of the Act of 2001 and take upon itself to make a provision in this regard in the bye-laws which is beyond the bye-laws, making power conferred upon it by virtue of provisions of Section 8 of the Act of 2001.

24. At this stage, it is appropriate to refer to the subjects specified under Schedule B in respect whereof a Cooperative Society is empowered to frame the

bye-laws. It is not in dispute that the matter with regard to qualification or disqualification of a member of a Cooperative Society or membership of Executive Committee of a Cooperative Society is not specifically included in the subjects specified under Schedule B. Clause (e) relied upon by the counsel for the respondents deals with the nature and extent of liability of members whereas, clause (v) deals with the power to send a representative to another Society and clause (w) is a residue clause, which deals with any other matters incidental to the management of the business of a Cooperative Society. In the considered opinion of this court, none of the clauses referred to by the counsel for the respondents covers the qualification/disqualification of the members of a Cooperative Society or for the membership of a Committee of a Cooperative Society. A fortiori, specific provisions having been incorporated in the Act of 2001, giving powers to the State Government to make provisions regarding qualification/disqualification of a member of a Society or for membership of a Committee as also for providing conditions in which a member of a Cooperative Society may be disqualified from voting, it is not permissible to infer an implied power vested in a Cooperative Society to frame the bye-laws under Section 8 in respect of subject not specifically enumerated in the Schedule B, appended to the Act of 2001.

25. At this stage, it would be appropriate to consider the decisions of this Court in Pukh Raj Mehta's case (supra) relied upon by learned counsel for the petitioner, which has directed bearing on the controversy involved in the present case.

26. In Pukh Raj Mehta's case (supra), the question involved was whether bye-law 31 of Jodhpur Nagarik Sahakari Bank Limited, Jodhpur, providing additional disqualification for a member aspiring to contest the election of the Board of Directors of the Bank, to the effect that he is required to maintain deposit account with the Bank for a continuous period of two years with a credit balance of not less than Rs. 500/-, transgresses mandatory statutory provision incorporated under Section 34(4) of the Act of 1965, providing disqualification for a member to be elected or appointed as a member of a committee. The provisions of sub-section (4) of Section 34 of the Act of 1965, are *pari materia* to the provisions of sub-section (3) of Section 28 of the Act of 2001. That apart, under the Act of 1965, the power to frame Rules was delegated to the State Government under Section 148 of the Act of 1965 and clause (xxv) of sub-section (2) of Section 148 empower the State Government to frame Rules regarding qualification or disqualification for membership of a committee, which is *pari materia* to the provisions of clause (xxvi) of sub-section (2) of Section 123 of the Act of 2001.

After due consideration of various provisions of the Act, in the said case, Court found that except the disqualification as provided for under sub-section (4) of Section 34 of the Act of 1965, there is no other disqualification provided under the Act of 1965, which may debar a member to contest the elections for the

office of Board of Directors of the Bank. Considering the power of the State Government to make Rules regarding qualification and disqualification for membership of a committee, the Court observed:

"17A. Section 149 of the Act of 1965 provides that the Rules made by the State Government under Sec. 148 of the Act of 1965 to be laid before the State Legislature. Thus, the rules made by the State Government under Sec. 148 are subject to the approval of the State Legislature which means nothing more than that it is a sort of a check upon the delegated legislation and does not in any way alter quality or character of the Rules, so made under the rule making power. The Rules approved by the State Legislature, undoubtedly, have the force of law but not force of an enactment of the legislature. It is apparent under Topic (xxv) of sub-sec. (2) of Sec. 148 quoted above that the State Government in exercise of its delegated powers can add further qualifications or disqualifications for membership of a committee in addition to the qualification prescribed under sub-sec. (4) of Sec. 34 of the Act of 1965 for contesting the election for membership of a Committee of the Bank. The words "Membership of a Committee" used under Topic (xxv) of sub-sec. (2) of Sec. 148 are synonymous with the words "Membership of a Committee" used under Sec. 34 of the Act of 1965. Nothing has been brought to our notice that in exercise of its rule making power, the State Government added further qualifications for contesting the election for the membership of a Committee of the Bank other than qualifications prescribed under sub-sec. (4) of Sec. 34 of the Act of 1965, therefore, it goes without saying that except the qualification prescribed under sub-sec. (4) of Sec. 34, the State Government has not prescribed any additional qualifications or disqualifications for the membership of a Committee. "

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While dealing with the provisions of Rule 8 of the Rajasthan Cooperative Societies Rules, 1996, specifying the matters in respect whereof a cooperative society was empowered to make provisions by way of bye-laws, the Court observed:

"18. A close scrutiny of subject-matters enumerated under rule 8 of the Rules framed by the State government in exercise of its powers under Sec. 148, the subject matters of framing Bye-laws by a Co-operative Society has not authorised (sic) a Co-operative Society to frame Bye-laws prescribing additional qualifications or dis-qualifications for election of membership of a Committee. In our considered opinion, since the State Government in exercise of its rule making power has not delegated the subject matter of qualifications or dis-qualifications for election of membership of a Committee to the Bank, therefore, the Bank being a Cooperative Society has no authority to frame Bye-law No. 31 prescribing further qualifications for membership of a Committee to contest the election for the office of the Board of Directors. In our humble opinion, Bye-law No. 31 prescribing additional qualification for contesting the election for the Board of Directors framed by the Bank is beyond its power to frame such a Bye

law, hence, the petitioner-appellant cannot be debarred to contest the election for the office of the Board of Directors on the basis of Bye-law No. 31."

The Court observed that the power delegated by the State Legislature to the State Government to add further qualification or disqualification in terms of sub-section (2)(xxv) of Section 148 of the Act of 1965, could not have been further delegated and precisely for this reason the State Government has not delegated the powers to the Cooperative Bank under Rule 8(1)(m) of the Rules of 1966, to add further qualification or disqualification for contesting the election for the membership of the Committee of the Bank. The Court further held that:

"19. Where the enactment is plain, the Rules and Bye-laws must if possible be reconciled with the enactment. If that cannot be done, the Rules and Bye-laws must give way to the plain terms of the enactment. In other words, if the Rules or Bye-laws are repugnant to the provisions of the enactment, the Rules and bye-laws though made under the power of enactment could not be allowed to override the enactment itself. Here in the present case, it is apparent from the aforesaid discussion that Bye-law No. 31 has not been framed even within the subject matter enumerated under rule 8 of the Rules framed under the Act of 1965, which empowers the Co-operative Bank to frame Bye-laws for transacting its business and to frame Bye-laws prescribing only mode of appointment of the Committee by election or otherwise which can be only ministerial in character facilitating free and fair appointment of the Committee by election or otherwise, hence, Bye-law No. 31 is to be treated as non est.

20. It is already demonstrated in earlier part of our judgment that Bye-law No. 31 has not been framed within the subject matter of framing Bye-laws enumerated under rule 8 of the Rules framed under the said Act, therefore, Bye-law No. 31 prescribing additional eligibility to debar the petitioner-appellant to contest the election for the office of the Board of Directors is non est and the said Bye-law is to be ignored. This Court cannot afford to permit Bye-law No. 31 to neutralise the mandatory statutory provisions enacted by the State Legislature under sub-sec. (4) of Sec. 34 of the Act of 1965 prescribing qualifications to contest the election for the office of the Board of Directors."

Relying upon the decision of the Hon'ble Supreme Court in Babaji Kondaji Garad's case and Co-operative Central Bank's case (supra), the Court held that the Bye-laws of the cooperative society can have status of an Articles of Associations of a Company governed under the Companies Act, 1965 and do not have the force of law.

Accordingly, the Court held that Rule 31 adding additional eligibility for contesting the elections for the office of the Board of Directors being not in consonance with the statutory provisions contemplated under sub-section (4) of Section 34 of the Act of 1965 and beyond the Bye-laws framing powers of the Cooperative Bank is non est and is to be ignored.

27. In the backdrop of position of law, settled by a Bench of this Court as

aforesaid, advertent to the facts of the present case, it is to be noticed that but for the disqualification prescribed under bye-law Nos. 20.1(2), 20.1(4), 20.2(7) and 20.2(9) of the Bye-laws, the petitioner representing various Primary Societies were entitled to participate in the election process of concerned District Milk Union. It is not the case of the respondents that any disqualification enumerated in the aforesaid bye-laws, has been prescribed by the State Government in exercise of power conferred under Rule 123 of the Rules of 2003. As laid down by a Bench of this Court, the power delegated by the State Legislature to the State Government to frame the Rules providing for any additional qualification or disqualification for members of a Cooperative Society or the membership of Committee of a Cooperative Society cannot be further delegated. As discuss hereinabove, a Cooperative Society has no power to frame the bye-laws in exercise of power conferred under Section 8 of the Act of 2001 in respect of the subjects, which are not specifically enumerated under Schedule-B, appended to the Act of 2001.

28. Thus, the discussion above leads to an irresistible conclusion that the bye-law Nos. 20.1(2), 20.1(4), 20.2(7) and 20.2(9) of the Bye-laws, as framed by the various District Milk Union engaged in cooperative dairy activity in the State of Rajasthan, are ultra vires the provisions of the Act of 2001 and has to be treated as non est.

29. Now, coming to the question as to what relief the petitioners are entitled for, keeping in view the conclusions arrived at by this Court as aforesaid, it is pertinent to note that the bye-laws as framed were in force for years together. The elections of the various District Milk Union were held in the year 2010 and the tenure of the elected representatives of Primary Societies therein is expiring shortly and the fresh process of election for the District Milk Union is to be undertaken by the State shortly and therefore, at this stage, though the elections held were made subject to decision of these writ petitions at this stage, this Court is not inclined to disturb the term of the elected representatives, if they are still continuing in the office.

30. In the result, the bye-law Nos. 20.1(2), 20.1(4), 20.2(7) and 20.2(9) of the various District Milk Producer Cooperative Union, namely, Paschimi Rajasthan Dugdh Utpadak Sahakari Sangh Limited, Jodhpur, Bhilwara Zila Dugdh Utpadak Sahakari Sangh Limited, Bhilwara, Churu Zila Dugdh Utpadak Sahakari Sangh Limited, Churu, Uttari Rajasthan Dugdh Utpadak Sahakari Sangh Limited, Bikaner, The Jalore-Sirohi Dugdh Utpadak Sahakari Sangh Limited, Raniwada, Pali Zila Dugdh Utpadak Sahakari Sangh Limited, Pali, Gangmool Dugdh Utpadak Sahakari Sangh Limited, Hanumangarh, Barmer Zila Dugdh Utpadak Sahakari Sangh Limited, Barmer, Nagaur Zila Dugdh Sahakari Sangh Limited, Nagaur and The Sri Ganganagar Zila Dugdh Utpadak Sahakari Sangh Limited, Hanumangarh, the respondents herein, are declared ultra vires the provisions of Rajasthan Cooperative Societies Act, 2001. The said bye-laws incorporated in the Bye-laws of the said District Milk Union shall be treated as non est. Needless to say that

ensuing election of various District Milk Producer Cooperative Unions, the respondents herein, functioning in the State of Rajasthan shall be conducted by the State Cooperative Election Authority, ignoring the aforesaid bye-laws, which are declared ultra vires by this Court. However, the results of elections of various District Milk Producer Cooperative Union, the respondents herein, held in the year 2010, are not interfered with.

The writ petitions stand allowed in the terms indicated above. No order as to costs.