
(2008) 04 MP CK 0045

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 3900, 3998, 4000 and 15429 of 2007

Ram Singh

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 16-04-2008

Acts Referred:

Constitution of India, 1950 — Article 19(1)(c)

Madhya Pradesh Co-operative Societies Act, 1960 — Section 19(2A)

Citation : (2008) ILR (MP) 2110 : (2008) 4 MPLJ 353

Hon'ble Judges : Rajendra Menon, J;Arun Mishra, J

Bench : Division Bench

Advocate : Ankit Saxena, for the Appellant; V.K. Shukla, Dy. A.G. for Respondent Nos. 1 to 3 and Amit Pandey for Respondent No. 4 (in W.P. No. 3900 of 2007), for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.

In these petitions the petitioners have assailed vires of section 19(2A) of the M.P. Co-operative Societies Act, 1960 (hereinafter referred to the "Act") being violative of Article 19(1)(c) of the Constitution of India.

Facts are being referred from W.P. No. 3900/2007. Petitioner is a member of Sewa Sahkari Samiti Maryadit, Soikala, district Sheopur. It is submitted that for the purpose of election the voter list prepared by the Manager of the Society was never submitted to the committee of the society for approval. Annual General Meeting was also not convened by the Manager. Voter List (P/4) was handed over to the Election Officer on 9-1-2007. No information regarding disqualification was sent to any of the member of the society, therefore, none of the members in the voter list were disqualified. Several objections (P/5) were preferred by the petitioner being Chairman of the Society, with respect to correctness of the voter list inter alia contending that the voter list was not approved by the Board. 200 new persons were entered in the voter list whereas they were not the members

of the society. 140 persons were declared defaulter, but, no intimation regarding their disqualification were served as per provision of Rule 23(3)(b) of the M.P. Co-operative Societies Rules, 1962 (hereinafter referred to as the "Rules")- As such they could not be treated as disqualified. Certain members were not borrowing members, but, they were marked as borrowing members so that they could participate in the election. Vires of section 19(2A) of the Act has been assailed on the ground that the aforesaid provision of the Act infringes the fundamental rights of founder members and pre-existing members of the societies guaranteed by the Constitution under Article 19(1)(c). Section 19(2A) provides for compulsory membership to be given to those person who are strangers and were not to be inducted by the society, they have to be inducted as member of the society by operation of the provision. As per provision contained in section 49(8) (i) of the Act the election of the society is required to be conducted by the outgoing committee. The Registrar has declared the formal election programme (P/7) for the societies on 24-1-2006 and has fixed the date 12-2-2007 for special General Meeting for conducting the election. Election programme (P/8) was prepared. It was for the society to decide the date of Annual General Meeting. Notice issued for convening the Annual General Meeting dt. 24-1-2007 was without authority. The committee was competent to fix the date and call the meeting as per bye-laws (P/10). As per the programme 31-1-2007 was the date of filing of nomination papers. As per the Co-operative Societies Rules, 1962 Rule 41(2)(b) it should not be less than 7 days from the date of Annual General Meeting. The scrutiny of nomination was to take place on 2-2-2007, withdrawal date was 3-2-2007. Annual General Meeting was to be held on 12-2-2007, counting on the same day after one hour of the election. It is submitted that the date of Annual General Meeting should have been 6-2-2007 not 12-2-2007 as per Rule 41(2)(b) of the Rules.

In the return filed by the respondent Nos. 1 to 3 it is contended that 200 new members were inducted in the society during the tenure of the Chairman in accordance with the provisions of bye-laws of the society. As per the bye-law of the society, any person who is resident within the territorial jurisdiction of the society can be made a member of the society after purchasing at least one share issued by the society along with entry fee as prescribed by the society. The name of such a member, who takes share of the society and deposits entry fee is entered in the membership register of the society and such entries approved in the meeting of the Board of Directors of the Committee as per bye-laws (R/1). During the tenure of the petitioner as Chairman, as many as 200 new persons were entered into membership register of the society, who had purchased shares of the society and deposited the entry fee.

It is further submitted in the reply filed by the respondents No. 1, 2, 3 that the voter list had been prepared as per Rule 23(b) duly considering the provision of sections 48(7) and 50-A. Election has been held as per the Act, Rules and Bye-laws.

With respect to section 19(2) of the Act it is contended that the provision is in conformity of the object of the Act which has been enacted to organize and develop co-operative as democratic instrument and people's institution based on self help and mutual aid and for curbing the exploitation and ensure sufficient economic development of people with particular emphasis on weaker section of the society. Thus, entire co-operative structure has been built up as a democratic instrument and as a people's institution with a view to ensure sufficient economic development of people. In the three tier structure of the societies, the primary cooperative societies have been established at village level which is dominated by the weaker section of the society and therefore it is the prime object of the legislature to induct as many persons as a members of the society to avail benefit of co-operative movement. Thus impugned provision, which provides that any person duly qualified for admission as member of the society, can be inducted as a member, cannot be said to be ultra-vires or unconstitutional. Article 19(1)(c) provides protection of certain rights including right to form association or unions. Induction of a member in a society does not in any manner violate the fundamental right of any founder member or existing member of the society. Such an induction does not affect the fundamental right of any person to form an Association or Union. Article 19(4) categorically prescribes that nothing in sub-clause (c) shall affect operation of any existing law insofar as it imposes or prevents the State from making any law imposing reasonable restrictions on the exercise of right conferred by said sub-clause. Thus the right guaranteed under Article 19(1)(c) is not an absolute right and if any other law provides certain facility to any individual as per its objects cannot be said to be violative of the aforesaid fundamental right.

It is further submitted in the reply that the resource societies and credit societies, which provide fertilizers, seeds, pesticides, agricultural loans for purchasing machinery as well as cash loan to its members. The aforesaid facility of getting all the necessary items and machinery on credit is provided to the members of the society in order to help them at the appropriate stage of agriculture operations, so that they can get maximum yield from their fields. As the credit societies are functioning in the rural areas with an object to provide maximum help to the residents of concerned villagers/farmers, each of the resident is required to be a member of society, so that he can avail the facilities being provided by the Societies on credit. The bye-laws of the present society contains adequate provisions to provide loans to the farmers, who are members of the societies. The complete mechanism has been prescribed in the bye-laws as to manner of providing loans to its members, maintenance of accounts and recovery of loans. The benefit cannot be denied by society in an unjust manner. The object of the amendment is to provide protection to eligible member. It is also submitted by the respondents in paragraph No. 11 of the reply that u/s 19(2A) of the Act the membership is required to be given in the meeting of the Board of Directors of the society. Thus, the provisions is in furtherance of the object of the main Act cannot be said to be unconstitutional or ultra vires.

Election has already been completed. Petitioner is free to raise objection by raising dispute u/s 64 of the Act.

Shri Ankit Saxena, learned counsel appearing on behalf of the petitioners has submitted that it is the right of the society to give membership that has been taken away by incorporation of section 19(2A) in the Act. The provision is violative of rights conferred under Article 19(1)(c) of the Constitution of India. He has also submitted that procedure for inducting members is prescribed u/s 48C of the Act and Rules 14 and 16 of the Co-operative Societies Rules of 1962 besides there is provision in the bye-laws of the society. Bye-laws number 5 and 6 of the Bye-laws deals with application to be submitted by the member for membership. He has relied upon the decision of the Apex Court in Smt. Damyanti Naranga Vs. The Union of India (UOI) and Others, , Bar Council of Delhi and Others Vs. Surjeet Singh and Others, and other decisions to be referred later. Counsel has also submitted that the Annual General Meeting could not have been fixed by the Registrar and that too beyond 7 days of the date of nomination as provided in Rule 41(2) of the Rules of 1962. Petitioners against the election programme prepared by the Registrar cannot avail the remedy u/s 64 of the Act. Preparation of the voter list has also been assailed by the counsel.

Shri V.K. Shukla, Dy. AG appearing on behalf of the respondents No. 1 to 3 and Shri Amit Pandey appearing on behalf of the respondent No. 4 in W.P. No. 3900/2007 have supported the vires of provision of section 19(2A). It is submitted by Shri Shukla learned Dy. A.G. that the aforesaid section 19(2A) of the Act operates in case incumbent who has applied is duly qualified for admission as member under the provision of the Act, Rules and bye-laws of the society only such a member shall be deemed to be admitted as member of the society from the date of receipt of the application in the office thereof. Adjudicatory process is not ousted, the competent body of the society as per bye-laws has to see whether the application is in conformity with the bye-laws and Act whether incumbent is duly qualified to be admitted and does not suffer with disqualification and holding requisite qualification prescribed and fulfils other conditions only then it can be said that a person is duly qualified for admission as a member. In case application is rejected on the ground that member is not qualified then under provision of section 19(6) of the Act, aggrieved incumbent can prefer an appeal and in case it is found that a person was duly qualified he shall be deemed to be as member of the society from the date of receipt of application thereof or any other members of the society can prefer an application to the Registrar and after hearing the Registrar can declare such member not eligible for membership of the said society. Right of the society has not been taken away rather protection is conferred to an incumbent who files an application to relate back his membership from the date he has applied. In case he is duly qualified as member. Right of the society has not been restricted or infringed in any manner, even otherwise it is permissible to impose reasonable restriction under Article 19(1)(c). With respect to preparation of voter list and election programme remedy lies u/s 64 of the Act by raising election dispute. No

interference can be made in the writ jurisdiction. There was no illegality committed in the entire election process.

First question for consideration is about whether the provision of section 19(2A) can be said to be ultra vires infringing any of the right conferred under Article 19(1)(c) of the Constitution of India. M.P. Co-operative Societies (Amendment) Act, 1999 (Act of No. 20/99) w.e.f. 7-8-1999. Section 19 in its entirety is reproduced below :

19. Persons who may become members. -- (1) No person shall be admitted as a member of a society except the following namely :

(a) an individual competent to contract u/s 11 of the Indian Contract Act, 1872 (No. 11 of 1872);

(b) any other society;

(c) a public trust registered under the Madhya Pradesh Public Trusts Act, 1951 (No. 30 of 1951);

(d) a firm, company or any other body corporate, not having minors as partners or directors, registered established or constituted, as the case may be, under any law for the time being in force.

(e) a society registered under the Madhya Pradesh Societies Registration Act, 1959 (No. 1 of 1960), as may be approved by the State Government in this behalf by general or special order;

(f) the State Government:

Provided that the provisions of clause (a) shall not apply to -- (i) an individual seeking admission to a society exclusively formed for the benefit of students;

(ii) a minor acting through a guardian appointed by the Court.

(2) Notwithstanding anything to the contrary in this Act or rules or in the bye-laws of a society, where the State Government has contributed to the share capital of a society, the liability of the State Government shall be limited to the face value of the shares held by it.

[(2-a) Notwithstanding anything contained in this Act or rules made thereunder or in the bye-laws of a resource Society or consumers society, as the case may be, if any person duly qualified for admission as a member under the provisions of this Act and the bye-laws of that Society makes an application for membership of such Society he shall be deemed to have been admitted as a member of such Society from the date of receipt of the application in the office thereof:

Provided that the Registrar may, either on his own motion at any time or on an application by the society or any aggrieved person made within " fifteen days from the aforesaid date and after giving reasonable opportunity to the society or person concerned by order, declare such person as not eligible for membership of

such society for the reasons mentioned therein, within forty five days from the date of receipt of application by the Registrar].

(3) Where a student, who is not competent to contract u/s 11 of the Indian Contract Act, 1872 (IX of 1872), desires to become a member of a society formed exclusively for the benefit of students, his application for the registration of a society or his application for membership shall be accompanied by a written undertaking from his guardian or other person competent to contract u/s 11 of the said Act in the prescribed form, in respect of the liability of the student as a member.

(4) Where a person is refused admission as a member in a society, the decision refusing admission shall be communicated by the society to that person within thirty days of the date of such decision.

[(5) No society shall, without sufficient cause, refuse admission to membership to any person, duly qualified therefor under the provisions of this Act and the bye-laws of the society.

(6) Any person aggrieved under sub-section (4) or sub-section (5) may appeal to the Registrar within ninety days of the date of rejection.

(7) The decision of the Registrar in appeal shall be final and the Registrar shall communicate his decision to the parties within thirty days from the date thereof.

Sub-section (1) of section 19 provides that who may become members of the society, person has to be competent to contract, any other society, a public trust registered under the M.P. Public Trusts Act, 1951, a firm, company or any other body corporate, not having minors as partners or directors, registered established or constituted, as the case may be, under any law for the time being in force, a society registered under the Madhya Pradesh Societies Registration Act, 1959 as may be approved by the State Government in this behalf by general or special order and the State Government. Provisions of clause (a) shall not apply to an individual seeking admission to a society. Sub-section (4) provides where a person is refused admission as a member in a society, the decision refusing admission shall be communicated by the society to that person within thirty days of the date of such decision. Sub-section (5) provides that no society shall, without sufficient cause, refuse admission to membership to any person, duly qualified therefore under the provisions of this Act and the bye-laws of the society. If a person has a right, he cannot be refused membership in arbitrary manner and any person aggrieved by an order passed under sub-section (4) or sub-section (5) may file an appeal to the registrar within ninety days of the date of rejection and Registrar has to decide such an appeal within 30 days as per the mandate of the Act. Provision incorporated by sub-section (2-A) to section 19 of the Act (Act No. 20 of 1999) provides non-obstante clause. Sub-section (2-A) of section 19 contains non-obstante clause if any person duly qualified for admission as a member under provision of bye-laws of the society make an application for membership of the society. He shall be deemed to have been

admitted as a member of the society from the date of receipt of application in the office. No doubt about it that the main part of sub-section (2-A) of section 19 is silent with respect to adjudicatory process to be undertaken to come to the conclusion that whether a person who has filed an application is duly qualified to be admitted as a member. In order to consider eligibility of member various provisions are required to be considered as provided by sub-section (5) of section 19 of the Act. Section 19A deals with disqualifications of member and it provides that no person shall be eligible for admission as member and when any member shall cease to be a member of a society. Section 19A is quoted below :

19-A. Disqualification of member. -- (1) No person shall be eligible for admission as member and any member shall cease to be a member of a society, if --

(a) he is an applicant to be adjudicated or is an undischarged insolvent;

(b) he has been sentenced for an offence involving moral turpitude and a period of five years has not elapsed from the date of expiry of sentence.

(bb) he has been sentenced for an offence under the provisions of the Protection of Civil Rights Act, 1955 (No. 22 of 1955) and a period of six years has not elapsed from the date of expiry of sentence.

(c) he or any member of his family, having common interest with him, carries on business similar to one carried on by the society :

Provided that the provisions of clause (b) shall not apply to a person seeking admission as member of a society exclusively formed or to be formed for the reclamation of Vimukta Jatis.

(d) If he is disqualified u/s 48A of the Act;

(e) If he is a person who has been dismissed from the service of any co-operative institution or Government service.

(f) In case of a Primary Agriculture Credit Co-operative Society, he is not a Bhumiswami, occupancy tenant or a Government lessee holding agricultural land:

Provided that a member of such society on the 26th day of April, 1990 who is not a Bhumiswami, occupancy tenant or a Government lessee shall as from such date be a nominal member of such society.

Explanation. -- For the purposes of this sub-section --

(i) "Vimukta Jatis" means such tribes as the State Government may, from time to time, by general or special order, declare as Vimukta Jatis for the purpose of this sub-section;

(ii) the business carried on by a trader including that of money lending shall be deemed to be similar to the business carried on by a marketing society.

Final authority of the society as per sub-section (1) of section 48 of the Act vests

in the general body of members. Bye-laws may provide for the constitution of a smaller body consisting of delegates elected in accordance with such bye-laws to exercise powers of the general body or as may be specified in the bye-laws of the society. As per section 48C of the Act the Board or the Committee of a society shall in accordance with the bye-laws, have power to admit and terminate membership. Section 48C(a) is quoted below :

48.C. Powers of Committee. -- The Board or the Committee of a society shall in accordance with the bye-laws, have power to --

(a) admit and terminate membership;

Rule 14 of the Rules of 1962 provides conditions to be complied with for admission for membership. Rule 14 is quoted below :

14. Condition to be complied with for admission for membership. -- No person shall be admitted as a member of a society unless --

(i) he has applied in writing in the form laid down by the society or in the form specified by the Registrar, if any, for membership;

(ii) he has purchased at least one share and paid the value thereof in full or in part in such calls as may be decided by the committee or general meeting of the society, as the case may be, according to the bye-laws of the society;

(iii) his application has been approved by the committee or the general meeting of the society, as the case may be, according to the bye-laws of the society;

(iv) he has fulfilled all other conditions laid down in the Act, the rules and the bye-laws.

It is apparent that for being admitted in the society person has to apply in writing in the form laid down by the society or Registrar. He has purchased at least one share and paid the value thereof in full or in part in such calls as may be decided by the committee or general meeting of the society. The application has been approved by the committee or the general meeting of the society, as the case may be, according to the bye-laws of the society. He has fulfilled all other conditions laid down in the Act, the rules and the bye-laws. Certain riders have been provided which provide no society shall admit member or transfer shares within forty-five days prior to the date of its annual general meeting on which election of the committee or office bearers is to take place.

Bye-laws have been framed under the provisions of the Act. Bye-law 5 of the respondent No. 4 society provides for submitting application for membership along with prescribed fee and element of share. Application is required to be decided in 60 days by the Board of Directors and it is open to the Board of Directors to decide or reject the application. In case of rejection reasons have to be assigned and appeal can be preferred against order of rejection. Membership is provided under bye-law 6 which provides that person should not be below the age of 18 years, must have the property within the operational area of the

society, competent to contract and has a good moral character. State Government and Financial Corporation Bank can be inducted as member, no person can become the member without special permission of the Registrar in case he is a member of some other primary credit society. Any person who has filed an application for being declared as insolvent and has been declared insolvent or has been convicted for offence except in the political cases or has committed offence involving moral turpitude which has not been pardoned and or altered. Disqualification will not be effective in case five years have passed after the date of conviction. Purchase of share for getting membership has been provided in para 5 of bye-law 6. As per bye-law 7 it is necessary to each of the member to hold one share and with the permission of Board of Directors person can hold more share.

It is apparent from conjoint reading of the aforesaid relevant provision of the Act, Rules and bye-laws i.e. sections 19, 19A, 48(1), 48C, Rules 14, 16 and bye-laws 5, 6 and 7 in order to consider a person to be duly qualified to be member it is necessary to go into question whether he is competent to contract and fulfils condition as prescribed u/s 19. It is also to be considered he is not disqualified u/s 19A. The body prescribed to take a decision is the Board or committee of the society in accordance with bye-laws to admit and terminate the membership. Rule 14 makes it mandatory that person in order to be eligible to be a member must comply the conditions before he could be admitted as a member of the society. Application in writing is necessary and also purchasing of share as prescribed. An application required to be approved by the committee if it fulfils other condition under the Act, Rules and other bye-laws. Bye-law 5 provides method and manner of filing of the application, deposit of the fee, person should not be below the age of 18 years, must be a good moral character and must not have been convicted or declared to be insolvent. All these questions are required to be gone into section 19(2A) substituted by Act No. 20/99 provides if any person duly qualified applies for membership, he shall be deemed to have been admitted as member of the society from the date of receipt of application in the office thereof. It is not that merely by filing of an application even a person who is not duly qualified shall be deemed to have been admitted as a member of the society, deeming fiction not to rescue a person who is not eligible or otherwise disqualified or has not applied in terms of the rules and bye-laws. He can be not deemed to be a member of such society from the date he files application. Obviously to consider eligibility mind is required to be applied at the level of the society itself. We have read the provision of section 19(2A) as rightly conceded by Shri V.K. Shukla, learned Dy. A.G. that adjudicatory process is required even at the level of the society prescribed u/s 19(2A) to go into question whether the application has been duly filed, person in holding share, is of good moral character, does not suffer with any disqualification prescribed under the Act, Rules and bye-laws and in case he is duly qualified he will be deemed to be member from the date of filing application. For induction of a member if we hold that no process is also required to be observed, to look into the eligibility of an

incumbent at the level of the society, it will create several difficulties, person who has not even purchased a share or is not of good moral character and is otherwise disqualified would become a member from the date on which he has filed application, but, provision is not intended to create such anomalous results which makes the provision invalid or impracticable such an interpretation has to be avoided. Thus, we hold that sub-section (2-A) of section 19 involves adjudicatory process at the level of the society also in order to consider whether a person is duly qualified for admission under this provision, in case an applicant is duly qualified under Act, Rules and bye-laws of the society only then the membership relates back to the date of filing application as per proviso to sub-section (2-A) of section 19 and any person aggrieved or the society within 15 days may file appeal it has to be decided in 45 days, in such appeal the Registrar can declare such a person as not eligible for membership of such society. Registrar is bound give reason in case he decides that such person is not eligible for membership, order cannot be passed in arbitrary manner. Reason assigned cannot be flimsy reason has to be in conformity with the provisions of Act, rules and bye-laws. In our opinion provision of sub-section (2-A) of section 19 provides protection to an incumbent that his application cannot be kept pending unduly and therefore it ensures that benefit of membership shall be available with effect from the date on which he shall be deemed to have been a member of the society. It cannot be said that any right of the society has been taken away which was conferred under the Act, Rules or bye-laws by the provision of sub-section (2-A) of section 19 as substituted by Act No. 20/99 w.e.f. 7-8-1999. If any person is deprived of the membership under sub-section (2-A) of section 19 is not remedy-less, he can prefer an appeal as against order of rejection u/s 19(6) of the Act. Person refused an admission or without sufficient cause denied admission in the society, he can file an appeal within 90 days. Registrar has to decide the appeal on time bound basis. Thus sufficient safeguard is provided with respect to membership. The provision of section 19(2A) cannot be said to be suffering with the vice of arbitrariness, it cannot be said to be taking away any right conferred under Article 19(1)(c) of the Constitution of India. No right can be said to be taken away as provided under Article 14 as sufficient provision has been made to prevent arbitrariness in action.

Shri Ankit Saxena learned counsel appearing on behalf of the petitioners has also submitted that the provision of section 19(2A) has been made applicable to a resource society or consumers society. Thus it is discriminatory, it violates Article 14 of the Constitution. It has not been made applicable to other societies specified in section 10. The purpose of creation and function of both the societies are different. "Resource Society" has been defined in section 2(y) which means a society formed with the object of obtaining for its members the credit, goods or services required by them and includes a service society and a primary credit society; whereas "consumers society" has been defined in section 2(g) which means a society formed with the object of obtaining or producing and processing and distributing goods to or performing other services for its members, as well

as for other customers and dividing among its members and customers in a proportion as may be laid down in the bye-laws of such society, the profits accruing from such supply, production, processing and distribution. Whereas other societies under the Act are Consumer's society, Farming society, Federal society, Central society, Housing society, marketing society, multipurpose society, processing society, resource society, general society and industrial society. Considering the operational area function and objects of the consumer society as well as resource society it has been considered by the Legislature that the person who want to be a member obtains the benefit from the date of filing the application the provision of section 19(2A) is for the welfare of the members of the society services rendered by the society in question it cannot be said that the society being similar has been treated in dissimilar fashion, it cannot be said that there is no rational criteria behind making the provision of section 19(2A) substituted by Amendment Act No. 20 of 1999. Thus, we find that by not making provision in section 19(2A) with respect to other societies defined in section 10 except resource society and consumer society, no discrimination has been made.

Coming to question of eligibility of member in the voter list, it is disputed question of fact whether the voter list was correctly prepared, whether or not it was prepared by the management. These disputed question of fact cannot be gone into in writ petition. Matter of preparation of voter list is subject-matter which has to be raised in election dispute u/s 64 of the Act as held by this Court in Akbar Mohd. Khan and Another Vs. State of M.P. and Others, . In Shiv Narain Pandey vs. Satish Tiwari, 1998 RN 178, this Court held that election should be allowed to be completed peacefully without any interruption from any forum. In Bhawani Shanker Sharma Vs. State of Madhya Pradesh and Others, the dispute related to earmarking of the particular constituency writ was held to not maintainable as remedy lies in filing election dispute. As per proviso to sub-section (2) of section 64 of Act, legislative intention is clear of completion of election unhindered; it is the view of this Court in Brij Behari Gupta Vs. L.L. Khare and Another, . Dispute as to voter list, nomination paper is to be raised in election dispute u/s 64 not in writ petition is consistent view taken in Radheshyam vs. Chairman, Sewa Sahakari Samiti, 1989 MPLJ 208 : 1989 RN 99, Ramdeo Sharma vs. Dy. Registrar, Gwalior, 1993 RN 18, Ramswaroop Dohare and Another Vs. Ayukt Sahkarith Avam Panjiyak Sahkari Sanstha, M.P. and Others, , Jagdish Sharma vs. State of M.P., 1996 RN 60, and Suresh Chandra Jain vs. State of M.P., 1996 RN 131.

We do not find any force in the submission that election programme issued by the Registrar was illegal in any manner so as to render election a nullity. It is submitted that the date of nomination was 31-1-2007, as per clause (b) of sub-rule (2) of Rule 41, which provides that the last date for making nominations shall not be later than seven days before the date fixed for holding the said meeting, the hours between which, the place at which and the person to whom nomination papers shall be presented. Clause (b) of sub-rule (2) of Rule 41 of the Rules, 1962 provides that elections have to be held expeditiously. In the

instant case date of nomination was fixed as 31-1-2007 and date of Annual General Meeting was fixed as 12-2-2007, it shall not vitiate the election which has been held after four days. Thus, we find no merit in the submission that the election programme issued by the Registrar was illegal due to the aforesaid reason.

The submission raised by Shri Ankit Saxena that once the Registrar has issued the election programme it would not be appropriate to have the remedy u/s 64, has no force. In the election matter, Registrar acts independently not to be influenced by the administrative procedure and we have held that the election was not vitiated due to aforesaid fixation of date beyond 10 days under Rule 41 of the Rules. In case petitioners want to avail the remedy u/s 64 it is open to them to have the remedy and to raise election dispute on the ground of voter list etc. with respect to matter not covered.

Resultantly, the writ petitions being devoid of merits deserves to be dismissed and are hereby dismissed. We leave the parties to bear their own costs as incurred.