

(2008) 05 BOM CK 0030

In the Bombay High Court

Case No : Writ Petition No. 5105 of 2006

Krishna Ganpatrao Kamdi and Others

APPELLANT

Vs

Liladhar Pathode and Others

RESPONDENT

Date of Decision : 05-05-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Municipalities Act, 1965 — Section 12, 21, 22
Representation of the People Act, 1951 — Section 100, 100(1)

Citation : (2008) 4 ALLMR 223 : (2008) 6 MhLj 391

Hon'ble Judges : Swatanter Kumar, C.J; Vasanti A. Naik, J

Bench : Division Bench

Advocate : Paliwal, for the Appellant; C.S. Kaptan, for the Respondent

Judgement

Swatanter Kumar, C.J.—It is a settled cannon of interpretative law that recital or preamble of an Act is key for opening the meaning and intent of an Act. Equally true it is that preamble of the statute can neither expand nor control the scope and application of the substantive provision particularly when it is clear and explicit. The legislature with a view to provide for orderly development of co-operative movement in the State of Maharashtra and in accordance with the relevant directive principle of the State policy enumerated in the Constitution of India considered it expedient to consolidate and enact the laws relating to the Co-operative Society in the State. The Bombay Co-operative Societies Act, 1925 in its application to State of Maharashtra was repealed and by a new enactment The Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as the "said Act") was enacted. This Act was for the development of the co-operative movement which was expected to be in an orderly manner. The said Act was intended to provide greater freedom, free and fair democratic process and to regulate business and management of the societies in accordance with the prescribed standards with inbuilt check and balances indicated under the various provisions therein. Chapter VII of the said Act relates to the management of the societies. Sections 73-1A, 73-1B, 73-1C and 73-1D regulate the requirement and

conduct of elections in relation to committees of notified societies. Section 73-A deals with disqualification for being a designated officer. Chapter XI-A deals with the elections of committees and officers of certain other societies. Under that chapter, the provisions prescribe how the election is to be conducted, disqualification of membership and removal, as a result of disqualification or corrupt practices, from such bodies. Suffice it to note that the entire process of management and election disputes are bound to arise in the affairs of the society.

2. In terms of Section 91, any dispute touching the constitution and election of the committees or its officers, other than elections of the committees of specified societies including its officers, conduct of general meetings etc., is to be referred by any of the parties to the dispute or by a federal society to which the society is affiliated or by a creditor of the society, to a co-operative Court, provided the parties are one which are indicated under Clauses (a) to (e) of Section 91(1). The provisions of Section 91 open with non obstante Clause and give precedence to the law over all other laws for the time being in force. The Co-operative Court gets jurisdiction to adjudicate upon the disputes referred to it in terms of Section 91-A and has to exercise jurisdiction over whole of the State or over any part thereof as may be notified. The Section uses the expression "any dispute" touching the constitution and includes any dispute relating to election of the committee. The expression has very wide implication and far reaching ramification. This expression has been subjected to judicial interpretation and in the case of *Rambhau Jairam Dhamange and Others Vs. The President, Vinkar Co-operative Society Ltd., Chanda and Others*, a Full Bench of this Court held that "any dispute" means any dispute which the co-operative Court is competent to try and decide. It has also been held that it would mean a dispute arising out of the provisions of the said Act and not a dispute which would arise independently of the provisions of the said Act. Even if a dispute is between a member and the society about a matter which does not arise out of the provisions contained in the said Act, it will not fall within the jurisdiction of the co-operative Court. On a plain reading of Section 91, it is contemplated that two conditions must be satisfied (1) the dispute must be one touching the constitution, elections of office-bearers, conduct of general meeting, management or business of the society and (2) that both the parties to the suit must be one or the other as mentioned in Clauses (a) to (e) of Sub-clause (1) of Section 91. These two conditions are conjunctive and not disjunctive.

3. Where any dispute in relation to election of the society is raised, a pertinent question that normally would fall for consideration in such cases is whether the election has been materially affected by the violation or other act complained of. The learned Single Judge of this Court felt that there was an element of conflict of views in the different judgments of this Court and persuaded by the divergent views, the learned Judge, vide his order dated 6th November, 2006 while declining to concur with the view expressed by another Single Judge of this Court in the case of *Bhagwat Sojanaji Sonawane and Others Vs. State of Maharashtra and Others*, referred the matter to a larger Bench. We feel that it is not

necessary for us to refer to the facts of the or the controversy arising as they have been appropriately summed up in the order of reference dated 6th November, 2006 which reads as under:

1. Challenge in writ petition is to the judgment dated 26-12-2005 delivered by Co-operative Court, Nagpur in the dispute No. 113/2004 and Order dated 7-9-2006 passed by Member, Maharashtra State Cooperative Appellate Court, Nagpur in Appeal No. 9/2006 upholding said judgment. The facts are not in dispute. Co-operative Court has set aside the election of present petitioners to the managing committee of respondent No. 20 Society. Said election was held on 14-2-2004 and is for the period from 2003 to 2008. The election is governed by Maharashtra Co-operative Societies Act (MCS Act hereafter) and Election Rules of Society framed thereunder. The Co-operative Court in paragraph 15 and 17 of its judgment found that elections have been held contrary to Election Rules by Election Officer. It has also observed that it has not been proved factually that election from other constituencies except O.B.C. Constituency has been materially affected. However it has relied upon Bhagwat Sojanaji Sonawane and Others Vs. State of Maharashtra and Others, and held that such proof about result of election being materially affected by infringement of election rules was not necessary. The Appellate Court has taken the same view. Division Bench judgment of this Court Maniklal Madanlal Lahoti v. Tukaram Ganpat Tehore reported at 1978 Mh.L.J. 316 has been distinguished by Appellate Court and it is observed that it was not necessary for election petitioners to prove that result of election has been materially affected. It has accepted the judgment of this Court by learned Single Judge in case of Bhagwat Sojanaji Sonawane and Ors. v. State of Maharashtra and Ors. (supra).

2. I have heard Advocate S.D. Paliwal for petitioners and Advocate C.S. Kaptan with Advocate S.B. Ninawe for respondents 1 to 18 (caveators). Nobody has appeared for respondent No. 19 Election Officer or respondent No. 20 Society though served. Counsel for petitioners has straightway pointed out that there is difference of view about the law applicable and according to him, judgment of Division Bench ought to have been followed by both lower Courts. He states that as respondents 1 to 18 could not prove that result of election of these petitioners is materially affected because of infringements of bye-laws or Election Rules, Courts below erred in setting aside their election. In addition to above rulings he has also invited attention to unreported judgment dated 7-11-1968 in Spl. C.A.743 of 1968 by Division Bench. Advocate C.S. Kaptan for contesting respondents initially invited attention to finding recorded against Issue No. 9 by Co-operative Court and also to discussion there about in paragraph 15 of its judgment to urge that the impugned election has in fact been found to be materially affected. He has also stated that Section 91 of MCS Act is required to be read with Section 73(1) thereof and Section 91 begins with non obstante Clause and hence permits setting aside of election even for breach of rules or bye-laws. It is argued that the election of co-operative society cannot be scrutinised by applying to it the standards laid down for elections of various local

bodies. He further argues that both lower Courts are well within their limits in deciding the matter and hence no interference is warranted in writ jurisdiction.

3. Perusal of judgment delivered by Co-operative Court leaves no manner of doubt that it has not recorded a finding positively that result of election of present petitioners has been materially affected because of ballot papers being not in accordance with Election Rules. In paragraph 15, it has observed that there is possibility of personation as alleged by election petitioners/disputants before it but then it has qualified it by observing that "this fact is not strictly proved by disputants". Discussion by it in paragraph 17 leaves no manner of doubt that Co-operative Court was not satisfied that result of election of present petitioners from other constituencies, except O.B.C. Constituency, was materially affected by infringement of bye-laws or Election Rules. Thus, only question which needs to be answered in present writ petition is about legality or otherwise of extending the concept of result of election being materially affected by any breach of law or procedural irregularity to Election under MCS Act.

4. Both lower Courts have relied upon Bhagwat Sojanaji Sonawane and Others Vs. State of Maharashtra and Others, , particularly the following portion:

8. Shri Raghuvanshi, learned Counsel for the petitioners contended that it was not enough for the disputant to prove the contravention of bye-law No. 11(3) but it was also necessary for him to allege and prove that the result of the elections were materially affected by reason of allotment of one common symbol to the entire panel-----.

All these judgments are given while considering Section 100 of the Representation of the People Act, 1951. It cannot be doubted that the right to contest the election is not a fundamental right, but it is a statutory right. The content of the right to contest an election is determined by the statute creating the right it is open for Legislature to provide by a statute as to how the election should be held, who is eligible to contest the election what should be the procedure for filing of a nomination paper and allotment of symbols it is also open for the Legislature to provide as to what would be the grounds on which election can be set aside. Clause (d) of Sub-section (1) of Section 100 of the Representation of the People Act provides that the election can be set aside on account of the grounds mentioned therein, if it is shown that the result of the election, insofar as it concerns a returned candidate, has been materially affected. As distinguished from Clause (d) Clause (c) of Sub-section (1) of Section 100 of the Representation of the People Act does not mandate that the petitioner should prove that the election insofar as it relates to the concerned returned candidate has been materially affected in para 7 of its judgment in the case of Santosh Yadav Vs. Narender Singh, , the Apex Court observed:

Parliament has drawn a clear distinction between an improper rejection of any nomination and the improper acceptance of any nomination. In the former case, to avoid an election, it is not necessary to further prove that the result of the

election has been materially affected.

(emphasis supplied)

10. Thus, the contention that for setting aside the election, the petitioner must prove in every case that the result of election has been materially affected is not correct. It is only where the Statute requires that the petitioner should so prove that the petitioner is required to prove that the result of an election has been materially affected. In the present case, the Statute does not provide that the disputant must prove that the result of the election has been materially affected. If there has been any infringement of the bye-laws under which the elections are to be held, then the disputant is entitled to file a dispute u/s 91 and prove the infringement of the bye-laws. If it is proved that the elections have been held contrary to the bye-laws, the election can be set aside.

5. *Maniklal Madanlal Lahoti v. Tukaram Ganpat Tehore* 1978 Mh.L.J. 316 is relied upon by Adv. S.D. Paliwal to show that above view is not correct and the analogy has been extended even to other enactments which do not contain express provision requiring the election petitioner to prove that result of impugned election has been materially affected. This case is decided by Division Bench and considers challenge to the election of the Municipal Council, a local authority under Maharashtra Municipalities Act, 1965. In para 7, Division Bench observed that:

7. In our opinion, having regard to the facts and circumstances of this case if it is held that as result of alleged non-compliance or irregularity the result of the election has not been materially affected, then obviously the petitioner cannot succeed in this election petition...result of the election is materially affected.

9. By now it appears to be well settled that normally in all cases of irregularity of procedure any one who challenges the result of an election has to show that alleged irregularity or even an illegality has materially affected the result of the election. ...Somalwar.

10. In this context a reference...George Fernandes. It is no doubt true that this interpretation of the Supreme Court is based upon provisions of the Representation of People Act. However, the same principle has been extended by this Court in *Eknath v. Gorakh* (cited supra) and *Kisanrao v. Shri M.L. Somalwar*, even to the enactment where a specific provision as contained in Section 100(1) (d)(iv) of the Representation of People Act has not been made. From bare reading of the basic election statute of this country or the well-established principles of election Law, it is quite clear that it is only in the case of fundamental infirmities like commission of corrupt practice, improper rejection of nomination paper, lack of basic qualification in candidate etc. that an election should be declared void. It is quite obvious that these are matters which either go to the very root of the election process or involve question of purity of election. On the other hand, unless otherwise expressly provided, so far as mere non-compliance with provisions of the Act and Rules made thereunder are

concerned, the well-established principle is that the election petitioner must show that result of the election has been materially affected. This involves salient principle that the verdict of the electorate should not be lightly set aside unless it is clear that the result of the election so far as returned candidate is concerned has been materially affected. An election is a time-consuming process involving lot of expenditure. If it is shown that the voters have been able to make their choice in a free and proper manner, then election should not be set aside on mere technicalities. Every procedural provision in the election law cannot be raised to such a high pedestal that its violation should ipso facto result in setting aside the verdict of electorate. The Court of Law charged with the duty of determining the validity of an election must lean in favour of the Will of the people. This principle appears to be firmly established in our system of Law relating to elections. At least this appears to be the intention even behind the provisions of Sub-section (11-A) of Section 21 of the Act. Therefore, in all cases where the election of returned candidate is challenged on the ground of some irregularities or illegality, the petitioner will have to show and establish that same has materially affected the result of the election.

6. The conflict in views in both judgments is apparent. Division Bench has not considered elections of a co-operative society and learned Single Judge expressly mentions that in view of Section 91 of MCS Act, dispute about election needs to be tried as any other dispute and disputant can succeed by proving only infringement of bye-laws without anything more. It is observed that it is not possible to import the concept of Clause (d) of Sub-section (1) of Section 100 of the Representation of People Act, 1951.

Consideration whether election is materially affected is also noticed in following judgments in relation to elections under MCS Act.

In *Zambar Rajaram Patil and Another Vs. The State of Maharashtra and Others*, Division Bench of this Court has used this concept as under:

10. We agree with these observations and we find that in the present matter the Co-operative Court has not only usurped the jurisdiction of the other statutory authorities but became victim of misuse of the judicial process by the respondent No. 7 and his group which was interested in electing the respondent No. 5 as a Chairman of the said institution, because the prayer made in the dispute is only to restrain the petitioners from taking part in the election of the Chairman and there is no prayer to restrain the petitioners from taking part in the election of the Vice-Chairman. It is the Presiding Officer who on the basis of this order of the Co-operative Court further prohibited the petitioners from taking part in the election of the Vice-Chairman.

However, as observed in the reported judgment as the facts as stated earlier demonstrate that it is a case of misuse of judicial process and usurping of the jurisdiction by the Co-operative Court which has ultimately resulted into materially affecting the result of the elections as a result of non-participation of

the petitioners in the said election, we are inclined to set aside the total process of the election. Therefore, the following order.

Babaji Kondaji Garad Vs. Nasik Merchants Co-operative Bank Ltd., Nasik and Others, ., Nasik shows that Hon''ble Apex Court used said concept as under to conclude that breach there was of such a nature that it vitiated entire election:

16. The provision contained in Chapter XI-A applies to election to the committees of specified societies categorised in Section 73-B. Section 144-C requires the Collector to draw an election programme and arrange for conducting the election or under his control by the Returning Officer according to the programme. Now the election programme has to be published. The programme therefore, must in order to comply with legal formality show whether any of the seats to be filled in are reserved and specify the class in whose favour reservation has been made, so as to give notice to persons eligible for contesting election to reserved seats. This becomes manifestly clear from the form prescribed for filling in the nomination paper being Form No. 2 appended to the rules. In the case of reserved seats a further declaration has to be made in the nomination form that the candidate belongs to Scheduled Castes or Scheduled Tribes or Vimukta Jati or the weaker Section candidate. And this declaration has to be signed by the candidate himself. Now therefore, the Collector, a statutory authority charged with a duty to hold election according to the Act, must specify in the election programme inter alia that there are reserved seats to be filled in by election and the class in whose favour reservation is made. This will be to notice to the members eligible for contesting election to reserved seats so that they may fill in their nomination. There is not even a whisper in the election programme whether any of the seats were reserved. The omission is glaring and fatal. As pointed out earlier, election has to be held to form the committee. Section 73 requires the Collector to hold election in accordance with the Act including Section 73-B. The failure to hold election in accordance with the Act including Section 73-B would vitiate the whole election programme from commencement till the end. It would all the more be so because the failure to hold election according to the provisions of the Act which denies an opportunity to the persons who are eligible to get elected to the reserved seats would certainly vitiate the whole election programme. One can safely conclude that the election is held in violation of Section 73-B. Therefore, in our opinion, the High Court was in error in upholding the election, which is ex facie illegal, invalid and contrary to law.

7. Looking to the above case law and application of mind therein, prima facie, I am not in position to concur with views expressed by this Court in Bhagwat Sojanaji Sonawane and Ors. v. State of Maharashtra and Ors. (supra). Challenge to election will have to be tested on same touchstone and merely because MCS Act permits such challenge u/s 91, nature of election dispute will not undergo any change. However, in order to put the controversy at rest once for all I find it appropriate to request Hon''ble Chief Justice to place the issue before larger bench. The question to be placed therefore larger bench is:

Whether the election petitioner challenging election under MCS Act on the ground of violation of law, breach of rules or bye-laws or pointing out procedural irregularities has to establish that result of election has been materially affected because of such breach or irregularities?

8. Needless to mention that, the interim order granted by this Court to continue.

4. Various judgments have been discussed in the order of reference, but it needs to be noticed that the Division Bench judgments referred to in the order are not under the provisions of the Maharashtra Co-operative Societies Act, 1960. As far as the Maniklal Madanlal Lahoti (supra) case is concerned, it is a judgment under the Maharashtra Municipalities Act and related to the election being held under those provisions. That judgment was relied upon by the petitioners to show that the concept of election being materially affected would be attracted in the case under that Act though there was no specific provision in that Act. The Court expressed the view that alleged non-compliance or irregularity should normally be coupled and petitioner should show that the election was materially affected, then alone the election would be liable to be interfered with. While in the case of Zambar Rajaram Patil and Anr. (supra), the Court even set aside the entire process of election which had resulted in affecting the election materially, on the ground that Co-operative Court has misused the judicial process and usurped the jurisdiction not vested in it.

5. The learned Single Judge of this Court, however, in the case of Bhagwat Sojanji Sonawane and Ors. (supra) had taken the view that it was not necessary for the petitioner to prove in every case that result of the election had been materially affected and only then the election could be set aside. The Court felt that it was only where statute requires that the petitioner should prove that the election was materially affected, but where the statute is silent, the petitioner cannot be called upon to prove such a fact. If there had been any infringement of bye-laws under which the elections are to be held, then the disputant is entitled to file a dispute u/s 91 and prove the infringement and in that case the election could be set aside for violation of the bye-law. This view did not find favour with the learned Single Judge in the present case and resulted in reference to the larger Bench.

6. In the present case, the dispute related to the election of the managing committee members of the Bhandara Zilla Patbandhare Shaskiya Karmachari Sahakari Pat Sanstha Limited, Bhandara. The members were elected on 14th February, 2004 and their election had been challenged before the Co-operative Court, Nagpur on different grounds including that there was no proper scrutiny of the nomination papers, their acceptance was bad, no date was given in the election programme, objection as to the declaration of polling station at Sakoli, though there was no polling station in the election programme, ballot papers were of different sizes, signatures of the voters were not obtained on the counter-foil of the ballot papers and counting of the votes was not proper. The Co-operative Court rejected four grounds out of the total 14 grounds taken by the

petitioners to challenge the election. While answering majority of the grounds in favour of the petitioners, it also found that the election was materially affected and, inter alia, recorded the finding as under:

15. As to Issue Nos. 9 and 10: It is the contention of disputants that because of different size of ballot papers and stapling of them in bunch, voters failed to exercise their votes on each ballot papers properly and blank invalid votes came to be done in large number which was materially affected the election results. It is undisputed fact that 15 ballot papers were provided to the voters stapling them in a bunch. On perusal of the ballot papers and votes casted, it is seen that the voters have casted their votes as per their choice and there is no much difference in the casted votes on big size ballot paper and small size ballot paper. But as per Rule 19 of the Election Rules of the opponent No. 2 Society, the ballot paper shall have counter file and have identical number on the ballot paper of the counter file. It shall also bear the seal of constituency number on its; upper side and on the back of the ballot paper at upper right corner, there shall be a Seal of region number. On perusal of the ballot papers, it is seen that the ballot papers does not bear the numbers. It is also admitted by the witnesses of opponents that there was no counter file to the ballot papers. Signatures of votes have not been taken on the counter files as there were no counter files to the ballot papers. Thus, the ballot papers provided for voting in the election in dispute are contrary to the Rule 19 of the election rules of the opponent No. 2 society. Therefore, there is possibility of personation as alleged by the disputants, though this fact is not strictly provided by the disputants. As the ballot papers are not in accordance with the Election Rules and signatures of voters have not been taken on the counter files of ballot papers, this fact in itself invalidates the votes casted....

17. ...That if there has been any infringement of the bye-laws under which the election are to be held then the disputant is entitled to file the dispute u/s 91 and prove the infringement of the bye-laws. If it is proved that the elections have been held contrary to the bye-laws, the election can be set aside. In the case before hand, the disputants; have proved that the opponent No. 1 Election Officer has infringed the Election Rules of the opponent No. 2 society, while rejection of the nomination papers of some of the candidates, creating new polling booth at Sakoli and preparing ballot papers, contrary to the Election Rules, therefore as per the above cited authority though it is not proved factually that the election from the other constituencies except O.B.C. Constituency have been affected as the elections have been held contrary to the election rules as per the above cited authority the election in dispute needs to be set aside. Hence, the election needs to be declared illegal and required to be set aside. Hence, I answer Issue Nos. 1 and 14 in affirmative. Issue No. 15 accordingly in affirmative and proceed to pass the following award.

After recording the above view, the Co-operative Court set aside the election of the respondents to the Managing Committee of the Society to be illegal.

7. The election dispute that was raised by the petitioners falls well within the ambit and scope of Section 91 of the Act. There can be no justification in law for prescribing limitations which in fact had not been legislatively provided by the framers of the law. Any dispute touching the election of the committee or its officers, etc., is wide enough to take into its ambit all kind of disputes relating to election of the committees of the society where they are relatable to violation of legal provisions, like, sections, bye-laws or rules or irregularities which patently are not acceptable in a fair election process. Where it is indicated that the provisions of Section 91 are clear in their terms and there is hardly any scope for adding or subtracting explanations of any kind from the language of these provisions.

In the entire scheme of the Act and particularly Section 91 of the Act does not provide for any grounds or criteria which can be adopted by the Cooperative Court as a precept to deal with the election dispute raised before it in accordance with law. In other words, the power or jurisdiction vested in the Cooperative Court is very wide and, therefore, cannot be curtailed or circumscribed by limitations which are not intended by the legislature. The Co-operative Court will have to decide every case on its facts.

8. Jurisdiction vested in the Co-operative Court in substance; is very wide but has a limited application to the persons and affairs spelt out in the provision. For example, in the case of Chairman and Vice-Chairman of the Managing Committee of the specified society, the Co-operative Court will have no jurisdiction to entertain an election petition as it would squarely fall within the jurisdiction of the Commissioner u/s 144-T of the Act as held in the case of Zambar Rajaram Patil and Another Vs. The State of Maharashtra and Others, . Absence of express statutory provision in relation to election being materially affected per se would not make application of the concept alien to Co-operative Court while determining the election dispute in exercise of its powers u/s 91 of the Act. This concept would have to be applied in its proper perspective and with due care. Uniform application de hors the nature of the violation alleged to have been committed can hardly be spelt out as a principle of law. In the case of Babaji Kondaji Garad Vs. Nasik Merchants Co-operative Bank Ltd., Nasik and Others, , the Supreme Court took the view that rules have a status of subsidiary but bye-law of the Co-operative Society can at best have the status of Article of Association of the company governed by the Companies Act, 1956. They are not law and are incapable of being treated as such. However, society is bound by its bye-laws but in case of conflict, the provisions of the statute prevail. Section 73 of the Act makes it mandatory that Managing Committee of the Society has to be constituted not only in accordance with the Act and the Rules but also in accordance with the Bye-laws. Anything done or decision taken not in conformity with the bye-laws will clearly result in affecting the constitution of the Managing Committee and infraction or violation of the provisions of Section 73. Of course, these observations of the Division Bench of this Court in this case, prima facie, looked to be at variance of the judgment of the Supreme Court in the case of Co-

operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, but in fact, when they are examined closely and harmoniously, there is no conflict between the two. The rules must get precedence over bye-laws and enforceability of bye-laws may not be equated to the statutory law but at the same time, they continued to bind the society and its members and they have no right to violate the same. Business of the society essentially, thus, may be carried out in consonance with the bye-laws. In the case of Chapadgaon Vividh Karyakari Seva Sahakari Society Ltd. v. Collector 1989 Mh.L.J. 872, the Division Bench of this Court even took a view that wrong exclusion of a member of a society from participating in the election to committee has a right to maintain election petition despite the language of Rule 74 which provides challenge to election by a voter or a candidate before the Commissioner. In the case of Shri Banwari Dass Vs. Shri Sumer Chand and Others, , the Supreme Court clearly stated the law that an election contest is not an action at law or a suit in equity but a purely statutory proceeding unknown to common law and Court possesses no common law powers. Its procedure, powers and scope of remedy has to be controlled statutorily and in accordance with those provisions. In an election of the Managing Committee, preparation of electoral roll is intermediate stage and once the election process is set in motion, the general principle that under Article 226, the High Court would not interfere and leave the parties to follow the statutory provision of invoking the election process or election procedure as the case may be. - Shri Sant Sadguru Janardhan Swami Sahakari Dugdha Utpadak Sanstha and Anr. v. State of Maharashtra 2002(1) Mh.L.J. 659.

9. Admittedly, there is no provision in the Act pari materia to Section 100(1)(d) and the other provisions of Representation of Peoples Act, 1951 which require that the Co-operative Court should examine the concept of "election being materially affected" by the irregularities, illegalities or other statutory violations. Absence of such provision in the present Act indicates the mind of the legislature not to subject all irregularities, illegalities or violation tactics to the concept of election being "materially affected". It is the settled canon of statutory interpretation that the principle of plain interpretation should be applied where the language of the provision is clear and rather unambiguous. It will be impermissible for the Court to provide any strait-jacket formula as panacea to the various situations that may arise in relation to any dispute of election to committee or notified society. The Court, at best, can only lay down certain general percepts which would help the co-operative Court and the High Court in dealing with the cases of the present kind or such other cases relating to matters of election. Section 91 of the Act provides for any dispute touching the election of the committee etc. and also between whom the dispute should be and what does the dispute includes. This Section either by specific expression or by necessary implication does not touch upon or prescribe any criteria/parameters which may be considered or adopted by the co-operative Court while dealing with the disputes relating to the election. This is the grey area left by the legislature and would require the lacunae to be supplied by judicial interpretation but while

supplying such a lacunae, the Court has to ensure the legislative character, object and methodology contemplated under the statutory provision is not altered or violated by such process.

10. The language of Section 91 being simple and unambiguous does not require the Court to add or subtract the words therefrom or give it a meaning which may not be in consonance with the object of the legislation. Reference can be made usefully to a Division Bench judgment of this Court in the case of Miten Mohota (Goidani) and Another Vs. Union of India (UOI), , where this Court held as under:

14 ...This provision is intended to liberalise the provisions relating to divorce. Being aware of the existing provisions, report of the Law Commission and the need of the society still the Legislature chose not to add any proviso granting relaxation to the conditions imposed u/s 13-B(1) and/or 13-B(2). It would not be permissible for the Court to read the expression "living separately for a period of one year or more" as by adding the word "may" or for such period as the Court in its discretion may consider appropriate. We shall shortly proceed to discuss the purpose of introduction of Section 13-B and its object. It is a settled rule of interpretation that Court while interpreting the statutory provisions would not add or subtract the words from the Section nor would it give meaning to the language of the Section other than what is intended on the plain reading of the provision. Reference can be made to the judgment of the Supreme Court in Smt. Vijayalakshamma and Another Vs. B.T. Shankar, where the Court held as under:

11. The laws relating to Municipalities, Gram Panchayats and even with regard to non-specified and non-notified societies do not contain provisions alike the Representation of Peoples Act. However, Rule 81 of the Maharashtra Specified Co-operative Societies Election to Committee Rules, 1971 (hereinafter referred to as "the Rules") is a provision *pari materia* to Section 100(1)(d) of the Representation of Peoples Act. The provisions of the Maharashtra Co-operative Societies Act, 1960, are primary provisions relating to process of election in exercise of powers conferred under Sections 144-F, 144-L and 144-X and their different Sub-sections read with Sub-section (1) of Section 165 of the Act, the State Government of Maharashtra in exercise of its power had framed the said Rules to regulate the process of election to the different societies. However, there are hardly any specific provisions which deal with process of election or ground on which an election can be set aside in the case of a non-specified or non-notified society. The general adjudicative powers are vested in the Tribunal in terms of Section 91 which is expected to adopt its own procedure. Thus, the provisions under other laws or even under these provisions cannot be applied to the non-specified or non-notified societies in strict sensu. The aggrieved person has to approach the Tribunal in accordance with the provisions of the Sections of the Act itself. In the present case, we are concerned with the non-specified or non-notified society. Elections to the Managing Committee were declared on 14th February, 2004 and 17 Managing Committee members were to be elected, 11 under the general category and remaining under different reserved categories.

The votes were counted on 15th October, 2004 and results were declared. 18 disputants had challenged the elections of the elected members on various grounds including the irregularities in election process as well as actual holding of election. It was also the ground taken that votes were not counted and even result of the election was changed. Thus, according to them, elections suffered from irregularities as well as illegalities. Viewing it from a larger perspective, there could be two classes of cases in election petition; (i) where there is clear violation of provisions of the Act, the Rules and the Bye-laws having a mandatory character. Such class of cases may even include unfair practices like corrupt practices etc. and (ii) where irregularities or improper practices are committed and they are not in conformity with the rules or bye-laws having non-mandatory character and are directory in nature. This classification would have to be determined by the Co-operative Court depending on the facts and circumstances of the case and in accordance with law. In the prior class of cases, it may not be absolutely necessary for the Court to apply the principle of election being materially affected while in the later class of cases, the application of such principle may be essential. In either of these class of cases, the purpose is that election should be "pure and fair". Fairness is relatable to procedure while pureness is to be tested in every facet of election process. This is the true doctrine applicable to any democratic process of election. Whatever be the status of the bye-laws, their sanctity cannot be entirely wiped out for lack of their statutory character. The object of the Act, Rules and the Bye-laws, cumulatively read, is to ensure proper and fair election and not to permit this to subserve illegalities or irregularities. Mainly such questions need to be determined by the Co-operative Court in exercise of its vast jurisdiction. It being a Court of specific jurisdiction, is expected to deal with the factual matrix and legal disputes raised in an election petition and in consonance with the settled principles of law. In the present case, the disputant had raised various objections and alleged that there is violation of rules and bye-laws.

12. Various grounds of challenge taken by the petitioner (disputant) have already been stated by us above. As per the findings of the Co-operative Court, majority of the grounds taken were correct and they had materially affected the result of the election. Once such a finding is found to be in consonance with the settled principles of law, hardly anything remains to be discussed. Statements of object and reasons of an Act are not of great help in interpreting clear and unambiguous words or language of the provision. However, they are relevant considerations wherever there is lacunae in statutory provisions. The object of the said Act was to pay attention to the growing role of co-operative movement. The growing diversification of activities through the co-operative movement, thus, had caused certain attendant problems in respect of the conduct of the business activities and democratic set up in a co-operative society. With an intent to streamline the working of co-operative societies and to provide appropriate and fair election process, the said Act was enacted and subsequently, amended. Despite language of Section 91 even a general concept that election

process has to be pure and fair and election disputes need to be adjudicated upon expeditiously can hardly be disputed. The concept of pure and fair election will take into its ambit the principle of election being materially affected, of course, depending upon the facts and circumstances of a given case. Wherever there is violation of a substantive and/or mandatory provision which affects the very root of the election process, it cannot be said that in such circumstances, it would be obligatory for the disputant or petitioner to prove that election was materially affected. For example, where a member whose nomination has been accepted was disqualified from membership prior to filing of nomination, such a member had contested the election and succeeded. A person may file his nomination to contest the election as an associate member and whose name does not stand in the share certificate (Bye-law 18) or had earned disqualification in terms of Rule 19(2) or the relevant bye-laws. In other words, violation of such statutory provisions, rules and bye-laws which in their contention are mandatory and which go to the very root of the election process, it would not be necessary, in our opinion, that the candidate should prove that in addition to such violation, the election result was also materially affected. Under the scheme of the said Act, it is not within the powers of anybody to condone non-compliance of such mandatory provisions. Thus, these are not the cases where a discretion is vested with any forum to permit alteration of a status or a situation to entry period. While in other cases where there are irregularities or practices adopted which do not violate mandatory provisions and are directory and procedural in nature it only amounts to irregularities, in those cases, it will be appropriate for the candidate to show to the satisfaction of the co-operative Court that even election result was materially affected by such irregularities. For example, as alleged by the disputant, there was improper voting at one of the booths and, thus, the validity of the entire election process was questioned. In that event, the possibility of the fact that even if all votes expected to be polled in that booth are taken against the succeeded candidate, still it may not affect the result of the election.

13. As far as the case of Zambar Rajaram Patil is concerned, it has no bearing on the matters in controversy in the present case. On any accepted norms of ratio decidendi, the judgment is not of much avail to either of the parties before the Court. In that case, the Court had stated that Co-operative Courts had no jurisdiction to entertain any dispute relating to election of Chairman, Vice-Chairman and/or the Managing Committee of the specified societies specified u/s 73G of the Act. In Maniklal Lahoti 's case, another Division Bench of this Court, while dealing with the election dispute under the Maharashtra Municipalities Act, had taken the view that the applicant must show in such cases that result of the election had been materially affected, even if there was irregularity or even illegality. Firstly, the provisions of law discussed in that judgment were of the Maharashtra Municipalities Act which are not *pari materia* to the provisions of the Maharashtra Co-operative Societies Act. In that judgment, the Division Bench, while referring to the judgment of the Supreme Court in the case of Mahadeo Vs.

Babu Udai Pratap Singh and Others, , where the Supreme Court had taken the view that in face of Section 100(1)(d)(iv) of the Act, it was required of the applicant to prove non-compliance as well as that the election had been materially affected. Secondly, in the case of Maniklal, the Court was concerned with the objections with regard to ballot papers and counting of votes, etc. The scheme stated under Sections 12, 21 and 22 of the Maharashtra Municipalities Act provides a complete framework relating to election process, corrupt practices and other matters relating thereto which would or would not be grounds for setting aside an election. In fact, in terms of Section 21(11-A), even a restriction is placed upon the Judge that he would not set aside the election, if validity of election was called in question on the ground of error made by the Officer charged and carrying out the provisions in that sub-section. In other words, Maniklal's judgment of the Division Bench of this Court cannot be said to be a precedent in relation to the question referred to the larger Bench, The view taken by the learned Single Judge in the case of Bhagwat Sonawane (supra) holding that where there is infringement of bye-laws and the election was contrary to such bye-laws, it would not be necessary to prove that the election had been materially affected and the election could be set aside even if the applicant failed to make such allegation and prove the same. This view also cannot be taken as entirely correct exposition of law. It will always and materially depend upon the facts and circumstances of a given case while particularly keeping in mind whether the breach is of mandatory provision or a regulatory provision. If it was a mere irregularity in relation to a directive provision of bye-law, the Co-operative Court may have to examine the effect of such breach on the election in question. The provisions of Section 91 of the Act are attracted in election disputes other than the election of Committees of the Specified Societies including its officers. The disputes which are referable are obviously with the exception of provisions of Section 144-T of the Act where the election disputes are referable only to the Commissioner in accordance with law. Rule 81 of the Rules provides the grounds for declaring the election to be void where the Commissioner is of the opinion that the grounds specified under Rule 81 are satisfied. But there are no such provisions regulating the exercise of jurisdiction and circumscribing the discretion of the Co-operative Court exercising its powers u/s 91 of the Act.

14. It is thus not possible either to accept a complete stringent approach that in every case it is obligatory upon the applicant or the disputant to prove that the result of the election has been materially affected. Equally unjustifiable would be the approach that in every case the applicant should prove that election has been materially affected. A balanced approach is required to be adopted by the Co-operative Court with reference to the facts of a given case. We have already noticed that it is neither permissible nor possible to state a strait-jacket formula which shall universally be applicable to all cases particularly in absence of any specific or implied legislative provision or intent. The Co-operative Court is expected to exercise its jurisdiction and discretion in accordance with the settled

canons of election laws, keeping in view the fact that it has a specified or limited jurisdiction. The paramount consideration being, whether the violation complained of is that of a mandatory provision, rule or bye-laws or an irregularity which are of directory or procedural nature. Wherever mandatory provision or bye-law has been violated or the practices adopted are of such nature which would infringe the very basic concept of pure and fair election, it may not be necessary for the disputant to show that the result of the election has been materially affected. In other cases it may be necessary to show that besides the irregularity or objectionable practice adopted by the elected candidate, the result of the election has been materially affected.

15. In view of our above discussion, we answer the framed question as follows:

It is neither possible nor permissible to set strait-jacket formula which will be universally applicable to all the Election Petitions filed before the Co-operative Court. The Co-operative Court would have to examine the application of the principles enunciated herein in light of the facts and circumstances of a given case. Of course, without hesitation we would say that wherever mandatory provision or bye-law has been violated or the practices adopted are of such nature which would infringe the very basic concept of pure and fair election, it may not be necessary for the disputant to show that the result of the election has been materially affected. In other cases it may be necessary to show that besides the irregularity or objectionable practice adopted by the elected candidate, the result of the election has been materially affected.

16. The reference is answered accordingly as above. The petitions be listed before the appropriate Bench for disposal in accordance with law.