

(1981) 11 BOM CK 0003

In the Bombay High Court

Case No : Writ Petition No. 1049 of 1981

Krishnaran Anandran Dhayagude and Others

APPELLANT

Vs

Khandala Taluka Shetkari Sahakari Kharedi Vikri Sangh Ltd.,
Lonand and Others

RESPONDENT

Date of Decision : 10-11-1981

Acts Referred:

General Clauses Act, 1897 — Section 13

Citation : AIR 1982 Bom 410

Hon'ble Judges : Dharmadhikari, J; Bhonsale, J

Bench : Division Bench

Advocate : S.A. Deshmukh, for the Appellant; A.V. Savant and R. D. Rane, Asstt. Govt. Pleader, for the Respondent

Judgement

Bhonsale, J.—This petition is filed by the petitioners under Arts, 226 and 227 of the Constitution of India challenging two order dated Dec., 26, 1979 and Apr., 19, 1980 passed by the Additional Commissioner, Pune Division, Pune in Election Commissioner, Pune Division, Pune in Election Petition No. 17/79. The petitioners contested the election to the Board of Directors of respondent No. 1, i.e, Khandala Taluka Shetkari Sahakari Kharedi Vikri Sangh Ltd., Lonand, District Satara. The respondents Nos. 3,4 and 8 to 12 are the returned candidates in the election the results of which were declared on Nov. 21, 1978. The respondent No. 1 is a Specified Society and as per provisions of S. 73-G of the Moharashtra Co-operation Societies Act. 1960. It is the Collector of District who holds and conducts the election in a manner laid down in Chap. XI-A of the said Act.

2. The petitioners filed Election Petition No. 17/79 before the respondent No. 13, i.e the Additional Commissioner, Pune Division, Pune. The Board of Directors consists of 7 Directors (A Class) representing the various Co-operative Societies in the jurisdiction of respondents Nos. 1, and 2 Directors (B Class) representing agriculturists members. The main grounds on which the election of the respondents was challenged were as follows:

(I) That the nomination paper of representative of one Dhavadwadi Society was wrongly accepted as a Society has not purchased share of Rs. 1,000/- from the respondent No. 1 as per the Bye-law No. 30-(B) of the respondent No. 1. The representative of Dhavadwadi Society was, therefore, disqualified from contesting the election and this wrong acceptance of the nomination paper had materially affected the result of the election. The election was, therefore, illegal and deserved to be set aside:

(ii) At the time of counting of the votes, the Returning Officer respondent No. 2 to this petition, wrongly treated ballot papers as valid votes although on each of them the marking was done in favour of six candidates instead of 7 candidates (who) were to be returned in election from "A" group constituency of Directors. This kind of defective voting had materially affected the election.

(iii) Election of returned candidate-respondent No. 8, was illegal inasmuch as Dhavadwadi Society which he represented as candidate was not cleared under a proper audit report by an auditor and as such the election of the said respondent No. 8 is illegal and deserves to be set aside:

(iv) The returned candidates did not render proper accounts relating to the expenses incurred in election after the election to the Collector, Satara, and therefore, on the count also the election deserves to be set aside.

The petitioners also prayed that the entire election, having been illegal, void and vitiated ab initio for the reasons stated in the petition, should be declared illegal and it be set aside and further the petitioners be declared as election, alternatively fresh elections to the Board of Directors of respondent No. 1, may be ordered.

3. The notices of this petition were served on the respondents. The returned candidates submitted written statements and apart from denying all the allegations in the petition on merits, contended that the petitioners on merits, contended that the petitioners being representatives of the respective societies, has no legal right to file the petition in the absence of authority delegated to them by the concerned societies and on the ground alone the petition deserved to be dismissed placing reliance on the provisions of Rule 74 of the Maharashtra Specified Co-operative Societies (Elections to Committees) Rules 1971 (hereinafter for the sake of brevity described as "Election Rules:") It was further contended by the returned candidates that the nominee or delegate of the society had no legal right to file the election petition. The further denied the allegations on the point of disqualification as well as denied the other contentions raised in the petition.

4. On these rival contentions, the learned respondent No. 3 i.e., Additional commissioner framed necessary issues and the parties were called upon to his their documents and list of witnesses in support of their claims. However, on the adjourned date, i.e., on Dec., 20. 1979 which was fixed for evidence of the petitioners, all the four petitioners as well as their advocate, remained absent.

There was no intimation to the respondent No. 13 regarding their inability to remain present for hearing. From the record, it appears that respondent No. 13 waited until 4.40 P.M. on that day expecting some kind of intimation from petitioners of their advocate. As the petitioners and their advocate failed to present themselves before the Commissioner, the Commissioner passed the following order.

"None for the petitioners. There is no information from either of the 4 petitioners regarding their absence for today's hearing.

Respondents Nos. 1, 3, 4, 8, 9, 10, 11 and 12 by Shri S. J. Khurjekar, Advocate

The case was fixed for evidence of petitioners. But the petitioners remained absent shir v. M. Chimbalkar, Advocate for the petitioners is also absent - although the names of all the petitioners were called out and I waited for their appearance or the appearance of their Advocate till 4.40 p.m. today, but no one has turned up so far not is there any information regarding their absence or inability to remain present for today's hearing. On account of default in appearance on the part of the petitioners I close the petition for final orders, For orders.

C. F. 16-12-1979.

Sd/- (M.R. Kher) Addl. Commissioner, pune Dn. Pune."

5. From the record, it does appear that the petitioners had sent a telegram on Dec. 20, 1979 itself informing respondent No. 13 that they would not be able to attend the proceedings. This telegram was received by the office of the respondent No. 13 on Dec. 21, 1979, However, the learned respondent No. 13 dismissed the election petition by his order dated Dec. 26. 1979 However, the learned respondent No. 13 dismissed the election petition by his order dated Dec. 26. 1979 as refereed to above. In addition, the respondent No. 13 further observed that the petitioner did not want to avail the opportunity and wanted to delay the trial of this petition by remaining absent without any sufficient cause. He further observed that out of four petitioners. Only one petitioner. Viz. Shri Madhav Binkaji Dhaygude has credited security deposits of Rs. 30/- on 19-1-1979. According to the interpretation placed by the learned respondent No. 14 on the provisions of S. 144-U of Maharashtra Cooperative Societies Act, there could not be one deposit of Rs. 500/- in support of election petition in respect of four petitions. According to the learned additional Commissioner, the provisions of Section 144-T of the said Act are mandatory and unless each petitioner deposits security deposit of Rs. 500/- at the time of Presentation of election petition, the petition shall be summarily dismissed.

6. This defect of non-compliance of mandatory provisions of S. 144-T and 144-U of the said Act against the remaining three petitioners, is a defect of serious nature by reason of which the petition deserves to be dismissed.

7. The learned Additional Commissioner, therefore, by his order dated Dec., 26, 1979 dismissed the election petition as not maintainable and further directed that the security deposit of Rs. 500/- made by the petitioner Shri M. B. Dhayagude shall be forfeited to the government. It is further directed that parties to bear their own costs.

8. The petitioners realised that their petition was dismissed for non-appearance and, therefore, they filed a restoration application dated Jan. 9, 1980 before the respondent No. 13. In this application several reasons were assigned by the petitioners as to why they were absent on Dec., 20, 1979. The main reason given by the petitioners was that there was understanding between themselves and the returned candidates to ask for adjournment of the hearing of the petition fixed on 20-12-1979. Both the parties were busy in canvassing in the parliamentary elections which were to be held in the first week of January. It was further stated that since the returned candidates had consented to such an arrangement, petitioners sent a telegram on the same day i.e., on Dec. 20, 1979 for adjournment. It was also stated in the said petition for restoration that as both the parties had decided amongst themselves to ask for adjournment, the petitioners had informed their advocate. Accordingly, they did not make separate application praying that the petition should be restored and heard on merits. Notices of this restoration petition were served on the returned candidates - respondents to this petition. As there were some doubts as to whether this petition amounted to review of the earlier order passed by the respondent No. 13 or was one for setting aside ex parte order passed by the respondent no. 13 by reason of wilful default on the part of the petitioners in regard to their appearance on the day fixed i.e. on Dec. 20, 1979 the learned. Additional Commissioner heard the advocate for the petitioners on Mar, 4, 1980. The advocate for the petitioners submitted that this was an application for restoration of the petition as the Court order dated Dec. 26 1979 was ex parte against the petitioners who wanted the respondent No 13 to hear the petition on merits. Accordingly the learned Assistant Additional Commissioner directed notices to be issued to the respondents. The respondents thereafter filed the reply and ultimately (sic) heard the arguments of both the sides on Apr 19, 1980 and rejected the petitioners application dated Jan 19, 1980 for restoration of their election petition No. 17/79

9. In his order, the learned Additional Commissioner has recorded that the respondents filed written statement and denied that there was any arrangement between the parties to seek the adjournment on Dec. 20, 1979. The returned candidates had further denied they had consented to the prayer of the the petitioners to restore the election petition. The learned Additional Commissioners observed that the reasons for restoration were not stall convening apart from the fact that the respondents had categorically denied the contentions of the petitioners in support of their restoration application. He also reiterated his reasoning contained in earlier order that petition was liable to be dismissed on the ground that only one of the four petitioners had deposited the security

amount of Rs. 500/- and on the ground alone without going into the merits the petition was liable to be dismissed. According to the learned Additional Commissioner, as the reasons stated in the application dated Jan, 19, 1980 were an afterthought they merited no consideration and therefore no sufficient or good reason was given for wilful default in appearance on Dec., 20, 1979 which was specifically fixed for recording evidence of the petitioner after a number of other earlier adjournments. In this view, which the learned Additional Commissioner chose to adopt, he rejected the petitioners restoration application by his order which have been challenged by the petitioners in the present petition filed under Arts. 226 and 227 of the contest praying that these orders be set aside and the Election Petition No. 17/79 be restored and heard on merits.

10. The learned counsel for the petitioners Shri. S. A. Deshmukh urged three grounds before as in support of the petition. Firstly, his main contention was that in the absence of any provision in the said Act or in the Rules framed thereunder the learned Additional Commissioner respondent No. 12 before whom the election petition was filed under the provisions of S. 144-T of the said Act had no jurisdiction to dismiss the election petition for non-appearance or for default, Secondly he contended that the order passed by the learned Additional Commissioner for failing security deposit of Rs. 500/- on behalf of the petitioners was unwarranted. Unjust and without any authority of law. Thirdly, he submitted that if the Rojnama was taken into consideration the petitioners were not to be blamed for several adjournments and the returned candidates had in face an understanding with the petitioners to ask for adjournment of the hearing of the petition which was fixed on Dec. 26, 1979 as both the parties were busy in canvassing of their respective parliamentary candidates contesting the parliamentary elections to be held in the first week of January 1980. The petitioners belong to the party of Congress (1), whereas the respondents - returned Candidates belong to the party of Congress (1) whereas the respondents - returned candidates belong to the civil Congress i.e. Congress (U) It was, therefore, agreed between the parties to have the hearing of the parliamentary elections were declared; and therefore, no formal application was made before the learned Additional Commissioner.

11. As against this the learned counsel Shri A. V. Savant appearing on behalf of the returned candidates has submitted that in law the respondents which was Election Tribunal - Additional Commissioner before whom the election petition was to be filed, had the powers to dismiss the election petition for non-appearance or for default. According to him, though there was no provision in the Statute or the Rules, placing reliance on several decisions of various High Courts. He contended, that the Tribunal had the power to dismiss such election petition for default.

12. The first question that falls for determination in this petition is whether the respondent No. 13 - Additional Commissioner could or could not have dismissed the election petition No. 17/79 for non-appearance or default of the petitioners or

their advocate now admittedly, the respondent No. 1 is a specified society within the meaning of S. 73(v) of the said Act and Chap. XI_A governs the election to such specified societies. Section 72(U) reads as follows:-

"The election of the member of the committees (and the officers by the committed) of the societies of the categories mentioned below shall be subject to the provisions of Chapter XI_A and shall be conducted in the manner laid down by or under under that Chapter.

13. There is no dispute before this Court that respondent No. 1 is such a specified society. Chapter IX-A of the said Act provides for elections of committees and officers of certain societies. The said Chap. XI-A is inserted in the Act by Mah. Act 27 of 1969. The elections of such societies are to be held by the Collector and shall be conducted under his control by such returning officer as may be appointed by him in that behalf. Any dispute relating do election has to be referred to the Commissioner of the Division in which such an election is held or to an officer not below the rank of Additional Commissioner of a division referred to as a specified officer according to the provisions of S. 144-T. An election petition has to be filed by the aggrieved party within the period of two mouths from the date of declaration of the results and a petitioner presenting an Election Petition under S. 144-T shall pay a deposit not exceeding Rs. 500/- Unless the petitioner deposits the said amount, the petition shall be summarily dismissed. Subject to such condition as may be prescribed at the time of deciding the petition. The Commissioner shall assess the costs of the hearing of the petition and shall require the petitioner or the respondents or both as the case may be, to defray the whole or in such proportion as he thinks fit, the costs of the petition. Including the deposit so made. The Commissioner is further required to credit to Government such sum as he assesses as the costs to Government of hearing the petition. The powers of the Commissioner under this Chapter XI_A in conducting the election patition are to be found in S. 144-T itself as well as in ss. 144-S. 144-U and 144-W and in Election Rules from R. 73 to R. 94 u/s 144-T sub-sec. (3), in exercising functions conferred upon him under chap. XI-A, the specified officer shall have the same power as vested in A Court in respect of -

- (a) proof of facts by affidavit;
- (b) summoning and enforcing the attendance of any persons and examining this on path:
- (c) compelling discovery or the production of documents; and
- (d) issuing commissions for the examination of witnesses.

Under sub-sec, (4) of the said section such election petitions shall be heard and disposed of by the specified officer as expeditiously as possible ans the order made by the specified officer on such petition shall be final and conclusive. In order to appreciate these rival contentions that such specified officer as

described in s. 144-T and other has no jurisdiction or is not empowered under the Statute as well as Rules to dismiss the election petition for non-appearance or for default, we have to appreciate the character of the powers conferred on the Additional Commissioner or other Specified officer under the provisions of S. 144-T itself. In sub-sec (3) of the said section, he has been conferred with the same powers as are vested in the Court itself in respect of items mentioned therein. That, however, in our opinion does not detract from incidental powers which Court possesses. If the Commissioner or the specified Officer under S. 144-T is vested and empowered to exercise certain powers of the Court. It follows that all such incidental and ancillary powers which a Court is empowered to exercise as is referred to in sub-sec (3) of S. 144-T can also be exercised by the Commissioner or the Specified Officer. What is contended before us is that there is no provision either in the Act or in the Rules framed thereunder to confer such power on the Commissioner or the specified officer as to dismiss the petition for non-appearance or for default. The learned Additional Commissioner at one stage wanted to find out whether the application presented by the petitioner on Jan., 19. 1980 was an application for review or merely an application for setting aside an ex parte decision. There is a necessary distinction to be drawn between an application for review and application for setting aside an ex parte award. In this context, the petitioner contended that as there was no evidence led before the Commissioner in respect of the absence of any provisions in the Statute or the Rules there is power to set aside an ex parte Award.

14. It is true that there are no provisions as stated above either under the Maharashtra Co-operative Societies Act or under the Rules framed thereunder to dismiss the petition for non-appearance or default. However, as observed by the Supreme Court in *Grindlays Bank Ltd v. Central Government Industrial Tribunal* AIR 181 Sc 606 that it is a well known rule or statutory construction that a Tribunal or bod should be considered to be endowed with such ancillary or incidental powers as are necessary to discharge its functions effectively for the purpose of doing justice between the parties. In the present case. If the entire spectrum of powers vested in the Additional Commissioner or the Specified Officer in conducting the election petitions is taken into account, we are of the view that the said Commissioner or the Specified Officer should be considered as invested with such incidental or ancillary powers and though there is no positive provision for dismissing election petition for non-appearance or default, there is neither an indication in the Statute nor Rules to the contrary. There is no statutory prohibition for dismissing the election petition for non-appearance or for default. On the contrary, the Commissioner or Specified Officer has been specifically conferred with powers under the CPC for limited purpose. For effectively discharging the duty of deciding the election petition, in our opinion, the incidental and ancillary powers can also be exercised by the Commissioner or the Specified Officer under the provisions of S. 144-T and other sections and relevant rules. It cannot be denied that the Commissioner or the Specified Officer. Apart from specific powers conferred as are vested in the Court, has in

deciding the election petition all the trappings of the Court and there could be no doubt that they exercise quasi-judicial in nature have the duty to determine objectively the matters referred to them under S. 144-T of the said Act and have to exercise their discretion in judicial manner without caprice and according to the general principles of law and Rules of natural justies. In our view, therefore even in absence of specific provisions under the Act and the Rules, the Commissioner or specified Officer u/s 144-T of the said act has the power to dismiss the election petition for non-appearance of default, It necessarily follows that this power or dismissal for non-appearance or default. It necessarily follows that this power of dismissal for non-appearance of for default also implies a power of restoration of such dismissed election petition.

15. We are fortified in the view we take regarding these powers of the Commissioner or the specified Officer under S. 144-T of the said Act and from the several reported decisions under the provisions of Representation of the People Act (1951) it would appear that the respondent No. 13 herein i.e. Election Tribunal (in this case Additional Commissioner or Specified Officer) certainly will have power to dismiss the election petition for default. Before we go to the several other decisions of various High Court this point, we may refer to the decision of the Court thought under the provisions of Rent Court Order reported in Diwalibai Damjibhai Bhatti and Others Vs. Jaikumar Gopaldas Jain and Others, ., Biwalibai v. Jaikumar. This was a case under the provisions of S. 13(3) (I) and (ii) of the Rent Control Order. After servant adjournments, on the date fixed for evidence, both the petitioners and counsel remained absent. The Rent Controller therefore, closed the case of orders. In subsequent applications filed for setting aside the ex parte order, the question arose whether such an application filed for setting aside the ex parte order, the question arose whether such an application for setting aside ex parte order was or was nor tenable in law. This was raised as a preliminary objection on behalf of the landlords. The Rent Controller had observed that the reasons given by the petitioners for their absence have hardly any justification and it is nothing but a case of negligence and law could not come to help such parties who are negligent. When the said decision was challenged before the High Court, the learned single judge of this Court was of the opinion that the jurisdiction to dismiss an application for default of appearance or to proceed ex parte against a party who fails to enter appearance is implicit in the jurisdiction to entertain and adjudicate upon the claims made before it by the parties in proceedings under the Rent Control Order. This jurisdiction is not traceable to its inherent powers but is implicit in the power to decide the case itself. If there is a power to decide the case itself. If there is a power to decide the case itself. If there is a power to decide the case itself. If there is a power to dismiss an application for non-appearance of the applicant, it hardly needs to be emphasised to point our that there is a co-ordinate power to proceed exparte against a party who fails to appear, but this power to dismiss in default or to proceeds to be emphasised to point out that there is a co-ordinate power to proceed exparte against a party who fails to appear, but this power to

dismiss in default or to proceed ex parte also implies equally a duty to restore an application dismissed for default or to set aside ex parte order if the defaulting party satisfies the authority that there was good cause for non-appearance. It is, therefore, clear that a Tribunal or Body which is required to act quasi-judicially has incidental powers apart from those which are specifically conferred on it. Such incidental or ancillary powers to dismiss for non-appearance, and therefore, power to restore dismissed petition also. Power to restore dismissed petition also. This power though ancillary and incidental would appear to us as since consonant to any judicial procedure which under the act of the Rules framed thereunder is required to adjudicate upon disputes between the parties and this is a necessary rule of procedure that powers should vest during the proceedings of the Commissioner or the Specified Officer either to dismiss in default of appearance of a party or to proceed ex parte against the defaulting party.

16. The Supreme Court as far back as in the case of Dr. Sushila Balraj v. Arundendu Bhushan. 1962 Mh LJ 65 observed that granting of an adjournment was primarily a matter for the Tribunal to consider and decide in its discretion, that there was power in the Election Tribunal under the Representation of the People Act, 1951, to dismiss the petition for non-appearance in its discretionary powers. However, that power has to be exercised judicially. It was held by Gajendragadkar, C. J. Delivering the judgment for the bench confirming the finding of the High Court, that there was no substance in the argument urged by the respondent that the election Tribunal had no jurisdiction to dismiss the petition for non-prosecution. The learned Chief Justice also observed that in considering the scheme of the Representation of the People Act. What was to be borne in mind is that the election petition must be borne in mind is that the election petition must be tried as expeditiously as possible. It is pertinent to note at this stage that sub-sec (4) of S. 144-T of the Act lays down that such election petition shall be heard and disposed of by Commissioner or a specified Officer as expeditiously as possible. The reason is not far to seek. If these petitions are allowed to be conducted in a leisurely way and go on interminably, then the very object of permitting the remedy of challenging the validity of elections in good time would be defeated. That is why S. 144-T sub-sec (4) lays down that every election petition shall be tried as expeditiously as possible. In determining whether the Commissioner or the specified officer for non-appearance or for default, the provisions of sub-sec (4) of S. 144-T cannot be ignored.

17. There are several decisions of various High Courts which support the view that the authority i.e. Election Tribunal deciding the election petition under the Representation of the People Act has power to dismiss the petition for default in appearance of the petitioner. It is also illogical to hold that the Tribunal has no power to restore the same. In Duryodhan Vs. Sitaram and Others, , the Full Bench of Allahabad High Court had occasion to decide the very point and it has been held by the Full Bench that even in the absence of power conferred on the Election Tribunal, Section 98 does not only contemplate an order on merits alone and an order of dismissal for default would be an order dismissing the

election 1982 Bom/27 IX G - 12 petition u/s 98(a) of the Representation of the People Act. Three learned judges of the Allahabad High Court, though for different reasons, held that the Election Tribunal did possess such powers, and procedure provided under Order 9 and 17 was held applicable for dismissal for non-appearance or default as well as for restoration of such petition.

18. The Full Bench of Punjab High Court in the case of Jugal Kishore Vs. Doctor Baldev Parkash, after reviewing several authorities also came to the conclusion that in prosecuting election petition though there is no specific provision laid down under the Act for application of provisions of Civil P. C., the Court has the power to dismiss the petition for default of the petitioner for non-appearance. Justices Grover who delivered judgement for the Bench observed that, where the petitioner choose to simply absent himself from the Court or ceases to give any instruction to the counsel engaged by himthe Court will have no option but to dismiss the election petition under the provision of the Civil P. C.,. Which would be applicable to the election petitions in the absence of any express provisions in the Act. Referring to the judicial conflates between some High Courts and after extensively referring to the decisions of various Courts, the learned judge observed that there was no distinct provision under the Representation of the Act laying down any particular or special procedure which is to be followed when the petitioner chooses to commit default either in appearance or in production of evidence or generally in prosecuting the election petition. Accordingly, it was held that the Court had powers to dismiss the petition for non-prosecution. The learned Judge in his observation relied on the decision of Patna High Court reported in the case of Sawalia Behari Lall Verma Vs. Tribikram Deo Narain Singh and Others, The learned Judge extensively referred to this judgment and held as follows (at pp. 158, 159):

"It has been repeatedly said that an election petition once filed is not a contest only between the [arties thereto but continues for the benefit of the whole constituency. It is for that purpose that in the Representation of the People Act, 1951 provisions have been made in ss. 112 and 116 relating to abatement of such a petition, the effect of which is that the petition cannot come to an end by the withdrawal thereof by the death of the petitioner or by the death of withdrawal of opposition by respondent, but is liable in such cases to be continued by any person who might have been a petitioner. There is nothing in the entire Act providing or indicating that a similar procedure is to be followed in the event of a petitioner failing to prosecute the petition. Such failure can be due to various causes. The petitioner can, by force of circumstance, be genuinely rendered helpless to prosecute the petition. For instance, he may find that his financial condition has suddenly worsened and that he can no longer afford the expenses of litigation. He may even owing to exigencies of business or vocation or profession have to go to such a distant place from the seat of the High Court where the election petition is being tried that he may find it impossible to prosecute the petition in a proper manner. There would be two courses open to him and that will depend entirely on his volition. He can either file an application

for withdrawal of the petition disclosing the circumstances which have brought about such a situation in which case there would be no difficulty in following the procedure laid down in S . 109 and 110 of the Act or he may choose to simply absent himself from the Court or cease to give any instructions to the counsel engaged by him or fail to deposit the process fee in which case the Court will have no option but to dismiss the election petition under the provisions of Civil P.C. which would be applicable to the election petitions in the absence of any express provisions in the act. The dismissal will have to be under the provisions contained in O. 9 or O. 17 of the Code>"

18-A. Admittedly there are no specific provisions in Maharashtra Co-operative Societies act 1960 of the Election Rules. Rule 79 speaks of order of the Commissioner and lays down that at the conclusion of the trial of an election petition, the Commissioner shall make an order -

- (a) dismissing the election petition;or
- (b) declaring the election of all or any of the returned candidates to be void, or
- (c) declaring the election of aff or any of the returned candidates to be void, and the petitioner or any other candidate to have been duly elected.

Rule 80 speaks of other orders to be made by Commissioner which are to be passed at the time or making a final order under Rule 79. There is no specific provision in the said Rules for dismissing election petition for non-appearance or in default or for non-prosecution. As is provided in sub-section (4) of S. 144-T petitions are to be disposed of as expeditiously as possible. It, therefore, necessarily follows that since the Election Tribunal has been conferred with certain powers vested in the Court, we will have to read by implication such incidental and ancillary power in the Commissioner and specified officers for dismissing the election petition for default. Such a power is not only incidental or ancillary but is necessary and is consistent with the object and the scheme of the Act as well as Rules framed thereunder. If petitioners for any reason choose to remain absent for considerable time, it cannot possibly be held that the Commissioner or specified officer in such circumstances cannot have the power to dismiss for default the election petition. As observed earlier, it has been held by various High Courts that such power does not vest in the Election Tribunal even in absence of specific provisions in the Act or in the Rules framed thereunder. This view is also supported by the decisions of the Rajasthan High Court reported in AIR 1962 Raj 73 , Sawalia Behari Lal Verma Vs. Tribikram Deo Narain Singh and Others, S. B. L. Verma v. T. D. N. Singh and Jammu and Kashmir High Court reported in AIR 1968 J & K 91, Bupa Singh v. Bishamber Singh.

19. Having held that the learned Commissioner did have the power to dismiss the petition for default, it now becomes necessary to examine whether the Commissioner was justified in dismissing the petition for default. In our opinion, the learned Additional Commissioner was perfectly justified to pass both the

impugned orders and for good reasons. It is clear from the record of the case that the election results were declared on Nov. 21, 1976 and the petition is filed on Jan, 20, 1979 and the petition ultimately came to be dismissed for non-appearance of the petitioners or their advocate on Dec. 26, 1979. In between these two dates several adjournments were granted by the learned Additional commissioner. We are not suggesting that for several adjournments the petitioners are to be blamed. However, it will be seen from the record that the petitioners are to be blamed. However, it will be seen from the record that the petitioners themselves have asked for a number of adjournments and ultimately on Dec. 20, 1979 petitioners' evidence was to begin. On Dec. 20, 1979 in spite of this, all the petitioners as well as their advocate chose to remain absent. The learned Additional Commissioner waited till 4.40 P. M. On that day. But neither there was any intimation to the learned Additional Commissioner seeking an adjournment nor mentioning of the matter before the learned Additional Commissioner as to why the petitioner could not remain present. According to the petitioner they had sent a telegram dated Dec. 20, 1979 itself at about 12.45 P. M. Admittedly, this telegram reached the office of the Additional Commissioner on Dec. 21, 1979. In the petition itself what is stated is that the learned Additional commissioner should have granted adjournment on the basis of this telegram. The matter was posted to Dec 26, 1979 for passing final order. However, no enquires were made by the petitioners or their advocate between 21st and 26th Dec., and therefore, the learned Commissioner passed the order on Dec. 26, 1979 dismissing the petition, as stated above.

20. In the application made by the petitioner for the restoration of the said election petition a very strange case is made out that there was an understanding that the contesting respondents and the petitioners have reached an understanding to seek adjournment on Dec., 20, 1979 as both the parties were busy in canvassing for their respective candidates in Parliamentary elections. It was further stated that the petitioners as well as contesting respondents belonged to the different parties but not to disturb their work of election campaign, it was not possible to attend the proceedings before the learned Additional Commissioner on Dec. 20, 1979. As the respondents have agreed to this arrangement, petitioners informed their advocates, and therefore their advocate did not make separate application before the learned Additional commissioner for adjournment and further date for bearing of the petition. The learned Additional Commissioner heard both the parties on this petition and came to the conclusion that reason assigned in the application for restoration were an after thought inasmuch as the contesting respondents had denied the claim made by the petitioners in the restoration. In fact the contesting respondents had opposed the petition being restored and denied the theory or mutual agreement on account of pre-occupation of the Lok Sabha Election campaign in support of their respective candidates. According to the learned Additional Commissioner he was duty bound to hear and dispose of the petition as expeditiously as possible and therefore, order passed by him earlier on Dec.

26, 1979 was final and conclusive within the meaning of Sec 144-T (4) of the said Act read with Rule 79 of the Election rules 1971. The Additional Commissioner also reiterated his earlier stand that all the petitioners have not separately credited security deposit of Rs. 500/- and without going into the incites of the petition, the petition, even otherwise, was liable to be dismissed. Having held this the learned Additional Commissioner dismissed the restoration application by his order dated Apr., 10. 1980.

21. We are of the opinion that in spite of the mandate contained to sub-section (4) of Section 144-T the elections petitions are to be heard and disposed of as expeditiously as possible. Hearing of this petition has gone on far a period of one year and there were several adjournments. In our opinion. Petitioners as to why they were absent on Dec. 20th 1979, Even if they were busy in the election campaign, in our opinion, that is no reason as to why they or their advocate had chosen to remain absent before the learned Additional Commissioner. The learned Additional Commissioner was absolutely in the dark as to why the petitioners did not choose to remain present. It is true that he had received a telegram on the next day i.e on Dec., 21, 1978, but merely sending a telegram was not sufficient enough and, in our opinion, this tendency on the part of the litigants to seek an adjournment by correspondence must be discouraged. Admittedly, from Dec., 21st to Dec., 20th none of the petitioners or their advocate ha chosen to remain present or had explained the reasons to remain absent from his day and we are inclined to observe that the learned Additional Commissioner was not in error in ultimately dismissing the election petition for non-appearance on Dec., 26 1979. We are also of the opinion that the reasons assigned for the restoring application grounds having been made put for restoration of the election petiton. The contesting respondents having whatsoever, the additional commissioner was right in dismissing the restoration application also.

22. Before passing final order, however, we must examine other submissions made by the petitioners counsel. Petitioners counsel contended that the order passed by the learned Additional Commissioner, holding that election petition was liable to the dismissed because of defect of serious nature inasmuch as each of the petitioners had not separately credited Rs. 500/- by way of security deposit, as bad and unsustainable in the eyes of law is well founded. Under the provisions of S. 144-U of the said Act it is provided as follows:

"Deposit towards costs for hearing and power to award costs.

S. 144-U. A Petitioner presenting in election petition under the last preceding section shall pay a deposit not exceeding Rs. 500/- as the Commissioner may direct towards the costs for hearing the petition. Unless the petitioner deposits the same as aforesaid, the petition shall be summarily dismissed. Subject to such conditions as may be prescribed at the time of deciding the petition, the Commissioner shall assess the costs of the hearing of the petition and shall require the petitioner of the respondents or both as the case may, to betray the

whole or in such proportion as he thinks fit, the costs of the petition, including the deposit so made. The Commissioner shall credit to Government such sum as he assesses as the costs to Government of hearing the petition (but not exceeding Rs. 300/- in any case)."

In other words a petitioner presenting an election petition u/s. 144-T of the said Act has to deposit an amount not exceeding R. 500/- If this deposit is not made by the petitioner, the petition is liable to be summarily dismissed. The Additional Commissioner at the time of hearing of the petition shall assess the costs of hearing and shall require both the parties to deposit the whole or in such proportion as he thinks fit the costs of the petition including the deposit so made. In other words, the security deposit is made for defraying the costs to be assessed by the Additional Commissioner at the conclusion of the trial of the petition. It is a well known rule of construction that singular includes plural, and therefore, even though the word used in S. 144-U is "A petitioner it shall include petitioners, Therefore, the expression "A petitioner shall deposit an amount not exceeding Rs. 500/- is to be read to mean that by ordinary rule of construction that the singular in this section would include plural, and therefore, where there are two petitioners, the section would be read to include more than one petitioner. Such a construction is warranted upon the provisions of the General Clause Act itself. In such a case even though there are more than one petition as long as one deposit is made for the election petition. It would be deemed to be made on behalf of all the petitioners and the only inescapable inference that would follow is that all the petitioner have complied with the requirement of Section 144-U.

23. Therefore, we are of opinion that in spite of the fact that the other petitioners have not deposited separately security deposit of Rs. 500/- at the time of presentation of the election petition, the petition would be maintainable and was not liable to be summarily dismissed as has been held by the learned Additional commissioner. In our opinion, the learned Additional Commisiiioner's view that such a petition in absence of security deposit by the other three petitioners wholly wrong and not sustainable in the even of law. We are fortified in the view we have taken inasmuch as this Court has taken a similar view in *Namdeo Chimnaji v. Govindda*, reported in (1963) 65 Bom LR 845 : AIR 1964 Bom 27 , where it is held as follows:

"Though there may be more than one petitioner to an election petition, so long as one deposit is made for the election petition. The election petitioners would comply with the requirements of Sec 117 of the Representation of the People Act,"

24. A similar view has been taken by the Judicial Commissioner goa. Daman and Diu in the case of *Yeshwant v. Jaisingrao*, reported in AIR 1974 Goa 4. In that case the election of successful candidate was challenged on several grounds. One of the preliminary contentions opposing the petition was raised to the effect that at the time of presenting an election petition only one deposit of Rs. 2,000/- was

made by the petitioner and not by each of the several petitioners. Relying on the provisions of section 117 of the Representation of the people Act, 1951, it was contended that each of the petitioners must deposit Rs. 2000/- Rejecting this contention, it was held that the deposit was for the security of costs of the petition. In joint petitions, though there are more than one petitioner, the petition being only one, the deposit of Rs. 2000/- was payable. This decision is applicable to the facts of the present case with all force. Even if there is more than one petitioner in this case, since a joint petition by more than one petitioner is permissible we are of the opinion that deposit made by only one of the petitioners was valid one and the joint petition by others without paying deposit did not suffer from any infirmity whatsoever. We are of the opinion that the submission made by the learned counsel for the petitioners is sound as far as this finding of the learned Additional commissioner is concerned.

25. In our view, the submission made by the learned counsel for the petitioner in respect of the order forfeiting the security deposit to the Government is also well-founded. We are of the opinion, that the said order of forfeiture of security deposit is plably illegal, untenable and without any authority of law. There is no provision either in the Maharashtra co-operative societies Act, 1960 or Rules framed thereunder or even in the Election Rules of 1971 to sustain the said order. The only reference we found to forfeiture in the entire election rules is contained in R.68 of the Election Rules which states that where a candidate has lost the election, his deposit shall be forfeited to the State Government if at an election the number of valid votes polled by him does not exceed one-eighth of the total number of valid votes polled by all the candidates. This obviously has nothing to do with the provisions relating to forfeiture of the security deposit which is deposited under Sec. 144-U of the said Act the time of filing of the petition. As the order passed by the learned Additional commissioner forfeiting this security deposit to the Government is wholly illegal, the same is liable to be quashed and set aside and we, therefore, set aside that part of the learned Additional commissioner's order.

26. In view of this, the petition is partly allowed to the extent of setting aside the order of the Additional commissioner, Pune Division forfeiting the security deposit of petitioner No.2 to the state Government. As far as the petitioners' prayer for restoration of the Election petition No.17/79 is concerned, we are of the opinion that the petitioners have not made out sufficient and good grounds for the restoration of the case. This part of the order of the Additional commissioner of Pune Division, Pune is hereby confirmed.

27. In view of the fact that we have partly allowed the petition granting a limited relief to the petitioners of refunding the security deposit of Rs. 500/- the rule is partly made absolute. However, in the circumstances of the case, there would be no order as to costs.

28. Petition partly allowed.