

(2016) 09 DEL CK 0072

In the Delhi High Court

Case No : Writ Petition (Civil) No. 4491 of 2015

Ramandeep Kaur

APPELLANT

Vs

Registrar Cooperative Societies

RESPONDENT

Date of Decision : 23-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi Co-operative Societies Act, 2003 — Section 31(1)
Delhi Co-operative Societies Rules, 1973 — Rule 24(2)(i), Rule 30
Delhi Co-operative Societies Rules, 2007 — Rule 156, Rule 170, R

Citation : (2016) 234 DLT 594

Hon'ble Judges : Mr. Sanjiv Khanna and Ms. Sunita Gupta, JJ.

Bench : Division Bench

Advocate : Mr. Sameer Abhayankar, Advocate, for the Respondent No. 2; Mr. Peeyosh Kalra and Ms. Sona Babbar, Advocates, for the GNCTD; Mr. Rajeshwar Kumar Gupta, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J. - Ramandeep Kaur and nine others in this writ petition have impugned and prayed for setting aside of the order of the Financial Commissioner dated 16th April, 2015, passed in the revision petition filed by them, challenging the order of the Registrar, Cooperative Societies dated 23rd August, 2010. The order dated 23rd August, 2010 is also challenged. The impugned orders hold and declare that the membership granted to the petitioners by the Pragya Cooperative Group Housing Society Limited, the second respondent before us, was illegal and void being in contravention of Rule 24(2) of the Delhi Cooperative Societies Rules, 1973 (1973 Rules, for short).

2. Pragya Cooperative Group Housing Society Limited, is a cooperative society registered with the Registrar, Cooperative Societies, the first respondent, under the then Delhi Cooperative Societies Act, 1972 (1972 Act, for short). The cooperative society was allotted a plot of land bearing No. 1B, Sector-2, Dwarka, New Delhi for the construction of multi-storeyed flats for its members. The date

of allotment of land, date of sanction of the layout and building plans, date of commencement of construction and the date on which the construction was completed have been withheld and have not been brought on record. However, it is apparent that by August, 2007, the month and year in which the petitioners were enrolled, the construction of flats on the said plot was at an advanced stage. By July, 2009 construction of 150 flats was almost complete, except for final finishing.

3. The petitioners and the cooperative society proclaim and predicated their case on the advertisements published in the newspapers; the Pioneer (English) and Amar Ujala (Hindi) on 21st August, 2007, inviting applications from the public to fill up ten vacancies of membership. The petitioners procured the application forms on 22nd August, 2007 and had submitted their applications with the cooperative society. The management committee, it is averred, on 2nd September, 2007 had accepted the applications and passed a resolution under Rule 24(1)(ii) read with Rule 30 of the 1972 Rules. Upon enrolment, the petitioners paid the share money and the admission fee on 2nd September, 2007.

4. The management committee resolution register, it is stated, has been lost and a FIR was registered on 5th January, 2009. The purported or alleged resolution enrolling the petitioners has not been filed and is unavailable.

5. The cooperative society had by their letter dated 5th September, 2007, informed the Registrar, Cooperative Societies about admission/enrolment of the petitioners.

6. It is the case of the Registrar, Cooperative Societies that they had, by their letter dated 10th September, 2007, directed the cooperative society not to pursue the matter of enrolment of the present petitioners as members. This letter and its receipt are disputed by the petitioners and the cooperative society.

7. In the Special General Body Meeting convened and held on 20th January, 2008, the earlier Management Committee of the cooperative society was removed and an ad hoc committee was elected to take care of the affairs of the society. By letter dated 15th May, 2008, Sub-Division Magistrate, Karol Bagh was appointed as the Returning Officer to conduct the election of the management committee of the second respondent under Section 31(1) of the Delhi Cooperative Societies Act 2003 (2003 Act, for short). Another order dated 5th October, 2009 of the Registrar, Cooperative Societies appointed an Administrator. On 16th February, 2010 a new Administrator was appointed by the Registrar, Cooperative Societies. The Returning Officer, on examining the list of members, noticed that the said names included the ten petitioners. A general notice for holding of elections was issued on 30th March, 2010 and the ten petitioners were barred from participating in the elections as voters for violation of Rule 24(2) of the 1973 Rules. Aggrieved, the petitioners had filed Writ Petition (C) No. 2182/2010, which was disposed of vide order dated 9th April, 2010. The operative portion of this order, reads:-

"Learned counsel for the respondents took some time to obtain instructions on the last date as to whether the R-1 had at any stage objected to the enrolment of the petitioners as members of the Society in terms of Rule 25 (4) of the Delhi Cooperative Society Rules, 2007.

Learned counsel for the respondents fairly states that no such objection was raised but that some subsequent facts had come to light whereupon the validity of the membership of the petitioners is being examined. Learned counsel for the respondents further fairly states that insofar as the election process in question is concerned, for which forms have been issued to the petitioners in pursuance to our directions dated 05.04.2010, such of the petitioners who want to submit their forms would be permitted to do so and the petitioners will be permitted to participate in the election process.

In view of the aforesaid statement of learned counsel for the respondents, the grievance of the petitioners does not survive.

We, however, make it clear, at the request of learned counsel for the respondents, that if the respondents find for any reason that action for termination of membership has to be taken against the petitioners, the aforesaid order will not preclude them from acting in accordance with law, but that this will not in any manner obstruct the participation of the petitioners in the election process in question.

The petition and the applications accordingly stand disposed of."

8. By order dated 23rd August, 2010, the Registrar, Cooperative Societies held that the enrolment of the ten petitioners as members, intimated to the Registrar by the second respondent, i.e., the cooperative society vide letter dated 3rd September, 2007, was not in conformity with Rule 24 of the 1973 Rules and the directive/circular No. F. 47/163/Policy/RCS/2004095/484-509 dated 9th November, 2004 for the following reasons:-

(i) The two public notices published in the Pioneer (English) and Amar Ujala (Hindi) dated 21st August, 2007 inviting applications for filling up of vacancies for membership had not mentioned and stated the address/site office address of the society.

(ii) Contrary to the directive/circular dated 9th November, 2004 and the public notice, the cooperative society closed and had stopped receipt of new applications and had completed the process of selection prematurely on 2nd September, 2009. As per the public notice dated 21st August, 2007 fifteen days" time was fixed for the receipt of new applications. Fifteen days was also the period mandated in the directive/circular dated 9th November, 1994. Thus, the enrolment was contrary to the public notice and in violation of the circular dated 9th November, 2004.

(iii) There was a violation of Rule 24(1)(ii) of the 1973 Rules. The Administrator vide his letter No. R/PA/A/NSIT/08 dated 18th August, 2010 had intimated that

the management committee of the society had not passed a resolution admitting the petitioners as members.

9. Aggrieved, the ten petitioners had filed a revision petition before the Financial Commissioner under Section 116 of the 2003 Act read with Rule 156 of the Delhi Cooperative Societies Rules, 2007 (2007 Rules, for short). The second impugned order dated 16th April, 2015 dismissed the said revision petition, recording as under:-

"6. I have considered all the facts and circumstances of the case, perused available record on file and have heard concerned parties at length. It is admitted fact that an advertisement for 10 vacancies of flats in Pragya CGHS was published on 21.08.2007 in which the address of registered office was not disclosed. It is also an admitted fact that the society closed the process for accepting the application for enrolment on 02.09.2007, i.e. 03 days prior to the last date of submission of this application. This fact has been further confirmed by the Society's letter dated 03.09.2007. In the absence of any address general public would not know as to where the applications are to be submitted. Premature closure of submission of applications amounts denying of opportunity to apply to those who would have applied during the last three days. I find that both are serious lapses which have vitiated the entire enrolment process. In fact an advertisement for enrolment is to be considered no advertisement if it fails to specify unambiguously the following:

- (i) Complete postal address of the office of society from where the prescribed application form can be collected and duly filled application can be submitted by the applicants;
- (ii) Timings during which application are to be submitted;
- (iii) List of documents which are to be enclosed with the completed application;
- (iv) Amount required to be deposited along with completed application.

Disclosure of above information in the advertisement is necessary to maintain transparency in the process of enrolment. This is also necessary to prevent the possibilities of behind the doors management of the enrolment process by the Society.

In the instant case no address of the society was given and enrolment process was closed prematurely. Such serious violations cannot be allowed to be condoned.

7. It is also a fact that the Society while submitting the list of 10 newly enrolled members on 02.09.2007 to the RCS Office did not enclose a copy of Managing Committee resolution along with the letter dated 03.09.2007. Petitioners in their submission submitted that resolution actually was passed on 02.09.2007 but the record has been misplaced and an FIR has already been registered on 05.01.2009 in the Police Station, Kotla Mubarakpur. Since the society vide its

letter dated 03.09.2007 did not annex any resolution for enrolling the 10 new members, then mere filing of an FIR after more than one year appears to be an afterthought and cannot establish that such a resolution was indeed passed.

8. Petitioner further submitted that they have paid the entire cost of land and construction of flats and after several years it cannot be said that enrolment was void ab-initio. Cost of constructions and land cannot validate their enrolment contrary to the prevailing rules and directions.

9. DCS Rule 2007 came into force vide notification dated 19.10.2007 and as per Rule 170 of new rules, DCS Rule 1973 shall stand repealed on the day in which DCS Rule 2007 came into force. Therefore, direction issued vide circular dated 09.11.2004 under DCS Rule 1973 shall be effective till the notification of DCS Rule 2007. Therefore, I do not find any infirmity in the order of AR (NW) on this count.

10. Considering the above facts and circumstances, I do not find any infirmity in the order dated 23.08.2010. Accordingly, the petition is dismissed."

10. The contention of the petitioners is that the 2007 Rules came into force and were effective from 19th October, 2007 and had the effect of repealing the 1973 Rules. The petitioners having deposited the admission and share money with the second respondent on 2nd September, 2007, and intimation in this regard having been sent by the cooperative society to the Registrar, Cooperative Societies on 3rd September, 2007, the petitioners should be treated validly enrolled as members in terms of bye-law 5(vi) of the Society's Bye-Laws and Rule 30(4) of the 1973 Rules as well as Rule 25(4) of the 2007 Rules which came into force on 19th October, 2007. Predicated on the aforesaid bye-laws and Rule 24(2) and making reference to Rule 170 of the 2007 Rules, the following legal issues were sought to be raised by the petitioners:-

"1. Whether the impugned order of RCS suffer from principles of natural justice as no notice was issued by the RCS before passing the said orders?

2. Whether the Registrar is conferred with the powers to cease the memberships of the petitioners under Rule 24 of the DCS Rules, 1973?

3. Whether after about 3 years of repealing the DCS Rules, 1973 by virtue of coming into force the DCS Rules, 2007 w.e.f. 19.10.2007, still the Registrar can pass orders under the old Rules of 1973 and without adhering to provisions of Rule 170 of DCS Rules, 2007?

4. When the Registrar failed to communicate or inform any irregularity or illegality for almost 3 years [order dated 05.04.2010 & 09.04.2010 in W.P. (C) 2182/2010] under Rule 25 (4) of the DCS Rules, 2007, whether the impugned orders dated 23.08.2010 of the RCS are sustainable?

5. Whether the orders dated 23.08.2010 passed by the Registrar & of the Financial Commissioner dated 05.07.2013 are illegal and arbitrary as the

petitioners acquired all their rights, obligations and liabilities by depositing the requisite amount as and when required by the Society and particularly under Bye-law 5 (vi) of the registered Bye-laws read with Rule 30 (4) of Rules, 1973, under Rule 25 (4) of Rules 2007 and as such their enrolment cannot be declared as void after lapse of 3 years and without affording any opportunity of being heard?

6. Whether there is any requirement under Rule 24 (2) of DCS Rules 1973 about publication in newspaper about vacancy in Group Housing Society with its address etc. as mentioned in the impugned orders dated 23.08.2010 of the RCS?

7. Whether the petitioners who acquired all rights & obligations under provisions of DCS Act, Rules & Bye-laws and deposited about 95% of costs towards share-money, land money, cost of construction etc. can be allowed to suffer at the hands of the respondents for no faults on their part and for the faults, if any, on the part of the Managing Committee of the Respondent Society?"

11. Reliance is placed upon decisions of two Division Benches of this Court in *Gurbachan Singh v. Rehabilitation Ministry Employees Co-operative House Building Society Limited and Others*, 45 (1991) DLT 689 (DB) and *Rajib Mukhopadhyaya and Others v. Registrar Cooperative Societies*, 2007 (97) DRJ 273 (DB). Reference is also made to the decision of the Supreme Court in *Satyavir Singh and Others v. Union of India and Others*, AIR 1986 SC 555.

12. We have considered the contentions raised by the petitioners, but find them to be entirely fallacious and missing the point in issue. The petitioners are trying to raise legal and technical grounds, which in the facts of the present case are academic and inconsequential. They are trying to ignore the factual matrix which speaks for itself. The decision in the case of *Rajib Mukhopadhyaya and Others* (supra) does not support the case of the petitioners and albeit strikes at the foundation of their case. We shall refer to this judgment subsequently. We begin by noticing Rule 24(2) of the 1973 Rules.

13. The aforesaid Rule, as amended on 6th August, 1997 before being substituted/amended on 1st April, 2005, was as under:-

"24(2). In case of vacancy in a housing society including group housing society where layout and building plans have been approved by the competent authority, the same shall be filled by the committee by notifying it in leading daily newspaper of Delhi in Hindi and English. In case the number of applications are more than the notified vacancies the membership shall be finalised through draw of lot in the presence of authorised representative of the Registrar."

After amendment on 1st April, 2005, the said Rule reads:-

"24(2). In case of vacancy in a housing society including group housing society the same shall be filled by the committee by notifying it in leading daily newspaper of Delhi in Hindi and English. In case the number of applications are more than the notified vacancies the membership shall be finalised through draw of lot in the presence of authorised representative of the Registrar."

The pre-amended Rule had stipulated that in case of a vacancy in a housing society, including a group housing society, where layout or building plans had been approved, the vacancy shall be filled up by the committee by notifying the vacancies in a leading daily newspaper in Hindi and English. If the number of applications received was more than the notified vacancies, membership shall be finalised through a draw of lots in the presence of the authorised representative of the Registrar. The amendment with effect from 1st April, 2005 had stipulated that vacancies in a housing society, including a group housing society, will be filled up by the committee by notifying vacancies in a daily newspaper of Delhi in Hindi and English and in case the number of applications received were more than the notified vacancies, membership shall be finalised by draw of lots in the presence of authorised representatives of the Registrar. The amendment of 1st April, 2005 had modified the earlier Rule, which had restricted application to cases where layout and building plans had been approved by the competent authority. In the present case the, the layout and building plans had been finalised and approved on the date when the public notices were issued-i.e. on 21st August, 2007. The procedure mandated and prescribed by the Rule was binding and had to be followed.

14. During the course of hearing, copies of the two advertisements published in the Pioneer (English) and Amar Ujala (Hindi) were filed and have been taken on record. The said advertisements are in English and read as under:-

" Applications are invited to fill up the vacancies in the society as per Rules 24(2)B provisions of DCS Rules, 1973 as amended, within fifteen days. The terms and conditions for considering membership applications are as under. Applications forms are available at 10.00 to 5.00 dated on 22-8-2007 at site office.

1) Earnest money along with application for membership by DD/Cheque/Pay Order

2) Tentative cost of flat

6 for Category A top floor 15,00,000

4 Category B II to IX floor 27,00,000

3) Government levy

+ Equalisation charges

4) Down payment

Applicant who fulfils the above conditions at Sl. No. 01 will be invited later on as per DCS Rules, 1973. Apply to Secretary at above address. The society is under investigation. Loan facilities are at risk and responsibilities.

For Pragya CGHS

Sd-

Authorised Signatory"

15. The advertisements do not meet the mandate of law. It was an attempt to bypass and nullify the very purpose and objective behind Rule 24(2) of the 2003 Rules. The advertisement capriciously excluded mentioning the relevant details like the plot number, address, etc., which were missing and had been concealed. The mere mention of the name of the cooperative society was not enough. The application forms were to be collected from the site office, but the address of the site office was not mentioned. Without the address and other particulars, members of the public could not have made inquiries, collected admission forms and deposited their applications. The advertisements were a mere facade to favour a few selected and known persons. Membership of a cooperative society, which has been allotted land and where layout and building plans have been approved, and the construction is at the advance stage, commands a high premium and is highly prized. The reason is that the land was allotted to the cooperative society at rates much lower than the market rates. There was an acute shortage, with people waiting for decades for allotment of a house. We must take judicial notice of the said factum and would not ignore this position.

16. The contention that third persons have not objected or protested and, therefore, it should be assumed that no third person was interested and wanted membership, must be rejected as imaginative conceit. A person reading the advertisement would notice the concealment and was bound to feel apprehensive. Choice can only be exercised when there is awareness and facts are stated. It would be incongruous to observe and hold that no one except for the 10 petitioners wanted and were desirous of membership. We do not agree and accept that the ten petitioners, with their soothsayer's ability, somehow managed to ascertain and reach the site office, procure the forms on 22nd August, 2007 and to their good fortune, within 10 days thereafter were enrolled as members.

17. Rule 24(2) of the 1973 Rules had a salutary purpose and object. It checked nepotism, favouritism and ensured transparency. More importantly, it ensured that members were not enrolled by charging an underhand and illicit premium. All eligible persons should be given a fair and equitable opportunity to apply and secure membership of a cooperative society. Membership should not be allotted by adopting illegal and wrongful means.

18. It is, in this context, that a Division Bench of the Delhi High Court in *Rajib Mukhopadhyaya and Others (supra)* had upheld the constitutional validity of Rule 24(2) of the 1973 Rules, though an argument was raised that cooperative societies are based upon the precept of the voluntary nature of their membership and the Rule results in the State's interference in the working of cooperative societies. Rejecting the said contention, it was held that Rule 24(2) of the 1973 Rules was not a restrictive, but a regulatory provision. The said Rule only means that eligible persons, i.e., the persons who are eligible as per the bye-laws and existing regulations of the cooperative society can apply for membership.

However, the procedure under Rule 24(2) of the 1973 Rules must be adhered to for enrolling eligible persons as members. A draw of lots would be required only when the number of applications received are more than the vacancies. The mandate of the Rule is that membership or vacancies should be publicised by inviting applications in a daily newspaper in Hindi and English and only thereafter can vacancies be filled, if required, by holding a draw of lots, in a transparent manner in the presence of the Registrar, Cooperative Societies or his representative. The Rule was upheld. The relevant portion of the judgment reads:-

"12. Consequently, we uphold the constitutional validity of Rule 24(2) of the DCS Rules subject to the above interpretation of the law submitted by the learned Additional Solicitor General, which we accept and declare. The bye laws of the Society shall be fully followed in entertaining the claims of memberships set up by those applying through the medium of Rule 24 (2) of the DCS Rules. Thus, if the society has any existing requirements in its bye laws about the characteristics required to be possessed by an intending member, only such persons possessing the requirements as stipulated in the existing bye laws and regulations of the Society are entitled to apply pursuant to Rule 24(2) of the DCS Rules. We also make it clear that if the Society has any existing members who have still not got the allotment of a plot/flat, such members, in accordance with the bye laws, shall be first allotted the vacant plot/flat/premises before resort to Rule 24(2) of the DCS Rules. It is only when all such existing members awaiting allotment have been allotted the premises/plot/flats, shall the operation of Rule 24 (2) of the DCS Rules come into being.

13. Consequently, while dispelling the challenge to the constitutional validity of Rule 24(2) of the DCS Rules, we nevertheless uphold the societies right to restrict its membership in accordance with the bye-laws, regulations and the rules of the society prospective candidates and further make it clear that any prospective entrant to a society, pursuant to the mandate of Rule 24 (2) of the DCS Rules shall only be eligible to be allotted a plot after the requirements of the existing members are fulfilled."

19. The decision in the case of Gurbachan Singh (*supra*) has no application to the present factual matrix. In 1966 Gurbachan Singh had deposited the share money and admission money for being enrolled as a member. Subsequently, dispute arose between him and the cooperative society, as his membership was cancelled by the Administrator vide order dated 1st July, 1976. The cancellation was challenged by invoking the Arbitration provisions adumbrated in Section 60 of the 1972 Act. The Division Bench of this Court observed and held that factual disputes had been raised and the mere fact that Gurbachan Singh did not have a share certificate or that his name was not mentioned in the register of members, would not foreclose or prevent Gurbachan Singh from raising the dispute. It was open to the parties to lead evidence before the Arbitrator. *Prima facie* evidence had shown that the petitioner therein was a member of the society.

20. The decision of the Supreme Court in *Satyavir Singh and Others* (supra), according to us, has no application to the facts of the present case for it relates to the second proviso and clause (b) of Article 311 (2) of the Constitution and Rule 19 of the Central Civil Services (Classification, Control, and Appeal) Rules, 1965.

21. The order dated 9th April, 2010 disposing of Writ Petition (C) No. 2182/2010 does not decide the issue raised and had held that if the authorities find that action for termination of membership had to be taken, they could act in accordance with law. This order was passed as the question of membership was pending consideration. The order dated 23rd August, 2010 was passed subsequently by the Registrar, Cooperative Societies.

22. The petitioners claim that the respondent No. 2 cooperative society had sent a letter dated 5th September, 2007 informing the Registrar, Cooperative Societies about the admission of the petitioners. As per the Registrar, Cooperative Societies, he had sent a letter dated 10th September, 2007 to the second respondent directing them not to pursue the matter for enrolment. The ten petitioners have disputed the receipt of this letter. The 2007 Rules came into force on 19th October, 2007. Rule 25(4) of the 2007 Rules was as under:-

"Rule 25(4)- A person whose application for membership has been approved by a Committee shall deposit the membership fee and the amount of qualifying share(s) necessary to become a member within fourteen days of the information of admission as member of the Cooperative Society, sent to him in person or by registered post. The amount should be deposited by Demand Draft/Banker's Cheque/Pay Order only. If no such amount is deposited within the stipulated period, the resolution of Committee approving the membership of the person concerned shall become void and inoperative.

In case of Cooperative Housing Societies Managing Committee shall endorse a copy of managing committee resolution passed under sub-rule (2) within twenty one days to the Registrar. The Resolution shall become final after a period of 60 days of conveying and receipt of the same in the office of the Registrar. In the event Registrar not agreeing to the enrolment of an individual for one reason or the other as may be relevant with reference to the provisions of law, the provisional enrolment will automatically become invalid."

Even if we assume that Rule 25(4) of the 2007 Rules would be applicable, the case of the petitioners would falter. The mandate of Rule 25(4) is that the Managing Committee of the cooperative housing society will endorse a copy of the management committee resolution within twenty one days to the Registrar. It stipulates that the resolution, i.e., the resolution of the management committee would become final after sixty days of conveying and receipt of the same in the office of the Registrar. There could be controversy and debate whether the last sentence of Rule 25(4) would empower the Registrar to not agree and reject the enrolment even after sixty days, but this controversy is not required to be

decided in the present case. There is a concurrent finding of fact that the Management Committee had not enclosed a copy of the resolution enrolling the ten petitioners along with their letter dated 5th September, 2007. In fact, what was produced before us is the letter dated 3rd September, 2007 which was received in the office of the Registrar, Cooperative Societies on 5th September, 2007. The letter states that the cooperative society had published advertisements for ten vacancies on 21st August, 2007 and against the ten vacancies ten application forms were issued on 22nd August, 2007. The management committee had thereafter enrolled ten members on 2nd September, 2007. The resolution is not enclosed and the letter does not make any reference to a resolution.

23. In our opinion, in case the petitioners or the cooperative society wanted to take advantage or benefit of the amended Rule 25(4) of the 2007 Rules applicable with effect from 19th October, 2007, the cooperative society should have filed and sent a copy of the resolution of the Management Committee enrolling the ten petitioners as members. It is interesting to note that the original records or register relating to the purported resolution passed by the management committee as per the cooperative society has been misplaced and lost. A FIR was registered on 5th January, 2009. In our opinion, the Financial Commissioner has rightly drawn an adverse inference and observed that mere filing of a FIR after more than one year, appears to be an afterthought and cannot establish whether the resolution was actually passed.

24. Reference to bye-laws 5.5(vi) and Rule 30(4) of the 1973 Rules is of no consequence. Bye-law 5(vi) reads as under:-

"Bye-law 5(vi)- When a person's application has been accepted by the Committee and he has paid his admission fee and share money, he shall be deemed to have acquired all the rights and incurred all the obligations and liabilities of a member of the Society as laid down in the Act, the Rules made thereunder and these bye-laws."

The said bye-law states that when a person's application has been accepted by the managing committee and he has paid the application fee and the share application money, he would be deemed to have acquired the rights and incurred all obligations and liability as a member as laid down in the 2003 Act and the Rules made thereunder. This Rule would only come into play when there is compliance with Rule 24(2) of the 1973 Rules and not otherwise. This is the mandate and the ratio of the decision in *Rajib Mukhopadhyaya and Others* (supra). Rule 30(4) would come into operation when the membership of a person has been approved by the committee of the cooperative society in accordance with the provisions of the Act and the Rules. Rule 30(4) also necessitates a resolution of the Management Committee having been passed, approving membership to the cooperative society. The Rule postulates that in case the said person refuses to deposit the membership fee and the qualifying share money within fourteen days, the resolution of the Management Committee approving

the membership will become void and inoperative. Once it is held and we conclude that Rule 24(2) of the 1973 Rules was violated, then and for this reason Bye-law 5(vi) or Rule 30(4) would have no application.

25. It was highlighted that the petitioners have deposited amounts ranging between Rs. 17 lacs to Rs. 41 lacs, i.e., in total about Rs. 2.80 crores. The said deposits were made by the petitioners at their peril. In fact, about Rs. 40 lacs was deposited even after filing of the revision petition, i.e. after the order dated 23rd August, 2010 of the Registrar, Cooperative Societies. The said deposits, in our opinion, would not confer any rights to the petitioners for that would amount to condoning and overlooking the illegality. When the initial enrolment itself is bad, receipt of any amount by the cooperative society would not confer any right. It is obvious that the petitioners, ten in number, were shown favourable and preferential treatment and were enrolled as members in clear violation of Rule 24(2) of the 1973 Rules. The said violation cannot and should not be pardoned for it will then give legitimacy to the illegality and contrivance perpetrated. We cannot, therefore, on this basis hold that on equity the petitioners should be granted relief. Enrolment of the petitioners itself was iniquitous and dubious. This being the situation, the petitioners cannot predicate their case on equity.

26. The writ petition has no merit and is accordingly dismissed. In the facts of the case, there will be no order as to costs.