IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 373 OF 2018

1. Prabodhan Education Society,
A Society registered under Society
Registrar Act, 1860 bearing
Reg. No.53/Goa/87
Represented through its Secretary,
Mr. Subhash B. Velingkar,
Having reg. Office address at
Vidya Prabodhani Educational
Complex, Alto Porvorim,
Bardez-Goa.

2. Shri Prabhakar Narayan Bhate,
s/o Narayan Bhate, Major of age,
resident of H. No.13/58, Housing Board,
Alto Porvorim Goa.

3. Shri Subhash Velingkar,
s/o late Bhaskar Narayan Velingkar,
Major of age, Indian National,
Secretary of the Parbodhan Education Society,
Karyakari Samiti, resident of 63,
Dr. Dada Vaidya Road,

Panaji-Goa. …. Petitioners

V e r s u s

1. Mr. Sanjay Walavalkar,
Major of age, Indian National,
resident of Janki Niwas,
Khorlim, Mapusa Goa.

2. The District Registrar (North
Inspector General of Societies
Having office at 4th floor,
Junta House Panaji Goa,
The Attorney. ….. Respondents

Mr. S. S. Kantak, Senior Advocate with Advocates Mr. A. Kamat and Mr. V. Naik for the Petitioners.

Mr. Pankaj P. Pai Vernekar, Advocate for Respondent no.1.

Mr. Deep Shirodkar, Additional Government Advocate for Respondent no.2.

Coram:- DAMA SESHADRI NAIDU, J.

Reserved on: 28/2/2020

Pronounced on : 28/5/2020.

O R D E R :

Introduction:

An educational society has 32 members. Its Managing Committee administers its affairs. Once elected, the Committee has a three-year tenure. To begin with, in 2014 it had elections held, belatedly. A couple of years later, the majority members wanted a Special General Body Meeting (SGBM) held. That was for holding elections on time and to express their lack of faith on the Managing Committee. The Committee did not hold the SGBM. That has led to litigation. Pending the litigation, the Managing Committee inducted 22 new members and thus altered the membership equation.

2. Has the Managing Committee abused its position, or has it acted well within its powers?

Facts:

3. The petitioner, an Educational Society, with 32 members, must have elections to its Managing Committee every 3 years. If we begin from 2010, the Society had its elections in September 2010. The next elections must have been in September 2013; instead, it had the elections in October 2014.

4. When the Managing Committee, elected in 2014, was at the helm, the first respondent, a member of the Society, along with 17 others, gave a requisition to the Managing Committee. That was on 7th November 2016. Those 18 members wanted the Managing Committee to convene an SGBM. Those members wanted the SGBM (a) for fixing a date for fresh elections because the Managing Committee's tenure was soon ending; (2) for expressing their lack of faith in the Managing Committee, too.

5. But the Committee did not act on the representation. Aggrieved, the first respondent filed Writ Petition No.1195/2016. Pending that writ petition, the Managing Committee met. One of the items in the agenda concerned the

induction of new members. Then, on 16th September 2017, twenty two new members were inducted. Later, the Managing Committee decided to hold the General Body Meeting on 8th October 2017, as its terms actually ended on 4th October 2017.

6. On 5th October 2017, this Court permitted the first respondent, who is the petitioner in WP No.1195 of 2016, to bring on record the new members because, by then, the Writ Petition questioned the legitimacy of the 22 newly-inducted members as well. In the light of this development, the Managing Committee deferred the General Body meeting. The Court has also directed that, pending elections, the same Managing Committee may continue at the helm of the affairs beyond its tenure, but it should not take any policy decisions.

7. Eventually, on 8th November 2017, this Court disposed of the WP No.1195 of 2016, holding that the District Registrar ("Registrar") could decide all the issues, including one about his own jurisdiction, involved in the writ petition. In tune with that direction, the Registrar passed the impugned order on 9th March 2018. In that order, the Registrar has found fault with the Managing Committee's not calling for the SGBM as the majority members had requested. Besides, it has also held that the Managing Committee's inducting 22 new members is improper and illegal. Aggrieved, the Society, the President, and the Secretary have filed this Writ Petition.

Submissions:

Petitioners:

8. In the light of the above facts, Shri S. S. Kantak, the learned Senior Counsel for the petitioners, has advanced his arguments. Initially, the learned Senior Counsel attempted to answer this proposition: Can the Society, as such, be treated as aggrieved to maintain a Writ Petition on a decision against its resolution to act in a particular way? The learned Senior Counsel has drawn my attention to the amended Section 20A of the Societies Registration Act 1860 ("the

Act”). He emphasised subsection 6 of that provision.

9. Shri Kantak has submitted that the Society can eminently maintain the proceedings on its own name. At any rate, he has insisted that even if the Society is not aggrieved, the Chairman and the Secretary, in the alternative, have also been prosecuting the case. They are not only office bearers but also members of the Society. Thus, according to Shri Kantak, the issue whether the Society can be treated as aggrieved is of no consequence. To support his contention, Shri Kantak has relied on (i) *Village Panchayat, Calangute v Additional Director of Panchayat-II*[1], (ii) *High Court of M.P v Mahesh Prakash*[2], (iii) *Satyavart Sidhantalankar v Arya Samaj, Bomaby*[3].

10. As to the merits, Shri Kantak has taken me through the impugned judgment. According to him, the Registrar has agreed that the Society has the power to induct new members when its tenure subsists, but it has erred in concluding, as the learned Senior Counsel stresses, that on the eve of the elections the Society should not have inducted new members, thus, upsetting the equation or composition of the membership.

11. To elaborate, Shri Kantak has submitted that the Registrar has misapplied the ratio of *Smt. Damyanth Naranga v The Union of India*[4], (ii) *Vijay Shanker Rai v State of U.P*[5].

12. On the question of new members, Shri Kantak stresses that there was no election notification by the time the Society inducted those members. He has also pointed out that the Registrar's reference to the applications of the members and other collateral aspects do not affect the case. Laying emphasis on *Raghunath*

1(2012) 7 SCC 550

2(1995) (1) SCC 203

3AIR 1946 Bom. 516

4(1971) 1 SCC 678

5MANU/UP/1305/2009

Rai Bareja v Punjab National Bank[6], Shri Kantak has submitted that once the statutory mandate is clear, no equitable principles will have a role to play.

13. About the Managing Committee's alleged inaction in the face of the majority members' request for an SGBM, Shri Kantak has submitted that the members' request was on 7th November 2016. It was on the premise that the Managing Committee's tenure would be ending soon. But, in fact, those members miscalculated the Managing Committee's tenure. Besides, their expressing no confidence on the Managing Committee was immaterial for there was no provision to remove the Managing Committee members midterm.

14. Shri Kantak has taken me to section 20A (1) of the Act to underline the scope of the inquiry the Registrar may conduct. Then, he has taken me to sections 4A and 12D, as amended by State of Goa. According to him, the Registrar's power is confined to what has been enumerated under those two provisions. According to him, section 20A of the Act attracts *ejusdem generis* as an interpretative aid. At any rate, in none of the provisions is there any reference to the induction of new members. So, that issue lies beyond the Registrar's jurisdictional bounds. Thus, Shri Kantak concludes that the impugned order is *ultra vires* of the Registrar.

Respondents:

15. To begin with, Shri Pankaj Pai Vernekar, the learned counsel for the first respondent, has argued that neither the Society nor its Office bearers could maintain the Writ Petition. According to him, they are not aggrieved persons. When the dispute concerns the membership, only those members that have been affected should have the *locus* to question the rejection of their membership. Then, he has taken me to the Act.

16. Shri Vernekar has also taken me through the bylaws. He has elaborated

6(2007) 2 SCC 230

on the scope of those bylaws. He has stressed that as per Clause 3 (4), the General Body is the supreme authority. Any decision as to the management can be put to the General Body's scrutiny. Then, he has submitted that once the members of requisite strength, as provided under the bylaws, require an SGBM, the Managing Committee cannot sit in judgment over the members' request. It is more so particularly when the allegations concern the very Managing Committee.

17. About the scope of the Registrar's power to interfere in the affairs of the Society, Shri Vernekar too has referred to section 20A in conjunction with sections 4A and 12D. He then contends that the Registrar enjoys supervisory powers. According to him, the impugned order completely accords with the established position of law. About the Managing Committee's not holding the SGBM, Shri Vernekar stresses that the Managing Committee has acted in utter disregard of the established practice.

18. About the applications the prospective members allegedly submitted to the Society, Shri Vernekar has submitted that they all have been ante-dated, as the inward entry on the applications demonstrate. That apart, he has submitted that those applications have never seen the light of the day, though the Secretary of the Society before this Court earlier placed only the list of the persons, but not the details.

19. Shri Vernekar has submitted that once the requisition was pending consideration, the Managing Committee should not have indulged in any decision making, much less, inducted new members. According to him, it is an easy way out to defeat any objections from the majority members.

20. On the question of jurisdiction, the learned counsel has contended that even if we were to assume that the Registrar had no jurisdiction, still his order could not be disturbed because that would otherwise revive another illegal order or act. To support his contentions, he has relied on *Maharaja Chintamani Saran*

Nath Shahdeo v State of Bihar[7]. According to him, the induction of new members violates section 20A of the Act, besides the Bylaws.

Second Respondent:

21. Shri Deep Shirodkar, the learned counsel for the second respondent, has submitted that section 20A must be read expansively, as it serves a salutary purpose of keeping democratic institutions, such as societies, within their bounds. Then about the absence of any provision in the bylaws to unseat any members of the Managing Committee, Shri Shirodkar has drawn my attention to the Supreme Court's judgment in *Vipulbhai M. Chaudhary v Gujarat Cooperative Milk Marketing Federation Ltd*[8].

22. Shri Shirodkar has also drawn my attention to the notice, dated 16.09.2017, the Managing Committee issued to the members. That notice, according to him, admits that the Committee's term has expired. So, he insisted that the impugned order calls for no interference.

Reply:

23. In reply, Shri Kantak, the learned Senior Counsel for the petitioners, has submitted that if the Managing Committee could induct new members, they could as well induct those members at any stage of their tenure. Therefore, it is incorrect on the first respondent's part to assert that the Managing Committee has indulged in the last-minute effort to induct members only to tilt the membership balance.

24. About the allegation that the applications have been back dated, the learned counsel has drawn my attention to the reply the Society filed in January 2017 before this Court in the previous Writ Petition. He pointed out that then the Society was willing to place all the records before the Court, but the Court did

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7(1999) 8 SCC 16

8(2015) 8 SCC 1

not reckon it necessary.

25. About the scope of section 20A, the learned Senior Counsel has submitted that had the Legislative intent been otherwise, then it would have worded sections 4A and 12D differently, and simply stated that any application concerning mismanagement could be within the Registrar's purview.

Discussion:

26. Let us put the issues in perspective. For that, we need to encapsulate the facts.

27. The first petitioner is an educational Society; the second and third petitioners are its Chairman and Secretary, respectively. This Society, having 32 members, had its elections in September 2010 for its Managing Committee. That Committee comprised Chairman, Secretary, Treasurer, and nominated members not exceeding 11. The tenure was three years. But the next election took place in October 2014, instead of 2013.

28. In November 2016, 18 of 32 members, including the first respondent, submitted a representation to the Managing Committee. In that, they demanded immediate elections because, according to them, the Managing Committee's tenure ended in 2016. Besides, they also expressed their lack of confidence in the office bearers of the Society. So, those members demanded the Managing Committee to hold an SGBM.

29. In response, the Committee did decide to hold the SGBM on 7th December 2016. Accordingly, it communicated to the members, too. But, soon thereafter, the Joint Secretary objected to the SGBM. His objection was said to be two-fold: (a) The members' demand for elections is premature; (b) the office bearers could not be removed, when the tenure is subsisting. These objections, it seems, convinced the Committee. So it withdrew its earlier proposal to hold the SGBM.

30. As the Committee did not act on their representation, one of the 18

members, that is the first respondent, filed Writ Petition No.1195/2016. Incidentally, the first respondent is also part of the Managing Committee. Pending that writ petition, the Committee met. It resolved to induct new members. Then, on 16th September 2017, it did induct 22 members. Finally, the Committee also decided to hold the General Body meeting on 8th October 2017.

31. In October 2017, this Court permitted the petitioner in WP No.1195 of 2016 to implead the newly added members. These developments put the elections on hold. So the Court allowed the Managing Committee to continue as a 'caretaker' but with no power to take any policy decisions.

32. Eventually, on 8th November 2017, this Court disposed of the WP No.1195 of 2016, holding that the Registrar under the Act could decide all the issues involved in the writ petition.

What has the Registrar held?

33. Based on this Court's directions in WP No. 1195 of 2017, the District Registrar rendered the impugned order, dated 9 March 2018. In fact, the Registrar considered four complaints; three of them he treated as original complaints, and the last one, dated 16 November 2017, as the consolidated one. All those complaints, as the Registrar notes, allege mismanagement and breach of fiduciary obligations on the Managing Committee's part.

34. Before this Court, in WP No. 1195 of 2017, the Society and its office bearers cast doubts on the Registrar's jurisdiction to decide the dispute of mismanagement and other collateral factors. Therefore, this Court left the issue open. That is, it required the Registrar to rule on his own jurisdiction before he could proceed further with the matter on the merits.

35. The Registrar has ruled thus:

(a) As the first issue, the Registrar posed unto himself the question of his jurisdiction to decide the dispute before him. The learned Registrar referred to section 4A, section 12 D, and section 20 A (1) of the Act and ruled that he had ample jurisdiction to decide a dispute involving the alleged mismanagement in any society.

(b) As the second issue, the Registrar considered whether the proceedings before him suffered on account of nonjoinder of necessary parties. On appreciating the facts, he has noted that not only the office bearers of the Society but also the newly inducted 22 members were given sufficient opportunity to defend themselves. So he has further ruled that the office bearers' objection about the non-joinder of necessary parties was misplaced.

(c) As the third issue, the Registrar has considered whether the applicants before him have an efficacious alternative remedy under section 6 of the Act. He has, then, concluded that section 6 of the Act does not afford any remedy, much less an efficacious one, to the applicants.

(d) As the fourth issue, the Registrar has taken up the question whether the Managing Committee has the power to enrol new members on the eve of elections. After examining the precedential position on that issue, the Registrar has concluded that the managing committee has no such power.

(e) In the end, the Registrar as held (1) that the Managing Committee is guilty of mismanaging the affairs of the educational society and (2) that it has breached its fiduciary obligations towards the general body of the society.

36. Consequently, the Registrar has directed the Managing Committee to hold the General Body Meeting of the Society in seven days and to hold the elections at the earliest. Besides, he has directed the soon-to-be-elected Managing Committee to frame "necessary rules concerning regulation of its affairs and to plug the loopholes.

37. Aggrieved, the Society, the Chairman, and the Secretary have filed this writ petition. The last two, it seems, have joined the writ petition in their individual capacity, though the Society stands represented by its Secretary. That is, the Secretary represents the Society and stands arrayed individually, too.

Adjudication:

What are the issues to be addressed?

(1) Can a Society, on its own, maintain a writ petition against an order passed by a statutory authority concerning the resolutions its Governing Body or Managing Committee passed?

(2) Is the impugned order *ultra vires* of the Registrar? In the alternative, has the Registrar got the power to rule on the allegations of mismanagement by the Managing Committee?

(3) Has the Managing Committee committed an illegality in not convening the Special General Body Meeting at the request of 18 of 32 Society members?

(4) In the absence of any provision in the bylaws or under the act for bringing up a no-confidence motion or to remove the office bearers, could the applicants have insisted on having a Special General Body meeting for discussing those issues?

(5) Has the Managing Committee legitimately inducted 22 new members, especially, pending the writ petition and on the eve of the elections?

Discussion:

Issue No.1

38. This issue concerns the Society's standing to maintain the writ petition on its own name. The respondents have argued that the Society cannot be treated as an aggrieved party if its activities have led to any litigation.

According to them, an individual, not the institution *per se*, aggrieved by the Society's decision may litigate. On the other hand, the petitioners have cited certain authorities and insisted that the Society, too, can be aggrieved and, thus, can sue on its name.

39. This issue, I must state, does not detain us for long. The technicalities apart, not only the Society but also two of the office bearers, in their individual capacity, have been suing here. So, the respondents' objection on the question of Society's standing must be relegated to an academic backburner. That said, there is ample authority, as cited by the petitioners, to hold that a Society can sue on its own name and assail any administrative or quasi-judicial adjudication involving its resolutions or decisions *per se*: *Village Panchayat*, *Calangute*, *Mahesh Prakash*, *Satyavart Sidhantalankar*, and *Damyanti Naranga*. All those decisions support the petitioners' contentions.

40. Thus, the petitioners have garnered sufficient precedential support to hammer home their point that the Society has the necessary standing to sue on its own name. Besides, a couple of members has joined the Society in the writ petition. Either way, the writ petition suffers no legal lacuna on the ground of standing—or the lack of it.

Issue No.2:

(2) Is the impugned order ultra vires *of the Registrar? In the alternative, has the Registrar got the power to rule on the allegations of mismanagement by the Managing Committee?*

41. We may, to begin with, note that in 1979 the Goan Legislature amended the Societies Registration Act, through the Societies Registration (Goa, Daman and Diu First Amendment) Act 1979. Among the provisions amended are sections 1, 3, 4, 11, 12, 17 to 21. There was another amendment in 1999, too: The amendment Act 1 of 1999, which inserted sections 20A, 20B, 20C, 20D and 20E.

Here, we are concerned with sections 1, 4A, 12D, and 20A of the Act.

42. Thus, the Societies Registration Act, as applicable to Goa, refers to the Inspector-General in the definitional clause: Section 1. And it equates the Registrar with that authority if he has the powers delegated to him. So we need not labour on the point whether the Registrar is competent under the Act to discharge the functions of an Inspector General. Now, let us refer to Section 4A of the Act.

43. Section 4A sets out the powers of Inspector-General and, by implication, those of the Registrar. The Registrar may require any society's governing body, say the Managing Committee, to furnish information or returns relating to persons employed by the society, their conditions of employment, and other related information. Subsections (2) to (5) prescribe the procedural bounds to the information to be sought under subsection (1). Subsection (6) is a good faith clause, protecting the authority from legal proceedings for his acting under section 4A of the Act. On the other hand, section 12D of the Act casts a duty on the auditor of the Society to report irregularities to Inspector General or his delegate.

44. Now, we will come to the pivotal provision. On the information the Inspector General received under section 4A or "otherwise", if he apprehends that the society is maladministered or mismanaged and the objects of the society are getting defeated, he may get the society's affairs investigated. It pays to reproduce the provision. Section 20A, to the extent relevant, reads thus:

> "20A. Investigation of affairs of society.— (1) Where, *on information received under section 4A or otherwise*, or in circumstances referred to in section 12D, the Inspector-General is of the opinion that there is *apprehension that the affairs of the society registered under this Act, are being so conducted as to defeat the objects of the society* or that the society or *its governing body, by whatever name called*, or any officer thereof in actual effective control of the society *is guilty of mismanaging its affairs or of any breach of fiduciary or other like obligations*, the Inspector-General

> may, either himself or by any person appointed by him in that behalf, *inspect or investigate into the affairs of the society or inspect any institution managed by the society.*
> (2) . . .
>
> (3) The Inspector-General or other person appointed under sub-section (1) may, *call upon and examine on oath any officer, member or employee of the society in relation to the affairs of the society* and it shall be the duty of every officer, member or employee, when called upon, to appear before him for such examination.
> (4) . . .
> (5) . . .
>
> (6) The Inspector-General may, *after such investigation or inspection, give such directions to the society or its governing body or any officer thereof, as he may think fit, for the removal of any defects or irregularities within such time as may be specified* and in the event of default in taking action in accordance with such directions, the Inspector-General may proceed to take action under section 12D.
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> (italics supplied)

45. The Society and even its office bearers do not doubt the Registrar's powers, but the question is, can he act on the complaint of the Society members? The petitioners contend that the Registrar may get the information under section 4A or section 12D. Then, his getting information "otherwise" must be read *ejusdem generis*. That is, the inquiry must be confined to the aspects mentioned in sections 4A and 12D but not beyond. Section 4A, according to them, concerns the Society's staffing affairs; section 12D deals with the auditor's obligation to blow the whistle on the Society's irregularities.

46. But the expression "otherwise" stands sandwiched between these two provisions—sections 4A and 12D. So it precedes section 12D. In other words, "otherwise" takes its colour from section 4A—that is, the staffing affairs—and has nothing to do with section 12D. Is it so?

(a) Does Section 20A invoke the interpretative Aid of Ejusdem Generis?

47. Justice Antonin Scalia and Bryan A. Garner, both of whom abhor the peculiar for the plain, in their book *Reading the Law*[9] have explained this

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9Thomson/West, 2012, e-book, Fundamental Principle 32 principle in plain language. According to them, where general words follow an enumeration of two or more things, they apply only to persons or things of the same general kind or class specifically mentioned. According to them, the *ejusdem generis* canon applies when a drafter has tacked on a catchall phrase at the end of an enumeration of specifics, as in *dogs, cats, horses, cattle, and other animals*. Does the phrase "and other animals" refer to wild animals as well as domesticated ones? Are we to read *other animals* here as meaning *other similar animals*? The principle of *ejusdem generis* essentially says just that: It implies the addition of *similar* after the word *other*.

48. The learned authors cite another example: a will gives to a particular devisee "my furniture, clothes, cooking utensils, housewares, motor vehicles, and all other property." In the absence of other indication, almost any court will construe the last phrase to include only 'personalty' and not real estate. And second, when the tagalong general term is given its broadest application, it renders the prior enumeration superfluous. If the testator really wished the devisee to receive *all* his property, he could simply have said "all my property"; why set forth a detailed enumeration and then render it all irrelevant by the concluding phrase *all other property*? Scalia *et al* answer this question with a resort to *ejusdem generis* principle: "One avoids this contradiction by giving the enumeration the effect of limiting the general phrase (while still not giving the general phrase a meaning that it will not bear)."[10]

49. Bennion's *On Statutory Information*[11] elaborately treats the principle of *ejusdem generis* as a part of 'Linguistic Canons of Construction.' The learned author, first, deals with the principle or maxim of *noscitur a sociis*. After setting out its literal meaning—a term is recognised by its associated words—Bennion

10Ibid

11Bennion, *On Statutory Information* (5th Ed., LexisNexis, New Delhi 2008) 1225 notes that this "maxim has given rise to particular precepts such as the *ejusdem generis* principle and the rank principle." He also refers to related maxims: (a) what cannot be known in itself may be known from its associate; (b) what has no meaning by itself is effective when combined. That is, words draw their colour and content from their context.

50. Many a judge, jurist, or scholar has grappled with the distinction, if ever present, between *noscitur a sociis* and *ejusdem generis*. But Bennion holds that the latter is a branch of the former. If we confine our discussion to the principle of *ejusdem generis*, Bennion warns that it is not tied to any particular formula. In this regard, he quotes Odgers, who says that "the general words were only intended to guard against some accidental omission in the objects of the kind mentioned and were not intended to extend to objects of a wholly different kind."[12]

51. Bennion stresses that for *ejusdem generis* principle to apply, there must be a sufficient indication of a category that can properly be described as a clause or genus, even though not specified as such in the enactment. In other words, if a genus cannot be found, the *ejusdem generis* principle does not apply. It is, as Lord Wright put it, a principal of construction, not a rule of law. Bennion, as the second principle, says that the *ejusdem generis* rule may apply where only a single term establishes the genus (as the petitioners contend here). But Bennion warns that in such cases the presumption favouring the principle is weakened because of the difficulty in discerning a genus from a single item.

52. Of much significance is Bennion's observation that an intention to exclude the *ejusdem generis* principle may be treated as implied if its application would produce a result contrary to the legal meaning taken to be intended by Parliament. That is, like all other linguistic canons of construction, the *ejusdem*

12C E Odgers, *The Construction of Deeds and Statutes* (5th edn 1967), as quoted in Bennion's *generis* principle applies only where the contrary intention does not appear.[13] In this context, Bennion quotes Lord Scarman, who in *Quazi v. Quazi*.[14] has said, "the rule, like many other rules of statutory interpretation, is a useful servant but a bad master."

53. Eventually, Bennion cites a couple of English precedents to demonstrate how the mischief rule trumps the principle of *ejusdem generis*. *In Re C (a minor) (interim care order: residential assessment)*[15], the statute required any member of a local authority to disclose his interest and refrain from voting if he had "any pecuniary interest, direct or indirect, in any contract or proposed contract or *other matter*". Lord Parker CJ held that the mischief at which the enactment was directed required the italicised phrase to be given its unrestricted meaning. Similarly, in *R v Edmundson*,[16] the statute authorised the issue of search warrants for stolen goods suspected of being in "any dwelling house, outhouse, yard, garden or *other place*." The genus here is, as Bennion notes, clearly places being or associated with dwelling houses, but the court treated a warehouse a mile away from the dwelling house in question as a "place" within the meaning of the section. Thus, mischief rule makes the principle of *ejusdem generis* bend[17].

(b) Application of Ejustdem Generis:

54. Here, let us examine whether section 20A presents a genus and then employs an over broad term, the amplitude of which we must cut and tailor to suit what has preceded that generic term. First, section 20A speaks of

13Bennion (n 11) 1244

14[1979] 3 All ER 897

15[1996] 4 All ER 71

16(1859) 28 LJMC 213 at 215

17Bennion (n 11) ------

"investigation of affairs of society". The "affairs" of the society has no restrictive or qualifying term preceding or following it. In subsection (1), the provision speaks of the sources of information for the investigation into the "affairs" of the society. There are two specific sources of information: one under section 4A and the other under section 12D.

55. True, section 4A deals with "information or returns relating to persons employed by the society, their conditions of employment … and such other matters relating thereto". Section 12D, on the other hand, speaks of the auditor's duty to report to the Inspector General about the "irregular, illegal or improper expenditure" and so forth. The auditor is also required to inform the Inspector General "whether such expenditure, failure, omission, loss or waste was caused in consequence of breach of trust, or misappropriation or any other misconduct" on the governing body's part. The generic expression "otherwise" finds place between "on information received under section 4A" and "in circumstances referred to in section 12D".

56. First, "information received under section 4A" and "circumstances referred to in section 12D" do not form a 'string of genus'—not even a simple genus. In fact, "otherwise" precedes "in circumstances referred to in section 12D"; so plainly read, "otherwise" has nothing to do what has been mentioned in 12D. Then, as the petitioners have argued, we must see whether what has been mentioned in section 4A forms the genus to cut down the amplitude of "otherwise". And, here we may remind ourselves, if no genus is found, the principle of *ejusdem generis* does not apply. As Bennion has held, a single term forming a genus is a rarity, and in that case the interpretative task of applying *ejusdem generis* stands weakened.

57. Besides, before we endeavour to apply the *ejustdem generis* principle, we

need to read the provision as a whole. Sir John Nicholl has held in *Brett v. Brett*, [18] that "the key to the opening of every law is the reason and the spirit of the law—it is the *animus imponentis*, the intention of the law-maker, expressed in the law itself, taken as a whole. Hence to arrive at the true meaning of any particular phrase in a statute, that particular phrase is not to be viewed detached from the context--meaning by this as well the title and the preamble as the purview or enacting part of the statute." That is, we need to adopt a holistic approach: a consideration of the text as well as the object and purposes of the provision.

58. Thus examined, section 20A reveals its dominant object or purpose—an investigation into the society's affairs. For the Registrar a mere apprehension is sufficient that the affairs of the society are being so conducted as to defeat the objects of the society. If the governing body or any officer of the society "is guilty of mismanaging its affairs or of any breach of fiduciary or other like obligations," the Registrar may get the affairs of the society investigated. The emphasis is on the mismanagement and the breach of fiduciary or other like obligations. They do not confine themselves merely to the staffing affairs. It is, in fact, preposterous for us to hold that the Registrar could investigate the "mismanagement" of only the staffing pattern and nothing else. Nor can we conclude that the Registrar could probe only into financial mismanagement, when the auditor, and no one else, complains. At least, section 20A has no such limitations incorporated into it.

59. Even otherwise, if section 4D specifies illustratively one form of mismanagement, "otherwise" puts under one umbrella information about all other forms of mismanagement. The mischief here the statute aims to cure is the mismanagement; it has not been condemned only in one form and condoned in all other forms. Mismanagement of whatever from should be amenable to

18(1826) 3 Add 210, as quoted with approval in *AG v HRH Prince Ernest Augustus* (1957) 1 All ER 49, 61 (HL) investigation, and that investigation or inquiry must expose it.

60. Subsection (2) invests the Registrar to call upon and examine on oath any officer, member, or employee of the society "in relation to the affairs of the society". Again, the "affairs" of the society has no limiting adjective to keep the scope in narrow confines. Under subsection (6), after the investigation, the Registrar is empowered to direct the society or its governing body or any officer to remove any defects or irregularities within a specified time. The "defects" and "irregularities", too, do not suffer any categorisation. The directions violated, the Registrar has punitive powers. Thus, I reckon the powers of the Registrar under section 20A of the Act are expansive, and they undoubtedly cover all shades of mismanagement in the society. And the informant does not matter; it is the information that does.

The Other Issues:

61. We have resolved the threshold issue—the jurisdictional authority of the District Registrar—positively. Strictly speaking, the petitioners have a legitimate right to insist on a judicial review to have a finding regarding the question of jurisdiction. That issue resolved, now I must note that the other issues cannot be revisited as if this writ petition were an appeal. It may be apt to recall what the Supreme Court has stressed in *V. Ramana v. APS RTC*[19]**:** in the name of judicial review, the Court should not interfere with the administrator's decision unless it is illogical or has suffered from procedural impropriety or is shocking to the conscience of the Court, in the sense that it is in defiance of logic or moral standards.

62. Recently, the Supreme Court in *Sarvepalli Ramaiah v. District*

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Collector[20], has reiterated that judicial review under Article 226 of the Constitution of India is directed not against the decision, but the decision-making process." To elaborate, it has held that administrative decisions are subject to judicial review under Article 226 of the Constitution of India only on grounds of perversity, patent illegality, irrationality, want of power to take the decision, and procedural irregularity. Except on these grounds, the courts, in exercise of the extraordinary power of judicial review, cannot interfere with administrative decisions. As to irrationality, the Court has further held that a decision is vitiated by irrationality if the decision is so outrageous that it defies all logic and when no person acting reasonably could possibly have taken the decision, having regard to the material on record.

63. Let us see how far the Registrar's decision suffers from any vices pointed out in the above two judgments.

Issue No.3:

(3) Has the Managing Committee committed an illegality in not convening the Special General Body Meeting at the request of 18 of 32 Society members?

64. Indeed, 18 of 32 members of the Society demanded the Managing Committee to convene an SGBM. They wanted that meeting on two grounds: (1) that the elections should be held expeditiously; (2) that they have lost faith in the Managing Committee. Initially, the Managing Committee desired to accede to their demand and hold the SGBM, but later, after communicating to the members about the date of the meeting, it went back on its commitment. For this U-turn, the Managing Committee cites the excuse that one of the office bearers objected to it. At any rate, all through, the Managing Committee has maintained that the convening of the SGBM would have served no purpose. In this regard, they assert that by the time those 18 members demanded the

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meeting, the Managing Committee's tenure had still been subsisting. Besides, despite their alleged loss of faith, the unsatisfied members have no mechanism in the bylaws of the Society to remove the office bearers when their tenure is subsisting.

65. To repel these contentions, the Registrar, in an elaborate order, has given cogent reasons. At pages 29 and 30 of the order, the Registrar has elaborated on how the Managing Committee has illegally refused to convene the special general body meeting despite a request by the majority members. In this regard, the Registrar sites clause 3 (v) of the bylaws and holds that the Managing Committee was duty bound to convene the SGBM, but it has wrongly arrogated to itself the task of deciding whether there was substance in the requisition by those 18 members. In other words, "it was completely improper for the Managing Committee to sit in judgement on the merits of the agenda stated in the requisition."

66. I find no perversity in the Registrar's findings on this issue; on the contrary, the reasoning commended acceptance. I, therefore, hold that the second issue should be answered against the Society and the Managing Committee. It is done so.

Issue No.4:

(4) In the absence of any provision in the bylaws or under the Act for bringing up a no-confidence motion or to remove the office bearers, could the applicants have insisted on having a Special General Body meeting for discussing those issues?

67. The issue is explicit, but not the answer. True, the Society's bylaws do not provide for any no-confidence motion or other mechanism to remove any office bearers from the Managing Committee. So, necessarily, we should look to precedents to resolve the issue.

68. In *Vipulbhai M. Chaudhary*, the question concerns the removal of the

Chairperson of a Cooperative Society through no confidence motion. But there was no specific provision for such removal. The Supreme Court has held that all laws on Cooperative Societies were bound to be restructured in consonance with 97th Constitutional Amendment. And any provision in any Act, Rules, or Byelaws otherwise inconsistent with the Amendment would be inoperative thereafter.

69. *Vipulbhai M. Chaudhary* has, among other things, held that there was a lot of difference between election of delegates or representatives to a constituent body and selection of a person by that body from amongst the elected members to be the leader. That is, if a person is 'selected' to office through democratic process, and when that person has lost the confidence of the representatives who selected him, those representatives should necessarily have democratic right to remove that office bearer in whom they did not have confidence. If there is no democracy in cooperative society, it ceases to be a cooperative society as conceived by Constitution under the 97th Amendment. According to *Vipulbhai M. Chaudhary*, it is permissible for the members to remove an elected office bearer through motion of no confidence.

70. *Vipulbhai M. Chaudhary* has emphasised that a body built, among other things, on democratic principles cannot be led by a captain in whom the co-sailors have no confidence. To conclude, it has held that if a person has been selected to an office through democratic process, and when that person loses the confidence of the representatives who selected him, those representatives should necessarily have a democratic right to remove such an office bearer in whom they do not have confidence, in case those institutions are viewed under the Constitution/statues as democratic institutions. It pays to extract what *Vipulbhai M. Chaudhary* has said in this regard:

> No doubt, in the cases referred to above, the respective Acts contained a provision regarding no confidence. *What about a situation where there is no express*

> *provision regarding no confidence? Once the cooperative society is conferred a constitutional status, it should rise to the constitutional aspirations as a democratic institution.* So, it is for the respective legislative bodies to ensure that there is democratic functioning. When the Constitution is eloquent, the laws made thereunder cannot be silent. *If the statute is silent or imprecise on the requirements under the Constitution, it is for the court to read the constitutional mandate into the provisions concerned and declare it accordingly.*
>
> (italics supplied)

71. *Vipulbhai M. Chaudhary*, I reckon, clinches the issue. In any democratically constituted institution, the office bearers continue to hold the office during the pleasure of the members that have chosen those office bearers. Sometimes the governing rules or regulations of that institution are silent about how the governing members must account for their misdeeds or maladministration when their tenure is subsisting. But it is no license for them to wreak havoc in the name of administration and annihilate the institution. In other words, it is institutionally inherent that the governing members must administer the affairs of the institution faithfully, honestly, and diligently; they should always remain accountable to the members for their omissions and commissions. In the same reckoning, the members' right to unseat these governing members is equally inherent in the scheme of the things, despite no express provision to that effect, say, in the byelaws.

72. So we cannot hear the petitioners saying that they were justified in not holding the SGBM. In this context, we may reiterate what the Registrar has held: once the majority members, especially in tune with the bylaws, required the Managing Committee to hold a general body meeting for whatever purpose, it is the Managing Committee's bounden duty to abide by that demand. Let us assume that the majority members wanted the general body meeting to discuss frivolous or unimportant issues; still it is not for the Managing Committee to sit in judgement over the tenability of the majority members' demand. Once meeting convened, it is for the entire body of the membership to examine the demands and

decide on them. This observation, as made by the Registrar, remains even more relevant because, here, the allegations concerned the very Managing Committee.

73. In fact, to support their contentions, the respondents have relied on *Chintamani Saran Nath Shahdeo*. It propounds that an order may be *prima facie* unsustainable and deserves to be set aside. But if that setting aside revives another illegal order, the courts would be loath to exercise their power of judicial review. Binding as that proposition is, I see no room here for me to apply the case holding of *Chintamani Saran Nath Shahdeo*.

74. Nevertheless, for the reasons mentioned above, I must confirm the findings of the Registrar that the Managing Committee has acted with material irregularity by refusing to abide by the majority members' demand for an SGBM. Now, we will examine the last issue, keeping in view our answer to this issue.

Issue No.5:

(5) Has the Managing Committee legitimately inducted 22 new members, especially, pending the writ petition and on the eve of the elections?

75. This issue forms the fulcrum of the case. Besides tarrying over the elections and refusing to hold the SGBM as desired by the majority members, the Managing Committee inducted 22 new members. And that was pending a writ petition about the Managing Committee's not holding the SGBM.

76. In answer to this issue, the Registrar has held that the Managing Committee does have the power to induct new members. That said, he has found fault with the way the Managing Committee has exercise that power. But the petitioners place heavy emphasis on the Registrar's observation about the Managing Committee's power to induct new members. Simply stated, the petitioners contend that the Managing Committee's not conducting SGBM does not affect its power to induct new members. They also assert that this Court never restrained the Managing Committee from exercising that power, though the writ petition is pending. Of course, the respondents counter-assert

that this Court did not interfere based on the oral assurance by the petitioners' counsel to that effect. As rightly observed by the Registrar, the record is silent on that score. So we cannot countenance that plea.

77. But we will examine the reasons that weighed with the Registrar on how the Managing Committee has abused its power, so to say.

Finding A:

78. The Registrar has heavily relied on *Vijay Shankar Rai* and has held that "even judged on principles of equity and fairness, it cannot be held that a Managing Committee (who may otherwise be entitled to enrol members) can be permitted to do so upon expiry of its term of office or shortly prior thereto on the eve of elections."

79. First, let us examine *Vijay Shankar Rai.* In that case, the questions were these: Has the Administrator appointed Under Section 29(5) of the Act any authority or power to enrol new members in the Society? If he has, can he do so on the eve of elections? On facts, *Vijay Shanker Rai* reveals that as the elections were not held by the Registrar, members filed various writ petitions. They pointed out that the Administrators had been functioning for many years and that they should not be allowed to function indefinitely. They wanted the Court to direct the Registrar to hold elections to the Committee of Management.

80. Then, the Registrar notified the dates of election. But, soon thereafter, the scheduled elections were postponed to some other date. In the meanwhile, the Administrator went on enrolling new members. When this was questioned, the respondents contended that the Administrator/Committee of Administrators appointed under Sub- clause (5) of Section 29 of the Act, as the deemed Committee of Management, is entitled to exercise all powers and

functions of the Committee of Management. And that power includes the power to enrol new members.

81. A Division Bench of Allahabad High Court, in *Vijay Shankar Rai*, has relied on the case holding of *Joint Registrar of Co-operative Societies v T. A. Kuttappan*[21] and *K. Shantharaj v M. L. Nagaraj*[22]. It has, then, held that a Co-operative Society is expected to function in a democratic manner through an elected Committee of Management. The power to enrol members, thus, vests with the elected Committee of Management. That is, the enrolment of new members is basically the function of the elected Committee of Management and not that of the Chairman, unless duly authorized by the Committee of Management.

82. Finally, in the penultimate paragraph of the judgment, *Vijay Shanker Rai* holds that "even otherwise, enrolment of new members on the eve of election, cannot be justified in any manner nor can be said to be reasonable and fair nor can be supported by any legal provision."

83. As rightly contended by the petitioners' counsel, the case holding of *Vijay Shankar Rai* does not apply here. The facts are different. The Allahabad High Court has examined the issue in the perspective of an administrator and the deeming provision that empowers him to have all the powers as if he were the governing body. Besides, *Vijay Shankar Rai* has, indeed, observed that the enrolment of new members on the eve of election cannot be justified. I am afraid, that observation cannot be a part of the case holding; it is, at best, an *obiter*.

84. Here, the Registrar has applied equity principles, too. But once a statute confers powers on a person, the exercise of that power must be within

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22(1997) 6 SCC 37

the four corners of the statute. Sans limitations—express or implied—in that statute, we cannot import equity principles to dilute those powers. Equity operates in the absence of a statute, but not in the face of it.

Finding B:

85. The Society in its notice, dated 16 September 2017, issued through the Secretary, has called for the meeting of the members. In that notice, the intimation reads thus: "in view of the expiry of the term of present committee…". The Registrar lays emphasis on this expression and holds that the Secretary himself has admitted that the Managing Committee's term has ended.

86. Regrettably, the Registrar has endeavoured to read between the lines. When a fact is a matter of arithmetic and verifiable from the record, an innocuous expression, such as "in view of the expiry of the term", cannot amount to an admission, displacing what is otherwise plainly a matter of calculation. Even otherwise, I cannot subscribe to the view that the expression the society used in the notice definitively amounts to an admission. "The expiry of the term", a nominal phrase, does not carry any temporal element.

87. The previous election for the Society was held on 5 October 2014; the tenure being three years, the Managing Committee could hold the office until 4 October 2017. And the notice was issued on 16th September 2017.

Finding C:

88. The induction of the new members was on 17 September 2017, a Sunday. The Registrar has noted that the Society has claimed before the High Court that it received the applications in December 2016, yet the Society did nothing until 16 September 2017. On that day, a Saturday, the Society put the members of the Managing Committee on notice, giving them less than 24

hours, and convened the meeting on the very next day. And, thus, it has hurried through the process of inducting the new members. Though the Registrar acknowledges that the bylaws do not provide for any specific time frame for convening the meeting, he nevertheless observes that the Society has displayed an unseemly haste and abused its position.

89. Indeed, when the Society inducted the new members, WP No. 1195 of 2016 was pending. There was no stay in the matter. Nor had the Managing Committee's tenure ended by then. Further, no election notification had been issued. In this backdrop, can we conclude that the induction of new members has been vitiated?

90. First, it is the Managing Committee that inducts the new members; second, no member of the Managing Committee has had a grievance that the members had been handicapped in taking a decision because of the paucity of time—on a short notice. Unseemly is the haste and unreasonable is the Society's attitude, but neither amounts to an illegality.

Finding D:

91. The Registrar has also visited a contested factual arena: though the Society claimed before the High Court to have received the application in December 2016, the inward register showed that the applications were received on 16 September 2017, one day before the actual induction. The Secretary is said to have, according to the Registrar, displayed his political predilections, forced the staff and other members to be part of his political activities, and has even ensured the induction of those members that conformed to his political affinity.

92. Indeed, all the above aspects are disputed facts. Though the Registrar has examined a few persons on either side as witnesses, I reckon the

issue before us can be decided without reference to those disputed questions of fact.

Finding E:

93. Has the Managing Committee committed an illegality in admitting new members?

94. We have already considered the Registrar's reasoning on this point; much of it, I am afraid, has not passed the judicial muster. The induction was on the eve of election, but by then there was no notification. The induction was at the very end of their tenure. No law mandates that the Committee should exercise its powers at the beginning or in the middle of its tenure. The quality or legality of no official act is proportionate to the length of the official tenure remaining. An official's act done on the last day of an official tenure is as valid as his act on the very first day of his tenure.

95. Then, what vitiates the Managing Committee's decision to induct new members?

96. We have already held that the Managing Committee's refusal to hold the SGBM even when majority members demanded is an act of illegality. Now, we should examine the induction of the new members in the context of that refusal. On the converse, if there was no demand for an SGBM by the majority and no expression of no-confidence, then the governing body may induct new members at any stage during its tenure—the beginning, the middle, or the end of the tenure making no difference.

97. Here, the majority members—18 out of 32—demanded an SGBM; it was, among other things, to express their no confidence against certain office bearers, too. The case holding of *Vipulbhai M. Chaudhary* dispels all doubts about whether the statute or the byelaws should provide for unseating of an

office bearer. No need. It is a constitutionally conferred right.

98. Thus, inferentially, we may hold that once majority members express no confidence on the governing body or any office bearer and demand an SGBM, until the governing body proves its majority, it loses legitimacy to take policy decisions. And that legitimacy includes induction of new members. Otherwise, the moment a governing body, that is the Managing Committee, faces a no-confidence motion, the easy—and devious—way out for the governing body is put the SGBM on hold, induct new members indiscriminately, alter the membership equation, and then hold the SGBM. It is abuse of power that upsets the democratic design of any society and that should be struck at.

99. So the inescapable conclusion is that the Managing Committee inducting new members in the face of no confidence and the impending SGBM is illegal and arbitrary.

100. As a collateral fact, I may note the Managing Committee of this Society has been habituated in holding elections belatedly. In 2013, when its tenure was over, it did not hold elections; instead, it had them the next year. The excuse was that the governing body was busy with preparations for institutional celebrations. In 2017, again there ought to be elections, but so far none. Whoever initiated the litigation, ultimately, the Managing Committee seems to be the beneficiary; it has clung to the power. Interestingly, none of the 22 new inductees have chosen to question their removal from the membership. It is, in fact, the Society and two of the office bearers that have been waging the war. That speaks volumes. In the ultimate analysis, the majority members have suffered, the Society's objectives got defeated, and the democratic sprit of the institution has evaporated. Let it not happen. Holding elections on time must be the norm, their postponement ought to be the exception. Not the other way

round.

Under these circumstances, I refuse to interfere with the impugned order, dated 9th March 2018, of the District Registrar. As a result, I dismiss the writ petition. No order on costs. Interim relief, if any, stands vacated.

DAMA SESHADRI NAIDU, J.

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