



W.P.(C)No.22503/2022

1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

MONDAY, THE 8TH DAY OF JANUARY 2024/18TH POU SHA, 1945

WP(C) NO. 22503 OF 2022

PETITIONERS:

*1 [MADHAVAN KUTTY,
S/O. SIVARAMAN NAIR, AGED 52 YEARS
KARUKAYIL HOUSE, VAIKOM, KOTTAYAM DISTRICT.] *DELETED

[FIRST PETITIONER IS DELETED FROM THE PARTY ARRAY AS
PER ORDER DATED 8.1.2024 IN WPC 22503/2022]

2 JOHN V.C.,
S/O. JOHN V.J., VALAVATH,
THEKKENADA P.O., VAIKOM,
KOTTAYAM DISTRICT.

3 K.S. BIJUMON,
S/O. SANKARA PILLAI, NANDANAM,
MARAVANTHURUTH P.O.,
VAIKOM,
KOTTAYAM DISTRICT.

4 THANKAMMA VARGHESE,
W/O. VARGHESE, AARAKKAL,
ERUMPAYAM P.O., VAIKOM, KOTTAYAM DISTRICT.

5 VIJAYAN V.,
S/O. VELAYUDHAN, ONATTU,
PALLIPRATHUSSERY P.O., VAIKOM
KOTTAYAM DISTRICT.

6 ANITHA G. NAIR,
W/O. KRISHNAKUMAR, THEJASS,
NADUVILE, VAIKOM,
KOTTAYAM DISTRICT.

BY ADVS.

SRI K.C.VINCENT

SRI N.ANAND

RESPONDENT/S:

- 1 THE STATE OF KERALA,
DEPARTMENT OF CO-OPERATION, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001, REPRESENTED BY ITS
SECRETARY.
- 2 THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES
(GENERAL),
COLLECTORATE, KOTTAYAM - 686002.
- 3 THE STATE CO-OPERATIVE ELECTION COMMISSION,
3RD FLOOR, CO-BANK TOWERS, VIKAS BHAVAN P.O.,
THIRUVANANTHAPURAM - 695033. REPRESENTED BY ITS
CHAIRMAN.
- 4 THE RETURNING OFFICER,
VAIKOM TALUK CO-OPERATIVE AGRICULTURAL & RURAL
DEVELOPMENT BANK LTD. NO. K951 MIDUKKI ENTERPRISES
BUILDING, KACHERIKAVALA, VAIKOM-686141, KOTTAYAM
DISTRICT.
- 5 THE ELECTORAL OFFICER,
VAIKOM TALUK CO-OPERATIVE AGRICULTURAL & RURAL
DEVELOPMENT BANK LTD. NO. K951 MIDUKKI ENTERPRISES
BUILDING, KACHERIKAVALA, VAIKOM-686141, KOTTAYAM
DISTRICT.
- 6 VAIKOM TALUK CO-OPERATIVE AGRICULTURAL & RURAL
DEVELOPMENT BANK LTD. NO. K951,
MIDUKKI ENTERPRISES BUILDING, KACHERIKAVALA, VAIKOM-
686141, REPRESENTED BY ITS SECRETARY.
- 7 ANIL PRASAD V.S.,
MEMBER NO. A-6111, RESIDING AT RATNAVIHAR,
ERAVIMANGALAM P.O., VAIKOM, KOTTAYAM DISTRICT -
686613.
- 8 JOSEPH A.V.,
MEMBER NO. A-7942, S/O. VARGHESE, AMBALATHIL,
THALAYOLAPARAMBU P.O., KOTTAYAM DISTRICT - 686613.
- 9 JOSE JAMES,
MEMBER NO. A-3201, S/O. JAMES, PULIYALAKKAL,
ARUNNOOTTIMANGALAM P.O., KOTTAYAM DISTRICT-686604.
- 10 LUKA J.,
MEMBER NO. A-8851, S/O. JOSEPH, PUTHUCHIRA, T.V. PURAM



- P.O., VAIKOM, KOTTAYAM DISTRICT - 686606.
- 11 VAKKACHAN MANNATHALI,
MEMBER NO. A-2632 S/O. E.K. JOSEPH, MANNATHALIL,
AMBIKA MARKET P.O., KOTTAYAM DISTRICT - 686144.
- 12 SUDHARMA K.M.,
MEMBER NO. 15790, S/O. MADHAVAN, KANDONTHARAYIL,
KARIPADOM P.O., KOTTAYAM DISTRICT - 686605.
- 13 SURENDRANATHA KAIMAL,
MEMBER NO. A-8178, S/O. PADMANABHAN NAIR,
PUTHUMITTATH, KARIPADOM P.O., KOTTAYAM DISTRICT -
686605.
- 14 ANNAMMA RAJA,
MEMBER NO. A-2962, D/O. PHILIP PAILO, KOCHUPARAMBIL,
KALLARA SOUTH P.O., KOTTAYAM DISTRICT - 686611.
- 15 BABUMOL SHAJI,
MEMBER NO. A-2383, D/O. PADMANABHAN, PERUMKULATHIL,
VADAKARA P.O., KARIPADOM P.O., KOTTAYAM DISTRICT -
686605.
- 16 SALY BABU,
MEMBER NO. A-2190, D/O. LONANKUTTY, KARIKKASSERY,
CHEMMANATHUKARA P.O., KOTTAYAM DISTRICT - 686606.
- 17 K.P. BHASKARAN,
MEMBER NO. 29530, S/O. PAPPY, SREEVALSAM, VELLASSERY
P.O., KADUTHURUTHY, KOTTAYAM DISTRICT - 686604.

BY ADVS.

SRI BIMAL K.NATH, SR.GOV.T.PLEADER
SRI C.M.NAZAR (SC)
SRI T.SHIHABUDHEEN
SRI M.A.ASIF
SRI BINISH MATHEW
SRI ANWIN JOHN ANTONY
SRI ATHUL SHAJI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
19.12.2023, THE COURT ON 08.01.2024 DELIVERED THE FOLLOWING:

**“CR”****T.R. RAVI, J.****-----
W.P.(C)No.22503 of 2022
-----****Dated this the 8th day of January, 2024****JUDGMENT**

The prayer in the writ petition is to declare that the elections held on 09.07.2022 to the 6th respondent Society and Ext.P10 as void and that it is not an election in the eye of law. There is also a prayer for a direction to the 2nd respondent to appoint an Administrative Committee from among the members of the last Managing Committee till fresh polling is conducted and results are declared. There are consequential prayers made to the effect that there should be a direction to the 4th respondent Returning Officer to permit all the members in the final voters' list published on 15.12.2020 with Form 6A identification cards and any other document mentioned in Rule 35n(ix) of the Kerala Co-operative Societies Rules, 1969 ('the KCS Rules' for short) to vote in the polling next scheduled.



2. The 6th respondent is a Primary Agricultural Credit Co-operative Society. The petitioner states that there are 14654 members. It is stated that elections were notified to be held on 9.7.2022 after a long-drawn-out legal battle at the instance of the petitioners. It is stated that to defeat the cause, the respondents permitted only 830 out of 14654 members to vote. On the basis of the said voting, the 4th respondent Returning Officer declared respondents 7 to 17 as elected. It is in the above circumstances that the writ petition has been filed.

3. The term of the earlier Managing Committee was due to expire on 16.1.2021. The earlier Managing Committee, in which petitioners 1, 3, and 4 were also members, resolved to hold elections on 10.1.2021. The 3rd respondent notified elections as per Ext.P1 notification dated 27.11.2020. Pursuant to Ext.P1 notification, the Bank issued a preliminary voters list, which had 14654 members, including the petitioners. No complaints were received against the preliminary voters list. On 15.12.2020, the final voters list was issued, which also contained the names of the petitioners as members. Ext.P1(a) produced, is



the relevant pages of the final voters' list, which had 14654 members.

4. On 08.01.2021, the 3rd respondent postponed the elections based on a complaint that persons who were not entitled to membership had been enrolled as members of the bank. Consequently, the Managing Committee of the Bank was replaced by an Administrator and later by an Administrative Committee. Challenging the postponement of the election on 08.01.2021, complaining that the Administrative Committee was not taking any steps for holding the election, and challenging the direction of the Administrator to the Bank to make available Rs1,92,525/- for sending notices to persons who were allegedly enrolled illegally, writ petitions were filed before this Court. The writ petitions were heard together, and this Court, by judgment dated 9.4.2021, directed the election to be conducted *de novo* after rejecting the contention of the petitioners that the election process shall be resumed from the stage at which it was stopped. The judgment of the learned Single Judge was challenged in W.A.No.1314 of 2021. Meanwhile, on 07.07.2021, the Election Commission cancelled the election, which had been re-scheduled



to be held on 09.07.2021. A Division Bench of this Court, by Ext.P2 judgment dated 25.10.2021, allowed W.A.1314 of 2021 and directed the 3rd respondent to take necessary steps to resume the election process pursuant to the initial notification which had been postponed by order dated 8.1.2021.

5. Pursuant to Ext.P2 judgment, elections were notified on 30.1.2022 but were adjourned due to the outbreak of the COVID-19 pandemic. The Election Commission, by Ext.P3 communication dated 14.3.2022, directed the Administrative Committee to adopt a fresh resolution indicating the date, time, and place of election. It is stated that the Administrative Committee did not heed the directions in Ext.P3, and the 3rd respondent was constrained to issue another communication on 6.4.2022, a copy of which is produced as Ext.P4. It is stated that Ext.P4 was also ignored by the Administrative Committee, and a fresh communication was issued by the 3rd respondent on 25.4.2022 since the term of the Committee was to expire on 30.4.2022. The Administrative Committee finally agreed to hold elections on 9.7.2022. Accordingly, the Election Commission on



17.5.2022 notified the elections of the Bank on 9.7.2022. Ext.P6 is the notification.

6. The former President of the 6th respondent approached this Court seeking police protection for the smooth conduct of the election. Ext.P6(a) is the judgment of this Court in W.P. (C)No.20801 of 2022, whereby it was directed that the polling process should be videographed and necessary police protection should be ensured for conducting a trouble-free election. The petitioners and the members, it is stated, had gone over to exercise their votes, and it is stated that the Presiding Officers did not permit them to vote since their names did not figure in the Form 6B register. Exts.P7 to P7(e) are the complaints which were preferred by the petitioners before the Returning Officer. In paragraph 13 of the writ petition, the petitioners have given details of other persons who had submitted complaints that they are not permitted to vote. It is stated that more than 100 members complained in writing to the Returning Officer about the Presiding Officer not permitting them to vote. The Returning Officer refused to entertain the complaints, since the identity cards in Form 6A, which were produced by the petitioners, were



not official, and the Form 6B register did not contain entries relating to them. Ext.P9 is the reply received by one Thomas John. The petitioners submit that because of the stand taken, more than 150 members could not vote. It is stated that this fact can be verified from the CCTV visuals and video recordings of the election process. It is also stated that close to 1000 members either went back or were sent back by the Police Personnel from the main gate itself, stating that they could not vote. It is hence stated that only 5.66% of the total eligible voters were permitted to vote (830), and based on the said votes, the Returning Officer declared respondents 7 to 17 as elected. The declaration is produced as Ext.P10.

7. The 2nd respondent has filed a counter affidavit. It is contended that the writ petition is not maintainable either in law or on facts. It is stated that the 11 members who won the election have taken charge of the Administration of the Society and that any challenge to election proceedings must be in an election petition before the Arbitration Court under Section 69 of the Kerala Co-operative Societies Act, 1969 (the KCS Act. It is hence submitted that as there is an effective alternate remedy,



the petitioners cannot maintain a writ petition under Article 226 of the Constitution of India. Reliance is placed on the decision of the Hon'ble Supreme Court in **Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha & Anr. v. State of Maharashtra & Ors. [(2001) 8 SCC 509]**, **Shaji K. Joseph v. V.Viswanath & Ors. [(2016) 4 SCC 429]** and the judgment of a Division Bench of this Court in **Jaya Varma K. V. State Co-operative Election Commission & Ors. [2017 (2) KHC 190]**. In view of the above judgments, it is contended that the law is settled that election cannot be challenged in proceedings under Article 226 of the Constitution of India. It is stated that the writ petition has been filed by persons who lost the election. Regarding the contention that only 5.66% of the voters have cast their vote, it is stated that it is purely a question of evidence whether voters had come to the polling booth and whether they are restrained from casting their votes. Regarding Form 6A and Form 6B, it is contended that there cannot be a Form 6A identity card without a Form 6B register, and hence, when the identity cards are not supported by entries in the Form 6B register, the same cannot be accepted. It



is stated that the Returning Officer must be satisfied that the voter is genuine, and the signature has to be obtained in Form 6B Register after counter-checking with Form 6A identity cards. Placing reliance on Ext.R2(b) judgment in W.P.(C)No.21220 of 2018, it is submitted that the identity of a voter coming to the polling booth with an identity card issued under Form 6A must be cross-checked by the Returning Officer with its duplicate in Form 6B register. It is submitted that after the publication of the final voters' list earlier, complaints were received regarding the voters' list and Form 6B register of the Society, and the Electoral Officer informed the above matter to the Kerala Co-operative Election Commission. It is stated that elections were postponed for the above reason, and the Bank had been directed to rectify the defects in Form 6B and the voters' list and to conduct the election process in a free, fair, and impartial manner. It is stated that during polling, voters whose names were included in the voters' list but not in the 6B register were not allowed to vote as their identities were challenged by the polling agents. It is stated that 34 voters had submitted complaints before the Returning Officer, on which clarifications were sought. It is admitted that 830



members alone had cast votes out of 14654 members. It is further stated that once polling started, there were several objections raised by the polling agents regarding the voters, and this was the reason why the identity was ensured by verification of the Form 6B register.

8. Respondents 7 to 13 and 15 to 17 have filed a counter affidavit contending that the remedy of the petitioners is to approach the Co-operative Arbitration Court under Section 69 of the KCS Act. It is contended that from 2006 onwards, in every election, only around 10% of the total voters have cast their votes, and there is nothing unusual in the low turnout.

9. The counsel for the petitioners contended that, as a matter of fact, there is no Form 6B register maintained in the form of a book in the Society, and only loose sheets of paper are kept in a file which is named as a Form 6B Register. Reference is made to the meaning of the word "register" in Black's Law Dictionary, and it is contended that a "register" should be a book containing a record of facts as they occur, kept by a public authority. Attention is also drawn to the meaning of the word "Book," as stated in Black's Law Dictionary, to contend that a



book should be a bound volume consisting of sheets of paper. It is contended that keeping loose sheets of paper in a file cannot be stated to be a register. The counsel for the petitioner relied on the judgment **Central Bureau of Investigation v. V.C.Shukla [1998 (3) SCC 410]**, wherein the Hon'ble Supreme Court has held that a 'book' ordinarily means a collection of sheets of paper or other material, blank, written, or printed, fastened or bound together so as to form a material whole. Loose sheets or scraps of paper cannot be termed as 'book', for they can be easily detached and replaced. It is hence submitted that a comparison of an identity card issued in Form 6A with the Form 6B register as is available in the Society, cannot be resorted to for denying the right to vote at an election. It is submitted that when the Statute itself has provided a method for ensuring the identity of a voter, that method alone can be followed by the Returning officer.

10. On 11.7.2022, this Court had directed the 2nd respondent to obtain the Form 6B register and the share register kept at the 6th respondent Bank and place the same before this Court on 14.7.2022, through the Government Pleader. Pursuant to the directions, the Form 6B register and the share register



were placed before the Court. The documents were examined for the purpose of ascertaining the correctness of the contentions of the petitioners that it is not safe to go by the entries in the Form 6B register, since they are not kept in the form of a book but are loose sheets kept in a file. I have compared the Form 6B register and the member register pertaining to the entries regarding respondents 7 to 17, who are now stated to have been elected. **Even though reference is made in this judgment to the Form 6B register, it is noticed that there is no such register in the form of a Book, and what is available are loose sheets kept in a file.** The findings of the examination of the books are compiled into a tabular form for easy reference;

Respondent No.	Member No.	Name	Remarks
7	A6111	Anil Prasad	Became a member on 8.11.2012. ID was issued on 7.1.2021. The address and the signatures differ in the share register and the 6B register.
8	A7942	Joseph A.V.	Became a member on 18.12.2015. ID is seen to be issued on 30.12.2015. Register does not show the issuance of any ID



			card.
9	A3201	Jose James	Membership is issued on 17.7.2009 and ID Card is issued on 4.1.2011.
10	A8851	Luka J.	Became a member on 15.10.2015. ID card says it was issued on 19.11.2015. The register does not say the year of issuance of the ID Card, and there is no signature of the Secretary. There is also a difference in the signature in the share register.
11	A2632	Vakkachan Mannathali	Became a member on 29.9.2008. The entry in the card says that it was issued on 6.12.2019. The register shows ID card was issued on 5.12.2014.
12	15790 (KK 1042)	Sudharman K.M.	Became a member on 6.2.1990. As per the book and the card, ID card was issued only on 10.12.2010. The signatures in the registers differ.
13	A8178	Surendranatha Kaimal	Became a member on 27.1.2016. ID is seen to have been issued on 5.1.2021. There is no



			corresponding entry in the 6B register.
14	A2962	Annamma Raja	The share register says she became a member on 2.3.2009. As per the ID card, the membership was issued on 3.2.2009. The card shows that it was issued on 15.10.2011. There is no signature in the share register.
15	A2383	Babumol Shaji	Became a member on 19.3.2008. The share register says ID card was issued on 7.1.2021. There is no signature in the book against the column. There is also no corresponding entry in the Form 6B register.
16	A2190	Saly Babu	Became a member on 20.11.2007. The share register and the 6B register show ID card was issued on 20.12.2010.
17	29530	K.P. Bhaskaran	Became a member on 23.07.2004. ID card is issued on 26.12.2020 as per the register and the card.



11. Heard Sri.N.Anand on behalf of the petitioner, Sri. Bimal K. Nath, Senior Government Pleader, and Sri. C.M. Nazar, Standing Counsel for the 3rd respondent.

12. The issue is regarding the importance that needs to be given to the Form 6B register while deciding on the identity of the voter at an election under the Co-operative Societies Act. Rule 35A of the KCS Rules lays down the procedure for the conduct of election to the committee of the Societies by the State Co-operative Election Commission. Under Rule 35A(4), the State Co-operative Election Commission is to appoint an Electoral Officer who shall be responsible for the publication of the list of the members qualified to vote at the election in accordance with the provisions of the Act, Rules and Bye-laws, as stood on a date 60 days prior to the date fixed for the poll. There is no dispute in this case about the publication of the voters' list. It is admitted that objections were called for, and a final voters' list was also drawn up. As per Ext.P2 judgment, the election must proceed on the basis of the said voters' list. Rule 35A6(n) deals with arrangements in a polling station. Rule 35A(6)(n)(ix) is extracted below for reference.



“35A. Procedure regarding conduct of election to the committee of Societies by the State Co-operative Election Commission.-The election of the members to the committee of Societies by the State Co-operative Election Commission shall be conducted in the following manner:

XXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX

(6)(n) Arrangements in Polling Station:

XXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX

(ix) No ballot paper shall be issued to a member unless he produces his identity card and any one of the documents mentioned in the explanation and the polling officer is satisfied that member concerned is the same person, as noted in the voters list, furnished to him. When a ballot paper is issued the serial number of the ballot paper will be noted against the name of the member in voters list. On receipt of such ballot paper the member shall proceed to the polling compartment apart for the purpose and indicate the person or persons in whose favour he exercises his vote by incribing a mark (x) against the name of the candidate or candidates, as the case may be, put the ballot paper in the ballot box, kept for the purpose with utmost secrecy. If owing to blindness or other physical infirmity or illiteracy, a member is unable to inscribe the mark on the ballot paper, the polling officer or the Returning Officer shall allow the companion of the voter to exercise his vote as instructed by the voter. Before allowing the companion to vote on behalf of the



voter the presiding officer should get a declaration from the companion in Form No. 38 (Appendix II).

Explanation.-

- (i) Identity Card issued by the Election Commission of India;
- (ii) Unique Identification Card "Aadhar Card";
- (iii) Ration Card;
- (iv) Driving Licence;
- (v) Identity Card issued by the Employer;
- (vi) PAN Card; and
- (vii) Any other identity card notified by the State Co-operative Election Commission"

13. Thus, a voter must produce, along with his identity card, any one of the documents mentioned in the Explanation to the Rule, **to prove his identity**. The Polling Officer must be satisfied that the member concerned is the same person as noted in the voters' list furnished to him. Significantly, the Explanation to the Rule does not mention Form 6B Register as a document of proof of identity. It is on the above basis that the petitioners are contending that declining permission to vote, stating that the Form 6B register does not have the signature of the voter, is not warranted by the Co-operative Societies Act and Rules.



14. The above contention is sought to be met by the Senior Government Pleader based on Rule 16A of the KCS Rules. As per Rule 16A, a person admitted as a member of a Society is to be issued with an identity card in Form 6A, which is to be conclusive evidence to prove his membership in the Society. The Rule further says that the member shall furnish two copies of his recent photograph of passport size to the Society and that one copy of the duly attested photograph is to be affixed on the identity card and the other copy is to be affixed in the register in Form 6B maintained for the purpose. The identity card is to bear the seal of the Society. Rule 16A(3) also says that the identity card shall be issued directly to the member concerned after obtaining his acknowledgment in the register in Form 6B. It is hence contended that if the identity card which is produced by a member at the time of voting, does not have corresponding entries in Form 6B register, the person shall not be entitled to vote. What is hence required is a proper understanding of the scope of Rule 16A and Rule 35A 6(n)(ix).

15. The Senior Government Pleader placed reliance on the judgment of a learned Single Judge in **WP(C) No.21220/2018**,



which has been produced as Ext.R2(a). While considering a request for Police protection and videography for the conduct of the election, the learned Single Judge, in the above-said judgment, had directed the respondents to ensure the smooth conduct of the election to the Managing Committee strictly in accordance with the directions contained in the Circular dated 20.11.2013 issued by the State Police Chief. The Court also directed the Returning Officer to ensure that there is no bogus voting or impersonation of voters by having the identity of the voters verified with reference to the Form 6B register maintained in the Society, wherever a dispute is raised regarding the identity of the voter. Ext.R2(a) judgment does not consider Rule 35A(6) (n)(ix) and the Explanation to the Rule, which specifically states how the identity of the voter is to be ascertained and hence the judgment cannot be treated as an authority regarding the relevance of Form 6B register. The Court has also not decided the case with reference to the statutory provisions contained in Rule 16A and Rule 35A. So is the case with the judgment in **W.P. (C)No.12286 of 2022**, referred to by the Senior Government Pleader.



16. The Explanation to Rule 35A(6)(n)(ix) came into force with effect from 26.11.2014. Earlier, the only statutory provisions that were in force were Rule 16A, which came into force on 14.7.1992, and Rule 35A(5), which came into force on 12.2.2001. The requirement of an Identity Card issued in Form 6A and the maintenance of Form 6B register was considered by a Division Bench of this Court in W.A.No.371 of 2014. In the case before the Division Bench, the State Election Commission had declined the request of a Society to conduct an election, since all the members had not been issued with Form 6A Identity Cards and the Form 6B Register was not maintained. The Division Bench upheld the order of the Election Commission and held that the issuance of an Identity Card and the maintenance of Form 6B Register is necessary for the conduct of the election to the Board of the Society. The Court was considering the power of the Election Commission to decline to act upon the resolution of the Society to conduct the election, and it was held that the Election Commission has such power. However, the Court did not have occasion to deal with a situation where there was a discrepancy between the Form 6A Identity Card and the Form 6B Register, as



in this case. It is after the above judgment of the Division Bench dated 03.03.2014 that Rule 35A(6)(n)(ix) was amended and the Explanation introduced, with effect from 26.11.2014.

17. Coming to Rule 16A, the purpose of the Rule is not the same as that of Rule 35A(6)(n)(ix). Rule 35A lays down the procedure for conduct of election to the Committee of the Societies and Rule 16A relates to issuance of Identity Card. A careful reading of Rule 16A would show that it only speaks of how the identity card should be issued to a member, apart from saying that the identity card issued in Form 6A is conclusive proof of "**membership.**" Proof of "**Identity**" of a person is different from proof of "**membership.**" Reading Rule 16A and Rule 35A(6)(n)(ix) in conjunction, it is evident that a voter, to prove his "membership," is required to produce his Identity Card in Form 6A, and he also has to prove his personal identity by production of any one of the documents mentioned in the Explanation to Rule 35A(6)(n)(ix). Reference was made to the decision of the Hon'ble Supreme Court in **State of Kerala & Anr. v. Mohammed Basheer [AIR 2019 SC 2994]** to submit that when a statute enjoins that any evidence would be treated as



conclusive proof of a certain factual situation, the law would forbid other evidence to be adduced. The above decision cannot apply to a case where the statute itself specifies the documents to be considered for ascertaining the identity of a voter. If the above judgment were to be understood to mean that Rule 16A should govern the identity of a voter, that would be rendering Rule 35A(6)(n)(ix) and the Explanation thereto otiose.

18. The above discussions would lead to a definite conclusion that the denial of voting rights to the petitioners for the reason that there are discrepancies in the entry in the Form 6B register was illegal and not permitted by the KCS Act and Rules. A right to vote is a valid right available to a member of a Society, and it can be denied only for reasons stated in the KCS Act and Rules. Having concluded as above, the next question that arises for consideration is whether this Court can, by invoking the power under Article 226, set aside the election and direct a fresh election.

19. The Senior Government Pleader, relying on **Shri Sant Sadguru (supra)**, submitted that, if the contention of the petitioners is that there is a breach of the Rule or that mandatory



provisions of the Rules were not complied with while preparing the electoral roll, the same can be challenged under the Rules by means of an election petition, after the declaration of the result of the election. The counsel for the petitioner submitted that the above decision has been considered by the Hon'ble Supreme Court in **Pundlik v. State of Maharashtra [2005 KHC 1377]**, and the Hon'ble Supreme Court had held that though it is true that normally the High Court will not interfere in the exercise of powers under Article 226 of the Constitution at the stage of preparation of the list of voters, such action must be in accordance with the law, and if there is a violation of law while preparing the electoral roll, the same can be challenged under Article 226 of the Constitution of India. It can thus be seen from the two decisions that though the normal rule is that a Court will not interfere, where there is a violation of the statutory rules in the preparation of the electoral roll, it is open to the Court to exercise its jurisdiction under Article 226 of the Constitution. In the case on hand, the Court is not concerned with the preparation of the electoral roll. The voters' list has already been prepared, and it has also become final. This is a case where



members were refused permission to vote because their identity has not been proved, since there is no corresponding entry in the Form 6B register. As already noted, the statutory rule does not call for the comparison with the Form 6B Register to identify the voter. What is relied on to refuse a valid right to vote is extraneous material. I do not think there is any reason for rejecting the writ petition on the grounds of the availability of an alternate remedy in such circumstances.

20. In **Jayavarma K. v. State Co-operative Election Commission & Ors. [2017 (2) KHC 190]**, a Division Bench of this Court, held that the proper electoral roll is a fundamental factor, and this Court can step in either before or after the election. The Court clarified that the Court is not to be misunderstood as holding that under no circumstances can a writ petition be entertained under Article 226 of the Constitution of India during the process of election. Referring to the decision of the Hon'ble Supreme Court in **Election Commission of India v. Ashok Kumar & Ors. [2000 (3) KLT 402]**, this Court held that a writ petition could be entertained on the well-settled parameters to correct or smoothen the progress of the election.



This Court held that the instance of rejection of a nomination on totally untenable grounds is an example that could be rectified without affecting the election calendar.

21. In **George Kuruvila & Ors. V Kerala State Co-operative Election Commission & Ors. [2010 (1) KHC 561]**, a Division Bench of this Court considered a case where out of 68000 members, 25000 alone had taken photo identification cards, and not even 20% of them participated in the election. The Division Bench set aside the election in which a little more than 4000 members alone had voted and directed the State Election Commission to re-notify the poll date and hold the election at the earliest. This Court specifically held that there is no need to sort out the dispute on Form 6B register or the issuance of photo identification cards before the election. The Court held that members who are issued with photo identification cards by the Society, who had not found their names in the register, can prove their identity with the help of the election identification card issued by the State Election Commission or even a passport or even a PAN Card with which the Returning Officer or Polling Officer can re-confirm their identity and permit



them to participate in the election and cast their votes. The Explanation to Rule 35A6(n)(ix) was brought in with effect from 26.11.2014, after the judgment of the Division Bench. The issue, hence, stands clarified by the Statute itself, making necessary amendments after the judgment of the Division Bench, regarding the manner in which the identification of a voter should be ascertained. The above judgment also makes it clear that the Form 6B register is not the final word about the identity of a voter.

22. In **Gangadharan Nair P. & Ors. v. Bhaskaran M. & Ors. [2017 (13) SCC 573]**, the Hon'ble Supreme Court set aside the election to the Committee of a Co-operative Society registered under the KCS Act, for the reason that there was no proper compliance of the mandatory provision in Rule 35A(3) regarding the publication of election schedule. A learned Single Judge of this Court has held in **Thankappan & Ors. v Cooperative Tribunal & Ors. [1979 KLT 528]** that every sub-rule mentioned in Rule 35 is mandatory, and violation of any of the provisions of Rule 35 vitiates the election and makes it void.



23. In a recent decision in **Union Territory of Ladakh & Ors. v. Jammu and Kashmir National Conference & Anr. [2023 SCC OnLine SC 1140]**, the Hon'ble Supreme Court considered the question of interference in election matters in extenso. Paragraphs 22, 36, and 37, which state the law on the subject, are extracted below.

"22. Elections to any office/body are required to be free, fair and transparent. Elections lie at the core of democracy. The authority entrusted by law to hold/conduct such elections is to be completely independent of any extraneous influence/consideration. It is surprising that the Union Territory of Ladakh not only denied R 1 the Plough symbol, but even upon timely intervention by the learned Single Judge, has left no stone unturned not only to resist but also frustrate a cause simply by efflux of time.

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36. We are conscious that, by way of certain pronouncements, some of which are alluded to in this judgment, the Court extended principles relating to elections to Parliament, State Assemblies and Municipalities to other arenas as well. Indicatively, the interpretation of judgments is always to be made with due regard to the facts and circumstances of the peculiar case concerned. We have looked at Articles 243-O, 243ZG and 329 of the Constitution, and conclude that no bar hit the High Court, even on principle. Apart from the



judgments expressly considered and dealt with, hereinbefore and hereinafter, we have perused, out of our own volition, the decisions, inter alia, of varying Bench-strength of this Court in **N.P. Ponnuswami v. Returning Officer, Namakkal Constituency, (1952) 1 SCC 94 : 1952 SCR 218 ; Durga Shankar Mehta v. Thakur Raghuraj Singh, (1955) 1 SCR 267; Hari Vishnu Kamath v. Syed Ahmad Ishaque, (1955) 1 SCR 1104; Narayan Bhaskar Khare (Dr) v. Election Commission of India, 1957 SCR 1081; Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405; Lakshmi Charan Sen v. A K M Hassan Uzzaman, (1985) 4 SCC 689; Indrajit Barua v. Election Commission of India, (1985) 4 SCC 722; Election Commission of India v. Shivaji, (1988) 1 SCC 277; Digvijay Mote v. Union of India, (1993) 4 SCC 175; Boddula Krishnaiah v. State Election Commissioner, Andhra Pradesh, (1996) 3 SCC 416; Anugrah Narain Singh v. State of Uttar Pradesh, (1996) 6 SCC 303; Election Commission of India v. Ashok Kumar, (2000) 8 SCC 216; Kishansing Tomar v. Municipal Corporation, Ahmedabad, (2006) 8 SCC 352; West Bengal State Election Commission v. Communist Party of India (Marxist), (2018) 18 SCC 141; Dravida Munnetra Kazhagam v. State of Tamil Nadu, (2020) 6 SCC 548; Laxmibai v. Collector, (2020) 12 SCC 186, and last but not the least, **State of Goa v. Fouziya Imtiaz Shaikh, (2021) 8 SCC 401**. On scrutiny, in combination with the timelines and facts**



of the matter herein, we are sure that the High Court did not falter.

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37. We would indicate that the restraint, self-imposed, by the Courts as a general principle, laid out in some detail in some of the decisions supra, in election matters to the extent that once a notification is issued and the election process starts, the Constitutional Courts, under normal circumstances are loath to interfere, is not a contentious issue. But where issues crop up, indicating unjust executive action or an attempt to disturb a level-playing field between candidates and/or political parties with no justifiable or intelligible basis, the Constitutional Courts are required, nay they are duty-bound, to step in. The reason that the Courts have usually maintained a hands-off approach is with the sole salutary objective of ensuring that the elections, which are a manifestation of the will of the people, are taken to their logical conclusion, without delay or dilution thereof. In the context of providing appropriate succour to the aggrieved litigant at the appropriate time, the learned Single Judge acted rightly. In all fairness, we must note that the learned ASG, during the course of arguments, did not contest the power per se of the High Court to issue the directions it did, except that the same amounted to denying the Appellants their discretion. As stated hereinbefore, we are satisfied that in view of the 1968 Order, the Appellants' discretion was not unbridled, and rather, it was guided by the 1968 Order."



24. The law has succinctly been stated in the sentence, **"But where issues crop up, indicating unjust executive action or an attempt to disturb a level-playing field between candidates and/or political parties with no justifiable or intelligible basis, the Constitutional Courts are required, nay they are duty-bound, to step in"**.

(emphasis supplied). The case on hand is one of the above kind. Due to unjust executive action, which is in total violation of the statutory rule (Rule 35A(6)(n)(ix) and its Explanation), members who are entitled to vote at the election have been denied permission to vote. The fact that persons were denied permission to vote is admitted, but the action is sought to be justified by the reason that their identity cards do not have a corresponding entry in the Form 6B register. The above reason has been found to be not legally justified, in the earlier paragraphs. The above action has disturbed the level playing field between the candidates. In view of the law laid down by the Hon'ble Supreme Court, this is an apt case where the Constitutional Court should step in, and I do so.



25. The writ petition is hence allowed. The elections held on 09.07.2022 to the 6th respondent Society is declared as void and it is held to be not an election in the eye of law. There will be a direction to respondents 3 and 4 to continue the election from the stage of polling by fixing a fresh polling date and completing the election strictly in accordance with the provisions contained in Rule 35A(6)(n)(ix) of the KCS Rules, as explained above. The legal consequences of setting aside the election will follow, and the 2nd respondent is directed to take necessary steps in accordance with the Kerala Co-operative Societies Act and the Rules, for the management of the Society in the interregnum.

Sd/-
T.R. RAVI
JUDGE

dsn

**APPENDIX OF WP (C) 22503/2022**

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE NOTIFICATION NO.
01/752/2020/E (2)S.C.E.C DATED 27.11.2020
ISSUED BY RESPONDENT NO.3.
- Exhibit P1 A TRUE COPY OF THE RELEVANT PAGES OF THE FINAL
VOTERS LIST ISSUED BY THE 4TH RESPONDENT ON
15.12.2020.
- Exhibit P2 TRUE COPY OF THE JUDGMENT DATED 25.10.2021
PASSED BY THIS HON'BLE COURT IN W.A.NO.
1314/2021.
- Exhibit P3 TRUE COPY OF THE COMMUNICATION DATED
14.03.2022 ISSUED BY RESPONDENT NO.3.
- Exhibit P4 TRUE COPY OF THE COMMUNICATION DATED
06.04.2022 ISSUED BY RESPONDENT NO.3.
- Exhibit P5 TRUE COPY OF THE COMMUNICATION DATED
25.04.2022 ISSUED BY RESPONDENT NO.3.
- Exhibit P6 TRUE COPY OF THE NOTIFICATION DATED
17.05.2022, AS IT APPEARED IN THE DESHABHIMANI
DAILY DATED 22.06.2022.
- Exhibit P6 A TRUE COPY OF THE JUDGMENT DATED 04.07.2022
PASSED BY THIS HON'BLE COURT IN W.P(C) NO.
20801/2022.
- Exhibit P7 TRUE COPY OF THE COMPLAINT DATED 09.07.2022
SUBMITTED BY THE 1ST PETITIONER TO THE 4TH
RESPONDENT RETURNING OFFICER ALONG WITH HIS
IDENTITY CARD.
- Exhibit P7 A TRUE COPY OF THE COMPLAINT DATED 07.07.2022
SUBMITTED BY THE 2ND PETITIONER TO THE 4TH
RESPONDENT RETURNING OFFICER ALONG WITH HIS
IDENTITY CARD.
- Exhibit P7 B TRUE COPY OF THE COMPLAINT DATED 09.07.2022
SUBMITTED BY THE 3RD PETITIONER TO THE 4TH
RESPONDENT RETURNING OFFICER ALONG WITH HIS
IDENTITY CARD.
- Exhibit P7 C TRUE COPY OF THE COMPLAINT DATED 09.07.2022
SUBMITTED BY THE 4TH PETITIONER TO THE 4TH



- RESPONDENT RETURNING OFFICER ALONG WITH HER IDENTITY CARD.
- Exhibit P7 D TRUE COPY OF THE COMPLAINT DATED 09.07.2022 SUBMITTED BY THE 5TH PETITIONER TO THE 4TH RESPONDENT RETURNING OFFICER ALONG WITH HIS IDENTITY CARD.
- Exhibit P7 E TRUE COPY OF THE COMPLAINT DATED 09.07.2022 SUBMITTED BY THE 6TH PETITIONER TO THE 4TH RESPONDENT RETURNING OFFICER ALONG WITH HER IDENTITY CARD.
- Exhibit P8 TRUE COPY OF THE COMPLAINT SUBMITTED DATED 09.07.2022 BY SRI BIJUMON M.K. TO RESPONDENT NO.4 RETURNING OFFICER.
- Exhibit P8 A TRUE COPY OF THE COMPLAINT DATED 07.07.2022 SUBMITTED BY JESSY JOSHY TO RESPONDENT NO.4 RETURNING OFFICER.
- Exhibit P8 B TRUE COPY OF THE COMPLAINT DATED 09.07.2022 SUBMITTED BY CYRIL JOSEPH TO RESPONDENT NO.4 RETURNING OFFICER.
- Exhibit P8 C TRUE COPY OF THE COMPLAINT DATED 09.07.2022 SUBMITTED BY JOY JOSEPH TO RESPONDENT NO.4 RETURNING OFFICER.
- Exhibit P8 D TRUE COPY OF THE COMPLAINT DATED 09.07.2022 SUBMITTED BY SHAJI P.G. TO RESPONDENT NO.4 RETURNING OFFICER.
- Exhibit P8 E TRUE COPY OF THE COMPLAINT DATED 09.07.2022 SUBMITTED BY BABU K. TO RESPONDENT NO.4 RETURNING OFFICER.
- Exhibit P9 TRUE COPY OF THE COMMUNICATION/REPLY DATED 09.07.2022 ISSUED BY THE RESPONDENT NO.4 TO THOMAS JOHN (MEMBER NO. A 9827).
- Exhibit P10 TRUE COPY OF THE DECLARATION DATED 09.07.2022 ISSUED BY RESPONDENT NO.4
- Exhibit P11 TRUE COPY OF THE COMMUNICATION NO. V1461/2020 (28) DATED 13/07/2022 ISSUED BY THE RETURNING OFFICER, 4TH RESPONDENT

RESPONDENT'S EXHIBITS

- EXHIBIT R2(A) TRUE COPY OF THE JUDGMENT IN WP(C) NO.



- 21220/2018.
- EXHIBIT R2 (B) TRUE COPY OF THE NOTIFICATION DATED
08/01/2021.
- EXHIBIT R6 (C) A TRUE COPY OF THE REPLY DATED 15.12.2020
RECEIVED BY MR. PUTHANKALA FROM 5TH
RESPONDENT.
- EXHIBIT R6 (D) A TRUE COPY OF THE REPLY DATED 15.12.2020
RECEIVED BY MR. JAYAN B. FROM 5TH RESPONDENT.
- EXHIBIT R6 (E) A TRUE COPY OF THE COMPLAINT DATED 17.12.2020
FILED BY MR. JOSE PUTHANKALA BEFORE THE 3RD
RESPONDENT.
- EXHIBIT R6 (F) A TRUE COPY OF THE REPORT NO. V. 1461/20 DATED
23.12.2020 FILED BEFORE THE 3RD RESPONDENT BY
5TH THE RESPONDENT.
- EXHIBIT R6 (G) A TRUE COPY OF THE ORDER NO. E(2) 3601/2020/S.
C. E. C. DATED 08.01.2021 ISSUED BY 3RD
RESPONDENT.
- EXHIBIT R6 (H) A TRUE COPY OF THE JUDGMENT DATED 09.04.2021
IN W.P. (C) NO. 5491/2021.
- EXHIBIT R6 (I) A TRUE COPY OF THE PETITION DATED 06.07.2022
FILED BEFORE THE 5TH RESPONDENT BY MR.
DEEPESH.
- EXHIBIT R7 (A) TRUE COPY OF THE A.R.C 43/2022 ON THE FILE OF
THE CO-OPERATIVE ARBITRATION COURT,
THIRUVANANTHAPURAM
- EXHIBIT R7 (B) TRUE COPY OF THE NOTICE DATED 08/08/2022 OF
THE SECRETARY, CO-OPERATIVE ARBITRATION COURT,
THIRUVANANTHAPURAM INTIMATING THE HEARING DATE
OF THE A.R.C 43/2022