

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

WP(C).No. 16889 of 2015 (I)

PETITIONERS:

1. JAMALUDHEEN, PEEDIKAYIL HOUSE,
RANNY P.O, RANNY, PATHANAMTHITTA DIST.
2. ABEEDHA MOHAMMED, PEEDIKAYIL HOUSE,
RANNY P.O, RANNY.
3. P.I THOMAS, PARATHODATHIL HOUSE,
MANDIRAM P.O, RANNY.
4. P.M ISMAIL, KOIPURATHU PEEDIKAYIL HOUSE,
RANNI P.O, RANNI.
5. T.K BABU, THOMBUMANNIL HOUSE,
MANDIRAM P.O, RANNY.

BY ADV. SRI.UNNI. K.K. (EZHUMATTOOR)

RESPONDENTS:

1. STATE OF KERALA REP. BY THE SECRETARY,
CO-OPERATION DEPARTMENT, GOVT. OF KERALA,
GOVT.SECRETARIAT, THIRUVANANTHAPURAM-695 001.
2. REGISTRAR OF CO-OPERATIVE SOCIETIES,
OFFICE OF REGISTRAR OF CO-OPERATIVE SOCIETIES,
THIRUVANANTHAPURAM-695 001.
3. JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES,
PATHANAMTHITTA-689 645.
4. THE CHIEF ELECTION COMMISSIONER, CO-OPERATIVE
ELECTION COMMISSION, HOUSING BOARD BUILDING,
THIRUVANANTHAPURAM-695 001.
5. ELECTORAL OFFICER (ASST. REGISTRAR OF CO-OPERATIVE
SOCIETIES), O/O ASST. REGISTRAR OF CO-OPERATIVE
SOCIETIES, RANNY-689 672.
6. RETURNING OFFICER (UNIT INSPECTOR, RANNI),
O/O ASST. REGISTRAR OF CO-OPERATIVE SOCIETIES
(GENERAL), RANNI-689 672.

7. PATHANAMTHITTA DISTRICT THOZHIL DAYAKA
WELFARE CO-OPERATIVE SOCIETY LTD NO.PT 277 (JOBCO),
RANNI P.O, RANNI-689 672 REPRESENTED BY ITS
HONOURARY SECRETARY.

ADDL. RESPONDENT IMPLEADED

8. SABUKUTTY JOY, PUTHUCHIRAYIL HOUSE,
MANDIRAM PO., KONNI, PATHANAMTHITTA.

IMPLEADED AS PER ORDER DATED 09.06.2015 IN IA 7680/15.

ADDL. R8 BY ADV. SRI.P.N.MOHANAN

R7 BY ADVS. SRI.V.G.ARUN

SRI.T.R.HARIKUMAR

R1 TO R6 BY GOVERNMENT PLEADER SRI.G.GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
09-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 16889 of 2015 (I)

PETITIONER'S' EXHIBITS:

EXT.P1 TRUE COPY OF THE REGISTRATION CERTIFICATE ISSUED BY THE 3RD RESPONDENT

EXT.P2 TRUE COPY OF THE BYE-LAW

EXT.P3 TRUE COPY OF THE DETAILS OF PROMOTERS AND THE TEMPORARY BOARD MEMBERS ISSUED UNDER RIGHT TO INFORMATION

EXT.P4 TRUE COPY OF THE RECEIPTS ISSUED BY THE 7TH RESPONDENT SOCIETY WITH REGARD TO THE PETITIONERS

EXT.P5 TRUE COPY OF THE ELECTION NOTIFICATION ISSUED BY THE 4TH RESPONDENT ON 8-5-2015

EXT.P6 TRUE COPY OF THE VOTERS LIST PUBLISHED BY THE ELECTORAL OFFICER

EXT.P7 TRUE COPY OF THE COMPLAINT SUBMITTED BY SABUKUTTY JOY, ONE OF THE PROMOTER TO THE 3RD RESPONDENT

EXT.P8 TRUE COPY OF THE COMPLAINT SUBMITTED TO THE 4TH RESPONDENT BY 3 PROMOTERS

EXT.P9 TRUE COPY OF THE COMPLAINT SUBMITTED TO THE 2ND RESPONDENT BY 3 PROMOTERS

EXT.P10 TRUE COPY OF THE RECEIPT ISSUED WITH REGARD TO ONE K.K.ZACHARIAH AND SEBA ABRAHAM

RESPONDENT'S EXHIBITS:

EXT. R7(a) A TRUE COPY OF THE RESOLUTION NO.24/2015 DATED 06.06.2015 OF THE MANAGING COMMITTEE OF THE SEVENTH RESPONDENT SOCIETY

EXT. R7(b) A TRUE COPY OF THE COMPLAINT FILED BY THE PRESIDENT OF THE SEVENTH RESPONDENT SOCIETY BEFORE THE CIRCLE INSPECTOR OF POLICE, RANNY DATED 06.06.2015

EXT. R7(c) A TRUE COPY OF THE RECEIPT ISSUED FROM THE RANNY POLICE STATION DATED 06.06.2015

EXT. R7(d) A TRUE COPY OF THE RECEIPT NO.127 DATED 13.04.2015 ISSUED TO JEBIN GEORGE JACOB

EXT. R7(d)(i) A TRUE COPY OF THE RECEIPT NO.128 DATED 13.04.2015 ISSUED TO SHEBA SABUKUTTY

EXT. R7(d)(ii) A TRUE COPY OF THE RECEIPT NO.129 DATED 13.04.2015 ISSUED TO SIBY JOY

EXT. R7(d)(iii) A TRUE COPY OF THE RECEIPT NO.130 DATED 13.04.2015
ISSUED TO SUJA SIBY

EXT. R7(d)(iv) A TRUE COPY OF THE RECEIPT NO.141 DATED 13.04.2015
ISSUED TO PRESILLA SIBY

EXT. R7(e) A TRUE COPY OF THE MINUTES OF THE MANAGING COMMITTEE
MEETING DATED 13.04.2015

EXT. R8(a) A TRUE COPY OF THE MINUTES REGARDING ADMISSION OF
MEMBERS DATED 13.04.2015

EXT. R8(b) A TRUE COPY OF THE RECEIPT DATED 06.04.2015

EXT. R8(c) A TRUE COPY OF THE RECEIPT DATED 06.04.2015

EXT. R8(d) A TRUE COPY OF THE COMPLAINT BEFORE THE ELECTION
COMMISSION DATED 2.6.2015

EXT. R8(e) A TRUE COPY OF THE COMPLAINT FILED BEFORE THE
REGISTRAR

EXT. R8(f) A TRUE COPY OF THE PHOTOGRAPHS TAKEN ON 19.06.2015 AT
11.35

EXT R8(g) TRUE COPY OF THE LETTER DATED 10.7.2015 ISSUED BY FOUR
DIRECTOR BOARD MEMBERS

EXT. R8(h) A TRUE COPY OF THE PETITION FILED BEFORE THE CIRCLE
INSPECTOR OF POLICE WITH RECEIPT

EXT. R8(i) TRUE COPY OF THE ORDER DATED 17.08.2015 OF THE JOINT
REGISTRAR OF CO-OPERATIVE SOCIETY

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.16889 of 2015 I

Dated this the 9th day of November, 2015

JUDGMENT

Facts:

The petitioners, five in number, claiming to be the members of the seventh respondent Society, a newly formed Society, have approached this Court assailing the action of the respondents in preparing Exhibit P6 'Final Voters List' excluding the majority members and going ahead with the elections based on the said voters list. In fact, as a matter of subsequent developments, in the writ petition, this Court granted an interim direction on 16.06.2015 that any election to be held shall be subject to the result of the writ petition. As a result, the respondent Society went ahead and conducted the elections.

2. Briefly stated, the facts are that the seventh respondent is a newly formed Society with Exhibit P2 bye-

laws, as is evident from Exhibit P1 certificate of registration dated 23.03.2015. At the time of its registration, the Society has shown Ranny, Pathanamthitta District, as the place of its registered office. Initially, having certain promoters, whose names have been reflected in Exhibit P3, the respondent Society went on providing membership to other persons, all of whom are said to have come to 812.

3. In the light of the statutory requirement under Rule 7 of the Kerala Co-operative Societies Rules, 1969 ('the Rules' for brevity), its office bearers allegedly had a meeting on 13.04.2015 admitting all 812 persons as its members, as is evident from Exhibit R8(a) minutes of the meeting. Soon thereafter, the Society is said to have had its first General Body meeting.

4. In its initial meeting on 13.04.2015, the Society seems to have taken a decision to conduct elections, allegedly with only 89 members on the rolls. Acting on the

Society's request, the Election Commission, the fourth respondent, issued Exhibit P5 notification dated 08.05.2015 proposing to conduct elections on 19.06.2015. In the interim, the eighth respondent, the Honorary Secretary, resigned his position. Nevertheless, when Exhibit P6 final voters list was published, it reflected only 89 members, instead of 812 members. Aggrieved, before the election could actually take place, the petitioners filed the present writ petition on 04.06.2015 assailing, inter alia, Exhibit P6 final voters list.

5. On parallel lines, the eighth respondent complained through Exhibit P7 to the Joint Registrar; through Exhibit P8 to the Election Commission; and through Exhibit P9 to the Registrar concerning what is said to be the wholesale elimination of the names from Exhibit P6 final voters list.

6. In the wake of the complaint lodged by the eighth respondent, the Registrar has directed the Joint Registrar to

conduct an enquiry and report to him on the veracity of Exhibit P9 allegations. As a result, the Assistant Registrar, having conducted an enquiry, submitted Exhibit R8(i) report to the Registrar. As has already been indicated above, this Court in its interim order dated 16.06.2015 did not desire to interdict the election process; instead, it permitted the respondent Society to go ahead with the elections to the Managing Committee on the scheduled date, i.e., 19.06.2015. But the Court made it explicit that the result shall be subject to the outcome of the writ petition.

Submissions:

Petitioners':

7. In the above factual background, Sri.Unni.K.K., the learned counsel for the petitioner, has strenuously contended that the persons presently at the helm of the affairs of the respondent Society have eliminated the petitioners and many other persons from Exhibit P6 final

voters list without any justification and, in fact, with mal intent. In elaboration of his submissions, the learned counsel has contended that the entire process of scrutinising the voters list and issuing the final voters list was shrouded in secrecy. According to him, the Society had its office in a particular building taken on the lease, for which in Exhibit R8(a) minutes of the meeting a decision was taken even to pay rent of ₹ 14,000/-. But all through the Society had its affairs conducted at some other place without any notice to the members.

8. The learned counsel has further submitted that since the petitioners were not informed of the objections to be filed against the preliminary voters list, they had no occasion to know about Exhibit P6 final voters list issued by the respondent Society. He has specifically contended that the petitioners came to know about the wholesale exclusion of the members only on 30.05.2015. In response to a query

from the Court why the petitioners did not take recourse to the statutory remedial mechanism concerning the final voters list, the learned counsel has submitted that since the elections were to be held on 19.06.2015, they had hardly been left with any time to go through the statutory process of challenging Exhibit P6. Under those circumstances, the petitioners, contends the learned counsel, have rushed to this Court by filing the writ petition on 04.06.2015.

9. The learned counsel has submitted that since the petitioners have duly become the members having paid the requisite fee, etc., their exclusion from the final voters list is totally illegal and arbitrary and that they have been deprived of an opportunity not only to be the members of the Society but also to contest the election.

Eighth Respondent's:

10. Sri.P.N.Mohanan, the learned counsel for the eighth respondent, having a common cause with the

petitioners, substantially supported the submissions of the learned counsel for the petitioners. Apart from taking me through the entire record, the learned counsel has contended that the eighth respondent, being the founding honorary secretary, was compelled to resign from the post only because of the illegal and arbitrary methods adopted by the rest of the office bearers. In elaboration, the learned counsel has contended that, initially, the Society in Exhibit R8(a) minutes of the meeting took various decisions including that of approving all the 812 members to be the members of the Society. The exclusion of 723 members in the final voters list was without any notice to the affected persons, much less with any justification.

11. In furtherance of the submissions made by the learned counsel for the petitioners, the learned counsel for the eighth respondent has reiterated that the Society carried on its affairs in an unauthorised place, rather than

its registered place, until the election. In that regard, the learned counsel has placed reliance on Exhibit R8(f) photograph of the building where the respondent Society is said to have been located. Since the photograph, said to have been taken on the date when the election was held, clearly shows that the building remained closed, the learned counsel would contend that the Society never operated from the registered office. And, statutorily speaking, all the steps that have been taken by the respondent Society at some other place fall foul of Rule 35A of the Rules as well as Exhibit P5 election notification, contends the learned counsel.

12. The learned counsel has further submitted that Exhibit P6 final voters' list does not contain the details, such as father's/husband's name. According to him, the very Exhibit P6 final voters' list has been vitiated for not containing the full details regarding the members of the Society. In support of his submissions, the learned counsel

has placed reliance on **Joseph v. Kothamangalam Co-Op. M. Society Ltd.**¹, **Devassy v. Asst. Registrar of Co-operative Societies**², **Thankappan & others v. Co-operative Tribunal & others**³, **Gopalan v. Joint Registrar of Co-operative Societies**⁴, **Govindan v. Dy. Registrar of Co-operative Societies**⁵, and **Mavelikara Co-operative Housing Society Ltd. v. Alleppey District Co-operative Bank**⁶.

Seventh Respondent's:

13. Sri.V.G.Arun, the learned counsel for the seventh respondent Society, has strenuously contested the claims and contentions of the eighth respondent as well as the petitioners. To begin with, the learned counsel has submitted that the eighth respondent, being the honorary secretary, went on admitting members indiscriminately

¹ 1994(1) KLT 828

² 1976 KLT 40

³ 1979 KLT 528

⁴ 1985 KLT 446

⁵ 1983 KLT 1038

⁶ 1974 KLT 783

without the consent of other members of the Managing Committee selected from among the promoters. In this regard, the learned counsel has drawn my attention to Exhibit P4 admission receipt allegedly issued by the eighth respondent. According to him, it does not contain any seal. On the other hand, the receipts issued in favour of 89 members, whose names have been reflected in Exhibit P6 final voters'list, did contain the seal of the Society, apart from the signature of the Secretary.

14. It is also the specific contention of the learned counsel that the amounts collected by the eighth respondent from the prospective members had not been accounted for by him. The learned counsel has contrasted Exhibit R7(d) series of receipts containing the seal of the Society with Exhibit P4 receipts issued in favour of the persons excluded from the final voters list. According to the learned counsel, the eighth respondent resigned from the post of Secretary

when questioned by the other members of the Managing Committee about his illegal activities. In other words, it is the contention of the learned counsel that only to avoid adverse consequences, has the eighth respondent given up his position in the Society.

15. The learned counsel has submitted that since the eighth respondent has not accounted for the money he has collected in the name of the membership fee, etc., the respondent Society was constrained to file Exhibit R7(b) police complaint. The learned counsel has also drawn my attention to Exhibit R7(c) dated 13.04.2015, a resolution said to have been passed by the Managing Committee admitting 89 members. Contrasting Exhibit R7(c) with Exhibit R8(a) minutes of the meeting, the learned counsel has further contended that even the Assistant Registrar, who conducted an enquiry on the direction of the Registrar, has placed on record through his counter affidavit that

Exhibit R8(a) is not genuine. In sum and substance, the learned counsel has contended that apart from 89 members, no other person has been legitimately admitted as a member of the Society.

16. Drawing my attention to the statutory scheme, the learned counsel has contended that Section 16 of the Kerala Co-operative Societies Act, 1969 ('the Act' for brevity) delineates the procedure concerning the membership of a society. According to him, Section 16(2A) of the Act provides for the remedial mechanism to an aggrieved person who is said to have been denied membership in a society. He has further referred to Section 19 of the Act and also Rules 16 and 20 of the Rules to hammer home his point that no member shall exercise the rights of a member unless he has duly paid the requisite fee, etc.

17. The learned counsel has placed reliance on **Nedumon Service Co-Operative Bank v. Joint Registrar of Co-Operative**⁷ for the proposition that a person does not get any indefeasible right to claim membership in a society unless all the statutory formalities have been complied with. The learned counsel has contended that the eighth respondent being fully aware of Exhibit P6 final voters' list submitted his nomination to contest the election. Only when it was rejected for his having not paid the nomination fee, has the eighth respondent turned hostile and set up the petitioners to question the acts of the Managing Committee. It is the specific contention of the learned counsel that the eighth respondent, having not challenged the rejection of his nomination, is estopped from questioning Exhibit P6 voters' list, based on which alone he has filed his nomination.

⁷ 2014 (4) KLT SN 63 (C.No.78)

18. Eventually, the learned counsel has contended that the petitioners cannot espouse the cause of rest of the persons who have been allegedly denied membership.

19. Drawing my attention to Section 69(2)(c) of the Act and Rule 35A of the Rules, which form according to the learned counsel a complete code, he has submitted that the petitioners, at best, can espouse their cause concerning only their membership, and that must be before a competent forum, at best, as has been prescribed under Section 69 of the Act.

20. Eventually, as regards shifting of the premises, the learned counsel would contend that the petitioners as well as the eighth respondent have all along been aware of the fact that the society in its initial stages carried on its operations in a mini auditorium of another society, namely Pazhavangadikkara Service Co-operative Society. In this regard, the learned counsel has drawn my attention to

paragraph 3 of the counter-affidavit filed by the fifth respondent and has further contended that sufficient measures have been taken by the respondent Society to inform all the members concerned about the election process, including the scrutiny of the preliminary voters list.

21. In sum and substance, it is the contention of the learned counsel for the respondent Society that the Society functioning at some other place has not prejudiced the interests of any of the members of the Society. And, in particular, it is within their knowledge. The learned counsel has placed reliance on **Muhammad Ali v. State Election Commission**⁸ and **Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra**⁹. He has strenuously contended that neither the petitioners nor the eighth respondent has placed any material before the Court to establish the

⁸ 2006 (3) KLT 496

⁹ (2001) 8 SCC 509

genuineness of Exhibit R8(a), the minutes of the meeting, which is held by the Assistant Registrar to have been fabricated.

22. The learned counsel for the petitioners, in reply, has submitted that not only Exhibit P4 receipt but also Exhibit P10 receipt issued by the same Secretary is without any seal of the Society. But the person whose name has been reflected in Exhibit P10 was given membership. The learned counsel has also pointed out that Exhibit R7(d)(i), which is said to be the genuine receipt, according to the respondent Society, was issued by the eighth respondent subsequent to Exhibit P4 receipt. The learned counsel inferentially would contend that it is preposterous to assume that the eighth respondent initially committed irregularities in admitting the members but later rectified himself, for the Society accepted the membership of persons who got admitted by the Secretary subsequently.

23. Heard the learned counsel for the petitioners and the learned counsel for the seventh respondent, as well as the learned Government Pleader, apart from perusing the record.

Issues:

I. Whether Exhibit P6 voters' list has been vitiated for non-compliance with the statutory provisions as regards calling for objections and determining the final voters list?

II. Whether the petitioners have an efficacious alternative remedy concerning the denial of membership?

III. Whether Exhibit R8(a) can be placed reliance on to conclude that the Managing Committee has accepted the membership of all the 812 persons? and

IV. Whether in the light of the irregularities, if any, committed by the respondent Society, is the election held already required to be set aside?

Issue Nos.I & II:

Voters' List & Alternative Remedy:

24. It is one of the principal contentions of the petitioners that Exhibit P6 voters' list has been vitiated for non-compliance with the statutory provisions as regards

calling for the objections and then determining the final voters' list. To appreciate this contention, we may examine the statutory scheme in that regard. Section 16 of the Act prescribes the parameters as to who can become the members of a society. Further, sub-section (2A) of Section 16 provides for the remedial mechanism concerning consideration of an application for membership.

25. If any application for membership is not disposed of within two months from the date of receipt, the person aggrieved may complain in writing to the Registrar, who in turn, shall determine whether the membership shall be given to the aggrieved person. Sub-section (2B) of Section 16 provides for further remedial echelons. If the power under sub-section (2A) is exercised by a person on whom the powers of the Registrar are conferred, in the event of his not disposing of the application within the stipulated time, the aggrieved person can complain to the Registrar. If

the Registrar is not the authority under sub-section (2A), the aggrieved person shall approach the Government under sub-section (2B)(b) of Section 16 of the Act.

26. In *Devassy (supra)*, a learned Single Judge of this Court has observed that the proper electoral roll is a fundamental factor before the election is actually held. If the complaint is that no such roll has been prepared in accordance with the Rules, this Court can certainly step in even before the election is actually held and prevent the election being held on the imperfect electoral rolls. Indeed, this Court can, but only at the behest of those who have been aggrieved. Out of hundreds who are said to have been omitted from the voters' list, only five have approached this Court.

27. In *Thankappan (supra)*, this Court has held that the procedure mandated by Rule 35 of the Rules, i.e., the procedure regarding the conduct of elections to the

societies is mandatory and non-compliance thereof by itself is sufficient to invalidate the election. It is interesting to note that the very Rule 35 stands omitted from the statute book with effect from 26.11.2014.

28. In Mavelikara Co-operative Housing Society Ltd. (supra), a learned Single Judge has emphasised the importance of the procedural steps to be taken concerning the preparation of the voters' list: putting on notice the persons interested and eventually finalising the voters' list. In sum and substance, this Court has held that the procedure admits of no lapses.

29. In Govindan (supra), a learned Single Judge of this Court has held that to impugn an election conducted in violation of Rule 26 of the Rules, the alternative remedy of an Election Petition is no bar. In fact, Section 26 prohibits admission of members on the transfer of shares within thirty days prior to the date of election or the date of the General

Body meeting. Neither of the eventualities is present in the present writ petition.

30. In Joseph (supra), a learned Single Judge affirmed the proposition that the voters' list should specify the admission number, the name of the member, the name of the father or husband and the address of such member. This Court has further held that possession of identity card is not a necessary condition for acquisition of membership.

31. In Gopalan (supra), this Court has held that though Section 33(2) of the Act states that the Administrator shall have the power to discharge all or any of the functions of the committee or any officer of the society, the said power operates only in a limited area and for a limited purpose; namely, in the management of the affairs of the society. Having held thus, this Court has further observed that the enrolment of new members by the Administrator is impermissible. It is further held that in the

event of the election process having been initiated, this Court can interfere notwithstanding the statutory remedy being available.

32. In Harbans Lal (supra), a learned Single Judge of this Court has held that a person would come within the definition of member only on being admitted to membership of the society in accordance with the procedure prescribed under Rule 16 of the Rules. Unless a person has been admitted to the membership of the society in accordance with the Act and the Rules, he cannot claim the benefit of protection provided under sub-rules (3) and (4) of Rule 16.

33. In Shri Sant Sadguru Janardan Swami (supra), the Hon'ble Supreme Court, while interpreting the provisions of the Maharashtra Specified Co-operative Societies Elections to Committees Rules 1971, has held that breach or non-compliance with the mandatory provisions of the Rules during preparation of the electoral roll can be

challenged in an Election Petition. According to their Lordships, once an election process has already commenced, the courts should be slow to interfere by exercising their powers under Article 226 of the Constitution.

34. In *Muhammad Ali* (supra), this Court has held, while interpreting the Kerala Panchayat Raj (Registration of Electors) Rules, 1994, that unless an objection is made to the draft voters' list, a subsequent challenge will not lie. It has further held that in the matters of election, the courts are required to observe self-imposed limitations and as a natural corollary, cannot order correction of the electoral rolls.

35. In the present instance, the eighth respondent as well as the petitioners has contended that the claim of 723 persons has been disregarded by the Managing Committee of the Society. I do not see any material having been placed

on record by either the petitioners or the eighth respondent that those 723 persons have taken recourse to sub-sections (2A) or (2B) of Section 16 of the Act.

36. Further, it is not in dispute that save the five persons, who are said to be part of those 723 excluded persons, no other person has come before this Court ventilating his grievance. There can be no cavil regarding the proposition that only the aggrieved persons having been denied the membership can seek judicial redressal. In other words, the petitioners cannot espouse before this Court the cause of the rest of the allegedly excluded persons.

37. Section 19 of the Act makes it clear that no member of the Society shall exercise his rights unless he has made such payment to the society irrespective of the membership or has acquired an interest in such society, as may be prescribed by the Rules or the bye-laws.

38. Further, Rules 16 to 20 of the Rules delineate the procedural nitty-gritty concerning how a person gets the membership. In the present instance, in the face of the fact that apart from the petitioners, no other person has approached this Court, it is not possible to determine the justifiability as regards exclusion of 723 persons from being the members of the society. Issue Nos.I & II are answered thus.

Issue No.III:

Resolutions-Have they been forged?

39. The learned counsel for the petitioners has contended that Exhibit R8(a) is the resolution initially passed by the Managing Committee, first, admitting all the 812 persons as the members of the society; second, requesting the Election Commission to conduct election on the date specified therein. On the other hand, the seventh respondent Society contends that the eighth respondent has

fabricated Exhibit R8(a). The Society also contends that Exhibit R7(c) is the resolution that was passed admitting 89 eligible persons and also requesting the Election Commission to conduct the election.

40. Indeed, the issue whether Exhibit R8(a) or Exhibit R7(c) is genuine is in the realm of a disputed question of fact. The learned counsel on either side has also brought to my notice that there are criminal cases registered concerning who fabricated the documents. In such an event, it is not appropriate for this Court to render a definitive pronouncement on the issue concerning the genuineness of those two exhibits.

41. This Court is, nevertheless, desirous of rendering only a prima facie finding to the extent required for adjudicating the dispute in the present lis. In that context, I abundantly make it clear that the opinion being voiced presently shall not be taken as a conclusive pronouncement

on the merit of the matter regarding the issue of fabrication. Needless to observe that if any Investigating Agency has been seized of the issue, it shall proceed further uninfluenced by the observations thus being made.

42. As I have qualified my observations that the finding would be only prima facie, I must state that the Assistant Registrar, the fifth respondent, earlier on the direction of the Registrar, conducted an enquiry into the issue of excluding the members. It was based on the complaint made by the eighth respondent. He did submit a report.

43. Pertinently, the fifth respondent has filed a counter affidavit placing on record that the eighth respondent, taking advantage of the fact that he had the custody of the Minutes Book and Receipt Book, fabricated Exhibit R8(a). On the other hand, he has endorsed the correctness of Exhibit R7(e).

44. Be that as it may, I leave the issue inconclusive save to the extent of prima facie observation, especially based on the fifth respondent's averment in the counter affidavit, that Exhibit R8(a) has been fabricated. At any rate, even if Exhibit R8(a) were to be believed to be genuine and that all the 812 persons had already been admitted, the fact, nevertheless, remains that save the petitioners no other person has come before this Court claiming their right to be a member of the society. Thus, ex debito justitiae, the issue is left inconclusive. Prima facie, I observe that the authorities acting on Exhibit R7(e) were satisfied about its genuineness, rightly proceeded further, and forwarded the Society's request to the Election Commission for conducting the elections.

Issue No.IV:

The Premises:

45. It is the contention of the eighth respondent as

well as the petitioners that the election held on 19.06.2015 was vitiated on account of the fact that there had been procedural irregularities. In dilation, they contended that before finalising Exhibit P6 voters' list, the Managing Committee gave no opportunity to the members to raise their objections. The other contention is that the Society carried on its operations at some other place than at its registered office.

46. It is not in dispute that the Society had its first General Body meeting on 26.03.2015 in the Mini Auditorium of the Pazhavangadikara Service Co-operative Bank Ltd., Ranni. Indeed, the Society may have taken a particular building on lease and resolved to pay rent to the said building. That accepted, the seventh respondent Society, however, contends that before it could move its operations into the demised building, it needed to have the basic infrastructure established therein. As it took some time,

they continued, in the meanwhile, to have their operations at the Mini Auditorium, Ranni, till the elections were held.

47. The assertion of the seventh respondent is that apart from the eighth respondent, then being the honorary secretary, even the petitioners have been too well aware to dispute this fact. What lends support to the contention of the seventh respondent is the counter affidavit of the fifth respondent, who enquired into the affairs of the Society and submitted a report to the Registrar.

48. Irrefutably, the fifth respondent, whose neutrality cannot be suspected, has stated in his counter affidavit that the Society carried on its day-to-day affairs in the Mini Auditorium mentioned above till the election was over. According to the said official, every person connected to the Society has ample knowledge about its carrying on the operations at the place mentioned rather than at its so-called registered office.

The Membership:

49. The fifth respondent has also asserted that the Society, as it has come out in the inspection, put all the 89 persons on notice concerning the finalisation of the voters' list and eventually issued Exhibit P6 final voters' list. Inferentially, it may be observed that so long as the rest of the 723 persons are not the members of the Society even in the preliminary voters' list owing to their initial exclusion, the question of putting them on notice as regards finalising the voters' list does not arise.

50. Indeed, the learned counsel for the seventh respondent has justified the exclusion of the petitioners from being the members on the ground that the receipts issued to them by the eighth respondent did not contain the seal of the Society. According to him, those receipts were issued by the eighth respondent in the name of admitting the petitioners without any valid approval by the rest of the

Managing Committee.

51. To the credit of the learned counsel for the petitioners, he has successfully refuted the said contention. Put differently, the learned counsel for the petitioners could demonstrate before this Court that certain receipts issued to some of the 89 persons have also not contained any seal of the Society, yet the Society never had any grievance about admitting those persons as members. Ipso facto, the exclusion of certain members on an excuse that the receipts produced by them did not contain the seal of the Society fails to carry any conviction, much less any justification.

52. In the facts and circumstances, this Court cannot but hold that the petitioners, five in number, ought to have been admitted as members. Especially, given the fact that they have been diligent in asserting their right and that they have provided cogent reason why they could not take recourse to the statutory remedy available under Section

16A of the Act concerning exclusion of their membership, this Court is of the opinion that the seventh respondent Society shall accord them the membership.

53. That said, this Court faces a question whether, in the wake of the petitioners' admission, it is essential to interdict the elections held earlier and order fresh elections. For the contention of the petitioners is that they have been deprived of an opportunity not only to vote but also to contest the elections. Plausible is the plea.

54. Adjusting the equities, I am of the considered opinion that it is too disproportionate a measure to hold that the entire issue has to be rolled back, and the clock has to be set back because the five persons are declared to be the members. In the interest of justice, I feel it appropriate to declare that the membership of the petitioners is prospective and from the date of the judgment they continue to exercise their rights as members.

About the Eighth Respondent:

55. To have a word about the eighth respondent, I may observe that he had been part of the Managing Committee until they could resolve to hold the elections. Evidently, he fell out and left the Society before the voters' list could be finalised. Nevertheless, having continued as a member he found his name reflected among the 89 members, and in fact he filed his nomination to contest the election. Though his nomination having been rejected on technicality, he did not choose to question it. In sum and substance, by his conduct, the eighth respondent is estopped from questioning either Exhibit P6 final voters' list or the election that has been held subsequently.

In the manner and to the extent indicated above, the writ petition is allowed. No order as to costs.

rv/tkv

'C.R.'

Dama Seshadri Naidu, Judge