

(2026) 01 SHI CK 1464

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 2896 Of 2018

Rakesh Kumar And Ors

APPELLANT

Vs

State Of Himachal Pradesh And Ors

RESPONDENT

Date of Decision : 09-01-2026

Acts Referred:

Constitution Of India, 1950 — Article 12, 32, 226, 227

Himachal Pradesh Cooperative Societies Rules, 1971 — Rule 4(2), 6(b), 15, 28, 37, 41

Himachal Pradesh Cooperative Societies Act, 1968 — Section 27, 94

Citation : (2026) 01 SHI CK 1464

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Devyani Sharma, Srishti Negi, Shivam Sharma, Anup Rattan, Rajan Kahol, Anish Banshtu, Ravi Chauhan, Rajiv Rai, Vivek Thakur, Bhim Raj Sharma, Pankaj Kumar, Rajender Sharma, Ram Krishan Sharma, Sanjeev Bhushan Rajesh Kumar

Final Decision : Disposed Of

Judgement

Sandeep Sharma, J

1. Petitioners herein, who are the members of respondent No.4-The Baghal Land Loosers Transport Cooperative Society Limited, Darlaghat (in short "respondent No.4-society"), are though primarily aggrieved of order dated 19.7.2018 (Annexure P-12) passed by Registrar (Cooperative Societies), Himachal Pradesh, Shimla-9, in terms of judgment dated 10.5.2018, passed by the Coordinate Bench of this Court in CWP No. 9532 of 2014, titled as Prem Lal Sharma v. Hira Lal and Ors., wherein a direction came to be issued to the Registrar (Cooperative Societies) to re-determine zones of the cooperative society in such a manner so as to ensure that same does not violate the provisions of law, but while seeking direction to the respondents to comply with the provisions of Rule 37 Appendix "A" and Rule 4 Sub-rule (2) of Appendix "A" of the Himachal Pradesh Cooperative Societies Rules, 1971 (in short the "Rules, 1971"), petitioners have also prayed for direction to respondent No.2 to take action on the inquiry report (Annexure

P-8) and exclude respondents No. 16 to 141 from voter list as they allegedly do not fulfill the conditions stipulated by the Regulatory Committee constituted vide order dated 26.3.2010 (Annexure P-5), for being enrolled as members of the society.

2. For having bird's eye view, facts relevant for adjudication of the case at hand as emerge from the pleadings adduced on record by the respective parties are that respondent No.4-Society, which is engaged in transportation work of Cement and Clinker with the Gujarat Ambuja Cement Limited Company Darlaghat is registered under the Himachal Pradesh Cooperative Societies Act, 1968 (in short "Act, 1968"). Petitioners as well as private respondents, as detailed in the memo of parties, are members of the society. In the year 2014, the then Managing Committee, prior to end of its term resolved to conduct the election and accordingly, sent the election program to the Assistant Registrar (Cooperative Societies) Solan, for constituting new Managing Committee consisting of 11 zones through Block Inspector (Cooperative Societies) Kunihar. Vide order dated 18.10.2014, afore authority approved the election program as well as zones, however, respondents No. 7 to 15 alongwith some other members filed revision petition under Section 94 of the Act, 1968, before the Registrar (Cooperative Societies), which was further assigned to the Joint Registrar (Marketing) Cooperative Societies, Himachal Pradesh.

3. Afore authority adjudicated the revision petition on 31.10.2014 and directed the Assistant Registrar (Cooperative Societies) Solan to re-constitute the zones afresh as per law taking into consideration the position of zones as it existed in the year 2009. In terms of aforesaid directions, Assistant Registrar (Cooperative Societies), Solan, vide order dated 10.11.2014, reconstituted the zones taking into consideration the base of zones approved for the election of year 2009.

4. At this stage, it is apt to take note of the fact that while aforesaid exercise was being carried out by the Assistant Registrar (Cooperative Societies) in terms of directions issued by the Joint Registrar (Marketing) Cooperative Societies, Himachal Pradesh, vide order dated 31.10.2014, respondent No.4-Society approached this Court by way of CMPMO No. 362 of 2014, laying therein challenge to order dated 31.10.2014, passed by the Joint Registrar (Marketing) Cooperative Societies, however, same was dismissed vide judgment dated 27.11.2014.

5. Respondents No. 7 to 15 alongwith other eight members of respondent No.4-Society filed another revision petition under Section 94 of the Act, 1968, before the Registrar (Cooperative Societies), laying therein challenge to order dated 10.11.2014, passed by the Assistant Registrar (Cooperative Societies) Solan, which was again entrusted to Additional Registrar (Administration) Cooperative Societies, who while exercising revisionary powers, vide order dated 3.12.2014, restored the original order dated 18.10.2014 of the Assistant Registrar (Cooperative Societies) Solan and included the name of respondents No. 7 to 15 in Kashlog-II ward, while modifying order dated 10.11.2014 passed by the

Assistant Registrar (Cooperative Societies).

6. Besides above, one Sh. Prem Lal Sharma i.e. respondent No.6 filed second revision petition before the State Government under Section 94 of the Act, against the order dated 3.12.2014, passed by the Additional Registrar (Administration), Cooperative Societies, who vide order dated 15.12.2024 upheld the order dated 3.12.2014 passed by the Additional Registrar (Administration).

7. Being aggrieved with aforesaid order dated 15.12.2014, above named Prem Lal Sharma filed CWP No. 9532 of 2014, titled as Prem Lal Sharma v. Hira Lal and Ors., praying therein to quash and set-aside both the orders of revisionary authorities. Coordinate Bench of this Court vide Judgment dated 10.5.2018, set-aside both the orders passed by the revisionary authorities and issued direction to the Registrar (Cooperative Societies) to re-determine the zones of Cooperative Societies in such a manner so as to ensure that same does not violate provision of law. In terms of aforesaid direction issued by this Court vide Judgment dated 10.5.2018, Registrar (Cooperative Societies) summoned the parties to the lis, but bare perusal of order passed by the afore authority, which has been laid challenge in the instant proceedings, reveals that besides being persons, who were party before Coordinate Bench of this Court in CWP No. 9532 of 2014, many private parties filed applications, claiming themselves to be stakeholders of the Society.

8. Registrar (Cooperative Societies) after having heard the parties and perused material adduced on record and taking note of the fact that each zone comprises of hilly topography with no clear cut geographical demarcation arrived at a conclusion that exact boundary of these zones cannot be identified to maintain the contiguity of such areas of the zones. He observed in the order that even if the zones of the Society are re-carved as per existing system being adopted by the Society, the chances of litigation cannot be denied on the part of members of such zones to be re-constituted in near future. While taking note of the factual position existing on the spot and mandate contained in the judgment dated 10.5.2018, passed by this Court in CWP No. 9532 of 2014, wherein admittedly, no restriction was imposed upon the authority for re-determining the entire zone of the society, rather direction was issued to re-determine the zones of cooperative society in such a manner to ensure that same does not violate the provision of law, Registrar (Cooperative Societies) vide order dated 19.7.2018 (Annexure P-12), re-determined/carved out the zones of respondent No.4-Society as per serial number of the members maintained in the membership register in consonance with Rule 37 of the Himachal Pradesh Cooperative Societies Rule 1971 read with Rule 4 (2) of Appendix "A" of the Rules of election to the committee. As per order passed by the Registrar (Cooperative Societies), there were 619 members in roll, which were divided into 11 zones in equal strength in ascending orders of their serial numbers as detailed in the afore order.

9. Being aggrieved and dissatisfied with aforesaid order passed by the Registrar (Cooperative Societies), respondent No.6-Prem Lal Sharma, filed Revision

Petition No. 11 of 2018 before the Principal Secretary (Co-operation) to the Government of Himachal Pradesh, Himachal Pradesh Secretariat, Shimla (Annexure P-13), however same was dismissed vide Judgment dated 21.11.2018 (Annexure P-14). In the afore background, petitioners herein have approached this Court in the instant proceedings filed under Article 226 of the Constitution of India, praying therein for following main reliefs:

“(I) That a writ in the nature of writ of certiorari may kindly be issued thereby quashing and setting aside the impugned orders passed by respondents No. 1 & 2 i.e. order dated 19.7.2018 (Annexure P-12) passed by respondent No.2 and order dated 21.11.2018 (Annexure P-14) passed by respondent No.1.

(II) That a writ in the nature of writ of mandamus may very kindly be issued thereby directing the respondents to comply with the provisions of Rule 37 Appendix “A” and Rule 4 Sub- rule (2) of Appendix “A” of the Himachal Pradesh Cooperative Societies Rules, 1971.

(III) That further direction be issued to respondent No.2 to take action on the inquiry report annexure P-8 and exclude from the voter list, 126 members i.e., respondents no. 16 to 141, who have been given membership contrary to the law laid down by this Hon’ble Court as well as which are contrary to the provisions of bye-law 6 proviso (b) and who are not fulfilling the conditions stipulated by the Regulatory Committee constituted vide order dated 26.03.2010, Annexure P-5.”

10. Pursuant to notices issued in the instant proceedings, respondents have filed their replies, perusal whereof nowhere disputes facts, as have been noticed herein above. They have prayed for dismissal of the petition being not maintainable on the ground that question with respect to membership cannot be raised in the instant petition, rather for that purpose, there is a specific procedure prescribed in the Act, 1968. Besides above, it has been further argued at the behest of the respondents that petition is collusive because at the first instance, the enrolment of few members in Kashlog-II ward was challenged by respondent No.6-Prem Lal Sharma, during Election in the year 2014 and it was in his petition that respondent No.2 carved out wards as was suggested by him and thereafter, again above named person with a view to delay the election got the revision petition filed by his brother Sh. Jai Ram Sharma, who is now one of the petitioners. It has been further averred in the reply that petitioners have not approached this Court with clean hands as they have suppressed material facts from the Court. Afore respondents have further claimed that after carving out the wards, the Administrator in furtherance of the provisions of Section 37 of the Rules 1971 and as per Appendix “A” of the Rules of the election to the Committee got the wards approved from the Assistant Registrar (Cooperative Societies) Solan and as such, Managing Committee, which did not have any role at any point to time for carving out the wards and same were carved out by the Administrator, got the next election in the year 2014 conducted.

11. Respondents No. 1 to 3 and 5 have averred in the reply that respondent No.2 has re-determined the zones of the respondent- society as per the provisions of Rule 37 Appendix "A" and Rule 4 Sub- Rule (2) of Appendix "A" of the Rules by passing a speaking and reasoned order. Afore respondents have further averred in the reply that on the complaint of some of the members of respondent No.4 Society regarding enrolment of ineligible persons as members of the society, an enquiry into the matter was got conducted through the District Inspector (Cooperative Societies) Solan. Inquiry officer in his report submitted to Assistant Registrar (Cooperative Societies), respondent No.3 pointed that respondent-society has enrolled some of the ineligible persons as its members and as per provisions contained in the Act, Rules and Bye-laws of the respondent-society, action qua expulsion of the ineligible members as per the findings of the enquiry report is to be taken by the Managing Committee of the respondent society. Therefore, the Assistant Registrar (Cooperative Societies) after considering the enquiry report forwarded the copy of enquiry report vide office letter dated 23.2.2019 to the Board of Administrators of the respondent society to take action against the ineligible members as per the law after affording them opportunity of hearing, but till date no action has been taken.

12. Private respondents No. 7, 13, 14, 18, 22 to 38, 40, 42 to 51, 53 to 67, 70, 72 to 79, 82, 84 to 97, 99 to 106, 109, 110, 113 to 116, 118 to 120, 122, 124, 126, 129 to 148, have further averred in their reply that since District Inspector belongs to the area of operation of the Society and has his deep interest in the society coupled with the fact that on account of his having interest in the area of the operation, he was removed from the post of Administrator of the society by this Court no much reliance can be placed upon the same while determining the eligibility of the members of the Society.

13. I have heard the learned counsel for the parties and gone through the records of the case.

14. As has been observed herein above, primarily, petitioners herein are aggrieved of order dated 19.7.2018 (Annexure P-12), whereby Registrar (Cooperative Societies) in compliance to judgment dated 10.5.2018 passed in CWP No. 9532 of 2014, has proceeded to re-determine/carve out the zones as per serial number of members maintained in the membership register in consonance with Rule 37 of the Himachal Pradesh Cooperative Societies Rule 1971 read with Rule 4 (2) of Appendix "A" of the Rules of election to the committee, but while laying challenge to the aforesaid order they have also prayed for other reliefs with regard to removal of respondent No.16 to 141 on the ground that they are not eligible to be members of the society as per bye-laws. On 21.9.2014, the then outgoing managing committee of respondent-society had resolved to conduct election and sent the election program for constituting new managing committee of the society comprising of 11 zones through the Block Inspector (Cooperative Societies) Kunihar to the Assistant Registrar (Cooperative Societies) Solan. Though Assistant Registrar (Cooperative

Societies) approved the election program and the zones of the society vide order dated 18.10.2014, but as has been noticed herein above, afore order other, had been filing revision petitions under Section 94 of the Act. At the first instance, order with regard to carving out of zones was passed on 18.10.2014 by the Assistant Registrar (Cooperative Societies) Solan and thereafter, again vide order dated 31.10.2014 passed by the Joint Registrar (Marketing) Cooperative Societies, Himachal Pradesh, Solan, directions were issued to constitute zones afresh taking into consideration the position of zones as it existed in the year 2009, however, afore order was again laid challenge by some of the petitioners before the Registrar (Cooperative Societies) by way of revision under Section 94 of the Act.

15. Though in the afore proceedings, again Additional Registrar (Administration) passed order dated 3.12.2014, thereby restoring the original order dated 18.10.2014, passed by Assistant Registrar (Cooperative Societies) including the names of respondents No. 7 to 15 in the Kashlog-II ward by modifying order dated 10.11.2014, but yet respondent No.6 Prem Lal again filed second revision petition before the State Government under Section 94 of the Act against the order dated 3.12.2014 of Additional Registrar (Administration) Cooperative Societies, who upheld the order in question of first revisionary authority vide order dated 15.12.2014.

16. Despite there being passing of order dated 15.12.2014 by the revisionary authority, Prem Lal Sharma again filed CWP No. 9532 of 2014, seeking therein quashment of orders passed by the revisionary authority. Coordinate Bench of this Court taking note of the dispute of carving out of zones, vide Judgment dated 10.5.2018, directed the Registrar (Cooperative Societies) to re-determine the zones of the Cooperative Society in such a manner so as to ensure that same does not violate the provisions of law.

17. Though Registrar (Cooperative Societies) vide order laid challenge in the instant proceedings (Annexure P-12), undertook an elaborate exercise to re-determine and carve out the zones as per serial number of members maintained in the membership register in consonance with Rule 37 of the Himachal Pradesh Cooperative Societies Rule 1971 read with Rule 4 (2) of Appendix "A" of the Rules of election to the committee, but yet petitioners, who are members of the respondent No.4-Society have approached this Court in the instant proceedings

18. At this stage it would be apt to take note of Rule 37 as well as Appendix "A" of the Rules:

"37. Election of committee - Notwithstanding anything contained in the foregoing rules, the members of the managing committee of a Co-operative Society shall be elected in accordance with the rules given in Appendix 'A'."

"Appendix 'A'

APPENDIX 'A' RULES OF ELECTION TO THE COMMITTEE

1. Definitions - In this Appendix unless the context otherwise requires:

(a) "Election" means the election of the Committee;

(b) 'Observer' means a person appointed by the Registrar for monitoring the elections of a Co-operative Society."

(c) "Manager" means any person appointed as such by the Registrar for the purpose of the rules contained in this Appendix and if no such person is appointed then the heard of office of a cooperative society by whatever name called, to whom the management of the office of the society is entrusted ;

(d) 'Returning Officer' means the Registrar, Additional Registrar, Joint Registrar, Deputy Registrar or Assistant Registrar (by whatever name called), Co-operative Societies and shall include the person authorized by the Registrar in this behalf by a general or special order; and"

(e) "Registration Officer" means a person appointed by the Registrar under rule 3 of the Appendix.

2. Qualifications of candidates - No person shall be eligible for election as a member of the Committee if he is subject to any disqualification mentioned in rule 41.

3. Preparations of voters' list - (1) In the case of every Primary Society, a notice regarding date of publication of tentative list of voters, date fixed for hearing objections and date fixed for publication of final list of voters shall be published by the Registration Officer in the Head Office and Branch Office(s) of the Society and such notice shall also be exhibited at some conspicuous places in the area of operation of the Society such as Panchayat Ghar or Mahila Mandal Bhawans etc. one month prior to date fixed for finalization of list of voters. In case, the area of operation of the Society is spread over a Tehsil or beyond; or if the number of members is more than 1500 such notice shall also be published in one Hindi daily having circulation in the area. Thereafter, tentative list of voters shall be prepared by the Manager ten days after display of notice at conspicuous places or date of publication of notice in the Newspaper, as the case may be, and the Registration Officer shall publish tentative list of voters at the Head Office twenty days prior to date fixed for finalization of list of voters and also circulate among the Branch Office(s) of the Society to display on the notice board. Simultaneously, the Registration Officer shall intimate such member of the society through authorized person or by post who is not eligible to vote as per Act/Rules/Bye laws/Instructions.

(2) In the case of every Secondary/Federal/Apex Society, the Registration Officer shall send a notice to the member societies containing the information regarding last date by which name of representatives to vote on behalf of member societies are to be intimated, date of publication of tentative list of voters, dates fixed for hearing of objections, date of finalization of list of voters and such other information as the Registration Officer may deem necessary. Such notice shall

also be sent to individual members. The notice shall be sent through authorized person or by post one month prior to date fixed for finalization of list of voters and shall also be displayed at the conspicuous places in the Head Office and Branch Office(s) of the society. Where area of operation of the society is spread over entire District or beyond, such notice shall be published in one Hindi daily having circulation in the area. Thereafter, tentative list of voters shall be prepared by the Manager ten days after the date of display of notice at the conspicuous places or date of publication of notice in the Newspaper, as the case may be, and the Registration Officer shall display tentative list of voters at the Head Office twenty days prior to the date fixed for finalization of list of voters and also circulate among the Branch Office(s) of the Society to display the same on the notice board. Simultaneously, the Registration Officer shall intimate such member of society or individual member through authorized person or by post who is not eligible to vote as per Act/Rules/Bye-laws/Instructions.

(3) The following procedure shall be carried out in all kind of Societies after registration of voters:-

(a) A tentative list of votes indicating the name of the member society, its representative and other voters so published at the Head Office and Branch Office(s) of the society by the Registration Officer shall remain open for inspection of members for atleast fifteen days and objection thereon shall be heard by him.

(b) Three clear days shall be given for hearing objections. The decision of the Registration Officer thereto shall be final.

(c) The final list of voters shall thereafter be published at the Head Office and Branch Office(s) of the society not later than one month prior to the date of poll by the Registration Officer.

4. Election - (I) The Manager shall draw up a detailed programme of election in accordance with the instructions issued by the Registrar from time to time.

(2) The Manger, shall, when so required by the Registrar for the purpose of such election, divide the area of operation of the co- operative society into such number of zones, as there are members to be elected, or into such lesser number as may be specified by the Registrar and communicate the zones so constituted to the Registrar for his prior approval:

Provided that the zones shall be constituted in such a way that members from contiguous areas are included in a particular zone and where such contiguity is not discernible, the zones shall be constituted as per Serial No. of the members in the membership register;

(3) Notwithstanding anything contained in rule 28, the notice for the election together with the zones constituted, if any, shall be exhibited by the Returning Officer not less than thirty days before the date fixed for such election at the registered office of the society, its branch(es), office of Returning Officer and at

some common place in the area of operation of the co-operative society for intimation of all the voters of the cooperative society indicating:-

- (a) the number of members to be elected zone-wise if any;
- (b) the date, hour and place of holding the polling and declaration of election result;
- (c) the last date of making nominations, which shall not be later than fifteen days before the date fixed for holding the said polling.
- (d) The date on which, the place at which, and hours between which the scrutiny of nomination papers shall be made; and
- (e) The last date for the withdrawal of candidates.
- (f) the date and time when the campaigning for such election shall come to an end which shall be forty eight hours prior to date and time of closure of polling :

Provided that if the area of operation of the Society is spread over tehsil or beyond or if the number of voters is more than 1500, then such notice shall also be published in one Hindi daily having circulation in the area:

Provided further that election process shall be considered to have been started from the day of approval of election programme by the Registrar.

(4) The nomination papers duly completed on the form prescribed by the Registrar and supplied by the co-operative society to its members on demand shall reach the head office of the society by such date and time as may be specified by the Manager in the programme drawn up in sub-rule(1) of this rule.

(5) A candidate shall not be entitled to file his nomination paper for more than one office of the Committee. If nomination paper, for more than one office are filed, the nomination paper filed for the first office shall only be considered, and the nomination papers for the other office/offices shall be deemed to be rejected.

(6) The person who is to receive the nomination paper under subrule (4), shall on receiving the nomination paper, enter thereon the serial number of its receipt and shall endorse thereon the date on which, and the hour at which the nomination was delivered to him. Nomination papers received after the date and time fixed under clause (b) of sub-rule (3) shall not be valid. The person submitting nomination paper shall be entitled to a receipt in writing from the person who is to receive nomination papers as an acknowledgement of having it received by the later.

(7) After the nomination papers are scrutinized by the Returning Officer, the list of the validly nominated candidates for election shall be announced, where necessary zone wise, ten days before the date of poll."

19. As per aforesaid Rules, Manager, for the purpose of election, shall constitute the zones in such a way that members from contiguous areas are included in a

particular zone and where such contiguity is not discernible, the zones shall be constituted as per serial number of the members in the membership register. Careful perusal of aforesaid rules clearly reveals that at the first instance, zones are to be constituted in such a way that members from contiguous areas are included in a particular zone, but where such contiguity is not discernible, the zones shall be constituted as per serial number of the members in the membership register.

20. If the order dated 19.7.2018 (Annexure P-12) is read in its entirety, this court is persuaded to agree with learned Additional Advocate General as well as Mr. Sanjeev Bhushan, learned Senior counsel, that Registrar (Cooperative Societies) firstly attempted to carve out zones on the basis of contiguity, but since area of operation of the respondent-society is defined in five Panchayats namely Darla, Mangu, Kashlog, Giana and Sanghoi and persons of these panchayats are enrolled as members of the Society as per their eligibility criteria coupled with the fact that society has been divided into 11 zones for election of managing committee and zones have been derived from afore five panchayats and zones comprise of hilly topography with no clear cut geographical demarcation due to which exact boundary of these zones cannot be identified to maintain the contiguity of such areas of the zone, afore authority proceeded to carve out zone as per serial number of the members maintained in the membership register in consonance with Rule 37 of the Rule 1971 read with rule 4 (2) of Appendix "A" of the Rules of election to the committee.

21. During proceedings of the case, Ms. Devyani Sharma, learned Senior Counsel appearing for the petitioners, was unable to dispute that afore authority before ordering re-determination/carving out as per serial number of members maintained in membership register explored all the possibilities of carving out of the zones on the basis of contiguity. This court having perused order laid challenge in the instant proceedings has no hesitation to conclude that afore authority taking note of the various factors, as have been taken note in the order, had left with no option, but to order re-determination and carving out as per serial number of members maintained in the membership register of the society, which is otherwise permissible in terms of Rule 37.

22. At this stage, it is apt to take note of fact that during proceedings of the case, this court having noticed chequered history of this case, coupled with the fact that for more than 11 years, no election to the society has been held, attempted to persuade the parties to resolve their dispute amicably inter-se them and in that regard, vide order dated 6.6.2025, permitted the parties to place on record proposal for amicable settlement, however save and except respondent No.6, who had initially filed second revision petition before the State Government under Section 94 of the Act, none showed any interest, but there was unanimity qua one issue that election may be conducted on the basis of zones determined/carved out by Registrar (Cooperative Societies) vide impugned order on the basis of serial number of the membership. But since petitioners

further stipulated that till the time respondents No. 16 to 141 are not removed for their being not eligible and report submitted by the District Inspector is not implemented, no amicable settlement, as was proposed by this court, could take place.

23. Though for the reasons stated herein above, coupled with the fact that impugned order passed by the Registrar (Cooperative Societies) with regard to redetermination/carving out of zone is strictly in conformity with Rule 37 Appendix "A" and Rule 4 Sub-rule (2) of Appendix "A" of the Himachal Pradesh Cooperative Societies Rules, 1971, this court is not persuaded to interfere with the same, rather as has been noticed herein above, parties to the lis have no objection qua the same, but next question which needs to be determined in the case at hand, is that "whether other reliefs as have been prayed in the instant proceedings, can be granted in the instant proceedings or not?"

24. Hon'ble Apex Court as well as High Court have repeatedly emphasized that Article 226 is designed to reach injustice wherever it is found and to mould reliefs in a flexible manner to meet the demands of justice. It is the responsibility of the High Court as custodian of the Constitution to maintain the social balance by interfering where necessary for sake of justice and refusing to interfere where it is against the social interest and public good.

25. In this regard, reliance is placed upon judgment of Hon'ble Apex Court in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani*, (1989) 2 SCC 691 wherein it was held that Article 226 empowers High Courts with wide, flexible writ jurisdiction to issue mandamus against any person or body performing a public duty be it statutory or otherwise in order to reach injustice wherever it exists and ensure substantive justice without being fettered by technicalities. Hon'ble Apex Court observed that a mandamus can be issued to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed. Relevant paras of the judgment as reproduced as under:

"17. There, however, the prerogative writ of mandamus is confined only to public authorities to compel performance of public duty. The "public authority" for them means everybody which is created by statute — and whose powers and duties are defined by statute. So government departments, local authorities, police authorities, and statutory undertakings and corporations, are all "public authorities". But there is no such limitation for our High Courts to issue the writ "in the nature of mandamus". Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to "any person or authority". It can be issued "for the enforcement of any of the fundamental rights and for any other purpose".

18. Article 226 reads:

"226. Power of High Courts to issue certain writs.—(1) Notwithstanding anything

in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

19. The scope of this article has been explained by Subba Rao, J., in *Dwarkanath v. ITO* [(1965) 3 SCR 536] : (SCR pp. 540-41)

"This article is couched in comprehensive phraseology and it ex-facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Court to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself."

20. The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.

21. In *Praga Tools Corpn. v. C.A. Imanuel* [(1969) 1 SCC 585 : (1969) 3 SCR 773] this Court said that a mandamus can issue against a person or body to carry out the duties placed on them by the statutes even though they are not public officials or statutory body. It was observed: (SCC p. 589, para 6 : SCR p. 778)

"It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings. A mandamus would also lie against a company constituted by a statute for the purpose of fulfilling public responsibilities. (Cf. Halsbury's Laws of England, 3rd Edn., Vol. II, p. 52 and onwards.)"

22. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor de Smith states: "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract." [Judicial Review of Administrative Action, 4th Edn., p. 540] We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available "to reach injustice wherever it is found". Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition."

26. Reliance is placed upon judgment of Hon'ble Apex Court in State of Maharashtra v. Prabhu, (1994) 2 SCC wherein it has been held as under:

"5. On this test the order of the High Court does not appear to be well-founded. Even assuming there was technical breach and the show-cause notice did not spell out those relevant facts which could have empowered the Government to take action the social injury by nominating or appointing the respondent to an office of responsibility must not only have raised the eyebrows in the educational circle but is susceptible of creating unhealthy atmosphere. Reliance was placed on the letter issued by the Director of Education withdrawing his circular debarring the respondent from being entrusted with any examination work. It is not necessary to comment on it. But the letter obviously was issued without properly appreciating the effect of order passed by the High Court. Such hasty actions by superior officers are destructive of discipline which is necessary to be maintained. In any case the Director might have acted under constraints for reasons more than one but the High Court was not bound by it. It was in a better position to appreciate the effect of such order. Therefore, even if the order of the Government was vitiated either because it omitted to issue a proper show-cause notice or it could not have proceeded against the respondent for his past activities the High Court should have refused to interfere in exercise of its equity jurisdiction as the facts of the case did not warrant interference. What could be more harmful to society than appointing the respondent as member of the

Board, a position of importance and responsibility, who was found responsible for mass copying at the examination centre of which he was a supervisor. It shakes the confidence and faith of the society in the system and is prone to encouraging even the honest and sincere to deviate from their path. It is the responsibility of the High Court as custodian of the Constitution to maintain the social balance by interfering where necessary for sake of justice and refusing to interfere where it is against the social interest and public good.”

27. Reliance is also placed upon judgment of Hon'ble Apex Court in *Union of India v. Kirloskar Pneumatic Co. Ltd.*, (1996) 4 SCC 453, relevant para of which is reproduced as under:

“10. According to these sub-sections, a claim for refund or an order of refund can be made only in accordance with the provisions of Section 27 which inter alia includes the period of limitation mentioned therein. Mr Hidayatullah submitted that the period of limitation prescribed by Section 27 does not apply either to a suit filed by the importer or to a writ petition filed by him and that in such cases the period of limitation would be three years. The learned counsel refers to certain decisions of this Court to that effect. We shall assume for the purposes of this appeal that it is so, notwithstanding the fact that the said question is now pending before a larger Constitution Bench of nine Judges along with the issue relating to unjust enrichment. Yet the question is whether it is permissible for the High Court to direct the authorities under the Act to act contrary to the aforesaid statutory provision. We do not think it is, even while acting under Article 226 of the Constitution. The power conferred by Articles 226/227 is designed to effectuate the law, to enforce the rule of law and to ensure that the several authorities and organs of the State act in accordance with law. It cannot be invoked for directing the authorities to act contrary to law. In particular, the Customs authorities, who are the creatures of the Customs Act, cannot be directed to ignore or act contrary to Section 27, whether before or after amendment. Maybe the High Court or a civil court is not bound by the said provisions but the authorities under the Act are. Nor can there be any question of the High Court clothing the authorities with its power under Article 226 or the power of a civil court. No such delegation or conferment can ever be conceived. We are, therefore, of the opinion that the direction contained in clause (3) of the impugned order is unsustainable in law. When we expressed this view during the hearing Mr Hidayatullah requested that in such a case the matter be remitted to the High Court and the High Court be left free to dispose of the writ petition according to law.”

28. High Court of Bombay in *Ramchandra Jakappa Nandavadekar and ors vs The State of Maharashtra* } Through its Principal Secretary and ors, WP NO.4228 of 2025 decided on 09.04.2025 held as under:

“8. The petitioners were granted liberty to raise a challenge to the provisional voters list in accordance with law. It is on that premise that such challenge as raised by the petitioners to the provisional voters list deserves to be considered.

However, while doing so, it is also to be borne in mind that the final voters list has now been published on 28/02/2025 after which the election programme has also been declared. It is well settled by various decisions of the Supreme Court as well as this Court that on the commencement of the election programme, the Court would be slow in exercising its jurisdiction under Article 226 of the Constitution of India. Hence any interference in the election programme so as to stall the conduct of elections is normally avoided. The limited scope of interference in a case of such nature has been succinctly laid down by Hon'ble R. M. Lodha, J (as his Lordship then was) in *Rajan Dinkarrao Pharate & others* (supra). In paragraph 25 of the said decision it has been observed as under:-

"As regards second objection raised by learned counsel for the State and Mr. Anturkar about maintainability of writ petition on the ground that since process of election is started, this Court should not invoke its extraordinary jurisdiction under Article 227 of Constitution of India, and, dispute relating to it must be left to be resolved by way of substantive election petition under Section 144-T of the Act of 1960, it may be observed that this is a rule of prudence and not a rule of jurisdiction. No doubt the High Court is always slow and sparingly invokes its jurisdiction under Article 226 of Constitution of India when there is challenge to preparation of voters list but where the exceptional and extraordinary case is made-out that the entire exercise of election would be farce if the process of election is completed on the basis of grossly invalid voters list depriving majority of members of the society from exercising right to vote, in my view, case is made-out for invoking extraordinary jurisdiction under Article 226 of Constitution of India and the interference by this Court. The edifice of valid election is built on valid list of voters and where there is wholesale exclusion of members from final list of voters, shockingly to the extent of 97% on unjustifiable grounds, the High Court cannot imprudently refuse to exercise extraordinary jurisdiction and observe that since the election process has started the dispute should be resolved through election petition."

29. Allahabad High Court in *Banwari Lal Kanchal vs. Dr. Bhartendu Agarwal and Others* 2019 SCC OnLine All 4739 has held as under:

"We have examined the judgments relied upon by the learned counsel for the appellant in regard to the maintainability of writ petition of initiation of election process by finalizing the electoral college. The law is very much settled that the writ petition under Article 226 of the Constitution of India to interfere in the election process, ordinarily is not maintainable when there are disputed question of facts and the remedy is to avail civil suit after holding of election. We are with the full agreement that ordinarily election process should not be interfered with, but in the facts and circumstances of the present case, the learned Single Judge has recorded finding that the appellant- respondent has not been enrolled as member as the provision contained under the registered bye-laws laws of the society. If the members who have been permitted to participate in the election found their induction to be in utter disregard of the provisions contained under

the registered bye-laws of the society and they are not able to establish their induction in consonance with the provisions of the bye-laws, it is always open to this Court in exercise of discretionary power under Article 226 of the Constitution of India to examine the issue of membership and holding of election on the basis of members who are not legally enrolled as members.”

30. From the aforesaid exposition of law, it is clear that the High Court possesses wide, flexible and discretionary powers under Article 226 of the Constitution of India to issue writs, directions or orders not only against statutory authorities but also against any person, body or institution performing a public duty. In matters relating to elections, although courts ordinarily refrain from interfering once the election process has commenced, however in exceptional and extraordinary circumstances the High Court is empowered to intervene under Article 226 in order to protect democratic principles and prevent miscarriage of justice.

31. Though having taken note of the fact that question with regard to ineligibility of private respondents No. 16 to 141 was not raised before the authorities otherwise responsible for deciding the issue of membership coupled with the fact that coordinate Bench of this Court in CWP No 9532 of 2014 had only issued direction to the Registrar (Cooperative Societies) to re-determine/carve out the zones, this Court is persuaded to conclude that an attempt has been made by the petitioners to further complicate the issue, but having taken note of the fact that election of the society has not been held for more than 10 years and at present, affairs of the society are being managed by ad-hoc committee, this Court with a view to settle the dispute for all times to come, also deemed it fit to look into the question of eligibility of some of the private members.

32. Though respondents No.16 to 141 have claimed that respondent No.4-Society is in collusion with the petitioners, but reply filed by respondent No.4, if perused, certainly suggests that there are complaints with regard to enrollment of certain members. Afore version put forth by respondent No.4 is further substantiated with inquiry report submitted by the District Inspector (Annexure P-8). District Inspector conducted inquiry on the instructions of Assistant Registrar (Cooperative Societies), who had forwarded the complaint made in that regard to District Inspector. District Inspector after having perused record found that some of the members have been given membership in violation of bye-laws rules 6 (b), which read as under:

“Membership

6. Subject to the provisions of Act, rules and the Bye-Laws, any individual who is hereditary resident of area of operation and also having ancestral land shall be eligible for admission as member of the society if he/she owns trusts, but not more than 3 trucks.

Provided that:-

a) an individual who has got valid papers indicating there in that he/she will be

able to have one truck within a period of one year in any one of the above systems, i.e. ownership, shall also be eligible to become member of the Society.

b) the person who has hereditary land rights in the area of operation of the society and whose land has been acquired for plant site, Conveyor Belt, and for the Mines & not for any other purposes in the above panchayats.

c) not more than one person from a family shall be enrolled as member;

d) a member shall not be entitled to have more than three trucks at a time.

e) a member shall have to submit land losers certificate within three months from revenue authority."

33. District Inspector also pointed that administrator, who was otherwise not authorized to enroll the members, enrolled as many as 13 members. Admittedly, aforesaid report submitted by the District Inspector never came to be implemented. Though in terms of order dated 19.7.2018 (Annexure P-12), election of the society can be conducted, but once material adduced on record by the petitioner suggests that membership of some of the members is under clout as same has been granted in violation of bye-laws 6(b), this court while hearing the matter indicated to learned counsel for the parties that to do substantial justice and ensure fair election, this court may direct Assistant Registrar (Cooperative Societies), Solan, to convene the meeting of General House and check the records of the society to verify whether all the members of the society have been granted membership strictly in terms of bye-laws rules 6(b) or not?

34. Though aforesaid proposal as mooted by this Court was acceptable to the petitioners without there being any condition, but Mr. Sanjeev Bhushan, learned Senior Counsel, submitted that though respondents are open to inquiry, if any, with regard to membership of some of the members of the society, but action, if any, in that regard, is to be taken by the Managing Committee of the society in terms of Rule 41 of the Rules.

35. While referring to Rule 15 of the Rules and Clauses 6, 7, 8, 9 and 10 of the registered bye-laws of the society, it also came to be argued by Mr. Sanjeev Bhushan, learned Senior Advocate, that respondent No.4 is authorized to enroll member of the society subject to fulfillment of the condition as stipulated in clause 6 of the registered and approved bye-laws of the society, which subsequently is confirmed by the Society's Annual General Meeting as per clause 28 of the registered bye-laws.

36. While placing reliance upon the judgment dated 9.1.2012, passed by coordinate Bench of this Court in CWP No. 4070 of 2011, titled as Hari Krishan Verma v. State of Himachal Pradesh, Mr. Bhushan further argued that managing committee alone has power to admit new members and to fine, suspend, remove or expel existing members on roll of society. Mr. Bhushan submitted that in case task of ascertaining correctness of enrollment of some of the members is assigned to Assistant Registrar (Cooperative Societies), members, who are

disqualified, may lose one forum to raise objection with regard to disqualification.

37. Though having taken note of the rules as well as afore judgment, this Court is persuaded to agree with Mr. Bhushan, for the reason that decision with regard to enrolment as well as removal is to be taken by the Managing Committee, but since it is the allegation of respondents represented by Mr. Bhushan, that respondent No.4 society is in collusion with the petitioners, coupled with the fact that respondent No.4-society in reply has itself mentioned that some of the members have been enrolled in violation of Act, Rules and Bye-laws, this court in the interest of justice and with a view to avoid multiplicity of litigation is persuaded to refer the matter with regard to membership to the Assistant Registrar (Cooperative Societies) Solan, who after perusing the applications made by all the members for their being enrolled as members of the respondent No.4-society vis-à-vis provisions contained in the Act, Rules and Bye-laws, may decide issue of membership of all the members of the society for all times to come.

38. Consequently, in view of the detailed discussion made herein above as well as peculiar facts and circumstances of the case as indicated herein above, this Court though upholds order dated 19.7.2018 (Annexure P-12) as far as redetermination/carving out of the zones is concerned, but directs Assistant Registrar (Cooperative Societies) Solan, Himachal Pradesh, to convene a meeting of General House of respondent No.4-society, within a period of one month to apprise them with regard to passing of instant judgment as well as directions contained therein. Assistant Registrar (Cooperative Societies) after convening the meeting of General House, as directed herein above, shall fix time and date for verification alongwith supporting documents submitted by all the members of the society at the time of their enrollment to ascertain whether enrollment was made strictly in terms of provisions contained in the Act, Rules and Bye- laws. After undertaking afore exercise, Assistant Registrar (Cooperative Societies) shall notify the list of persons, whose membership was found to be strictly in terms of Act, Rules and Bye- laws and simultaneously, he will also give notice to such of the persons, whose membership was not found in terms of Rules, enabling them to raise objections qua the same. On receipt of objections, if any, afore authority after affording opportunity of hearing to the persons concerned shall dispose of the same by passing speaking order. Since considerable time is likely to be consumed in undertaking the aforesaid exercise, Assistant Registrar (Cooperative Societies) though may call a meeting of General House within two weeks, but later on, may proceed to fix dates as per his convenience for deciding the issue of membership in terms of mandate contained in the instant judgment. Respondent No.4-society shall render full cooperation to the Assistant Registrar (Cooperative Societies), who shall otherwise be provided adequate staff alongwith up-to-date infrastructure in the office of respondent-Society by Sub Divisional Officer (Civil) of the area concerned. However, this Court hopes and trusts that entire exercise, as has been ordered to be undertaken, shall be

completed by the Assistant Registrar (Cooperative Societies) on or before 15.3.2026, whereafter respondent No.4-Society, on the basis of list of valid members issued by the Assistant Registrar (Cooperative Societies), would ensure the elections of the Society on the basis of zones carved out by the Registrar vide order dated 19.7.2018 are conducted on or before 30.6.2026.

39. In the aforesaid terms, present petition is disposed of alongwith pending applications, if any.