

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on 23.07.2021

Order delivered on 01.10.2021

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

O.A.Nos.734 & 735 of 2020
in
C.S.No.389 of 2020

Mr.Joseph Abraham Vs ...Applicant/Plaintiff in both O.As

1. The Madras Medical Mission,
(a Society registered under the Tamil Nadu
Societies Registration Act, 1975)
Having its registered office at :
No.4-A, Dr.J.Jayalalitha Nagar,
Mogappair,
Chennai - 600 037.

2. Mr. M.M.Phillip
Hon.Secretary (Interim)
The Madras Medical Mission,
residing at No.29, College Road,
Chennai - 600 006.

3. Mrs.Achamma Kurien

4. Mrs.Ambika Mammen

5. Mrs.Annama Mathai
6. Ms.Annu Thomas Philip
7. Mrs.Annykutty Y.
8. Mrs.Babitha Thomas
9. Mrs.Chinnamma Thomas
10. Mrs.Deepa Joseph
11. Mrs.Divya Mariam Zachariah
12. Mrs.Elizabeth Alexander
13. Mrs.Elizabeth Thomas
14. Ms.Karen Elsa Thomas
15. Ms.Kripa Mathew
16. Mrs.Manju Varghese
17. Mrs.Mariam George
18. Mrs.Mary Varghese
19. Mrs.Mini Sajan Varghese
20. Mrs.Prema Mammen Mathew

21. Mrs.Roshin Elsa Thomas

22. Mrs.Sarasu Eapen

23. Mrs. Seba Thomas

24. Mrs.Suseela Vergis

25. Mrs.Susha Alex ... Respondents/Defendants in both O.As

Prayers:

O.A.No.734 of 2020

Application filed under Order XIV Rule 8 of O.S. Rules read with Order XXXIX Rule 1 & 2 of C.P.C. to grant interim injunction restraining the 1st respondent/defendant Society from treating the Respondents/Defendants 3 to 25 as members of the Society pending disposal of the Civil Suit.

O.A.No.735 of 2020

Application filed under Order XIV Rule 8 of O.S. Rules read with Order XXXIX Rule 1 & 2 of C.P.C. to grant interim injunction restraining the Respondents/Defendants 3 to 25 from acting as members of the 1st respondent/ Defendant Society including restraining them from attending any meetings of the Society or voting in its elections pending disposal of the Civil Suit.

For Applicant : Mr.P.S.Raman,
Senior Counsel
for Mr.Hari Radhakrishnan

For Respondents : Mr.Silambanan,
Senior Counsel for
Mr.Hallel Ben for R1
Mr.Thomas T.Jacob for R2
Mr.AR.L.Sundaresan
Senior Counsel for
Mr.J.Cini
for R5, R6, R8, R11 to 14,
R19, R21 to 23 & R25
Mr.Amblimenan for R20
No appearance for R3, R4, R7, R9,
R10, R15 to 18 & R24

COMMON ORDER

The applicant herein is the plaintiff and the respondents are the defendants in the suit. The suit has been filed by the applicant/ plaintiff for the following prayer.

a. Declare that the decision taken by the Governing Board of the 1st defendant Society in Agenda Item No.7 in the meeting held on 12.02.2020 and Agenda item No.11 in the meeting held on 15.10.2020 and the consequential Members list issued by the 2nd Defendant dated 30.10.2020 in and by

which the Defendants 3 to 25 have been added as life members of the 1st Defendant Society are illegal, null and void;

b. Permanent injunction restraining the Defendants 3 to 25 from acting as members of the 1st Defendant Society;

c. Permanent injunction restraining the Governing Board of the 1st Defendant Society from inducting any persons as life members of the Society pending consideration of the proposed amendment to by-law 28 of the By-laws of the Society.

2. The facts and circumstances which gave rise to the filing of the applications and the suit are stated hereunder.

(i) The applicant/ plaintiff claims to be the life member of the 1st respondent/defendant Society. The 1st respondent is a registered Society under the provisions of the Tamil Nadu Societies Registration Act, 1975, hereinafter referred to the Act, 1975. The Society is governed by its own by-laws read with the provisions of the Act,1975. The 1st respondent Society currently has a total membership of 133 life members. The management and

control of the affairs of the 1st respondent Society is vested in the Governing Board which has a maximum of 21 members duly elected from among the life members of the 1st respondent/ defendant society. 1/3rd of the members of the Governing Board i.e., 7 members retire every year by rotation and the election to fill up the seats is held during the Annual General meeting, in case, more than 7 nominations are received. From among the members of the Governing Board, the President, Vice-President, Secretary and Treasurer are elected.

ii) According to the applicant herein, the normal practice of adding new members to the 1st respondent Society is, that the Governing Board will take a decision to open the membership of the Society to eligible persons and thereafter, decide on admitting those persons who fulfill the eligibility criteria. Any person interested and eligible can apply for admission to membership in the 1st respondent Society.

iii) In 2017, a member of the Society approached this Court questioning the inclusion of new members *inter alia* contending that induction of the new members, was without the approval of the general body and hence, was improper. In order to clear doubt as to the procedure

to be adopted by the Governing Board in admission of new members, an amendment was proposed in the by-laws of the Society. The amendment proposed was to clarify that any member of the Church having paid life membership of Rs.5000/- or as decided by the General Body from time to time and is admitted to the membership of the Society by the Governing Board shall be life member of the Society from the date on which the resolution approving his admission has been passed. The essence of the amendment was to give primacy to the General body towards ratification of the admission of new membership, instead of the Governing Board's exclusive power to admit new members, in terms of the existing by-laws of the Society. The amendment was listed as one of the agenda in the Extraordinary General Meeting scheduled on 22.06.2019. But ultimately, the agenda could not be carried through and thus, no amendment has been effected on the existing by-laws of the Society.

iv) In the meanwhile, seven of the Governing Board members of the Society retired in October, 2020 and the election to fill up the resultant vacancies was to be held. On 30.10.2020, a notice was issued to all the members of the Society including the applicant/ plaintiff herein enclosing a

list of members of the Society, as on 22.10.2020. According to the applicant, only on seeing the intimation dated 30.10.2020, he had come to know that 23 new members had been admitted as life members of the 1st respondent Society, without any intimation or calling for application from the interested persons. The newly inducted members have been arrayed as respondents/defendants 3 to 25 herein. On further enquiry, the applicant/plaintiff appeared to have been informed that in the meeting of the Governing Body held on 12.02.2020, a decision was taken to expand the life membership by considering induction of spouse/children of the founding members, who could not bring in any new members when the membership was opened in 1996 or 2013. After the decision was taken in the meeting on 12.02.2020, the Governing Board, in its subsequent meeting dated 15.10.2020, passed a resolution admitting 23 members as life members of the 1st respondent Society. Subsequently, a letter dated 30.10.2020 was issued updating the list of members of the Society.

v) According to the applicant/ plaintiff, a decision to admit only 23 persons as new members of the Society had been taken in partisan manner on the eve of the forthcoming election to the Governing Board. According

to the applicant, the 2nd respondent, being appointed as an interim Secretary of the Society was responsible for inducting 23 new members for advancing his prospects in the election. The applicant/plaintiff herein also question the manner in which, only 23 persons have been inducted, when there are number of representations seeking admission to the Society have been received and pending. According to him, the bye-laws of the Society do not envisage any class or category having description 'founder members' and therefore, the induction of the members against the said category is contrary to the bye-laws and thus without the authority of law. In the said circumstances, the applicant/plaintiff herein is before this Court seeking to challenge the induction of 23 new members in the first respondent Society.

vi) The above Original Applications have been filed for grant of interim injunction restraining the 1st respondent Society from treating the respondents 3 to 25 as members of the Society and restraining the respondents 3 to 25 from acting as members of the 1st respondent Society.

vii) As far as the applications are concerned, there was no interim order passed by this Court, however, when the Extraordinary General Body meeting was called by the Society on 23.04.2021, an issue was raised before

this Court as to the participation of the newly inducted members namely, respondents 3 to 25 herein and in consideration of the rival submissions of the parties, this Court vide order dated 19.04.2021 has passed an interim order as follows:

In consideration of the totality of the circumstances and also the balance of convenience in favour of the applicant/plaintiff for the present and the submissions made on behalf of the learned Senior Counsel, this Court would pass the following interim order:

“The respondents/defendants 3 to 25 may be allowed to participate in the deliberation of the Extraordinary General Body (EGM) meeting scheduled on 23.04.2021 and may also be allowed to cast their votes (through E-voting) in the meeting but their votes are to be kept separately in a sealed cover and not to be acted upon until further orders.”

3. In the above factual backdrop, the learned Counsels representing the parties have made their respective submissions as under.

4. Mr.P.S.Raman, leaned Senior counsel appearing for the applicant

would make the following submissions.

i) The learned Senior Counsel, at the outset has drawn the attention of this Court to various by-laws of the Society and in particular, he referred to by-laws 26 to 30. By-law 26 provides for admission of members as per which membership is open to anyone who pays the admission fee as decided by the General Body from time to time and who believes in the aims and objects of the Society. By-law 27 provides 3 classes of members viz., (a) Life Member (b) Sustaining Member (c) Honorary Member. By-laws 28 to 30 define each class of members. According to the learned Senior Counsel only the life member has a voting right in terms of the by-laws.

ii) The learned Senior Counsel would submit that in the Governing Board meeting held on 24.08.2018, it was decided to comply with the decision taken by the Governing Board meeting held on 19.01.2018, that the children of members can be admitted after the demise of the member only after suitable amendment of the bye-laws at the General Body Meeting. Without effecting the proposed amendment as decided by the Governing Board itself, the present induction of 23 new members as life members is improper and illegal. According to the learned Senior Counsel, as per bye-

law 27, there are only 3 classes of members defined and there is no such thing as founding member and hence, the induction of 23 members under the category "founding member" is not in terms of the by-laws of the Society and therefore, the same is liable to be interfered with.

iii) The learned Senior Counsel also referred to the minutes of the meeting of the Governing Board dated 12.02.2020 wherein a decision was taken to induct new members. He particularly referred to paragraph No.7 of the minutes which dealt with the expansion of the membership. It is stated therein that the founder members who took their membership by 1987, their families have not been adequately represented and therefore, the Governing Board decided that life membership will be open to those founding members who could not bring in any new member (spouse/children) when the founding membership was opened up previously in 1996 or 2013. According to the learned Senior Counsel, there was not rationality and fairness on the decision of the Governing Board fixing the year 1987 and confining admission of new members from the founding membership of that year alone. According to the learned Senior Counsel, when the Society was formed in 1982, the Governing Board could have opened the membership

even for those founding members of the year 1988, 1989 and so on and so forth. The decision taken, confining only to a particular year was blatantly intended to benefit a particular faction of members of the Society to the exclusion of all others who were otherwise, eligible to be inducted as life members.

iv) The learned Senior Counsel referred to the minutes of the Governing Board meeting held on 15.10.2020, wherein the resolution was passed in agenda No.11 unanimously admitting 23 members as life members from 15.10.2020. He referred to agenda 12 which speaks about the Annual General meeting of 2020 and the election for the vacant positions to the Governing Board. In that regard, one Mr.Jacob Kurian was requested to be the returning officer along with one Mr.Ron Thomas for the election. The induction of 23 new members on the eve of the election contemplated in the said meeting was meant to tilt the prospects of the ensuing election in favour of a particular faction in the Society. According to the learned Senior Counsel, such induction of new members on the eve of the election of the Society has been frowned upon by the Courts, repeatedly.

v) The learned Senior Counsel, in this regard, referred to Kerala

Co-operative Societies Rules, 1969 and Maharashtra Co-operative Societies Act, 1960. In Kerala Co-operative Societies Rules, 1969, Rule 26 place prohibition on admission of members and transfers of shares on the eve of the general meeting. Likewise, section 27 of the Maharashtra Co-operatives Societies Act, 1960 provides that any new member of Society shall be eligible to vote in the affairs only after completion of period of 3 years and further, it was provided that individual member of the Society shall not be eligible for voting in the affairs of the Society for a period of two years from the date of enrolment of member of such Society.

vi) The learned Senior Counsel also referred to a decision of Allahabad High Court dated 02.09.2009 passed in ***W.P.No.7679/2009 (Vijay Shanker Rai vs. State of U.P.)***. The observations of the High Court against admission of new members on the eve of election relied upon are extracted hereunder.

There can also not be any justification or necessity for the Administrator to enrol new members during the short period of his stay in the Society, apart from the fact that his competence would also have to be tested on the ground that once the term of the elected Committee of Management' has come to an end, the said

Committee could not have enrolled any new member, even if it had remained in office thereafter, till such time the elections were held, therefore, also there can be no occasion for the Administrator to enrol new member after the expiry of the term of the Committee of Management. If the elections were to be conducted and held during the subsistence of the elected Committee of Management, the Committee of Management under the rules, could have enrolled new members, but after the expiry of the term, the said Committee also could not have enrolled any new member and, therefore, the Administrator/Committee of Administrators, being the Committee of Management under the deeming clause, cannot enrol any new member. The elected Committee of Management under Section 29(5)(a) ceases to exist, after the expiry of its term, if fresh elections had not been held, for any reason whatsoever within the prescribed period of its term.

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We are thus, of the considered opinion that the deeming clause in sub-clause (6) of Section 29 does not enlarge the scope of powers and functions of the Administrator/Committee of Administrators, as against

the one interpreted by the Supreme Court in the cases of Jt. Registrar of Cooperative Societies and K. Shantharaj (supra) and thus, would not empower the Administrator or Committee of Administrators, to enrol new members.

The new members, who have been enrolled by the Administrator have been enrolled by an authority, which inherently lacked jurisdiction and authority, to enrol them as member, therefore, they can neither be treated as the members of the Society, nor such enrolment would confer any right upon them, to be treated as 'member'.

The elections have to be conducted on the basis of the electoral roll, which existed on the date when the existing Committee of Management was replaced by the Administrator/Committee of Administrators. Of course, if there is any dispute amongst the existing members regarding their qualification or disqualification or eligibility to participate in the elections, that can be resolved, as per the rules, by the authority competent.

We also find 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, apart from

the finding aforesaid that the Administrator/Committee of Administrators, has no authority or power to enrol new member, at any point of time, during which they remain in office.

For the reasons aforesaid, the members enrolled by the Administrator/Committee of Administrators in the Cooperative Society cannot be taken or treated as validly enrolled members of the Society, nor they would get any right to participate or vote in the elections of the Committee of Management of the Society.

vii) The learned Senior Counsel also relied upon the judgment of the Hon'ble Supreme Court in Civil Appeal No.412/2021 dated 10.02.2021 (**Swati Ulhas Kerkar and Ors. vs. Sanjay Walavalkar and Ors**) reported in **MANU/SC/0063/2021** and he particularly referred to paragraphs Nos.48, 51 and 53 which are extracted hereunder.

48. Be that as it may, we now proceed to examine the argument of the Appellants that at least the case of 5 Appellants, who had applied for grant of membership before the majority of the existing members had moved no confidence motion on 07.11.2016 be treated differently. After cogitating over all facets, we are of the considered opinion that it would be unwise to accede to this submission. We say so because as noted earlier, at

the instance of these Appellants it is not permissible to reopen the findings and conclusion reached by the High Court, as regards illegality committed by the then Managing Committee in deferring the SGBM despite the mandate in that regard in terms of Clause 3(v) of the by-laws and instead hastening the process of admitting 22 new members thereby changing the constitution of the Society of only 32 existing members. That finding and conclusion has become final with the rejection of the SLP filed by the Society and the office bearers of the then Managing Committee on 15.06.2020. Resultantly, it must follow that the decision of the then Managing Committee dated 17.09.2017 admitting 22 new members has been rendered non-est. This logic uniformly applies to all the 22 persons enrolled as new members of the Respondent-Society. There is no legal basis to segregate the claim of 5 Appellants on the basis of date of (prior) applications. Indubitably, merely upon making an application it does not follow that he/she would stand admitted as a member of the Society. The applicant must fulfil other eligibility and procedural conditions and eventually, the Managing Committee must find the candidature fit and deserving for being admitted as a member of the Society. In other words, the decision of

the then Managing Committee dated 17.09.2017, "as a whole", suffers from the vice of unseemly haste, and thus colourable exercise of power and non-est in the eyes of law. It cannot be viewed differently for 5 Appellants just because of prior date of application.

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51. To conclude, we uphold the view taken by the High Court that the decision of the Managing Committee dated 17.09.2017 suffers from the vice of colourable exercise of power and thus, illegal and bad in law. The same is non-est in the eyes of law. However, the parties (Appellants and Society) need to be relegated to the stage before 17.09.2017, meaning thereby the applications submitted by the Appellants and two other similarly placed persons for grant of membership, be regarded as pending and/or deemed to be revived in terms of this judgment. Their applications for grant of membership be considered by the newly constituted Managing Committee on its own merits in accordance with law. All contentions available to the parties in that regard are left open.

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53. Accordingly, this appeal partly succeeds to the

extent of clarifying/modifying the order passed by the Registrar (paragraph (A) of his operative order) as affirmed by the High Court, to mean that the applications made by the Appellants and similarly placed two other persons for grant of membership of the Society, are deemed to be pending and/or revived and be considered by the newly constituted Managing Committee on its own merits in accordance with law, keeping in mind the observations made in this judgment.

viii) In the above decision, the Allahabad High Court has strongly held that enrolment of new members on the eve of election cannot be justified under any circumstances and such enrolment was unreasonable and unfair. In similar context, the admission of members is found to be suffering from the vice of colourable exercise of power and held illegal and bad in law, by the Hon'ble Supreme Court in the above decision. Likewise, in the present case, induction of 23 members selectively with an eye on the election was actuated by bad faith. This is more particularly so that without considering so many other spouses and children of other eligible founding members and restricting admission only to 23 members is *ex facie* illegal, unjust and discriminatory and therefore, the impugned induction is liable to

be interfered with.

5. Mr.AR.L.Sunderasan, the learned Senior Counsel appearing for some of the respondents/ defendants would make the following submissions.

i) At the outset, he referred to two crucial by-laws viz., by-laws 26 and 31. As per by-law 26, Membership is open to any one who pays admission fees and subscription. As per by-law 31, the Governing Board has the power to refuse membership without assigning any reason. According to the learned Senior Counsel, when the Governing Board is vested with the power of admission of members in terms of by-law 26, the power to refuse membership without assigning any reason is also provided under by-law 31. The induction of 23 members by the Governing Board, cannot be questioned successfully, as no by-law has been stated to be violated in the process of induction of new members. According to the learned Senior Counsel, admission or refusal of membership in a Society is not subjected to legal scrutiny with reference to Article 14 of the Constitution of India, as contended by the learned Senior Counsel on behalf of the applicant.

ii) The learned Senior counsel also refuted the contention that there was no description of founding member in by-law 27 stating that though the expression was used, ultimately, when the respondents 3 to 25 were inducted, they were inducted only as life members. In this connection, he has referred to the resolution of the Governing Board dated 15.10.2020, wherein it has been clearly expressed that 23 members have been admitted as life members.

iii) The learned Senior Counsel also referred to resolution 12 in the same meeting which merely recorded the election due for the vacant positions in the Governing Board and no date of election was announced in the meeting. In fact, ultimately, the election was held only recently on 29.06.2021. Therefore, there is no basis in the contention that the induction of new members had any nexus with the election to the Governing Board.

iv) The learned Senior Counsel then proceeded to refer to certain documents contending that it was not the first time that new members have been inducted vide resolution of the Governing Board dated 15.10.2020. There were several instances in the past that periodically wherein new members have been inducted. The learned Senior Counsel in this regard

referred to the earliest minutes of the emergency meeting held on 25.03.1983 of the Society wherein a decision was taken to have a vigorous drive to raise funds to pay off the land owners for expansion of the activities of the Society. A decision was taken to rope in as many as members as possible. Likewise, another Governing Board meeting was held on 03.02.1996, wherein it was decided to admit 41 applicants as life members. Thereafter, vide Governing Board resolution dated 22.08.2013, 21 new members were admitted. Those new members were the children of the life members. In another Governing Board Meeting held on 23.10.2013, yet another resolution was passed admitting 14 new members who were the children of the life members into the Society. He would therefore, submit that in all the instances, where new members were admitted, the same by-laws had been followed and there was no issue raised in the past.

v) The learned Senior Counsel would further submit that when the members are inducted into the Society in terms of the by-laws, the jurisdiction of the Civil Court's interference with internal affairs of the Society is extremely limited. Only when any patent illegality is noticed, any intervention is called for and not otherwise. The learned Senior Counsel

also submitted that when a person becomes a member of the Society, he is deemed to have surrendered his personal right subscribing to the common rights of the Society as envisaged in the by-laws. The applicant/plaintiff, being the member of the Society is governed by the by-laws of the Society and he cannot therefore, question the by-laws as being the member of the Society.

vi) The learned Senior counsel has referred to a few decisions in support of his contentions as under.

(a) **1971 (1) SCC 1(Damyanti Naranga vs. Union of India).**

Learned Senior Counsel has drawn the attention of this Court to paragraph No.6 which is extracted hereunder.

6. It was argued that the right guaranteed by Article 19(1)(c) is only to form an association and, consequently, any regulation of the affairs of the Association, after it has been formed, will not amount to a breach of that right. It is true that it has been held by this Court that, after an Association has been formed and the right under Article 19(1)(c) has been exercised by the members forming it, they have no right to claim that its activities must also be permitted to be carried on in the manner they desire. Those cases are, however,

inapplicable to the present case. The Act does not merely regulate the administration of the affairs of the Society; what it does is to alter the composition of the Society itself as we have indicated above. The result of this change in composition is that the members, who voluntarily formed the Association, are now compelled to act in that Association with other members who have been imposed as members by the Act and in whose admission to membership they had no say. Such alteration in the composition of the Association itself clearly interferes with the right to continue to function as members of the Association which was voluntarily formed by the original founders. The right to form an association, in our opinion, necessarily implies that the persons forming the Association have also the right to continue to be associated with only those whom they voluntarily admit in the Association. Any law, by which members are introduced in the voluntary Association without any option being given to the members to keep them out, or any law which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form an association. If we were to accept the submission that the right guaranteed by Article 19(1)(c) is confined to the initial stage of

forming an Association and does not protect the right to continue the Association with the membership either chosen by the founders or regulated by rules made by the Association itself, the right would be meaningless because, as soon as an Association is formed, a law may be passed interfering with its composition, so that the Association formed may not be able to function at all. The right can be effective only if it is held to include within it the right to continue the Association with its composition as voluntarily agreed upon by the persons forming the Association.

He has referred to certain observations made in the judgment regarding that fundamental right guaranteed under the Constitution is only to form an Association and after it is formed, it will not amount to breach of that right.

(b) **2010(14) SCC 230 (Ishwar Nagar Coop. Housing Building Society vs. Parma Nand Sharma)**. The learned Senior Counsel has drawn the attention of this Court to paragraph Nos.25 and 26, which are extracted hereunder.

25. by-laws of the society regulate the management of the society and govern the relationship between the society and members inter se. They are of the nature of articles of association of a company registered under the Companies

Act. If they are consistent with the Act and the Rules, the members are bound by them. In Zoroastrian Coop. Housing Society Ltd. v. District Registrar, Coop. Societies (Urban) [(2005) 5 SCC 632] , at p. 661: (SCC para 36)

“36. ... if the relevant by-law of a society places any restriction on a person getting admitted to a cooperative society, that by-law would be operative against him and no person, or aspiring member, can be heard to say that he will not be bound by that law which prescribes a qualification for his membership.”

26. by-law 8(vii) was neither inconsistent with the Bombay Cooperative Societies Act, 1925 under which the appellant Society was governed nor was it contrary to the Delhi Cooperative Societies Act, 1972 and the Rules framed thereunder. Therefore, a member of the Society who acted in violation of the said by-law was liable to have his or her membership removed from the appellant Society.

In the above case, the Hon'ble Supreme Court has laid emphasis on the by-laws of the Society which govern the relationship between the Society and the members *inter se*. With reference to the above decision, the learned Counsel once again drawn reference to by-laws 26 and 31.

(c) 1997(3) SCC 681 (State of U.P. v. C.O.D. Chheoki Employees' Coop. Society Ltd.). The learned Senior Counsel referred to paragraphs Nos.16, 17, 19 and 21, which are extracted hereunder.

16. Thus, it is settled law that no citizen has a fundamental right under Article 19(1)(c) to become a member of a Cooperative Society. His right is governed by the provisions of the statute. So, the right to become or to continue being a member of the society is a statutory right. On fulfilment of the qualifications prescribed to become a member and for being a member of the society and on admission, he becomes a member. His being a member of the society is subject to the operation of the Act, rules and by-laws applicable from time to time. A member of the society has no independent right qua the society and it is the society that is entitled to represent as the corporate aggregate. No individual member is entitled to assail the constitutionality of the provisions of the Act, rules and the by-laws as he has his right under the Act, rules and the by-laws and is subject to its operation. The stream cannot rise higher than the source.

17. So, the society having been formed is governed by the provisions of the Act. The individual members do not have any fundamental right to the management of the Committee except in accordance with the provisions of the Act, rules and by-laws. The management of the Committee is regulated by Section 29 of the Act. The composition thereof is also regulated by the Act and has to be in accordance with the Rules and the by-laws. The Rules referred to hereinbefore have to be in

furtherance of and in conformity with the provisions contained in Section 130(2)(xii) and (xii-A) and the Rules providing for reservation in the election of the Committee or for nomination to the Management Committee of the members belonging to the weaker sections and women should be to effectuate socio-economic and political justice assured by the Preamble, Articles 38 and 46 of the Constitution.

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19. It is then contended that nomination of members belonging to the weaker sections is arbitrary and uncanalised and it is violative of Article 14 of the Constitution. It is seen that the provisions of the Act and the relevant Rules provide necessary guidelines. The persons are identified. The by-laws prescribe the eligibility of the members who would be eligible to be nominated as members of the society and the disqualifications have been provided under Rule 393 of the Rules. Under those circumstances, these provisions do indicate the guidelines under the Act. If anyone is nominated in derogation of the guidelines provided under the Act and rules, that would be an individual case to be considered separately but on that count alone, the Act and the Rules cannot be declared to be ultra vires.

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21. It is then contended by Mr S. Markandeya, learned counsel for some of the respondents, that the Workers' Ordinance Cooperative Society consists of weaker sections and further induction of weaker sections by nomination of women who do not become members of the society is unconstitutional. The election or nomination of the weaker sections to the Committee of Management is as per the provisions of the Act, the Rules and the by-laws. If any society consists solely of those segments and elected Committee of Management consists of them, the question of nomination to represent them as that segment again would not arise. In the absence of elected members being there in the Committee, necessarily, the Government have the power to nominate the unfilled membership of the Committee.

The Hon'ble Supreme Court has held that members of the Society do not have any fundamental right of the management, except in accordance with the statutory provisions and the bye-laws. The member of the Society has no individual right qua the Society. In that case, certain members were identified belonging to weaker section and nominated to the membership in terms of by-laws of the Society therein. When questioned, the Hon'ble Supreme Court discountenanced the challenge and upheld the nominations.

The legal principle that was applied was that when a decision was taken within the by-laws, the same cannot be interfered with by the Courts or **successfully** questioned by any member of the Society.

(d) **1964 (1) SCR 1 (T.P.Daver v. Lode Victoria)**. The learned Senior Counsel referred to the following observation.

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Though it is advisable for a club to frame rules to avoid conflict of duties, if the rules sanction such a procedure, the party, who has bound himself by those rules, cannot complain, unless the enquiry held pursuant to such rules discloses mala fides or unfair treatment.

8. The following principles may be gathered from the above discussion. (1) A member of a masonic lodge is bound to abide by the rules of the lodge; and if the rules provide for expulsion, he shall be expelled only in the manner provided by the rules. (2) The lodge is bound to act strictly according to the rules whether a particular rule is mandatory or directory falls to be decided in each case, having regard to the well settled rules of construction in that regard. (3) The jurisdiction of a civil court is rather limited; it cannot obviously sit as a court of appeal from decisions of such a body; it can set aside the order of such a body, if the said body acts without jurisdiction or does not act in good faith or acts

in violation of the principles of natural justice as explained in the decisions cited supra.

In the above observation, the Hon'ble Supreme Court have held that the member is bound to abide by the Rules and jurisdiction of the Civil Court is limited and it cannot sit as a Court of Appeal from the decision taken by the competent body in terms of the by-laws of the Society.

(e) **2012 SCC Online Madras 3909 (Syed Munir Hoda v. Bader Sayeed)**, the following has been referred to:

27. Under the Contract Act, 1872, a person sui juris has the freedom to enter into a contract. The by-laws of a cooperative society setting out the terms of membership to it, is a contract entered into by a person when he seeks to become a member of that society. Even the formation of the society is based on a contract. This freedom to contract available to a citizen cannot be curtailed or curbed relying on the fundamental rights enshrined in Part III of the Constitution against State action. A right to enforce a fundamental right against State action, cannot be extended to challenge a right to enter into a contract giving up an absolute right in oneself in the interests of an association to be formed or in the interests of the members in general of that association. This is also in lieu of advantages derived by that person by accepting a

membership in the society. The restriction imposed, is generally for retaining the identity of the society and to carry forward the object for which the society was originally formed. It is, therefore, a fallacy to consider, in the context of cooperative societies, that the surrendering of an absolute right by a citizen who becomes a member of that society, could be challenged by the said member by taking up the position that the restriction he had placed on himself by entering into the compact, is in violation of his fundamental right of freedom of movement, trade or right to settle in any part of the country. He exercises his right of association when he becomes a member of a society by entering into a contract with others regulating his conduct vis-à-vis the society, the members constituting it, and submerging his rights in the common right to be enjoyed by all and he is really exercising his right of association guaranteed by Article 19(1)(c) of the Constitution in that process. His rights merge in the rights of the society and are controlled by the Act and the by-laws of the society.”

The learned Judge of this Court has categorically held that a formation of Society is based on contract and a right to enforce a fundamental right against State action cannot be extended to challenge a right to enter into a contract. In fact, the learned Judge had held that a person who becomes a member had placed restriction on himself by entering into a contract with

others regulating his conduct vis-a-vis the Society.

(f) **2005(5) SCC 632 (Zoroastrian Coop. Housing Society Ltd. v. District Registrar, Coop. Societies (Urban))**. The learned Senior Counsel has drawn specific reference to this judgment, wherein the Hon'ble Supreme Court has made important observation with reference to the right of membership vis-a-vis the Society.

In the land mark decision, the Hon'ble Supreme Court has held that the members are bound by the by-laws. In that case, the Society involves on certain restriction in the matter of disposal of a property and restriction was held as self imposed restriction which was not opposed to public policy. The relevant paragraphs viz., paragraph Nos. 25 to 27, 38, 39, 42 and 44, containing the observations of the Hon'ble Supreme Court, are extracted hereunder .

25. It is true that it is very tempting to accept an argument that Articles 14 and 15 read in the light of the preamble to the Constitution reflect the thinking of our Constitution-makers and prevent any discrimination based on religion or origin in the matter of equal treatment or employment and to apply the same even in respect of a cooperative society. But, while being thus tempted, the court

must also consider what lies behind the formation of cooperative societies and what their character is and how they are to be run as envisaged by the various Cooperative Societies Acts prevalent in the various States of this country. Running through the Cooperative Societies Act, is the theory of area of operation. That means that membership could be denied to a citizen of this country who is located outside the area of operation of a society. Does he not have a fundamental right to settle down in any part of the country or carry on a trade or business in any part of the country? Does not that right carry with it, the right to apply for membership in any cooperative society irrespective of the fact that he is a person hailing from an area outside the area of operation of the society? In the name of enforcing public policy, can a Registrar permit such a member to be enrolled? Will it not then go against the very concept of limiting the areas of operation of cooperative societies? It is, in this context that we are inclined to the view that public policy in terms of a particular entity must be as reflected by the statute that creates the entity or governs it and on the rules for the creation of such an entity. Tested from that angle, so long as there is no amendment brought to the Cooperative Societies Acts in the various States, it would not be permissible to direct the societies to go against their by-laws restricting

membership based on their own criteria.

26. What is relied on to invoke the plea that the restriction of membership is opposed to public policy is the proviso to Section 4 of the Act. We have already quoted Section 4. For convenience, we extract the proviso once again:

“Provided that it shall not be registered if, in the opinion of the Registrar, it is economically unsound, or its registration may have an adverse effect upon any other society, or it is opposed to, or its working is likely to be in contravention of public policy.”

What is the public policy contemplated by the proviso, when the formation and running of an association like a cooperative society is governed by a law enacted for that purpose, the Cooperative Societies Act, which recognises the sanctity of the rights of the citizens coming together, to impose restrictions on their own rights by making appropriate provisions in the by-laws of the society? Normally, that policy has to be searched for within the confines of that statute. What one has to bear in mind is that the statute reflects the policy of the legislature in respect of the subject-matter dealt with thereunder. When the Gujarat Cooperative Societies Act, 1961 was enacted, it could not be taken that the legislature was unaware of the fundamental rights of citizens enshrined in Articles 19(1)(d) and (g) of the

*Constitution. But the legislation, in aid of the cooperative movement and in the context of the rights available to citizens under Article 19(1)(c) of the Constitution, imposes only certain restrictions as reflected by the Act, the Rules and the by-laws of the particular society. The Act specifically gave sanctity to the by-laws of a society duly approved by the authorities under the Act. The expression “public policy” in the context of Section 4 of the Act can be understood only as being opposed to the policy reflected by the Cooperative Societies Act. As indicated in *Renusagar Power Co. Ltd. v. General Electric Co.* [1994 Supp (1) SCC 644] the public policy underlying a statute has to be considered in the context of the provisions of that statute. Therein, in the context of the Foreign Exchange Regulation Act, 1973, it was held that any violation of the provisions of that Act enacted in national economic interest would be contrary to public policy and that would be the sense in which it should be understood when used in Section 7(1)(b)(ii) of that Act.*

27. Under the Contract Act, 1872, a person sui juris has the freedom to enter into a contract. The by-laws of a cooperative society setting out the terms of membership to it, is a contract entered into by a person when he seeks to become a member of that society. Even the formation of the society is based on a contract. This freedom to contract

available to a citizen cannot be curtailed or curbed relying on the fundamental rights enshrined in Part III of the Constitution against State action. A right to enforce a fundamental right against State action, cannot be extended to challenge a right to enter into a contract giving up an absolute right in oneself in the interests of an association to be formed or in the interests of the members in general of that association. This is also in lieu of advantages derived by that person by accepting a membership in the society. The restriction imposed, is generally for retaining the identity of the society and to carry forward the object for which the society was originally formed. It is, therefore, a fallacy to consider, in the context of cooperative societies, that the surrendering of an absolute right by a citizen who becomes a member of that society, could be challenged by the said member by taking up the position that the restriction he had placed on himself by entering into the compact, is in violation of his fundamental right of freedom of movement, trade or right to settle in any part of the country. He exercises his right of association when he becomes a member of a society by entering into a contract with others regulating his conduct vis-à-vis the society, the members constituting it, and submerging his rights in the common right to be enjoyed by all and he is really exercising his right of association

guaranteed by Article 19(1)(c) of the Constitution in that process. His rights merge in the rights of the society and are controlled by the Act and the by-laws of the society.

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*38. It is true that our Constitution has set goals for ourselves and one such goal is the doing away with discrimination based on religion or sex. But that goal has to be achieved by legislative intervention and not by the court coining a theory that whatever is not consistent with the scheme or a provision of the Constitution, be it under Part III or Part IV thereof, could be declared to be opposed to public policy by the court. Normally, as stated by this Court in *Gherulal Parakh v. Mahadeodas Maiya* [1959 Supp (2) SCR 406 : AIR 1959 SC 781] the doctrine of public policy is governed by precedents, its principles have been crystallised under the different heads and though it was permissible to expound and apply them to different situations it could be applied only to clear and undeniable cases of harm to the public. Although, theoretically it was permissible to evolve a new head of public policy in exceptional circumstances, such a course would be inadvisable in the interest of stability of society.*

39. The appellant Society was formed with the object of providing housing to the members of the Parsi community,

a community admittedly a minority which apparently did not claim that status when the Constituent Assembly was debating the Constitution. But even then, it is open to that community to try to preserve its culture and way of life and in that process, to work for the advancement of members of that community by enabling them to acquire membership in a society and allotment of lands or buildings in one's capacity as a member of that society, to preserve its object of advancement of the community. It is also open to the members of that community, who came together to form the cooperative society, to prescribe that members of that community for whose benefit the society was formed, alone could aspire to be members of that society. There is nothing in the Bombay Act or the Gujarat Act which precludes the formation of such a society. In fact, the history of legislation referred to earlier, would indicate that such coming together of groups was recognised by the Acts enacted in that behalf concerning the cooperative movement. Even today, we have women's cooperative societies, we have cooperative societies of handicapped persons, we have cooperative societies of labourers and agricultural workers. We have cooperative societies of religious groups who believe in vegetarianism and abhor non-vegetarian food. It will be impermissible, so long as the law stands as it is, to thrust upon the society of

those believing in say, vegetarianism, persons who are regular consumers of non-vegetarian food. Maybe, in view of the developments that have taken place in our society and in the context of the constitutional scheme, it is time to legislate or bring about changes in Cooperative Societies Acts regarding the formation of societies based on such a thinking or concept. But that cannot make the formation of a society like the appellant Society or the qualification fixed for membership therein, opposed to public policy or enable the authorities under the Act to intervene and dictate to the society to change its fundamental character.

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42. The restriction, if any, is a self-imposed restriction. It is a restriction in a compact to which the father of Respondent 2 was a party and to which Respondent 2 voluntarily became a party. It is difficult to postulate that such a qualified freedom to transfer a property accepted by a person voluntarily, would attract Section 10 of the Act. Moreover, it is not as if it is an absolute restraint on alienation. Respondent 2 has the right to transfer the property to a person who is qualified to be a member of the Society as per its by-laws. At best, it is a partial restraint on alienation. Such partial restraints are valid if imposed in a

family settlement, partition or compromise of disputed claims. This is clear from the decision of the Privy Council in Mohd. Raza v. Abbas Bandi Bibi [(1932) 59 IA 236 : AIR 1932 PC 158] and also from the decision of the Supreme Court in Gumman Shetty v. Nagaveniamma [(1967) 3 SCR 932 : AIR 1967 SC 1595] . So, when a person accepts membership in a cooperative society by submitting himself to its by-laws and secures an allotment of a plot of land or a building in terms of the by-laws and places on himself a qualified restriction in his right to transfer the property by stipulating that the same would be transferred back to the society or with the prior consent of the society to a person qualified to be a member of the society, it cannot be held to be an absolute restraint on alienation offending Section 10 of the Transfer of Property Act. He has placed that restriction on himself in the interests of the collective body, the society. He has voluntarily submerged his rights in that of the society.

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44. In view of what we have stated above, we allow this appeal, set aside the judgments of the High Court and the orders of the authorities under the Act and uphold the right of the Society to insist that the property has to be dealt by Respondent 2 only in terms of the by-laws of the Society

and assigned either wholly or in parts only to persons qualified to be members of the Society in terms of its by-laws. The direction given by the authority to the appellant to admit Respondent 3 as a member is set aside. Respondent 3 is restrained from entering the property or putting up any construction therein on the basis of any transfer by Respondent 2 in disregard of the by-laws of the Society and without the prior consent of the Society.

The learned Senior Counsel contended that when the action by the Governing Board is in consonance with the by-laws of the Society, this Court may not interfere with the decision of the competent body.

vi) The learned Senior Counsel also stated that in regard to the reference to Kerala Co-operative Societies Rules and Maharashtra Co-operative Societies Act, no such provisions are there in the Tamil Nadu Societies Registration Act, 1975. Therefore, any reference to those Rules or Act is of no legal significance to this case.

vii) As regards the decision relied on by the learned Senior Counsel for the applicant in the matter of ***Vijay Shanker Rai vs. State of U.P. made in W.P.No.7679(MB) of 2009 dated 02.09.2009***, the learned Senior Counsel submitted that it is a case where interim Administrator who was

appointed to manage the Society as a care taker had indiscriminately admitted the members. Only in that context, the Court had interfered in the matter. The learned Senior Counsel, particularly referred to the issue that was the subject matter of consideration before the Court and the relevant paragraphs are extracted hereunder.

This petition raises only one legal question nonetheless of great importance and significance in context to the elections of Committee of Management of all the Co-operative Societies in the State of Uttar Pradesh, under the provisions of Uttar Pradesh Co-operative Societies Act, 1965 (hereinafter referred to as the Act), and the rules framed thereunder known as U. P. Co-operative Societies Rules, 1968, namely:

Whether the Administrator appointed Under Section 29(5) of the Act has any authority or power to enrol new members in the Society?

The next question in this context is that even if the Administrator had the power to enrol members, can it be done on the eve of the elections.

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In the instant case, the dates of election of the Committee of Management were notified on 16.2.2009 fixing 10/11.7.2009 for holding elections. Soon thereafter, on 18.3.2009, the proposed election was cancelled and the dates were postponed to 14th and 15th September, 2009.

After the dates of election were notified, the Administrator started enrolling members in the Sangh.

From the above, it could be seen that it was an extreme case where the care taker /Administrator had admitted members deliberately by cancelling the election and postponing and in the meanwhile, he started enrolling members. The Court therefore, was compelled and constrained to interfere in the affairs of the Society. Such extreme example may not be applicable to the factual matrix of the present case.

viii) The learned Senior Counsel summed up that not one relevant legal issue has been raised that the induction of the new 23 members is in violation of any of the by-laws of the Society. In the absence of any violation, the challenge to the induction has to necessarily fail.

6. Mr.Silambannan, the learned Senior Counsel appearing for the 1st respondent Society on his part has also referred to the by-laws 26, 28 and

31. He particularly emphasised the fact that the only criterion to become a member is to pay Rs.5000/- as admission fee and subscription and who believes in the aims and objects of the Society. In terms of the by-law 31, the Board has power to refuse membership and no reasons need to be assigned for refusal. In the past, several members had been inducted into the Society as life members periodically. In regard to the arguments on behalf of the plaintiff that there was no category called 'founding member', the learned Senior Counsel referred to the expression 'Founding member' that finds place in the Extraordinary General Meeting dated 22.06.2019, while proposing some amendment, to the Society by-laws, wherein it is specifically stated that memberships are open to the members with special preference be given to lineal descendants of the Founding Member and spouse married to members. The expression 'founding member' is therefore, not alien to the by-laws of the Society.

7. The learned Senior Counsel also submitted that only 1/3rd of the members of the Governing Board retire every year and the remaining members are still there in the Governing Board. According to the learned

Senior Counsel no provision of the by-laws have been stated to be violated either in the plaint or in the affidavit filed in support of the applications and unless any violation is specifically pointed out, the Court's interference is not called for at all. The learned Senior Counsel therefore, summed up that the suit and the applications are without any merit and liable to be dismissed.

8. Mr.Thomas T. Jacob learned counsel appearing for the 2nd respondent/ defendant made the following submissions.

At the outset, the learned counsel pointed out various Rules and provisions as contained in the Tamil Nadu Societies Registration Rules 1978. He started with Rule 6 which deals with the subject matter of by-laws. According to the learned counsel, the by-laws of the 1st respondent Society has been framed within the frame work of the said Section. He particularly submitted that sub-clauses (j) and (x) to Rule 6 have been followed in its letter and spirit. The learned Counsel also referred to Rules 16 and 17 being fully complied with by the first respondent Society. These rules relate to maintaining of register of members and filing of copy of the register of

members, notice of change of members or committee. He also referred to section 14 of the Act, 1978 which deals with the register of members.

9. According to him, the induction of members is entirely in terms of the by-laws of the Society and also in conformity with the provisions of the Act and Rules. Apart from referring to the by-laws 20 and 22 which defined what is Orthodox Syrian Church means and the Member of the Church means, he also referred to by-laws 26 and 31. The learned counsel also referred to by-laws 32 and 34 which deal with the maintenance of register of members, which is in terms of provisions as contained in the Tamil Nadu Societies Registration Act, 1975 and the Rules framed thereunder. He also referred to by-laws 40 and 41. The said by-laws state control of all the affairs of the Society by the Board and the Board shall have a maximum of 21 members duly elected from among the Life members of the Society.

10. He then referred to by-laws 42 to 44 which deal with the election process. He also referred to by-law 64 which confers power on the Board for carrying out the objects and for the management of activities of

the Society. He also referred to the notice of the Extraordinary General Body Meeting dated 29.05.2019 where certain proposed amendments were to be discussed in the Meeting scheduled on 22.06.2019. In the notice, in item No.4 , the amendment which was sought to be made in by-law 27 was to the effect that founding members shall be informally defined as members enrolled before the end of 1987. Therefore, there is nothing unusual in calling some members as founding members by the Society. According to the learned counsel, the expression 'founding member' was coined by non other than Dr.Jacob himself, who is one of the suspended members belonging to the opposing group and part of the vested interests in questioning the legitimate exercise of the Governing Board in admitting new members.

11. The learned counsel also referred to the minutes of the Governing Board meeting dated 12.02.2020 wherein a decision was taken for expanding the membership. After taking a decision, notices were sent to all the 18 members on 05.10.2020 and despite receipt of notice by all the members, only 8 attended the meeting on 15.10.2020. According to him,

nothing prevented, the other members from attending the meeting on 15.10.2020.

12. The learned counsel also clarified that it was not the case that all the applicants who had applied had been admitted as members. The claim of some of the applicants had not been considered favourably by the governing board. In this connection, the learned counsel referred to agenda 11, admitting 23 members from 15.10.2020 and in the same agenda, it is stated that the application received from two persons viz., Mrs. Reemi Abraham and Mrs. Anna Joseph, could not be considered due to certain defects. In the same breath, the learned counsel also submitted that the aggrieved persons who had been denied admission are not before this Court. On the other hand, the applicant/plaintiff who is not aggrieved at all is before this Court and hence, he lacks locus standi to maintain the suit. The suit is therefore liable to be dismissed on this ground alone.

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13. The learned counsel also referred to a copy of the resolution passed in the Governing Board meeting held on 15.10.2020 for the purpose

of entry in the Register. He also referred to Form 7 submitted before the Registrar of Societies showing admission of new members on 15.10.2020.

14. The learned counsel further referred to O.A.No.898/2019 in C.S.No.586/2019 filed by the same applicant herein challenging the admission of 2 members therein and seeking injunction restraining them from attending the Annual General Meeting. He also referred to another suit in C.S.No.666/2019 filed by a member of the Society coming up with similar challenge. The learned Judge while dealing with O.A.No.1044/2019 for injunction in C.S.No.666/2019 vide order dated 02.0.2020 had clearly held that in terms of by-laws, the Governing Board has power to refuse membership thereby implied that the governing board has power to grant membership. In fact, the learned Judge proceeded to hold that the amendment what was contemplated earlier in 2018-19, was primarily intended to make the position clear that the Governing Board has power to admit or refuse membership and eventually, held that such power is not vested in the General Body. According to the learned counsel, in the light of the specific finding of the learned Judge of this court with reference to

identical challenge, the present challenge has to necessarily fail.

15. The learned counsel also relied on the decision reported in **2005(5) SCC 632 (Zoroastrian Coop. Housing Society Ltd. v. District Registrar, Coop. Societies (Urban))**. Apart from referring to the paragraphs relied by the learned Senior Counsel Mr.AR.L.Sundaresan, he also relied on paragraphs 21 and 27. Paragraph 27 since been extracted supra, paragraph 21 is extracted hereunder.

21.Membership in a cooperative society only brings about a contractual relationship among the members forming it subject of course to the Act and the Rules. One becomes a member in a cooperative society either at the time of its formation or acquires membership in it on possessing the requisite qualification under the bye-laws of the society and on being accepted as a member. It is not as if one has a fundamental right to become a member of a cooperative society. But certainly, if the application of one for membership, who is otherwise qualified to be a member under the Act, Rules and the bye-laws of the society, is rejected unreasonably or for frivolous reasons, the person may be entitled to enforce his claim to become a member in an appropriate forum or court of law. This is the effect of the decision in Jain Merchants Coop. Housing Society Ltd. v. HUF of Manubhai Kalyanbhai

*Shah [(1995) 1 Guj LR 19] relied on by the High Court. The said decision does not lay down a proposition, nor can it lay down a proposition, that even a person who does not qualify to be a member in terms of the bye-laws of a society can enforce a right to become a member of that society. It is one thing to say that it is not desirable to restrict membership in a society based solely on religion or sex but it is quite a different thing to say that any such voluntary approved bye-law containing such a restriction could be ignored or declared unconstitutional by an authority or a tribunal created under the Act itself. Normally, the bye-laws of a society do not have the status of a statute and as held by this Court in *Coop. Central Bank Ltd. v. Addl. Industrial Tribunal [(1969) 2 SCC 43 : AIR 1970 SC 245]* bye-laws are only the rules which govern the internal management or administration of a society and they are of the nature of articles of association of a company incorporated under the Companies Act. They may be binding between the persons affected by them but they do not have the force of a statute.*

16. Finally, the learned counsel referred to a decision reported in ***CDJ 2021 SC 101 (Swati Ulhas Kerkar & ors. v. Sanjay Walavalkar & ors.)*** which was relied on by the learned Senior Counsel for the applicant. He clarified in that decision of admission of new membership did not find

favour with the Court and in this regard, he particularly relied on paragraph Nos.43 and 44 which are extracted hereunder.

43. Be it noted that as per Clause 1(c) of the by-laws, it is the prerogative of the Managing Committee to admit a person as member of the Society or to reject his application without assigning any reason therefor. The eligibility for being enrolled as a member of the Society is spelt out in Clause 1(a). The further condition in Clause 1(c) is of being proposed by the member of the Managing Committee and submitting application in the prescribed form and payment of prescribed fee.

44. The problem in the present case is the manner of consideration of stated applications of Appellants (and two others) by the outgoing Managing Committee including by unjustly protracting the requisition for convening SGBM demanded by majority of existing members. For, upon receipt of such requisition, it was the bounden duty of the Secretary of the Society, in terms of Clause 3(v), to immediately issue notice to convene SGBM within 15 days from the date of receipt of requisition and to issue 15 days' notice to all the members intimating about date of such meeting. The Secretary had issued such notice on 22.11.2016

scheduling SGBM for 07.12.2016. But, before the date of meeting, the Managing Committee deferred the SGBM on some specious objection. That meeting was not held. Instead, the then Managing Committee hastened to take a decision about admitting 22 new members in its meeting held on 17.09.2017 by giving a short notice of only one day. This action did not find favour with the Registrar for the reasons recorded in his decision dated 09.03.2018 including for setting aside the minutes of Managing Committee meeting dated 17.09.2017, some of which commended to the High Court as is discerned from the impugned judgment.

The facts recorded above will speak for itself as to how the Court was constrained to interfere in such blatant misuse of power by the competent body while admitting the members. The learned counsel therefore, summed up that in the absence of any violation of the by-laws and the relevant provisions of the Act, 1975 read with the Rules framed thereunder, the applicant is not entitled to the relief as prayed for.

17. By way of reply, the learned Senior Counsel Mr.P.S.Raman

reiterated that in Agenda 12 of the Governing Board meeting dated 15.10.2020, a returning officer has been appointed for the conduct of election which clearly demonstrated that only with the election in mind, the new members were inducted. He also referred to by-law 42, which provides for Secretary to call for nomination for election to the Board in the 1st week of August every year which was not done at all by the Society. According to the learned Senior counsel, the induction of 23 members will certainly tilt the fair democratic electoral process relating to the election of the Governing Board members of the Society. He also once again referred to the proposed amendment to various by-laws of the Society but unfortunately proposed amendments have not been effected till date, but the new members continued to be admitted, under the existing by-laws to favour one group of members.

18. The learned Senior Counsel referred to a decision reported in **1964 (1) SCR 1 (T.P.Daer v. Lodge Victoria)** which was relied on by the respondents and he would particularly refer to the observations of the Hon'ble Supreme Court to the effect that "body acts without jurisdiction or

does not act in good faith”. In this case, assuming that the governing board has vested with the jurisdiction and power to admit members, but admission of members selectively and the exclusion of all other claims, amounted to not exercising the power in good faith. In such case, the Courts can interfere in the decisions made by the Governing Board.

19. The learned Counsel finally submitted that if the spouses and children of all life members/ founding members are admitted, then there would not be any impediment for the smooth management of the society. The problem is only when members admitted on partisan consideration by the persons at the helm of the Society. He therefore, submitted that induction of respondents 3 to 25 is to be held illegal, null and void.

20. Heard the learned Senior Counsel Mr.P.S.Raman for the appellant/plaintiff, Mr.Silambanan, the learned Senior Counsel for the 1st respondent Society, Mr.Thomas T.Jacob, the learned counsel for the 2nd respondent and Mr.AR.L.Sundaresan, the learned Senior Counsel for the 5th , 6th , 8th , 11th to 14th , 19th , 21st to 23rd and 25th respondents. Perused the

materials, pleadings and the case laws cited by the respective parties.

21. The nucleus of the controversy herein is whether the induction of 3 to 25 respondents herein is within the frame work of the by-laws of the 1st respondent Society or the admission of the members was a result of the malafide, discriminatory exercise of power by the Governing Board.

22. At the outset, the foremost fact in this case is that the eligibility of the inducted life members namely, respondents 3 to 25 is not in dispute at all. What is being assailed is the manner in which the new members have been inducted by a resolution of the Governing Board in its meeting dated 15.10.2020. On behalf of the applicant herein, it has been contended that earlier, certain amendments were proposed in 2018-2019 in the bye-laws, in particular, towards admitting new members. The proposed amendments for some reasons admittedly had fallen through and not effected. Therefore, as on date, the unamended by-laws, are to be considered for testing the validity of the induction of new members by the Governing Board and the exclusion of other members.

23. Initially, the learned Senior Counsel appearing for the applicant contended that there is no such description as founder member in terms of the Scheme of the by-laws of the 1st respondent Society and the very induction of the respondents 3 to 25 categorising them as founding /founder members is therefore, illegal.

24. The above contention of the learned Senior Counsel has been effectively met by the respondents stating that though in the minutes of the meeting dated 12.02.2020, the expression 'Founding member' did not figure but in effect in the subsequent meeting dated 15.10.2020 of the Governing Board, the respondents 3 to 25, had been admitted only as life members. This fact has been specifically emphasised by the learned Senior Counsel Mr.AR.L.Sundaresan who appeared for some of the respondents/defendants. The objection of the learned Senior Counsel for the applicant is that by-law 27 provide only 3 classes of members namely, life member, sustaining member and Honorary member and no founder member has been mentioned. In any event, factually, it is established that the respondents 3 to 25 have been admitted only as life members. What was envisaged in

paragraph 7 relating to the expansion of membership for consideration in the Governing Board meeting dated 12.02.2020, was to open up membership through the source of founding members who could not bring in any new members (spouses/children) when such membership was opened previously in 1996 and 2013. The expression founder member used therein is only to name the source and not intended to add any new class of membership. In the opinion of this Court, the objection appears to be borne out of desperation, not being able to lay on any substantive material towards setting up the present challenge. The learned Senior Counsel has needlessly emphasised this issue, which in substance, does not merit serious consideration of this Court with reference to the essence of the controversy herein.

25. In fact, the learned Senior counsel has also strenuously contended that why the membership was opened up only from the founder members of the year 1987 alone and not for other subsequent years. This contentions, in the opinion of this Court, are hypothetical and in the realm of speculation. When the Society opened up the membership at a particular point of time, it

is well within its discretion to confine the admission of membership as it deems fit. There cannot be any legal compulsion that once a membership is opened, it should be opened to all and every one. In fact, as demonstrated by the learned Senior Counsel Mr.AR.L.Sundaresan, in the past, from the year 1983, several times new members were admitted and the number of admitted members varied every time. Therefore, it does not lie in the mouth of the applicant herein to question why 23 members alone? As long as the members inducted in consonance with the by-laws and the statutory provision, the consideration of the challenge cannot extend into areas of speculation.

26. Further, contention has been raised emphasizing the challenge to the manner in which the power has been exercised by the Governing Board in terms of the by-laws of the Society. The most crucial by-law that confers the power on the Governing Board to admit or refuse membership is by-law 31 which is extracted hereunder.

31. The Board has the power to refuse membership or refuse renewal of membership to anyone without assigning any reason.

27. In fact, the learned Judge of this Court interpreted the above by-law in similar proceedings in C.S.No.666/2019 (O.A.No.1044/2019) vide order dated 02.01.2020 to mean admission of membership by implication, the Governing Board is vested with the power to grant membership. According to the learned Senior Counsel for the applicant, an amendment was sought to be made in the said by-law, wherein it was mooted that no membership should be refused without assigning any specific written reason. Various other proposals were also mooted for amendments in the by-laws including the power of the Governing Board to admit membership. In this regard, the learned Senior Counsel has also pointed out a decision taken in the Governing Board meeting dated 24.08.2019 that children of members can be admitted after the demise of the member only after suitable amendment of the by-law in the General Body meeting. Without effecting the amendment as proposed, the present induction of 23 new members is invalid.

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28. Although a decision was taken earlier in 2018 or even in 2019 that no new members to be admitted unless the amendments were effected, yet

merely because a decision was taken at that particular point of time, did not mean that the Society or the Governing Board cannot induct new members on the basis of the existing by-laws. This position, in fact, is fortified when earlier, the induction of some members had been put to challenge in C.S.No.586/2019 and C.S.No.666/2019. The learned Judge of this Court, vide order dated 02.01.2020 in Application No.9013//2019, O.A.No.1044/2019 in C.S.No.666/2019 has held that the proposed amendment was prima facie to make the position abundantly clear that the Governing Board has power to admit or refuse to admit a person to membership. The learned Judge also held that prima facie the power is not vested in the General Body.

29. In fact, the learned Judge in the said order has also dealt with the issues succinctly and particularly with reference to the earlier decision, proposing amendments and reasoned that the Governing Board was conscious of the said decision and still taken a decision to admit the members and found that there was nothing wrong in such admission. It is relevant to extract the reasons and conclusion of the learned Judge as found

in paragraph Nos.14 to 19 of the order dated 02.01.2020 hereunder.

14. On a perusal of the bye-laws of the society, I find that bye-law No.26 specifies that membership is open to any one who pays the admission fee and subscription as decided by the General Body from time to time and who believes in the aims and objectives of the Society and agrees to abide by the rules and regulations of the Society. Bye-law No.28 states that any member of the Church, who is admitted to the membership of the Society, pays the life membership fee of Rs.5,000/- or as decided from time to time, shall be a life member of the Society. Neither of these bye-laws stipulate that persons are admitted to membership by the General Body. In specific, these bye-laws specify the admission and subscription fee requirement and the qualification requirement, namely membership of the Church. However, these bye-laws do not say that the General body should admit a person to membership. In addition, as correctly contended by the learned counsel for the second, third and fourth respondents, bye-law No.31 indicates prima-facie that the Governing Board has the power to refuse membership thereby implying that the Governing Board has the power to grant membership.

15. As regards the contention based on the proposed amendment, once again, on perusal of the proposed amendment, I find that it is intended prima-facie to make the position abundantly clear that the Governing Board has the power to admit or refuse to admit a person to membership. Therefore, it appears prima-facie that the power is not vested in the General body.

16. I am not inclined to accept the contention based on the order in O.A.No.854 of 2017 in C.S.No.685 of 2017 both because the said order was issued in a different factual context and because it is an interim order, which does not decide issues conclusively.

17. The other contention of the learned counsel for the applicant which merits close consideration is based on the decision of the Governing Board at the meeting held on 24.08.2018. On examining the said proceedings, it appears that the Society decided not to admit children of members until a suitable amendment is made to the bye-laws of the General Body Meeting. In view of the fact that this decision pertains to children of members, it would be relevant in the context of the third respondent, but not in the context of the second or fourth respondents.

18. On perusal of the Minutes of the meeting of the Governing Board on 05.09.2019, I find that the Governing Board took note of the earlier decision, as would be evident from page 33 of the typed-set of papers filed by the respondents, and thereafter, recorded that the Honorary Secretary should look at any pending applications in this regard and after checking with the persons concerned as to whether they are still interested, follow the procedure for their admission. On examining the Minutes of the meeting held on 05.09.2019, it is clear that the earlier decision at the meeting held on 24.08.2018 has been duly taken note of before admitting the second, third and fourth respondents' to membership.

19. For the reasons set out above and on the basis of the foregoing analysis, I am of the view that the applicant has failed to make out a prima- facie case for the grant of an interim injunction as required. In this regard, it is also pertinent to point out that the suit is for a declaration that the inclusion of the second, third and fourth respondents as members of the General Body is illegal, null and void and contrary to the by-laws. The said second, third and fourth respondents/ defendants have admittedly become members based on their

applications with effect from 05.09.2019. Therefore, the balance of convenience is also not in favour of preventing them from participating at the General Body Meetings or to exercise the rights in such Board meetings. I am also not convinced that irreparable loss will be caused to the applicant if the interim order is not granted. Therefore, the interim application is hereby dismissed.

30. In view of the above order of this Court, negating the very same objection, it is not open to the applicant to raise the very same objection in the proceedings. Even otherwise, merely because some amendments were proposed and not effected the present induction of the members does not become vulnerable to challenge on that account. This Court is therefore, of the view that the arguments advanced on the basis of the proposed amendments are to be rejected outright, as being without any legal substance.

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31. The principal contentions of the applicant is that the respondents 3 to 25 have been selectively admitted with undue haste, with an eye on the

ensuing election to the Governing Board. Much has been contended on the resolution passed by the Annual General Meeting dated 15.10.2020 in agenda 11 and agenda 12. One, resolving to admit respondents 3 to 25 as life members with effect from 15.10.2020 and the other, appointment of one Mr.Jacob Kurien and one Mr.Roy Thomas to be as returning officers for the election. Such action on the part of the Governing Board in adding new members to the Society on the eve of the election amounted to malafide exercise of power and the Courts have held that admission of membership on the eve of election as illegal actuated by bad faith.

32. In regard to the above contention, the learned Senior Counsel referred to the decisions of the Allahabad High Court in W.P.No.7679 of 2009 dated 02.09.2009. Attention of this Court has been drawn to certain observations made by the High Court therein. The High Court has held that enrolment of the 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 provisions. The High Court has further held that the Committee which enrolled new members had no power or authority to do

so. The learned Senior Counsel also referred to Kerala Cooperative Societies Rules, 1969 and Maharashtra Cooperative Societies Act, 1960, wherein specific provisions have been incorporated prohibiting admission of members on the eve of general meeting and also prohibition of voting right immediately on being enrolled as members.

33. As far as the above submissions and the case laws are concerned, this Court once again does not find any material substance advancing the case of the applicant. As contended on behalf of the respondents, as far as the Tamil Nadu Societies Registration Act, 1975, and the rules framed thereunder, no such prohibition is contemplated at all. Therefore, drawing analogy of the rules which have application in different States, is patently misplaced and therefore, liable to be rejected. As far as the decision relied on of the Allahabad High Court, it was clearly pointed out by the learned Senior Counsel Mr.AR.L.Sundaresan that was the case where the Court held that the interim administrator appointed had no authority or power to enrol new members in the Society. It was a case where the election was fixed on 10th and 11th July 2009 and it was cancelled and postponed on 14th and 15th

September 2009. After the dates of election were notified the administrator started enrolling the members. Noticing a clear malafide in the exercise of power by authority, the High Court had intervened in the matter. The comparison of the above ruling rendered on the above facts to the present case amounted to misreading of the two situations for the following reasons.

34. As far as the present case on hand is concerned, it was pointed out on behalf of the respondents that when the new members were admitted through the minutes of the Governing Board dated 15.10.2020 in agenda 12, a decision was taken only to appoint returning officers for the conduct the election and no dates were notified at all. In fact, the election was ultimately, conducted only in June, 2021. Therefore, the induction of new members had no nexus with the election to the Governing Board at all at that point of time. This Court is in agreement with the submissions of the learned Senior Counsels appearing for the respondents in this regard.

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35. Further, the reliance placed on the Allahabad High Court judgement by the learned Senior Counsel for the applicant is an extreme

example of brazen malafide exercise of power by the administrative committee, denuded of authority in enrolling members. In this case, the scenario is completely and materially different. The Governing Board is the competent body to enrol membership and in the agenda of the meeting dated 15.10.2020, no firm date for the election to the Governing Board had been discussed or notified. In fact, the induction of members in the meeting dated 15.10.2020 was a consequence of the decision taken in the earlier Governing Board meeting dated 12.02.2020. In that meeting, the expansion of membership has been the specific agenda of discussion in one of the agenda. The induction of the members is therefore, a follow up action taken by the Board as early as in February, 2020. Therefore, the contention that the induction suffered from the vice of malafide exercise of power is not supported by the relevant facts and the records.

36. The learned Senior Counsel further relied on the decision of the Hon'ble Supreme Court of India decided in Civil Appeal No.412 of 2021 dated 10.02.2021. He has drawn the attention of this Court to paragraph Nos.48, 51 and 53 which have been extracted supra. There also, a finding of

the Hon'ble Supreme Court was that new members had been admitted by changing the constitution of the society. On the finding of fact, the Court held that the decision of the Committee suffered from the vice of colourable exercise of power and thus, was declared illegal and bad in law. The said decision in fact, has not laid down any general principle of law. The decision was rendered primarily on the factual matrix of that case. Therefore, the said decision also does not advance the case of the applicant a wee bit.

37. The learned counsel also relied on another Hon'ble Supreme Court decision reported in **2013(3) LW 20 M.Arumugam v. State of Tamil Nadu & others**). The said decision highlight the fact that the General Body is the ultimate authority in the conduct of the affairs of any Society. Be that as it may, it is beyond the pale of any doubt that Governing Board is the competent body in terms of the by-laws of the Society. This position has been solidified by the decision of this Court dated 02.01.2020 in C.S.No.666/2019 (O.A.No.1044/2019 & Application No.9013/2019). Therefore, and reliance placed by the learned Senior Counsel on the above

decision is not at all relevant for the purpose of consideration of the present applications.

38. The learned Senior Counsel has also relied upon the observation of the Hon'ble Supreme Court decision reported in **(1964 (1) SCR 1 (T.P.Daver v. Lodge Victoria)** in regard to the jurisdiction of the Civil Court's to interfere in matters where it finds that the act of any body was not in good faith. According to the learned Senior Counsel that the selective induction of only 23 members and leaving out all other aspiring spouse and children of the founding members amounted to hostile discrimination. The selective induction also amounted to malafide exercise of power.

39. The above contentions have been refuted on behalf of the respondents. In fact, the learned Senior Counsel Mr.AR.L.Sundaresan has drawn the attention of this Court to earlier Governing Board meeting held from 1983 onwards. A specific reference has been drawn to the minutes of the meeting held on 25.03.1983 wherein the membership was proposed to be expanded for the purpose of raising funds for the Society. In the minutes

of the Governing Board meeting dated 03.02.1996, some members were also admitted. Likewise, the Governing Board in its meetings dated 22.08.2013, 23.10.2013 had admitted several persons as life members.

40. From the above facts, it could be seen that periodically new members have been added to the Society as life members, particularly, from the category of spouses and children of the founding members. Therefore, this Court does not see anything amiss in the present admission of membership inducing respondents 3 to 25 herein. As rightly contended by the learned Senior Counsel and Mr.Jacob Thomas, appearing on behalf of the respondents, no violation of by-laws has been pointed out on behalf of the applicant nor any clinching material produced for holding that induction of respondents 3 to 25 suffered from colourable exercise of power.

41. In fact, the learned Senior Counsel Mr.Silambanan, appearing for the Society has pointedly contended that no violation whatsoever of the by-

laws has been stated by the applicant either in the plaint or in the affidavit filed in support of the applications. In the absence of any violation, the Courts cannot interfere in the discretionary exercise of power by the competent body.

42. In fact, this Court's attention has also been drawn to the eligible criteria envisaged in the by-laws. The by-law 26 defines Membership & Qualification which is extracted hereunder.

*26. **Membership & Qualification:** Membership is open to any one who pays the admission fee and subscription (except for Honorary Membership) as decided by the General Body from time to time, and who believes in the aims and objects of the Society, and who agrees to abide by the rules and regulations of the Society.*

43. By-law 28 deals with the Membership Fee which is extracted hereunder.

*28. **Life Member:** Any Member of the church who is admitted to the membership of the Society and pays the Life Membership fee of Rs.5000/- or as decided from time to time, shall be a Life Member of the Society.*

44. If any person comes within the framework of by-law 26, he /she is eligible to be admitted as members and no further special qualification is required at all. All the members who have been admitted namely respondents 3 to 25 have satisfied the criteria as laid down in the above by-laws and therefore, their induction cannot be the subject matter of challenge with reference to the relevant by-laws at all.

45. On behalf of the respondents, the learned Senior Counsel Mr.AR.L.Sundaresan has relied on several decisions in support of his contention viz., (i) **1971(1) SCC 1 DamyantiNaranga v. Union of India**). He relied on paragraph No. 6 which has been extracted supra. (ii) **2010(14) SCC 230 (Ishwar Nagar Coop. Housing Building Society vs. Parma Nand Sharma)**. He relied on paragraph Nos.25 and 26 extracted supra. (iii) **1997(3) SCC 681 (State of U.P. v. C.O.D. Chheoki employees' Coop. Society Ltd.)**. He relied on paragraph Nos.16, 17, 19 & 21 extracted supra. (iv) **1964 (1) SCR 1 (T.P.Daver v. Lodge Victoria)**. He relied on paragraphs 8 & 9 extracted supra. (v) **2012 SCC Online Madras 3909 (Syed Munir Hoda v. Bader Sayeed)**. He relied on paragraph 27 extracted supra. (vi)

2005(5) SCC 632 (Zoroastrian Coop. Housing Society Ltd. v. District Registrar, Coop. Societies (Urban)). He relied on paragraphs 25 to 27, 38, 39, 42 and 44, extracted supra.

46. In all the above decisions and the relevant paragraphs which have been referred to and relied upon, it has been clearly held that once a person becomes a member of the Society, he surrenders his individual right and to be governed by the by-laws of the Society. The Courts have clearly held that the violation of fundamental right cannot be pleaded once a member becomes part of the Society by surrendering his personal right. When a person voluntarily chooses to become a member, he cannot thereafter, choose to complain against his personal right being violated.

47. The judgment cited on behalf of the respondents, particularly, by the learned Senior Counsel Mr.AR.L.Sundaresan, can be squarely applied to the factual matrix of the present case. The arguments advanced on behalf of the applicant about the discrimination in admission of membership may be valid in public law remedy. However, such argument have no relevance in a

private law civil remedy like the present one. When a competent Board exercised its discretion to admit members and such members being admitted, it is not for the Court to examine the number of membership admission made and pronounce that exercise of power by the competent body as good or bad in law. As rightly contended by the learned counsel on behalf of the respondent, the jurisdiction of the Civil Court cannot be extended to interfere with the internal management of the Society as a matter of course. The interference is called for only when the Court is fully convinced when the action of the Society is opposed to public policy or suffer from patent illegality or the exercise of the power is tainted with malafides compelling the Court to intervene either to do justice or to prevent miscarriage of justice.

48. Even otherwise, on behalf of the 2nd respondent, the learned Counsel Mr.Thomas T.Jacob has referred to relevant sections and rules of Tamil Nadu Societies Registration Act,1975 and the rules framed thereunder. The relevant provisions of the Act and the Rules have been demonstrated to be fully complied with and Form 7 has also been submitted

immediately after admission of the 23 new members in the meeting held on 15.10.2020. The learned Counsel has drawn the attention of this Court that the by-laws have been framed in consonance with the provisions of the Tamil Nadu Societies Registration Act, 1975 and the induction of the members has also been done in terms of the by-laws read with the provisions of the Act and the Rules framed thereunder. Therefore, there cannot be any modicum of substance to be found in the present challenge at all. This Court is fully in agreement with the submission made by the learned counsel on behalf of the 2nd respondent that when no specific instance of any violation being pointed out with reference to the by-laws or with the provisions of the Tamil Nadu Societies Registration Act, 1975 and the Rules, the power of this Court to interfere in the decision making process of the Governing Board is extremely limited or absent altogether, excepting in extraordinary circumstances.

49. In the absence of any violation of the by-laws and the provisions of the Act, 1975 and the Rules, the only residuary consideration of this Court is whether the exercise of power by the Governing Board could be

construed to be premised on malicious and malafide consideration. The facts which are made available through materials would categorically and unequivocally disclose that periodically, members have been added to the Society as life members. In all the earlier instances of admission, the Governing Board dictated by its own discretion had admitted number of members as life members varying from 41 members in 1996, 21 members in August 2013, 14 members in October 2013 meeting and as low as 3 members in September, 2019. The last instance of admission of 3 members was put to challenge as stated earlier in this order in C.S.No.666/2019 and this Court refused to grant interim order of injunction as sought in O.A.No.1044/2019 vide order dated 02.01.2020. This Court adverted to the rival contentions touching upon some of the contentions raised in the present proceedings and finally dismissed the applications. The admission of membership, thus, dependant upon the request emanating from the life members from time to time and the decisions taken by the Governing Board to admit new members as deemed fit and acceptable to the Society periodically. The number of membership admitted is the exclusive call of the Governing Board and exercise of discretionary power by the Board

cannot be subjected to judicial scrutiny, unless such admission is explicitly riddled with malice against the interest of the Society. The Courts need to be wary in making foray into private turf of the internal management of the Society. It cannot interfere at the drop of a hat, whenever it is confronted with run-of-the-mill challenge like the present one.

50. As a matter of fact, the allegation of malafide exercise of power, the only point of reference is that there was a discussion about the ensuing election and returning officer appointed in the minutes of Governing Board Meeting dated 15.10.2020 when the respondents 3 to 25 were admitted as new members. However, as stated above, the decision to expand membership was taken as early as on in the meeting of the Governing Board dated 12.02.2020 which transformed into action in the board meeting dated 15.10.2020.

51. Even otherwise, this Court is unable to appreciate the arguments that the induction of new members was only with a view to tilt the election prospects in favour of the persons at the helm of the Society. In terms of the

scheme of the by-laws only 1/3rd of the Governing Board members retire out of 21 total members. Therefore, the majority of the Governing Board members is always in occupation of the office, during the interregnum. The allegation that the present induction was intended to achieve a collateral purpose appeared to be a far fetched contention and this Court is not persuaded at all. The voting preference of the inducted new members cannot be the subject matter of adjudication and there cannot be any presumption of voting behaviour of the new members. These are all matters fall entirely within the realm of speculation.

52. In fact, Mr.Thomas T.Jacob, the learned counsel argued that the applicant is not being aggrieved at all as he is already a life member and the actual aggrieved members are not before this Court. He has drawn the attention of this Court to the resolution of the meeting of the Governing Board dated 15.10.2020 wherein two applications received from Mrs.Reemi Abraham and Mrs.Anna Joseph were not considered favourably as their applications did not meet the eligibility criteria as set out in the Governing Board meeting dated 12.02.2020. Those two persons who were denied

membership are not before this Court.

53. Further, it was pointed out by the learned Counsel that a member in a Society brings about the contractual relationship among the members. Once, he becomes a member, his or her right merged with the rights of the Society and are controlled by the Act and the by-laws of the Society as held by the Hon'ble Supreme Court in its decision reported in ***CDJ 2005 SC 407(Zoroastrian Coop. Housing Society Ltd. v. District Registrar, Coop. Societies (Urban).***

54. There is another facet to the contention made on behalf of the applicant by the learned Senior Counsel that the Governing Board ought to have admitted membership of all spouses and children of life members, in which event, there would not be any discrimination at all. This Court is once again unable to appreciate such sweeping submission for the simple reason that it is entirely within the discretionary domain of the Governing Board to admit membership as it deems fit and proper. This Court cannot compel the Governing Body to admit all spouses and children of all life members and if

any such view to be taken by this Court that would amount to transgression beyond the permissible confines of judicial review of actions taken in respect of managing the internal affairs of the Society.

55. On a *prima facie* consideration, this Court is of the view that no iota of case has been projected on behalf of the applicant for considering the applications favourably. On the other hand, it has been well demonstrated on behalf of the 1st respondent Society and other respondents that the induction of respondents 3 to 25 is not vitiated by any legal infirmity. In the absence of any specific violation pleaded or demonstrated in terms of the by-laws of the Society and also in terms of the provisions of the Tamil Nadu Societies Registration Act, 1975 and the Rules framed thereunder, the induction of new members cannot be held to be illegal. Further, the applicant has also miserably failed to establish that the respondents 3 to 25 have been inducted as a consequence of a malafide exercise of power and such induction amounted to act of bad faith. There is nothing on record or any material produced to establish that the induction of respondents 3 to 25 by the Governing Board suffered from the vice of colourable exercise of

power.

56. On the other hand, this Court does not see even remotely any infirmity in the induction of the members and the case laws cited on behalf of the applicant as stated above are extreme examples which have no application to the factual matrix of the present case. Contrarily, the case laws cited on behalf of the respondents are relevant and applicable.

57. In the conspectus of the above discussion, this Court does not see any violation of the by-laws of the Society, nor does it find anything legally amiss in the exercise of the power by the Governing Board on the subject 'lis'. In the circumstances, the applications, on a prima facie consideration failed to convince the Court and hence, liable to be rejected.

58. Accordingly, both the Applications stand dismissed. No costs.

59. List the Suit for filing written statement on 29.10.2021 along with C.S.Nos.329 & 364/2020 and C.S.Nos.159 & 204/2021.

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Index: Yes/No

Speaking/Non-speaking order

01.10.2021

V.PARTHIBAN,J.

Vsi



Pre-delivery order made in
O.A.Nos.734 & 735 of 2020
in
C.S.No.389 of 2020

01.10.2021

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