

(2010) 10 KL CK 0173

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 18192 Y and 18426 C of 2010

Thomas. K.D, Director and Skaria. K.A, President

APPELLANT

Vs

Assistant Registrar (Planning) and Others

RESPONDENT

Date of Decision : 15-10-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 10 KL CK 0173

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : P.N. Mohanan, for the Appellant; P.K. Ramkumar, for the Respondent

Final Decision : Allowed

Judgement

T.R. Ramachandran Nair, J.—The petitioners in these writ petitions are delegates representing primary societies in the third respondent Wayanad District Wholesale Consumer's Co-operative Store. They are challenging the decision of the Administrator in forwarding the list of voters to the Electoral Officer deleting the names of their primary societies along with several such societies. The election has already been conducted as per the directions issued by this Court and the votes of those members have also been separately polled and kept in separate box and the counting is also over. What remains is only the declaration of the result of the election.

2. The Wayanad District Wholesale Consumer's Co-operative Store was being managed by an elected managing committee whose term expired on 3.9.2009. Even though they took a resolution to conduct the election on 30.8.2009, as there was no proper quorum, the resolution was returned by the Joint Registrar. Thus, the election could not be conducted by the managing committee which paved the way for appointing an Administrator for a period of six months. This Court in a writ petition filed by the then President of the Store, viz. W.P.(C) No. 21904/2009 had directed to conduct the election and accordingly the administrator took a resolution to conduct the election on 27.6.2010. The first

respondent is the Electoral Officer and the second respondent is the Returning Officer appointed by the State Election Commission.

3. The electorate of the store includes individual members and institutional members. There are 916 individual members and 82 institutional members as on 19.6.2009 and thereafter no new membership has been granted. Ext.P4 is the voters list for the election held on 30.8.2004 which included 72 institutional members and only 10 primary societies have been enrolled as new members till the end of the term of the managing committee.

4. The petitioners point out that when the list of members as stood 60 days prior to the date of election, was forwarded by the Administrator to the Electoral Officer, it included only 57 members as against the total number of 82 members. It is pointed out that the Administrator has no power to delete or decline to include all the genuine members. It is further pointed out that none of these members have been removed from the membership by recourse to Rule 16(3) of the Kerala Co-operative Societies Rules after giving due notice to them. Ext.P6 is the copy of the list furnished by the Administrator to the Electoral Officer which was published as a preliminary voters list. It is also pointed out that even during the time of the Administrator, a general body meeting was convened on 15.3.2010, wherein all the 82 institutional members were given notice. Ext.P9 is the objection filed by the first petitioner in W.P.(C) No. 18192/2010 to the preliminary voters list and several objections were filed by other societies which were excluded from the preliminary voters list. Without hearing any of the institutional members the final voters list was published as per Ext.P10. Mainly it is prayed that a direction be issued to include all the 25 institutional members in the voters list.

5. While admitting the writ petitions on 11.6.2010, this Court passed an interim order whereby the nomination submitted by the petitioners were directed to be accepted provisionally. Thereafter, by order dated 18.6.2010, after hearing the parties, an interim direction was granted to include 25 primary societies mentioned in Ext.P7 in the voters list and to permit them to vote in the election as per Ext.P3. The votes polled by the representatives of the said 25 primary societies were directed to be kept in a separate ballot box by the Returning Officer. It was further directed that the votes can be counted and the results of the election can be declared. However, the votes collected separately shall be retained separately after declaration of the results, subject to further orders in the writ petitions.

6. Against the above interim order, the 4th respondent Administrator filed W.A. No. 1054/2010 which was disposed of by a Division Bench by judgment dated 21.7.2010. The Division Bench permitted the Returning Officer to count the votes and ordered that it shall be kept in a separate ballot box. It was further ordered that counting of votes and declaration of result shall be done only after obtaining orders from this Court. It was also held that the dispute relating to 25 votes shall be decided in the writ petition.

7. Learned Counsel for the petitioners contended that the action of the Administrator in removing the 25 institutional members when the voters list was furnished to the Electoral Officer, is purely in violation of the rules. It is pointed out that under Rule 35A(4) of the Rules, the Chief Executive Officer is bound to furnish the list of members as stood 60 days prior to the date of election, to the Electoral Officer. In the previous election there were 72 institutional members and the managing committee enrolled 10 members and thus there are 82 members. It is pointed out that a member can be removed only as provided under Rule 16(3) of the Rules. There is a provision for expulsion of member as per Section 17 of the Act. None of the societies have been removed by any known process of law and therefore the action taken by the Administrator and the Electoral Officer is clearly arbitrary and illegal.

8. It is pointed out that going by Clause 5(1)(a) of the bye-laws of the Stores, co-operative societies dealing or intending to deal in consumer articles within the area of operation of the stores referred to in bye-law No. 1, are entitled to be admitted as members and all these 82 societies have been thus admitted. Therefore, the premise under which the Administrator has deleted the 25 institutional members is also not correct.

9. Learned Counsel for the petitioners relied upon various decisions of this Court to contend that the voters list is a fundamental factor in an election and the Administrator has no power to tamper with the same.

10. The decisions relied upon by the learned Counsel for the petitioners are: *Devassy v. Asst. Registrar of Co-operative Societies* 1976 KLT 40, *Thankappan and Ors. v. Co-operative Tribunal and Ors.* 1979 KLT 528, *Krishnan Ezhuthahan v. Asst. Registrar* 1990 (1) KLT 695, *K. Jaya Varma v. Returning Officer* 1999 (2) KLT 826, *Gopinathan Nair v. Joint Registrar* 2002 (2) KLT 817 and *Kadakam Service Co-operative Bank Ltd. Vs. Narayana Bhat*, . It is pointed out that any member who has been enrolled prior to 60 days of the date of election is entitled to vote as held by this Court in some of the decisions relied upon above.

11. Learned Govt. Pleader, by relying upon the decision of this Court in *Vijayakumar's case* 1996 (1) KLT 285 submitted that the committee of a society is expected to forward the list of members eligible to vote in the election and therefore the Administrator who is having the powers of the committee can consider whether any of the members are eligible to vote in the election. It is pointed out that non inclusion in the voters list does not mean that they have been removed as members. It is thus pointed out that the action is not illegal. Learned Govt. Pleader relied upon Clause 21 of the bye-laws in this context. The argument of the learned Govt. Pleader was supported by the learned Counsel appearing for the Administrator who further submitted that in the light of the decisions of this Court in *P. Bhaskaran and Ors. v. Addl. Secretary and Ors.* 1987 (2) KLT 903 and *John Vs. Liquidator*, , a writ petition against the Administrator is not maintainable.

12. The Administrator herein was appointed for the purpose of conducting the election after the term of the managing committee was over. Evidently, prior to the preparation of the preliminary voters list to be forwarded to the Electoral Officer, the Administrator has not initiated any proceedings under Rule 16(3) of the Rules, to remove any of the members from the membership of the society. The said position is not disputed. The manner in which the Administrator has decided not to include such institutional members, is therefore important to consider the points raised in these writ petitions.

13. Clause 5 of the bye-laws deals with "membership". Clause 5(1) provides that "there shall be three classes of members viz. A, B and C". Sub Clause (a) provides as follows:

Co-operative societies dealing or intending to deal in consumer articles within the area of operation of the stores referred to in bye-law No. 1 shall be eligible for admission as members and shall be allotted `A" Class shares.

Sub-clause (b) concerns membership for individuals and they shall be allotted `B" Class shares. We are concerned only with Sub-clause (a). Going by the same, co-operative societies "dealing or intending to deal" in consumer articles are eligible for admission as members. It cannot be disputed that the concerned members were admitted to membership in terms of the above clause in the bye-law.

14. The Administrator has no case that any other members have complained to him about the want of qualification of any of the institutional members on the basis of the above clause in the bye-law.

15. The bye-laws of a co-operative society are framed in the light of Rule 5 of the Co-operative Societies Rule providing for "Subject matter of bye laws". One of the subjects provided therein, going by Rule 5(1)(e) is regarding "the terms and qualifications for admission to membership, the payment, if any to be made or interest to be acquired as a condition precedent for exercising the right of membership." Therefore, evidently Clause 5(1)(a) of the bye-laws is framed in terms of the said enabling rule.

16. Learned Govt. Pleader and learned Counsel for the Administrator relied upon Clause 21 of the bye-laws in view of which, it is stated that the Administrator has taken the decision. Clause 21 of the bye-laws is extracted below:

21. MANAGEMENT-BOARD OF DIRECTORS. Subject to such resolution the general body may from time to time pass the entire administration of the stores shall vest in a Board of Directors. The Board of Directors shall consist of eleven members, six of whom shall be representatives of affiliated primary stores or Societies having consumer wings, two from each taluk viz., Vythiri, Manantoddy and S. Bathery, three representatives of individual `B" Class members one from each Taluk, and two nominees of the Registrar of whom one shall be a representative of a nominee District Co-op. Bank and the other a Harijan

member. A Director who is a representative of an affiliated society shall cease to serve on the Board if the society concerned withdraws the delegation or when he ceases to be a member of the society. Directors representing societies shall be elected from among the delegates of societies by the delegates of societies assembled and attending the general body meeting and those representing individuals by individuals attending the general body meeting.

Obviously it is concerned only with the constitution of the Board of Directors. Evidently, Clause 21 is in tune with Rule 5(1)(m) of the Rules dealing with the constitution of the Board of Directors. It is provided in Clause 21 that the Board of Directors shall consist of eleven members, six of whom shall be representatives of affiliated primary stores or societies having consumer wings, two from each taluk, viz. Vythiri, Mananthavady and S. Bathery and three representatives of individual 'B' Class members, one from each taluk, etc. etc. Learned Govt. Pleader put emphasis on the words "representatives of affiliated primary stores or societies having consumer wings" and contended that such of those societies alone can vote in the election. It is therefore contended that the 25 societies are not primary stores or societies having consumer wings and therefore on a reading of the above clause in the bye-law, they cannot be included in the voters list. Evidently, the said contention is untenable. The qualification for membership as institutional members, is contained in Clause 5(1)(a) of the bye-laws. Clause 21 of the bye-laws exclusively deals with the constitution of the Board of Directors. It does not concern with the qualification for membership. Therefore, the Administrator and the Electoral Officer were not right in going into bye-law 21, but could have considered Clause 5(1)(a) which alone deals with qualification for membership. True that going by Clause 21 of the bye-laws, from among the 11 members, six shall be representatives of affiliated primary stores or societies having consumer wings, etc. etc. The distribution is two from each taluk, viz. Vythiri, Mananthavady and S. Bathery. It cannot be stretched to deny voting right, that too without even considering the effect of Clause 5(1)(a) of the bye-laws. Therefore, the reliance placed on clause 21 which is not relevant for considering the qualification for membership and continuance thereof is clearly wrong and unacceptable. It is not as if the bye-laws contains one clause dealing with qualification for membership and another dealing with qualification for being included in voters list.

17. The petitioners have got a case that all the societies represented by them are dealing in consumer items. The Administrator has unilaterally took a decision that 25 institutions need not be included in the voters list only by referring to Clause 21 of the bye-laws, as is evident from the arguments of the learned Govt. Pleader and the learned Counsel for the Administrator. The concerned officers have also reiterated the said contention in their respective counter affidavits.

18. Therefore, evidently no enquiry has been conducted by the Administrator before forwarding the list of voters to the Electoral Officer. In respect of an important matter like this the decision of the Administrator not to include them

will affect their right to vote. It is understandable as to how in a matter like this the Administrator has taken such a drastic decision, unknown to any affected societies.

19. The contentions of the respondents show that even without conducting any enquiry the Administrator and the Electoral Officer took decisions on the qualifications of members to be included in the voters list.. What was available with the Administrator was only the names of societies included in the preliminary voters list and the admission register. Simply by looking into these and by reference to Clause 21 of the bye-law, he has taken a decision in the matter. By no stretch of imagination such a decision can be sustained in law. The right to vote and the right to contest in an election is a statutory right. The same can be deprived only by a proper and legal method.

20. In fact, the removal from membership is governed by Rule 16(3) of the Rules which is extracted below:

16(3) Where a person already admitted to membership is seen to have been ineligible for membership at the time he was so admitted as a member or if he subsequently becomes ineligible for membership the Committee of the Society may remove the person from membership after giving him an opportunity for making his representation if any, and the person concerned shall thereupon cease to be a member of the society.

Therein, the concerned member will have to be given an opportunity for making his representation and only after a proper decision, alone he will cease to be a member of the society. Such course has not been adopted by the Administrator here.

21. The argument of the learned Govt. Pleader in this regard is that non inclusion in the voters list is not removal from membership and therefore absence of a proceedings under Rule 16(3) of the Rules will not nullify the decision taken by the Administrator. Herein, reliance is placed on the decision of a Division Bench of this Court in Vijayakumar v. Joint Registrar 1996 (1) KLT 285, taking the view that the Returning Officer has power to make an enquiry regarding the eligibility of a voter to be included in the voters list. In fact, Rule 35(3) of the Rules was interpreted by the Bench therein. After referring to various aspects, it was held thus in para 16:

It has therefore, to be taken that the Returning Officer has the power to conduct a summary enquiry when objection is raised regarding the inclusion of a member in the voters list. The powers to consider the objections has been conferred on the Returning Officer alone. There is nothing in the Act or Rules to show that he can delegate or abdicate his functions in favour of any authority of the Society. The returning officer is required to give his own ruling on the objection. He cannot rule out any objection or sustain it arbitrarily. In order to arrive at a proper decision it is open to him to conduct a summary enquiry to be satisfied about the sustainability or otherwise of the objections. But, he can do so only if

the objections are specific and definite against each individual member which can be subjected to verification with reliable materials that may be made available to him by the objections and the authorities of the Society. He is not expected to make a roving enquiry.

The above dictum will also show that the Returning Officer cannot rule out any objection to the preliminary voters list or sustain it arbitrarily and he will have to conduct a preliminary enquiry into the matter. But, he can do so only if the objections are specific and definite against each individual member which can be subjected to verification with reliable materials that may be made available to him by the objectors and the authorities of the Society. He is not expected to make a roving enquiry.

22. Herein, against the preliminary voters list with regard to the non inclusion of 25 institutional members, the petitioners had filed objections, with regard to their non-inclusion. It is the case of the petitioner that no enquiry was conducted by the Electoral Officer and the objections were summarily rejected and final voters list was published. Learned Govt. Pleader submitted that the Electoral Officer was also relying upon Clause 21 of the bye-law and thus accepted the decision of the Administrator.

23. Actually, the Electoral Officer has also not considered the objections of the petitioners in the right perspective by referring to Clause 5 (1)(a) of the bye-laws with regard to the qualifications for membership. Wrongly, Clause 21 was relied upon. Therefore, the decision of the Electoral Officer is also quite arbitrary and illegal and the dictum laid down in the above decision also will not support the decision taken herein, by the Electoral Officer also.

24. Now I will come to the decisions relied upon by the learned counsel for the petitioners. In regard to the jurisdictions of this Court under Article 226 of the Constitution of India, it was held in *Devassy's case* 1976 KLT 40 that "proper electoral roll is a fundamental factor before the election is actually held and if the complaint is that no such roll, has been prepared in accordance with the Rules, this Court can certainly step in even before the election is actually held and prevent the election being held on the imperfect electoral rolls exercising its jurisdiction under Article 226 of the Constitution."

25. The decision of this Court in *Thankappan's case* 1979 KLT 528 is relied upon by the learned Counsel for the petitioners to contend that all the provisions of Rule 35 are mandatory and violation of any one of the provisions will vitiate the election and make it void. This is relied upon in the context of Rule 35A(4) which provides that "the State Co-operative Election Commission shall appoint an Electoral Officer from among the officers of the concerned Administrative Department who shall be responsible for the publication of the list of members qualified to vote at the election in accordance with the provisions of the Act, rules and bye-laws as stood on a date 60 days prior to the date fixed for the poll. ... It shall be the duty of the Chief Executive of the concerned society to

prepare, up date the list as per the Rules and submit voters list duly approved by the Committee, to the Electoral Officer and render all assistance required by the Electoral Officer." Therefore, it is pointed out that this rule is mandatory in the sense that all the voters who were qualified prior to 60 days of the date fixed for the poll, will have to be included in the voters list and herein, there is a violation of the said statutory mandate.

26. In Krishnan Ezhuthachan's case 1990 (1) KLT 695 also, the jurisdiction of this Court under Article 226 of the Constitution was considered in an identical matter and it was held thus in para 18:

It is true that this Court will not ordinarily entertain an original petition at the intermediate stages of the election process. But this is a rule of discretion and not one of absolute bar in law. As Paripoornan, J. observed in *Govindan v. Dy. Registrar of Co-operative Societies* 1983 KLT 1038 this fact should not lead to a situation whereby the concerned authorities or the persons who participate in the elections acting in violation of the statutory command are smug in the belief or an impression that whatever be the degree or gravity of the violation or breach of the mandate of the law, once the election is held this Court will be powerless or reluctant to deal with the situation, even if there is any patent transgression of the limits imposed by law. The learned Judge went on to observe:

It is idle for the society or any person who has been elected in violation of the mandatory provisions of Rule 26, to contend that notwithstanding the fact that the voters list included members who were not entitled to vote, nonetheless, the election of persons, by voters inclusive of the ineligible voters taking part in the election, should not be interfered with, by this Court in exercise of the powers under Article 226 of the Constitution. A proper electoral roll should be maintained and that is a "fundamental factor". Rule 26 is in the nature of an injunction or command and in spite of the prohibition or injunction specified in Rule 26, if ineligible persons were included in the voters list and they also participated in the election, the consequent election held in breach of the rules, should be held to be totally infirm and illegal.

27. *K. Jaya Varma v. Returning Officer* 1999 (2) KLT 826 is the decision of a Division Bench of this Court regarding interpretation of Rules 26 and 28 of the Rules. This is relied upon to contend that in the light of the dictum laid down therein a person who was admitted to the membership prior to 60 days of the election and who has paid the entire dues before 30 days of the election as per Rule 28, is entitled to vote.

28. *Gopinathan Nair's* case 2002 (2) KLT 817 lays down the principle that the Administrator/Administrative Committee has power to remove ineligible members after following the procedure prescribed. The said decision is rendered on the interpretation of the power of the Administrator under Rule 16(3) of the Rules. Therein also, it was held that any removal will be only after giving an opportunity for making a representation.

29. Of course, going by Rule 35A(4), the Electoral Officer shall be responsible for the publication of the list of members qualified to vote at the election in accordance with the provisions of the Act, rules and bye-laws as stood on a date 60 days prior to the date fixed for the poll. Going by the same rule, the Chief Executive of the concerned society shall prepare, up date the list as per the Rules and submit voters list duly approved by the Committee, to the Electoral Officer and render all assistance required by the Electoral Officer. Therefore, the Electoral Officer will have to publish the preliminary voters list as forwarded by the Chief Executive duly approved by the Committee, in Form No. 34 in the notice board of the Head Office and branches if any, of the society and call for objections if any, on the voters list within 3 days of publication and publish final voters list in Form No. 35 within 15 days prior to the date fixed for the poll. Even going by the dictum laid down in Vijayakumar's case 1996 (1) KLT 285, the power has to be exercised in terms of the express provisions. Therein, Rule 35(3) (b) of the Rules was considered and after the introduction of Rule 35A by the amendment in the year 2003 there is change in the wording of Rule 35A. Going by Rule 35(3)(b), after considering the objections, if any, the Returning Officer shall publish a final list of "eligible voters" on the Notice Board of the society and in its branches, if any. It is in that context the scope of the power of the Returning Officer was examined in Vijayakumar's case (supra). Herein, after the introduction of Rule 35A, the publication of preliminary voters list and final voters list is the duty of the Electoral Officer. Significantly, the word "eligible" is not there in sub-rule (4) of Rule 35A now and what is mentioned is that the "Electoral Officer shall be responsible for the publication of the list of members qualified to vote at the election in accordance with the provisions of the "Act, rules and bye-laws" as stood on a date 60 days prior to the date fixed for the poll. The various factors about membership thus will have to be ascertained with respect to the date of admission to the membership. Evidently, that should be 60 days prior to the date of the poll. For enabling the Electoral Officer to publish the list, the list will have to be forwarded by the Chief Executive duly approved by the Committee. The Administrator herein obviously is exercising the powers of the Committee. Nothing is mentioned in Rule 35A(4) conferring any power on the Administrator or the Chief Executive when forwarding the list to perform the exercise as done in this case. Of course, if relevant procedures have been followed under Rule 16(3) of the rules after due enquiry and after giving opportunity to the members, there would not have been any complaint. That is totally absent here. The power is conferred on the Electoral Officer to publish the preliminary voters list and finalise it. Herein, at the first stage itself the Administrator did not include 25 institutional members and such a list was forwarded. Actually, the Electoral Officer alone could have received objections to the voters list, if such an objection was raised by any other members. There is no plea herein that before the Administrator any members filed any representation to remove 25 institutional members also.

30. Therefore, when the entire statutory scheme is examined, the whole action

taken by the Administrator not to include 25 institutional members in the preliminary voters list and the rejection of their objection by the Electoral Officer on the basis of the very same step taken by the Administrator and on the same grounds, cannot be supported, as the same is arbitrary. They did not consider the effect of Clause 5(1) of the bye-laws dealing with the qualification for membership.

31. In that view of the matter, the petitioners are entitled to succeed in these writ petitions. The view taken by the Administrator which is confirmed by the Electoral Officer that the particular societies have been removed in the light of Clause 21 of the bye-laws, is therefore not correct. There is no dispute that under Clause 5(1)(a) of the bye-laws even societies intending to deal with consumer items, are entitled to have membership. Therefore, running of a proper primary store or consumer wing is not mentioned in Clause 5(1)(a). What is mentioned in Clause 5(1) is "dealing or intending to deal" in consumer articles alone.

32. Therefore, for a proper and due enquiry the Administrator should have issued notices to those societies to produce materials, if there was an allegation that they are not dealing in consumer articles. Such actions are wanting in these cases. Therefore, the very premise on which the Administrator has proceeded, is arbitrary and illegal.

33. Learned Govt. Pleader submitted that in the election notification also, with reference to the constituency, the same wordings in Clause 21 of the bye-laws are mentioned. As explained already, the same is with regard to the constitution of Board of Directors and it cannot have any impact on Clause 5(1)(a). What is mentioned by the Electoral Officer is also that the societies which were removed, are not dealing with consumer goods. No material is relied upon in that regard.

34. In the above view of the matter, the non inclusion of the societies included in Ext.P7 list, from the voters list is clearly arbitrary and illegal and is against the mandate of the rules.

35. The objection raised by the learned Counsel for the Administrator that the writ petition is not maintainable, is not correct. Herein, it is not the action of the Administrator alone that is under challenge. It is followed by the action of the Electoral Officer, who is a statutory authority. Therefore, it is not a writ petition against a co-operative society, as argued by the learned Counsel for the Administrator. Hence, the decision of the Full Bench in *P. Bhaskaran and Ors. v. Addl. Secretary and Ors.* 1987 (2) KLT 903 FB will not apply herein. A Division Bench in *K. Jaya Varma's case* 1999 (2) KLT 826, considered a similar question in para 13 and the objection that jurisdiction under Article 226 of the Constitution cannot be exercised, was rejected in the following terms:

It cannot be stated that since election petition is maintainable parties now be relegated to the remedy of election petition after knowing the question of law. After the reference is answered there is no question to be decided in the election

petition. Further, as held by the Supreme Court in *K. Venkatachalam Vs. A Swamickan and Another*, that Article 226 of the Constitution is couched in widest possible term and unless there is clear bar to jurisdiction of the High Court its powers under Article 226 of the Constitution can be exercised when there is any act which is against any provision of law and when recourse cannot be had to the provisions of the Act for the appropriate relief. Before the election was held the parties approached this Court as at that time, election petition was not a remedy and election was conducted as directed by this Court and after answering the main point disputed, result of election has to be declared according to law laid down. Since the reason for deleting the members from the final voters list by the Returning Officer is wrong, the votes in box Nos. 1, 2 & 3 also have to be counted and accordingly the result would be declared now. In any event, before declaration of result finally, no election petition can be filed as it will be premature.

The decision of a Full Bench of this Court in *John Vs. Liquidator*, relied upon by the learned Counsel for the Administrator, also shows that the Bench was of the view that a writ will lie against a co-operative society only when the duty owed by the co-operative society is of a public nature or when there is infringement of any statutory rules by such a co-operative society. There cannot be any dispute that the whole procedure for conduct of election is governed by Rule 35A and the rights of members, etc. are also governed by the provisions of the Statute. Therefore, violation of the statutory provision is a contingency on which this Court can interfere. Further, there are no disputed questions of fact here, as what is involved is the interpretation of the clauses in the bye-laws only.

36. Therefore, the writ petitions are allowed. As the votes have already been counted in the light of the direction issued by this Court in *W.A. No. 1054/2010*, there will be a direction to the Returning Officer to declare the results after adding the votes kept in the separate box polled by the 25 institutional members. Such votes will be reckoned along with the votes of undisputed members which are already polled, in the other boxes. Such declaration shall be made within a period of ten days from the date of production of a copy of this judgment. No costs.