

(1996) 08 KL CK 0065
In the High Court Of Kerala
Case No : O.P. No. 10867 of 1996

N. Sudarsanan

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 09-08-1996

Acts Referred:

Citation : (1996) 08 KL CK 0065

Hon'ble Judges : P. Shanmugam, J.

Bench : Single Bench

Final Decision : Dismissed

Judgement

P. Shanmugam, J.—The petitioner seeks for a declaration that he is entitled to continue as duly elected Vice-President of the Kerala State Co-operative Bank Limited (hereinafter referred to as "the bank") and for a declaration that Rule 37 (3) of the Kerala Cooperative Societies Rules as invalid and for a further declaration that the nominated members of the Bank are not entitled to vote in the election of office bearers and for direction not to convene any meeting for the election of the President or Vice-President of the bank. The Kerala State Co-operative Bank is an apex society registered under the Kerala Co-operative Societies Act (hereinafter referred to as "the Act"). The Board of Directors of the bank consists of the following: a) one Director deputed by each affiliated District Co-operative Bank numbering 16; b) the Registrar of Co-operative Societies; c) two nominees of the State Government; d) the Managing Director of the bank; e) one representative of Scheduled Castes and Scheduled Tribes; and f) one woman representative.

2. After the expiry of the term of the office bearers of the State Co-operative Bank, a meeting of the Board of Directors of the bank for the year 1996-97 was proposed to be held on 30.4.1996 for the election of President, Vice-President and other executive committee members. The meeting was postponed to 2.5.1996 and again to 4.5.1996 and further to 29.5.1996. In the meeting held on 29.5.1996, the petitioner claims to have been elected as Vice-President of the

bank unopposed. As against the resolution and decision electing the Vice-President, the Managing Director of the bank represented to the Registrar of Co-operative Societies that the election of the petitioner was illegal since there was no agenda for the election of the Vice-President and the same was contrary to Rule 43 (4) of the Co-operative Societies Rules. The Registrar by order dated 20.6.1996 rescinded the decision and resolution dated 29.5.1996 of the Board electing the petitioner as Vice-President and directing the Managing Director to initiate action to conduct the election in accordance with the Rules. The present Original Petition came to be filed for the reliefs stated above, without challenging the order passed by the Registrar.

3. Learned counsel appearing on behalf of the petitioner submitted that the question whether there was a resolution/decision taken regarding the election of the Vice-President on 29.5.1996 is a question of fact. The same has to be adjudicated before an arbitrator against the election and the Registrar cannot decide that question. The order of the Registrar rescinding the resolution was made without giving opportunity to the petitioner and, therefore, violative of principles of natural justice. It is further contended that the Registrar of Co-operative Societies being a member of the Board cannot sit in judgment over the decision taken by the Board. The order of Registrar is actuated by bias and arbitrariness. It is further submitted that Rule 43 (4) of the Rules which gives equal authority to the nominated members is illegal and ultra vires of section 20 (b) of the Act. According to him, if elections were to be held for the office bearers of the society, it should be without the nominated members voting in the said election.

4. The learned Advocate General appearing on behalf of respondents 1 to 3 submitted that the facts are admitted and there is no dispute regarding the question that the election of the Vice-President was not in the agenda to the meeting on 29.5.1996. According to him, the petitioner was issued with the notice for the said meeting and he was well aware that the election of Vice-President was not one of the subjects. According to him, the election of the office bearers shall be done only in accordance with Rule 43 in a meeting convened for the purpose. The meeting held on 29.5.1996 was not the meeting convened for the purpose of electing Vice President. As a matter of fact, when the subject was taken up, two Directors have given written objections. The President of the said meeting stated that the election of Vice-President was not included in the agenda and, therefore, the Board should not conduct the election in that meeting. The Secretary and the Registrar of Co-operative Societies also objected to holding of the election without prior notice. Therefore, they did not participate in the election. The Managing Director also had objected to the holding of the election. According to him, inasmuch as an election was conducted in violation of specific provision of Rule 43 in spite of the objections, the Registrar is competent to cancel the resolution.

5. In reference to the contention that there was violation of principles of natural

justice inasmuch as the petitioner was not afforded an opportunity, he submitted that no useful purpose will be served by giving a notice to the petitioner. The petitioner, who had been elected in a meeting which had been convened without notice to the members of the Board, cannot contend that he was not given notice. The petitioner has absolutely no defence for holding the meeting contrary to Rule 43 and getting elected unopposed. According to him, an opportunity should not be an empty formality.

6. The 5th respondent, namely the Managing Director of the Bank, has filed the counter and produced the minutes book and other records. Besides filing a counter, according to him, for each meeting of the Board of Directors, the agenda is circulated among the members of the Board along with the notice of the meeting. For the meeting held on 29.5.1996 notice Ext.R5 (b) dated 21.5.1996, informing that the third meeting of the Board of Directors of the Bank for the year 1996-97 would be held on 29.5.1996 and enclosing the agenda for the meeting, was issued to the 17 members of the Board of Directors. The agenda consisted of 9 specific items. It is further stated that when an item is adjourned and is proposed to be taken up in the next meeting it is specifically stated in the agenda and circulated among the members. According to the 5th respondent, election of the Vice-President was not one of the items included in the agenda for the meeting of 29.5.1996. The election of the Vice-President which was an item on 4.5.1996 did not take place and it was adjourned. On the next postponed meeting on 11.5.1996 the said item was not taken up automatically as contended by the petitioner since election to the post of Vice-President was not included in the agenda. So also for the meeting held on 29.5.1996 the said item was not included. It is stated that the petitioner had attended the meeting held on 11.5.1996 and the meeting was confined to the agenda items and items which were permitted by the Chair. It is further stated that when important items like election for filling up vacancies of the President, Vice-President and Executive Committee members are to be taken up for consideration notice are given to the members of the Board.

7. The petitioner has filed a reply to the counter filed by the 5th respondent. In the reply affidavit, a new stand was taken by the petitioner. In the Original Petition in ground No.A it is stated that the meeting dated 29.5.1996 was convened specifically for the purpose of election of Vice-President. He also proceeded in the Original Petition that no fresh agenda need be prepared as members had already notice of the agenda on which the adjourned meeting will take place and the meeting dated 29.5.1996 was one of the adjourned meetings. In the reply affidavit it is stated that no separate agenda is required for the purpose of election of the Vice-President and the person who is presiding over the meeting has power to permit the discussion on the election of the Vice-President.

8. I have heard the learned counsel in extenso, the learned Advocate General and the counsel for respondents 5, 8 and 10.

9. The four main issues arising for consideration which can be separately dealt with are (i) whether the election of the Vice-President in the meeting held on 29.5.1996 is valid without the same being included as a specific item in the agenda? (ii) whether the order of the Registrar (Ext. P2) rescinding the decision and resolution No. 53 dated 29.5.1996 regarding the election of the Vice-President is valid? (iii) whether Rule 37 (3) of the Co-operative Societies Rules is valid? and (iv) whether the nominated members are entitled to vote for election to the office bearers of the society or not?

10. We are concerned with election of the Vice-President of the Bank. Rule 43 provides the manner of election of the Vice-President. Rule 43 (3) requires the convening of a new committee for the purpose of the election. Rule 43 (4) provides for filing of the nomination and receiving the names of the eligible candidates and the other sub-rule sets out the manner of election. From these it is clear that the Rule contemplates a specific meeting to be convened for the purpose of the election. According to Sub-rules 8 and 9, proceedings of the meeting and the results of the election shall be recorded in the minutes book of the society and attested by Presiding Officer and the ballot papers and other records shall be secured in a container which shall be affixed with the seal of the society and of the candidates. Therefore, when this Rule enjoins that the election should be done in a particular manner, it should be done in no other manner. The Rule is mandatory in nature and it has to be strictly be complied with. In *Sainudeen v. State of Kerala* (1992 (2) KLT 829) this Court while dealing with Rule 43 held that this rule is mandatory in nature and when rule enjoins a particular thing to be done in a particular manner, it has to be strictly be complied with. Applying this principle, it has to be held that election of Vice-President cannot be held without giving a specific notice and without convening a meeting for that purpose.

11. While dealing with the validation of irregular notices, in "Shackleton on the law and practice of meetings", 17th Edition, Page 42 it is stated as follows:

If members are summoned to appear for a particular purpose, they cannot proceed to any other matter without the unanimous consent of the whole body, but if they are all present and waive the formality of notice a resolution passed at such meeting will be good even though the meeting was not assembled for that particular purpose. Learned Advocate General when referring to this passage submits that the election of the Vice-President can be held only in a meeting convened for the particular purpose and if the meeting is convened for a different purpose, the meeting cannot proceed to deal with any other matter unless all the members are present and waived the formality. In this case, the meeting dated 29.5.1996 was not convened for the purpose of election of the Vice-President. Secondly, the meeting could have proceeded only with the items set out in the agenda and if they wanted to take up any other agenda it could have been done only if all the members were present and that they waived the formalities of the notice of resolution. Admittedly, in this case, notice regarding the election of Vice-

President was not given to all the members. Only 15 members out of 17 who had been given the notice for the meeting attended and even among the 17 members, 4 members have objected to the taking up of the item of election of the Vice-President as one of the items. Therefore, the meeting for election is clearly illegal. In *Kodivathur Panchayat v. District Panchayat Officer, Calicut* (1977 KLT 80) a Division Bench of this Court relating to the meetings under the Panchayat Act held that under general law relating to meetings, no business of an important nature is to be taken up at a meeting of a council or a committee unless notice is given in respect of it to all the concerned members. In other words, notice of meetings should specify the business to be transacted. When notice is given that particular business will be transacted in a meeting, no other business can be embarked upon in that meeting unless the whole body was present and consents. It follows that the resolution passed on a subject not included in the agenda of a meeting would be good only if all the members of the committee are present at the meeting and if all of them waived the formality of notice. The Division Bench was dealing with a similar case where resolution was made on an item which was not included in the agenda. Two members of the Committee who came late to the meeting after passing of the resolution objected to this stating that if they had known that the item would be taken for consideration, they would have attended the meeting in time, placed their view points and even influenced the other member to see that the resolution was not passed. In the absence of notice, they lost the above right and it is open for them to challenge the decision. The Division Bench upheld this objection following the judgment of the Supreme Court in *The Vice-chancellor, Utkal University and Others Vs. S.K. Ghosh and Others*, which in turn extracted the passage from "Halsbury's Laws of England". The said passage is worth extracting here:

The reason for the stricter rule laid down in the cases cited before us is that though an incorporated body like a University is a legal entity it has neither a living mind nor voice. It can only express its will in a formal way by a formal resolution and so can only act in its corporate capacity by resolutions properly considered, carried and duly recorded in the manner laid down by its constitution. If its rules require such resolutions to be moved and passed in a meeting called for the purpose, then every member of the body entitled to take part in the meeting must be given notice so that he can attend and express his views. Individual assents given separately cannot be regarded as equivalent to the assent of a meeting because the incorporated body is different from the persons of which it is composed. Hence, an omission to give proper notice even to a single member "in these circumstances" would invalidate the meeting and that in turn would invalidate resolutions which purport to have been passed as it. But this is only when such inflexible rigidity is imposed by the incorporating constitution. In *Muthukumaraswarmi Pillai v. Muthukatha Pillai and another* (I.L.R 1964 (2) Mad 22) a Division Bench of Madras High Court dealing with an election of a Panchayat President held that the law does not countenance the

election of a President in a meeting convened ad hoc. It has necessarily to comply with certain prescribed statutory formalities, which cover not merely the service of notices but also the time, place and the election of presiding officer. It must be held in a duly constituted election meeting by an officer nominated for that purpose. The requirement of notice in a present case is much stronger position since this is dealing with the election of the Vice-President. Apart from the fact that the Rule 43 requires that the election should be done in a particular manner as prescribed under Rule 43 every member of the Board should have been put on notice so that they will be able to contest and exercise their right to elect the Vice-President. In the absence of a specific notice to all the members, the meeting convened for some other purpose cannot be permitted to take up the item of election abruptly without notice to the members and proceed with the election. Apart from the fact that an adjourned item cannot be automatically be taken up in the next meeting in so far as the election of the Vice-President is concerned, it cannot be done simply for the reason that the procedure has been laid down under Rule 43 and that opportunity should be given to all the members in reference to the election. As a matter of fact, realising this position, I find that in the meeting held on 29.5.1996 from the records, it is found that a separate resolution appears to have been taken up to hold the election. The minutes of item 53 proceeds with a resolution to conduct the election to the office of the Vice-President. If the contentions of the learned counsel for the petitioner have to be accepted, namely, that the election of the Vice-President be included in the agenda on 4.5.1996, and that the said item is to be automatically be included in the next meeting on 11.5.1996 and then on 29.5.1996, then there is no need to take up a separate resolution before holding the election. That itself shows that the members who participated in the meeting realised that there should be a separate resolution to hold the election. But the said request to hold the election was objected to by the 4 members on the ground that the same was not included in the agenda and the election could not be permitted without notice to other members and included in the agenda specifically. Overruling this objection, a resolution was passed to hold the election. I am of the view that the said resolution to hold the election is patently illegal and clearly violative of Rule 43 and the general rules of meetings and the decision of the Division Bench of this court and Supreme Court in reference to the meetings. Therefore, if there was no meeting in the eye of law, the decision taken to elect the petitioner as unopposed to the post of Vice-President is void ab initio.

12. The Registrar of Co-operative Societies by Ext. P2 order has rescinded the resolution dated 29.5.1996 electing the petitioner as Vice-President. The said order is not specifically challenged in this Original Petition. But the prayer is that there should be a declaration to the effect that the petitioner is entitled to continue as duly elected Vice-President, Without specifically seeking to set aside the order of the Registrar of Co-operative Societies which has been passed under Rule 176, the prayer simply to seek for a declaration may not lie. The petitioner has got an effective alternative remedy by way of appeal to the Government

under Section 83 as against the order of the Registrar. According to the petitioner, the order was passed in violation of principles of natural justice inasmuch as the petitioner's election as Vice-President is being held to be invalid without giving a notice and an opportunity. It is his further contention that the Registrar who was a party to the meeting cannot decide the matter and is influenced by bias.

13. As against the rescinding of the resolution, the Bank has not filed any objection. On the contrary, the Managing Director of the Bank who represented the Bank has supported the order of the Registrar and stated that the resolution to hold the meeting and the election of the petitioner as Vice-President are invalid. The Managing Director had also given his objection even at the time of the meeting itself on 29.5.1996. When the petitioner got himself elected without giving notice to other members of the Board and without giving opportunity to the other members to contest and participate in the election, he cannot be heard to plead that he should have been given an opportunity while setting aside the said resolution. A person who seeks equity, himself should have followed the principle of equity. Admittedly all the members of the Board were not given notice for the election and therefore it is not open to the petitioner to raise a question of opportunity when he himself is a party to a resolution passed without giving an opportunity to the members.

14. In *S.L. Kapoor Vs. Jagmohan and Others*, , the Supreme Court while dealing with the principles of natural justice held that where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs. In *Purushothaman v. Registrar* (1996 (2) KLT 26) a Division Bench of this Court while dealing with the question whether before passing an order under Rule 176 of the Rules, opportunity should be given to the affected party, held that persons who got the orders of appointment by resorting to backdoor methods should be sent out through backdoor itself. While coming to the said conclusion, the Supreme Court referred and applied the principles set out in *The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee*, wherein Justice V.R. Krishna Iyer observed as follows:

Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt-that is the conscience of the matter. To the same effect in their decision in *Krishan Yadav*

and another Vs. State of Haryana and others, the Supreme Court held that persons who got selection to a post by illegal methods is not entitled to hear before they are thrown out of employment. Their Lordships observed as follows:

In the above circumstances, what are we to do? The only proper course open to us is to set aside the entire election. The plea was made that innocent candidates should not be penalised for the misdeeds of others. We are unable to accept this argument. When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place as "Fraud unravels everything". To put it in other words, the entire selection is arbitrary. It is that which is faulted and not the individual candidates. Accordingly, we hereby set aside the selection of Taxation Inspectors. In Union of India and Others Vs. Anand Kumar Pandey and Others, under similar circumstances, the Supreme Court held as follows:

This court has repeatedly held that the rules of natural justice cannot be put in a strait-jacket. Applicability of these rules depends upon the facts and circumstances relating to each particular given situation. Therefore, considering the facts and circumstances of the entire case, I am of the view that the petitioner cannot be heard to contend that no opportunity was given and that the question of giving an opportunity to the petitioner does not arise at all and there is no need to give such an opportunity to the petitioner in view of the circumstances of the case. The decision in item 53 has two parts. One deals with a resolution to hold the election and the second the election of Vice-President. In so far as the first part is concerned, the aggrieved party can be only the society. The petitioner had not pleaded anything in support of the resolution in the original petition. When such a resolution cannot be taken in the eye of law, it is non est and no notice need be given to the society in such circumstances. The resolution did not give an answer or as to how the objection of four members was got over. The second part is the election of Vice-President. The petitioner is aggrieved only against setting aside this part without notice. If no valid consequence will follow in view of the illegality as found earlier the petitioner cannot be heard to plead notice. As a matter of fact, after rescinding the decision and resolution, the Registrar has directed the Managing Director of the Bank to initiate action to conduct the election in accordance with the provisions in Rule 43. The petitioner having no vested right over the office of the Vice-President he is aware that he is to contest in a properly convened meeting. He cannot take advantage of a meeting which has been illegally convened and elected unopposed in the said meeting. The counsel for the petitioner has referred to a decision in Kurien v. Joint Registrar (1987 (2) KLT 357) to the effect that election of a President of a committee cannot be rescinded under Rule 176. As pointed out earlier, in this case, the Registrar has cancelled the decision to hold the election and the consequential election that went with that. Therefore, this decision is of no help to the petitioner.

15. The next point urged by the learned counsel is that the Registrar is actuated by bias. It is an admitted fact that the Registrar did not participate in the

meeting. The Registrar, after raising the objection to the holding of the meeting without prior notice, was not present at the time of election. Rule 37 (3) provides that when the Registrar or any other officer exercising the powers of the Registrar presents at such committee meeting in their capacity as an ex officio member it shall not preclude them from examining such resolutions or decision in exercise of their power conferred under the Act or Rules. As we are concerned only with the election of the Vice-President the resolution electing the petitioner as Vice-President inasmuch as the Registrar was not a party to that part of the resolution and she did not participate in the said meeting that would not bar the Registrar to take an action under Rule 176. As a matter of fact, the Rule 37 (3) provides that even the participation of the Registrar would not preclude him from passing orders in exercise of the power conferred by the Act or Rules. The rule is not to be attracted since the Registrar did not participate in the election. The petitioner has not pleaded or argued on the decision taken against the resolution without specific agenda and notice to the other members. The averments related only to the setting aside of the election without notice. The Registrar has set aside the decision and the resolution which was combined as one item. Therefore, the consideration regarding the validity of Rule 37 (3) is academic in this case. Even in this respect, the petitioner has not substantiated as to how this rule is violative of Article 14 of the Constitution of India. The learned counsel for the petitioner has not elaborated his points on this aspect except stating that this is basically violating the provisions of Article 14 of the Constitution of India. In the capacity of an ex officio member Registrar and other officers are participating in the functions of the society under various provisions of the Co-operative Societies Act would not preclude them while functioning as authorities competent under the Act specifically provided. The principle that he cannot be the Judge of his own cause cannot be attributed in this case because the Registrar has no personal role to play in the affairs of the society. He functions as an ex officio member of the society whereas under the Rules and Act he functions as an authority conferred with the power. In the decision taken by the society or the committee in which the officers are also members of the bodies, they are representing not in their personal capacity as members. Therefore, the said principle cannot be imported so as to declare this rule invalid. Apart from a general statement, no other authority has been cited before me to consider this specific question. On the contrary the principles governing the "doctrine of bias" are that no man shall be a judge in his own cause and that justice should not only be done but manifestly and undoubtedly seem to be done, will not be applicable in this case. In *Dr. P.S. Venkata Swamy v. University of Mysore* (AIR 1964 Mys 159) a Division Bench of Mysore High Court took the view that this principle will ordinarily and properly be applicable only in cases where the regular judicial functions are discharged by the person concerned. According to the Bench this principle need not necessarily be applied in every case where quasi judicial functions are discharged by administrative bodies or statutory authorities. It would depend on the provisions of the relevant statutes some of which contain express provisions enabling particular authorities to function in a

manner closely resembling that a person being a judge in his own cause. In *M.L. Joshi v. Director of Estates* (AIR 1967 Del 86) it was held that no one shall be a judge in his own cause only means that he should not have personal interest in the cause he is to adjudicate. It does not mean that an officer discharging official functions must not start proceedings in a matter in which he is under the law competent to adjudicate upon. In *The Registrar, Co-operative Societies Vs. Dharam Chand and Others*, the Supreme Court held that even though the Registrar was the administrative head of the Department, there was nothing inherent in the situation which showed any official bias whatsoever in him so far as adjudication of the dispute was concerned as there was no reason to suppose that if any of his subordinates or the auditors appointed by him were in any way found to be connected with the fraud he would not put the responsibility where it should lie. Therefore, there was nothing inherent in the situation which made the Registrar a biased person who could not act as judge or an arbitrator in the case. Therefore from these decisions it is clear that the principle of bias cannot be imported in this case. The Registrar is functioning in his capacity as a member of the Society and that is only at best can be an administrative function concerning with the particular society. While he decides the question as a statutory authority he has no personal interest in the matter. The rule which enable the Registrar or other officers to function as a statutory authorities cannot be arbitrary violating the principles that no man can be judged on his own cause. Hence, I do not find any merits to sustain the argument of invalidity of Rule 37 (3).

16. The last point taken by the learned counsel for the petitioner is that this court must declare that the nominated members of the Bank are not entitled to vote in the election of office bearers. This is placed as an alternative argument that in case the Registrar's order is held as valid and the petitioner does not succeed in his prayer to declare him to continue as duly elected Vice-President, in the ensuing election to the Vice-President, the nominated members should not be permitted to vote. The whole premises of the petitioner's argument in this regard rests on Section 20 (b). As per Section 20 every member of a society shall have one vote in the affairs of the society. But the proviso says that a nominal or associate member shall not have the right to vote. Sub-clause (b) says that where the Government is a member of the society, each person nominated by the Government on the committee of the society shall have one vote except when the right to vote is to be exercised for election of office bearers of the society. The case of the petitioner is that this provision is very clear and restricts the right of the Government nominees in the committee to vote in the case of election of office bearers of the society. The learned Advocate General on the other hand submits that this Section deals with the rights of votes of members in the general body meeting of the ordinary society and does not deal with the voting rights of members of the committee in the apex society. Section 31 is the provision specifically dealing with the nominees of the Government on committee of an apex society. This provision does not restrict the nominees to exercise their vote. Apart from Section 31, Section 28A also provides for

nominees of women or members belonging to scheduled castes. Sub-clause (4) of Section 28A provides that the nominee shall have all the powers of the members elected to the committee. That apart, Rule 37 (2) makes abundantly clear that the powers, duties, the functions and responsibilities of a person nominated to the committee under Section 31 shall be the same as those of a member duly elected under the byelaws. Thus we have Section 20 (b) on the one hand and Sections 28A, 31 and Rule 31 (2) on the other. Section 28A was introduced by Act 29 of 1986 and Section 31 was substituted by Act 19 of 1987. Apart from Sections 28A and 31, there is no other provision by which the Government is entitled to nominate members on the committee on its own. Section 31 provides that the Government can nominate to the committee only in cases where they have subscribed to the share capital or have assisted in the formation or augmentation of the share capital of an apex or a central society, or guaranteed the repayment of principle and payment of interest on loans and advances to the society. The only restriction on the nominated member is provided under Sub-clause (3) of Section 31. It is stated that a nominated personal shall not take part in the discussion of any no-confidence motion or vote on any such motion. When the government's participation in a society is substantial, the Government thought it fit to nominate their representatives as members of the committee. The representation also are restricted to 3 or 1/3 of the total members whichever is less. Thus when a government participation is substantial, it is incomprehensible that their right in electing the office bearers is to be restricted. A reading of Rule 37 makes the intention of the legislature very clear to the effect that the nominees shall have the same power, duties functions and responsibilities as those of the members elected under the bye-laws. In the case of such a clear provision, the restriction that is contemplated under Section 20 (b) has to be read down as to mean other societies than apex and central societies and societies contemplated under Section 28A. As rightly pointed out, Section 20 deals with the vote in the general body of a society and not in the managing committee. The appointment of committee is provided under Section 28. It is for the general body to constitute the committee. But prior to amendment by Act 19 of 87 dated 25.8.87 the Government had the power to nominate members on the committee for unspecified period. Now the power is restricted to first committee and for period not exceeding twelve months. The provision to Section 20(b) is not happily worded and at any rate cannot control Sections 28A, 31 and Rule 37 (2).

17. This very point was a subject-matter in *Kumaran v. State of Kerala* (1994 (2) KLT 80). The learned Judge has taken a view that Clause (b) of the proviso to Section 20 is repugnant to sub-section 3 of Section 31 and Sub-rule 2 of Rule 37 in so far as it excludes the right of the nominated to vote in the election of office bearers. No appeal has been filed against this decision and this is the law as on date. I do not find any grounds to differ from the view taken by the learned Judge. As pointed out in the decision, the other decision was not a considered decision, especially the implications of Section 31 of the Act. If the interpretation

sought by the petitioner is to be accepted, then the women and scheduled caste member nominated under Section 28A would have no right to vote in the election to the office bearers of the society. That would be making the reservation meaningless. Similarly, the government participation significantly in the Apex or Central societies also would become meaningless. Hence, Section 20(b) will not apply to Apex and Central Societies. In that view of the matter, I do not find any grounds to declare that the delegates and nominated members are not entitled to vote in the election. The Kerala State Co-operative Bank Limited is a state level financing Bank. The interest of member Banks would suffer if elections are not held for its office bearers. Hence, I do not find anything illegal in the direction of the Registrar to initiate steps to hold the election in accordance with the Rule 43 with immediate effect.

For all these reasons, I find no merits in the original petition and it is dismissed.