

**(2019) 09 PAT CK 0106**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 24467 Of 2018

Tanu Singh

APPELLANT

Vs

State Of Bihar Through The Principal Secretary And Ors

RESPONDENT

**Date of Decision :** 16-09-2019

**Acts Referred:**

Bihar Cooperative Societies Act, 1935 — Section 6(2), 48  
Bihar State Election Authority Act, 2008 — Section 12, 12(1)(a), 12(1)(d)(iv), 12(2)  
Cooperative Societies Act, 1912 — Section 16, 32, 63  
Representation Of The People Act, 1951 — Section 19, 27(5), 62(2), 62(3), 62(4),  
62(5), 100(1)(a), 100(1)(d)  
Citizenship Act, 1955 — Section 5(1)(c), 9, 9(1)  
Representation Of The People Act, 1950 — Section 16  
Bihar Cooperative Societies Rules, 1959 — Rule 7, 7(4)(a), 7(4)(b), 7(4)(c), 8, 21(J),  
21(N), 21(X), 23, 23(1)  
Constitution Of India, 1950 — Article 84, 102

**Citation :** (2019) 4 PLJR 784

**Hon'ble Judges :** Rajeev Ranjan Prasad, J

**Bench :** Single Bench

**Advocate :** S.B.K. Mangalam, Ravi Ranjan, Kislay Raj, Awnish Kumar, Sandeep Kumar, Ram Nibash Prasad, Mahtab Alam

**Final Decision :** Allowed

## Judgement

1. This writ application has been preferred for issuance of a writ in the nature of certiorari to quash and cancel the judgment and order dated 26.10.2018/20.11.2018 passed by Respondent No. 3 in Election Dispute Case No. 323 of 2014 whereby the respondent no. 3 i.e. the Deputy Registrar (Headquarter), Cooperative Societies, Bihar, Patna has set aside the election of the writ petitioner on the ground that there had been overwriting and interpolation in the list of members and the petitioner had failed to produce any clinching evidence in support of his bonafide membership of Dhenuki Primary Agriculture Credit Cooperative Societies (hereinafter referred to as the 'Society' or the 'PACS').

The petitioner also prays for a declaration that in absence of any notification by the State Government in terms of Sub-Section 2 of Section 6 of the Bihar Cooperative Societies Act, 1935 (hereinafter referred to as the 'Act of 1935') authorizing the Respondent No. 3 to discharge the functions of Registrar, the Respondent no. 2 had no jurisdiction to transfer the case for disposal by Respondent no. 3 and if respondent no. 3 has disposed of the election petition by the impugned order the same is without jurisdiction.

A prayer has also been made to issue a writ in the nature of mandamus commanding and directing the respondent authorities to reinstate the petitioner to the post of Chairman of the Society which the petitioner was holding prior to passing of the impugned order.

2. It is the case of the petitioner that he had applied for membership of the Society in the prescribed form and declaration in terms of Sub-Rule 4(a) to (c) of Rule '7' of the Bihar Cooperative Societies Rules, 1959 (hereinafter referred to as the 'Rules of 1959'). He was admitted as a member of the society by the Block Development Officer and a list of the applicant was sent to the Chapra Branch of Bihar State Cooperative Bank Limited, where the petitioner had also deposited his membership fee and had purchased one share of the society. It is his submission that a draft voter list was drawn by respondent no. '7' who happened to be the Returning Officer of the election and it was published for general information to the public. No objection was received against the draft voter list, therefore, final voter list for holding the election of the Managing Committee was published.

3. It is his further case that since in the voter list his name was appearing, he filed his nomination to contest the post of Chairman and in course of scrutiny of the application no objection was raised by anyone against the candidature of the petitioner. The nomination was thus accepted and was also published in the list of validly nominated candidates. The petitioner, thereafter, contested the election and was declared elected as Chairman of the Society. Private respondent no. 8 was defeated. The respondent no. 8, thereafter filed an election dispute case bearing Case No. 323 of 2014. A copy of the election petition has been brought on record as Annexure 'P-1'. The case was contested by this petitioner by filing written statement and bringing on record the various documentary evidences. Respondent no. 7 had also filed his response in the election dispute case and had brought on record the letter of District Cooperative Officer dated 05.02.2016 to demonstrate that the petitioner had deposited the membership fee and had purchased one Share of the Society. In this connection, respondent no. 7 had also produced letter of the Branch Manager of the bank to show that the petitioner was one amongst 41 members whose membership fee has been deposited in the Bank.

4. The petitioner has also brought on record certain information supplied to him by the Public Information Officer-cum-Branch Manager, Chapra Branch of the Bank, which according to the petitioner, conclusively proved that at serial no. 41

of the list of members forwarded by respondent no. 7, the name of the petitioner finds place. It is submitted that before the respondent no. 2 the petitioner had filed a list of documents and a prayer was made to call for the documents from the respective custodians but that was not found.

5. Learned counsel for the petitioner submits that the respondent no. 3 has passed the impugned judgment and order doubting the membership of the writ petitioner and on that ground alone he has set-aside the election. It is also submitted that after 16.05.2018 when the matter was placed for hearing lastly, no further date of hearing was fixed but the judgment has been passed without hearing the petitioner. It is submitted that the respondent no. 3 has repeatedly relied upon the order dated 08.03.2016 passed by the respondent no. 2 but has failed to appreciate that the said order of respondent no. 2 was set-aside by this court in CWJC No. 6775/2016. Learned counsel has assailed the impugned judgment on various grounds including that once the letter of District Cooperative Officer and the Branch Manager of the Bank confirmed that the petitioner's name is there at serial no. 41 of the list dated 28.07.2014, even without calling for the relevant records the respondent no. 3 was not justified in doubting the membership of the petitioner. The respondent no. 3, it is submitted, has not taken any notice of the letter of the District Cooperative Officer and the letter of the Branch Manager dated 05.02.2016 and 23.07.2016 respectively. Respondent no. 3 is said to have relied upon a letter no. 97 dated 17.01.2015 issued by the District Cooperative Officer which was neither a part of the rejoinder filed by the election petitioner nor it was called from the custody of the District Cooperative Officer.

6. Mr. Mangalam has relied upon a judgment of this court in the case of Kaushal Kishore and Another Vs. The State of Bihar and others reported in 2016(2) PLJR 604 to submit that in almost similar circumstance where the election petitioner sought to challenge illegal grant of membership of 281 persons a learned coordinate Bench of this court took a view that the subject matter of a membership dispute may be raised before the statutory authorities under Section 48 of the Act of 1935, but until such time the grant of membership cannot be a subject matter of any election dispute it was held that the election dispute was not maintainable. Learned coordinate Bench also relied upon another judgment of this court in the case of Sushila Prasad Vs. State of Bihar and Ors. reported in 2015(4) PLJR 881 while taking this view the learned coordinate Bench relied upon Section 12 of the Bihar State Election Authority Act, 2008 (hereinafter referred to as the 'Act of 2008').

7. On the other hand, learned counsel for the respondent no. 8 has contested the writ application. It is submitted that the petitioner had filed an Election Appeal No. 167/2018 (Annexure 'P/10') which has been annexed with the supplementary affidavit filed by the petitioner but the order dated 04.12.2018 passed in the said Appeal has not been challenged by the petitioner.

8. It is a case of respondent no. 8 that the writ petitioner is not a valid member

of the Society as he had not been granted membership of the 'PACS' by any authority competent to grant membership in terms of Rule '7' of the Rules of 1959. It is submitted that on the basis of the forged receipt dated 20.07.2014 (Annexure '1' to the Election Petition) the petitioner succeeded in getting entry of his name in the supplementary voter list prepared on 13.09.2014 few days prior to the date of nomination. The nomination of the petitioner was objected to but no action was taken thereon. The submission is that being a non-member the writ petitioner was disqualified from getting elected in terms of Rule 23(1) of the Rules of 1959 and because he was not eligible for filing nomination in terms of Rule '21-N' his election was fit to be set-aside in terms of Section 12(1)(a) of the Bihar State Election Authority Act, 2008 (hereinafter referred to as the 'Act of 2008').

9. Respondent no. 8 has brought on record a copy of the receipt dated 20.07.2014 and a copy of the objection dated 26.09.2014 as Annexure 'R-8/A' and 'R-8/B' to his counter affidavit.

10. It is submitted that the receipt as contained in Annexure 'R-8/A' is a forged document which is proved from letter no. 97 dated 17.01.2015 issued by the District Cooperative Officer, Saran. It is submitted that vide Annexure 'R-8/C' the District Cooperative Officer, Saran has informed respondent no. 3 that the said receipt is a forged receipt, it is not like the receipts issued by the Bihar State Cooperative Bank Limited, Chapra Branch and seal of the registration number and the name of the Society are also wrongly mentioned in the receipt.

11. By Annexure 'R-8/D' and 'R-8/E1' learned counsel has submitted that at serial no. 41 the name of the applicant is recorded as "Manu Singh" son of Late Ram Ekbal Singh whereas the name of the petitioner is "Tanu Singh". According to respondent no. 8, in 'R-8/E2' there is a manipulation in the first letter of the name as 'Ma' has been converted in 'Ta' which is thus a case of impersonation. Respondent No. 8 has also relied upon the affidavit of one Shyam Bihari who has stated that he had not deposited any membership fee on behalf of the petitioner.

12. Learned counsel for the Election Dispute Petitioner - Respondent no. 8 has relied upon a judgment of the Hon'ble Supreme Court in the case of Harishankar Jain Vs. Sonia Gandhi reported in AIR 2001 SC 3689 to submit that in the said case the Hon'ble Supreme Court held that a returned candidate is not a citizen of India and hence not qualified, or is disqualified for being a candidate in the election can be raised in an election petition before the High Court but in the same judgment the Hon'ble Supreme Court has accepted the submission of the Respondent that "by virtue of the certificate granted to her under Section (1) (c) of the Citizenship Act, which certificate has not been cancelled, withdrawn or annulled till date, she is a Citizen of India". The Hon'ble Supreme Court referred it's judgment in the case of Bhagwati Prasad Dixit 'Gharewala' Vs. Rajeev Gandhi (1986) 4 SCC 78 which this court will discuss in the concluding part of this judgment.

13. In course of argument, learned counsel for the parties have mainly argued and confined their submission to the issue of membership, while it is the submission of Mr. Mangalam, representing the petitioner that the issue of 'membership' could not have been gone into in the election dispute in question, Mr. Sandeep Kumar, learned counsel for respondent no. 8 has argued that the improper acceptance of nomination of a non-member is one of the grounds to challenge the election of the writ petitioner and there was no bar for the Deputy Director in going through the said issue.

#### Consideration

14. Having heard learned counsel for the parties and on perusal of the records, this court finds that the solitary question which has been argued and is required to be answered is as to whether the issue of 'membership' of the returned candidate could have been gone into by respondent no. 3 in an election petition. Section 12 of the Act of 2008 reads as under:

"12. Grounds for declaring election to be void. - (1) Subject to the provisions of sub-section (2) if the prescribed authority is of opinion-

(a) that on the date of his election, a returned candidate was not qualified or was disqualified, to be chosen as a member under this Act; or

(b) That any corrupt practice has been committed by a returned candidate or his agent or by any other person with the consent of a returned candidate or his agent; or

(c) that any nomination paper has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected.

(i) by the improper acceptance of any nomination; or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent; or

(iii) by the improper reception, refusal or rejection of any vote or reception by an agent; or

(iv) by any non-compliance with the provision of this Act or of any rules or orders made thereunder; the prescribed authority shall declare the election of the returned candidate to be void.

(2) If in the opinion of the Prescribed Authority, any agent of a returned candidate has been guilty of any corrupt practice, but the prescribed authority is satisfied -

(a) that no such corrupt practice was committed at the election by the candidate and every such corrupt practice was committed contrary to the orders and without the consent of the candidate.

(b) that the candidate took all reasonable measures for preventing the commission of corrupt practices at the election; and

(c) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agent; then the Prescribed Authority may decide that the election of the returned candidates is not void."

The rules of 1959 provides for the admission to membership. Rule 7 & 8 of the Rules of 1959 are as under: -

"7. Admission to Membership - (1) (a) Every person desiring admission to membership of a registered society shall apply in Form V.

(b) The Secretary of the Society or any person duly authorised by him in this behalf shall immediately grant a receipt for the application in the form at the foot of Form V.

(c) in case the Secretary of the Society or any such person as aforesaid does not receive the application or grant a receipt for it, the applicant may submit his application to the Block Development Officer or the Assistant Registrar of Co-operative Societies or the District Co-operative Officer, who shall immediately grant him a receipt for the applicant in the prescribed form, and shall at once send the same to the society concerned.

(d) The application shall be considered by a Managing Committee of the Society and the decision of the Committee thereon shall be communicated to the applicant within 15 days of receipt of the application and, where the applicant is rejected, with reasons therefor.

(e) If no decision is communicated to the applicant within the period specified above, it shall be deemed that the application has been accepted and the applicant has been admitted to the membership of the Society.

(2) A person whose application for admission to membership has been rejected by the managing committee may, within sixty days of the communication of the decision to him appeal to the Registrar whose decision shall be final.

(3) On payment of the admission fee and share money as prescribed in the bye-laws, a member shall be entitled to all the rights and shall be subject to all the liabilities of a member.

(4) Notwithstanding anything contrary contained in this rule or bye-laws of a Primary agriculture Credit Society, if any person applies for membership of such a society with a declaration to the Block Development Officer or Assistant Registrar, Cooperative Societies or District Cooperative Officer that-

(a) he fulfills the criteria for attaining membership of such a society.

(b) no other member of his family is a member of the society and

(c) he has applied for membership to the managing committee of such society

and has not been admitted as a member, the concerned Block Development Officer or Assistant Registrar Cooperative Societies or District Cooperative Officer, as the case may be, shall order such person to be made a member of the said society."

8. Eligibility for membership - No person shall be eligible for admission as a member of a registered society, if he -

(a) is under eighteen years of age;

(b) is a paid employee of the society or of an affiliating society;

(c) is of unsound mind;

(d) has applied to be adjudged a bankrupt or an insolvent or is an uncertificated bankrupt or an undischarged insolvent, or

(e) has been sentenced for any offence other than an offence of a political character or an offence not involving moral delinquency, such sentence not having been reversed or the offence pardoned. Provided that this disqualification shall not apply where more than five years have elapsed from the date of the expiration of such sentence."

15. Rule 21-J of the Rules of 1959 provides that the election officer shall cause voter's list to be displayed on the notice board of the society concerned and such other place or places as may be deemed fit. A general notice fixing the date for filing objections to the voters list and the disposal of the objections by the election officer shall also be published of course on the notice board of the society. Thereafter, the objections are to be disposed of and the final voters list shall be published which will be forwarded to the society concerned, which shall issue notice to the voters for special general meeting on it's basis. For the purpose of this case Rule 21-N of the rules of 1959 is quoted hereunder for ready reference: -

"21-N. (1) No person shall file nomination paper for election to fill a seat if -

(i) his name does not appear in the final Voter's list, or

(ii) he is otherwise disqualified for being elected under the provisions of the Act, Rules or the Bye-laws of the Society.

(2) Proposal for nomination shall be addressed to the Election Officer in the prescribed form. Objection to nomination by a voter shall also be addressed to him.

(3) The candidate shall present his nomination to the Election Officer in person or through his authorised agent and an entry thereof shall be made by the Election Officer in the register maintained for the purpose strictly in chronological order and he will also acknowledge receipt, if demanded:

Provided that the proposer and seconder to the nominations shall be a voter

other than the candidate himself.

(4) The Election Officer shall take up scrutiny of nomination papers in alphabetical order on the date specified. The candidate, his proposer or seconder may be present at the time of scrutiny.

(5) While scrutinizing the nomination, the Election Officer may -

(a) Permit any clerical error in the nomination paper in regard to the names or number to be corrected in order to bring them in conformity with the corresponding entries in the final voters list:

(b) where necessary direct that any printing error in the said entries may be overlooked.

(6) At the time of scrutiny, the Election Officer shall endorse on such nomination paper the decision regarding acceptance or rejection, in the case of rejection he will record in writing a brief statement of his reasons for such rejection. The candidate whose nomination is rejected may obtain a copy of the order of rejection on payment of a fee of rupees five to the Election Officer, who shall deposit the amount in the society concerned.

(7) Application for withdrawal of the nomination shall be made to the Election Officer in person in the prescribed form by the candidate concerned."

16. Now coming to the provisions of the Act of 1935, this court would take note of Section 48 thereunder which reads as under:

"48. Disputes - (1) If any dispute touching the business of a registered society (other than a dispute regarding disciplinary action taken by the society or its managing committee against a paid servant of the society) arises -

(a) amongst members, past members, persons claiming through members, past members or deceased members, and sureties of members, past members or deceased members, whether such sureties are members or non-members; or

(b) between a member, past member, persons claiming through a member, past member or deceased member, or sureties of members, past members or deceased member, whether such sureties are members or non-members and the society, its managing committee or any officer, agent or servant of the society; or

(c) between the society or its managing committee and any past or present officer, agent or servant of the society; or

(d) between the society and any other registered society; or

(e) between a financing bank authorised under the provisions of sub-section (1) of section 16 and a person who is not a member of a registered society;

Such dispute shall be referred to the Registrar:

Provided that no claim against a past member or the estate of a deceased

member shall be treated as a dispute if the liability of the past member or of the estate of the deceased member has been extinguished by virtue of section 32 or section 63.

Explanation - (1) A claim by a registered society for any debt or demand due to it from a member, [non-member], past member or the nominee, heir or legal representative of a deceased member or [non-member], or from sureties or members, past members or deceased members, whether such sureties are members or non-members, shall be a dispute touching the business of the society within the meaning of this sub-section even in case such debt or demand is admitted and the only point at issue is the ability to pay or the manner of enforcement of payment.

Explanation - (1) The question whether a person is or was a member of a registered society or not shall be a dispute within the meaning of this sub-section.

(2) The Registrar may on receipt of such reference -

(a) decide the dispute himself; or

(b) transfer it for disposal to any person exercising the powers of a Registrar in this behalf; or

(c) subject to any rules refer it for disposal to an arbitrator or arbitrators.

(3) .....

(4) .....

(5) .....

(6) .....

(7) .....

(8) The Registrar may where it appears to him advisable, either of application or of his own motion, state a case and refer it to the District Judge for decision, and the decision of the District Judge shall be final.

(9) Save as expressly provided in this section, a decision of the Registrar under this section, and subject to the orders of the Registrar on appeal or review, a decision given in a dispute transferred or referred under clause (b) or (c) of sub-section (2) shall be final."

17. In the light of the aforementioned provisions of the relevant acts and the rules framed thereunder as also the judgment of the Hon'ble Supreme Court as this court noticed hereinabove, the Court proceeds to consider the present case.

18. Rule 21-X of the Bihar Cooperative Societies Rules, 1959 provides that any dispute relating to election of a cooperative society may be raised within 90 days from the date of declaration of the result and such dispute shall be decided under Section 48 of the Bihar Cooperative Societies Act, 1935. According to Rule 23 "no

person shall be eligible for election to the Managing Committee, if -

(a) he is not a member of the society, or

(b) he is in default to the society in respect of any loan taken by him for such period as is prescribed in the bye-laws or in any case for a period exceeding three months or is in default to the society in respect of any other dues or is in default to any other registered society on the date of filing of nomination, or

(c) he has directly or indirectly any interest in any subsisting contract made with the society or in any property sold or purchased by the society or in any other transaction of the society except in any investment made in or any loan taken from the society, or

(d) a proceeding for surcharge relating to any registered society is pending against him, or

(e) an enquiry relating to any transaction of the registered society to the Managing Committee of which he seeks election, is pending against him, or

(f) a criminal proceeding relating to any transaction of a registered society is pending against him in which cognizance has been taken."

19. It appears from the records that an election petition was preferred under Section 48 of the Act of 1935 read with Rule 21-X of the Rule of 1959 in which it was alleged that the name of respondent no. 5 - petitioner was added at the eleventh hour without any opportunity to the petitioner to rebut the claim of respondent no. 5. The membership receipt of respondent no. 5 issued on 20.07.2014 was alleged to be forged and fabricated. A statement was made that respondent no. 4 i.e. the Block Development Officer had not acted on the objection of the Election petitioner. Prayer was made to set aside the election of respondent no. 5 and to set-aside the membership of 40 other persons against whom there were identical allegations.

20. In response to the petition the respondent no. 5 - petitioner filed a written statement in which he denied the allegations. He claimed that the Block Development officer had vide his memo no. 943 dated 28.07.2014 sent list of 50 persons to the Branch Manager of the Bihar State Cooperative Bank Limited, Chapra for the purposes of acceptance of their admission fee as also share money. Pursuant to the same, the amount was deposited in the bank on 30.07.2014. It was claimed that there is no question of changing the name of the petitioner because the enclosed list of members duly shows the name of the petitioner as well as his father's name. He has also brought on record the money receipt showing deposit of the admission fee in the bank on 30.07.2014.

21. A counter affidavit has also been filed on behalf of the Block Development Officer who has stated that he had sent letter no. 876 dated 16.07.2014 to the bank together with the application.

22. In his rejoinder to the written statement filed by respondent no. 5, the

election dispute petitioner has submitted that the original letter no. 943 dated 28.07.2014 clearly shows that at serial no. 41 the name exists of Manu Singh son of late Ram Ekbal Singh in which there is an interpolation by cutting 'M' to 'P'. He had also filed a complaint for committing fraud by respondent no. 5 - petitioner.

23. A perusal of the impugned order shows that the Deputy Registrar, Cooperative Societies who was exercising his power as Presiding Officer under Section 48 of the Act of 1935 has after taking note of the submissions of the parties recorded his finding as under:

"उपरोक्त परिस्थिति में यह न्यायालय वाद की समग्रता से विश्लेषण करने के उपरांत निबंधक, सहयोग समितियाँ के आदेश जिला सहकारिता पदाधिकारी के प्रतिवेदन तथा प्रखंड विकास पदाधिकारी द्वारा समर्पित सदस्यता सूची में हुए अपलेखन के आधार पर प्रतिवादी संख्या-05 के निर्वाचन को रद्द करते हुए जिला सहकारिता पदाधिकारी, सारण को धेनुकी पैक्स के संदर्भ में शीघ्र कार्रवाई करने का निदेश देती है।"

24. This court finds from the reasoning and rationale provided in the impugned order that the Deputy Registrar has relied upon a report as contained in letter no. 97 dated 17.01.2015 issued by the District Cooperative Officer and after taking a prima-facie view on the name recorded in the list of the Block Development Officer forwarded vide letter no. 943 dated 28.07.2014, the Deputy Registrar came to a conclusion that the respondent no. 5 had neither obtained the membership by depositing his membership fee and share capital amount in accordance with law nor the Block Development Officer had made him a member by following the law. He has recorded a finding that in the list there is interpolation in the name of the respondent no. 5 - petitioner herein.

25. In the case of Sushila Prasad (supra) learned coordinate Bench of this court has recorded in paragraph 11, 12 & 14 which reads as under for a ready reference:

"11. A plain reading of the statutory provisions would confirm that there is a twin duty cast upon a person to question an election on grounds of non compliance of the provisions of "the Act" or any rules and which is that he has not only to prove that the rules and provisions have been violated rather he has also to demonstrate that such statutory violation has resulted in the success of the returned candidate.

12. This very issue came up for consideration in the case of Shyamdeo Prasad Singh Vs. Nawal Kishore Yadav since reported in (2000) 8 SCC 46 and a Bench of three Judges of the Supreme Court taking note of the judgments on the issue as to whether an election can be declared void on grounds of infirmity in the electoral roll has concluded as follows:-

"26. To sum up we are of the opinion that inclusion of person or persons in the electoral roll by an authority empowered in law to prepare the electoral rolls, though they were not qualified to be so enrolled, cannot be a ground for setting aside an election of a returned candidate under sub-clause (iii) or (iv) of clause

(d) of sub-section (1) of Section 100 of the Representation of the People Act, 1951.

A person enrolled in the electoral list by an authority empowered by law to prepare an electoral roll or to include a name therein is entitled to cast a vote unless disqualified under sub-sections (2) to (5) of Section 62 of the representation of the People Act, 1951. A person enrolled in the electoral roll cannot be excluded from exercising his right to cast vote on the ground that he did not satisfy the eligibility requirement as laid down in Section 19 or 27(5) of the Representation of the People Act, 1950."

14. There is absolute lack of pleadings to support that the voters who had been illegally included in the list had contributed to the success of the returned candidate and which had materially affected the election nor is there any thing on record to show whether any such prayer had been made by the petitioner in conformity with the statutory provisions. In fact even in absence of such prayer the petitioner simply proceeded to seek a declaration that the entire election was void on such infirmity.

26. In the case of Shyamdeo Prasad Singh (supra) the Hon'ble Supreme Court was considering a case where election of a returned candidate was challenged on the ground that a large number of ineligible persons were enrolled in the voter list as a result whereof there were improper reception of votes cast by such illegal electors which had materially affected the result. Hon'ble Supreme Court referred Full Bench judgment of this Hon'ble Allahabad High Court in the case of Ghulam Mohiuddin Vs. Election Tribunal reported in AIR 1959 All 357 and that of Hon'ble Punjab and Haryana High Court in Roop Lal Mahta Vs. Dhan Singh (1967) 69 Pun LR 618 = AIR 1968 Punj I and what have been held in paragraph 26 are already quoted hereinabove in the case of Sushila Prasad.

27. Again in the case of Kaushal Kishore (supra) an another learned coordinate Bench of this court was considering a challenge to the order of the Joint Registrar, Cooperative Societies, Bhagalpur Division, Bhagalpur in Election Dispute No. 15/2015, the issue which had fallen for consideration in the said case were almost similar. This court held in paragraph 8 & 9 as under:

"8. The election petition has been placed on record by the petitioner vide Annexure-1 to the writ petition. The foundation of the election dispute lies on the allegation of election petitioner who is respondent no.7 herein regarding illegal grant of membership to 281 persons. The election petitioner thus prays for deletion of names of these 281 persons from the voter-list and for holding fresh election. Apparently a membership issue has been translated into an election dispute. Whether or not the prescribed procedure was followed in the matter of grant of membership to those 281 persons, may be a subject-matter of a membership dispute to be raised before the statutory authorities under section 48 of 'the Act' but until such time that an opinion is expressed by the statutory authority as regarding grant of membership to these 281 persons it cannot be a

subject-matter of an election dispute for in my opinion, until such time that there is an adjudication on the membership of 281 persons their entry into voter list would suffer from no infirmity. There is no discussion in the election petition as to whether the respondent no.7 took any steps to question the membership of these 281 persons before the proper forum. Certainly this issue could not have been raised before the Prescribed Authority by way of election dispute. I would go a step further to hold that once a membership is granted to any person which may be suffering from procedural infraction but that ipso facto cannot be a ground to snatch the membership from him until such time that the charge maker is able to establish that the member concerned suffers from ineligibility to enter into the membership. In so far as the present case is concerned there is no dispute that these 281 persons had attained membership of the society and whose membership is yet to be set aside by a competent forum.

9. In my opinion, in the circumstances discussed, the election dispute, on this count, was not maintainable. The election dispute was also not maintainable for the election petitioner cannot question the election of the managing committee as a whole in a sweeping manner simply on grounds that 281 persons had incorrectly been granted membership of the society. The provisions of section 12(1) (d) (iv) of 'the Election Authority Act' is self eloquent and until such time that the election petitioner is able to demonstrate by leading substantive piece of evidence that these ineligible persons have contributed to the success of the returned candidate, a sweeping statement cannot constitute an election dispute nor a charge simplicitor of infracted voter list shall be sufficient to interfere with the election of the returned candidate(s). Reference in this regard is made to the judgment reported in 2015(4) PLJR 881 (Sushila Prasad Vs. State of Bihar). Neither on maintainability nor on merits the election dispute was capable of being entertained and has been wrongly entertained by the prescribed authority who has perpetuated the illegality by upsetting the election.

28. It is evident that in the case of Kaushal Kishore (supra) the election of the whole Managing Committee was challenged alleging illegal grant of 281 numbers of membership. Here the grant of membership of 40 numbers of membership were sought to be challenged in the election petition which is not permissible and could not be gone into by the prescribed authority, there were also lack of proper and adequate pleadings in the Election Dispute Petition and in fact this issue was not pursued by the Election Petitioner.

29. So far as membership issue of the petitioner is concerned, in view of Section 12(1)(a) of the Act of 2008 it could have been gone into in the election petition filed under Section 48 of the Act of 1935 read with the rule but the Deputy Registrar in the present case was not having authority to decide a question of fraud and forgery of the nature alleged in this case. A first information report alleging commission of act of fraud and forgery has been lodged and the matter is still pending before a competent court of law under the Code of Criminal Procedure.

30. In the case of Harishankar Jain (*supra*) on which reliance has been placed by learned counsel for the respondent no. 8, the Hon'ble Supreme Court has held that the issue of qualification of candidate can be raised in an election petition before the High Court. While considering the case of Harishankar Jain, the Hon'ble Supreme recorded in paragraph 11, 14, 15 & 19 as under:

"11. It would be appropriate to have a brief survey of judicial opinion. In *Bhagwati Prasad Dixit Ghorewala Vs. Rajeev Gandhi*, (1986) 4 SCC 78, the question raised in the election petition laying challenge to the election of the respondent was that in view of the respondent having married a foreign national, he had lost the citizenship and the respondents citizenship, therefore, stood terminated under Section 9 of the Citizenship Act. This Court held that the question of citizenship could be gone into by the High Court hearing an election petition and the High Court, trying an election petition, can declare an Indian citizen having become disqualified because of his having acquired the citizenship of a foreign State. But in view of the scheme of Section 9, which is a complete code as regards the termination of Indian citizenship on the acquisition of the citizenship of a foreign country, the High Court trying an election petition, could give such declaration only on the basis of a declaration made by the Central Government as to termination of citizenship being produced before a High Court, which shall have to be given effect to by the High Court. So long as such a declaration is not forthcoming, the High Court should proceed on the ground that the candidate concerned had not ceased to be an Indian citizen. This is a harmonious way in which the two types of issues, namely, the issue relating to the validity of an election to either House of Parliament or of a State Legislature and the issue relating to loss of Indian citizenship on the acquisition of citizenship of a foreign country, which are both vital, can be resolved. The Court drew a distinction between two situations: (i) a person may not be citizen of India because he has not acquired the citizenship of India at all, and (ii) a person may not be a citizen of India because having acquired citizenship, he may have lost it by voluntarily acquiring citizenship of another country as provided in Section 9 (1) of the Citizenship Act.

14. Article 84 of the Constitution provides inter alia that a person shall not be qualified to be chosen to fill a seat in Parliament unless he is a citizen of India. Article 102 of the Constitution provides that a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament inter alia if he is not a citizen of India or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State. That a returned candidate was not qualified or was disqualified to be chosen on the date of his election, is specifically a ground for declaring his election void under clause (a) of sub-section (1) of Section 100 of RPA, 1951.

15. Preparation and revision of electoral rolls is governed by the Representation of the People Act, 1950 (RPA, 1950, for short). Section 16 of RPA, 1950 provides, inter alia, a person shall be disqualified for registration in an electoral roll if he is

not a citizen of India. In *Shyamdeo Pd. Singh Vs. Nawal Kishore Yadav*, (2000) 8 SCC 46, a subtle distinction was drawn between disqualification for registration and not being qualified for enrollment in electoral roll and the consequences flowing from the two concepts while deciding the question of finality and conclusiveness attaching to the electoral roll. This Court held:-

"The electoral roll is to be deemed final and conclusive as far as the fulfilment of qualification of a voter is concerned but it is not to be deemed final and conclusive by the Election Tribunal so far as the disqualifications attaching to such persons are concerned. An entry in the electoral roll has to be taken to be conclusive proof of the fact that the person fulfils the requisite conditions as to age and residence in the constituency; finality has been given to the decision of the officer preparing the roll insofar as the fulfilment of conditions of registration is concerned but it has not been considered desirable to extend the same finality to the decision on the subject of disqualification as the latter is a more serious matter."

19. Thus, looking at the scheme of the Citizenship Act, as also the judicial opinion which has prevailed ever since the enactment of Citizenship Act, 1955, we are unhesitatingly of the opinion that in spite of a certificate of registration under Section 5(1)(c) of Citizenship Act, 1955 having been granted to a person and in spite of his having been enrolled in the voters list, the question whether he is a citizen of India and hence qualified for, or disqualified from, contesting an election can be raised before and tried by the High Court hearing an election petition, provided the challenge is based on factual matrix given in the petition and not merely bald or vague allegations."

31. In the present case, Section 12 of the Act of 2008 permits the issue of qualification of a candidate to be raised before the prescribed authority and as such this court is of the opinion that the issue of membership of respondent no. 5 - petitioner could have been raised in the application under Section 48 of the Act of 1935 and to that extent there cannot be any issue. At the same time the issue of membership of 40 voters could not have been raised. Even on pleading this court finds that issue of membership of 40 voters was raised in a totally vague manner and that issue seems to have been abandoned by the election petitioner.

32. This court however finds that the prescribed authority in this case has recorded a finding that the receipt showing deposit of admission fee is forged. In the beginning of the judgment under challenge a prima-facie view has been recorded, but in the concluding paragraph the finding has been recorded to the aforesaid effect on the strength of the report of the District Cooperative Officer and on his own assessment. It is, this recording of finding by the prescribed authority, which cannot be approved by this Court. The reason behind the same is that the prescribed authority under the Act of 2008 while considering the Election Dispute Case had no power akin to a court of law to record a finding as to fraud and forgery of documents. The Prescribed Authority had no decision of a

competent court before it saying that the receipts showing payment of membership fee was a forged document.

33. In the light of the aforesaid discussions, this court is of the considered opinion that the finding recorded by the Deputy Registrar, Cooperative Societies in the impugned judgment and order in the election dispute case is erroneous exercise of power by the Prescribed Authority. The finding based on his own assessment and on the basis of a report of the District Cooperative Officer in a summary manner is perverted and cannot sustain the test of law.

34. In the case of Hari Prasad Mulshanker Trivedi Vs. V.B. Raju (1974) 1 SCR 548 = AIR 1973 SC 2602, the Hon'ble Constitution Bench of the Hon'ble Supreme Court drew a distinction between lack of jurisdiction or power and erroneous exercise thereof. The relevant part of the observation of Hon'ble Supreme Court in paragraph '27' reads as under : -

"27. .... Though the dividing line between lack of jurisdiction or power and erroneous exercise of it has become thin with the decision of the House of Lords in The Anisminic Case (1967) 3 W. L. R. 382, we do not think that the distinction between the two has been completely wiped out. We are aware of the difficulty in formulating an exhaustive rule of tell when there, is lack of power and when there is an erroneous exercise of it. The difficulty has arisen because the word "jurisdiction" is an expression which is used in a variety of senses and takes its colour from its context, (see per- Diplock, J. at p. 394 in the Anisminic Case). Whereas the 'pure' theory of jurisdiction would reduce jurisdictional control to a vanishing point, the adoption of a narrower meaning might result in a more useful legal concept even though the formal structure of law may lose something of its logical symmetry. "At bottom the problem of defining the concept of jurisdiction for purpose of judicial review has been one of public policy rather than one of logic". And viewed from the aspect of public policy as reflected in the provisions of the 1950 and 1951 Acts, we do not think that a wrong decision on a question of ordinary residence for the purpose of entering a person's name in the electoral roll should be treated as a jurisdictional error which can be judicially reviewed either in a civil court or before an election tribunal."

35. The impugned judgment is, thus, set-aside.

The Writ Application is allowed and the petitioner is restored to his position.