

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION**

WRIT PETITION NO.5257 OF 2015

1. Pandurang Laxman Kadam }
age 52 yrs, Occu: Business

2. Dadu Dhondiba Patil }
Age 66 yrs, Occu: Business

3. Sudarshan Keru Kadam }
Age 47 yrs, Occu: Business

4. Vijaya Dilip Sonawane }
Age 50 yrs, Occu: Business

5. Mohan Keru Kadam }
Age 50 yrs, Occu: Business

6. Shobha Chotelal Kesarwani }
Age 52 yrs, Occu: Housewife

7. Mira Vishnu Khorate }
Age 2 yrs, Occu: Housewife

8. Sambhaji Krushna Patil }
Age 45 yrs, Occu: Business

9. Maruti Thanu Patil }
Age 50 yrs, Occu: Business

All above 1 to 10 residing }
at Gokul Nagar, Old Agra Road
Thane (West)

.. Petitioners

vs

1. State of Maharashtra }

Through its Secretary,
Ministry of Co-operation
Mantralaya, Mumbai-20

}

2. The Deputy Registrar
Co-operative Societies
Thane city, Thane

}

}

3. Board of Administrator
for Shivanand Co-op Housing Society Ltd
Gokul Nagar, Old Agra Road, Thane (W)

}

4. Shri Sunil Munde
The Election Officer for Shivanand Co-operative
Hsg Scty Ltd having office at Nr Jarimari
Mandir Gokul Nagar, Old Agra Road
Thane (W)

}

}

5. Shivanand Co-op Housing Society Ltd
through its Board of Administrator
having office Nr Jarimari Mandir
Gokul Nagar, Old Agra Road Thane(W)

}

.. Respondents

Mr.S.M.Oak i/b Mr.Pranil Sonawane,
Mr.Sagar Joshi Advocates for the Petitioners
Mrs.M.S.Bane 'B' Panel Counsel for Respondent nos.1 & 2
for State of Maharashtra

**CORAM: S.C.DHARMADHIKARI &
G.S.KULKARNI, JJ**
DATED 15th JUNE, 2015

ORAL JUDGMENT (Per S.C.Dharmadhikari, J)

1. The petitioners pray by this writ petition under Article 226 of the Constitution of India that the respondents and particularly the Election

Officer be directed to include 124 names in the list of voters for elections and which are scheduled for the constitution of a committee to manage and administer the affairs of Shivanand Cooperative Housing Society Ltd.

2. The argument of Mr.Oak learned counsel appearing in support of this petition is two-fold:

3. He firstly submits that though The Maharashtra Co-operative Societies (Elections to Committee) Rules, 2014 are notified by the statute, they supersede all prior Rules. By Rule 78 of these rules in part XI it is stated that no election shall be called in question except by an Election Petition presented to the Co-operative Court as laid down in section 91. Mr.Oak submits that because of the super-session of the prior Rules, what has remained thereafter and in the present set of Rules is the procedure for holding elections. However, as notified by the same statute in other rules and particularly Maharashtra Specified Societies (Elections to Committees) Rules all details such as necessary parties to the Election Petition, format in which it is to be filed, grounds on which elections can be declared as invalid and set aside are not dealt with by the 2014 Rules.

These material and relevant aspects being not provided in the 2014 Rules, the remedy of an Election Petition provided therein cannot be said to be equally efficacious and complete. Hence, this writ petition therefore, should be entertained as the alternate remedy is illusory.

4. His second contention is that this is a slum rehabilitation project governed by Appendix 'S' appended to the Development Control Regulations, 1994 for the city of Thane. That envisages a project by the cooperative societies of slum dwellers and which is permitted to undertake re-development activity under the control of the authorities, provided the authorities certify a list of slum dwellers to be eligible for a permanent housing accommodation. Mr.Oak submits that there is no dispute about this part of the matter. That list has now been notified and which contains 288 names. These very names would comprise of the voters list meaning thereby that all those certified as eligible for permanent alternate accommodation or styled as 'eligible slum dwellers' should find their name and details entered in the voter's list as a voter. There is no other step which is required to be undertaken. The process is automatic. All those whose names are entered as eligible slum dwellers would be therefore,

entitled to vote at these elections. They are thus eligible voters. The name of the petitioners have been entered in the list of eligible slum dwellers but, some of them have been erroneously and wrongfully excluded from the voter's list. Such being the position and remedy of a Election petition being incomplete and in-efficacious, this Court should entertain the writ petition. Our attention is invited to the complaints which have been made by the petitioners to the authorities and others so also the response of the authorities. It is argued that the authorities are assuming and to themselves a power which is absent in the Regulations. In the circumstances, by relying upon the two judgments of this Court in the case of RAJAN DINKARRAO PHARATE VS STATE OF MAHARASHTRA & ORS 1997 (12) Mh.L.J. 543 and SHIVAJI MAROTRAO SURYAWANSHI VS STATE OF MAHARASHTRA & ors 2000 (2) Mh.L.J. 306 it is urged that the writ petition is maintainable.

5. After having heard Mr.Oak learned counsel for the petitioners at great length and on perusing with his assistance the petition and all the annexures thereto, so also the recently notified The Maharashtra Co-operative societies (Election to Committee) Rules 2014 we are unable to

agree with him. These Rules have been notified and from the definitions it is apparent that the term “Committee “ has been defined to mean the Committee of management or board of directors or the governing body or the directing body of a co-operative society, by whatever name called, in which the management of the affairs of a society is entrusted. The term “corrupt practice” is defined in Rule 2 (7) to mean any of the practices specified in the rule 79. The term “ election” is defined in Rule 2 (9). The term “list of voters” has been defined in rule 2 (10) and there is definition of the term “Returning Officer” of a co-operative society in Rule 2 (16).

6. After the Rules set out the powers of the State Cooperative Election Authority, what is relevant for our purpose is part III which deals with “Preparation of Electoral Roll” and which contains rules for enabling preparation of provisional list of voters. The particulars to be included in the provisional list of voters for cooperative societies, claims and objections to the provisional list of voters and the final list of voters for co-operative societies having individuals as members are inter alia the matters provided therein. (See Rule 6 to Rule 11). After setting out the complete administrative machinery for the conduct of elections in part IV,

what is relevant is the procedure for holding of elections. In the present case, all steps prior to poll as envisaged by part VI of these Rules have been completed. What remains is the polling and which is scheduled on 19th June 2015. Apart from these aspects, we are not impressed with the petitioner's submissions that the remedy provided of an Election Petition under section 91 by raising an election dispute before the Co-operative Court is inefficacious or incomplete. After all matters are dealt with in the Rules and equally the Rules setting out as what would be termed as 'corrupt practices' then definitely the challenge to the election dispute can be filed raising appropriate grounds. They would include the challenge to the validity to the list of voters at the elections or illegalities committed in its preparation. It is not possible to agree with Mr.Oak learned counsel for the petitioners that when a remedy is provided to a Court and which is pre-existing, that Court is powerless and cannot grant appropriate reliefs by applying the principles and which are to be found and relatable to election disputes in relevant and applicable statutes. It is not as if every single aspect has to be provided by the legislature. There are enough guidelines in law as well as in the 2014 Rules, the Maharashtra Co-operative Societies Act, 1960 and based on which challenge to elections

can be raised. The Rules themselves set out the entire procedure and right up to counting of votes. They also provide for election expenses and apportionment thereof. They also set out the corrupt practices (See Part I clause 7). In the circumstances, there is a complete remedy and which is equally efficacious for challenging the elections. Once the legislature has provided for challenge to the elections by raising a dispute under section 91 of the Act, then all provisions substantive as well as procedural in so far as powers of the competent Court to deal with such disputes are attracted. The necessity of making this provision appears to be to preserve the purity and sanctity of elections and the process as a whole and to deal with issues vitiating them and which could be raised. The Co-operative Court will be in a position to take a note of the same and decide them in accordance with law.

7. Mr.Oak learned counsel for the petitioners has urged that there is nothing in the Rules which would enable the party like the petitioners to decide as to how to present and file such disputes and who would be necessary parties thereto and on what grounds the elections can be challenged. To our mind, this argument overlooks substantive

provisions in the Maharashtra Co-operative Societies Act, 1960 namely section 91 to 94 thereof and the Maharashtra Co-operative Societies rules, 1961 (see Rules 77-E and 77-F thereof) which contains the procedural aspects. Thus, there are enough provisions and to deal with various aspects of a election dispute. As far as the grounds on which a election can be challenged, the principles are far too well settled to require any reiteration. In a Full Bench decision of this Court reported in 77 Bombay Law Reporter 1975 page 533 (DATTATRAYA NARHAR PITALE VS VIBHAKAR DINKAR GOKHALE) these principles are discussed. At pages 538-540, 542-543 of the report their Lordships held as under :

“The question then arises whether it is permissible to the petitioner filing an election petition challenging the validity of an election to urge as a ground that the successful candidate is disqualified as contemplated by s.16 and that is why his election should be set aside. The argument of Mr.Deshpande is that having regard to the provisions of s.17 of the Act read with r.15 (10) of the Rules and s.44 of the Act the ground as regards acceptance or rejection of the nomination paper of any candidate including the returned candidate on the ground that he is disqualified under s.16 cannot be taken up for challenging the validity of an election of the returned candidate. He has also contended that if the ground of challenge is disqualification, then the only permissible remedy is the one provided in s.44 of the Act. In exercise of the powers conferred by s.17 Rules have been made by the state government in relation to nomination of candidates, form of nomination paper, objections to nomination, scrutiny of nomination papers and appeal against the acceptance or rejection of nomination papers. Under r.12 any person may be nominated as a candidate for election to fill a seat if

he is qualified to be chosen to fill that seat under the provisions of the Act. Rule 13 provides for scrutiny of nomination papers. Sub-rule (1) thereof provides for class of persons who can remain present at the time when the nomination paper is to be scrutinised. Under that sub-rule the candidates one proposer of each candidate and one other person duly authorised in writing by his candidate but no other person may attend at the time and place fixed for the scrutiny of the nomination papers and the Returning Officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered as required by sub-r (2) of r.12. The nature of inquiry and the grounds on which the nomination paper may be rejected are provided in sub-r (2). Under that sub rule the Returning Officer shall examine the nomination papers and decide all objections which may be made to any nomination and may, either on such objection or on his own motion after such summary inquiry, if any as he thinks necessary reject any nomination paper on any of the following grounds that is to say :

“ (a) that the candidate is not qualified or is disqualified for election under the Act;

(b):

(c):.....

(d):.....

(e) :

It is obligatory upon the Returning Officer under sub-r (6) to endorse his decision on each nomination paper either accepting or rejecting the same and if the nomination paper is rejected he has to record in writing a brief statement of his reasons for such rejection under sub-r (8) and immediately after all the nomination papers have been scrutinised and decisions accepting or rejecting the same have been recorded, the Returning Officer shall prepare a list of validly nominated candidates. It is clear from the provision of r.13 that only a limited class of persons are intended to remain present when the nomination papers are to be scrutinised; only the candidates one proposer of each candidate and one other person duly authorised in writing by each candidate can remain present. A

voter as such is not entitled under this rule to remain present at the time of scrutiny of nomination papers. Further it is clear that the nature of inquiry that has to be conducted by the Returning Officer before either accepting or rejecting the nomination papers on the ground of objections raised or suo motu is described to be a summary inquiry. An appeal against the decision of the Returning Officer either accepting or rejecting the nomination paper is provided in r.15 and such appeal lies to the District Judge of the district in which the municipal area is situate. The right to prefer such an appeal is only conferred upon the candidate who is aggrieved by the decision of the Returning Officer accepting or rejecting the nomination paper. Thus, under r.15 a person other than the candidate including the voter has no right to prefer an appeal against the decision of the Returning Officer. An appeal presented under r.15 can be disposed of either by the District Judge himself or it may be disposed of by any Judge not lower in rank than an Assistant Judge to whom the case may be referred to by the District Judge. Such Judge not lower in rank than an Assistant Judge is for the purpose of suit regarded as District Judge. Sub rule (10) of r.15 provides that the decision of the District Judge on appeal under this rule and subject only to such decision the decision of the Returning Officer, accepting or rejecting the nomination of a candidate shall be final and conclusive and shall not be called in question in any Court. Relying upon the language of sub. r (10) of r.15 the argument of Mr.Deshpande is that when specific provisions is made as regard conclusiveness of the decision of the Returning Officer and that of the District Judge on appeal, it is not permissible to any person to go behind the said decision and urge by way of a ground for challenging the validity of an election, any plea like disqualification which could be urged at the state of scrutiny of the nomination papers. Great emphasis is laid by him upon the provision saying that the decision is final and conclusive and shall not be called in question in any court. His submission is that when a decision is made final and conclusive, the jurisdiction of every civil court as well as the Election Tribunal is thereby taken away to go into any questions which are considered either by the Returning Officer or the District Judge while accepting or rejecting the nomination paper. Undoubtedly sub-r (10) makes the decision final

and conclusive and further provides that the said decision cannot be called in question in any court. But it shall not be overlooked that this is a provision contained in Rules made under the provisions contained in s./17 of the Act. It is well settled that provisions of the Act are always superior and the rules that are made in exercise of the power conferred by statute cannot be inconsistent with the provisions of the Act and cannot override or take away the right which had been conferred by the provisions of the statute itself. After all making of rules is in the nature of subordinate legislation and that cannot have greater force than the provisions of the statute itself or the effect of overriding its provisions. Such rules can neither be inconsistent with the Act nor derogatory from the provisions thereof.”

“ Under s.21 of the Act the validity of election, co-option or nomination can be challenged either by a candidate at the election or by any person entitled to vote at the election. The grounds on which the validity of such election can be challenged are not different to a candidate on the one hand and to a person entitled to vote at the election on the other. The language of s.21 being uniform the grounds of challenge to the validity of an election will be the same either it is at the instance of a voter or at the instance of a candidate. If in view of the provisions of r.15 (10) the right of a voter to challenge the validity of an election on the ground of disqualification of a candidate is taken away it will result in substantially taking away the right of a voter to challenge the validity of election of a returned candidate on such grounds as are permissible to him in law. The fact that a candidate is not disqualified is one of the necessary qualifications before he can file his nomination paper. Now a voter can in an election petition to set aside the election of a returned candidate, take various grounds including the ground of disqualification. He may either urge that the candidate whose nomination paper was filed was wrongfully rejected at the time of scrutiny or he may as well urge that even one of the defeated candidates whose nomination paper was accepted was wrongfully accepted because in either of the two cases the result of election will be materially affected if the decision of the Returning Officer or the District Judge in appeal therefrom is

treated as erroneous. When the nomination paper of a candidate has been wrongfully rejected then it will be a pure surmise to think how many votes he could have secured if he was in the field at the time when the poll took place so also when the nomination paper of any defeated candidate has been wrongfully accepted another defeated candidate or a voter can equally contend that the nomination paper of such defeated candidate was wrongfully accepted and if he was not the field then even the defeated candidate would have secured the votes which were cast in favour of the other defeated candidate. This will be a ground on which the validity of an election of a returned candidate can be challenged having regard to the scope and ambit of s.21 and the decision arrived at as the result of summary inquiry cannot be so treated as to deprive a voter or a candidate to have a proper and fuller inquiry at the trial of an election petition. Thus, in our opinion, it is not possible to take the view that on proper construction of r.15 (10) read with s.17 of the Act it is not permissible either to a candidate or to an elector to challenge the validity of an election of a returned candidate on the ground that he was disqualified under the provisions of s.16 (1) of the Act.”

“.....Moreover, we are concerned with the ambit of jurisdiction of the Election Tribunal which is clothed with the power to decide the election petition under s. 21 and in the absence of any limitation or restrictions imposed upon the grounds on which an election can be set aside, normal rule must prevail, namely that on every legal and justified ground on which an election can be challenged in law will be open to the petitioner to urge for challenging the validity of an election of the successful candidate.”

8. Thus, the election can be challenged on the grounds available in law and whether all or some of them can be invoked and raised depends on the facts and circumstances in each case. If there are no

restrictions or limitations placed by the statutory provision, then, the above principles would be clearly attracted. There are no limitations placed by the present provision, namely, section 91 of the Maharashtra Co-operative Societies Act, 1960. In this case, the words employed are not restricted or limited. In a decision reported in **2008 (4) All Maharashtra Reporter, 223 (KRISHNA GANPATRAO KAMDHI & ors vs LILADHAR W/o LAXMAN PATHODE & ORS** this Court held as under:

“4. Various judgments have been discussed in the order of reference, but it needs to be noticed that the Division Bench judgments referred to in the order are not under the provisions of the Maharashtra Co-operative societies Act, 1960. As far as the Maneklal Madanlal Lahoti (supra) case is concerned, it is a judgment under the Maharashtra municipalities Act and related to the election being held under those provisions. That judgment was relied upon by the Petitioners to show that the concept of election being materially affected would be attracted in the case under that Act though there was no specific provision in that Act. The Court expressed the view that alleged non-compliance or irregularity should normally be coupled and petitioner should show that the election was materially affected, then alone the election would be liable to be interfered with. While in the case of Zambar Rajaram Patil and another (supra), the Court even set aside the entire process of election which had resulted in affecting the election materially, on the ground that Co-operative Court has misused the judicial process and usurped the jurisdiction not vested in it.

8. The election dispute that was raised by the petitioners falls well within the ambit and scope of Section 91 of the Act. There can be no justification in law for prescribing limitations which in fact had not been legislatively provided by the framers of the law. Any dispute touching the election of the committee or its officers etc

is wide enough to take into its ambit all kind of disputes relating to election of the committees of the society where they are relatable to violation of legal provisions like sections, bye-laws or rules or irregularities which patently are not acceptable in a fair election process. Where it is indicated that the provisions of Section 91 are clear in their terms and there is hardly any scope for adding or subtracting explanations of any kind from the language of these provisions.

9. In the entire scheme of the Act and particularly section 91 of the Act does not provide for any grounds or criteria which can be adopted by the Cooperative Court as a precept to deal with the election dispute raised before it in accordance with law. In other words, the power or jurisdiction vested in the cooperative Court is very wide and therefore, cannot be curtailed or circumscribed by limitations which are not intended by the legislature. The Co-operative Court will have to decide every case on its facts.

10. Jurisdiction vested in the Cooperative Court in substance is very wide but has a limited application to the persons and affairs spelt out in the provisions. For example in the case of Chairman and Vice Chairman of the Managing Committee of the specified society, the Cooperative court will have no jurisdiction to entertain an election petition as it would squarely fall within the jurisdiction of the Commissioner under section 144-T of the Act as held in the case of **Zambar Rajaram Patil and another vs State of Maharashtra and others, 2000(2) Mh.LJ.213**. Absence of express statutory provision in relation to election being materially affected per se would not make application of the concept alien to Co-operative Court while determining the election dispute in exercise of its powers under section 91 of the Act. This concept would have to be applied in its proper perspective and with due care. Uniform application dehors the nature of the violation alleged to have been committed can hardly be spelt out as a principle of law. In the case of **B.K.Garad vs Nasik Merchants Co-op Bank Ltd AIR 1984 SC 192** the Supreme Court took the view that rules have a status of

subsidiary legislation but bye-law of the Co-operative Society can at best have the status of Article of Association of the company governed by the Companies Act, 1956. They are not law and are incapable of being treated as such. However, society is bound by its bye-laws but in case of conflict, the provisions of the statute prevail. Section 73 of the Act makes it mandatory that Managing Committee of the society has to be constituted not only in accordance with the Act and the Rules but also in accordance with the Bye-laws. Anything done or decision taken not in conformity with the bye-laws will clearly result in affecting the constitution of the Managing committee and infraction or violation of the provisions of section 73. Of course, these observations of the Division Bench of this Court in this case, prima facie, looked to beat variance of the judgment of the Supreme Court in the case of Co-operative Central Bank Ltd vs Addl.Industrial Tribunal, Andhra Pradesh, Hyderabad and others AIR1970 SC 245 but in fact when they are examined closely and harmoniously, there is no conflict between the two. The rules must get precedence over bye-laws and enforceability of bye-laws may not be equated to the statutory law but at the same time, they continued to bind the society and its members and they have no right to violate the same. Business of the society essentially thus may be carried out in consonance with the bye-laws. In the case of **Chapdgaon Vividh Karyakari Seva Sahakari Society Ltd and others 1989 Mh.L.J. 872** the Division Bench of this court even took a view that wrong exclusion of a member of a society from participating in the election to committee has a right to maintain election petition despite the language of Rule 74 which provides challenge to election by a voter or a candidate before the Commissioner. In the case of **Banwari Dass vs Sumer Chand (1974) 4 SCC 817** the Supreme Court clearly stated the law that an election contest is not an action at law or a suit in equity but a purely statutory proceeding unknown to common law and court possesses not common law powers. Its procedure powers and scope of remedy has to be controlled statutorily and in accordance with those provisions. In an election of the Managing Committee, preparation of electoral roll is intermediate stage and once the election process is set in motion, the general principle that under Article 226, the High Court would not interfere and leave the

parties to follow the statutory provision of invoking the election process or election procedure as the case may be. **Shri Sant Sadguru Janardhan Swami Sahakari Dugdha Utpadak Sanstha and another vs State of Maharashtra 2002 (1) Mh.L.J. 659.**

11. Admittedly, there is no provision in the Act pari materia to section 100 (1) (d) and the other provisions of Representation of Peoples Act, 1951 which require that the Cooperative Court should examine the concept of 'election being materially affected' by the irregularities, illegalities or other statutory violations. Absence of such provision the present Act indicates the mind of the legislature not to subject all irregularities, illegalities or violation tactics to the concept of election being 'materially affected'. It is the settled cannot of statutory interpretation that the principle of plain interpretation should be applied where the language of the provision is clear and rather unambiguous. It will be impermissible for the court to provide any strait jacket formula as panacea to the various situations that may arise in relation to any dispute of election to committee or notified society. The court, at best, can only lay down certain general percepts which would help the cooperative court and the High Court in dealing with the cases relating to matters of election. Section 91 of the Act provides for any dispute touching the election of the committee etc and also between whom the dispute should be and what does the dispute includes. This section either by specific expression or by necessary implication does not touch upon or prescribe any criteria/parameters which may be considered or adopted by the cooperative court while dealing with the disputes relating to the election. This is the grey area left by the legislature and would require the lacunae to be supplied by judicial interpretation but while supplying such a lacunae, the court has to ensure that the basic legislative character, object and methodology contemplated under the statutory provision is not altered or violated by such process.

12. The language of Section 91 being simple and unambiguous does not require the court to add or subtract the words therefrom or give it a meaning which may not be in consonance with the

object of the legislation. Reference can be made usefully to a Division Bench judgment of this court in the case of Miten s/o Shyamsunder Mohota (Goidan) and another vs Union of India (Writ Petition (Lodging) No.2412 of 2007, where this court held as under :

“ 14. This provision is intended to liberalise the provisions relating to divorce. Being aware of the existing provisions, report of the Law Commission and the need of the society still the Legislature chose not to add any proviso granting relaxation to the conditions imposed under section 13-B (1) and/or 13-B (2). It would not be permissible for the court to read the expression 'living separately for a period of one year or more' as by adding the word 'may' or for such period as the court in its discretion may consider appropriate. We shall shortly proceed to discuss the purpose of introduction of section 13-B and its object. It is a settled rule of interpretation that court while interpreting the statutory provisions would not add or subtract the words from the section nor would it give meaning to the language of the section other than what is intended on the plain reading of the provision. Reference can be made to the judgment of the Supreme Court in Vijalakshamma and another vs B.T.Shankar (2001) 4 SCC 558 where the court held as under :-

13. The laws relating to Municipalities, Gram Panchayats and even with regard to non-specified and non-notified societies do not contain provisions alike the Representation of Peoples Act. However, Rule 81 of the Maharashtra Specified Co-operative Societies Election to Committee Rules, 1971 (hereinafter referred to as “the Rules”) is a provision pari materia to section 100 (1) (d) of the Representation of Peoples Act. The provisions of the Maharashtra Co-operative Societies Act, 1960 are primary provisions relating to relating to process of election in exercise of powers conferred under sections 144-F, 144-L and 144-X and their different sub-sections read with sub-section (1) of section 165 of the Act, the State Government of Maharashtra in exercise of its power had framed the said Rules to regulate the process of election to the different societies. However, there are hardly any specific provisions which deal with process of election or ground on which an election can be

set aside in the case of a non-specified or non-notified society. The general adjudicative powers are vested in the Tribunal in terms of section 91 which is expected to adopt its own procedure. Thus, the provisions under other laws or even under these provisions cannot be applied to the non-specified or non-notified societies in stricto sensu. The aggrieved person has to approach the Tribunal in accordance with the provisions of the sections of the Act itself. In the present case, we are concerned with the non-specified or non-notified society. Elections to the Managing Committee were declared on 14th February 2004 and 17 Managing Committee members were to be elected, 11 under the general category and remaining under different reserved categories. The votes were counted on 15th October 2004 and results were declared. 18 disputants had challenged the elections of the elected members on various grounds including the irregularities in election process as well as actual holding of election. It was also the ground taken that votes were not counted and even result of the election was changed. Thus, according to them elections suffered from irregularities as well as illegalities, Viewing it from a larger perspective, there could be two classes of cases in election petition: (1) where there is clear violation of provisions of the Act, the Rules and the Bye-laws having a mandatory character. Such class of cases may even include unfair practices like corrupt practices etc and (ii) where irregularities or improper practices are committed and they are not in conformity with the rules or bye-laws having non-mandatory character and are directory in nature. This classification would have to be determined by the Co-operative Court depending on the facts and circumstances of the case and in accordance with law. In the prior class of cases, it may not be absolutely necessary for the court to apply the principle of election being materially affected while in the later classes of cases, the application of such principle may be essential. In either of these class of cases, the purpose is that election should be 'pure and fair'. Fairness is relatable to procedure while pureness is to be tested in every facet of election process. This is the true doctrine applicable to any democratic process of election. Whatever be the status of the bye-laws, their sanctity cannot be entirely wiped out for lack of their statutory character. The object of the Act, Rules and the Bye-laws cumulatively read, is to ensure proper and fair election

and not to permit this to sub-serve illegalities or irregularities. Mainly such questions need to be determined by the Co-operative Court in exercise of its vast jurisdiction. It being a court of specific jurisdiction is expected to deal with the factual matrix and legal disputes raised in an election petition and in consonance with the settled principles of law. In the present case, the disputant had raised various objections and alleged that there is violation of rules and bye-laws.

14. Various grounds of challenge taken by the petitioner (disputant) have already been stated by us above. As per the findings of the Co-operative Court, majority of the grounds taken were correct and they had materially affected the result of the election. Once such a finding is found to be in consonance with the settled principles of law, hardly anything remains to be discussed. Statements of object and reasons of an Act are not of great help in interpreting clear and unambiguous words or language of the provision. However, they are relevant considerations wherever there is lacunae in statutory provisions. The object of the said Act was to pay attention to the growing role of co-operative movement. The growing diversification of activities through the cooperative movement, thus had caused certain attendant problems in respect of the conduct of the business activities and democratic set up in a co-operative society. With an intent to streamline the working of co-operative societies and to provide appropriate and fair election process, the said Act was enacted and subsequently, amended. Despite language of section 91 even a general concept that election process has to be pure and fair and election disputes need to be adjudicated upon expeditiously can hardly be disputed. The concept of pure and fair election will take into its ambit the principle of election being materially affected, of course depending upon the facts and circumstances of a given case. Wherever there is violation of a substantive and/or mandatory provision which affects the very root of the election process, it cannot be said that in such circumstances, it would be obligatory for the disputant or petitioner to prove that election was materially affected. For example, where a member whose nomination has been accepted was disqualified from membership prior to filing of nomination, such a member had

contested the election and succeeded. A person may file his nomination to contest the election as an associate member and whose name does not stand in the share certificate (Bye-law 18) or had earned disqualification in terms of rule 19 (2) or the relevant bye-laws. In other words, violation of such statutory provisions rules and bye-laws which in their contention are mandatory and which go to the very root of the election process, it would not be necessary in our opinion that the candidate should prove that in addition to such violation, the election result was also materially affected. Under the scheme of the said Act it is not within the powers of anybody to condone non-compliance of such mandatory provisions. Thus, there are not the cases where a discretion is vested with any forum to permit alteration of a status or a situation to entry period. While in other cases where there are irregularities or practices adopted which do not violate mandatory provisions and are directory and procedural in nature it only amounts to irregularities in those cases, it will be appropriate for the candidate to show to the satisfaction of the co-operative court that even election results was materially affected by such irregularities. For example as alleged by the disputant there was improper voting at one of the booths and thus the validity of the entire election process was questioned. In that event, the possibility of the fact that even if all votes expected to be polled in that booth are taken against the succeeded candidate, still it may not affect the result of the election.”

16. It is thus not possible either to accept a complete stringent approach that in every case it is obligatory upon the applicant or the disputant to prove that the result of the election has been materially affected. Equally unjustifiable would be the approach that in every case the applicant should prove that election has been materially affected. A balanced approach is required to be adopted by the Co-operative Court with reference to the facts of a given case. We have already noticed that it is neither permissible nor possible to state a straitjacket formula which shall universally be applicable to all cases particularly in absence of any specific or implied legislative provision or intent. The Co-operative Court is expected to exercise its jurisdiction and discretion in accordance with the settled canons

of election laws, keeping in view the fact that it has a specified or limited jurisdiction. The paramount consideration being whether the violation complained of is that of a mandatory provision, rule or bye-laws or an irregularity which are of directory or procedural nature. Wherever mandatory provision or bye-law has been violated or the practices adopted are of such nature which would infringe the very basic concept of pure and fair election, it may not be necessary for the disputant to show that the result of the election has been materially affected. In other cases, it may be necessary to show that besides the irregularity or objectionable practice adopted by the elected candidate the result of the election has been materially affected.”

9. Hence, all grounds including validity of the electoral roll, validity of nominations, corrupt practices, irregularities and illegalities in electoral process as a whole can be raised in the dispute. The parties to the dispute, necessary and proper, the reliefs that can be sought and granted all depends upon the facts and circumstances in each case. No general rule can be laid down in that behalf. The decided cases under the statutes dealing with elections provide sufficient guidelines in that behalf. The legal principles would have to be applied to the facts in each case. However, merely alleging irregularities and illegalities would not be enough. In all such cases, proof will have to be brought and which would demonstrate that the purity and sanctity of the electoral process is adversely and prejudicially affected. Further, it will have to be proved that

the breach, if any, is of a mandatory or procedural provision. In this behalf, a reference can be made to the recent pronouncement of the Hon'ble Supreme Court in VIPULBHAI M.CHAUDHARY VS GUJRAT CO-OPERATIVE MILK MARKETING FEDERATION LIMITED & ors reported in 2015 (3) ABR 472. The Court holds thus:

44. “ It may be seen that all these decisions dealt with the pre-Ninety Seventh Amendment status of the cooperative societies. 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.

46. The provision simply deals with removal for misconduct or persistent default/non-performance. A person with good conduct may still not earn the confidence of the people who selected him to the office. The very concept of cooperation is to work jointly towards the same end. Unless there is co-operativeness among the elected co-operators who constitute the Governing Body for achieving the object for which the society is constituted and for which those representatives are elected by the members entrusting them with the management of affairs of the society, there will be total chaos. Co-operation among the co-operators is the essence of democratic functioning of a cooperative society. If there is no democracy in a co-operative society, it ceases to be a co-operative society as conceived by the Constitution of India under the Ninety Seventh Amendment.

47. There is no quarrel with the well-settled proposition that a right to elect is not a fundamental right nor a common law right; it is a statutory right, and any question relating to election has to be resorted within the four corners of the Act as held by this Court in *Jyoti Basu and others v. Debi Ghosal and others*.

48. In the background of the constitutional mandate, the question is

not what the statute does say but what the statute must say. If the Act or the Rules or the Bye-laws do not say what they should say in terms of the Constitution, it is the duty of the court to read the constitutional spirit and concept into the Acts.

... “In so far as in its Act Parliament does not convey its intention clearly, expressly and completely, it is taken to require the enforcement agencies who are charged with the duty of applying legislation to spell out the detail of its legal meaning. This may be done either- (a) by finding and declaring implications in the words used by the legislator, or (b) by regarding the breadth or other obscurity of the express language as conferring a delegated legislative power to elaborate its meaning in accordance with public policy (including legal policy) and the purpose of the legislation”.

53. The co-operative society registered under the Central or the State Act is bound to function as a democratic institution and conduct its affairs based on democratic principles. Democratic functioning on democratic principles is to be reflected in the respective Acts or Rules or Bye-laws both on the principle and procedure. If not, it is for the court to read the democratic principles into the Act or Rules or Bye-laws. If a procedure is prescribed in any Act or Rule or Bye-law regarding election of an office bearer by the Board, as defined under Article 243ZH(b) of the Constitution of India, and for removal thereof, by way of a motion of no confidence, the same procedure has to be followed. In case there is no express provision under the Act or Rules or Bye-laws for removal of an office bearer, such office bearer is liable to be removed in the event of loss of confidence by following the same procedure by which he was elected to office.”

10. As far as the second argument of Mr.Oak learned counsel for the petitioners is concerned, once we have noted the scheme of the Rules and there is a complete remedy to challenge the elections, then, issues on merits need not be gone into. The authority while dealing with the claims and objections has held there is divergence or difference between those

identified as eligible slum dwellers and those whose names were found in the provisional voter's list. Similarly, there are reasons assigned as to why other persons could not be enrolled and enlisted as voters. We are not in a position to interfere with the same in our limited jurisdiction. We are not concerned presently as to who were eligible. We cannot scrutinize the list and find out as to whether all compliances have been made. Merely because the list of eligible slum dwellers prepared by the authorities is placed side by side, we cannot assume that names therein are necessarily to be included in the voter's list and without any further scrutiny. What scrutiny could have been undertaken and to what extent are all matters raising disputed questions of fact and which cannot be decided in our writ jurisdiction. Even if there is no power to make any further scrutiny or verification and as contended, that issue can be conveniently raised in a election dispute.

11. In the circumstances, without expressing any opinion on the merits of the controversy and factual issues related thereto, we would dispose of this writ petition. We are disposing it of by holding that the petitioners have an alternate equally efficacious remedy of an election

dispute and contemplated by Rule 78/section 91 of the Maharashtra Co-operative Societies Act, 1960.

12. Reliance on the two judgments fails to impress us. In the first judgment of the single Judge, the names of more than 97% members of the specified co-operative society were excluded from the list of voters and their applications for registering them as voters in the final list of voters had been rejected under sub-rule (7) of rule 6 of the Maharashtra Specified Co-operative Societies Elections to Committee Rules, 1971 on untenable and unjustifiable grounds, that the High Court interfered in its writ jurisdiction. Thus, out of 100 names and taken as an illustration as eligible voters 97% members came to be illegally and erroneously excluded. No adjudication as to why they were declared as ineligible had taken place. That enabled the learned single Judge to exercise his writ jurisdiction.

13. In the Division Bench matter in the case of **SHIVAJI MAROTRAO SURYAWANSHI SUPRA**, the issue was somewhat identical. There were 363 non-borrowers voters, out of which 122 persons were not

residents of the village in question. All these persons though included in the voter's list could not be the members of the society. The Division Bench found that the question was not of one or two voters but the entire list of 352 voters appeared to be bogus. These non-borrower voters outnumbered the borrower members by great margin. Thus, in both the decisions, in peculiar facts and circumstances this Court exercised its writ jurisdiction. These judgments do not lay down any general principles of law but are rendered essentially in the factual background about which there was never any dispute. They do not assist the petitioner before us.

14. In the circumstances, we do not find that the petitioner is remediless and therefore, the petition cannot be entertained. The writ petition is accordingly dismissed. No costs.

G.S.KULKARNI, J.

S.C.DHARMADHIKARI, J.