

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15229 of 2017

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Md. Shamim, son of Late Sheikh Jumaid Ali, resident of Village- Rampur Mohanpur West, P.O. Rampur Mohanpur, P.S. Araria, District- Arara, presently Chairman of Rampur Mohanpur Primary Agriculture Credit Cooperative Society, Block Araria, District- Araria.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Cooperative Department, Government of Bihar, Patna
2. The Registrar, Cooperative Societies, Bihar, Patna
3. The District Magistrate-cum-District Election Officer (Cooperative), Araria, District- Araria
4. The Sub-Divisional Officer, Araria, District- Araria
5. The District Cooperative Officer, Araria, District- Araria
6. The Block Development Officer, Araria-cum-Returning Officer, Aaria Block Vyapar Mandal Election, 2007, District-Arara

.... Respondent 1st set.

7. The Bihar State Election Authority, 32, Harding Road, Patna through the Secretary
8. The Chief Election Officer, The Bihar State Election Authority, 32, Harding Road, Patna

.... Respondent 2nd set.

9. Sunil Kumar Yadav, son of Sri Satya Narayan Yadav, resident of Village- Diari, P.O. Rampur Kodar Katti, P.S. Araria, District- Araria.

.... Respondent 3rd set

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Appearance :

For the Petitioner/s	:	Mr. S.B.K. Mangalam, Adv.
For the State	:	Mr. Sushil Kumar –SC-22
For State Election Authority	:	Mr. M.K. Thakur, Adv.
For the Respondent No.9	:	Mr. Awadhesh Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 09-01-2018

The prayers of the petitioner in this writ petition are as
under :-

- (I) For issuance of an appropriate writ in the nature of CERTIORARI for quashing the order dated 09.10.2017 passed by the Respondent no.6 whereby



and whereunder the Respondent no.6 has been pleased to reject the nomination paper filed by the petitioner to contest the election of Araria Vyapar Mandal for the post of Chairman on the ground that the petitioner is defaulter of Bank and has accepted the single valid nomination for the said post filed by the Respondent no.9.

- (II) For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent No.6 to accept the nomination filed by the petitioner to contest the election of Chairman for Araria Vyapar Mandal on the ground that in view of the order dated 16.10.2014 passed by a bench of this Hon'ble Court n C.W.J.C. No. 16142 of 2014 and the order issued by the Respondent no.2 in compliance thereof and the requirements of Section-41 of th Bihar Cooperative Societies Act, 1935, the Respondent no.6 ought not to have rejected the nomination of the petitioner merely because the Bank has sent a list of defaulter to the Respondent no.6 which was issued by the Bank itself on 06.10.2017.
- (III) For a declaration that if defaulter of a society is disqualified to contest the election of another society, the law would equally apply to all candidates and the Respondent no.6 was not justified to reject the petitioner's nomination if he has accepted the nomination of other candidates, who had filed their nomination to contest for other post.



- (IV) To debar the Respondent no.6 and all other Officers, who persuaded or pressurized the Respondent no.6 to reject the nomination of the petitioner to be associated with the conduct of any future election on the ground that they have tinkered with the free and fair conduct of Cooperative election of Vyapar Mandal, Araria.
- (V) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case.

2. The facts of the case, in brief, are that the State Election Authority had declared election for the Managing Committee of Block Vyapar Mandal, Araria. The Returning Officer had issued detail schedule of election, according to which the date of filing of nomination was 07.10.2017, the date of scrutiny of nomination was 09.10.2017, the date of withdrawal of nomination was 10.10.2017 and the date of election was fixed on 17.10.2017. Pursuant to the aforesaid schedule of election, for the post of Chairman, four nominations were filed, one by the writ petitioner, the other by the Respondent no.9, the third by one Sakil Kumar Yadav and the fourth by one Md. Imran. After scrutiny, the nomination of the petitioner was rejected on the ground that the Society was defaulter.

3. Mr. S.B.K. Mangalam, learned counsel for the petitioner



submitted that the action of the Returning Officer in rejecting the nomination of the petitioner is gross example of arbitrary action on his part. He submitted that the nomination of the petitioner has been rejected on the ground that he is defaulter whereas nomination of Md. Imran was accepted even though the Society to which he was Chairman was also mentioned in the same list of defaulter. He contended that the Returning Officer had neither provided any opportunity of hearing to the petitioner nor had be discussed about the letter of the Registrar, Cooperative Society by which it was directed that no nomination would be rejected unless the Society concerned has been declared defaulter upon adjudication under Section 41 of the Cooperative Societies Act. He submitted that this case is an exception to the normal conduct of the Returning Officer when he accepts or rejects a nomination and under the exceptional circumstance a writ petition only is the remedy because the alternative remedy of election petition would not be efficacious in the facts of the case.

4. On the other hand, Mr. Mukesh Kumar Thakur, learned counsel appearing on behalf of the respondent nos.6 to 8 submitted that the grievances of the petitioner come in the category of improper rejection of nomination paper filed for the post of Chairman of Araria Block Vyapar Mandal Election. According to him, to contest an election is a simple and purely statutory right and if statute provides



remedy, the same has to be taken recourse to after the election is over. He contended that the Bihar State Election Authority Act, 2008 (for short 'Act, 2008') is a complete code in respect of election of cooperative societies and, thus, a writ petition under Article 226 of the Constitution of India in the nature of dispute raised in the present application would not be maintainable. He submitted that Section 11(b) of the Act, 2008 clearly stipulates that no election to any body shall be called in question except by an election petition presented to the prescribed authority under this Act. In support of his submissions, he has placed reliance on the decisions of the Supreme Court in *N.P. Punnuswami Vs. Returning Officer & Ors.* [AIR 1952 SC 64], *Jyoti Basu Vs. Devi Ghosal* [(1982) 1 SCC 691], *K. K. Srivastava Vs. Bhupendra Kumar Jain & Ors.* [AIR 1977 SC 1703], *Sri Sant Sadguru Janardan Swami Sahkari Dugdh Utpadak Sanstha Vs. State of Maharashtra* [(2001) 8 SCC 509], *Mohinder Singh Gill Vs. Chief Election Commissioner* [(1978) 1 SCC 405], *Shaji K. Joseph Vs. V. Vishwanath & Ors.* [2016 (2) PLJR SC 330], *Harcharan Singh Vs. S. Mohinder Singh & Ors.* [AIR 1968 SC 1500], *Banwari Dass Vs. Sumer Chand & Ors.* [(1974) 4 SCC 817], *Tapash Majumder & Anr. Vs. Pranab Dasgupta & Ors.* [(2004) 13 SCC 574], *The New Friends Co-operative House Building Society Ltd. Vs. Rajesh Chawla and Ors.* [(2004) 5 SCC 795], *Umesh*



Shivappa Ambi & Ors. Vs. Angadi Shekara Basappa & Ors. [AIR 1999 SC 1566] and Election Commission of India vs. Ashok Kumar [(2000) 8 SCC 216].

5. Referring to the aforesaid judgments, he submitted that if the statute provides for remedy then instead of invoking the extraordinary and discretionary writ jurisdiction the petitioner ought to have availed the efficacious statutory remedy before the prescribed authority in respect of the dispute. He contended that it would be manifest from the ratio of the aforesaid judgments that a writ petition would not be maintainable in the nature of dispute raised herein.

6. Mr. Awadhesh Kumar, learned counsel appearing for the respondent no.9 submitted that the petitioner is claiming that his nomination ought not to be rejected mainly on the ground that the nomination of another candidate, namely, Md. Imran was accepted despite the fact that the society to which he was the Chairman was also defaulter. He submitted that in this way the petitioner is claiming negative equality that he should also have been allowed to contest the election. He submitted that neither Md. Imran has been made a party in this case nor any cogent material has been produced by the petitioner to support his contention that Md. Imran being a defaulter was allowed to contest the election. Moreover, Md. Imran had subsequently withdrawn his candidature and nomination even before



the date of election. He submitted that after filing of nomination paper, it was brought to the knowledge of the office of the Election Authority that the petitioner as well as Rampur Mohanpur West Primary Agriculture Co-operative Society Limited (for short 'PACS') of which the petitioner is the Chairman both are defaulters under Rule 23 of the Bihar Co-operative Societies Rules, 1959 (for short 'Rules, 1959') and as Rule 23(2)(a) of the Rules, 1959 specifically bars the eligibility of the petitioner for election to the Managing Committee, the nomination of the petitioner was rejected. He contended that the respondent no.9 has already been declared elected as Chairman of the Araria Vyapar Mandal vide order dated 10.10.2017 passed by the joint signatures of the Election Authority-cum-Block Development Officer, Araria and the Assistant Election Authority-cum-Block Panchayati Raj Officer, Araria and his election can only be challenged by way of filing an election petition. He supported the contention of the learned counsel appearing for the Bihar State Election Authority and submitted that the election to any office of a body can not be called in question except by an election petition in view of Section 10 of the Act, 2008.

7. In reply, Mr. Mangalam, learned counsel for the petitioner submitted that in *N.P. Punnuswami* (Supra) and *Mohinder Singh Gill* (Supra) the Constitution Bench of the Supreme Court has



categorically held that Article 226 of the Constitution of India is couched in the widest possible term and unless there is a clear bar to jurisdiction of the High Court its power under Article 226 of the Constitution can be exercised when there is any act which is against any provision of law and violative of the constitutional provision and when recourse cannot be had to the provisions of the Act for the appropriate relief.

8. He submitted that in similar circumstances when the Returning Officer of a cooperative society election had rejected the nomination of a candidate Shyamdeo Prasad, he approached this Court in C.W.J.C. No. 13474 of 2009 and this Court allowed the writ petition and set aside the order of rejection passed by the Returning Officer and nomination of the writ petition was treated to be valid.

9. He submitted that the aforesaid order of the learned single Judge was challenged in intra-court appeal by N.S. Madhavan, the Chief Election Officer of the State Election Authority. The Division Bench of this Court in the case of *N.S. Madhavan Vs. Shyamdeo Prasad [2010(3) PLJR 578]* upheld the order passed by the learned single Judge and held that when the exercise of power is in total disregard of all canons of justice and violative of acceptable norms and manifestly exposes clear abuse of the process of law, a writ Court cannot ignore it. He submitted that since the Returning



Officer neither provided any opportunity to the petitioner nor had he discussed about the letter of the Registrar, Cooperative Society by which it was directed that no nomination of the Society concerned would be rejected unless the society concerned has been declared defaulter upon adjudication under Section 41 of the Act, 2008, this writ petition would be maintainable.

10. Mr. Manglam has also placed reliance on the judgment of this Court in *Mohammad Faizan & Anr. Vs. State of Bihar & Ors. [1997(1) PLJR 1028]* and the order dated 16.10.2014 passed in C.W.J.C. No. 16142 of 2014 in support of his submission that there has to be a formal order under Section 41(1) of the Act, 1935.

11. I have heard learned counsel for the parties and perused the record.

12. From the pleadings of the parties, it would be manifest that basically the petitioner has challenged the order dated 09.10.2017 passed by the respondent no.6, the Block Development Officer, Araria-cum-Returning Officer, Araria Block Vyapar Mandal Election, 2007 whereby nomination of the petitioner from contesting the election of Araria Block Vyapar Mandal for the post of Chairman has been rejected. He has also prayed for issuance of a direction to the respondent no.6 to accept the nomination of the petitioner.

13. A Vyapar Mandal is a Central Cooperative Society,



which has primary cooperative societies as its members and as per first proviso to Rule 12A of the Rules, 1959, it may have individual members. For the sake of convenience, the Bihar State Election Authority has categorized the societies as Old Vyapar Mandal and New Vyapar Mandal. In the former, Societies individuals are its members and in the later only the societies are its members.

14. The Bihar State Election Authority constituted under the Act, 2008 is authorized to conduct election for constitution of the Managing Committee of all types of Cooperative Societies registered under the Bihar Cooperative Societies Act, 1935 (for short 'Act, 1935'). The Vyapar Mandal is one of them. The Chairman of the affiliated cooperative society is the delegate authority which in the present case is Vyapar Mandal, Araria. The petitioner in the capacity of delegate of Rampur Mohanpur PACS, an affiliated society, filed his nomination for Chairman of Araria Vyapar Mandal, but his nomination was rejected on the ground that the Rampur Mohanpur PACS represented by him was defaulter of the Bank on the date of nomination. According to the petitioner, the order rejecting his nomination is a case of improper rejection of nomination by the Returning Officer.

15. At this stage, it would be relevant to note that the object of the enactment of the Act, 2008 was to establish a body akin to



State Election Commission, which has been entrusted with the duty and responsibility of holding elections to Co-operative Societies, Shiksha Samiti or any other Institution/Establishment/Organization where an elected body has to be put in place.

16. Section 4 of the Act, 2008 stipulates that the Election Authority shall have power, authority and jurisdiction for exercising superintendence, direction and control of the preparation of electoral rolls for, and conduct of all elections to bodies such as Co-operative Societies, Shiksha Samiti or any other institution, organization, establishment, which may be entrusted to it by the State Government.

17. Under the Act, 2008, the Bihar State Election Authority Rules, 2008 (for short 'Rules, 2008') has also been framed. Rule 7 of the Rules, 2008 stipulates that for the purpose of conduct of election or elections in an institution or establishment or organization or group of such bodies, the Authority shall take necessary action under the appropriate Act/Rules in force for such institution or establishment or organization or other bodies. For this purpose the Authority shall have powers to make arrangements by way of making regulation or/and regulations and/or by issuing executive instructions.

18. Section 10 of the Act, 2008 prescribes election petition, the authority before whom the election petition would lie and parties to the petition as under :-



“10. Election Petition. - (1)(i) The election to any office of a body shall not be called in question except by an election petition as prescribed:

Provided that if an election to any office of a body is under dispute, the election petition shall lie before such authority as is prescribed under the Act or Rule regulating such body or where administration and functioning of such body is not regulated by any statutory provision, before such Authority, which the State Government may prescribe by issuance of notification.

(2) Parties to the petition. - A petitioner shall join as a respondent to this petition-

- (a) Where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and
- (b) Any other candidate against whom allegations of any corrupt practice are made in the petition.

(emphasis mine)

19. Section 10(1)(i) of the Act, 2008 prescribes that the election to any office of a body shall not be called in question except by an election petition as prescribed. The proviso to Section 10(1)(i) prescribes that if an election to any office of a body is under dispute, the election petition shall lie before such authority as is prescribed under the Act or Rule regulating such body or where administration and functioning of such body is not regulated by any statutory provision, before such Authority, which the State Government may



prescribe by issuance of notification.

20. Section 11 of the Act, 2008 bars interference by Courts in electoral matters. It reads as under :

“11. Bar to interference by Courts in electoral matters. - Notwithstanding anything contained in this Act-

(a) The validity of any order relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made shall not be called in question in any court;

(b) No election to any body shall be called in question except by an election petition presented to the Prescribed Authority under this Act.

(emphasis mine)

21. Section 12 of the Act, 2008 deals with the grounds for declaring election to be void by the prescribed Authority. Section 12 (1) (c) deals with the grounds of improper rejection of nomination paper. Section 12(1)(d)(iv) prescribes that due to non-compliance with the provision of the Act or of any rules or orders made thereunder; the Prescribed Authority shall declare the election of the returned candidate to be void.

22. Under Section 48 of the Act, 1935, the Registrar, Cooperative Society has been empowered to entertain any dispute touching the business of a registered society other than a dispute regarding disciplinary action taken by the society or its managing committee against a paid servant or the society.



23. Further, clause (6) of Section 14A of the Act, 1935, which was substituted by Act 3 of 2012 stipulates as under :

“No election to any class or classes of registered societies notified under sub-section (1) shall be called in question except by way of an election petition filed within ninety days from declaration of the result of such election and the same shall be decided as a dispute under section 48 of this Act. Such an election petition shall be filed before the Registrar or such other officer appointed to assist the Registrar under Section 6 of this Act.”

(emphasis mine)

24. At this stage, it would be pertinent to note that the Act, 2008 and the Act, 1935 are complete code in themselves. They prescribe the entire mechanism under which an election dispute can be raised and the remedies thereof.

25. Having noted the legal position hereinabove, when I come to the facts of the present case, I find that the petitioner has not denied the fact that there was liability due upon Rampur Mohanpur PACS of which the petitioner was the Chairman. Respondent no.9 in his counter affidavit has categorically stated that the petitioner was the Chairman of Rampur Mohanpur PACS since 2008 and had the prior knowledge of the fact that the Society owes dues of the Cooperative Bank since long. The said stand of the respondent no.9 has not been denied or contradicted by the petitioner by way of filing any rejoinder petition. His contention in this regard is that since it is



not found necessary to deny such facts in the writ petition, no rejoinder to this effect has been filed. He submitted that there is no denial to the fact that the petitioner was the Chairman of Rampur Mohanpur PACS between the period 2008 and 2015 but in respect of the liability on the PACS proper pleading can be taken only before the appropriate forum.

26. In my considered opinion, once the petitioner has approached this Court in writ jurisdiction and the respondent no.9 has specifically stated in his counter affidavit that the society of which the petitioner was the Chairman was defaulter and the petitioner has not rebutted the same, the Court would be left with no other option but to accept the assertion made by the respondent no.9.

27. It would be pertinent to note here out that Rule 23(2)(a) of the Rules, 1959 specifically bars the eligibility for the election to the Managing Committee in case of defaulter. It reads as under :-

“23(2) No delegate/representative of an affiliated society shall be eligible for election to the Managing Committee, if-

(a) the affiliated society is in default to the society in respect of any loan taken by it for such period as is prescribed in the bye-laws or in any case for a period exceeding three months or is in default to the society in respect of any other registered society on the date of filing of nomination.”

28. Hence, by application of Rule 23(2)(a) of the Rules, 1959 as Rampur Mohanpur PACS was in default to the Cooperative Bank



in respect of loan taken by it, the petitioner cannot have any grievance in respect of rejection of his nomination.

29. Apart from the above, I also find substance in the submission of the learned counsel for the respondents that the writ petition in the present matter would not be maintainable.

30. As seen above, the Act, 2008 confers power, authority and jurisdiction to the Election Authority for exercising superintendence, direction and control on preparation of electoral rolls for and conduct of all elections to bodies including Cooperative Societies.

31. Section 10(1)(i) of the Act, 2008 clearly stipulates that the election to any office of a body shall not be called in question except by an election petition as prescribed. Section 11 of the Act, 2008 bars interference by Courts in electoral matters.

32. Section 11(b) of the Act, 2008 stipulates that no election to any body shall be called in question except by an election petition presented to the Prescribed Authority under the Act.

33. Further, clause (6) of Section 14A of the Act, 1935 stipulates that no election to any class or classes of registered societies shall be called in question except by way of an election petition filed within ninety days from declaration of the result of such election and the same shall be decided as a dispute under section 48 of this Act.



34. Under Section 48 of the Act, 1935, the Registrar, Cooperative Society has been empowered to entertain any dispute touching the business of a registered society other than a dispute regarding disciplinary action taken by the society or its managing committee against a paid servant or the society.

35. Thus, I find that there are sufficient guidelines in the Act, 2008 and the Act, 1935 regarding the manner in which challenge to elections can be raised.

36. I further find that Section 12 of the Act, 2008 deals with the grounds for declaring elections to be void by the prescribed Authority.

37. Section 12(1)(c) deals with the grounds of improper rejection of nomination paper.

38. Section 12(1)(d)(iv) prescribes that due to non-compliance with the provision of the Act or of any rules or orders made thereunder; the Prescribed Authority shall declare the election of the returned candidate to be void. Thus, I find that in case of improper rejection of nomination paper, there is a complete remedy, which is equally efficacious for challenging the elections.

39. Hence, once the Legislature has provided for challenge to the elections by raising a dispute under Section 48 of the Act, 1935, then in that case, the challenge to the elections by way of filing a writ



petition under Article 226 would not be maintainable as it is open for the petitioner to question the legality of rejection of nomination papers by the Returning Officer on all available grounds including the grounds taken in the present application.

40. A Full Bench of this Court in *Chandeshwar Prasad & Ors. Vs. State of Bihar [1987 PLJR 159 FB]* held that the election dispute also comes squarely within the ambit of the provisions of Section 48 of the Act, 1935.

41. In *Hare Krishna Updhyay Vs. State Of Bihar & Ors. [1976 BLJ 141]*, this Court held that the expression election will also cover election dispute, where an election has been challenged. In the same way, a dispute that can be raised under Section 48 of the Act covers a dispute as to election.

42. In *Harcharan Singh Vs. S. Mohinder Singh & Ors. [AIR 1968 SC 1500]*, the Supreme Court considered the application of doctrine of election and substantial justice etc. in election law and held as under :-

“The statutory requirements of election law must be strictly observed. An election dispute is a statutory proceeding unknown to the common law: it is not an action at law or in equity.... The primary purpose of the diverse provisions of the election law which may appear to be technical is to safeguard the purity of the election process, and the Courts will not ordinarily minimise their operation....”



43. Again in *Jyoti Basu Vs. Devi Ghosal* (Supra), the Supreme Court held as under :-

“A right to elect, fundamental though it is to democracy, is, anomalously neither a fundamental right nor a Common Law Right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected, and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at Common Law, nor in equity. It is a statutory proceeding to which neither the Common Law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to Common Law and Equity must remain strangers to Election Law unless statutorily embodied. A Court has no right to resort to them on considerations of alleged policy because policy in such matters, as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes, Court is put in a straight jacket. We have noticed the necessity to rid ourselves of notions based on Common Law or Equity. We see that we must seek an answer to the question within the four corners of the statute.”

44. Similarly, in *Banwari Dass Vs. Sumer Chand & Ors.* [(1974) 4 SCC 817], the Supreme Court held 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 the court possesses no



common law powers. Its procedure, powers and scope of remedy has to be controlled statutorily and in accordance with those provisions.

45. In *Tapash Majumder & Anr. Vs. Pranab Dasgupta & Ors. [(2004) 13 SCC 574]*, the Supreme Court held that when the election process is started, the Court should not interfere with such process.

46. In *The New Friends Co-operative House Building Society Ltd. Vs. Rajesh Chawla and Ors. [(2004) 5 SCC 795]*, the Supreme Court while holding that the question relating to non-payment of dues of the Society should be raised at the appropriate stage and the election process may not be interfered with observed as under :-

“The question whether a member was a defaulter had to be adjudicated in appropriate proceedings and writ application prima facie was not a proper course. Assuming without accepting that the stand taken for the alleged defaulters can be entertained and gone into in the course of conduct of election, it could, if at all be only for the limited purpose of election and the right of the society or the member for having their rights and liabilities finally and effectively get adjudicated by arbitration proceedings statutorily provided for under the statute in lieu of proceedings before civil court, and the conclusions arrived at or recorded in the course of election proceedings shall be only without prejudice to and ultimately subject to all or any such proceedings and decisions by such statutory forums. In any event without proper hearing and consideration of relevant materials, High Court seems to have arrived at abrupt conclusions. High Court's order is consequently unsustainable for



more than one reason. To add further to the vulnerability of the High Court's judgment is the direction given for refund and in favour of those who have not approached the Court also, as though it is deciding statutory Arbitration proceedings, envisaged under the Co-operative Societies Act concerned. It was no body's case that any other person has been illegally asked to pay, or that any such collection has been illegally made. Direction for refund to other members is without application of mind and totally uncalled for. The records and correspondences were apparently called for. If the High Court wanted to decide the matter it should have been done after looking into them which has not been done. Even such decision, as noticed above, should be made subject to any adjudication in the Statutory Arbitration proceedings and not to decide finally the civil liabilities inter se of parties. Therefore, we set aside the judgment of the High Court and remit the matter back for fresh adjudication. We make it clear that except quashing the directions given for refund to other members and restraining the High Court from giving any such directions, rest of the matter shall be adjudicated on its own merit in accordance with law and such exercise could only be for the limited purpose of treating the person(s) concerned "defaulters or not" for participating in the election process and not for foreclosing the right of the society to recover any amount as such, through the forums prescribed under the concerned Co-operative Societies Act and in accordance with law."

47. In *Umesh Shivappa Ambi & Ors. Vs. Angadi Shekara Basappa & Ors. [AIR 1999 SC 1566]*, the Supreme Court held as under :-

"4. It is now well settled that once an election is over, the aggrieved candidate will have to pursue his remedy in accordance with the provisions of law and this Court will not ordinarily interfere with the elections under Article 226 of the



Constitution. (See in this connection AIR 1977 SC 1703, Para 4, K.K. Shrivastava v. B. K. Jain). The Court will not ordinarily interfere where there is an appropriate or equally efficacious remedy available, particularly in relation to election disputes. In the present case, under Section 70(2)(C) of the Karnataka Cooperative Societies Act, 1959 any dispute arising in connection with the election of a President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer or member of Committee of the Society has to be referred to the Registrar by raising a dispute before him. The Registrar is required to decide this in accordance with law.”

48. In *K.K. Shrivastava etc. Vs. Bhupendra Kumar Jain & Ors. [AIR 1977 SC 1703]*, The Supreme Court in para-4 held as under :-

“4. It is well settled law that while Art. 226 of the Constitution confers a wide power on the High Court there are equally well settled limitations which this Court has repeatedly pointed out on the exercise of such power. One of them which is relevant for the present case is that where there is an appropriate or equally efficacious remedy the Court should keep its hands off. This is more particularly so where the dispute relates to an election. Still more so where there is a statutorily prescribed remedy which almost reads in mandatory terms. While we need not in this case go to the extent of stating that if there are exceptional or extraordinary circumstances the Court should still refuse to entertain a writ petition it is perfectly clear that merely because the challenge is to a plurality of returns of elections, therefore a writ petition will lie, is a fallacious argument. It is important to notice what the High Court has overlooked is that the period of limitation prescribed by the rules is 15 days and if writ petitions are to be entertained long afterwards it will stultify the statutory provision. Again in the present case an election petition covering the same subject



matter is actually pending. There is no foundation whatever for thinking that where the challenge is to an "entire election" then the writ jurisdiction springs into action. On the other hand the circumstances of this case convince us that exercise of the power under Art. 226 may be described as mis-exercise. It is unfortunate that an election petition which probably might have been disposed of long ago is still pending because the writ petition was pending in the High Court and later on special leave having been granted these appeals have been pending in this Court. How injurious sometimes the repercussions of entertaining writ petitions are where they should not be is illustrated by this very case."

49. In *N.P. Ponnuswamy* (Supra), the appellant had filed his nomination papers for election to the Madras Legislative Assembly from the Namakkal Constituency in Salem district. The Returning Officer, at the time of scrutiny of nomination papers, on 28.11.1951, rejected his nomination papers on certain grounds. Aggrieved by the order of the Returning Officer rejecting his nomination paper, the appellant moved the Madras High Court under Article 226 of the Constitution seeking a direction to the Returning Officer to include his name in the list of validly nominated candidates. The High Court dismissed the writ petition on the ground that it had no jurisdiction to interfere with the order of the Returning Officer in view of the provisions of Article 329(b) of the Constitution. The appellant then moved in appeal before the Supreme Court. The Supreme Court also dismissed the appeal confirming the



view of the High Court. The Supreme Court held that the word 'election' in Article 329(b) of the Constitution connotes the entire electoral process with the issue of notification calling the election and culminating in the declaration of result, and that the electoral process once started could not be interfered with at any intermediate stage by the Courts. The Supreme Court further held that the High Court has no jurisdiction under Article 226 of the Constitution to entertain petitions regarding improper rejection by the Returning Officer of nomination papers of candidates for election either to the House of Parliament or to the State Assembly.

50. In *N.P. Ponnuswamy* (supra), the Constitution Bench of the Supreme Court analyzed the effect of negative language in Article 329(b) and held that Article 329(b) is primarily intended to exclude or oust the jurisdiction of all courts in regard to electoral matters and to lay down the only mode in which an election should be challenged.

51. The Constitution Bench in *N.P. Ponnuswamy* (supra) held as under :-

“It was argued that since the Representation of the People Act was enacted subject to the provisions of the Constitution, it cannot bar the jurisdiction of the High Court to issue writs under article 226 of the Constitution. This argument however is completely shut out by reading the Act along with article 329 (b). It will be noticed that the language used in that article and in section 80 of the Act is



almost identical, with this difference only that the article is preceded by the words "notwithstanding anything in this Constitution". I think that those words are quite apt to exclude the jurisdiction of the High Court to deal with any matter which may arise while the elections are in progress”.

52. The judgment in *N.P. Ponnuswamy* (supra) has been followed by the Supreme Court in several subsequent cases. In *N.P. Ponnuswamy* (supra), the Supreme Court did not find any distinction between election to Parliament and Legislature and others elections mainly because if a statute provides a remedy before a special Tribunal by means of election petition, legal recourse should be taken to that remedy alone. This would be manifest from the following :-

“(1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

(2) In conformity with this principle, the scheme the election law in this country as well as in England is that no significance should be attached to anything which does not affect the "election"; and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the “election” and enable the person affected to call it in question, they should be brought up before a special tribunal by means of an election petition and not be made the subject of a dispute before any court while the election is in progress.”



53. The ratio decided in *N.P. Ponnuswamy* (supra) was again considered by a Constitution Bench of the Supreme Court in *Mohinder Singh Gill* (Supra). The main issue held by the Constitution Bench in *Mohinder Singh Gill* (Supra) was as under:-

“Is Art. 329(b) a blanket ban on all manner of questions which may have impact on the ultimate result of the election, arising between two temporal termini viz., the notification by the President calling for the election and the declaration of the result by the returning officer? Is Art. 226 also covered by this embargo and, if so, is S. 100 broad enough to accommodate every kind of objection, constitutional, legal or factual, which may have the result of invalidation of an election and the declaration of the petitioner as the returned candidate and direct the organization of any steps necessary to give full relief?”

54. Thus, the issue before the Supreme Court in *Mohinder Singh Gill* (supra) was whether Article 329(b) of the Constitution completely bars the jurisdiction of High Court under Article 226 of the Constitution. The Constitution Bench in *Mohinder Singh Gill* (Supra) interpreted Section 100 of the Representation of People Act, 1951 in the light of Article 329(b) of the Constitution and concluded that the mandate of Article 329(b) is that ordinarily an election petition before an authority established or designated by the law is the only remedy available to a person challenging the election. However, this principle is not wholly inflexible inasmuch as special



circumstances may arise. Though, rarely wherein the High Court interference may be called for in order to smoothen or facilitate the pressure of election. However, once the election is over and the result is announced, the result of the election cannot be called in question by way of a writ petition under Article 226 and the only remedy available to an aggrieved person is to challenge the result of the election by way of an election petition.

55. Interpreting Article 329(b) of the Constitution, the Constitution Bench observed:

“...the sole remedy for an aggrieved party, if he wants to challenge any election, is election petition. This exclusion of all other remedies includes constitutional remedies like Article 226 because of the non-obstante clause. ...”.

56. Thus, I find that as far as interference by Courts in an election process is concerned, law in this regard is now well settled. Once the election process has commenced, it must be concluded as per its schedule and any legal challenge to the election must await the conclusion of the election. The Court must guard against any attempt to interpreting, protracting or spoiling the election process. The Court would normally pass orders only to assist the completion of election and not in interdicting the same.

57. In *Election Commission of India vs. Ashok Kumar [(2000) 8 SCC 216]*, a three Judge Bench of the Supreme Court had



the occasion to consider the two Constitution Bench judgments i.e. *N.P. Ponnuswamy* (Supra) and *Mohinder Singh Gill* (Supra).

58. In *Ashok Kumar* (Supra), having considered the aforesaid two Constitution Bench decisions, the Supreme Court held as under :-

“30. To what extent Article 329 (b) has an overriding effect on Article 226 of the Constitution? The two Constitution Benches have held that Representation of the People Act, 1951 provides for only one remedy; that remedy being by an election petition to be presented after the election is over and there is no remedy provided at any intermediate stage. The non-obstante clause with which Article 329 opens pushes out Article 226 where the dispute takes the form of calling in question an election (see para 25 of Mohinder Singh Gills case, supra). The provisions of the Constitution and the Act read together do not totally exclude the right of a citizen to approach the Court so as to have the wrong done remedied by invoking the judicial forum; nevertheless the lesson is that the election rights and remedies are statutory, ignore the trifles even if there are irregularities or illegalities, and knock the doors of the courts when the election proceedings in question are over. Two-pronged attack on anything done during the election proceedings is to be avoided - one during the course of the proceedings and the other at its termination, for such two-pronged attack, if allowed, would unduly protract or obstruct the functioning of democracy.

31. The founding fathers of the Constitution have consciously employed use of the words no election shall be called in question in the body of Section 329 (b) and these words provide the determinative test for attracting applicability of Article 329 (b). If the petition presented to the Court calls in question an election the bar of Article 329 (b) is attracted. Else it is not”.



The Court summed up their conclusions as under:-

“32. For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove:-

1) If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

2) Any decision sought and rendered will not amount to calling in question an election if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the Court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the Court.



5) The Court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The Court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilize the courts indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the Court would act with reluctance and shall not act except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material.

33. These conclusions, however, should not be construed as a summary of our judgment. These have to be read alongwith the earlier part of our judgment wherein the conclusions have been elaborately stated with reasons”.

59. Thus, the ratio laid down in *Ashok Kumar* (Supra) is that the High Court will not have jurisdiction under Article 226 of the Constitution of India to pass interim directions with respect to ongoing election process which do not subserve the progress of election and facilitate the election process.

60. I further find that the principles of law relating to Representation of People Act, 1951 have been extended to elections of other bodies. The Supreme Court in a case of election to the Managing Committee of a Society registered under Maharashtra



Cooperative Societies Act, 1960 reiterated the well settled law in *Sri Sant Sadguru Janardan Swami Sahkari Dugdh Utpadak Sanstha Vs. State of Maharashtra* (Supra) in para-12 as under :-

“12. In view of our finding that preparation of the electoral roll is being an intermediate stage in the process of election of the Managing Committee of a specified society and the election process having been set in motion, it is well settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. It is not disputed that the election in question has already been held and the result thereof has been stayed by an order of this Court, and once the result of the election is declared, it would be open to the appellants to challenge the election of returned candidate, if aggrieved, by means of an election petition before the Election Tribunal.”

61. Similarly, in **Shaji K. Joseph** (Supra), the issue before the Supreme Court was with regard to election of a member to the Dental Council of India under Section 3(a) of the Dentists Act, 1948 and Dental Council (Election) Regulations, 1952. The respondent no.1 of the case wanted to contest the election, but as his name was not in electoral roll in Part-A of the register of the dentist for the State, his nomination form had not accepted by the Returning Officer. In these circumstances, respondent no.1 preferred with petition before the High Court Kerala challenging the validity of rejection of his nomination paper. The learned Single Judge allowed respondent



no.1's writ petition by setting aside the order passed by the Returning Officer, rejecting nomination in respect of candidature of Respondent no.1 and directed the Returning Officer to conduct the election afresh after including name of Respondent no.1 and to declare the result on the basis of such election to be conducted afresh from the stage after submission of the nominations. The appellant preferred intra-court appeal assailing the validity and correctness of the said judgment by the learned Single Judge. The Division Bench dismissed the intra-court appeal and, thereafter, the appellant had approached the Supreme Court.

62. In *Shaji K. Joseph (Supra)*, the Supreme Court once again reiterated the settled law that once the process of election starts, no Court should interfere with the election process. It held that the High Court was not right in interfering with the process of election specially when the process of election had started upon publication of the election programme and more particularly when an alternative statutory remedy was available to the respondent by way of referring the dispute to the Central Government as per the provisions of the Dentists Act, 1948 and Dental Council (Election) Regulations, 1952. The Supreme Court observed as under :-

“Very often, for frivolous reasons candidates or others approach the courts and by virtue of interim orders passed by courts, the election is delayed or cancelled and in such a case the basic purpose of



having election and getting an elected body to run the administration is frustrated”.

63. As far as the reliance placed by the petitioner on the judgment passed in *C.W.J.C. No. 16142 of 2014* is concerned, the same is of no consequence. Perusal of the said judgment reveals that it facilitates disqualification of the candidate in individual capacity and not as a delegate of the society.

64. As far as reliance of the petitioner on *N. S. Madhavan* (Supra) wherein it has been held that “in exceptional circumstances the writ petition may be entertained and alternative remedy can be by-passed” is concerned, suffice it to say that the petitioner has failed to appreciate the judgment in its entirety. The facts of *N.S. Madhavan’s* case and the facts of the petitioner’s case are clearly distinguishable. The petitioner has not uttered a word in his writ petition or in his representation dated 11.10.2017 (Annexure-P-7 of the writ petition) that he is not a defaulter. Rather, his claim is mainly based on negative equality, which has no locus to stand in the eyes of law.

65. So far as the contention of the petitioner that there has to be a formal order under Section 41 of the Act, 1935, I am of the view that the same does not have any force of law.

66. Section 41(1) of the Act, 1935 provides that if the Board



of a Cooperative Society is dissolved/superseded on any of the grounds mentioned in sub-sections (i) to (iv) thereof, the member/members of such Board may be declared disqualified to be elected in the Board of that particular society. It would be manifest from the order dated 23.09.2014 passed in **C.W.J.C. No. 16142 of 2014** that the Registrar, Cooperative Society, Bihar issued letter no. 2269 dated 29.05.2013 directing that even if proceeding of supersession under Section 41 is pending, i.e. that no final order superseding the society has been passed, then also the members of the Board can be declared disqualified to contest election for next three years (maximum). This Court, vide its order dated 29.05.2013, interfered by holding that until such time any final order is passed in terms of Section 41 of the Act, the members of the Board cannot be declared disqualified and they are eligible candidates.

67. Further, this judgment by relying upon the law laid down in the case of **Md. Faizan** (Supra) visualizes a liability where it is yet to determine as to whether the body corporate itself is liable for dues or the said liability is of office bearers. At the relevant time, for a cash credit loan disbursed in the name of cooperative society, the cooperative Banks (the creditors) while considering the liability of the office bearers of the society, declared them defaulter for said amount and denied them to give no dues certificate. In the said



eventuality, this Court saved the office bearers of the society and allowed them to contest election of their own society because for corporate liability its office bearers cannot be held liable. However, in the present case, there is no dispute that the PACS of which the petitioner is the delegate is defaulter to the Co-operative Bank.

68. Thus, by virtue of Rule 23(2)(a) of the Act, 1935, the petitioner incurred disqualification to contest election of the Araria Vyapar Mandal. Since the petitioner has not denied the liability of PACS towards the Co-operative Bank, therefore, there is no need of any order by the competent authority declaring his society as defaulter. Having not denied the existence of dues beyond the statutory period, he cannot take shelter of the order passed by this Court in C.W.J.C. No. 16142 of 2014 or the judgment in *Md. Faizan* (Supra).

69. In view of the statutory provisions discussed above and in the light of the aforesaid judgments, I am of the considered opinion that the issue of illegal rejection of nomination of the petitioner and declaration of the result of respondent no.9 can only be challenged by way of filing election petition. The petitioner instead of invoking extra-ordinary and discretionary writ jurisdiction ought to have availed the efficacious statutory remedy before the prescribed Authority.



70. The writ petition, being devoid of any merit, is dismissed.
71. There shall be no order as to costs.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	16-01-2018
Transmission Date	

