

(2016) 02 KL CK 0120

In the High Court Of Kerala

Case No : W.P.(C) Nos. 29467 of 2015 (G) and 1162, 5062 of 2016

V.G. Padmanabhan

APPELLANT

Vs

The Special Officer and Others

RESPONDENT

Date of Decision : 22-02-2016

Acts Referred:

Constitution of India, 1950 — Article 19(1)(c), Article 226, Article 243-ZI, Article 243-ZJ, Article 243-ZK, Article 243-ZL, Article 43-B
Karnataka Co-operative Societies Act, 1959 — Section 30, Section 30A, Section 30-A
Kerala Co-oper

Citation : (2016) AIRCC 1714 : (2016) 2 KLT 803

Hon'ble Judges : Dama Seshadri Naidu, J.

Bench : Single Bench

Advocate : M. Sasindran and V. Venugopal, Advocates, for the Appellant;

Final Decision : Allowed

Judgement

Dama Seshadri Naidu, J.—Facts:

1. Both the petitioners are the members of the sixth respondent Society; the second petitioner has also had the distinction of being the former President of the parent Society-Tellichery Primary Agricultural and Rural Development Bank.
2. Initially, Iritty Taluk was created by carving out some territories from two other taluks; namely, Kannur and Thalassery. The creation of the new taluk has, therefore, necessitated the division of the two Co-operative Societies situated in those Taluks: the Kannur and the Tellichery Primary Agricultural and Rural Development Banks. In that process, the Government has appointed a Special Officer to oversee the operations of bifurcation of the existing societies and registration of the new society.
3. In the course of time, the Special Officer passed a resolution proposing to hold the election to the new society on 27.02.2016. Accordingly, acting on the resolution thus passed, the Election Commission issued Exhibit P1 notification to

hold the election on the assigned date. Assailing Exhibit P1, the petitioners have filed W.P (C) No. 5062/2016.

4. The second petitioner, the former President, earlier filed W.P.(C) No. 1162/2016 challenging the enhancement of the share value from Rs. 100/- to Rs. 500/-. As the Special Officer issued Exhibit P10 notice requiring the members of the new society to pay the enhanced share value, the petitioner has sought the interdiction of Exhibit P10 notice also. This Court on 12.01.2016 issued an interim order suspending Exhibit P10 demand notice.

5. The same second petitioner, much earlier, filed W.P.(C) No. 29467/2015 assailing the agenda for the first General Body meeting, which contained an item as regards the enrolment of new members. This Court on 1st October, 2015 issued an order recording the submission of the learned Special Government Pleader that the Special Officer would not be admitting any new members.

6. Since the issues in all the writ petitions, involving substantially the same parties, are inextricably interconnected, this Court has proposed to dispose of them through a common judgment. Because W.P.(C) No. 5062/2016 contains a comprehensive challenge to the election process, this Court refers to the facts pleaded and the documents filed in the said writ petition for the narrative purpose.

Rival Submissions:

Petitioners":

7. Sri. M. Sasindran, the learned counsel for the petitioners, has submitted that the Society has to elect fifteen members to be on the managing committee; it has, nevertheless, divided the area only into seven wards, instead of fifteen. The primary contention on his part is that inadequate division of wards is impermissible.

8. Before the new society could come into existence, the members who were likely to be the members of the new society due to the territorial division had their initial general body meeting. In the said meeting, while drafting the bye-laws, they had the share value fixed at Rs. 500/-.

9. According to the learned counsel, both the parent societies have Rs. 100/- or below Rs. 100/- as the share value. But the new society, which was yet to come into existence had abnormally raised the share value to Rs. 500/-. It was without any basis. The learned counsel has also contended that this is in violation of Section 29(1E) of the Kerala Cooperative Societies Act ("the Act").

10. In elaboration, the learned counsel has contended that the Special Officer is appointed for the limited purpose of bifurcating the existing societies. He is required, according to the learned counsel, to hold elections involving those who became the members of the new society owing to the territorial division. Apart from discharging these two functions, the Special Officer has no other role to

pay, emphasises the learned counsel.

11. The learned counsel has also brought to my notice the fact that despite the interim stay granted by this Court in W.P.(C) No. 1162/2016, the Special Officer, while finalising the voters' list, has excluded the members who did not pay the share value at the enhanced rate of Rs. 500/-. Pertinent is another of his submissions that the very General Body of the Society passed Exhibit P9 resolution in W.P.(C) No. 1162/2016 suspending the operation of the bye-law which dealt with the enhanced share value.

12. The learned counsel has also tried to impress upon this Court that the Special Officer's conduct is not only statutorily violative, but also contemptuous as it was in the face of the interim direction passed by this Court on 12.01.2016.

13. The learned counsel, as the third limb of his arguments, has submitted that the Special Officer has admitted more than a thousand new members, though he has not been statutorily empowered. In this regard, the learned counsel has drawn my attention to Exhibit P6 order.

14. The learned counsel, in the alternative, has submitted that, if at all the Special officer admits any new members those members could only have the advantage of taking loans. But not a right to vote.

15. In support of his submissions, the learned counsel has placed reliance on *Sanjeevi v. State of Kerala* , 1994 (2) KLT 127, *Ahmednagar Zilla S.D.V. & P. Sangh Ltd. v. State of Maharashtra* , (2004) 1 SCC 133, *Jt. Registrar of Co-operative Societies v. T.A. Kuttappan* , 2000 (2) KLT 480, *Abdul Rahman K.A. v. Cheranelloor Service Co-operative Bank Ltd., Ekm* , 2015 (1) KHC 46, *Govindan v. Dy. Registrar of Cooperative Societies* , 1983 KLT 1038, *Mathai v. State Co-operative Election Commission* , 2007 (2) KLT 789, *D. Astin v. Electoral Officer*,1 and *M. Rajendran v. The Mattancherry Mahajanik Co-Operative Urban Bank Ltd.*2

Respondents":

Department's:

16. Sri. D. Somasundaram, the learned Special Government Pleader, has submitted that in so far as the division of wards is concerned, the bye-laws are either framed or amended only in tune with the third proviso to Section 28(1) of the Act. The operation of the said proviso has been suspended, according to the learned Special Government Pleader, through Order No. 10/2016 by the Government in exercise of its powers under Section 101 of the Act. It is, therefore, of no consequence whether a society has been divided into an inadequate number of wards or there is no division at all.

17. In the alternative, the learned Special Government Pleader has also contended that none of the affected persons, i.e. those who could have been marginalised because of the non-division of the rest of the wards, has laid any challenge. In this regard, he has reminded that even very recently this Court has

held that unless an affected person comes before this Court ventilating his grievance, this Court would not be inclined to interdict the process of election on account of the alleged shortcomings in the division of wards, though.

18. As regards the issue of share value, the learned Special Government Pleader has submitted that it is fallacious to contend that the new society had decided to enhance the share value before it could go for election. According to him, as the new society was coming into existence, its members in their first general body meeting decided with a majority, while framing the bye-law, that the share value should be Rs. 500/-.

19. The learned Special Government Pleader has also contended that Section 28(1E) does not impose any embargo on the power of the general body to fix the share value. When confronted with the issue of interim suspension of Exhibit P10 in W.P.(C) No. 1162/2016, the learned Special Government Pleader has made efforts to explain it away. He has submitted that this Court, through the interim direction, has only interdicted the notice demanding payment of the enhanced share value, but the stipulation in the registered bye-laws remained unaffected: Those who have not paid the requisite share value would not get the right to vote. He has, in this context, drawn my attention to Section 19 of the Act and Rule 28 of the Kerala Co-operative Societies Rules ("the Rules").

20. As regards the issue of admitting new members, the learned Special Government Pleader has made very elaborate submissions. First, he has contended that there is any amount of difference between a Special Officer appointed under Section 28 of the Act, and an Administrator appointed either under Section 32 or Section 33 of the Act. According to him, the Special Officer can be likened to a promoting committee of a new society rather than the Administrator of an existing society.

21. Further, trying to distinguish the ratio of Kuttappan (supra), the learned Special Government Pleader has submitted that the Apex Court has specifically held that an Administrator would be appointed only to set right the mismanagement of the outgoing managing committee. In other words, it is his specific contention that once the society is divided, even by way of bifurcation; the Special Officer at the helm of the new society has plenary powers. In this regard, he has also drawn my attention to Section 2 (qc), which defines the "Special Officer".

22. Further, placing a very strong reliance on Vipulbhai M. Chaudhary v. Gujarat Cooperative Milk Marketing Federation Limited , (2015) 8 SCC 1 and also the 97th Constitutional Amendment, the learned Special Government Pleader has strenuously contended that if any embargo is imposed on the powers of the Special officer in his administering the society to the best advantage of the members, it will defeat the very constitutional mandate under 97th Constitutional Amendment.

23. The learned Special Government Pleader has contended that the general

body has got the plenary powers to pass the resolution and formulate the bye-laws for the first time. Once the said bye-laws have been registered in terms of Section 12 of the Act, it is deemed that they have been duly registered; unless they have been interdicted or rescinded under either Section 83(1)(j) of the Act or Rule 176 of the Rules, no member can be permitted to question them. In the present instance, submits the learned Special Government Pleader, neither of the eventualities has occurred.

24. The learned Special Government Pleader has also submitted that there is no denying the fact that he has gone on record submitting, as was reflected in Ext. P6, that the Special Officer, after assuming charge, has not enrolled on his own any new members except recognising those who had already been the members prior to bifurcation. He has, however, urged that the submissions he made at that time in Exhibit P6 was contextual, and it was based on Rule 8 of the Rules.

25. The prospects of the new members would be affected if they were asked to wait until the new managing committee assumed charge, contends the learned Special Government Pleader. In this regard, he has laid emphasis on the Preamble to the Act and also the 97th Constitutional Amendment. Any denial of membership, according to him, offends the Amendment. In support of his submissions, the learned Special Government Pleader has placed reliance on *Vipulbhai M. Chaudhary v. Gujarat Cooperative Milk Marketing Federation Limited* , (2015) 8 SCC 1, *Ramanlal v. State of Haryana* (2015) 11 SCC 1, *Vasavan v. District Coir Project Officer* , 1993 (1) KLT 293, *Rajan v. Electoral Officer* , 2009 (3) KLT 1046 and *Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha* , (2001) 8 SCC 509.

Additional Respondents":

26. Sri. V.G. Arun, the learned counsel for the additional respondents, apart from adopting the submissions of the learned Special Government Pleader, has contended that the petitioners have not challenged the bye-laws in the first place. In terms of Section 12, it shall be presumed that the bye-laws have been duly registered and made operational without any hindrance. According to him, nothing prevented the petitioners from laying challenge against the bye-laws at the earliest point in time if they were aggrieved.

27. Drawing my attention to Exhibit P9 resolution passed in the second general body meeting of the society, the learned counsel would strenuously contend that once the bye-laws have been approved and registered, the general body is powerless to suspend its operation. According to him, they could only be statutorily challenged as is evident from Section 13 of the Act. He has also underlined the fact that Section 28(1E) has not curtailed the powers of the Special officer as the petitioners would have this Court believe.

Reply:

28. In reply, the learned counsel for the petitioners has submitted that the

statutory scheme is very explicit: The Special Officer has only a limited role of bifurcating the existing society and facilitating the formation of a managing committee by holding the election only with the existing members. He has no other duty assigned unlike an administrator, who has plenary powers under Sections 32 and 33 of the Act.

29. He has, in this context, submitted that despite the statute being very expansive in conferring the powers on the administrator, the Apex Court has read down the provisions and limited his powers to a minimal. According to the learned counsel, the said ratio in Kuttappan (supra) applies with full vigour in the case of the Special Officer, whose statutory powers are placed in very narrow confines.

30. As regards the share value, the learned counsel would contend that in terms of Section 28(1E), the society has to have the elections without any additions or deletions from what could have been its position as if it were part of the parent society or societies. He has also submitted that it is evident from Rule 16 that the question of the Special Officer admitting new members does not arise as it is the managing committee that has the power in that regard.

Issues:

Issue No. I:

Does the third proviso to Section 28 of the Act permit partial division of the area of a society on ward basis? In other words, is it permissible for the society to permit certain candidates on a ward basis and others on a non-ward basis even on the strength of Circular No. 10/2016?

Issue No. II:

Are the members of the new society on majority fix, before the election, a different share value from that of the parent society or societies? Put differently, does such an enhancement offend Section 28(1E) of the Act?

Issue No. III:

Did the Special Officer act legally in excluding the members who had not paid the "enhanced share value" from being the voters despite Exhibit P10 the interim stay granted by this Court in W.P.(C) No. 1162/2016?

Issue No. IV:

What is the impact of Exhibit P9 resolution in W.P. (C) No. 1162/2016, for it suspends the operation of a bye-law which deals with the enhanced share value?

Issue No. V:

Is the Special Officer empowered to admit new members at any stage before the elected managing committee assumes charge of the new society? Put differently, what is the impact of Exhibit P6 interim order?

Issue No. VI:

Are there any distinguishing features between the statutory functions of the Administrator and those of the Special Officer?

Statutory Scheme:

Section 2 (qc):

31. Section 2(qc) of the Act defines "Special Officer" to mean an officer not below the rank of an Assistant Registrar, appointed by the Registrar, to take into custody the assets and liabilities of the society which secured registration without bifurcation of the area of operation of an existing society, to register the new societies, and to constitute committees as provided under Section 28 of the Act.

32. An analysis of the definition reveals the duties to be discharged by the Special Officer: (i) take into custody the assets and liabilities of the society; (ii) register new societies; and (iii) constitute committees as provided under Section 28 of the Act.

Section 28 (1E):

33. Section 28(1E) further enjoins the Special officer to discharge the following functions:

"(i) Take into custody or bring under his control, the property, effects and actionable claims to which the society is, or appears to be entitled to and shall take steps as may be necessary or expedient to prevent loss or deterioration of or damage to, such property, effects, and claims;

(ii) Take such steps for the bifurcation of area, assets and liabilities of the society and also take all steps to register new society with the members of the society so bifurcated and constitute the Committee;

(iii) Such bifurcation shall be completed within a period of one year from the date of commencement of the Kerala Co-operative Societies (Amendment) Ordinance, 2012, (9 of 2012)]."

Section 19 & Rule 28:

34. Section 19 of the Act imposes an embargo that no member of the society shall exercise the rights of a member unless he has made such payment to the society in respect of the membership as may be prescribed by the rules or the bye-laws. Further, Rule 28 of the rules reinforces what has been stipulated in Section 19 of the Act. It is, therefore, unambiguous that no member of the society shall be eligible to vote at the meeting fixed for the election to the committee of that society unless sixty days prior to such meeting, he acquires the number of shares for membership as may be provided in the bye-laws of the society of which he is a member.

35. Since an effort has been made by the learned counsel for the respondents to

likened the Special Officer to a promoting committee and, on the other hand, contrasted the Special Officer with the administrator, it is further apposite to examine the provisions that deal with these entities. Sections 32 & 33:

36. Granted that the Special Officer has already been defined above, I may observe further that the term Administrator has not been defined in the Act. Nevertheless, the functions to be performed by the Administrator are specified in Sections 32 and 33 of the Act. As can be seen from Section 32, once a managing committee is superseded for the reasons mentioned therein, the Registrar, after following the due procedure, is entitled to appoint an Administrator or an Administrative Committee to oversee the affairs of the society. The said Administrator or the Administrative Committee can exercise all or any of the powers available to the managing committee.

37. While Section 32 deals with the supersession of the incumbent managing committee, Section 33 contemplates the other circumstances under which an Administrator or an Administrative Committee can be appointed. At any rate, under either Section 32 or Section 33 of the Act, an Administrator is statutorily permitted to exercise all the powers that are available to the duly elected managing committee.

Preamble to the Act:

38. The learned Special Government Pleader has laid much emphasis on the Preamble to the Act and also the scope of the 97th Constitutional Amendment. In that context, it is apposite to examine the Preamble to the Act which reads as follows: With a view to provide for the orderly development of the Co-operative sector in the State, it is essential to organise the Co-operative Societies in accordance with Co-operative principles as the self-governing, democratic institutions, to achieve the objects of equity, social justice, and economic development, as envisaged under the Directive Principles of State Policy of the Constitution of India. It also aims at promoting scientific and technological development, health care, market intervention, and management excellence in the Cooperative sector.

97th Constitutional Amendment:

39. Through 97th Constitutional Amendment, the incorporation of co-operative societies has been made part of Article 19(1)(c), thus a fundamental right. In Part IV of the Constitution, Article 43-B has been inserted to the effect that the State shall endeavour to promote voluntary formation, autonomous functioning, democratic control, and professional management of co-operative societies.

40. Further, among other provisions, Article 243-ZI enables the Legislature of a State to bring forth the necessary legislation with respect to the incorporation, regulation, and winding up of co-operative societies. The laws thus brought about shall be based on the principles of voluntary formation, democratic member-control, member-economic participation and autonomous functioning.

41. Article 243-ZJ mandates that the tenure of the Board shall be five years. It provides for co-option as well. Article 243-ZK, it is to be seen, strictly provides that the election of members to the board shall be conducted before the expiry of the term of the board. Further, Article 243-ZL says that the board of a co-operative society shall not be superseded or kept under suspension if there was no Government shareholding or loan or financial assistance or any guarantee by the Government.

Section 12:

42. Section 12 of the Act stipulates that no amendment to any bye-laws of the society shall be valid unless such an amendment has been registered under the Act. Sub-section (3) provides for the statutory presumption that once a certificate of registration is issued, it shall be conclusive evidence that the amendment has been duly registered.

Section 13:

43. As per Section 13, an amendment of the bye-laws of the society shall come into force on the day on which it is registered.

Section 83(1)(j) & Rule 176:

44. Section 83(1)(j) provides for a statutory appeal to the Government-an instance of the Executive residuary powers. On a different plane, Rule 176 of the Rules empowers the Registrar to rescind any resolution passed by the society if it is ultra vires of the objects of the society, etc.

Issue No. I:

45. The third proviso to Section 28 mandates that the societies mentioned therein should have their areas divided on a ward basis. In the present instance, there is a partial division of the wards. Apart from letting the general candidates contest from the wards, the society has permitted the reserved candidates to contest on a non-ward basis.

46. This Court in its judgment dated 16.02.2016 in W.P.(C) No. 4328/2016 has held that partial division of wards is unsustainable. Nevertheless, it has not interfered with the process of election in the said writ petition on the premise that none of the candidates who would be affected by the non-division of wards has come before this Court. This Court, in that process, has held that a mere statutory violation needs no interference from this Court under its remedial dispensation of Article 226 of the Constitution. It has, indeed, further held that the said violation ought to have infringed the constitutional or civil rights of the person that has approached the Court.

47. In the present instance, any discussion on the issue is obviated because of the following two grounds: (1) The Government issued Circular No. 10/16 permitting the societies to hold elections on a non-ward basis. In other words, the Government Order has suspended the operation of the third proviso to

Section 28 of the Act. (2) None of the affected persons is before this Court, as per ratio laid down in the judgment dated 16.02.2016 in W.P.(C) No. 4328/2016. Therefore, issue No. I is answered against the petitioners.

Issue Nos. II, III & IV:

48. The learned counsel for the petitioners has strenuously contended that the newly formed society under the administration of the Special Officer should go for election only based on the bye-laws that govern the parent society or societies from which the new society took its birth. According to him, Section 28(1E) fixes the power of the Special Officer in narrow confines.

49. In the present instance, the members allotted to the new society had their first general body meeting for a limited purpose, as has been admitted by the learned Special Government Pleader; it met under the aegis of the Special Officer. Indeed, the Special Officer convenes the General Body meeting as a preparatory step to have the society registered. The registration of the society and the subsequent election should be involving the members who have been allotted to the new society on the territorial basis. Ipso facto, the Society, until it has its first General Body elected, should take no steps that dilute the membership basis or pattern. But enhancement of the share value in the very maiden general body meeting is one such step.

50. In the present instance, the maiden general body in its meeting fixed the share value at Rs. 500/- instead of Rs. 100/- or Rs. 50/-, both of which are the share values of the two parent societies. Soon thereafter, the second petitioner filed W.P.(C) No. 1162/2016 assailing the bye-laws to the extent of what is termed as enhancement of the share value. He has sought interim directions concerning the operation of not only Exhibit P10 demand notice but also clause 6(a) of the bye-laws. This Court on 12.01.2016 suspended the operation of Exhibit P10 notice directing the members of the society to pay the enhanced share value.

51. As can be seen from the record, despite the interim direction, the Special officer, while notifying the final voters' list, excluded those members who have failed to pay the enhanced share value.

52. The issue is required to be examined from two angles: Whether clause 6(a) of the bye-laws has come into existence for the first time stipulating the share value or it has amounted to a raise in the share value, thus becoming a major policy decision taken by the general body in its maiden meeting.

53. The learned counsel for the respondents have contended that it is fallacious to call the fixing of share value an enhancement. According to them, the new society has fixed its share value for the first time. I am afraid, it is this contention of the learned counsel for the respondents that is fallacious. To have a particular bye-law framed for the first time, there ought to be its total absence until it is framed: a truism.

54. We cannot be oblivious to the fact that the new society is not new in its absolute semantic sense; it is only new in a relative sense. To wit, I may observe that the parent society got sub-divided, and in that sense of the word, the new society has come into existence. The members of the new society have continued to carry the same rights and liabilities as they have had in the parent society. They have not got a clear slate; nor have those members commenced their co-operative journey for the first time.

55. In the light of the division of the parent society, it shall be presumed that the new society inherits not only the assets and liabilities but also the bye-laws and the entire procedural, regulatory mechanism, too. Thus in the absence of any modification, the bye-laws governing the parent society get re-registered to govern the new society. Of course, this assertion is by no means suggestive of the proposition that the new society is powerless to break free from the past and have its own identity, which include its distinctive administrative features. It can change its bye-laws, for example. But the question is, at what stage and at whose instance?

56. As has been rightly contended by the learned Special Government Pleader, the democratic spirit pervading the Preamble, the 97th Constitutional Amendment, and International covenants as have been acknowledged by the Apex Court in Vipulbhai's case (supra) is unmistakable. To elaborate, I may note that a cooperative society, an autonomous entity, now having its position fortified through 97th Constitutional Amendment, is required to be administered in a true democratic spirit. The entire constitutional and statutory endeavour is to keep the governmental interference to a minimum.

57. Eloquent are the preamble to the Act and the 97th Constitutional Amendment: The former exhorts that it is essential to organise the Co-operative Societies in accordance with Co-operative principles as the self-governing, democratic institutions, to achieve the objects of equity, social justice, and economic development, as envisaged under the Directive Principles of State Policy of the Constitution of India. The latter, sacrosanct to be trifled with, mandates that the State shall endeavour to promote voluntary formation, autonomous functioning, democratic control, and professional management of co-operative societies.

58. The upshot of the above solemn statutory and constitutional scheme is that the Special Officer, an appointee of the Government, is expected to play the role of a catalyst: a transitional executive required to exercise his power to the minimal extent to ensure that the society has become functional and operational. Nothing more.

59. The Apex Court as well as this Court has reiterated through a profusion of precedents that an Administrator cannot take policy decisions. On this issue, later.

60. In the present instance, no doubt, it is the general body that has taken the decision to enhance the share value. It was, nevertheless convened under the

aegis of the Special officer, whose shadow has definitely loomed large over the maiden meeting. Indeed, the learned Special Government Pleader has correctly stated that the first general body is to meet with a fixed, limited agenda. By implication it appears, to me, that the said general body is to meet for the limited purpose of ensuring the registration of the society for facilitating an early election. Ipso facto, it has to shun taking any policy decisions.

61. In the present instance, two added features lend a different colour to the issue: First, the Special Officer recognised new members who have earlier been admitted by the Special Officer of the parent societies. In view of the finding to be rendered in answer to the subsequent issues, I am of the opinion that the decision in the general body got influenced by those new members whose presence was unwarranted. Second, this Court has suspended, as an interim measure, the operation of Exhibit P10 demand notice through which the society has required the members to pay the enhanced share value.

62. Indeed, the society wants to take shelter under a technicality that though the operation of the demand notice was suspended, but the very basis for the demand, the bye-law, has not been suspended. Theoretically, the said contention may pass the judicial muster. As a matter of equity adjudication, we cannot lose sight of the fact that the members might not have paid the enhanced amount on the strength of the interim order issued by this court. M.K. Vasavan and also Rajan (supra) interpret the scope of Rule 28 of the Rules and lay down that a member has to acquire the requisite number of shares sixty days prior to the date of meeting fixed for election-no quarrel as regards the proposition of law.

63. In my view, the respondent Society ought to have put the members on a further notice that in the light of the operation of clause 6 of the bye-laws, they still have to pay the enhanced share value, lest they should lose their right to vote. In the alternative, it ought to have, to my mind, sought the necessary clarification from this court that it would be made clear that in the face of the continued operation of clause 6, the disqualification visits upon the members.

64. Farfetched the second proposition may appear. I am of the firm opinion that the co-operative spirit of the institution demands that it should ensure the participation of maximum members in the democratic process of election. Further, a member should not be made to suffer on account of an order of this court, more particularly when the said member has acted bona fide.

65. Thus, taking a panoptic view of the issue, I am of the considered opinion that the enhancement of share value as a matter of policy decision before the duly elected managing committee could come into being cannot be sustained. As a consequence, the exclusion of the members on account of their failure to pay the enhanced share value is unsustainable.

66. The lopsided nature of the resolution enhancing the share value passed in the maiden general body meeting is exposed once we look at Exhibit P9 resolution in W.P.(C) No. 1162/2016. The self-same majority members who had

allegedly consented to raise the share value in the first general body meeting took a diametrically opposite view in the second general body meeting: They have through Exhibit P9 resolved to suspend the operation of the bye-laws to the extent of enhancement of the share value. It is perhaps an added reason why the members do not pay the enhanced share value.

67. True, the learned counsel for the respondents have strenuously contended that even the majority of the general body cannot suspend the operation of the bye-laws. According to them, in terms of Section 12, registration of the bye-laws is the conclusive proof of its validity and only in the manner known to law the bye-law can be interdicted -either by taking recourse to appeal under Section 83(1)(j) of the Act or recession of the bye-laws under Rule 176 of the Rules. Be that as it may, issue No. IV needs no addressing at this stage because, in my view, the issue Nos. II and III are to be, and accordingly, ordered in favour of the petitioners.

Issue Nos. V and VI:

68. The issue of admission of new members is a vexed one. It is hydra-headed; the more heads this Court severs, the more sprout.

69. First, the Special Officers of the parent societies admitted certain members. The Special Officer of the new society has accorded recognition to them. Later, during the first general body meeting, an issue was incorporated in the agenda to admit new members. This Court in W.P.(C) No. 29467/2015 passed an interim order essentially based on the concession made by the learned Special Government Pleader. Since there is a controversy on the scope and ambit of the concession made by the learned Special Government Pleader, it is apposite to extract what this court has recorded in the interim order:

"[t]he Special Officer after assuming charge has not enrolled on his own any new members except recognising those who had already been the members prior to the bifurcation."

70. In the face of the persistent contention by the learned counsel for the petitioners that more than three thousand members have been admitted as members after the bifurcation of the societies, the learned Special Government Pleader with equal vehemence has submitted that the Special Officer after assuming charge has not enrolled on his own any new members except recognising those who had already been the members prior to the bifurcation of the society.

71. Despite the said clarification or assurance (if we can call it thus) given by the learned Special Government Pleader, the Special Officer, however, went ahead and admitted new members. His action forced the equable learned Special Government Pleader, whose submissions usually carry an air of assurance, to lean over backwards to defend the Special Officer's action.

72. The learned Special Government Pleader has submitted that the embargo

against admitting new members was only till the holding of the first general body meeting. Later, the Special Officer, according to him, can admit new members. The said plea is regrettably deceptive, if not dishonest.

73. In the first place, the petitioner filed W.P.(C) No. 29467/2015 contending that the general body was going to discuss the issue of admitting new members but that would be impermissible. The learned Special Government Pleader, of course, conceded that it should not have been an item on the agenda. Nevertheless, the principal issue in the writ petition is whether the society can admit new members while under the management of the Special Officer; conversely, before a duly elected managing committee comes into being.

74. The petitioners have specifically contended, initially, that the general body of a co-operative society has not been vested with the power to enroll members. They have, further, pleaded that the eligibility of each person who submits an application for admission will have to be considered by the examining body and the said power of examination is vested with the committee comprising eleven or thirteen members as the case may be.

75. The petitioners have, finally, contended that when the statutory mandate is to constitute a committee with the existing members, the attempt to enroll new members so as to alter the composition of the society to suit the needs of the ruling dispensation is impermissible.

76. Thus, from the above contentions of the petitioners, it is evident that the writ petition, on the whole, assails the admission of members at any stage before a duly elected managing committee comes into existence. While issuing the interim direction on 12.01.2016, this Court, per me, understood the learned Special Government to have meant that the Special Officer did not intend to admit new members on his own-at any point in time. The submission was not even remotely suggestive that the non-admission of members was confined to the first General Body Meeting. Special Officer, Administrator, and Promoting Committee:

77. The learned Special Government Pleader has made arduous efforts to impress upon this Court that the Special Officer cannot be likened to an Administrator. According to him, he is akin to a promoting committee. Indeed, unlike the term "Special Officer", the expression "Promoting Committee" has not been defined. Nevertheless, the term "Committee" is defined to mean the governing body of a co-operative society, to which the management of the affairs of the society is entrusted. The Committee may be called by whatever name.

78. A member, on the other hand, in terms of Section 2(I) is a person "joining in the application for the registration of a Co-operative society or a person admitted to membership after such registration in accordance with this Act, etc."

79. From the above, it is evident that there are two types of members: (1) A person who joins in the application for the registration of a co-operative society; (2) a person who joins after the registration of the society.

80. In fact, a minimum of 25 persons is required to join in an application for the registration of a society. Those persons, being the founders or, in the alternative, the committee to be appointed by them in the interim as per Section 28 of the Act, is conveniently called the "Promoting Committee"-an expression that has not been employed in the act, though.

81. One of them can be called "the Chief Promoter". Further, as can be seen from Section 28, the committee appointed by the promoters to manage the initial affairs of the society shall be valid for three months from the date of registration or such other period. But the said committee shall cease to function as soon as a committee has been constituted in accordance with the bye-laws.

82. Rule 8 of the Rules prescribes that within three months from the date of registration of the society, the Chief Promoter shall convene the First General Body Meeting of "all the persons, who had signed the application for the registration of the society". The business to be transacted in the first general body include "the admission of members" and the allotment of shares.

83. Section 28(1E)(ii) of the Act, on the converse, mandates that the Special Officer, among other things, shall do the following:

"[t]ake such steps for the bifurcation of area, assets, and liabilities of the society and also shall take all steps to register new society with the members of the society so bifurcated and constitute the Committee."

(emphasis supplied)

84. From the above extract, it is evident that the registration of the society shall be with the members of the society so bifurcated. The Special Officer shall also constitute the Committee. With whom? The answer, to my mind, is that it should be the elected members from among the members of the bifurcated society. In that process, the registration and the subsequent election need resolutions to be passed: For that limited purpose, the general body, after bifurcation, will have its maiden meeting.

85. The statutory scheme, thus, makes it clear beyond pale of any doubt that the Special Officer is appointed for a very limited purpose. He is, in fact, a facilitator empowered to do all that is necessary during the transitional period. In my considered view, his role is more limited than that of an administrator. Metaphorically, the Special Officer is the air host of the society on its "next journey" after its initial landing in the name of bifurcation. The air host cannot, at any rate, be the pilot: The pilot is the managing committee to be elected through the democratic process.

86. The promoting committee, evidently, has altogether different functions to be discharged. A nascent society needs members for its growth, for a society is not a family concern or a fiefdom. Any restrictions on the membership in the formative years is fatal to the survival of the society; rather, the restrictions are against the very spirit of the co-operative movement.

87. Not to put too fine a point on the issue, I may state that the argument that a special officer is like a promoting committee carries no conviction. A promoting committee, as is evident, takes charge of a nascent society practically with no membership basis. It is incumbent on the said committee to ensure maximum participation of the willing members in the affairs of the society. Thus, advisedly the statute has not put any fetters on the powers of the so called promoting committee.

88. On the other hand, a Special officer, like an Administrator, comes to take charge of an existing society, although recast in a new mould. I am of the considered view that his powers have to be restrictively read as has been done in the case of the Administrator-vouched for by the judicial precedents.

Precedential Considerations:

89. In Ramanlal and also in Janardan Swami (supra), the Apex Court has held that the electoral roll being an intermediate stage in the process of election of the Managing Committee of a specified society and the election process having been set in motion, the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll.

90. In the present instance, the election is a maiden exercise involving a society born out of bifurcation. In this writ petition, further, the preparation of voters' list is not in issue; on the other hand, more fundamental issues going to the root of the matter are involved.

91. Indeed, the learned Special Government Pleader has submitted that the membership in terms of the Preamble and the co-operative principles is open, and if a person approaches seeking membership, it does not lie within the power of the Special Officer to deny it. The Constitution embodying the rule of law abhors absolutism. Even the most cherished, sacrosanct fundamental rights have also been hedged about with limitations. Even right to life is a matter of due process.

92. There is no gainsaying the fact that eligible member cannot be denied membership but, under the cover of eligibility, one cannot barge into a society. In other words, he could get membership only after following the due process. In the present instance, if the logic of the argument advanced by the learned Special Government pleader has to be extended further, if the Special Officer cannot deny the membership to an eligible member, nor can the Administrator. But the Apex Court as well as this court has held on more than one occasion that an official who has not been democratically elected but has come to be at the helm of the affairs of the society in the interim cannot arrogate to himself all the statutory powers to take policy decisions and thus alter the face of the society in the manner he pleases.

93. Under those circumstances, I am constrained to hold that the admission of

new members by the Special Officer is totally impermissible.

94. In *Vipulbhai (supra)*, the Hon'ble Supreme Court has held that that all the decisions concerning the procedural constraints involving the co-operative societies took into account the statutory scheme existing before the 97th Constitutional Amendment. The Amendment providing constitutional status to the societies has brought out radical changes in the concept of cooperative societies. Democratic functioning and autonomy have now become the core constitutional values of a cooperative society. Such societies are to be registered only if they are founded on cooperative principles of democracy, equality, equity and solidarity.

95. Indeed, the above authoritative proposition of law applies on all fours in the present instance, but contrary to what has been espoused by the respondents. The change in share value, the admission of new members, etc., under the aegis of the Special Officer, whose appointment can be anything but democratic, deal a death blow to the democratic spirit of the co-operative societies. At the cost of repetition, it is observed that the Special Officer is appointed for a limited purpose, and in the interim, at that. During his tenure, the society cannot have any policy decisions taken.

96. In this regard, the felicitous observations of the Apex Court in *Kuttappan (supra)* involving an administrator ring true, tellingly. As is evident, in *Kuttappan*, both Sections 30 and 30A of the Karnataka Co-operative Societies Act have been examined. Those two sections deal with the Special Officer as well as the Administrator. The Apex Court has observed, *inter alia*, as follows:

"7. [W]hether an authority is discharging a function or exercising a power will have to be ascertained with reference to the nature of the function or the power discharged or exercised in the background of the enactment. Often we do express that functions are discharged or powers exercised or vice versa depending upon the context of the duty or power enjoined under the law if the two expressions are interchangeable. What is necessary to bear in mind is that nature of function or power exercised and not the manner in which it is done. Indeed this Court, while considering the provisions of Section 30-A of the Karnataka Act, which enabled a Special Officer appointed to exercise and perform all the powers and functions of the Committee of Management or any officer of the cooperative society (and not merely functions), took the view that the administrator or a Special Officer can exercise powers and functions only as may be required in the interests of the cooperative society. In that context, it was stated that he should conduct elections as enjoined under law, that is, he is to conduct elections with the members as on the rolls and by necessary implication, he is not vested with power to enrol new members of the society. We may add that a cooperative society is expected to function in a democratic manner through an elected Committee of Management and that Committee of Management is empowered to enrol new members. Enrolment of new members would involve alteration of the composition of the society itself and such a power

should be exercised by an elected committee rather than by an administrator or a committee appointed by the Registrar while the Committee of Management is under supersession. This Court has taken the view, it did, bearing in mind these aspects, though not spelt out in the course of the judgment. Even where the language of Section 30-A of the Karnataka Act empowering a Special Officer to exercise and perform all the powers and functions of the Committee of Management of a cooperative society fell for consideration, this Court having expressed that view, we do not think, there is any need to explore the difference in the meaning of the expressions "have power to exercise all or any of the functions of the committee" in the Act and "exercise all or any of the functions of the committee" in the Karnataka Act as they are not different and are in substance one and the same and difference in language will assume no importance..."

(emphasis supplied)

97. Suffice it to bear in mind the definitive declaration of law by the Apex Court above that enrolment of new members would involve alteration of the composition of the society itself and such a power should be exercised by an elected committee rather than by a special officer or an administrator or a committee appointed by the Registrar.

98. I, however, hasten to add that a society comes into existence primarily to serve as many eligible members as are willing to be part of it in its area. Most of the societies have the salutary objective of improving the economic lot of its members. In the present instance, as has been done earlier, it is abundantly made clear that the members admitted by other means before the democratically elected managing committee comes into existence should enjoy all the substantial rights, inclusive of their access to the services of the Bank, such as loans, but not the right to vote.

99. In the facts and circumstances, this Court allows the writ petitions declaring that (i) the Special Officer is not empowered to enrol new members at any stage; (ii) the Special Officer is eligible to constitute the committee of the new society after bifurcation only with the existing members who were allotted to the society based on the territorial division; (iii) the Special Officer has no power or jurisdiction to enrol new members, who shall be admitted into the society only by a duly elected managing committee; (iv) Exhibit P9 resolution in W.P.(C) No. 1162/2016 enhancing the share value to Rs. 500/- in the inaugural general body meeting under the aegis of the Special Officer cannot be sustained for it is in violation of the statutory mandate under Section 28(1E) of the Act; (v) consequently, exclusion of the members on the premise that they do not remit the enhanced share value cannot be countenanced; and (vi) further consequently, Exhibit P1 notification is set aside.

No order as to costs.

1Unreported judgment, dt. 15.02.2016 in W.A. No. 292 of 2016

2Unreported judgment, dt. 26.10.2015 in W.P. (C) No. 26684 of 2013