

(1965) 03 CAL CK 0028
In the Calcutta High Court
Case No : Civil Rule No. 999 (W) of 1961

Madan Mohan Sen Gupta and Another APPELLANT
Vs
State of West Bengal and Others RESPONDENT

Date of Decision : 30-03-1965

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : AIR 1966 Cal 23 : (1966) 1 CALLT 274 : (1966) 12 FLR 30

Hon'ble Judges : C.N. Laik, J

Bench : Single Bench

Advocate : Arun Kumar Dutt, Sunil Mukherjee, Satyendra Nath De, for the Appellant; N.C. Chakrabarty, Govt. Pleader, Sushil Kumar Banerjee, (for Nos. 1 to 3 and 7) and Arun Prokash Chatterjee, (for Nos. 4 to 6 and 8 to 13), for the Respondent

Judgement

C.N. Laik, J.—This Rule, touching the election of a Co-operative Society, arises on an application under Article 220 of the Constitution of India praying inter alia for a writ in the nature of mandamus, calling upon the respondents to recall, rescind and withdraw and not to give effect or to take any steps in relation to the three notices dated July 13, 1961, August 14, 1961 and September 13, 1961 and to command each one of them to forbear from holding the election with the help of the delegates elected by the Election Sub-Committee and for other appropriate writ or writs, directions or orders.

2. The two petitioners are employees of the Gun and Shell Factory, Cossipore, and of the Inspectorate of Armaments, being an allied organisation of the Factory. But the organisations are under the control and management of the Government of India. A Co-operative Society in the name of the Gun and Shelf Factory Co-operative Society Limited (hereinafter referred to as the Society) was formed and registered under the provisions of the Bengali Co-operative Societies Act, 1940 (shortly stated hereinafter as the Act).

In exercise of the powers conferred by Section 140 of the Act, the Rules were

framed by the State Government, namely, the Bengal Co-operative Societies Rules, 1942 (hereinafter stated to be the Rules),

3. The petitioners are stated to be the members of the Society at material times. I am told the number of the members exceeds five thousand. The State of West Bengal is the respondent No. 1 in the instant Rule. The registrar and the Assistant Registrar of the Co-operative Societies of the State of West Bengal and one of their Officers are respondents Nos. 2, 3 and 7 respectively. The Society itself is respondent No. 4. The Managing Committee of the Society and its Chairman are respondents Nos. 5 and 6 respectively. The added respondents Nos. 8 to 13 are the newly elected Directors of the Managing Committee of the Society.

4. The object of the Society *inter alia* is to encourage self-help and "mutual aid among members" which is being followed, as argued, by its breach. These cases lead one to think that it will be sometime yet before the Co-operative Societies can achieve the objective set by the Planning Commission, to give the social structure and the national economy a distinction and a sense of value. There should be more to co-operation than economic improvement. Several Committees proposed administrative reforms of such Societies. Whether they needed rationalisation of procedure is a question. Some persons think that there is deepening disagreement about the role of Co-operatives in this country. According to others some State Governments seem singularly tardy in de-officialising Cooperatives and refer to such Societies in foreign Countries. But it is again profitable to remember that there is no specific identifiable pattern of the Co-operative Societies in the Western countries. Europe places much greater value to the inter-group co-operation than does the United States. Therefore, the record of Co-operative enterprise in those countries would not be of much assistance to India, which has, by trial and error, still to find her own pattern.

5. If we now come back, after a little digression, to certain, provisions of the Act. Rules and the By-Laws touching the instant case and specially the powers of the Registrar of the Cooperative Societies, we find that in the definition section being Section 2, "dispute" in Clause (J) thereof means any matter capable of being the subject of civil litigation and includes the claim in respect of any sum payable to or by a Cooperative Society whether such claim be admitted or not. The provisions of the Indian Companies Act, 1913, were made inapplicable to Co-operative Societies, Section 6. Sections 9 and 10 provide *inter alia* for the appointment of the Registrar and conferment of the powers of the Registrar. Sections 18 and 14 provide, that: along with the application for registration of a Society a copy of the proposed By-Laws should be accompanied. Provision for the amendment of the By-Laws was made in Sections 17 and 18. About the vesting of the final authority of a Society, Section 20 of the Act reads:

"20 (1). The final authority of every co- operative society shall vest in the general body of members in general meeting:

Provided that, in such circumstances as may be prescribed, the final authority may vest in the delegates of such members, elected in the prescribed manner and assembled in general meeting.

2. The general meeting shall be summoned and shall exercise its authority in such manner as may be prescribed."

The provisions of the Annual General Meeting for electing members of the Managing Committee are laid down in Section 21. Sub-section (1) (a) of the said section runs as follows:

"21(1). A general meeting of every cooperative society shall be held once at least in every co-operative year for the purpose of

(a) electing members of the managing committee and such other officers as may be provided in the by-laws."

"The management of every Co-operative society shall vest in a managing committee constituted in accordance with the rules and bylaws which shall exercise such powers and perform such duties and by-laws"--(Section 23).

Sections 24 to 26 provide for the power of the Government to manage the affairs of a co-operative society and the power of the Registrar to dissolve and re-constitute the managing committee. On such dissolution all properties of the cooperative societies shall vest in the Registrar (sec. 23). The State Government's power to give financial assistance to a society is provided in Section 38 and the restrictions on the society on lending are provided in Section 39. Only with the approval of the Registrar, a society may change its name and change its form of liability (Sections 42 and 43), Section 53 provides for the power of the State Govt. to remit any tax, cess or fee or the stamp duty payable by a society. As to the investment of funds, the Registrar's sanction was necessary (Section 55). Sanction of the Registrar is also required in certain cases of distribution of profits (Section 57). On the winding up of the society there is a joint and several liability of the members of the society (Section 65). u/s 80, the Registrar is to afford an opportunity to a society for explaining any defects or irregularities . A State Government may constitute an authority to supervise the working of the Society (sec. 81). Sec. 84(1) provides for an enquiry by the Registrar into the constitution, working and financial condition of a co-operative society.

6. Regarding settlement of the disputes, Section 86 inter alia provides:

that any dispute touching the business of a co-operative society shall be referred to the Registrar if the parties thereto are among the following, namely . .

(b) a member, past member or person claiming through a member, past member or deceased member of the society..... Procedure for the settlement of dispute and the force and effect of certain awards in respect of the same, were provided for in Sections 87 and 88. The Registrar has power to wind up a Society

(Section 89) and to appoint a liquidator (Section 90). The Registrar again may cancel the order of winding up and inter alia may order for cancellation of the registration of the society (Section 94). The Registrar has also power to appoint a Receiver in certain cases (Section 112). Penalty for certain acts of misdemeanors was provided for in Section 128 to the following effect, viz., that: If any person contravenes the provisions of the Act, rules or by-laws by sitting or voting as a member of a managing committee or voting in certain other matters, the Registrar may direct him to pay to the assets of the society by way of penalty such sum as the Registrar thinks fit in respect of every such contravention. The Registrar has also power to enforce performance by any officer of the society for carrying out his direction; in default, may impose penalty (Section 129). There is a bar to jurisdiction of Civil Courts inter alia in respect of the dissolution of a managing committee and the management of the society on dissolution thereof or in respect of any dispute required u/s 86 to be referred to the Registrar (Section 133(1)(b) and (c)). Certain orders were mentioned in the Fourth Schedule of the Act, against which appeals would lie u/s 134 of the Act. Section 140 is the rule-making power by the State Government and Clause (xii) of Sub-section (2) of the said section runs "the circumstances in which delegates may be elected for the purpose of Section 20, the manner of electing delegates for any of the purposes of this Act and the manner in which delegates so elected shall vote."

7. Rule 10 of the Rules gives inter alia the power to the Registrar to satisfy himself that the by-laws are in conformity with the Act and the Rules and his power to refuse the registration of Society. Certain matters have been mentioned in Rule 12(1) in respect of which, every Society shall make by-laws. Sub-rule (2) of the said Rule 12, directs the Society to make bylaws if the Registrar so directs. Rule 25 provides for election along with the provision for general meeting by delegates. Rule 27 provides:

"The managing committee shall make regulations to provide for all matters relating to the election of delegates and in particular for (a) the manner of nomination and election of delegates, (b) total number of delegates to be elected and the number of delegates to be elected from each area or section in accordance with Sub-rule (2) of Rule 25".

The powers of the Managing Committee in Rule 43 inter alia are:

"The managing committee of a co-operative society shall exercise all or any of the following powers as may be provided in the by-laws..... (h) to appoint sub-committee as may be deemed necessary from time to time."

Rule 44 lays down several and diverse duties of the Managing Committee. Within Chapter IX of the Rules relating to the settlement of disputes, Rules 122 and 123 read as follows:

"122. A reference of a dispute to the Registrar shall be made in writing and shall be accompanied by (a) statement of the subject-matter of the dispute, (b) a

copy of the ledger account of the defendant in respect of money suits and (c) such other statement or records as may be required by the Registrar.

123. Unless the Registrar permits otherwise, every application for a reference of a dispute to the Registrar shall bear a court-fee stamp of one rupee."

The Registrar may call on such person as he may hold responsible to carry out any of his direction and on his failure of carrying out, the Registrar may take action against him: see Section 129 of the Act and Rule 173 of the Rules.

8. The Society framed its own by-laws, which were sanctioned by the Registrar by Memo No. 1118 dated June 28, 1945. The provision of the general meeting in by-law 38 Clause (9) is:

"Regulations to provide for all the matters relating to the election of delegate particularly for (a) the manner of election of delegated (misprint for delegates) (b) the number of delegates to be elected from each section and the total number to be elected shall be framed by the managing committee".

For carrying on the business of the Society, the managing committee in By-law 46 is directed to follow the provisions of the Act, the rules, the by-laws and also the regulations, if any, for entering into any agreement and doing all such acts as may be necessary for management of the affairs of the Society. Certain powers and authorities are expressly given to and conferred upon the managing committee by By-Law 49, Clause (i) of the same, being "to appoint sub-committee as may be deemed necessary from time to time and approved by the Registrar and to define their powers and duties: and Clause (j) "to frame regulations for the conduct of the business of the society."

9. This in brief is the picture relevant in the present case in which the Society is required to move subject to the powers of the Registrar and control of the State Government.

10. The facts giving rise to the instant Rule are shortly as follows:

11. On or about June 30, 1960, the Society's assets stood at about fifteen lakhs of rupees. On June 22, 1961, the Managing Committee of the Society in its meeting formed an Election Sub-Committee to conduct the election and make necessary arrangements for the election of delegates for the next Annual General Meeting. The area was separated and the Society divided itself into several constituencies (Annexure A to the affidavit-in-opposition of the Society in the main petition).

12. On July 11, 1961, the meeting of the Committee was held. Rules for election of delegates were approved. Provision for filing nominations, scrutiny thereof, withdrawal thereafter were also made. It was provided that "Programme with dates and time for election will be announced in due course." The Chairman was empowered to issue necessary notice regarding election of delegates." It was also directed that "Notice publishing these Rules and inviting nomination papers"

for. election be issued on or before July 14, 1961, (see the same Annexure A at pages 12 and 13.

13. July 13 was the date, the notice bears, over the signature of the Chairman (Annexure B to the main petition). Paragraph 3 thereof states that nomination papers will be scrutinised by the "Election Committee" on July 24.

14. On August 10, 1961, from the proceedings of the Committee meeting (Annexure B to the affidavit-in-opposition of the Society in the main petition) it appears, that the dates of the election were fixed on three successive days, namely, August 22, 23 and 24. "Election Sub-Committee was authorised to fix up programme of election and to take necessary action for conducting election" in consultation with the Chairman or the Society. The suggestion of outsiders as polling officers was not accepted. It was decided that the officers would be from the Directors of the Society.

15. On August 14, 1961, the Election Sub-Committee fixed up the programme for election which notified (Annexure D to the main petition). Paragraph 6 of the same states that the complaints and disputes are to be lodged to the Chairman; of the Society whose decision will be final.

16. On August 17, 1961, the petitioner No. 1 (Madan) along with two other members of the Society made a representation (Annexure E to the main petition) to the respondent No. 3 (the Assistant Registrar) bringing to his notice some of the irregularities and submitting also that fair election will not be conducted if the existing Directors become the polling officers. It is stated that there was no reply to the said representation,

17. From August 22 to 24 elections were held and respondents Nos. 8 to 13 are elected as new members..

18. On September 13, 1961, the Chairman a notice calling the Annual General Meeting on September 29, 1961 (Annexure F to the main petition). On September 23, 1961 the petitioner No. 2 Sushil, as a delegate and shareholder of the Society, by a notice to the Chairman (respondent No. 6) with copies to respondents Nos. 2 and 3 (Registrar and the Assistant Registrar) demanded justice. On September 27, 1961 this Court was moved, on which the instant Rule was issued. Affidavits and counter-affidavits were filed by the parties, both in the main application and in the application for vacating injunction. As already stated, respondents Nos. 8 to 13 were added by an order of this Court.

19. Mr. Arun Prakash Chatterjee, the learned Advocate opposing the Rule and appearing on behalf of the respondents Nos. 4 to 6 and 8 to 13 raised a preliminary point that a writ does not lie against the Co-operative Society or its Managing Committee. His contention is that it is a private body and not a statutory body. A number of decisions were cited by Ramnath Sharma Vs. State of M.B. and Others, ; S.K. Mukherjee Vs. Chemicals and Allied Products, Export Promotion Council, ; Sm. Ena Ghosh Vs. State of West Bengal and Others, ;

Sardar Jaswant Singh Vs. Board of Secondary Education and Others, ; Carlsbad Mineral Water Mfg. Co. Ltd. Vs. H.M. Jagtiani, ; Monmatha v. Secy. D.H.H.E. School, 62 Cal W N 384; Amarendra Chandra Vs. Narendra Kumar Basu and Others, and Union of India (UOI) and Another Vs. Elbridge Watson, .

20. Regarding the first decision, namely, of Madhya Pradesh, Mr. Arun Kumar putt, (Sr.), the learned Advocate, in support of the Rule, cited a later decision of the same High Court, namely, of Madhya Pradesh High Court in the case of Dukhuram Gupta Vs. Co-operative Agricultural Association Ltd. and Others, but the earlier decision is not noted there. It appears that both are Bench decisions of the same High Court. The later decision arose out of a case of Co-operative; Society. On the application under Article 226 of the Constitution, the writ was issued. The earlier decision is given in a different context. It arose out of a case of a civil servant, and his dismissal. Article 311 of the Constitution came up for discussion. The emphasis was laid on the contractual nexus as appearing in the judgment. If Mr. Chatterjee's argument would have been correct, then the said application under Article 226 should have been dismissed in famine in the first decision. Moreover, even it be not so, by the later decision, Madhya Pradesh High Court should he taken to have given a go-by to the principle laid down in the earlier decision being not: followed, though it must be said that the question as to whether a writ lies against a Co-operative Society was neither specifically raised nor decided. Emphasis was laid on the expression "Authority" in Article 12 and in the Chapter of fundamental rights. Paragraphs 5, 6 and 8 in the said judgment make it clear.

21. Regarding the decision in the case S.K. Mukherjee Vs. Chemicals and Allied Products, Export Promotion Council, cited above, it arose again out of a case of a civil servant. It is a case of commercial concern or a company which is not the case here. The question arose as to whether the Rule of Export and Import Council was approved by the Government or not. There is an observation of Sinha, J. that even if the company is wholly controlled "by the State still then, it is not the public authority. Mr. Dutt contends that the said principle is no longer a good law in view of he later decision of P.B. Mukharji, j., of this Court in the case of M. Verghese Vs. Union of India (UOI) and Others, and the Supreme Court decision in the case of Sohanlal Vs. The Union of India (UOI), . Mr. Dutt also cites another decision of Sinha, J. in the case of Md. Ibrahim v. Assansol Iron and Steel Workers Union AIR 1956 Cal 189 in which though Mr. S. Chowdhury, the learned Counsel. pointedly raised the question that the case being a case of a trade union, a writ for mandamus is not maintainable (see paragraph 13) but his Lordship went into the merits of the case and dismissed it on another ground (see paragraph 18).

22. In the third decision of Sm. Ena Ghosh Vs. State of West Bengal and Others, it appears that it is a case of a sponsored college. The question arose as to who is the person holding a civil post under the State or who becomes a civil servant. The tests laid down fit Article 311 of the Constitution came up for discussion.

S.K. Mukherjee Vs. Chemicals and Allied Products, Export Promotion Council, was referred to. I might observe that the said case is not *pari materia* with the instant one.

23. The point arose in the case of *Sardar Jaswant Singh Vs. Board of Secondary Education and Others*, as to whether a writ lies against the Managing Committee of a school. There, all the donations to the school were private (see page 1135), and the Managing Committee was admittedly a private body. The Rules appearing in the Revised School Code were not made statutory. Hence no writ lay. This is not the case here. It should be remembered that the Supreme Court observed, in *Sohanlal Vs. The Union of India (UOI)*, that even in a case of a private body, where there is a collusion, a writ lies. In the case of *Carlsbad Mineral Water Mfg. Co. Ltd. Vs. H.M. Jagtiani*, the application was also u/s 45 of the Specific Relief Act. In paragraphs 11 and 12 thereof, the principles of the application of high prerogative writs in Article 226 were discussed. Bose, J., (as his Lordship then was) in the case of *Manmatha Nath Naiya Vs. Secretary Diamond Harbour H.E. School and Others*, referring to the above decision of *Carlsbad Mineral Water Mfg. Co. Ltd. Vs. H.M. Jagtiani*, held that no writ lay against a private body unless the said body holds office of a public nature. The same principle would be found in his later judgment in *Amarendra Chandra Vs. Narendra Kumar Basu and Others*, .

24. It should be borne in mind that there cannot be any precise definition as to what constitutes a public authority. Instances of public authorities will be found in Halsbury's Laws of England (Simonds Edition) Vol. 30, page 682, paragraphs 1317 and 1318. One of the distinguishing features of an authority not being a public authority, is profit-making. Commercial undertakings and the Companies, where they are profit-making concerns are not generally regarded as public authorities. In certain cases the Companies were declared public utility concerns because their duties were in the nature of a public duty. In certain other cases where some of the Directors in Commercial undertakings are annually nominated by the State Government, the question of control of the State may arise, which I am not called upon to decide in the instant case. But still Supreme Court in the case of *The Nagpur Electric Light and Power Co., Ltd. and Others Vs. K. Shreepathirao*, did not dismiss the application in limine on the said principle, on the ground that it is a private body but entered into the merits of the case and decided the same.

25. In the instant: case the Managing Committee of the Society stands on a different footing. Earlier I have referred to the several provisions of the Act, the Rules and the By Laws. The Society is here registered. Registration is not an act of volition of the parties. There is no volition of the members. (See Section 26 of the Act). See also the principles of Friendly Societies and Registration in Halsbury's Laws of England (Simonds Edition) Vol. 18, page 3).

26. The Managing Committee of the Society is to be constituted u/s 23 of the Act (see Section 2(m)) and in accordance with the Rules and also the By-Laws. Such

Managing Committee is therefore created by the Act and not merely registered. The cases of the Managing Committee of the school and of the sponsored colleges referred to above, might be categorised as not being created by the statute or statutory Rules. By several provisions of the Act (which I have given copiously in the beginning) and specially by Sections 25, 86 and 129 of the same, I am inclined to hold that the management of the affairs and the activities of such Societies, as in the instant Rule, are entirely controlled by the Registrar of the Co-operative Society (respondent No. 2) who is undoubtedly a public authority. Such affairs, therefore, cannot be private affairs. It might be stated that Rules to and 44 and specially the opening words thereof in the said Rules, specifically providing that the Managing Committee shall observe the provisions of the Act, the Rules and the By-Laws. The powers and the duties are, therefore, created by the Act and the Rules though it is not incumbent that a body in order to be a public" body must always be constituted by a Statute.

27. The question might again arise in certain cases as to how far the State Government controls such bodies. In my view, the control is one of the main distinguishing features for the maintainability of an application under Article 226 of the Constitution, which control I find very much with the State Government and the Registrar over such Co-operative Societies as in the instant case. It is better to remember, on the question of "Authority", the difference in language in Article 12 and Article 226. It cannot also be disputed that even if the Society is a person, there cannot be any broad and general proposition that no writ lies against a person. The decision of the Supreme Court in *Sohanlal Vs. The Union of India (UOI)*, is a pointer, In my opinion, the particular facts of each case should be the basis. The veil, whether a corporate veil or the veil of the Society, should be lifted to see what sort of a face, statutory or otherwise, it has and under whose control it remains and whether the affairs are purely private or otherwise. That the Society is appointed to carry out measures of public benefit, cannot be disputed in most cases.

28. Applying the said principles, I overrule Mr. Chatterjee's first objection and I hold that the application for writ against such Co-operative Societies is maintainable.

29. Mr. Chatterjee then contends as the next preliminary objection, that as the alternative remedy is available to the petitioners this application should be dismissed. It is argued that the application, as in the instant case, is a matter touching the business of the Society and therefore the petitioners should first have exhausted the provisions of the Act and the Rules before coming to this Court under Article 226; that is to say, instead, they should have referred the dispute to the Registrar u/s 86 of the Act. Mr. Chatterjee in fact relies on the argument of Mr. N.C. Chakrabarty, the learned Government Pleader on this branch appearing on behalf of the respondents Nos. 1 to 3 and 7. The learned Government Pleader contended that election is a dispute coming within the purview of Section 80 of the Act. In aid of the said contention two Madras

decisions were cited namely, the Full Bench decision in the case of M.S. Madhava Rao and Others Vs. D.V.K. Surya Rao, Member of the Pithapuram Co-operative Bank, Pithapuram and Others, and the case of C. Lakshmiah Reddiar Vs. The Sri Perumbadur Taluk Co-operative Marketing Society Ltd., , Mr. Chat Chatterjee referred to the well-known decision of the Judicial Committee in AIR 1940 105 (Privy Council) which I might dismiss at once, being not relevant to the present discussion. Mr. Dutt, on the other hand, points out on behalf of the petitioners, that the learned Government Pleader has argued against the stand taken by their clients stated in the affidavit. Moreover the said Madras decisions are distinguishable being based on different sets of facts. One of them, though touches the election of the Directors, the section is stated to be based on the Central Act though registered with the State enactment.

30. Mr. Dutt also places a decision of this Court of B.K. Mukherjea, J., (as his Lordship then was) in the case of Hara Dayal Nag Vs. Chandpur Central Co-operative Bank, Ltd., , It arose out of a suit challenging the resolution of the Managing Committee and that the Managing Committee was not elected properly. The defence was that the suit was not triable by the Civil Court but there should have been a reference to the Registrar. The trial court decreed the suit. The said decree was modified by the Court of appeal-below. This Court held, dismissing the cross-objection that it was not a dispute to be referred. Though it was a case under the provision of paragraph 22 of the Rules framed u/s 13 of the old Act, I think the same principle can be well applied here because the said para of the old Rule 22 is substantially similar to the present Section 86. The other two decisions of this Court were cited by Ramendra Nath Mukherjee Vs. Balurghat Central Co-operative Bank Ltd., and Barisal Co-operative Central Bank Ltd. Vs. Benoy Bhusan Gupta and Another, . Lastly, "he cites a Full Bench decision of Madhya Pradesh High Court in the case of Gokul Prasad Moujilal Bharat Vs. Laxman Singh Maha Singh and Others, where the Rule quoted, is *pari materia* with Section 86 of the Act. A distinction is made in the said decision between ""business of Society" and the "affairs of the Society", it relied on the principle laid down by Mukherjea, J., in Hara Dayal Nag Vs. Chandpur Central Co-operative Bank, Ltd., and the Full Bench of Madhya Pradesh and it did not follow the views of Born-bay, Madras and Allahabad High Courts. With respect I accept the principle laid down by Mukherjea, J., followed by the Full Bench of the Madhya Pradesh High Court. In passing, I may observe that the unreported Bench decision of this Court in the case of Kamal Mukherjee v. Ram Pack Ghosh, S. M. A. No. 80 of 1952 of S. R. Das Gupta and Mallick JJ., dated 6-7-1954 (Cal) cited by the learned Government Pleader does not touch the point of election and is not of any assistance for the decision of the instant case,

31. Again, the principle of refusal of writ on the ground of alternative remedy has been laid down by the Supreme Court in cases more than one. In the case of Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, the majority judgment held, in paragraph 28 (at p. 380) that the existence of such alternative remedy is not however always a sufficient reason

for refusing a party a quick relief by a writ. In the case of A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, the majority judgment again after reviewing the earlier decisions, laid down in paragraph 9 thereof that the rule of alternative remedy is a rule that the courts have laid down for exercise of their own discretion. In the Commissioner of Police, Bombay Vs. Gordhandas Bhanji, alternative remedy is held to be no bar where it would be ineffective or inadequate.

32. I accordingly, overrule the second preliminary objection of Mr. Chatterjee and I hold that the alternative remedy is no bar to the instant application.

33. Mr. Dutt then presses the main objections in the Rule, namely, (a) the appointment of the Election Subcommittee is illegal being without the approval of the Registrar. Therefore, the entire proceedings holding the election being without jurisdiction, the election inclusive should be set aside; (b) As no regulation has been framed u/s 27 (sic Rule 27?) which is mandatory, the election held in the absence of the same is also bad and without jurisdiction and should be set aside.

34. It is admitted that by Rule 43 (relevant portion quoted earlier) the powers of the Managing Committee are to be provided in the By-Laws. The power of the appointment of the Sub-Committee is given by Clause. (h) of the said Rule 43. Turning to the By-Law 49 Clause (i), also quoted earlier, it appears that such appointment must get the approval of the Registrar. The expression "and approved by the Registrar" makes it sufficiently clear that the approval is mandatory. The learned Government Pleader admits that the Registrar's approval was not taken. Mr. Chatterjee attempted to answer Mr. Dutt back by saying that the approval in Clause (i) of By-Law 49 is ultra vires Rule 43. According to him, the power of appointment of the Sub-Committee in the Rule is an unfettered power and the said provision in the By-Law is overstepping the boundary.

35. I do not think that Mr. Chatterjee is correct in his submissions. The power in the Rule is neither unfettered and the approval portion in the By-Law is not ultra vires Rule 43. Rule 43 in its opening paragraph refers and makes it subject to the By-Laws which in my judgment govern and would ultimately prevail. When the Society, including its Managing Committee, has framed its own By-Laws which have been sanctioned by the Registrar, as noted before, the Society or its managing committee cannot be heard to say, through Mr. Chatterjee, that it is ultra vires the said Rule,

36. This takes me to the other branch of Mr. Chatterjee's argument, namely, that the Election Sub-Committee has been properly formed under Rule 27, (quoted earlier). According to him, though admittedly no regulation had been framed but the making of the "resolutions" to provide for all matters relating to the election as provided in the said Rule, would be tantamount to and equally effective as regulations, on the passing of the "resolutions" passed in the committee

meetings and particularly the resolutions, dated June 22 and July II, 1961 (Annexure A to the affidavit-in-opposition of the Society). But according to the learned Government Pleader also, the resolutions can never take the place of regulations and he further submits that no election can be held without framing regulations and he supports Mr. Dutt's contention on this branch.

37. The expression "regulation" in my judgment has a well-defined meaning in law and the same cannot be equated with the resolution passed in a meeting of the Committee. Regulations have some permanent features to be followed and observed by the persons intended to be bound; whereas the resolutions were passed to meet the particular contingencies of particular situations which usually vary. Though the same or similar resolutions might be passed year by year, they even then, cannot in my view, partake the character of regulations. The Rules and the By-Laws themselves make a distinction between regulations and resolutions. For example reference to regulations will be found not only in Rule 27 but also in By-Laws 38(9), 46(2) and 49(j). Similarly reference to resolutions will not only be found in Ss. 42, 43 and 89 of the Act but also in Rules 8, 14, 15, 20, 24, 37, 39, 50, 53, 85, 142 and 173 in the Rules and in paragraph Nos. 21(3), 44, 51(5) and 56 of the By-Laws.

38. I accordingly accept both the objections, of Mr. Dutt and find that the election is bad, | held without jurisdiction and fit to be set aside.

39. The further short submission of Mr. Chatterjee namely that it is a mere irregularity not affecting the result of the election, and the same is cured by the scrutiny of the Managing Committee made in every step, is, in my view, again of little substance. The expression that it does not materially affect the result of the election, does not find place in the Act i.e. the Bengal Co-operative Societies Act, 1940 with which we are concerned in the instant Rule. The said expression is found in the provisions of the Bengal Municipal Act.

40. I am also unable to accept the submission that the petitioners have not suffered. Mr. Dutt's submission that the Society is maintaining two Minute Books were not only denied by the Society but Mr. Chatterjee further submitted that out of the two Minute Books one is a rough copy and the other is a regular copy. Mr. Dutt submitted that there appears to be no resolution approving the voters list. Mr. Chatterjee, on the other hand, states that preparation of the voters' list is in the rough Minute Book. As these are disputed questions of fact I need not go into the same. More so on the ground that it is not necessary for the decision of this Rule.

41. The learned Government Pleader, however, submitted that the Rule should be discharged, so far as the respondents Nos. 1 to 3 and 7 are concerned, because according to him, the State Government is not concerned or interested whether the notices (Annexures B, D, E and F) are recalled or not or the election it held to be bad or not,

42. In my view, the learned Government Pleader would not be right in saying

that. The summary of the several sections of the Act, the Rules and the By-Laws, as made by me at the threshold of the judgment, make it abundantly clear that the Registrar has not only got wide powers but the State Government has also sufficient control. It is the duty of the Registrar to see that the provisions of the Act and the Rules and the By-Laws are being strictly followed by the Societies. By the whole of Chapter XII in the Act, particularly by Sections 128 and 129 thereof, the power is given to the Registrar to enforce performance of the obligations, where any Society is required to take any action under the Act, the Rules or the By-Laws; and especially when such action is not taken, as in the instant case. The Registrars duty is to see that such action is taken by the Society. In other words, Section 129 of the Act is a controlling section giving again widest possible powers to the Registrar in appropriate cases. If one peruses the whole of the Act one would find that the State Government and/or the Registrar exercises supervision and control or rather should exercise control in almost all the affairs of the Society. Therefore, in my view, the respondents Nos. 1 to 3 and 7 are not unnecessary parties and the Rule cannot be discharged on the said ground. No other point was urged by the learned Advocates appearing in this Rule.

43. For all these reasons and after giving anxious consideration and following the principle laid down by the Court of Appeal in the case of Norton v. C. C. permanent Benefit Bldg. Society (1895) 1 QB 246 to the effect that in such cases writs are the real remedies, it is only proper, in my judgment, that a writ in the nature of mandamus do issue commanding the respondents and each one of them not to give effect to or to take further steps in pursuance of the election and further commanding them to recall, rescind or withdraw the notice mentioned in prayer (a) of the prayer portion of the petition and further commanding them and each one of them to forbear the new Managing Committee from functioning any further and directing them to act in accordance with law.

44. The Rule is accordingly made absolute.

45. All interim orders stand dissolved. In the particular circumstances of this case, the parties would bear their own costs.

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