

(1)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2018

CORAM:

THE HON'BLE MS.JUSTICE INDIRA BANERJEE, CHIEF JUSTICE  
and  
THE HON'BLE MS.JUSTICE P.T. ASHA

W.P.Nos.7526, 7641, 7852, 7942, 7988, 8011, 8044, 8085, 8115, 8118, 8138, 8146, 8149, 8156, 8158, 8159, 8226, 8312, 8343, 8355, 8436, 8464, 8469, 8475, 8481, 8482, 8483, 8487, 8556, 8563 to 8565, 8589, 8658, 8707, 8739 to 8741, 8743, 8759, 8804, 8837, 8864, 8879, 8890, 8898, 8922, 8934 to 8937, 9006, 9042 to 9044, 9046, 9141, 9142, 9151, 9152, 9161, 9178, 9210, 9238, 9244, 9245, 9246, 9297, 9306 to 9310, 9311, 9317, 9338, 9340, 9354, 9375, 9384, 9386, 9387, 9403, 9416, 9452, 9453, 9456, 9507, 9511, 9534 to 9536, 9538, 9701 to 9705, 9709, 9852, 10438, 10993, 11070, 11083, 11106, 11131, 11239, 11362, 11466, 11468 to 11471, 11486, 11487, 11488 to 11490, 11666, 11745, 11809, 11810, 11815, 11830, 11831, 12394, 12424, 12442, 12453, 12515, 12526, 12527, 12529, 12530, 12554, 12555, 12576, 12579, 12586, 12595 to 12626, 12641, 12657, 12674, 12676, 12736, 12849, 12630 to 12638, 12888, 12911, 12925, 13109, 13116, 9620, 10796, 11635, 11640, 11641, 11797, 11798, 11799, 11905, 11906, 10443, 11841, 12509, 13488, 13489, 8042, 9773 of 2018

and

W.P.(MD) Nos.6156, 6465, 6516, 6909, 6914, 7001, 7010, 7030, 7078, 7079, 7084, 7092, 7100, 7160, 7170, 7186, 7187, 7223, 7236 to 7240, 7250, 7272, 7274, 7277, 7303, 7317, 7322 to 7325, 7326, 7359, 7381 to 7385, 7422, 7423, 7431, 7467, 7468, 7469, 7509, 7523, 7524, 7533 to 7535, 7536, 7538, 7541, 7563, 7564, 7590, 7612, 7620, 7633, 7640, 7649, 7668, 7671, 7672, 7677, 7697, 7720, 7733, 7739, 7748, 7754, 7767, 7796, 7797, 7812, 7822, 7827, 7828, 7873, 7879, 7882, 7883, 7886, 7890, 7892, 7900, 7902, 7908, 7909, 7910, 7923, 7924, 7930, 7948, 7949, 7968, 7972, 7981, 7982, 7988, 8009, 8013, 8019, 8027, 8030, 8047, 8054, 8058, 8059, 8071, 8079, 8081, 8084, 8095, 8096, 8102, 8111, 8119, 8121, 8129, 8134, 8135, 8136, 8145, 8149, 8150, 8198, 8214, 8268, 8309, 8323, 8359, 8403, 8464, 8466, 8524, 8527, 8542, 8590, 8623, 8627, 8650, 8655, 8667, 8674, 8702, 8742, 8743, 8767, 8804, 8899, 8961, 8983, 9039, 9084,

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9403, 9463, 9464, 9472, 9553, 9554, 9560, 9586, 9612, 9614, 9636, 9649, 9678, 9761, 9773, 9774, 9775, 9776, 9782, 9784, 9834, 9872, 9885, 9894, 9905, 9924, 9936, 9944, 9955, 9982, 9984, 9999, 10026, 10129, 10130, 10138, 10139, 10140, 10211, 10224, 10260, 10266, 10319, 10509, 10513, 10514, 10515, 10520, 10525, 10527, 10537, 10540, 10575, 10582, 10588, 10599 to 10602, 10617, 10618, 10619, 10620, 10621, 10622, 10645, 10656, 10664, 10666, 10667, 10670, 10677, 10678, 10682, 10685 to 10688, 10689, 10691, 10692, 10700, 10703, 10707, 10715 to 10717, 10722, 10725, 10743, 10744, 10745, 10756, 10761, 10764, 10769, 10770, 10782, 10784, 10791, 10792, 10793, 10794, 10795, 10799, 10801, 10804 to 10815, 10816, 10818, 10829, 10844, 10846, 10458, 10459, 10460, 10461, 11491, 11497, 11516, 11521, 11524, 11526, 11527, 11528, 11582, 11629, 11637, 11656, 11691, 11719, 11747, 11748, 11848, 11849, 11887, 11913, 11929, 11935, 11951, 11963, 11965, 11983, 11995, 11999, 12028, 12032, 12033, 12047 to 12049, 12114, 12102, 12256, 12877, 12528, 13106, 13245, 13312, 13438, 13758, 13799, 13851, 13863, 13903, 14041, 14135, 14306 of 2018

and

W.A. (MD) No.739 of 2018

and connected miscellaneous petitions (cause list appended)

W.P.(MD)No.7620 of 2018 (***Taken as lead case***)

R.Sakkarapani,  
Member of the Legislative Assembly,  
Oddanchathiram Constituency/  
Whip of the Opposite Party,  
(Dravida Munnetra Kazhagam)  
Oddanchathiram Taluk,  
Dindigul District.

.. Petitioner

vs.

1.The State of Tamil Nadu,  
rep. by its Principal Secretary to Government,  
Co-operation, Food and Consumer Protection Department,  
Fort St. George,  
Chennai - 600 009.

- 2.The Election Commission,  
Tamil Nadu State Co-operative Societies,  
rep. by its Secretary,  
No.273, Kamadenu Super Market,  
I-Floor, Anna Salai,  
Chennai - 600 018.
- 3.The Registrar of Co-operative Societies,  
Chetpet, Chennai - 600 010.
- 4.Dr.M.Rajendran, I.A.S.,  
Now functioning as Election Commissioner,  
Tamil Nadu State Co-operative Societies,  
Chennai - 600 018.
- 5.All India Anna Dravida Munnetra Kazhagam,  
rep. by its Authorised Representative  
Dr.Avvai Shanmugam Salai,  
Royapettah, Chennai - 600 014. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for a Writ of Declaration declaring that the elections to the Co-operative Societies in the State of Tamil Nadu conducted by the 2nd respondent in Na.Ka.331/2018 Co-operative Election-I dated 5.3.2018 under the Tamil Nadu Co-operative Societies Act, 1983, as unconstitutional, illegal, void, unenforceable and consequently, direct the 1st respondent to conduct free and fair election to the Co-operative Societies in the State of Tamil Nadu in accordance with law.

(4)

W.P.(MD) No.7620 of 2018:

For Petitioner : Mr.Veera Kathiravan  
Senior Counsel  
for M/s.Veera Associates

For Respondents : Mr.Vijay Narayan  
Advocate General  
assisted by  
Mr.T.N.Rajagopalan  
Government Pleader &  
Mr.L.P.Shanmugasundaram  
Spl. G.P. (Co-op)  
for 1st respondent

Mr.N.R.Chandran  
Senior Counsel  
assisted by  
Mr.M.S.Palanisamy  
for 2nd respondent

Mr.P.H.Arvind Pandian  
Addl. Advocate General  
assisted by  
Mr.L.P.Shanmugasundarm  
Spl. G.P. (Co-op)  
for 3rd respondent

Mr.AR.L.Sundaresan  
Senior Counsel  
assisted by  
Mr.U.Karukaran  
for 4th respondent

Mr.A.L.Somayaji  
Senior Counsel  
assisted by  
Mr.V.Perumal  
for 5th respondent

\*\*(Appearance in respect of other writ petitions/appeal – cause list appended)

**COMMON ORDER**

*(Order was made by Ms.Indira Banerjee, Chief Justice)*

This writ petition, being W.P.(MD) No.7620 of 2018, by way of public interest litigation has been filed by a Member of the Tamil Nadu Legislative Assembly from Oddanchathiram Constituency, praying, *inter alia*, for a declaration that elections to the Cooperative Societies in the State of Tamil Nadu conducted by the second respondent in furtherance of the impugned election notification being Na.Ka.No.331/2018, Cooperative Elections, dated 05.3.2018 under the Tamil Nadu Cooperative Societies Act, 1993 as unconstitutional, illegal and unenforceable and to direct the first respondent to conduct free and fair elections to the Cooperative Societies in the State of Tamil Nadu in accordance with law.

2. The 543 other writ petitions, which also relate to elections to cooperative societies in the State of Tamil Nadu in furtherance of the impugned election notification, being Na.Ka.No.331/2018, Co-operative Elections, dated 05.3.2018, are disposed of by this judgment and order.

3. Article 43B inserted in Part IV of the Constitution of India containing the Directive Principles of State policy with effect from 15.02.2012, by the Constitution (97<sup>th</sup> Amendment) Act, 2011, provides:

**"43B. Promotion of cooperative societies . -**

*The state shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies."*

4. By the Constitution (97<sup>th</sup> Amendment) Act, 2011, Part IX B, titled 'The Cooperative Societies', was incorporated in the Constitution of India with effect from 15.2.2012. Articles 243-ZI, 243-ZJ, 243-ZK, 243-ZL and 243-ZT contained in Part IX-B are set out herein below for convenience:

**"243-ZI. Incorporation of cooperative societies. -**

*Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the incorporation, regulation and winding up of cooperative societies based on the principles of voluntary formation, democratic member-control, member-economic participation and autonomous functioning.*

(7)

**243-ZJ. Number and term of members of board and its office bearers.** - (1) *The board shall consist of such number of directors as may be provided by the Legislature of a State, by law:*

*Provided that the maximum number of directors of a co-operative society shall not exceed twenty-one:*

*Provided further that the Legislature of a State shall, by law, provide for the reservation of one seat for the Scheduled Castes or the Scheduled Tribes and two seats for women on board of every co-operative society consisting of individuals as members and having members from such class or category of persons.*

(2) *The term of office of elected members of the board and its office bearers shall be five years from the date of election and the term of office bearers shall be conterminous with the term of the board:*

*Provided that the board may fill a casual vacancy on the board by nomination out of the same class of members in respect of which the casual vacancy has arisen, if the term of office of the board is less than half of its original term.*

*(3) The Legislature of a State shall, by law, make provisions for co-option of persons to be members of the board having experience in the field of banking, management, finance or specialisation in any other field relating to the objects and activities undertaken by the co-operative society, as members of the board of such society:*

*Provided that the number of such co-opted members shall not exceed two in addition to twenty-one directors specified in the first proviso to clause (1):*

*Provided further that such co-opted members shall not have the right to vote in any election of the co-operative society in their capacity as such member or to be eligible to be elected as office bearers of the board:*

*Provided also that the functional directors of a cooperative society shall also be the members of the board and such members shall be excluded for the purpose of counting the total number of directors specified in the first proviso to clause (1).*

**243-ZK. Election of members of board. - (1)**  
*Notwithstanding anything contained in any law made by the Legislature of a State, the election of a board shall be conducted before the expiry of the term of the*

*board so as to ensure that the newly elected members of the board assume office immediately on the expiry of the term of the office of members of the outgoing board.*

*(2) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to a co-operative society shall vest in such an authority or body, as may be provided by the Legislature of a State, by law:*

*Provided that the Legislature of a State may, by law, provide for the procedure and guidelines for the conduct of such elections.*

**243-ZL. Supersession and suspension of board and interim management.** - *(1) Notwithstanding anything contained in any law for the time being in force, no board shall be superseded or kept under suspension for a period exceeding six months:*

*Provided that the board may be superseded or kept under suspension in case—*

- (i) of its persistent default; or*
- (ii) of negligence in the performance of its duties; or*
- (iii) the board has committed any act prejudicial to the interests of the co-operative society or its members; or*
- (iv) there is a stalemate in the constitution or functions*

*of the board; or*

*(v) the authority or body as provided by the Legislature of a State, by law, under clause (2) of article 243-ZK, has failed to conduct elections in accordance with the provisions of the State Act:*

*Provided further that the board of any such cooperative society shall not be superseded or kept under suspension where there is no Government shareholding or loan or financial assistance or any guarantee by the Government:*

*Provided also that in case of a co-operative society carrying on the business of banking, the provisions of the Banking Regulation Act, 1949 (10 of 1949) shall also apply:*

*Provided also that in case of a co-operative society, other than a multi-State co-operative society, carrying on the business of banking, the provisions of this clause shall have the effect as if for the words "six months", the words "one year" had been substituted.*

*(2) In case of supersession of a board, the administrator appointed to manage the affairs of such co-operative society shall arrange for conduct of elections within the period specified in clause (1) and handover the management to the elected board.*

*(3) The Legislature of a State may, by law, make provisions for the conditions of service of the administrator.*

**243-ZT. Continuance of existing laws. -**  
*Notwithstanding anything in this Part, any provision of any law relating to co-operative societies in force in a State immediately before the commencement of the Constitution (Ninety-seventh Amendment) Act, 2011, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is less."*

5. As provided in Article 243-ZJ of the Constitution of India, the term of elected members of the Board and its office bearers is to be five years from the date of election and the term of office bearers is to be coterminous with the term of the board.

6. Under Article 243-ZK of the Constitution, the election of the board is to be conducted before the expiry of the term of the board and/or in other words, before expiry of five years from the date of election, so as to ensure that the newly elected members of the board

assume office immediately on expiry of the tenure of office of members of the outgoing board.

7. In Tamil Nadu, co-operative societies are governed by the Tamil Nadu Co-operative Societies Act, 1983, hereinafter referred to as "the 1983 Act", and the Rules framed thereunder. Section 33A of the 1983 Act incorporated by Tamil Nadu Co-operative Societies (Fourth Amendment) Act, 38 of 2012, with effect from 6.10.2012 provides as follows:

***"Section 33-A. Tamil Nadu State Co-operative Societies Election Commission.—***

*(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to a co-operative society shall vest in the Tamil Nadu State Co-operative Societies Election Commission consisting of a Tamil Nadu State Co-operative Societies Election Commissioner.*

*(2) The Tamil Nadu State Co-operative Societies Election Commissioner shall be appointed by the Government.*

*(3) No person shall be qualified for appointment as Tamil Nadu State Co-operative Societies Election Commissioner unless he is or has been an officer of the*

*Government not below the rank of Secretary to the Government.*

*(4) The Tamil Nadu State Co-operative Societies Election Commissioner shall hold office for a term of five years from the date on which he enters upon his office:*

*Provided that a person appointed as Tamil Nadu State Co-operative Societies Election Commissioner shall retire from office if he completes the age of sixty five years during the term of his office.*

*(5) Subject to the provision of sub-section (3), the conditions of service of the Tamil Nadu State Co-operative Societies Election Commissioner shall be such as may be prescribed.*

*(6) The Government may make available to the Tamil Nadu State Co-operative Societies Election Commission such staff as may be necessary for the discharge of the functions conferred on the Tamil Nadu State Co-operative Societies Election Commission by sub-section (1)".*

8. In exercise of powers conferred by sub-sections (1), (2) and (3) of Section 180 of the 1983 Act, the Governor of Tamil Nadu framed

the Tamil Nadu Co-operative Societies Rules, 1988, hereinafter referred to as "*the Rules*". The Rules were amended by G.O.Ms.No.10, CF&CF (CJ1), dated 31.1.2013, published in the Tamil Nadu Government Gazette, Part III, Sec. 1(a), dated 31.1.2013, with effect from 31.1.2013.

9. Rules 51 to 53 of the Rules relate to election of members of co-operative societies. Under Rule 51, the members of the board of a co-operative society are to be elected by all the members of the society entitled to vote. However, where there is provision in the by-laws of any society for the formation of constituencies otherwise than on the basis of area, the election of a member or members of the board in respect of each such constituency is to be by all the members from among themselves of that constituency only. Under Rule 51, all members of a co-operative society not otherwise disqualified are eligible to contest or vote at any election to the society.

10. The members of the board of a co-operative society are to be elected in the manner stipulated in Rules 52 of the Rules. Under Rule 52:

- i. Every society is to report to the Election

Commission the date of expiry of the term of office of the members of the board for which elections are to be held and the number of members to be elected and other particulars.

- ii. On receipt, of such report, the Election Commission is to appoint District Election Officers for each district for conducting election of members of the board of co-operative societies in the respective districts or part of a district.
- iii. The District Election Officer is to appoint Electoral Officers for preparation and publication of voters' list of the co-operative society/co-operative societies concerned.
- iv. Notice of election is to be served on members by putting the same in the notice board or in such other place as the District Election Officer or Election Officer may specify.
- v. Where the District Election Officer or Election Officer so directs, the notice is to be served by the Chief Executive, President or Chairperson of the co-operative society to all the members.

- vi. On receipt of election programme, the co-operative society is to make a list of members and send three copies thereof to the Electoral Officer at least 15 clear days prior to the date of poll.
- vii. The Electoral Officer is to verify the members' list and prepare a voters' list consisting of all members qualified to vote at the election.
- viii. The Electoral Officer shall publish the voters' list on the notice board not less than at least ten days prior to the date of poll.
- ix. The Electoral Officer shall decide objections, if any, to the voters list after such enquiry as he considers necessary.
- x. If society fails to prepare and send members list, the Electoral Officer may prepare the voters' list himself or through any person authorised by him. In such case, voters list is to be published by the Electoral Officer at least seven days before the date of poll requiring the members to make their claims or raise their objections.
- xi. No person is to be eligible for being nominated as a

candidate for election to the board, unless he is qualified for being elected under the 1983 Act and the Rules framed thereunder and his/her name is included in the voters' list.

xii. Every nomination paper can be presented in person to the Election Officer by the candidate himself or his proposer or seconder on the date and time specified in the notice of election.

xiii. The Election Officer receiving the nomination paper shall enter on the nomination paper its serial number and the date and hour of presentation thereof and immediately acknowledge receipt of the nomination paper.

xiv. On the date and time of scrutiny, the Electoral Officer shall decide in writing the objections to any nomination. The Electoral Officer may, either on his own motion or having regard to the objection, reject any nomination on grounds stipulated in subparagraphs (i) to (iv) of Rule 52(8)(d) of the Rules, that is,

(a) candidate was not qualified and/or was

disqualified on the date of filing of nomination;

(b) failure to comply with any of the provisions of Clause (a) or Clause (aa) of the Rule;

(c) signature of the candidate or the proposer or seconder on the nomination paper is not genuine; and

(d) election is solely for a seat or for seats reserved for Scheduled Castes and Scheduled Tribes or Women and the candidate does not belong to such reserved category.

xv. The nomination of a candidate is not to be rejected only on the ground of an incorrect description of his name or the name of his proposer or seconder or of any other particulars relating to the candidate or his proposer or seconder as entered in the voters' list, if the identity of the candidate or proposer or seconder, as the case may be, is established beyond reasonable doubt.

xvi. The Election Officer shall give all reasonable facilities to the candidates or the persons duly authorised by them to examine all the nomination papers and satisfy themselves of the validity of the nomination papers and/or the eligibility of the candidates for inclusion in the list of candidates.

xvii. The Election Officer shall endorse on each nomination paper his decision accepting or rejecting the same and in case of rejection, record in writing a brief statement of grounds for such rejection.

xviii. After scrutiny and acceptance or rejection of nomination papers, the Election Officer is to prepare a list of candidates whose nominations have been accepted as valid and such list is to be published in the notice board at the office of the society or at such other place as the Election Officer may specify, on the date and time fixed in the election notice for such publication.

xix. Any candidate may withdraw his candidature by notice in Form No.19 signed by him and delivered

to the Election Officer before the date and time fixed in the election notice. Notice of withdrawal of candidature once given shall be final.

xx.The Election Officer shall prepare in Form No.20 a list of candidates whose nomination papers are finally accepted as valid.

xxi.If for any constituency for which the election is to be held, the number of candidates in respect of whom valid nominations have been filed, but have not been withdrawn, does not exceed the number of candidates to be elected for that constituency, such candidates shall be deemed to have been duly elected for the constituency and the names of such candidates shall be published in the notice board at the office of the society or at such other place as the Election Officer might specify, after a declaration by the Election Officer to the effect that they have been duly elected.

xxii.If number of candidates for any constituency exceeds the number of members to be elected, the Election Officer is to allot a serial number to each

candidate and arrange for taking a poll on the date fixed for the purpose.

xxiii.If for any constituency, there is no contesting candidate, the Election Officer is to send a report to the District Election Officer, the State Election Officer and the Election Commission, in which case, the Election Commission might start election proceedings afresh in all respects as if for a new election to fill up the vacancy or vacancies.

xxiv.If the number of contesting candidates qualified to be chosen to fill reserved seats is not larger than the number of vacancies, the Election Officer shall declare the candidate or all such candidates, as the case might be, duly elected and send a report to the District Election Officer, the State Election Officer and the Election Commission.

xxv.If the number of contesting candidates qualified to be chosen for the reserved seats exceeds the number of seats reserved, the Election Officer shall decide by drawing lots, which of the candidates so qualified to fill the reserved seats shall be declared

elected to the reserved seats and which of them to the non-reserved seats.

xxvi.If all the vacancies in the reserved seats are filled up under clause (d) or (e) and if the number of contesting candidates remaining after the exclusion of the candidates so declared elected is not larger than the number of non-reserved seats, the Election Officer is to cause a copy of the list of contesting candidates in Form No.20 to be affixed in the notice board at the office of the society and send a report to the District Election Officer, the State Election Officer and the Election Commission.

xxvii.If there are any seats remaining to be filled after following the procedure prescribed in clauses (a), (d), (e) and (f) of Rule 52(9), the election Officer shall send a report to the State Election and the Election Commission. In such case, the Election Commission might start election proceedings afresh in all respects as if for a new election to fill up the vacancy or vacancies.

xxviii.Where the number of contesting candidates is

more than the number of seats to be filled, a poll is to be held for election from among the candidates remaining after due exclusion.

xxix. At every election where a poll is taken, the society shall provide each Election Officer with sufficient number of ballot boxes, ballot papers, copies of voters' list etc.

xxx. A candidate contesting the election may appoint an election agent to represent him at every booth where polling is held by giving notice of such appointment to the Election Officer in the manner prescribed.

xxxi. Immediately before the commencement of the poll, the Election Officer or the polling officer shall show the empty ballot box to the candidates or their agents as might be present and shall seal the box after it has been closed.

xxxii. No person including the candidates and his election agent shall canvass any voter, within the polling station in any manner.

xxxiii. No votes are to be received by proxy.

xxxiv. In deciding the right of a person to obtain a ballot paper the Election Officer or the polling officer, as the case might be, shall overlook any clerical or printing or typographical error in any entry in the voters' list, if he is satisfied that such person is identical with the voter to whom such entry relates.

xxxv. The Election Officer shall decide in writing the objections, if any, which might be made by a candidate or his election agent as to the right of any person to vote at the election after making such summary enquiry as he considers necessary.

xxxvi. Each voter shall be given only one ballot paper for each election and enter the voting compartment at a time.

xxxvii. Voters suffering from blindness or other physical infirmity or illiteracy may be assisted by the Election Officer or the polling officer upon ascertaining the candidate or candidates in whose favour he desires to vote.

11. The Election Commission, being the second respondent, was established under Section 33A of the 1983 Act, which was incorporated by the Tamil Nadu Co-operative Societies (Amendment) Act, 2012. Under the 1983 Act, as amended. Elections to co-operative societies, are only to be conducted by the Election Commission.

12. Section 33A read with Section 90 of the 1983 Act and Rules 52 and 53 of the Rules make it amply clear that the Election Commission is entrusted with the superintendence, direction and control of the preparation of electoral rolls and the conduct of all elections to a cooperative society. The power of superintendence, direction and control of preparation of electoral rolls and conduct of elections to a cooperative society include the power to take steps to ensure that elections are free and fair. However, the Election Commission has no power to adjudicate election disputes.

13. By notification Na.Ka.331/2018/Cooperative Election-I, dated 5.3.2018, the Election Commission announced elections to co-operative societies along with the election schedule.

14. As per the election programme, the Election Commission

fixed 26<sup>th</sup> March 2018 as the date for submission of the nomination forms in Form-18 to the Election Officer of the concerned Society. The next day i.e., 27<sup>th</sup> March 2018 was fixed for examination by the candidates of the nomination papers of other candidates and for scrutiny and acceptance or rejection of the nomination forms. The very next day i.e., 28<sup>th</sup> March 2018 was fixed for withdrawal of nominations and 29<sup>th</sup> March 2018 was the date for preparation and publication of the final list of candidates for election after withdrawals.

15. Pursuant to the aforesaid notification, elections were conducted in 18,465 co-operative societies divided stage wise into Stage-1 comprising 4684 co-operative societies, Stage-2 comprising 4557 co-operative societies, Stage-3 comprising 4551 co-operative societies and Stage-4 comprising 4673 co-operative societies. There were 1,84,970 vacancies to be filled up by election by 1,84,30,707 eligible voters, as per the information furnished by the Election Commission.

16. Of the 18,465 co-operative societies there was no contest in 16,344 co-operative societies. Only in the case of 447

co-operative societies there was no contest as no nomination papers were filed. Yet, polling took place in only 1084 co-operative societies. Election was either cancelled or postponed in 590 constituencies, 81 by reason of complaints and 509 by reason of law and order problems.

17. The details of elections are depicted in the table herein below:

<i>Phase I (Stage wise)</i>	<i>No. of Societies</i>	<i>No Nomination</i>	<i>Election cancelled/ postponed</i>	<i>No. of societies subjected for election</i>	<i>No contest</i>	<i>% of societies declared no contest</i>
Stage - 1	4684	121	115	4448	4168	94%
Stage - 2	4557	110	107	4340	4125	95%
Stage - 3	4551	98	147	4306	3997	93%
Stage - 4	4673	118	221	4334	4054	94%
	18465	447	590	17428	16344	94%

18. Statistics reveal that in 88.51% co-operative societies, there was no contest. There was polling in only 5.87% co-operative societies. Only in 2.42% cases, no nomination paper was filed.

19. This writ petition, in public interest, has been filed on the

allegation that the second respondent Election Commission has not conducted the proceedings impartially, but has rejected nominations of candidates except candidates belonging to the ruling party and then declared candidates as elected uncontested, shaking the grass root of democracy.

20. The writ petitioner has alleged that the ruling party appointed top cadres and/or leaders for every district to monitor operations. In support of such allegation, reference has been made to a publication from the ruling part, announcing that the Chief Minister would be in-charge of Salem District and the Deputy Chief Minister in-charge of Theni District, in connection with the election. Of course, the mere fact that leaders of the ruling part were in-charge of operations in certain districts does not in itself lead to inference of any unfair practice in the elections. It is possible that the Chief Minister and the Deputy Chief Minister and other elected representatives of the ruling party were put in-charge of constituencies from which they had been elected.

21. The writ petitioner has also alleged that he has been able to collect information that in some co-operative societies, nominations

had been filed by various persons, but except for nominations filed by members belonging to the ruling party, all others were rejected and results declared as if there was no contest at all.

22. On behalf of the writ petitioners, it has also been submitted that there are instances where several nominations had been accepted, the list affixed in the notice board, but the very next day, even without polling, the ruling party candidates were declared elected.

23. Opposing the writ petitions, the respondents have vehemently denied allegations of collusion and bias in favour of the ruling party. Counsel appearing on behalf of the respondents contended that in most of the co-operative societies there was no contest, either because no nominations were filed or because nominations were withdrawn or found defective and hence rejected as invalid. The learned Advocate General argued that elections to co-operative societies are not contested in the same manner as elections to Legislative Houses or Local Bodies. Even in the last elections held in 2013 the percentage of co-operative

societies in which there was no contest was about 93.74%.

24. A comparative table of the election conducted in 2013 with the election conducted in 2018 as furnished by the Election Commission is depicted herein below:

<b>Sl.No.</b>	<b>Details</b>	<b>2018</b>	<b>2013</b>
1.	No. of Societies Election Conducted	18,465	21,027
2.	Of which-		
	a) No contest	16,344,	19,710
	b) Polling	1,084	1,317
	c) No Nomination	447	1525
	d) Cancelled/Postponed	590	-
	i) On Law & Order – 509		
	ii) On Complaints – 81		
2.	No. of Vacancies	1,84,970	2,04,889
3	No. of Eligible Voters	1,84,30,707	2,04,71,569

<b>II. Comparative Statement</b>		<b>2018</b>	<b>2013</b>
1.	% 'No Contest' to number of societies	88.51%	93.74%
2.	% 'Polling' to number of societies	5.87%	6.26%
3.	% 'No Nomination' to number of societies	2.42%	7.25%

25. This Court is concerned with the elections to the co-operative societies announced this year and not with the last elections to co-operative societies held in the year 2013. The

facts and figures relating to uncontested election in that year are not relevant to the question of whether the elections this year were free and fair and in accordance with law. In any case, the fact that some irregularities in an earlier election may not have been questioned, and went unnoticed, does not mean that cognizance is not to be taken of irregularities in a subsequent election.

26. The Election Commission appears to have received 2514 petitions of objection/complaint, 1525 between 1.3.2018 and 9.5.2018 and 989 between 9.5.2018 and 31.5.2018, in respect of 1,324 co-operative societies of which 1413 petitions of objection/complaint had been disposed of as on 12.6.2018. As on that date, notices had been sent and enquiry pending in 1101 cases.

27. Of the 1413 petitions of objection/complaint that were disposed of, elections were cancelled in full and/or postponed in case of 620 co-operative societies, cancelled in part in respect of 65 co-operative societies. 302 petitions of objection/complaint

were referred to the remedy under Section 90 of the 1983 Act and 426 rejected on various grounds. The rejections have been questioned by filing writ petitions in this Court.

28. The respondents have also taken a preliminary objection to the writ petition on the ground of existence of an alternative remedy under Section 90 of the 1983 Act. Section 90 of the 1983 Act reads as under:

*"Section 90. Disputes.-*

*(1) If any dispute touching the constitution of the board or the management or the business of a registered society (other than a dispute regarding disciplinary action taken by the competent authority constituted under subsection (3) of section 75 or the Registrar or the society or its board against a paid servant of the society) arises- -*

*(a) among members, past members and persons claiming through members, past members and deceased members, or*

*(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its board or any officer, agent or servant of the society, or*

*(c) between the society or its board and any past board, any officer, agent or servant, or any past officer, past agent or past servant, or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased servant of the society, or*

*(d) between the society and any other registered society, such dispute shall be referred to the Registrar for decision.*

*Explanation.- For the purposes of this section, a dispute shall include -*

*(i) a claim by a registered society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of a deceased member whether such debt or demand be admitted or not;*

*(ii) a claim by a registered society against a member, past member or the nominee, heir or legal representative of a deceased member for the delivery of possession to the society of land or other immovable property resumed by it for breach of the conditions to assignment or allotment of such land or other immovable property; and*

*(iii) a decision by the board under sub-section (3) of section 34:*

*Provided that no dispute relating to, or in connection with, any election shall be referred under this sub-*

*section till the date of the declaration of the result of such election.*

*(2) The Registrar may, on receipt of such reference,-*

*(a) decide the dispute himself or transfer it for disposal to any person subordinate to, and empowered by, him; or*

*(b) subject to such Rules as may be prescribed, refer it for disposal to an Arbitrator or Arbitrators.*

*(3) Subject to such Rules as may be prescribed, the Registrar may withdraw any dispute referred under sub-section (1) to any person subordinate to him or transferred under clause (a) or referred under clause (b) of sub-section (2) by the Registrar or any person subordinate to him and -*

*(a) decide the dispute himself; or*

*(b) transfer it for disposal to any person subordinate to, and empowered by, him; or*

*(c) refer it for disposal to an Arbitrator or Arbitrators; or*

*(d) re-transfer the same for disposal to the person from whom it was withdrawn; or*

*(e) refer it for disposal to the Arbitrator or Arbitrators from whom it was withdrawn.*

*(4) If a question arises, whether for the purposes of this section, any person is or was a member of a registered society, or whether the dispute referred for decision is a dispute touching the constitution of the board, or the management or the business of the society, such question shall be decided by the Registrar.*

*(5) Where any dispute referred to the Registrar under sub-section (1) or withdrawn by him under sub-section (3) relates to immovable property, the Registrar or the person or the Arbitrator or Arbitrators to whom it is transferred, referred or re-transferred under sub-section (2) or sub-section (3) may, on the application of a party to the dispute direct that any person who is interested in such property, whether such person be a member or not, be included as a party to the dispute and any decision that may be passed on the reference, by the Registrar, the person, the Arbitrator or Arbitrators aforesaid, as the case may be, shall be binding on the party so included, provided that he shall be liable only to the extent of such property.*

*(6) The Registrar may pass such interlocutory orders as he may deem fit in the interests of justice.*

*(7) Nothing contained in the Arbitration Act, 1940 (Central Act X of 1940) shall apply to any arbitration under this section.*

*(8) Nothing contained in section 34 of the Code of Civil Procedure, 1908 (Central Act V of 1908) shall apply to any decision passed or award made under this section.*

*(9) (a) The period of limitation for referring a dispute under this section shall be regulated by the provisions of the Limitation Act, 1963 (Central Act 36 of 1963) as if the disputes were a suit and the Registrar, a Civil Court, subject to the following modifications, namely:-*

*(i) when the dispute relates to a society in respect of which a special officer has been appointed under section 88 or to a society which has been ordered to be wound up under section 137, the period of limitation shall be six years from the date of the order issued under section 88 or section 137, as the case may be;*

*(ii) save as otherwise provided in clause (i), when the dispute relates to any act or omission on the part of any of the parties referred to in clause (b) or clause (c) of sub-section (1), the period of limitation shall be six years from the date on which the act or omission with reference to which the dispute arose, took place;*

*(iii) when the dispute is in respect of, or in connection with, any election, the period of limitation shall be two months from the date of declaration of the result of the election.*

*(b) Notwithstanding any thing contained in clause (a), the Registrar may admit a dispute after the expiry of the period of limitation if the applicant satisfies the Registrar that he had sufficient cause for not referring the dispute within such period and the dispute so admitted shall be a dispute which shall not be barred on the ground that the period of limitation has expired."*

29. Learned Advocate General argued that Section 90(1) provides for a Dispute Redressal Forum in respect of constitution of the Board, which includes election of members.

30. The learned Advocate General argued that the Supreme Court and the High Courts have consistently taken the view that where there is an alternative remedy provided for resolution of disputes in respect of elections, the Court should not interdict the process of election. This view has been taken in cases of co-operative societies as also in cases of election to other bodies such as Bar Associations, Bar Councils, Dental Council, etc. In support of his submissions, the

learned Advocate General cited the following judgments:

- (i) N.P.Ponnuswami v. The Returning Officer, reported in AIR 1952 SC 64;
- (ii) Nanhoo Mal and others v. Hira Mal and others, reported in (1976) 3 SCC 211;
- (iii) Mohinder Singh Gill v. The Chief Election Commissioner, reported in (1978) 1 SCC 405;
- (iv) Sri Sant Sadguru Janardan Swami v. The State of Maharashtra, reported in (2001) 8 SCC 509;
- (v) Sohan Lal v. Babu Gandhi and others, reported in (2003) 1 SCC 108;
- (vi) Manda Jaganath v. K.S.Rathanam and others, reported in (2004) 7 SCC 492;
- (vii) Avtar Singh Hit v. Delhi Sikh Gurdwara Management Committee and others, reported in (2006) 8 SCC 487;
- (viii) P.Manjula v. State of A.P., reported in (2007) 15 SCC 766;
- (ix) K.Anandaraj v. State of Tamil Nadu and others (W.A.No.902 of 2013);
- (x) R.Murali Mohan v. State Cooperative Election Commissioner (W.A.No.1282 of 2013);

- (xi) R.Kalkaiarasan v. The Registrar of Cooperative Societies (W.A.No.1348 of 2013);
- (xii) K.J.Chерian v. State of Tamil Nadu (W.P.No.12915 of 2013);
- (xiii) R.Kumar v. The Tamil Nadu State Cooperative Societies Election Commission (Order dated 2.4.2018 in W.P. (MD) No.7090 of 2018);
- (xiv) Boddula Krishnaiah and another v. State Election Commissioner, A.P. And others, reported in (1996) 3 SCC 416;
- (xv) S.T.Muthusamy v. Natarajan, reported in (1988) 1 SCC 572;
- (xvi) Shaji K.Joseph v. V.Viswanath and others (SLP (C) No.22902 of 2011).

31. Mr.N.R.Chandran, learned Senior Counsel appearing on behalf of the Election Commission also submitted that the writ petition is not maintainable in law and on facts and deserves to be dismissed for the following reasons:

- (i) The writ petitioner is not a candidate in any election in the Tamil Nadu Co-operative Societies

and has not filed the writ petition to agitate any personal grievance.

(ii) If any individual candidate has any grievance with regard to the rejection of his nomination or with regard to alleged improper conduct of elections in any particular society or any grievances against any particular Election Officer, his remedy is to initiate proceedings under Section 90 of the 1983 Act, raising election dispute.

(iii) Elections have been conducted as per the provisions of the 1983 Act and the Rules, Regulations and Bye-laws framed thereunder. Rule 52 is a Code by itself. It governs the entire process of election. The Board is constituted pursuant to such election as per the Rules. A reading of Section 33, Rule 52 and Section 90 of the Act leaves no room for doubt that a dispute relating to election is amenable only to adjudication under Section 90 by the concerned authority.

(iv)The contentions raised by the petitioner are all vague and not supported by any materials. The list of candidates whose nominations is said to have been accepted, in respect of certain Societies and the list of candidates whose nominations is said to have been rejected without jurisdiction are unauthenticated.

(v)The correctness or otherwise of the rejection of nomination, which is a disputed question of facts can only be tested on a case to case basis by the competent authority nominated under the 1983 Act, for the said purpose. On a vague allegation in a writ petition under the guise of Public Interest Litigation, a blanket relief cannot be granted.

32. Mr.N.R.Chandran, learned Senior Counsel for the Election Commission argued that the allegation of collusion with the ruling party is patently incorrect for the following reasons:

(i) The application form does not contain any column requiring the proposed member to declare the

political party to which he belongs. The authorities under the 1983 Act would not, therefore, know the political party to which a candidate may belong.

- (ii) Wherever election is held, the names of the contesting candidates are printed in the ballot paper in alphabetical order as per the final list. The ballot paper does not have any symbol of any political party. Only numbers are allotted to the candidates. As such the allegation of bias on the basis of political affiliation is not correct.

33. Mr.Chandran, learned Senior Counsel for the Election Commission submitted that the allegation that the Election Commissioner had not taken any action on the complaints made to it, was also incorrect and deserved to be rejected.

34. As per the Rules, the nominations are scrutinized and number of valid nominations are announced and in case of any rejection of nomination under Rule 52(8)(d), a brief reasoning is endorsed on the nomination form itself and thereafter the number of

valid nominations are accepted. As per the Rules, in case the number of nominations which are accepted are equal or less than the number of vacancies in the Board, the Election Officer has to declare the candidate as elected unopposed. This is part of the election process and it cannot be said that there had been no election at all, only because some members had been elected without contest.

35. It may be true that unopposed election in cases where the number of nominations which are accepted are equal or less than the number of vacancies, is part of the election process and it cannot be said that there had been no election at all. However, in the case of the 2018 elections to Co-operative Societies, 94% of the elections to Co-operative Societies were uncontested and there were 2514 petitions of objection/complaint. This warrants interference of this Court.

36. Mr.Chandran argued that the contention of the petitioner that absence of contest in 16344 societies out of 18465 societies for which elections were conducted goes to show that the 2<sup>nd</sup> respondent has failed to conduct elections in a democratic manner, is totally

misconceived and exhibits utter lack of knowledge about the cooperative movement and functioning of cooperative societies. In the Elections of 2018, there were 447 societies where no members filed nomination. Because of understanding and consensus among members, contest is mostly avoided. The lawmakers foresaw this unique trend of absence of contest in a large number of cooperative societies, and accordingly framed Clause (a) of Sub-Rule (9) of Rule 52 as under:

“If for any constituency for which the election is to be held, the number of candidates in respect of whom valid nominations have been filed but have not been withdrawn does not exceed the number of candidates to be elected for that constituency, such candidates shall be deemed to have been duly elected for the constituency.”

37. Mr.Chandran submitted that the number of societies in which there was no contest in the election held in 2013 was 19710, that is 93.74% of the total number of 21027 societies for which election had been conducted. This year, there was no contest in 16344 out of total 18465 societies for which election has been conducted, which works out to 88.51%. Counsel submitted that this is nothing alarming or unusual.

38. Mr.Chandran further submitted that the vires of Section 90 or Section 33(1) of the 1983 Act or Rule 52 of the Rules is not under challenge. The authority to receive nomination forms, scrutinize nomination forms and announce the final list of valid nominations is the Election Officer and if the Election Officer is wrong, the remedy is by way of an election dispute under Section 90 of the 1983 Act. The Election Officer is not the authority to decide dispute under Section 90, but the Sub Registrar or Deputy Registrar or Registrar, who are superior to the Election Officer.

39. Mr.Chandran learned Senior Counsel for the Election Commission argued that the nominations had been rejected on the ground of omission to mention the constituency in the nomination form, only where there was a specific constituency as per the by-laws of the cooperative society. In this context, counsel referred to Rule 52(9)(a) to (d) of the Rules set out herein below:

*"52(9)(a) If for any constituency for which the election is to be held, the number of candidates in respect of whom valid nominations have been filed but have not been withdrawn does not exceed the number of candidates to be elected for that constituency, such candidates shall be deemed to have been duly elected*

*for the constituency and the names of such candidates shall be published in the notice board at the office of the society or at such other place as the Election Officer may specify, after a declaration by the Election Officer to the effect that they have been duly elected. The Election Officer shall immediately send a report to the District Election Officer, the State Election Officer and the Election Commission.*

*(b) If the number of candidates for any constituency exceeds the number of members to be elected, the election officer shall allot a serial number to each candidate according to their names in the alphabetical order in English language and arrange for taking a poll on the date fixed for the purpose.*

*(c) If for any constituency there is no contesting candidate, the Election Officer shall immediately send a report to the District Election Officer, the State Election Officer and the Election Commission. In such case, the Election Commission may start election proceedings afresh in all respects as if for a new election to fill up the vacancy or vacancies.*

*(d) In respect of reserved seats, if the number of contesting candidates qualified to be chosen to fill them is not larger than the number of vacancies, the election officer shall declare the candidate or all such*

*candidates, as the case may be, duly elected and the names of such candidate or candidates shall be published in the notice board at the office of the society or at such other place as the election officer may specify. The Election Officer shall immediately send a report to the District Election Officer, the Election Officer and the Election Commission."*

40. Mr.Chandran argued that in cases where the by-laws of the society provided for election in specific constituencies, elections were to be held only amongst the members of those constituencies. All the members of the cooperative society would not be entitled to vote. Disclosure of the constituency in which the candidates were contesting was, therefore, mandatory.

41. Mr.Chandran finally argued that the duty of the State Election Commission was to conduct elections within the stipulated time of five years, which is a constitutional mandate under Article 243-ZK and statutory requirement under Section 33(11)(a) of the 1983 Act. The five year term of office of the previous board has expired in May, 2018. The elections have been conducted by the Election Commission after due publicity and in accordance with the procedure prescribed by law. When the notice of the Election Commission is

drawn to any individual grievance during the process of election, action is taken by the Election Commission within the four corners of law and if there is any dispute to be adjudicated upon, the parties will be referred to proceedings under Section 90 of the 1983 Act. The issues urged by the writ petitioners are disputed questions of fact, which can be individually scrutinized only if any action is initiated by the concerned aggrieved person, for redressal of his grievance.

42. In support of the submissions, the learned counsel cited:

(i) *N.P.Ponnuswami v. The Returning Officer*, reported in

*AIR 1952 SC 64*;

(ii) *Nanhoo Mal and others v. Hira Mal and others*,

reported in (1976) 3 SCC 211;

(iii) *Mohinder Singh Gill v. The Chief Election*

*Commissioner*, reported in (1978) 1 SCC 405;

(iv) *Boddula Krishnaiah and another v. State Election*

*Commissioner, A.P. And others*, reported in (1996) 3

SCC 416;

(v) *Sri Sant Sadguru Janardan Swami v. The State of*

*Maharashtra*, reported in (2001) 8 SCC 509;

(vi) *Sohan Lal v. Babu Gandhi and others*, reported in

*(2003) 1 SCC 108;*

(vii) *Manda Jaganath v. K.S.Rathanam and others,*  
*reported in (2004) 7 SCC 492;*

(viii) *Avtar Singh Hit v. Delhi Sikh Gurdwara Management*  
*Committee and others, reported in (2006) 8 SCC 487;*

(ix) *P.Manjula v. State of A.P., reported in (2007) 15 SCC*  
*766;*

(x) *A.P.Gowdhamasidharthan v. Government of Tamil*  
*Nadu (Order dated 20.3.2013 in W.P.No.6516 of*  
*2013);*

(xi) *R.Annamalai v. Election Commissioner and others*  
*(Order dated 25.4.2013 in W.P.No.11751 of 2013);*

(xii) *K.Anandaraj v. The State of Tamil Nadu and others*  
*(Order dated 30.4.2013 in W.A.No.903 of 2013);*

(xiii) *R.Murali Mohan v. The Cooperative Election*  
*Commissioner and others (Order dated 17.6.2013 in*  
*W.A.No.1282 of 2013);*

(xiv) *Saravanan v. The Secretary to Government and*  
*others (Order dated 25.6.2013 in W.P.Nos.9391 and*  
*9723 of 2013);*

(xv) *R.Kalaiarasan and another v. The Registrar of*

*Cooperative Societies (Order dated 16.7.2013 in W.A.No.1348 of 2013);*

(xvi) *T.Govindarasu v. The Election Commissioner and others (Order dated 19.9.2013 in W.P.No.18055 of 2013);*

(xvii) *S.Karupiah v. The Government of Tamil Nadu and others (Order dated 3.12.2015 in W.P.No.28189 of 2012);*

(xviii) *Shaji K.Joseph v. V.Viswanath and others, reported in (2016) 4 SCC 429;*

(xix) *The State Election Commissioner v. T.Anandan (Order dated 10.3.2016 in W.A.No.757 of 2015);*

(xx) *K.J.Chेरian v. The State of Tamil Nadu and others, (Order dated 12.9.2017 in W.P.No.12915 of 2013);*

(xxi) *R.Kumar v. The Tamil Nadu State Cooperative Societies and others (Order dated 2.4.2018 in W.P. (MD) No.7090 of 2018);*

(xxii) *Election Commission, Tamil Nadu State Cooperative Societies and another v. R.Sakkarapani and others (Order dated 7.5.2018 in Special Leave to Appeal (C) Nos.10051-10059 of 2018);*

(xxiii) *K.Natarajan and others v. Government of Tamil Nadu and others (Order dated 9.5.2018 in W.P.No.12033 of 2018, etc. batch).*

43. Mr.Somayaji, learned Senior Counsel appearing on behalf of the fifth respondent, being the ruling party, All India Anna Dravida Munnetra Kazhagam (AIADMK), opposing the writ petition, denied allegations of collusion between the ruling party and the statutory functionaries responsible for conduct of the elections.

44. Mr.Somayaji submitted that the allegations made by the writ petitioner, Whip of the political party in opposition, that is, Dravida Munnetra Kazhagam (DMK), is politically motivated.

45. In a nutshell, Mr.Somayaji submitted that the writ petition is not maintainable for the following reasons:

- (a) Election Officer is not impleaded as party to the writ petition;
- (b) The elected members, whose election is in question, are not impleaded;
- (c) Averments in the writ petitioner are totally vague.

In a writ petition not only facts, but also evidence in proof of such facts have to be pleaded and annexed. A vague petition cannot be entertained. In support of the proposition, counsel cited *Bharat Singh v. State of Haryana*, reported in (1988) 4 SCC 534.

(d) Mere inclusion of newspaper reports and some other documents in the typed set, without reference to the same in the affidavit, cannot form the basis of a writ petition.

(e) writ petitioner has chosen not to collect information by invoking provisions of the Right to Information Act.

(f) Elections have been concluded in many cases and the remedy lies in raising a dispute under Section 90 of the 1983 Act before the Registrar.

(g) Writ petition is not maintainable in election matters.

46. In support of the submission that a writ petition is not maintainable in election matters, Mr.Somayaji cited:

(i) *N.P.Ponnuswami v. The Returning Officer*,  
reported in AIR 1952 SC 64;

(ii) *Mohinder Singh Gill v. The Chief Election*

- Commissioner, reported in (1978) 1 SCC 405;*
- (iii) *Election Commissioner of India v. Ashok Kumar, reported in AIR 2000 SC 2979;*
- (iv) *The Chief Election Commissioner, Election Commission of India and others, (Suo Motu W.P.No.8022 of 2011, order dated 28.3.2011), reported in (2011) 6 CTC 129; and*
- (v) *Ratna Devi Sonkar v. State of West Bengal and others (Order dated 20.4.2009 in W.P. No.26461(W) of 2008).*

47. In support of the proposition that a writ petition is not maintainable when election process is set in motion, Mr.Somayaji cited:

- (i) *Bharathiya Janata Party, West Bengal v. State of West Bengal and others, reported in (2018) 5 SCC 365; and*
- (ii) *Boddula Krishnaiah and another v. State Election Commissioner, A.P. and others, reported in (1996) 3 SCC 416.*

48. Mr.Somayaji argued that the existence of alternative remedy under Section 90 of the 1983 is a bar to entertaining a writ petition.

In support of the proposition, Mr.Somayaji cited:

- (i) *Co-operative Central Bank Ltd. and others v. Additional Industrial Tribunal, Andhra Pradesh and others, reported in AIR 1970 SC 245;*
- (ii) *Deccan Merchants Co-operative Bank Ltd. v. Dalichand Jugraj Jain and others, reported in AIR 1969 SC 1320; and*
- (iii) *Madhava Rao and others v. D.V.K. Surya Rao and others, reported in AIR 1954 Madras 103.*

49. Mr.Somayaji also argued that the writ petition should be dismissed as the same has been filed to gain political advantage. In support of his submission, Mr.Somayaji cited:

- (i) *S.P.Gupta v. Union of India, reported in (1981) Supp SCC 87;*
- (ii) *Lakshmi Charan Sen and others v. A.K.M.Hassan Uzzaman and others, reported in (1985) 4 SCC 689;*
- (iii) *Janata Dal v. H.S.Chowdhary and others,*

*reported in (1992) 4 SCC 305; and*

(iv) *Tehseen Poonawalla v. Union of India and another, reported in 2018 SCC Online SC 400.*

50. Mr.Somayaji next argued that a public interest litigation is not maintainable in election matters. In support of this proposition, Mr.Somayaji cited *Satta Panchayat Iyakkam v. The Chief Election Commissioner, reported in 2016 SCC Online Madras 6867.*

51. On the scope of public interest litigation, Mr.Somayaji submitted that such litigation can only be entertained for vindication of the rule of law, effective access to justice to the weaker class, but not for the benefit of any individual. The contesting candidates, who are members of cooperative societies, can afford to espouse their own cause.

52. Mr.Somayaji concluded with the submission that writ petition involves adjudication of disputed questions of facts and, hence, not maintainable. Reference was made to:

(i) *Kanaiyalal Lalchand Sachdev and others v. State of Maharashtra and others, reported in (2011) 2*

*SCC 782; and*

(ii) *Hindustan Coca Cola Beverage Pvt. Ltd. v. Union of India and others, reported in (2014) 15 SCC 44.*

53. A judgment is a precedent for the proposition of law which is raised and decided and not for something which may logically be deduced from the judgments.

54. Words and sentences in a judgment cannot be read in isolation but in the context of the facts and circumstances in which the same have been used.

55. An order disposing of a writ petition or for that matter, any other litigation, in the facts and circumstances of the case, without laying down any proposition of law, but with some directions does not operate as a binding precedent.

56. Articles 329, 243-O and 243-ZG of the Constitution of India, which impose a bar on interference by Court in electoral matters are set out herein below for convenience:

*"Article 329. Bar to interference by Courts in electoral matter.-*

*Notwithstanding anything in this Constitution— (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 327 or Article 328, shall not be called in question in any court;*

*(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.*

*Article 243-O. Bar to interference by Courts in electoral matters.-*

*Notwithstanding anything in this Constitution,—*

*(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243K, shall not be called in question in any court;*

*(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.*

*Article 243-ZG. Bar to interference by Courts in electoral matters.-*

*Notwithstanding anything in this Constitution,—*

*(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243ZA shall not be called in question in any court;*

*(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.”*

57. There is no provision similar to Articles 329, 243-O and 243-ZG in Part IXB of the Constitution relating to cooperative societies. There is, therefore, no constitutional bar to interference by Courts in electoral matters relating to cooperative societies.

58. Elections to legislative bodies, that is the Houses of Parliament and the Legislative Assemblies of States and Union Territories, are governed by the Representation of People Act, 1950 and the Representation of People Act, 1951.

59. Section 80 of the Representation of People Act, 1951 provides:

*"Section 80. Election petitions.—No election shall be called in question except by an election petition presented in accordance with the provisions of this Part."*

60. By virtue of Section 80 of the Representation of People Act, 1951, elections to legislative houses cannot be challenged except by way of an election petition, as provided in the said Act.

61. Many State Acts relating to Municipalities, Panchayats and other institutions and/or bodies contain provisions similar to Section 80 of the Representation of People Act, 1951. Similarly, there are numerous other statutes which contain specific provisions with regard to adjudication of election disputes and bar interference by Courts. Some statutes adopt such provisions from other statutes by reference and/or incorporation.

62. The 1983 Act or the Rules framed thereunder do not bar the jurisdiction of the Court to interfere in election disputes relating to cooperative societies.

63. Judgments of the Supreme Court or this Court, or other High Courts, rendered in the context of elections to legislative bodies, municipalities or panchayats or to any other entity governed by Articles 329, 243-O and 243-ZG of the Constitution of India, or by statutes which bar the jurisdiction of Courts and/or prescribe a specific procedure and forum for adjudication of election disputes, would not operate as a precedent in these cases.

64. Some of the judgments of the Supreme Court and of this Court have been cited more than once and by different respondents. For the sake of convenience and to avoid prolixity and repetition, the judgments cited on behalf of the respective respondents are not dealt with separately.

65. The judgment of the Supreme Court in *N.P.Ponnuswami v. The Returning Officer*, reported in AIR 1952 SC 64, was rendered in the context of Article 329(b) of the Constitution of India read with the Representation of People Act, 1951. Article 329(b) provides that no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an

election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature. The Representation of People Act, 1951 is a self-contained enactment so far as elections are concerned and Section 80 stipulates that no election shall be called in question except by an election petition. There is no provision similar to Section 80 of the Representation of People Act, 1951 in the 1983 Act or the Rules framed thereunder.

66. The judgment in *Nanhoo Mal and others v. Hira Mal and others*, reported in (1976) 3 SCC 211 pertains to municipal elections under U.P. Municipalities Act, 1926, which provides for challenge to election by filing election petition before the District Judge.

67. The judgment of the Supreme Court in *Shaji K. Joseph v. V. Viswanath and others*, reported in (2016) 4 SCC 429 was rendered in the context of the Dentists Act, 1948 and the Election Regulations framed thereunder. The said judgment was also referred to in the decision in *R. Kumar v. The Tamil Nadu State Cooperative Societies Election Commission* (Order dated 2.4.2018 in W.P. (MD) No.7090 of 2018).

68. *Mohinder Singh Gill v. The Chief Election Commissioner*, reported in (1978) 1 SCC 405, relates to Article 329(b) of the Constitution of India read with the Representation of People Act, 1951.

69. *Boddula Krishnaiah and another v. State Election Commissioner, A.P. and others*, reported in (1996) 3 SCC 416, relates to elections to Gram Panchayat governed by Article 243-O(b) of the Constitution of India read with Andhra Pradesh Panchayat Raj Act, 1994. Article 243-O(b) provides that no election to any Panchayats shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State. There is a bar to challenge of any election to any panchayats except by way of an election petition.

70. *Sri Sant Sadguru Janardan Swami v. The State of Maharashtra*, reported in (2001) 8 SCC 509, was rendered in the context of Sections 144-T, 144-X and 73-G of the Maharashtra Cooperative Societies Act, 1960. The Supreme Court held that preparation of electoral roll was an intermediate stage of the election

process and breach of mandatory provisions of Rules in preparation of electoral roll could be challenged under Rule 81(d)(iv) of the Rules by means of an election petition. Rule 81(d)(iv) of the Rules provided for challenge to breach of Rules by way of an election petition. The judgment is distinguishable.

71. The judgment in *Sohan Lal v. Babu Gandhi and others*, reported in (2003) 1 SCC 108, relates to panchayat elections which are governed by Article 243-O(b) of the Constitution of India. Article 243-O(b) provides that no election to any panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State. There is a bar to challenging an election to any panchayat except by way of an election petition.

72. The judgment in *Manda Jaganath v. K.S.Rathanam and others*, reported in (2004) 7 SCC 492 also relates to Article 329(b) of the Constitution of India read with the Representation of People Act, 1951 and has no application.

73. The judgment of the Supreme Court in *Avtar Singh Hit v.*

*Delhi Sikh Gurdwara Management Committee and others, reported in (2006) 8 SCC 487*, relates to the Delhi Sikh Gurdwaras Act, 1971 read with the Delhi Municipal Corporation Act, 1957. Section 31 of the Delhi Sikh Gurdwaras Act, 1971 makes the provisions, *inter alia*, of Section 15 of the Delhi Municipal Corporation Act, 1957 applicable to Gurdwaras. Under Section 15 of the Delhi Municipal Corporation Act, 1957, no election of a Councilor is to be called in question except by an election petition presented to the Court of the District Judge of Delhi within fifteen days from the date of the publication of the result of the election under Section 14. The aforesaid judgment is also distinguishable.

74. The judgment of the Supreme Court in *P.Manjula v. State of A.P., reported in (2007) 15 SCC 766*, also relates to Article 243-O of the Constitution of India read with Andhra Pradesh Panchayat Raj Act, 1994.

75. The Constitution Bench judgment of the Supreme Court in *Lakshmi Charan Sen and others v. A.K.M.Hassan Uzzaman and others, reported in (1985) 4 SCC 689*, pertains to electoral roll for the West Bengal Legislative Assembly elections covered by the Representation

of People Acts 1950 and 1951 read with Article 329(b) of the Constitution of India.

76. There can be no doubt, as observed by the Supreme Court in *Tehseen Poonawalla v. Union of India and another*, reported in 2018 SCC Online SC 400, that public interest litigation has over the years been brazenly mis-utilized by persons with personal agenda and such misuse is a serious matter. However, in the facts of this case, where, as observed above, 94% of the elections have, as aforesaid, gone uncontested and nominations have been rejected on an unprecedented scale, it cannot be said that this writ petition is frivolous.

77. The respondents also relied upon the following orders:

(i) In W.P.No.6516 of 2013 (*A.P.Gowdhamasidharthan v. Government of Tamil Nadu*), a Division Bench of this Court passed an order dated 20.03.2013, relating to reservation of 18% seats in co-operative societies for Scheduled Caste and 1% for Scheduled Tribe for the post of President in co-operative societies. The Court held that the representation could not be considered by the fourth respondent, as he was not the competent

authority. The observation that the Court had no power to interfere after the commencement of election process is not supported by reasons.

(ii) In the order dated 25.4.2013 in W.P.No.11751 of 2013, (*R.Annamalai v. Election Commissioner and others*), a Single Bench observed "I am of the considered view that the petitioner could only plead for himself and he cannot plead for others, especially, when the writ petitioner has not been filed as public interest litigation". In this case, W.P.(MD) No.7620 of 2018 has been filed as a public interest litigation.

(iii) In the order dated 29.4.2013 of the Single Bench in W.P. (MD) No.7498 of 2013 (*S.Thangamani v. The Deputy Registrar of Cooperative Societies, Pudukkottai Circle and others*), it was observed that the petitioner has raised dispute before the first respondent and it was for the first respondent to consider the issue and decide the matter on merits.

(iv) In W.A.No.902 of 2013 (*K.Anandaraj v. The State of Tamil Nadu and others*), the question was whether the appellant writ petitioner could file a writ petition seeking relief when his nomination for the post of Director of the Primary Agricultural Cooperative Bank was rejected. The question was answered in the negative by the order dated 30.4.2013 with the observation that the issue was a disputed fact which could only be gone into in the forum provided for proving such disputed fact by raising a dispute. Referring to the judgments of the Supreme Court in (i) *Manda Jaganath, supra*, (ii) *Ramesh Rout v. Rabindra Nath Rout.*, reported in (2012) 1 SCC 762; (iii) *City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwalla*, reported in (2009) 1 SCC 168 and (iv) *Kanaiyalal Lalchand Sachdev V. State of Maharashtra*, (2011) 2 SCC 782, the Division Bench declined to entertain the writ appeal.

(v) The judgment in the *Chief Election Commissioner, Election Commission of India and others*, (*Suo Motu*

*W.P.No.8022 of 2011, order dated 28.3.2011), reported in (2011) 6 CTC 129, has been rendered in the context of elections to the Tamil Nadu Legislative Assembly, which attracts the provisions of Article 329(b) of the Constitution, referred to above.*

(vi) The judgment in *Ratna Devi Sonkar v. State of West Bengal and others (Order dated 20.4.2009 in W.P. No.26461(W) of 2008)* was rendered in the context of municipal elections, where there is bar on interference by Courts under Article 243-ZG of the Constitution of India.

78. Significantly, *Manda Jaganath, supra*, as observed above, relates to the Representation of People Act, 1951 read with Article 329 of the Constitution of India. In *City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwalla, reported in (2009) 1 SCC 168*, the Supreme Court held that the Court, while exercising its jurisdiction under Article 226 of the Constitution of India is duty bound to consider whether (a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be

satisfactorily resolved; (b) the petition reveals all material facts; (c) the petitioner has any alternative or effective remedy for the resolution of the dispute; (d) person invoking the jurisdiction is guilty of unexplained delay and laches; (e) ex facie barred by any laws of limitation; (f) grant of relief is against public policy or barred by any valid law; and host of other factors.

79. In this case, many of the disputes may be resolved by scrutiny of nomination papers and/or ballot papers. As observed above, the petitioners do not have any alternative or effective remedy. There is no provision under the 1983 Act for presentation of an election petition before a judicial authority, similar to other statutes. The petitioners are not guilty of unexplained delay or laches. The relief sought is not barred by any laws of limitation nor would the grant of relief be against public policy. Rather when there appears to have been any public perception a mockery of elections, the intervention of the Court is necessary.

80. The proposition in *City and Industrial Development Corporation*, supra, has been reiterated in *Kanaiyalal Lalchand*

*Sachdev V. State of Maharashtra, (2011) 2 SCC 782*, in the context of Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

81. The judgment of the Supreme Court in *Ramesh Rout v. Rabindra Nath Rout, reported in (2012) 1 SCC 762*, pertains to the Representation of people Act, 1951, governing election to Assembly. The bar of Article 329 of the Constitution of India is attracted.

82. The respondents also relied on the following orders:

(i) The order dated 17.6.2013 of a Division Bench in *W.A.No.1282 of 2013 (R.Murali Mohan v. The Cooperative Election Commissioner and others)* was rendered in the context of an election dispute in one particular co-operative society in the particular facts and circumstances of the case. The order is not an authority for the proposition that a writ petition can never be entertained in respect of an election dispute relating to co-operative society.

(ii) In W.P.No.9391 of 2013 (*Saravanan v. The Secretary to Government and others*), a Division Bench of this Court passed an order dated 25.6.2013 upholding the validity of Section 34(1)(i) of the 1983 Act. The provision is not under challenge.

(iii) In W.P.No.18055 of 2013 (*T.Govindarasu v. The Election Commissioner and others*), a Single Bench passed an order dated 19.09.2013, remitting the writ petitioner to his alternative remedy of moving the appropriate forum. The order does not lay down any legal proposition.

(iv) The judgment in *S.Karuppiah v. The Government of Tamil Nadu* (Order dated 3.12.2015 in W.P.No.28189 of 2012) pertains to implementation of the reservation policy in relation to cooperative societies and is distinguishable on facts.

(v) The order dated 16.7.2013 in W.A.No.1348 of 2013 (*R.Kalaiarasan and another v. The Registrar of*

*Cooperative Societies*) was rendered in the particular facts of the case pertaining to elections in one cooperative society and in any case, in this case, all the election results had not been declared when the writ petitions had been filed.

(vi) The order dated 10.3.2016 in W.A.No.757 of 2015 (*The State Election Commissioner v. T.Anandan*) is a consent order.

(vii) The order dated 12.9.2017 in W.P.No.12915 of 2013 (*K.J.Cherian v. State of Tamil Nadu*) of the Single Bench has been passed considering Article 329(b) of the Constitution of India and the judgments of the Supreme Court in *N.P.Ponnuswami v. The Returning Officer, supra*, and *S.T.Muthusamy v. Natarajan, supra*, which have no application to cooperative societies.

(ix) By an order dated 9.5.2018, *S.M.Subramaniam,J.*, disposed of a batch of writ petitions pertaining to the

elections to cooperative societies notified by the impugned notification with the following directions:

*"(i) All the aggrieved persons in respect of the allegations or otherwise of the conduct of Elections in the Co-operative societies across the State, are at liberty to submit their respective complaints/ objections/applications and provide all relevant materials, if any available with them within a period of two weeks from the date of receipt of a copy of this order. The aggrieved persons are at liberty to submit fresh complaints/objections/applications also.*

*(ii) The State Election Commission, on receipt of any such complaints/objections/applications or materials from any such aggrieved person, should consider the same by providing an opportunity to all the parties concerned and a personal hearing, if any such specific request is made and conduct enquiry in a free, fair and transparent manner and take a decision and pass orders within a period of eight weeks from the date of receipt of any such complaints/objections/applications.*

*(iii) After passing the final order in respect of the complaints/objections/applications in respect of each Co-operative Society, the State*

*Election Commission should declare the Election results of the society.*

*(iv) Once, the Election results are declared in respect of a particular Co-operative Society, then, it is left open to the aggrieved persons to raise the dispute under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983 before the competent authority.*

*(v) If any dispute under Section 90 of the Tamil Nadu Co-operative Societies Act is raised before the competent authority, such disputes raised should be adjudicated and disposed of by the competent authority under the Tamil Nadu Co-operative Societies Act within a period of six months from the date of receipt of application regarding any dispute. However, the period of six months stipulated in this order is subject to the condition that the parties to the disputes should cooperate with the competent authority for the early disposal of these disputes. In the event of any non-cooperation by any one of the party, the competent authority under Section 90 is the Tamil Nadu Co-operative Societies Act is at liberty to record the same and conclude the adjudication and pass orders in the dispute without reference to the period of six months stipulated in this order."*

The Single Bench observed:

*"33. Thus, it is not, as if, the State Election Commission can confine the grievance petitions, only in respect of 410 petitions alone. The aggrieved persons are still raising various objections in respect of conduct of elections and all those representations/ applications, if any received by the State Election Commission, are to be scrutinised by the authorities and appropriate decision is to be taken and an order to be passed by providing reasons. The application of mind in this regard by the Election Commission is vital. It is not, as if the State Election Commission can pass orders in a routine manner. The State Election Commission has to consider all the materials available on record and by providing personal hearings, if there is a specific request and there after apply its mind independently and take a decision. Application of mind means, the relevant materials to be considered for arriving a conclusion should be considered. Thus, the application of mind does not mean that the Election Commission can act based on the records alone. The Election Commission is bound to view the possible damages, if any, in the event of upholding the elections or in the*

*event of cancellation of election. Both the views are to be taken and the Election Commission, being a statutory body and exercising their powers akin to that of a judicial power, they are bound to act in a fair and transparent manner. Thus, this Court is of an opinion that all such grievances, including the grievance to be raised, if any by the aggrieved persons are also to be considered on merits and in accordance with law.*

*34. As already stated in earlier paragraphs, this Court is of an opinion that an inhouse remedy is vital to these aggrieved persons under the provisions of the Tamil Nadu Co-operative Societies Act. The disputes are to be raised before the competent authority notified under the provisions of the Act. The disputes are also to be adjudicated in the manner prescribed under the provisions of the Act and the Rules. An enquiry is to be conducted, which is quasi judicial in nature. The authority competent dealing with a suit under Section 90 of the Act, has to issue summons to the parties concerned, conduct an enquiry by providing opportunity and by marking the documents, by adducing evidences and witnesses and thereafter take a decision. This Court is of an opinion that the disputes under Section 90 of*

*the Act is to be dealt with akin to that of a trial in a Civil Court. Undoubtedly, the provisions of the Limitation Act and the Code of Civil Procedures are also applicable at the time of conducting the enquiry before the competent authorities under Section 90 of the Act. Therefore, it is almost to be treated as a civil suit for the purpose of adjudication and such a nature of quasi judicial proceedings are to be conducted in a fair and transparent manner and as per the procedures contemplated under the Act and the Rules.*

*35. This being the legal provisions of the Act and the Rules, this Court is of an opinion that all the aggrieved persons from and out of the elections conducted in respect of the Co-operative Societies registered under the Tamil Nadu Co-operative Societies Act, 1983 across the State is at liberty to submit any further representations/objections or materials, if any available with them to the State Election Commission. The State Election Commission on receipt of all such materials, call for remarks from the Election Officer and other officials concerned, if necessary. Thereafter, the Election Commission is at liberty to conduct an enquiry in the manner known to law and take a decision in accordance with the*

*procedures contemplated. If the final decision is taken by the Election Commission and an order is passed, then the same is to be communicated to the parties concerned without causing any undue delay. In view of the fact that the limitation of two months period is prescribed under Section 90 of the Act, it is necessary that the orders passed by the Election Commission are to be communicated to the parties concerned without any delay.*

*36. In the event of receiving any such orders and if any person aggrieved from and out of such a decision and an order passed by the State Election Commission, then they are at liberty to approach the competent authority under Section 90 of the Act, for the purpose of redressing their grievances in respect of the election disputes."*

83. A perusal of Sections 33 and 90 of the 1983 Act, as also Rule 52 of the Rules, makes it amply clear that the Election Commissioner is not conferred with the power to adjudicate disputes and the appropriate authority under Section 90 is the Registrar of the Cooperative societies. The Election Officers decide objections with regard to nominations, etc., before publication of the final list of

candidates. Moreover, in this case, the learned counsel appearing on behalf of the Election Commission submitted that once elections are over and results are declared, the Election Commission becomes *functus officio*.

84. As rightly argued by the learned Advocate General, there is a constitutional obligation to ensure that democratic principles govern the functioning of co-operative societies and for this purpose elections have to be held in time and any delay in conducting elections would result in failure to fulfil the constitutional obligation. At the same time, elections necessarily have to be free and fair.

85. The learned Advocate General has rightly argued that dispute touching the constitution of the board or management or the business of the registered society, contemplated in Section 90 of the 1983 Act necessarily includes dispute in relation to election of a member, and may be referred to the Registrar. There can be no dispute with the proposition laid down by the Full Bench of the Madras High Court in *N.S.Madhava Rao and others v. D.V.K. Surya Rao and others*, reported in *AIR 1954 Madras 103* that the expression "touching the business of the society" might include election related

disputes.

86. It is also true that there is a difference between election to cooperative societies and election to municipalities or panchayats, or for that matter elections to legislative bodies, as argued by the learned Advocate General.

87. As argued by the learned Advocate General:

- (i) Organization and structure of a cooperative society is different from the organization and structure of a panchayat or municipality.
- (ii) Membership and/or voters in a cooperative society are different from voters in panchayat or voters in a municipality.
- (iii) Eligibility to vote to a cooperative society is different from eligibility to vote to a panchayat or municipality.
- (iv) Election to a cooperative society is conducted according to the number of Board of Directors to be elected as specified in the by-laws of each and every primary cooperative society subject to a

minimum of seven and maximum of twenty one as provided in clause (b) of sub-section (3) of Section 33 of the 1983 Act and it varies from one cooperative society to another, but the election to panchayats and municipalities are conducted on ward basis, which is based on the law enacted by the State relating to delimitation of constituencies or allotment of seats to such constituencies.

- (v) Every cooperative society has a separate legal identity and has its own by-laws which govern the composition of the board of the management of a cooperative society.
- (vi) In the election to a cooperative society, a member of a cooperative society alone is eligible to vote, provided the member is not disqualified to vote on a ground specified in Section 34 of the 1983 Act. However, in the case of election to panchayats and municipalities, the voters are citizens of the country whose names are found in the voters' list prepared by the authorities concerned of the Government. The list of eligible

voters of a cooperative society is prepared and published by the electoral officer appointed by the District Election Officer on the basis of list of members prepared by the society concerned.

88. The alternative remedy under Section 90 of the 1983 Act of reference to the Registrar cannot, however, be said to be a certain equally efficacious alternative remedy since the Registrar may decide the dispute himself or transfer it to any subordinate irrespective of his rank and position and irrespective of his qualification and experience. The Registrar can also refer the dispute to an Arbitrator or Arbitrators. The Registrar can also re-transfer the dispute for disposal to the person from whom it was withdrawn. Moreover, the remedy under Section 90 is not available in respect of an election dispute until the results are actually declared [Proviso to Section 90 (1)]

89. There is no alternative forum under the 1983 Act or any other statute for adjudication of disputes in respect of wrongful entry in or omission from voters' lists or disputes in respect of nomination of candidates for election or rejection of such nominations or any other requisites under Rule 52 of the Rules before the declaration of the

result of the election.

90. Under Rule 52(5) of the Rules, the Electoral Officer is to prepare and publish the voters' list and also decide claims or objections to the voters' list. There is no remedy of appeal against the decision of the Electoral Officer with regard to the voters' list.

91. Under Rule 52(8)(d), the Electoral Officer decides objections to any nomination. There is no provision for appeal from an order of the Electoral Officer rejecting an objection to a nomination.

92. In any case, there is no provision in the Rules for adjudication of a dispute raised by a candidate against the rejection of his own nomination.

93. Until the results of an election are declared, a person whose nomination is wrongfully rejected has no other remedy except to approach the Court. It is only in those cases where the election result has been declared, that remedy of reference under Section 90 is available. However, the remedy cannot be said to be equally efficacious, for the reasons discussed above.

94. Many of these writ petitions are, *inter alia*, directed against the rejection of nominations for election to Co-operative Societies where elections are yet to be held and/or the result of elections have not been declared. These writ petitions cannot, therefore, be rejected on the ground of existence of an efficacious alternative remedy.

95. On behalf of the writ petitioner, it is submitted that when there is a large scale organized illegality committed by the respondents, the respondents cannot raise a technical plea and question the locus standi of the petitioner. It is submitted that the petitioner, being an elected representative of the people and the whip of the opposition party, has locus standi to file this public interest litigation.

96. It is also argued on behalf of the writ petitioner that a free and fair election is the lifeline of democracy in our country. There is no assertion by the Election Commission that election was conducted by polling. On the other hand, the data furnished by the second respondent itself suggests virtual subversion of the democratic process.

97. Commenting on the argument of respondents 1 to 4 that in 2013 election of co-operative societies more than 90% of the Board of Directors had been elected unopposed, counsel for the petitioner contended that in 2013, the major political parties, including the DMK, had boycotted the cooperative elections. Just because the 2013 elections were uncontested, it could not be presumed that the so-called uncontested elections this year were actually uncontested.

98. The petitioner has relied upon a table, containing data pertaining to uncontested elections, which shows that in all the stages elections were without contest, on an average in 94% of the cases.

99. The data pertains to four stages. Stage-1 covers 4684 co-operative societies out of which 4448 societies held election, 4168 societies candidates were declared elected uncontested, i.e., 94% of the total candidates. Stage-2 covers 4557 co-operative societies out of which 4340 societies held election, but in 4125 societies candidates were declared elected uncontested, i.e., 95% of the total candidates. Stage-3 covers 4551 co-operative societies out of which 4306 societies held election, but in 3997 societies candidates were declared elected

uncontested, i.e., 93% of the total candidates. Stage-4 covers 4673 co-operative societies out of which 4334 societies held election, but in 4054 societies candidates were declared elected uncontested, i.e., 94% of the total candidates.

100. Refuting the submission of the learned Advocate General and the Senior Counsel for the the Election Commission, the learned Counsel appearing on behalf of the different writ petitioners all argued that there is no constitutional bar to challenging elections to cooperative societies by filing a writ petition.

101. The power to issue prerogative writs under Article 226 of the Constitution of India is plenary in nature and is not limited by any other provision of the Constitution. The High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. There is no hard and fast rule that a writ petition should not be entertained whenever there is an alternative remedy.

102. However, the High Court has imposed upon itself certain restrictions on exercise of its extraordinary power of judicial review under Article 226 of the Constitution of India. When an effective and

efficacious alternative remedy is available, the High Court, does not ordinarily exercise its jurisdiction under Article 226 of the Constitution of India.

103. It is also true that this Court does not ordinarily in exercise of its discretion to invoke writ jurisdiction in an election dispute, if an alternative remedy is available. However, the judgment in *S.T.Muthusamy v. Natarajan, supra*, has no manner of election since the judgment arises in connection with the election to a panchayat. There is a bar under Article 243O of the Constitution to interference by Courts in electoral matters relating to panchayats.

104. The judgment in *State of Uttar Pradesh and another v. Uttar Pradesh Rajya Khanij Vikas Sangharsh Samiti and others, reported in (2008) 12 SCC 675* was rendered in the particular facts and circumstances of the case in the context of the Industrial Disputes Act, 1947.

105. However, as held by the Supreme Court in *Whirlpool Corporation v. Registrar of Trademarks, Mumbai and others, reported in (1998) 8 SCC 1*, the existence of an alternative remedy does not

operate as a bar in at least three contingencies, i.e., where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order and/or proceedings is without jurisdiction or the vires of an Act is challenged. Reference may also to be made to the judgment of the Supreme Court in *State of U.P. v. Mohd. Nooh*, reported in AIR 1958 SC 86.

106. The aim of the Constitution of India, as stated in its preamble is to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens; Justice, Social, Economic and Political; Liberty of thought, Expression, Belief, Faith and worship; Equality of status and of opportunity and to promote among them all; Fraternity assuring the dignity of the individual and the unity and integrity of the Nation.

107. The fundamental right to equality under Part III of the Constitution of India includes in its fold, the right to equality of opportunity to contest elections. Large scale rejection of nominations which lead to uncontested walkover in elections is discriminatory and contravenes the right to equality.

108. Article 43B incorporated in the Constitution of India with effect from 15.2.2012 by the 97<sup>th</sup> Constitution Amendment Act casts an obligation on the State to endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies. Democratic control contemplates control by an elected body chosen pursuant to free and fair election.

109. Part IX-B of the Constitution inserted with effect from 15.2.2012 by the Constitution 97<sup>th</sup> Amendment Act, 2011 empowers the State by law to make provisions to incorporate, regulate and wind up co-operative societies based *inter alia* on the democratic member control. As rightly argued the learned Advocate General, elections are to be conducted before the expiry of the term of elected members of the Board. However, elections have to be free and fair.

110. This Court cannot turn a blind eye to instances of rejection of nominations on frivolous grounds. The large scale rejection of nominations lead to the inference of unfairness though there may not have actually been any unfairness in the rejections. In fact, the

Election Commission itself has issued guidelines with regard to acceptance and/or rejection of nominations vide Circular Na.Ka.321/2018/Co.EI.1, dated 19.7.2018 based on its Manual, Sub-Manual and the earlier Circulars. The guidelines require:

- (i) Compulsory presence of the Election Officer during the process of scrutiny of nominations and rejection and withdrawal of nominations on the announced date and time.
- (ii) Police protection.
- (iii) No scope to anyone to handle or damage nominations and connected documents.
- (iv) Supply of nomination form to be provided to all intending candidates. However, nomination form can be typed or in photo copy or in written or downloaded, but only in Form-18.
- (v) Errors and omissions allowed to be rectified in relation to the Membership Number, category of constitution, signature, place of affixation of signature, omission of details in the nomination form.
- (vi) Nominations are not to be rejected on the

ground of minor errors.

(vii) If the Election Officer is satisfied on enquiry that the person who files the nomination is the same person in the voters list, then the nomination is not to be rejected.

(viii) Declaration in Form 18 is sufficient to contest from seats reserved for Scheduled Caste/Scheduled Tribe.

(ix) Nominations are not to be rejected for not filling up Columns 5 and 6 in Serial No.3, which Columns are only to be filled by candidates belonging to the Scheduled Caste/Scheduled Tribe.

(x) Nomination is not to be rejected only on the ground of omission to strike out the declaration by the candidates who do not belong to Scheduled Caste/Scheduled Tribe.

(xi) While receiving nomination, the Election Officer has to put his initial with date by mentioning the Serial Number of the nomination, date and time.

(xii) Acknowledgments are to be issued to candidates who filed nomination.

(xiii) There should not be crowd during the filling up of nominations and not more than five persons including the candidate are to be allowed.

(xiv) Reasons for accepting the nomination in case of acceptance and reasons for rejecting the nomination in case of rejection shall be recorded briefly and clearly in the nomination Form.

(xv) A candidate can be a proposer or seconder for candidates in constituencies other than the constituency in which he himself is contesting. For example, in a Society, if there are 11 members of the Board to be elected, a candidate can be a proposer or seconder for 10 constituencies except the one to which he is contesting.

(xvi) Rule 52(8) is strictly followed during filling up of nomination, receipt of nomination and scrutiny in the nomination for election as member of the Board.

(xvii) There shall be no correction in the nomination form by the Election Officer under any

circumstances.

(xviii) The District Election Officers are to ensure that all Election Officers adopt the Rules and the instructions issued by the Commission without giving room for any complaints in respect of filing of nomination, scrutiny, publication of valid nominations, withdrawal of nomination and publication of final list of contesting candidates.

111. The expression "litigation" means a legal action including all proceedings therein, initiated in a Court of law with the purpose of enforcing a right or seeking a remedy. Lexically, the expression "Public Interest Litigation" (PIL) means a legal action initiated in a Court of law for the enforcement of a right or removal of a large scale wrong, which is of public interest or general interest. It is litigation for an adjudication in which people in general or a class of people are interested.

112. Public Interest Litigation is a weapon which has to be used with great care and circumspection and the Court has to be careful to see that behind the beautiful veil of public interest, there is no private

malice, vested interest or search of publicity. It is to be used as an effective weapon in the armoury of law for delivering social justice to the citizens.

113. The expression "public interest" means of interest to the general public. It means action necessarily taken for public purpose, an action beneficial to people in general or people of any particular class or classes. The requirements of public interest vary from case to case. In *Stroud's Judicial Dictionary, Volume IV (4<sup>th</sup> Edn.)*, "public interest" is defined to mean:

*"Public Interest (1) a matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected."*

114. In *Janata Dal v. H. S. Chaudhary*, reported in AIR 1993 SC 892, the Supreme Court held that lexically the expression '*Public Interest Litigation*' means a legal action initiated in a Court of Law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected. The

Supreme Court further held:

*"..... In contrast, the strict rule of locus standi applicable to private litigation is relaxed and a broad rule is evolved which gives the right of locus standi to any member of the public acting bona fide and having sufficient interest in instituting an action for redressal of public wrong or public injury, but who is not a mere busy body or a meddlesome interloper; since the dominant object of PIL is to ensure observance of the provisions of the Constitution or the law which can be best achieved to advance the cause of community or disadvantaged groups and individuals or public interest by permitting any person, having no personal gain or private motivation or any other oblique consideration but acting bona fide and having sufficient interest in maintaining an action for judicial redress for public injury to put the judicial machinery in motion like action popularis of Roman Law whereby any citizen could bring such an action in respect of a public delict....."*

115. A public interest litigation at the behest of an organization or a group of individuals or even a member of Legislative Assembly belonging to an opposition party to prevent public wrong, or public injury or to prevent or annul acts and omissions which are violative of the Constitution or the law, would be maintainable.

116. In the present case, the public interest litigation is stated to be directed against the subversion of the democratic process of constitution of boards of cooperative societies by unfair election of members without contest. It is alleged that the elections were not free and fair.

117. It may be true that the public interest litigation, being W.P.(MD) No.7620 of 2018, lacks material particulars and is somewhat vague. But, the attention of this Court has been drawn to the fact that out of 18465 cooperative societies there has been no contest in 16344 societies, primarily by reason of rejection of nomination papers. There are serious allegations of deliberate rejection of nomination papers to favour chosen candidates. There are 2514 petitions of objection/complaint filed before the Election Commission of which 1101 are pending. When the selection of 88.51% of the members is uncontested, even though there was actually no contest only in 2.42% of the cases, in the sense no nominations are filed, the Court exercising jurisdiction under Article 226 of the Constitution of India cannot keep its eyes closed only on the technical ground of the public interest litigant not being a contestant or on the technical ground of

existence of an alternative remedy or that the issues raised in the writ petition involve disputed questions of fact.

118. A public interest litigation is intended to vindicate and effectuate the public interest by prevention of violation of rights, constitutional or statutory, which affect a sizeable segment of the society, who are unable to enforce their rights by approaching Court by reason of ignorance and social and economic disadvantages.

119. In a public interest litigation, the petitioner and the State are not supposed to be pitted against each other. These proceedings are, strictly speaking, not adversarial, it is cooperative litigation to ensure removal of illegality and restoration of justice.

120. With the emergence of public interest litigation, the concept of locus standi has been liberalized. In *S.P.Gupta v. Union of India*, reported in AIR 1982 SC 149, Bhagwati, J., observed:

*"...The courts cannot countenance such a situation where the observance of the law is left to the sweet will of the authority bound by it, without any redress if the law is contravened. The view has therefore been taken by the courts in many decisions that whenever there is a public wrong or public injury caused by an*

*act or omission of the State or a public authority which is contrary to the Constitution or the law, any member of the public acting bona fide and having sufficient interest can maintain an action for redressal of such public wrong or public injury. The strict rule of standing which insists that only a person who has suffered a specific legal injury can maintain an action for judicial redress is relaxed and a broad rule is evolved which gives standing to any member of the public who is not a mere busybody or a meddlesome interloper but who has sufficient interest in the proceeding. There can be no doubt that the risk of legal action against the State or a public authority by any citizen will induce the State or such public authority to act with greater responsibility and care thereby improving the administration of justice."*

121. It is true that a public interest litigation cannot be entertained at the behest of a meddlesome interloper. However, a people's representative drawing the attention of the Court to large scale rejection of nominations and consequential uncontested selection of board members cannot be brushed aside as a meddlesome interloper.

122. In *Sunil Batra v. Delhi Administration*, reported in (1980) 3

SCC 488, the Supreme Court accepted a letter written to the Supreme Court by one Sunil Batra, a prisoner from Tihar Jail, complaining that the Jail Warden had subjected another prisoner serving life term to inhuman torture. The Supreme Court treated the letter as a writ petition, allowed the same by an elaborate judgment and issued directions for taking suitable action against erring officials, enlarging the scope of habeas corpus for enforcement of a constitutional right.

123. In *Dr.Upendra Baxi v. State of U.P.*, reported in (1983) 2 SCC 308, the Supreme Court entertained a letter sent by two Professors of Delhi University seeking enforcement of the constitutional right of the inmates of a Protective Home at Agra, who were living in inhuman and degrading conditions, in blatant violation of Article 21 of the Constitution of India. The letter was treated as a writ petition.

124. In *People's Union for Democratic Rights v. Union of India*, reported in AIR 1982 SC 1473, a letter addressed for ensuring observance of the provisions of various labour laws in relation to workmen employed in the construction work of projects connected with the Asian Games was entertained by relaxing the traditional rule of standing.

125. In *Bandhua Mukti Morcha v. Union of India*, reported in AIR 1984 SC 802, the Supreme Court issued several directions to the Central Government and the State of Haryana for release of the bonded labourers and for their future improvement and betterment.

126. In *S.P.Gupta v. Union of India*, supra, the Supreme Court refused to reject a public interest litigation filed by two lawyers questioning transfer of Judges on the ground that lawyers had no locus standi to make such prayers.

127. In *Bangalore Medical Trust v. B.S.Muddappa*, reported in AIR 1991 SC 1902, the Supreme Court held:

*"...It is too late in the day to claim that petition filed by inhabitants of a locality whose park was converted into a nursing home had no cause to invoke equity jurisdiction of the High Court. In fact, public spirited citizens having faith in rule of law are rendering great social and legal service by espousing cause of public nature. They cannot be ignored or overlooked on technical or conservative yard stick of the rule of locus standi or absence of personal loss or injury. Present day development of this branch of jurisprudence is towards free movement both in*

*nature of litigation and approach of the courts. Residents of locality seeking protection and maintenance of environment of their locality cannot be said to be busy bodies or interlopers. Even otherwise physical or personal or economic injury may give rise to civil or criminal action but violation of rule of law either by ignoring or affronting individual or action of the' executive in disregard of the provisions of law raises substantial issue of accountability of those entrusted with responsibility of the administration. It furnishes enough cause of action either for individual or community in general to approach by way of writ petition and the authorities cannot be permitted to seek shelter under cover of technicalities of locus standi nor they can be heard to plead for restraint in exercise of discretion as grave issues of public concern outweigh such considerations."*

128. On a parity of reasoning, a writ petition designed to prevent subversion of the democratic process of elections to cooperative societies cannot also be thrown out on the ground of want of locus standi, particularly in view of the overwhelmingly high percentage of uncontested election and thousands of petitions of objection/complaint.

129. In *All India Anna Dravida Munnetra Kazhagam, 226/275, Avvai Shanmugam Salai, Royapettah, Chennai-600014, rep. by its Fisheries Wing Secretary, D. Jayakumar, M.L.A. vs. The State Election Commissioner, rep. by D. Chandrasekaran, State Election Commissioner, No. 6, Revathy Street, 100 Feet Road, Vadapalani Chennai-600026 and others, reported in 2007 (1) CTC 705*, this Court held:

**"169.** *Having regard to the magnitude of the violation in the conduct of the Elections to the majority of the Wards, namely atleast 99 Wards out of 155 Wards, it will be wholly inappropriate if it were to be held that the aggrieved voters or the candidates over the outcome of the Election results, should be directed to work out the remedy before the Election Tribunal. This is not a single case of any aggrieved candidate who lost in the Election, who wishes to challenge the Election results in the form of Writ Petition. The grievance of the petitioners is that the wholesale violence perpetrated in the Polling process was so grave that the concept of purity in Elections, or otherwise called as "free and fair Poll" was seriously impinged and thereby, the common voter was not in a position to exercise his Franchise in a calm atmosphere where he could have exercised his voting right for electing a candidate of his choice. Therefore, the case on hand cannot be equated to the ordinary case of*

*election dispute and find out whether any such issue can be thrashed out in the Writ Petition or the party should be directed to work out the remedy before the Election Tribunal.*

**170.** *Having regard to the fact situation culled out from the various materials on record and the affidavits and the counter affidavits filed by the parties as specifically noted in paragraph 104 of this order, I am convinced that this case stands on a different footing, where this Court will have to necessarily invoke the extraordinary jurisdiction conferred upon it under Article 226 of the Constitution in order to ensure that "free and fair Poll" is held and thereby, the purity in Elections as enshrined in the Constitution is ensured to the common voters.*

.....

**218.** *Keeping in view the observations made in Ashok Kumar's case and the observations made by this Court in the above unreported judgment, it can be said that though generally the jurisdiction of the High Court should not be invoked under Article 226 to interfere with any ongoing process of election and should not be invoked directly to interfere with any matter connected to election after the election process was over, it cannot be said that there is an absolute bar to invoke such extraordinary jurisdiction under Article 226.*

*Therefore, it cannot be said that a Writ Petition is not maintainable in all circumstances; rather it would be more appropriate to say that under special circumstances a Writ Petition would be maintainable in the matters relating to elections even before completion of the election process and after completion of the election process. What would be the exceptional circumstances in a given case where the extraordinary jurisdiction under Article 226 can be invoked is obviously a matter which would depend upon the facts and circumstances of each case and it is not possible nor desirable to lay down the circumstances in which such jurisdiction can be invoked."*

130. In *J.Anbzhagan v. Union of India*, reported in 2018 (3)

CTC 449, this Court held:

**"66.** *In exercise of power under Article 226 of the Constitution of India, the Court can entertain a petition in public interest whenever its attention is drawn to any injustice or patent illegality. In a public interest litigation, the common rule of locus standi is relaxed and any public spirited citizen can approach this Court to seek redress on behalf of the public in general or any specific group.*

**67.** *The Court is constitutionally bound to protect the fundamental rights of the people. If issues of public*

*importance and infringement of fundamental and other basic rights of a large number of people are raised, the Court would be duty bound to pass necessary orders. Whenever injustice is meted out, the Court would not hesitate to step in. ....*

.....

**69.** *In this case, though the public interest litigant is a member of the Dravida Munnetra Kazhagam, a political opponent of the ruling political party in power in the State of Tamil Nadu, he has sought investigation into the illegal Gutkha business operating through several States, including Tamil Nadu, and involving different functionaries cutting across political parties of different States. This Court cannot shut its eyes to the illegality.*

**70.** *As held by the Supreme Court in K. Anbazhagan v. Superintendent of Police, reported in (2004) 3 SCC 767 cited by Mr. Wilson, in a democracy, the political opponents play an important role. They are the watchdogs of the Government in power. They are the mouthpiece to ventilate the grievances of the public at large, if genuinely and unbiasedly projected. Political opponents are vitally interested party in the running of the Government or in the administration of criminal justice in the State. A petition filed by such persons cannot be brushed aside on the allegation of political*

*vendetta, if otherwise, it is genuine and raises a reasonable apprehension of likelihood of bias in the dispensation of criminal justice system."*

131. In the case of *Zenith Mantaplast Pvt. Ltd. v. State of Maharashtra*, reported in (2009) 10 SCC 388, the Supreme Court held:

**"27.** *Every action of the State or its instrumentalities should not only be fair, legitimate and above-board but should be without any affection or aversion. It should neither be suggestive of discrimination nor even apparently give an impression of bias, favouritism and nepotism. The decision should be made by the application of known principles and rules and in general such decision should be predictable and the citizen should know where he is, but if a decision is taken without any principle or without any rule, it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law (vide S.G. Jaisinghani v. Union of India [AIR 1967 SC 1427] , AIR p. 1434, para 14 and Haji T.M. Hassan Rawther v. Kerala Financial Corpn. [(1988) 1 SCC 166 : AIR 1988 SC 157] ).*

**28.** *In essence, the action/order of the State or State instrumentality would stand vitiated if it lacks bona fides as it would only be a case of colourable exercise of power. The rule of law is the foundation of a*

*democratic society. In I.R. Coelho v. State of T.N. [(2007) 2 SCC 1] the Apex Court held as under: (SCC pp. 98-99 & 105, paras 101, 105 & 129)*

*"101. ... The State is to deny no one equality before the law.*

*\*\*\**

*129. Equality, rule of law, judicial review and separation of powers form parts of the basic structure of the Constitution. Each of these concepts are intimately connected. There can be no rule of law, if there is no equality before the law. These would be meaningless if the violation was not subject to the judicial review."*

132. In *Peoples Union for Civil Liberties v. Union of India and others*, reported in (2013) 10 SCC 1, it was held:

*"53. Democracy being the basic feature of our constitutional set-up, there can be no two opinions that free and fair elections would alone guarantee the growth of a healthy democracy in the country. The "fair" denotes equal opportunity to all people. Universal adult suffrage conferred on the citizens of India by the Constitution has made it possible for these millions of individual voters to go to the polls and thus participate in the governance of our country. For democracy to survive, it is essential that the best available men*

*should be chosen as people's representatives for proper governance of the country. This can be best achieved through men of high moral and ethical values, who win the elections on a positive vote. Thus in a vibrant democracy, the voter must be given an opportunity to choose none of the above (NOTA) button, which will indeed compel the political parties to nominate a sound candidate. This situation palpably tells us the dire need of negative voting."*

133. In the case of *Ponnala Lakshaiah v. Kommuri Pratap Reddy*, reported in (2012) 7 SCC 788, the Supreme Court observed:

**"30.** *Experience has shown that the electoral process is, despite several safeguards taken by the statutory authorities concerned, often vitiated by use of means, factors and considerations that are specifically forbidden by the statute. The electoral process is vulnerable to misuse, in several ways, in the process distorting the picture in which the obvious may be completely different from the real. Electoral reforms are, therefore, a crying need of our times but have remained a far cry. If the courts also adopt a technical approach towards the resolution of electoral disputes, the confidence of the people not only in the democratic process but in the efficacy of the judicial determination of electoral disputes will be seriously undermined. This Court has in several pronouncements while*

*emphasising the need to leave the elections untouched, reiterated the need to maintain the purity of elections and thereby strengthening democratic values in this country. The decisions of this Court in T.A. Ahammed Kabeer v. A.A. Azeez [(2003) 5 SCC 650] and P. Malaichami v. M. Andi Ambalam [(1973) 2 SCC 170] express a similar sentiment."*

134. In *Noida Enterprisers Association v. Noida*, reported in (2011) 6 SCC 508, the Supreme Court observed:

**"40.** *The public trust doctrine is a part of the law of the land. The doctrine has grown from Article 21 of the Constitution. In essence, the action/order of the State or State instrumentality would stand vitiated if it lacks bona fides, as it would only be a case of colourable exercise of power. The rule of law is the foundation of a democratic society."*

135. Having regard to the magnitude of the situation, it is a fit case for this Court to exercise the power under Article 226 of the Constitution of India.

136. The cases of election to co-operative societies may be categorized into the following groups:

(i) Uncontested election and/or nomination as no

other candidate offered himself/herself for contest.

(ii) Uncontested election as nominations were filed but withdrawn by other candidates.

(iii) Uncontested election by reason of rejection of nominations for valid reasons.

(iv) Uncontested nominations by reason of rejection of nominations for trivial reasons and/or no reasons.

137. However, as observed above, the Election Commission has not been conferred with powers to adjudicate disputes with regard to omissions or wrongful inclusion of names in voters' lists, wrongful acceptance, non-acceptance and/or rejection of nomination papers or wrongful acceptance or rejection of ballot papers. Moreover, as stated above, the remedy under Section 90 of the 1983 Act cannot also be availed until results of election are declared.

138. The fact that in 94% of the cooperative societies elections were uncontested and 2514 petitions of objection/complaint were

received by the Election Commission, 1525 between 1.3.2018 and 9.5.2018 and 989 between 9.5.2018 and 31.5.2018, in respect of 1,324 cooperative societies, evinces the need for interference of this Court in exercise of its extraordinary power of judicial review under Article 226 of the Constitution of India. In case of 620 cooperative societies, elections have been cancelled at least in part and others have been rejected. The rejections numbering 426 are in question in these writ petitions. This Court is of the view that the overwhelming percentage of uncontested elections, as a consequence of rejection of nominations on an unprecedented scale, requires judicial scrutiny.

139. This Court, therefore, deems it appropriate to appoint Committees chaired by Retired High Court Judges to decide petitions of objection and/or petitions of complaints filed till the date of delivery of this judgment.

140. There will be four Committees for four Zones in Tamil Nadu, namely, North Zone with its Headquarters at Chennai, comprising of Chennai, Tiruvallur, Vellore, Krishnagiri, Dharmapuri, Villupuram,

Tiruvannamalai and Kanchipuram Districts; South Zone with its Headquarters at Madurai comprising of Madurai, Tirunelveli, Kanyakumari, Thoothukudi, Ramanadapuram, Virudhunagar, Sivagangai and Theni Districts; West Zone with its Headquarters at Coimbatore, comprising of Coimbatore, Nilgiris, Erode, Tiruppur, Salem, Namakkal, Karur and Dindigul Districts; and East Central Zone with its Headquarters at Tiruchirappalli, comprising of Tiruchirappalli, Cuddalore, Perambalur, Ariyalur, Tanjavore, Pudukottai, Tiruvarur and Nagapatinam Districts. Each of the Committees shall be chaired by a retired High Court Judge.

141. Mr.Justice S.Rajeswaran, (Retd.) is appointed as Chairperson of the Committee for the West Zone, Mr.Justice K.Venkataraman, (Retd.) as Chairperson of the Committee for North Zone, Mr.Justice R.S.Ramanathan, as Chairperson of the Committee for South Zone and Mr.G.Rajasuriya, as Chairperson of the Committee for East Central Zone. The Committees headed by the retired Judges shall comprise two Joint Registrars of Cooperative Societies and two District Collectors of the Zone, nominated by the Chairperson. The Committees chaired by retired High Court Judges shall decide objections and/or complaints of wrongful inclusions or omissions in the

voters' lists, wrongful acceptance, non-acceptance or rejection of nomination papers, wrongful acceptance or rejection of ballot papers and other disputes with regard to the elections. When deciding disputes with regard to specific cooperative societies, the Chairperson shall co-opt the Joint Registrar of Cooperative Societies and the Collector of the District/Districts in which the cooperative society is located, unless they are already members of the Committee.

142. The Committees will look into the complaints of wrongful inclusions and omissions in the voters' list, if such disputes have been raised prior to the holding of elections, but not decided and/or wrongfully decided by the Election Officer concerned. Finding of wrongful omission from or inclusion in the voters' list if not material will not affect the election. To cite an example, if one candidate has been excluded, but successful candidates have won with margin exceeding one, the election will not be affected.

143. Only objections and/or complaints with regard to voters' lists and nominations already made by approaching this Court or alternatively by approaching the Election Commission and/or Registrar and/or any other appropriate authority shall be entertained and no

new complainants and/or objectors who never raised any objection till the date of this judgment shall be entertained by the Committee. The Committee shall check if the nomination papers comply with the requisites of Rule 52 read with Circular No. Na.Ka.321/2018/Co.EI.1, dated 19.7.2018 of the Election Commission. In particular, the Committee should look into the following aspects:

- (a) if the nomination of a candidate for the election is in Form No.18, and proposed, seconded by two other members whose names are included in the voters list, and is signed by the candidate, the proposer and the seconder.
- (b) If the nomination paper has to be rejected on the ground that it is not signed by the candidate for election, or it is not signed by two other members whose names are included in the voters list, one as the proposer and the other as the seconder for the nomination. Of course, where there is only one member in the voters list, the nomination need not be seconded, and where excluding the candidate there are no members in the voters' list, the nomination need not be either proposed or

seconded.

(c) In case of a central or apex society which has only one society member and no individual member, for election to the board of such central or apex society to fill up the seats reserved for Scheduled Castes and Scheduled Tribes or for women, a person whose name is not included in the voters list, shall also be eligible for being nominated as a candidate.

(d) If the seat is reserved for Scheduled Castes and Scheduled Tribes, whether the candidate seeking election to such reserved seat had furnished a declaration in the nomination form made by him specifying the caste or tribe to which he belongs and the area in relation to which that caste or tribe is notified as a Scheduled Caste or Scheduled Tribes of the State.

(e) Whether there is any contravention of the rule that the candidate may be nominated by more than one nomination paper, but not exceeding four nomination papers.

(f) Any candidate contesting as a candidate in an election to a single member constituency has signed any nomination papers as a proposer or seconder:

(g)The Committee may examine if the nomination paper was filed in time or out of time.

144. Objections with regard to voters lists may only be raised by an aggrieved voter, whose name has been excluded, or by a contestant. Similarly, objections with regard to acceptance, non acceptance, withdrawal or rejection of nomination papers may only be raised by aggrieved contestants, who have filed and/or intended to file nomination papers.

145. Similarly, the Committees will go into the complaints of wrongful acceptance, non-acceptance or rejection of nomination papers only in cases where such complaints have already been made either before this Court or before the Election Commission or any other authority. The Committees will look into whether nomination papers were filed within the date stipulated in the election notification, whether the nomination forms were duly signed by the candidate and

by the proposer and the seconder and whether the nomination form was complete in all respects. The Committees shall verify the nominations having regard to the requisites of Rule 52 of the Rules read with Circular No. Na.Ka.321/2018/Co.EI.1, dated 19.7.2018 of the Election Commission. Nomination papers are not to be rejected for frivolous reasons such as discrepancies in signature, if the signatures are identifiable, affixing of signature at the wrong place, etc.

146. In disputes with regard to polling, counting of votes, etc., the Committees will look into the ballot papers to see if the votes have validly been cast. However, in the event resolution of the dispute requires detailed evidence, the Committee shall remit the complainants/objectors to their alternative remedy under Section 90 of the 1983 Act and refer the disputes to the Registrar of the Cooperative Societies, who shall appoint a panel of three Arbitrators to adjudicate the dispute.

147. The Committees will not intervene in those cases where candidates have been elected and/or nominated by consensus, as no other candidate offered himself/herself for contest and/or withdrew

his/her candidature. However, where nominations are alleged to have been wrongfully rejected or not accepted, it may be necessary to scrutinize the reason.

148. The Committees shall be constituted and notified within two weeks from date. Objections/complaints may be filed before the Committee within seven days from the date of its constitution, at the address notified by publication in one vernacular daily having circulation in the District.

149. The State shall provide infrastructure and secretarial facilities to the Committees as also space from where the Committees can function. The Committees shall within two weeks from the date of receipt of a certified copy of this order, publish a notice in a vernacular newspaper having circulation in the concerned zone notifying its constitution and inviting petitions of objection/complaint within the date and at the address specified in the notice.

150. It is clarified that only petitions of objections/complaints in respect of voters' list and nominations will be entertained, which have earlier been filed before the authorities and/or before this Court by

initiation of writ proceedings and/or any other proceedings.

151. Disputes with regard to the conduct of elections, that is, polling, counting, etc., may be raised within fifteen days from the date of publication of notice. In case, a dispute is referred to Registrar for constitution of an arbitral Tribunal, the same shall be decided by the arbitral Tribunal within three months from the date of reference by the Committees.

152. It is made clear that this Court has not adjudicated the correctness of the allegations levelled against the respondents and this order is not to be construed as any finding of this Court of correctness of the allegations levelled by the writ petitioners against the respondent authorities.

153. It is also made clear that the Election Commission may declare the results of the elections in those cooperative societies in respect of which there is no complaint.

154. With the above directions, all the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are

closed. It is made clear that this order has been made in view of large scale uncontested elections. This Court has neither gone into nor arrived at any finding with regard to allegations of collusion, arbitrariness, malafides, etc. In case of Co-operative Societies which are not before this Court, it will be open to the Election Commission to declare the results, if the same has not already been done.

In the light of the discussion in the writ petitions, the writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

**(I.B. C.J.,) (P.T.A. J.,)**

Internet : Yes  
Index : Yes  
sra/sasi/bbr

(121)

**THE HON'BLE CHIEF JUSTICE**

**and**

**P.T. ASHA, J.**

(bbr/sasi)

W.P.Nos.7526 of 2018 etc. batch

3.8.2018