

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 23RD DAY OF DECEMBER 2015/2ND POUSHA, 1937

WP(C).No. 38391 of 2015 (Y)

PETITIONERS:

1. SALLY SABU, W/O. K.J.SABU, KARIKKASERY HOUSE, THEKKENADA, VAIKOM P.O., KOTTAYAM DISTRICT.
2. T.J.THOMAS, S/O. JOSEPH, THERETH HOUSE, CHEMMANATHUKARA, VAIKOM P.O., KOTTAYAM DIST.
3. K.V.KARUNAKARA, S/O. VAVA, KOVETHARA HOUSE, VADAYAR P.O., THALAYOLAPARAMBU, KOTTAYAM DIST.
4. R.BABURAJ, S/O. RAJU, THETHOTHIL HOUSE, EAST GATE, VAIKOM P.O., KOTTAYAM DISTRICT.
5. CLINS SEBASTIAN, S/O. SEBASTIAN, CHETHAYIL HOUSE, MANGALAM, VAIKOM P.O., KOTTAYAM DISTRICT.
6. MIDHUN VARMA, S/O. MOHANA VARMA, PUTHUPANATHU MADOM, ARATTUKULANGARA, VAIKOM P.O., KOTTAYAM DISTRICT.

BY ADVS.SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

RESPONDENTS:

1. THE VAIKOM TALUK CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK LTD. NO. K 951, REPRESENTED BY ITS SECRETARY, VAIKOM, KOTTAYAM DISTRICT - 686 141.
2. THE ADMINISTRATIVE COMMITTEE OF THE VAIKOM TALUK CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK LTD. NO. K 951, REPRESENTED BY ITS CONVENOR, VAIKOM, KOTTAYAM DISTRICT - 686 141.
3. THE RETURNING OFFICER, VAIKOM TALUK CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK LTD. NO. K 951, VAIKOM, KOTTAYAM DISTRICT - 686 141, (OFFICE INSPECTOR, OFFICE OF THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), VAIKOM).
4. THE ELECTORAL OFFICER, VAIKOM TALUK CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK LTD. NO. K 951, VAIKOM, KOTTAYAM DISTRICT - 686 141 (ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), VAIKOM).

5. THE STATE CO-OPERATIVE ELECTION COMMISSION,
THIRUVANANTHAPURAM - 695 001.
6. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL),
KOTTAYAM, KOTTAYAM DISTRICT - 686 001.
7. PAULSON JOSEPH, VALIYATHARAYIL HOUSE,
CHEMMANATHU KARA P.O, VAIKOM,
KOTTAYAM DISTRICT - 686 141.
8. GEORGE JOSE, KOCHUVADAKARA, MANNAR, KUZHIKOL P.O.,
KADUTHURUTHY, VAIKOM, KOTTAYAM - 686 141 (SECRETARY
(UNDER SUSPENSION), VAIKOM TALUK CO-OPERATIVE
AGRICULTURAL AND RURAL DEVELOPMENT BANK LTD NO. K 951).

R1 BY ADV. SRI.P.N.MOHANAN

R3 TO R6 BY SPL.GOV'T. PLEADER SRI.D.SOMASUNDARAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
23-12-2015 ALONG WITH WPC. 38705/2015, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 38391 of 2015 (Y)

PETITIONER'S EXHIBITS:

EXT. P1 - A TRUE COPY OF THE ELECTION NOTIFICATION NO.NO.E(1) 4284/2015/S.C.E.C DATED 20.11.2015 ALONG WITH ENGLISH TRANSLATION.

EXT. P2 - A TRUE COPY OF THE JUDGMENT DATED 10.04.2015 IN WPC NO. 12180/2015.

EXT. P3 - A TRUE COPY OF THE JUDGMENT DATED 17.08.2015 IN WPC NO. 10821/2015.

EXT. P4 - A TRUE COPY OF THE ORDER NO.C.R.B 8375/15 DATED 27.11.2015 ISSUED BY THE 6TH RESPONDENT.

EXT. P5 - A TRUE COPY OF THE COMPLAINT SUBMITTED BY THE 1ST PETITIONER BEFORE THE ASSISTANT REGISTRAR, VAIKOM DATED 24.11.2015 ALONG WITH ENGLISH TRANSLATION.

EXT. P6 - A TRUE COPY OF THE COMPLAINT SUBMITTED BY THE 1ST PETITIONER BEFORE THE 6TH RESPONDENT DATED 26.11.2015 ALONG WITH ENGLISH TRANSLATION.

EXT. P7 - A TRUE COPY OF THE COMPLAINT SUBMITTED BY PETITIONERS 1 TO 4 BEFORE THE 5TH RESPONDENT DATED 28.11.2015 ALONG WITH ENGLISH TRANSLATION.

EXT. P8 - A TRUE COPY OF THE COMPLAINT DATED 30.11.2015 SUBMITTED BY PETITIONERS 1 TO 4 BEFORE THE 2ND RESPONDENT ALONG WITH ENGLISH TRANSLATION.

EXT. P9 - A TRUE COPY OF THE RELEVANT PAGES OF THE DRAFT VOTERS LIST CONTAINING THE NAMES AND DETAILS OF MEMBER NUMBERS A9001 TO A12935.

EXT. P10 - A TRUE COPY OF THE MEMBERSHIP RECEIPT DATED 30.09.2015 ISSUED IN THE NAME OF SREELAKSHMI R.

EXT. P11 - A TRUE COPY OF THE MEMBERSHIP RECEIPT DATED 05.10.2015 ISSUED IN THE NAME OF ONE SHAJI P.T.

EXT. P12 - A TRUE COPY OF THE MEMBERSHIP RECEIPT DATED 05.10.2015 ISSUED IN THE NAME OF ONE SIMLA SUNILDATH.

EXT. P13 - A TRUE COPY OF THE MEMBERSHIP RECEIPT DATED 03.11.2015 ISSUED IN THE NAME OF AKHIL MANOHARAN.

EXT. P14 - A TRUE COPY OF THE RELEVANT PAGES OF THE BYELAWS OF THE 1ST RESPONDENT SOCIETY

EXT. P15 - A TRUE COPY OF THE OBJECTION SUBMITTED BY THE PETITIONERS BEFORE THE 4TH RESPONDENT DATED 07.12.2015.

RESPONDENT'S EXHIBITS: NIL.

Dama Seshadri Naidu, J.

W.P.(C)Nos.38391 & 38705 of 2015

Dated this the 23rd day of December, 2015

COMMON JUDGMENT

Facts in Brief:

Two petitioners in W.P.(C)No.38705/2015 are the members of the fourth respondent Bank. Four of the six petitioners in W.P.(C)No.38391/2015 were the members of the erstwhile managing committee of the Bank. Initially on 31.10.2015, the managing committee resolved to request the Election Commission to conduct the election. Later, on 21.11.2015 petitioners 1 to 4 resigned from the managing committee.

2. Since all the petitioners in both the writ petitions, being the members of the fourth respondent Bank, have assailed Exhibit P2 election notification on almost identical grounds, this Court has decided to dispose of the writ

petitions through a common judgment. For the sake of convenience, I refer to the facts pleaded and the documents placed in W.P.(C)No.38705/2015.

3. In the wake of Exhibit P2 election notification issued on 20.11.2015 by the Election Commission deciding to hold elections on 03.01.2016, the petitioners have assailed the legality of the process adopted by the respondent Bank for conducting the election. Since the factual matrix is not elaborate, it can be unfolded through the submissions of the learned counsel for the parties on either side.

Submissions:

Petitioners' in W.P. (C) No.38705/2015:

4. Sri.George Poonthottam, the learned counsel for the petitioners in W.P.(C)No.38705/2015, has submitted that just days prior to the Bank resolving to conduct election and also on the very day when it resolved to conduct election, i.e., on 03.10.2015 and 31.10.2015, it admitted more than

four thousand members without any manner or method. According to him, the managing committee at the helm of the affairs took recourse to abuse of process in having en mass admissions of new members. It is the specific contention of the learned counsel that, in the process of inducting new members, the managing committee of the respondent Bank has grossly violated Section 16 of the Kerala Co-operative Societies Act ('the Act' for brevity) and Rule 16 of the Kerala Co-operative Societies Rules ('the Rules' for brevity), as well as Rule 35A(iv) of the very same Rules.

5. On the issue of elections on ward-basis, the learned counsel has contended that though the statute mandates that the list of new members should be approved, the said approval never took place. According to the learned counsel, the bye-laws and the statute mandate that the elections are to be held on ward-basis. And ipso facto the voters' list should be prepared on ward basis. Nevertheless,

the respondent Bank has decided to go ahead with elections without preparing the voters' list on ward basis.

6. Drawing my attention to Exhibit P9 objections, the learned counsel would further contend that though the petitioners submitted the said objections on 18.12.2015, the Returning Officer duly acknowledged its receipt, he did not, however, choose to pass any orders. In elaboration of his submissions, the learned counsel would contend that all the seven candidates who have submitted their nominations do not belong to the wards they have decided to contest from.

7. On the issue of membership, the learned counsel has submitted that the Rules have specifically mandated that each candidate desiring to be a member of a Society/Bank should individually submit an application along with the requisite fee. The Society/Bank, in turn, is required to examine each application and consider whether that particular candidate meets all the eligibility criteria so that he could be made a member of the society.

8. Nevertheless, in the present instance, the managing committee, according to the learned counsel, had been in a hurry to see that a large number of members were admitted at the last moment so as to tilt the electoral balances. It has, accordingly, given a go-by to any violation of the statutory mandate. The learned counsel has further contended that if the procedure prescribed under Section 16 of the Act and Rule 16 of the Rules were to be followed scrupulously, it would be impossible for the respondent Bank to have more than 4,000 members admitted in just two days.

9. As regards the issue of active members, the learned counsel has also submitted that in terms of Rule 18A of the Rules, it is mandatory that the Bank ought to have included only the active members in the voters' list.

Petitioners' in W.P.(C) No.38391/2015:

10. Sri.V.G.Arun, the learned counsel for the petitioners in W.P.(C)No.38391/2015, has submitted that a

perusal of Exhibit P9 voters' list speaks volumes about the manner and method adopted by the respondent Bank in preparing the list of electors. He has drawn my attention to certain gaps that remained in the columns of voters' details. In elaboration, the learned counsel has submitted that since the managing committee of the respondent Bank has decided to admit en mass members at the eleventh hour, it has committed many irregularities resulting in an incomplete, imperfect voters' list.

11. The learned counsel has drawn my attention to Exhibits P10, P11 and P12 receipts said to have been issued to the members who were admitted on 30.09.2015, 03.10.2015 and 03.11.2015. It is the particular contention of the learned counsel that all those members had their admission numbers in the series of 8,000; on the other hand, about 4,000 members who were admitted prior to them had the membership numbers in 9,000 series. The learned counsel has eventually drawn my attention to

Exhibit P3 judgment of this Court to hammer home his point that even this Court has directed the respondent Bank to ensure that the members are admitted after proper verification of their credentials, especially the identity and eligibility.

Respondent Bank's:

12. Per contra, Sri.P.N.Mohanan, the learned counsel for the fourth respondent, has submitted that the respondent Bank did admit members en bloc. Nevertheless, taking me through the entire counter affidavit filed by the respondent Bank, he would contend that the outgoing President with his recalcitrant conduct constrained the respondent Bank to take extreme measures to ensure that all eligible candidates found admitted into the fold of the respondent Bank.

13. In elaboration of his submissions, the learned counsel has submitted that the erstwhile President for about seven months blocked all admissions into the

respondent Bank. According to him, initially he ordered the administration not to disburse any applications for new membership. Later, he further directed the Secretary not to process the applications that had been received by then. Even the application money received was ordered to be kept in a suspense account.

14. The learned counsel has also contended that in view of the total illegal, unilateral ban on the membership at the behest of the erstwhile President, a couple of prospective members approached this Court and obtained judgments; this Court did direct the respondent Bank to issue applications to the prospective members without insisting on their identification or being present personally to receive the applications.

15. It is the specific contention of the learned counsel that the respondent Bank has followed the procedure to a perfection and ensured that only eligible members have been admitted. As regards the allegation

that all the members were given membership beginning with 9,000 series, whereas certain other members who got admitted later had the membership in 8,000 series; the learned counsel has submitted that most of these 4,000 members submitted their applications a long time ago. But given the obstinate attitude of the erstwhile President, the Bank could not process them.

16. In the end, especially based on the directions of this Court, the managing committee considered the applications and admitted members after due verification, submits the learned counsel. Since the process of admission took place subsequently, the members got their membership numbers in 9,000 series. In support of his submissions, the learned counsel has referred to Exhibits R4(b) and R4(c) judgments of this Court rendered at the instance of certain prospective members.

17. The learned counsel has further drawn my attention to Exhibit R4(d) proceedings issued by the Joint

Registrar. With reference to the said proceedings, the learned counsel would contend that in compliance with Exhibits R4(b) and R4(c) judgments of this Court, the Joint Registrar issued directions in Exhibit R4(d) to the effect that the respondent Bank shall consider all the applications received by it for membership within two months.

18. The learned counsel has also further laid emphasis on Exhibit R4(f) extract of the minutes-book to hammer home that all the members of the managing committee have ratified the admission of new members. According to him, petitioners 1 to 4 in W.P.(C)No. 38391/2015 were also among the members who signed the minutes of the meeting.

19. Referring to Exhibit P7 in W.P.(C) No.38391/2015, the learned counsel has submitted that based on the complaint submitted by the petitioners, the Election Commissioner herself along with other officials visited the respondent Bank on 21.12.2015 and thoroughly examined

all the records. Had there been any irregularity noticed by the said authority, contends the learned counsel, certainly she would have issued directions interdicting the election process. For the Election Commission has ample powers under Section 28B of the Act. In support of his submissions, the learned counsel has placed reliance on **Mohanachandran Nair v. State Co-operative Election Commission**¹.

20. The learned counsel has also submitted that the contentions raised by the petitioners in both the writ petitions are essentially disputed questions of fact, and any summary adjudication, especially under Article 226 of the Constitution, is unsuited to resolve the dispute.

21. With specific reference to the objections said to have been submitted by the petitioners in W.P.(C)No. 38705/2015 to the Electoral Officer as regards the seven nominations, the learned counsel would further contend

¹ 2013 (3) KLT 506

that only in the case of rejection of nomination are the authorities required to give reasons. The Electoral Officer while, for example, accepting the nomination is not obligated to give reasons.

22. In other words, if a nomination has been accepted despite the objection, the objector, after the election, is entitled to raise an election dispute in that regard under Section 69 of the Act. In support of his submissions, the learned counsel has placed reliance on **Subramanian v. Devicolam Taluk Plantation Workers Co-op., Society**².

23. The learned counsel has also contended that once the members have been admitted, their removal, if at all justified on whatever statutory ground, shall be in terms of Rule 16(3) or 16(4) of the Rules, as the case may be.

24. As regards the issue of active members, the learned counsel has placed reliance on **Surendran N. and another v. Poovattur East Service Co-op. Bank Ltd. and**

² 2004 (3) KLT SN 105 (C. No.145)

others³ to contend that the issue now stands resolved to the effect that in the light of the non-obstante clause in Section 20 of the Act, every member is entitled to exercise his right to vote. He has further drawn my attention to **Shri Sant Sadguru Janardan Swami v. State of Maharashtra**⁴.

25. The learned counsel has strenuously contended that even for the sake of argument if one were to assume that there was any illegality in the admission of new members, no proceedings could be sustained in the absence of the very members who are sought to be removed. According to the learned counsel, since the petitioners have not chosen to implead any of the 4,000 members, it is entirely impermissible for this Court to render a decision on the qualification of the members who are not present before it.

26. The learned counsel has also contended that, as regards the active membership, the petitioners have not

³ ILR 2015 (2) Kerala 339

⁴ AIR 2001 SC 3982

taken any specific objection that is mandatory in terms of the ratio laid in **Vijayakumar v. Joint Registrar**⁵. The learned counsel for the fourth respondent has placed reliance on an unreported judgment of this Court in **Sandeep E.M. v. Kerala State Co-op. Election Commission**⁶ to contend that once the voters' list is prepared and the election notification is issued, the election process cannot be interdicted; on the other hand, the aggrieved person can as well take recourse to election petition as has been contemplated under Section 69 of the Act.

State's:

27. Sri.D.Somasundaram, the learned Special Government Pleader, on his part, has submitted that the statute does not mandate that the voters' list shall be prepared on ward-basis. Laying specific emphasis on Rule 35A(iv) of the Rules, the learned Special Government Pleader would contend that the statutory requirement is

⁵ 1996 (1) KLT 285

⁶ An unreported judgment, dt.07.12.2015 in W.P. (C) No.36199 of 2015

only to the extent that the members who propose and second as well as the candidates who desire to contest should belong to the same ward.

28. As regards Exhibit P9 objection, the learned Special Government Pleader has submitted that he has received telephonic instructions from the Returning Officer that he had not received any objection from any member of the Bank, leave alone Exhibit P9.

29. Concerning the requirement of having an active membership, the learned Special Government Pleader has contended that the Primary Co-operative Agricultural and Rural Development Bank has no other service than lending long-term agricultural loans to the farmers. Had it been any another co-operative society accepting deposits and rendering other services, the question of the member frequently availing himself of the Bank's services would have arisen. In the present instance, the concept of active and inactive membership, according to him, has no

relevance.

30. It is the specific contention of the learned Special Government Pleader that while resolving any dispute concerning active membership, it is very essential that the spirit of co-operative moment, especially the preamble to the Act, and also the concept of membership as has been defined under Section 2(e)(ccc) should be borne in mind. In this regard, the learned counsel would contend that Schedule II annexed to clause (e)(ccc) of Section 2 mandates that one of the core principles of co-operation is to have an open, voluntary membership.

31. The learned Special Government Pleader has submitted that the fourth respondent is a large Bank having a huge membership basis. As the authorities have made all the preparations expending huge money, any interdiction of elections at the eleventh hour is entirely inadvisable and impermissible.

32. In reply, Sri.George Poonthotam, the learned counsel for the petitioners in W.P.(C)No.38075/2015, has further drawn my attention to Exhibit P4 objections filed by the petitioners to contend that it contains specific objections concerning mass enrollment of the members, and also the issue of active membership. Drawing my further attention to Rule 35A of the Rules, the learned counsel would contend that the said Rule was brought on to the statute book on 12.02.2001; later, it had a proviso added to it on 26.11.2014. According to the learned counsel, it is very evident from the proviso that the election shall be held on a ward basis. Ipso facto, the natural corollary is that the electoral roll should also be prepared on ward-basis lest it should be impossible for the Bank to identify the voters or even the contesting candidates—on ward basis.

33. In further reply, Sri.Arun, the learned counsel for the petitioners in W.P.(C)No.38391/2015, has submitted that Section 2(l) of the Act defines members and amply provides

for a member to be admitted after following the due process. Any shortcoming or infraction in following the process while admitting the member will certainly vitiate the membership. In support of his submissions, the learned counsel has placed reliance on **Nedumon Service Co-operative Bank Ltd. v. Joint Registrar of Co-Op. Societies**⁷.

34. The learned counsel has drawn my attention to Exhibit P15 objection said to have been filed by the petitioners before the Electoral Officer. According to the learned counsel, the objections are very explicit and elaborate, yet the authorities have not chosen to address them.

35. Heard the learned counsel for the petitioners in W.P.(C)Nos.38705/2015 & 38391/2015, the learned Special Government Pleader, and the learned counsel for the fourth respondent, apart from perusing the record.

⁷ 2014 (4) KLJ 162

Issues:

- I.** Whether the process adopted by the respondent Bank in admitting new members has been vitiated?
- II.** Whether ward-wise voters' list is a must for holding elections on ward-basis?
- III.** Whether Exhibit P9 voters' list has contained any inactive members in violation of Section 18A of the Act?

Issue No.I:

37. The gravamen of the entire allegation on the petitioners' part in both the writ petitions is that the managing committee has taken recourse to en mass admissions of new members. The whole process of admitting new members is said to have been vitiated owing to the infraction of the procedural norms. As can be seen, in support of their contentions the petitioners have relied upon the procedural parameters contained in Section 16 of the Act and also Rule 16 of the Rules.

38. Section 16 of the Act, couched in mandatory terms, declares that no person shall be admitted as a

member of a society unless he or she fulfills the conditions enlisted therein. In elaboration of Section 16, Rule 16 prescribes, among other things, that the prospective member shall apply in writing in the form, if any, provided by the society. Once an application is received, the committee of the society has to ensure before it could approve the application that the applicant has fulfilled all the conditions laid down in the Act, Rules, and the bye-laws.

39. In the light of the above statutory mandate, the learned counsel for the petitioners have contended that there should be an individual application by each candidate, and the committee should consider them on a person-to-person basis. In other words, the committee should examine each and every individual application before it decides whether a person is eligible to be a member of the society.

40. Indisputably, more than 4,000 members were admitted by the Bank in two days. According to the learned counsel, if Rule 16 had been adhered to strictly, it would

have been impossible for the Bank to complete the admission of about 4,000 members in just two days. In my opinion, there is not much of an issue in that regard.

41. Stated differently, the assertion on the part of the petitioners that there was an en mass admission, in fact, stands admitted by the Bank. For the Bank has gone on record saying that all the 4,000 members had been admitted in two days: on 03.10.2015 and 31.10.2015. Nevertheless, the Bank has supplied the reasons why it was constrained to enroll those many members in just two days.

42. Before proceeding further, it may be relevant to examine the ratio of Nedumon Service Co-operative Bank (supra). A learned Single Judge of this Court, having discussed the issue elaborately, has, in the end, observed that a resolution passed for bulk enrollment of members without following the statutory procedure for admitting them to membership with an eye on a forthcoming election

is unsustainable. His Lordship has further held that only a person who has been properly admitted to the membership of a Bank in compliance with the provisions of the Co-operative Societies Act, Rules, or Bye-laws is entitled to claim the protection of the procedure contemplated by sub-rules (3) and (4) of Rule 16 of the Rules.

43. It is pertinent to observe that in Nedumon Service co-operative Bank (*supra*) the allegation is that the managing committee of the Bank with an eye on the forthcoming election has resorted to bulk enrollment of members just days prior to the election. And it was without following the statutory procedure, at that. In the present instance, admittedly there was bulk admission and the admission took place just days prior to the election. To that extent alone the facts of the Nedumon Service Co-operative Bank (*supra*) accord with those of the present case.

44. As is evident from the record, the erstwhile President of the Bank for about seven months stalled, for

whatever reason, the process of admitting any new members into the Bank. First, he directed the administration not to supply any applications to the prospective members. Later, he prevented the processing of applications received by the Bank. Thus, got accumulated many applications.

45. At one stage, certain persons desirous of getting admission approached this Court and invited Exhibits R4(b) and R4(c) judgments. In the first place, this Court directed that the Bank should provide applications to the prospective members at their request. This Court has specifically observed that the Bank cannot insist on a person's physical presence to collect the application. This Court, in fact, has directed that the applications may be given in bulk, but at the time of admission, the Bank should ensure that only qualified persons have been admitted.

46. Further, in terms of the judgments rendered by this Court, the Joint Registrar issued Exhibit R4(d) order to the effect that the Bank should consider all the applications

and take appropriate decision concerning the admission of new members. Thus, in the face of the stalling tactics adopted by the erstwhile President and also the judicial mandate, as well as the directive of the Joint Registrar in Exhibit R4(d), the Bank was constrained to consider the tens of hundreds of applications—within a short span of time.

47. Going by the ratio of Nedumon Service Co-operative Bank (*supra*), we cannot say that the managing committee of the Bank has resorted to bulk enrollment of members with an eye on the impending election.

48. Though the petitioners in W.P.(C)No.38391/2015 have serious reservations about the admissions of new members, the fact, nevertheless, remains that four of them were part of the managing committee that had resolved to admit those members. Indeed, the learned counsel for the petitioners in the said writ petition has submitted that those members of the managing committee, as was the alleged

practice, signed the minutes book and other registers in blank, and later the persons at the helm of the affairs filled them up. According to him, only because of these irregularities did the members resign from the committee. However, at no point of time have petitioners 1 to 4, being the erstwhile members of the managing committee, complained to any competent authority against what is said to be filling up the blank, signed minutes of the meeting or other proceedings.

49. In the absence of any clinching evidence that there is no consensus ad idem among the members of the managing committee, it shall be presumed in terms of Section 11(4) of the Evidence Act that the petitioners have signed the minutes of the meeting and other proceedings in due course, especially, in accordance with law. Under these circumstances, I am of the considered opinion that the ratio of Nedumon Service Co-operative Bank (supra) has no application to the facts of the case.

50. Further, as regards the bulk enrollment of members, it is appropriate, nay essential, to observe that the qualifications prescribed under Section 16 of the Act and Rule 16 of the Rules are mandatory and admit of no exception. It cannot, however, be said that the procedure prescribed under Rule 16 while processing the applications for membership should be adhered to with religious regularity, as if it were a ritual.

51. The procedure is not a ritual; it is an expediency to facilitate the substantive statutory objective. In other words, the whole purpose of laying down a particular procedure is to ensure that the intended objective of the statute is achieved without any abuse. In the present instance, the administration of the Bank is to guard against the eventuality that no unqualified person secures membership in the Bank.

52. In *Vijayakumar (supra)*, a learned Division Bench of this Court has held that under Rule 35 of the Rules, a

Returning Officer has the power to make an enquiry regarding the eligibility of a voter to be included in the voters' list if the objections are definite and specific.

53. In *Sadguru Janardan Swami (supra)*, the Hon'ble Supreme Court has held that preparation of electoral rolls is an intermediate stage in the process of the election to any society. The Court has further held that interference with the process of election, because there are illegalities in the preparation of election rolls, is impermissible. The remedy in that regard, according to their Lordships, is an election petition. In *Subramanian (supra)*, a learned Division Bench of this Court has echoed the same principle of law.

54. In *Mohanachandran Nair (supra)*, a learned Single Judge of this Court has held that the Election Commission, but not the Returning Officer, has the power to adjourn the election.

55. As has already been observed, the Bank has cogently, convincingly placed on record under what

circumstances it was constrained to take up bulk enrollment of members. It is not the case of the petitioners that any unqualified person has secured membership. Had there been any such instance, they would have already brought it to the notice of the authorities or, at least, to that of this Court. It was not to be. It is further made clear that even in future if the petitioners are to come across any instance of any person securing membership without having been qualified, they are at liberty to take appropriate remedial measures in that regard.

Issue No.II

56. The learned counsel for the petitioners have drawn my attention to the instructions attached to Exhibit P2 election notification. According to him, clause (1) of the Note appended to Exhibit P2 makes it manifestly clear that the voters' list shall be prepared on a ward basis, and the voters are entitled to exercise their right to vote. He has also laid emphasis on condition no.7 in the said Note to

hammer home his contention that the election is required to be held on ward basis and the proposer and the seconder as well as the candidate should be from the same ward.

57. The natural corollary, according to the learned counsel, is that the electoral roll should also be prepared on ward-basis, lest it should be impossible for the Bank to identify the voters or even the contesting candidates—on ward basis.

58. Indeed, the elections are to be held on ward-basis; the proposer and the seconder should be from the same ward. *Ipsa facto*, there should be a method to ascertain that all those persons—the candidate, the proposer, and the seconder—are from the same ward. Is the ward-wise voters' list the only answer for that?

59. A perusal of all the provisions and also the instructions attached to Exhibit P2 election notification does not even remotely suggest that the preparation of voters' list on ward-basis is the *sine qua non*.

60. If the identification of the parties contesting or proposing, etc., is the primary purpose, preparation of the voters' list ward-wise may not be the only method of ascertainment. The identity of the persons, in fact, can be ascertained in a host of other ways, too. Thus, viewed in a conspectus, I am of the opinion that neither the statutory provisions, including the Rules, nor the regulations concerning the conduct of election—the instructions incorporated in Exhibit P2 election notification not excluded—have made it mandatory that the voters' list be ward-wise.

Issue No.III:

61. Indeed, the learned Special Government Pleader as well as the learned counsel for the fourth respondent has made strenuous efforts to impress upon this Court that the distinction of members being active and inactive has no application to the respondent Bank which is a Primary Co-operative Agricultural and Rural Development Bank. In that regard, they have also placed reliance on Exhibit R4(b), a

judgment rendered by a learned Single Judge. At any rate, it is not in dispute that the issue whether a member should be active in terms of Section 18A of the Act has already engaged the attention of a learned Full Bench of this Court. In that context, it is inappropriate for me to pronounce definitively on the issue.

62. Under these circumstances, it is advisable to await the judgment to be rendered by the learned Full Bench. I further hasten to add that it is imprudent, nay impermissible, to hold up the entire election process involving thousands of voters on the grounds that the issue concerning active membership is required to be resolved. Instead, it is apposite for the Bank to go ahead with the election process ensuring that the votes cast by the members newly admitted—their names having already been separately provided in Exhibit P9 voters' list—are collected separately and counted, however, along with the rest of the votes.

In the facts and circumstances, this Court disposes of the writ petitions with the following directions:

i. The procedure adopted by the respondent Bank in admitting the new members cannot be found fault with;

ii. As regards the disqualification of any particular members, the petitioners are always at liberty to approach the appropriate authorities ventilating their grievance, if any, by invoking the appropriate statutory remedial mechanism;

iii. The elections being held shall be subject to the result of the judgment to be rendered by a learned Full Bench of this Court on the issue of the dichotomy of active and inactive members.

iv. The authorities shall hold elections as scheduled by permitting the new members enlisted in Exhibit P9 to vote separately;

v. Based on the result of the election, a managing committee may come into being and assume power without

any hindrance.

vi. If the learned Full Bench is to hold that only active members even in a Primary Co-operative Agricultural and Rural Development Bank shall be eligible to vote, in such an eventuality, the authorities shall exclude the votes of the new members and re-constitute the managing committee taking into account the votes of the previous members alone.

Dama Seshadri Naidu, Judge

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