
(2000) 04 KAR CK 0019
In the Karnataka High Court
Case No : Writ Petition No. 20715 of 1999

N. Ganesh and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 13-04-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Karnataka Co-operative Societies Act, 1959 — Section 2 (a-1), 29 (1), 29 F (4), 29 F (6)

Citation : (2000) ILR (Kar) 3982 : (2000) 6 KarLJ 459 : (2000) 4 KCCR 383 SN

Hon'ble Judges : G. Patribasavan Goud, J

Bench : Single Bench

Advocate : Sri Madhusudan R. Naik, for the Appellant; Sri M.N. Ramanjanaya Gouda, Additional Government Advocate and Sri B.K. Manjunath, for the Respondent

Judgement

1. The two petitioners and the sixth respondent, along with others, had been elected to the Committee of the second respondent-Society. In pursuance of Section 29-F(4) of the Karnataka Co-operative Societies Act, 1959 ("Act" for short) and Rule 14-A of the Karnataka Co-operative Societies Rules, 1960 ("Rules" for short), the Chief Executive of the second respondent-Society arranged to have the President of the Society elected on 10-6-1999. A day earlier, i.e., on 9-6-1999, as at Annexure-E, first respondent-State Government, in exercise of its powers u/s 29(1) of the Act, nominated respondents 3 to 5 as its representatives on the Committee of the second respondent-Society. The said nominated members of the Committee, together with the elected members of the Committee, participated in the election of the President held on 10-6-1999. As Annexure-F would show, out of 18 members of the Committee, including the elected and the nominated, 10 members voted in favour of sixth respondent while 8 in favour of the first petitioner, though in view of Section 28-A(6) of the Act and Rule 14-A(12) of the Rules, it is not possible to determine which member of the Committee voted for which of the two candidates amongst the first

petitioner and the sixth respondent, since the election had to be by secret ballot.

2. Petitioners contend that respondent 2-Society has not received any assistance in the form of share capital from the State Government and therefore respondent 2 is not an "Assisted Society" for the purpose of Section 29 of the Act, and that the State Government has therefore no power u/s 29(1) of the Act to nominate any representative of its on the Committee of respondent 2-Society. In this writ petition under Article 226 of the Constitution, they seek quashing of nomination of respondents 3 to 5 u/s 29(1) of the Act as made under Annexure-E. Petitioners contend that the participation of respondents 3 to 5 in the Meeting of 10-6-1999 has vitiated the entire proceedings of the meeting including the election to the post of President, and, as such, the Chief Executive of the second respondent should conduct the meeting afresh for the election to the post of President. They contend that the sixth respondent got elected by the addition of votes of respondents 3 to 5, and, that therefore, since the nomination itself was incompetent, the election of sixth respondent also stood vitiated.

3. The sixth respondent points out that the nomination of respondents 3 to 5 made under Annexure-E has since been withdrawn by respondent 1 passing an order to that effect on 28-10-1999 as at Annexure-R1, and as such, the question of going into legality or otherwise of the nomination of R-3 to R-5 u/s 29(1) of the Act as per Annexure-E would not arise. Respondent 6 contends that since the very nomination of R-3 to R-5 has since been cancelled under Annexure-R1, the writ petition has become infructuous. Even otherwise, according to the sixth respondent, respondent 2-Society is an Assisted Society since the "assistance" includes what is given by the State under any other mode of financial assistance and not necessarily by way of share capital, and therefore, nomination of respondents 3 to 5 made by the respondent-State Government u/s 29(1) under Annexure-E was competent. Respondent 6 next contends that the contention of the petitioners that the sixth respondent got elected on account of the votes of respondents 3 to 5 in his favour was untenable. That apart, when the election had to be by secret ballot, petitioners' contention that the sixth respondent got elected on account of votes cast by respondents 3 to 5 was highly speculative. If the petitioners are aggrieved by the election of the sixth respondent as President, remedy lies in their raising an election dispute u/s 70 of the Act, and that recourse to Article 226 of the Constitution would be impermissible.

The other respondents have not filed objection statement.

4. At the outset, Sri B.K. Manjunath, learned Counsel for the sixth respondent, submits that in view of the first respondent-State Government cancelling the nomination of respondents 3 to 5 under Annexure-R1, the question of going into legality or otherwise of their nomination earlier made under Annexure-E does not arise, and that the writ petition has become infructuous and needs to be disposed of as such. Sri Madhusudan R. Naik for the petitioners points out, and rightly in my opinion, that the writ petition is not confined to challenging the

nomination of respondents 3 to 5 under Annexure-E but also covers the consequence of participation of the said nominated members in the election held on 10-6-1999 wherein the sixth respondent was declared elected as President, and as such, merely because, subsequent to the date of election and subsequent to the date of filing of the writ petition, nominations of respondents 3 to 5 are cancelled, same does not render the writ petition infructuous. It is true, as Annexure-R1 would show, respondents 3 to 5 as on today are no longer on the Committee of respondent 2-Society as nominated members. But, they did participate in the election of the President held on 10-6-1999 and, since the nominated members were three in number, and since the difference in the number of votes secured between the elected candidate-the sixth respondent and the defeated candidate-the first petitioner was only two as per Annexure-F, it is obvious that participation of the nominated members in the election has materially altered the result of the election. The question raised in this writ petition therefore still survives to be considered notwithstanding the subsequent cancellation of the nomination of respondents 3 to 5 under Annexure-R1.

5. Firstly, as regards the competence of the State Government to nominate its representatives on the Committee of respondent 2-Society. Section 29(1) of the Act provides that the State Government may nominate not more than three members as its representatives on the Committee of any Assisted Society, of whom one shall be a person belonging to Scheduled Castes and Scheduled Tribes, and one shall be a woman. Section 2(a-l) of the Act defines "Assisted Society" as meaning a Co-operative Society which has received assistance in the form of share capital from the Government. As Annexure-B would show, respondent 2-Society has not received assistance in the form of share capital from respondent 1-State Government. About this factual position, there is no dispute among the parties. Though there is no material on record as to whether respondent 2-Society had received assistance from respondent 1-State Government in any other form, I am of the opinion that, in view of definition u/s 2(a-1) of the Act, only that Co-operative Society which has received assistance in the form of share capital from the Government, can be taken as Assisted Society, and not a Co-operative Society that has received assistance in any other form, i.e., in a form other than the share capital. If that were to be so, respondent 2-Society cannot be called "Assisted Society" within the meaning of Section 2(a-1) of the Act. If respondent 2-Society is thus not an "Assisted Society", then, it is incompetent for respondent 1-State Government to nominate any representatives of its on the Committee of respondent 2-Society u/s 29(1) of the Act. This factual and legal position was there on 9-6-1999 when the first respondent-State Government nominated respondents 3 to 5 as its representatives on the Committee of respondent 2-Society under Annexure-E. The said nomination, therefore, was incompetent.

6. The three nominated members, namely respondents 3 to 5, as noticed earlier, participated in the election of the President of respondent 2-Society on 10-6-1999, and their participation has materially altered the results of the

election, inasmuch as the difference between the winning candidate and the losing candidate is only two. The question that next arises is as to whether the election of the sixth respondent also stood vitiated on that account, and if so, what should be the result of such a finding. Any exercise to find an answer to this question, according to Sri B.K. Manjunath, learned Counsel for the sixth respondent, would amount to sitting in judgment over the election of sixth respondent as President of respondent 2-Society. Sri B.K. Manjunath submits that Section 70(1) of the Act requires any such dispute to be decided by the Registrar, since under clause (c) of sub-section (2) of Section 70 of the Act, even a dispute in connection with the election of a President is a dispute to be decided by the Registrar u/s 70(1) of the Act, Sri B.K. Manjunath therefore submits that when there is an alternative and efficacious remedy provided for adjudicating upon the election dispute, recourse to Article 226 of the Constitution should not be permitted. Sri Madhusudan R. Naik, learned Counsel for the petitioners, points out that the dispute, though appears to be an election dispute, is not in reality the one, but that the real challenge is to the nomination of respondents 3 to 5 u/s 29(1) of the Act. Once such nomination is held to be incompetent, natural consequences should follow including the effect of participation of the said nominated members in the election to the post of President of respondent 2-Society that has, as seen earlier, materially altered the election results. Sri Madhusudan R. Naik for the petitioners submits that, there is no forum under the Act before which the petitioners can challenge the nominations of respondents 3 to 5 by respondent-1-State Government, and that in order to challenge the said nomination, petitioners have no alternative, but to take recourse to Article 226 of the Constitution, and that, once that is done, and once, on accepting their contentions, the nomination is held to be incompetent, then, what follows would be the natural consequences of incompetently nominated members' participation in the meeting of 10-6-1999, which participation has materially altered the outcome of that meeting. Sri Madhusudan R. Naik therefore urges that what is to be examined as a natural consequence of a finding relating to nomination, should not be taken as an election dispute. Sri B.K. Manjunath for the sixth respondent, however, points out that though the nominations of respondents 3 to 5 cannot be independently challenged before any forum under the Act, the alleged incompetent nominations of respondents 3 to 5 could certainly be made a ground of attack in an election dispute u/s 70 of the Act relating to election of sixth respondent as President of respondent 2-Society, and, that therefore, if the question of incompetency or otherwise of the nomination of respondents 3 to 5 can thus be gone into in deciding an election dispute relating to the election of the sixth respondent u/s 70 of the Act, then, there is no excuse for the petitioners to take recourse under Article 226 of the Constitution in the guise of posing the main challenge as the one to the nomination of respondents 3 to 5.

7. The election for the office of the President of the second respondent-Society was held on 10-6-1999 with the sixth respondent having been elected as President. The said election was in accordance with Section 29-F(4) of the Act

and Rule 14-A of the Rules. Nomination of respondents 3 to 5 u/s 29(1) of the Act was not a step connected with the process of conducting election to the office of the President of the second respondent-Society. It was a step anterior to the holding of election for the office of the President of the second respondent-Society. Nomination had been done on 9-6-1999 under Annexure-E. Section 70 of the Act provides for a machinery to challenge the election of the elected members of the Committee. Clause (c) of sub-section (2) of Section 70 of the Act makes it absolutely clear that, so far as members of the Committee are concerned, it is only a dispute arising in connection with the election of a member of the Committee that will be covered under the said provision. A dispute relating to nomination of members, therefore, is out of the purview of the said machinery. There is no other provision in the Act or the rules that enables an aggrieved person to challenge the validity of the nomination made u/s 29 of the Act by initiating any proceeding before any forum created under the Act. As noticed earlier, the forum u/s 70 of the Act is one provided to resolve the dispute relating to election of a member of the Committee and not with respect to any dispute relating to the competency of the Government in nominating the members. Therefore, insofar as the challenge relates to validity of nomination of respondents 3 to 5, there is no alternative remedy provided for under the Act and the rules. Petitioners, therefore, had no alternative but to take recourse to Article 226 of the Constitution for that purpose. The said course of action cannot be equated to a challenge to the election of the sixth respondent as President of second respondent-Society, because, as said earlier, the act of nominating respondents 3 to 5 on 9-6-1999 is anterior, and in no way a part of the process of the election to the office of the President of the respondent 2-Society that is held on 10-6-1999. In this view of the matter, the submission of Sri B.K. Manjunath, learned Counsel for respondent 6 in this regard cannot be appreciated. This writ petition cannot be understood as a proceeding initiated for challenging the election of the sixth respondent as President of respondent 2-Society. In course of adjudication of the questions raised herein, if the sixth respondent were to lose his office, it would be not on account of the dispute relating to his election as President of respondent 2-Society being adjudicated upon but on account of nomination of respondents 3 to 5 being found incompetent, and as such, void ab initio, and on that account, the proceedings in which they participated as such members having stood materially altered in their outcome, and therefore having consequently stood vitiated.

In *Ashok Vs. Tawanappa Siddappa Jakkannavara*, , a Division Bench of this Court had to deal with a situation wherein nomination of certain members to the Panchayat under the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 ("Panchayat Act" for short), had been questioned as also the consequences of their participation in the election of Pradhan of the Panchayat. The Division Bench observed in paragraph 13 that, no forum was to be found in the Panchayat Act to examine the validity of nomination of a member by a person incompetent to nominate, and that whereas

an elected member continues to function validly until his election is set aside under the Panchayat Act, that the said Panchayat Act was silent as to the effect of incompetent nomination of a member under the said Act, and that, in such a situation, the incompetent nomination results in a void act, which cannot clothe the nominated member with any legal status as a member and cannot be treated as a "member" in the eye of law. In paragraph 18, the Division Bench observed that the Panchayat Act had not provided any remedy against any illegality committed in making nomination, and that in the absence of any statutory forum, High Court has to step in to keep the statutory authorities within their bounds and set at naught any ultra vires Act. The Division Bench also made it clear that the illegality in the making of nomination was independent of the election process to elect Pradhan and UpaPradhan. The Division Bench, in paragraph 28 of the judgment, observed that when a person, lacking in authority to make nomination, purports to exercise the said power and nominates the persons to be members of Panchayats, such nominated members would not attain any legal status, and that the nominations are ultra vires acts and are void. The Division Bench observes that the declaration of the invalidity of the nominations strikes at the root of the respective nomination, resulting in the declaration that the nominations were void ab initio, and that, therefore, those nominated persons had no legal status to participate in the elections to elect the Pradhan and UpaPradhan.

Since the election rules concerned with the election of Pradhan and UpaPradhan were found not to provide for setting aside the nomination of members, and since such nomination was anterior to the commencement of the election process, and since there was no provision under the Act to challenge the validity of such nominations, the Division Bench concluded that the votes cast by illegally nominated members would not be counted for the declaration of results of an election to elect Pradhan and UpaPradhan, and that the declaration of the result of such an election can be challenged under Article 226 of the Constitution while challenging the validity of nominations. The Division Bench found therein that nominations made by Adhyaksha of the Zilla Parishad purporting to act u/s 5(3) of the Panchayat Act was an exercise of power not vested in Adhyaksha and hence nominations were void ab initio.

8. As said earlier, election of sixth respondent as President of respondent 2-Society on 10-6-1999 was in the process of an election conducted in accordance with Section 29-F(4) of the Act and Rule 14-A of the Rules. Nomination of respondents 3 to 5 on 9-6-1999 was an act anterior to the said election process. It was not an act connected with the election of the sixth respondent as President on 10-6-1999. Of course, the petitioner could have raised a dispute u/s 70 of the Act relating to election of the sixth respondent as President. But the question is, whether the invalidity of nomination of respondents 3 to 5 could have been made a ground of such challenge u/s 70 of the Act. Nomination could not have been made the basis for the following reasons. It is true, Sections 70 and 71 of the Act deal with raising of a dispute and settlement thereof. Rules

concerned in this regard are to be found in Chapter VII of the Rules. It is true, none of these provisions restrict the grounds on which the dispute relating to an election of President could be raised. Therefore, it is possible to contend that unlike the Panchayat Act and the election rules relating to election of Pradhan and UpaPradhan, etc., the forum created by Section 70 of the Act did not have any hindrance to permit someone raising a dispute thereunder to urge any ground in respect of his challenge to the election of another as President. Without restricting the grounds on which the dispute could be raised, Section 70(2)(c) of the Act inter alia provides that any dispute arising in connection with the election of the President could be raised. The question is, whether the nomination of respondents 3 to 5, which is the sole ground on which election of sixth respondent as President is indirectly challenged herein, would have been urged by the petitioners if they had raised a dispute u/s 70 of the Act for the purpose of challenging the election of sixth respondent as President. In my opinion, if it is to be a ground that could be raised, it must be further said that the forum concerned would have the jurisdiction to uphold the said ground if it were accept the contention of the person raising the dispute, and, accordingly to grant the consequential relief of setting aside of election.

Herein is a forum created u/s 70 of the Act, that has no competence to go into the question as to whether the State Government had or had no competence to make nomination u/s 29(1) of the Act. The said forum had no competence to quash the notification u/s 29(1) of the Act, Annexure-E herein, under which respondents 3 to 5 were nominated. That is because, in order to quash Annexure-E, the forum u/s 70 of the Act shall have to first decide whether nomination of respondents 3 to 5 was valid or not. Going into such a question amounts to deciding the dispute relating to nomination of respondents 3 to 5 as members of the Committee. Section 70 of the Act inter alia vests with that forum jurisdiction to adjudicate upon a dispute arising in connection with the election of a member of the Committee and not the nomination of a member of the Committee. Therefore, if the said forum has no jurisdiction to adjudicate upon the validity or otherwise of nomination of respondents 3 to 5, it has no jurisdiction to quash Annexure-E. On the facts and in the circumstances of the case, the only ground on which the election of sixth respondent as President of respondent 2-Society could be challenged u/s 70 of the Act before the forum concerned was on the ground of incompetently nominated members having participated in the election and their participation having materially altered the result of the election. The forum could not have granted any relief in that proceeding unless it is decided that respondents 3 to 5 were incompetently nominated, and that their nomination was void ab initio. If the forum had no jurisdiction to do so, and therefore, if the forum was incompetent to quash Annexure-E, it could not have granted any relief at all in the dispute raised in connection with the election of sixth respondent. That means that even if the present writ petition is to be taken as challenge to the election of the sixth respondent as President, it is on a ground which could not have been urged in a dispute u/s 70 of the Act, and the

forum u/s 70 of the Act could not have quashed Annexure-E without which no relief could have been granted to the petitioners under Sections 70 and 71 of the Act. That being the case, it is not possible for the sixth respondent to contend that the petitioners should have been driven to raising a dispute u/s 70 of the Act.

The Division Bench in the above said case under the Panchayat Act, observed in paragraph 26 of the judgment, that even the Munsiff constituted as forum to resolve the election dispute having no power to examine the validity of the nomination of members purported to have been made u/s 5(3) of the Panchayat Act, the votes of the persons who clothed themselves as nominated members, having materially affected declaration of the results in the election of Pradhan and UpaPradhan, injustice would get perpetuated if the High Court declined to interfere under Article 226 of the Constitution and to grant relief sought for in the writ petition. I am therefore of the opinion that the petitioners could not have made the invalidity of the nomination of respondents 3 to 5 as a ground to challenge the election of sixth respondent as President in the dispute raised u/s 70 of the Act for the simple reason that the forum u/s 70 of the Act was incompetent to give a declaration that the nomination of respondents 3 to 5 was void ab initio and that the order of nomination under Annexure-E needed to be quashed. This was therefore one case wherein petitioners had no alternative but to approach this Court under Article 226 of the Constitution even if the challenge is to be taken as a challenge not only to the nomination of respondents 3 to 5, but also indirectly as a challenge to the election of sixth respondent as President. Of course, taking a highly technical view, it could have been urged that because it is only a dispute relating to election of members of the Committee that could be raised u/s 70 of the Act, and, as such, a dispute relating to validity of nomination of members cannot be raised under the said Section 70, and as such, recourse to Article 226 of the Constitution would be permissible for that limited purpose, this Court could declare the nomination of respondents 3 to 5 as void ab initio and thereafter drive the petitioners to the forum u/s 70 of the Act for the purpose of raising the dispute with regard to the election of sixth respondent as President, and that, if such course is taken, since the nomination of respondents 3 to 5 would have already been held as being void ab initio by this Court, the forum u/s 70 of the Act could then proceed on that footing to go into the dispute relating to election of sixth respondent as President. Doing so in my opinion would be an empty formality, particularly when the other facts needed for disposal of the entire matter are not at all in dispute, namely that these three nominated members participated in the proceeding relating to election of sixth respondent as President, and that on account of their participation, the result of the election stood materially altered. Such a course of action, namely declaring the nomination as void ab initio, and driving the petitioners to the forum u/s 70 of the Act for challenging the election of sixth respondent as President, would, in my opinion, not only be an empty formality but would be looking at the scope of Article 226 of the Constitution in a highly technical way. I am therefore of the opinion that the writ petition is maintainable, and, it is Article 226 of the

Constitution that is appropriate course rather than Section 70 of the Act.

9. As found earlier, admittedly, respondent 2 is not an Assisted Society within the meaning of Section 2(a-1) of the Act, and it was incompetent for the respondent 1-State Government to nominate any of its representatives on the Committee of respondent 2-Society, because Section 29(1) enabled nomination only in respect of Assisted Societies. Nomination of respondents 3 to 5 under Annexure-E was void ab initio. The said Annexure-E therefore did not clothe respondents 3 to 5 with the membership of the Committee of respondent 2-Society, but still they participated as such members in the election of the President held on 10-6-1999, in which the first petitioner and the sixth respondent contested to the office of the President. As had been done in cases being dealt with by the Division Bench in the above said Panchayat cases, if it had been possible to exclude the votes cast by illegally nominated members in the said election for the office of the President, and the declaration of the result redone, it would have been a different matter. But, where in respect of an election like the one concerned under the Act, namely the election of the President of a Co-operative Society, the voting would be by secret ballot as required by sub-section (6) of Section 28A of the Act, the difficulty would arise because of the impossibility of finding out as to in favour of which of the two contesting candidates, the illegally nominated members cast their votes. In such a situation, what is to be done is to examine whether the participation of such unauthorised persons in the election for the office of the President has materially altered the result of the election. Supposing, in the present case, out of 18 persons who voted in the election on 10-6-1999, if sixth respondent had come to be elected by a margin of four votes, then, it could have been said that the participation of unauthorised persons has not materially altered the result of the election. In such a situation, even without the participation of three unauthorised persons, sixth respondent still could have got himself elected by a majority of one vote instead of by a majority of four votes. Result would have been the same, namely R-6 being elected as President. But it so happened in the present case that the difference is only two, inasmuch as, out of 18 members of the Committee including respondents 3 to 5 who participated as such members, 10 voted in favour of sixth respondent while 8 voted in favour of the first petitioner. It is therefore obvious that the participation of respondents 3 to 5 has materially altered the result of the election in which sixth respondent was declared elected. The result is that, in addition to quashing Annexure-E under which respondents 3 to 5 were nominated u/s 29(1) of the Act, the proceedings of 10-6-1999 in which respondent 6 was elected as President also need to be declared as having stood vitiated, the consequences of which would be, holding of fresh elections for the office of the President. In *Patel Basavegowda and Another v Prescribed Officer, Singarajapura Mandal Panchayat and Others*, the learned Single Judge of this Court, after finding that the result of the election of Pradhan has stood materially altered on account of participation of two persons concerned therein who were found to have been illegally nominated, proceeded to quash the election of Pradhan with a direction to hold fresh

elections to the office of Pradhan, The result in the present case could be no different. The proceedings of 10-6-1999 in which sixth respondent was declared elected as President have stood vitiated, and a declaration to that effect would render the office of the President of respondent 2-Society vacant, in which event, the consequences would automatically follow. Learned Counsel for the sixth respondent-Sri B.K. Manjunath, referring to various decisions, strenuously urged that R-2 Society is not amenable to writ jurisdiction because it is not "State" within the meaning of Article 12 of the Constitution, and that therefore, no writ of mandamus or any other writ or order could be issued against the sixth respondent-Society. There is no dispute at all that respondent 2-Society is not "State" within the meaning of Article 12 of the Constitution, and, as such, not amenable to writ jurisdiction. Several decisions that Sri B.K. Manjunath has relied upon in support of this contention, therefore, do not need to be referred to. No direction or order or writ can be issued against respondent 2-Society under Article 226 of the Constitution. But, as a result of the discussion made earlier and the conclusions reached thereon, if Annexure-E, dated 9-7-1999 under which respondents 3 to 5 were nominated, comes to be quashed, and as a consequence of participation of respondents 3 to 5 in the proceedings of the Committee of respondent 2-Society dated 10-6-1999 resulting in the election of sixth respondent as President, the said proceedings are declared, merely as a consequence of quashing of Annexure-E, as having stood vitiated, the result will be that without any further direction, writ or order, sixth respondent would cease to be the President of respondent 2-Society. Even for the consequences of respondent 6 so ceasing to be President of respondent 2-Society to take place also, no direction, writ or order would be necessary, because, if the office of the President becomes vacant, Section 29-F of the Act mandates that steps shall be taken within the specified time to convene the meeting of the Committee for electing the President. This is a statutory duty cast on the Chief Executive of respondent 2-Society to do so, and no direction, order or writ of the Court for this purpose would be necessary. Section 29-G(4)(k) of the Act inter alia mandates that the Chief Executive shall perform such duties and exercise such powers as are imposed or conferred on him under the Act and the rules.

Where, by quashing Annexure-E and declaring the proceedings of the Committee of R-2 Society dated 10-6-1999 as having stood vitiated, respondent 6 needs to vacate the office of the President of respondent 2-Society, Section 29F of the Act and Rule 14-A of the Rules mandate the Chief Executive of respondent 2-Society to convene the meeting of the members of the Committee within the specified time for the purpose of electing the President. The occasion to give any direction, order or writ to the Chief Executive for this purpose does not arise. Only if there is a failure on his part to perform this duty, a need may arise to issue direction, order or writ. If such a situation arises, and if someone concerned once again approaches this Court under Article 226 of the Constitution for a direction, order or writ to the Chief Executive to perform the said duty, it may still be open for the other side to contend that no direction or order or writ could be issued to the

Chief Executive in this regard under Article 226 of the Constitution because it indirectly amounts to issuing such direction or order or writ to a Co-operative Society under Article 226 of the Constitution, which would not be permissible. If such a contention is raised, there could also be an answer to the following effect: No doubt, the Society is a body corporate u/s 9 of the Act and that the Chief Executive, in view of Section 29-G(4)(j) of the Act, can sue or be sued. But, u/s 29-G(4)(k) of the Act, he also needs to perform such other duties and exercise such other powers as imposed or conferred on him under the Act, rules or bye-laws. Some of the duties that he so performs and the powers that he so exercises may not be related to his functioning as Chief Executive of the Co-operative Society concerned, but as a representative of the Registrar in a wider sense. One such duty is the one imposed under sub-sections (4) and (6) of Section 29F of the Act read with Rule 14-A of the Rules, namely convening of the meeting of members of the Committee for electing the President. Though these provisions refer to the person to so convene the meeting as Chief Executive, it shall have to be taken in this particular context as referring to an official independent of an employee of the Co-operative Society. In other words, he is to be taken as someone independent of the Co-operative Society who is asked to perform certain duties and exercise certain powers. For example, Section 39-A(3) of the Act inter alia provides that subject to the provisions of the Act, election of members of the Committee shall be in accordance with such rules as may be prescribed, and Rule 14(1) of the Rules requires that the Registrar shall appoint an officer or official of the State Government or the local authority as Returning Officer for this purpose. The Returning Officer so appointed under Rule 14(1) does not become an employee of the Co-operative Society. The situation is not different merely because, for the next step of convening the meeting of members of the Committee for electing the President, sub-sections (4) and (6) of Section 29F and Rule 14-A of the Rules, cast the duty of convening such meetings of the Committee on the Chief Executive. In performing this duty either under sub-section (4) or under sub-section (6) of Section 29F of the Act read with Rule 14-A of the Rules, the Chief Executive would not be acting as an employee of the Co-operative Society concerned, but as an independent Returning Officer for the purpose of holding elections for the office of the President. Section 39-A(1) of the Act inter alia provides that the election of members of the Committee other than the members of the first Committee of the Co-operative Society after its registration, shall be held subject to the superintendence, direction and control of the Registrar. Section 29-F(7) of the Act provides that the Chief Executive shall, within three days from the date of the meeting under sub-section (4) of Section 29F of the Act, forward to the Registrar a copy of the notice convening the meeting and also a copy of the proceedings of the meeting. The superintendence, direction and control of the Registrar under sub-section (1) of Section 39A of the Act in respect of election of members of the Committee, thus does not end with the election of the Committee of the members, because, the process would not be complete unless the office-bearers also are elected. That is how, though the duty of convening the

meeting of the members of the Committee for electing the President under sub-section (4) of Section 29F of the Act is cast upon the Chief Executive, he is required to keep the Registrar informed not only with the copy of the notice that he had sent convening the meeting, but, also of the proceedings of the meeting by sending a copy thereon to the Registrar. The Chief Executive thus virtually acts as a Returning Officer for the election of the President of the Society. Sub-section (8) of Section 29F of the Act makes this position absolutely clear by providing that if the Chief Executive fails to convene the meeting in accordance with sub-sections (4) and (6) of Section 29F, then, the Registrar or any person authorised by him to do so shall convene the meeting for the purposes specified in the said sub-sections (4) and (6). It is therefore to be taken that the Chief Executive, while performing his duty either under sub-section (4) or sub-section (6) of Section 29F of the Act read with Rule 14-A of the Rules, is an officer distinct and separate from the Co-operative Society concerned, in the same way as Returning Officer for the purposes of conducting election for the Committee of the Co-operative Society appointed under Rule 14(1) of the Rules is. In the matter of conducting the elections, therefore, while in respect of the Committee, there is no bar to issue any direction, order or writ under Article 226 of the Constitution against the Returning Officer appointed under Rule 14(1) of the Rules, there could be similarly no bar to issue any direction, order or writ under Article 226 of the Constitution to the Chief Executive in the matter of conducting elections for the office of the President either under sub-section (4) or under sub-section (6) of Section 29F of the Act read with Rule 14-A of the Rules. Any direction, order or writ issued to the Chief Executive in this context therefore cannot be construed as a direction or order or writ issued to the co-operative Society concerned. This could be the answer for any contention that could be raised as pointed out above.

But, I am not going into the above question since it is unnecessary for the purpose of disposal of this writ petition to do so. As it is, since Annexure-E needs to be quashed and the proceedings of 10-6-1999 need to be declared as having stood vitiated, the sixth respondent would cease to be the President of respondent 2-Society, and as a consequence, the Chief Executive is to be expected to perform his duties as imposed on him by Section 29F of the Act read with Rule 14-A of the Rules. It is only on his failure to do so, that any question will thereafter arise, whether any direction or order or writ should be issued against him under Article 226 of the Constitution. As and when such a situation arises, the above answer as to the Chief Executive being required to be treated as Returning Officer distinct and separate from the co-operative Society concerned, and as such Returning Officer being amenable to writ jurisdiction, needs to be considered. Right now, that stage has not yet been reached, and therefore, no opinion needs to be expressed in that regard.

10. Petition is therefore allowed. Annexure-E is quashed. Consequently, the proceedings of the Committee of respondent 2 dated 10-6-1999 in which the sixth respondent was elected as President, are declared as having stood vitiated.