

It may be noticed that a Division Bench of Delhi High Court has directed the Central/State Government to consider the legislation permitting practise in Electropathy system of medicine. The executive order dated 25th October, 2003 was passed in compliance of the said directions. The Central Government was considering the fact whether any legislation is to be enacted in respect of Electropathy system of medicine. The Central Government came to the conclusion that legislation is not required. The said decision of the Central Government whether to legislate or not is, in fact, an order in exercise of executive power of the State contemplated under Article 73 of the Constitution of India.

(37) In view of the aforesaid discussion, none of the judgments referred to by the learned counsel for the petitioners are applicable to the facts of the present case of the proposition that prohibition to practise alternative system of medicine could be only by a law enacted by the Parliament or the State Legislature. Such proposition is not supported either by statutory provisions or by the precedents referred to above.

(38) In view of the above, we do not find any merit in the present writ petitions. the same are dismissed with no order as to costs.

R.N.R.

Before M.M. Kumar & Nirmaljit Kaur, JJ.

BEJUL SOMAIA AND OTHERS,—Petitioners

versus

STATE OF HARYANA AND OTHERS,—Respondents

C.W.P. No. 3648 of 2007

27th August, 2009

Constitution of India, 1950—Art. 226—Haryana Cooperative Societies Act, 1984—Ss. 20 & 131(2)(x)—Haryana Cooperative Societies Rules, 1989—Appendix 'A', Rl. 34—Election to Cooperative Society—Right to vote—S.20 grants every member of a cooperative society one vote in affairs of Society—Rl. 34 of Appendix 'A' restricting right of a member to cast only one vote irrespective of number of executive members to be elected—Whether expression 'one vote in affairs of the society' used in S. 20 means

that a member would have right to cast one single vote in entire affairs of society—Held, no—According to S. 20 a member would have as many votes as number of candidates to be elected—Provisions of Rl. 34 of 1989 Rules held to be ultra vires of S. 131(2)(x) 1984 Act.

Held, that the right to vote conferred on the member of the society does not flow from the power of the State Government conferred by Section 131(2)(x) of the Act. The right to vote of the members has been taken care of by Section 20 of the Act, which specifically provide that every member of co-operative society shall have one vote in affairs of the society, which we have already been interpreted to mean that in a multiple member cooperative society each member would have the right to exercise as many votes as the number of candidates to be elected. Thereafter, the section itself occupies the field and Section 131(2)(x) of the Act only clothe the Government with the power to frame Rules to carry out the purpose of the Act. In other words, the State Government is not empowered to restrict the right as conferred on the members of the society by reducing his right to vote to fraction. Therefore, the portion of rule 34 of Appendix 'A' of the Rules does not flow from authorization given to the State Government by Section 131 (2)(x) of the Act. Accordingly, we hold that the portion of Rule 34 of Appendix 'A' of the Rules is outside the scope of power and competence of the Government as per the provisions of Section 131 (2)(x) of the Act. Hence, we declare the portion of Rule 34 of Appendix 'A' of the Rules, namely "*and each voter shall have right to exercise the vote for a candidate of his choice from amongst all the candidates at the election in a general body meeting of the cooperative society called for the purpose of election*", as ultra vires of Section 131(2)(x) of the Act.

(Para 19)

Arun Kathpalia, Advocate, and Ms. Jaishree Thakur,
Advocate, *for the petitioners.*

Ms. Ritu Bahri DAG, Haryana, for respondent Nos. 1, 2, 6, 7 and
8, *for the revenue-respondent.*

Lokesh Sinhal, Advocate, *for the respondent Nos 3 and 5.*

M.M. KUMAR, J.

(1) This petition filed under Article 226 of the Constitution prays for issuance of a writ in the nature of mandamus declaring the provisions of Section 20 of the Haryana Co-operative Societies Act, 1984 (for brevity, 'the Act') ultra vires of Article 14 of the Constitution. It has also been prayed that Rule 34 of Appendix 'A' of the Haryana Co-operative Societies Rules 1989 (for brevity, 'the Rules') be declared as ultra vires of the Act. A further prayer has also been made for quashing order dated 4th November, 2006 (P-1) issued by respondent No. 3.

(2) Brief facts of the case are that the petitioners are members of the Saraswati Kunj Cooperative House Building Society Ltd, Wazirabad, Gurgaon-respondent No. 5 (for brevity, 'the Society'). It is claimed that the Society has approximately 9,200 members. On 29th November, 2004, on account of certain irregularities, the Assistant Registrar-respondent No. 7 suspended the then Managing Committee of the Society and the Inspector, Cooperative Societies, Gurgaon, was appointed as the Administrator of the Society. On 2nd February, 2005, the then Managing Committee of the Society was removed by respondent No. 7 and a Board of Administrators comprising of Deputy Registrar, Cooperative Societies, Assistant Registrar, Cooperative Societies, Inspector, Co-operative Societies-respondent Nos. 6, 7, 8 and Sub-Divisional Officer (Civil) Gurgaon, was appointed. The Sub-Divisional Officer (Civil) was later on substituted by Dr. Avtar Singh, Commissioner, Gurgaon Division. Shri Suresh Aggarwal-respondent No. 3 was appointed as 'Election Manager-cum-Manager' by the Board of Administrators to manage the affairs of the Society till the time fresh elections are conducted. The elections of the Managing Committee of the Society were fixed for 19th November, 2006 by the Election Manager-cum-Manager-respondent Nos 3 and the Returning Officer-respondent No. 4. In that regard a native was published in the newspaper wherein detailed election programme was given (P-2).

(3) In the meantime, the members of the erstwhile Managing Committee filed C.W.P. No. 17066 of 2006 in this Court challenging their removal and appointment of the Board. Initially, holding of the

elections of the Society was stayed by this Court, however, on 25th January, 2007, the said writ petition was dismissed and it was directed that election be conducted afresh expeditiously so that the process is completed by 31st March, 2007 (P-3). On 11th February another notice was published regarding election programme of the Society, scheduled to be held on 18th March, 2007 (P-4).

(4) On 4th November, 2006, some of the members of the society sought a clarification from the Returning Officer and Assistant Registrar, Co-operative Societies whether members would be permitted to vote for all seven posts or they would be allowed to vote for only one candidate (P-5). On 4th November, 2006 itself respondent No. 3 passed an order clarifying as under :—

“(i) Each voter is to vote in favour of a candidate of his choice out of all the candidates contesting the election in the general meeting of the cooperative society.

(ii) The candidates to be elected who secure the highest valid votes will be considered as elected

i.e.: Total No. of candidates=20

To be elected=7

Those seven who secure highest votes will be elected.

(iii) A voter can exercise only vote and can vote for only one candidate only.” (emphasis added).

(5) A perusal of the above clarification/order dated 4th November, 2006 (P-1) shows that an eligible member could vote only for one candidate whereas seven members were required to be elected to constitute the Managing Committee. The petitioners have claimed that the aforementioned decision denies them their right to effectively participate in the affairs of the Society and the same is based on mis-interpretation of Section 20 of the Act as well as various provisions of the Rules. In that regard some members of the Society sent a letter dated 1st December, 2006 through their counsel to respondent Nos. 1

and 2 (P-6 & P-7). In this backdrop of factual matrix the petitioners have filed the instant petition.

(6) The matter came up for consideration before a Division Bench on 15th March, 2007 and notice of motion was issued. The petitioners had then sought and were granted permission to amend the petition to challenge vires of the provisions of Rule 34 of Appendix 'A' of the Rules. It was further directed that the election be conducted in accordance with clarification/order dated 4th November, 2006 (P-1), however, the result of the election was to be subject to the final decision of the instant petition.

(7) Though two separate written statements have been filed one on behalf of respondent Nos. 1, 2, 6 and 8 and the other by respondent No. 5. However, their contents and averments are almost similar. A preliminary objection has been taken by the respondents that as per provisions of Section 28(2) of the Act the instant petition is not maintainable because once the election process is started the same cannot be postponed and any dispute pertaining to election could be entertained only after completion of election process. On merits, the factual position has not been disputed. However, it has been denied that any direction issued by respondent No. 3 is contrary to Section 20 of the Act. It has also been asserted that the Rules have been framed in consonance with the statute and there is no ambiguity therein.

(8) The petitioners have also filed rejoinder to the written statement of respondent Nos. 1, 2, 6 and 8, wherein other than reiteration of the contents of the writ petition, they have referred to the provisions of the Delhi Co-operative Societies Act, 2003 (for brevity, 'Delhi Act') and the Uttar Pradesh Co-operative Societies Act, 1965 (for brevity, 'U.P. Act') which would be dealt with in the succeeding paras.

(9) Mr. Arun Kathpalia and Miss Jaishree Thakur, learned counsel for the petitioners, have argued that Rule 34 of Appendix 'A' of the Rules is *ultra vires* of Section 20 of the Act, inasmuch as, Section 20 of the Act grants every member of a co-operative society one vote in the affairs of the society. According to learned counsel it would mean that each elected candidate after election would have direct concern

with the affairs of the Society and a member would be entitled to cast one vote for one of the members only. He has maintained that the right of the petitioners to vote in respect of the affair of the Society cannot be restricted by allowing them to vote for one candidate only because other candidates are equally interested and involved in the affairs of Society. He has submitted that Rule 34 of Appendix 'A' of the Rules reduces the aforesaid right to a shadow by restricting the right of a member to cast only one vote irrespective of the number of executive members to be elected. Learned counsel has maintained that if the members/voters are not to have any say in respect of the election of rest of the executive members except the one to be voted, as per the right given to a member then the mandate of Section 20 of the Act would be violated as every member of the Society have been granted the right of one vote in the affairs of the Society and by virtue of Rule 34 he would not be able to elect and vote for more than one member. According to the learned counsel such a construction would be contrary to the intent and purposes of Section 131 of the Act, which clothed the Government with the power to make the rules to carry out the purpose of the Act. According to clause (x) of sub-section (2) of Section 131 of the Act, the Rules may provide for the election and nomination of members of the committee, the appointment or election of officers, the suspension and removal of the members and other officers etc. He has maintained that Rule 34 of Appendix 'A' of the Rules has resulted into violation of the mandate of Section 20 of the Act, which provide that every member of the co-operative society must have one vote in the affairs of the society because election of each candidate aspiring to be the Executive Member would concern the affairs of the society.

(10) He has further contended that the provisions of Rule 41 of Appendix 'A' of the Rules would stand in conflict with Rule 34 of Appendix 'A', which contemplates and provide that members having the right to participate in the election of all vacancies by electing the contestant by show of hand.

(11) His alternative argument is that the interpretation given by authorities could not be intended by the legislature which has framed Section 20 of the Act. In that regard, he has placed reliance on the provisions of the U.P. Act. According to learned counsel, Section 20

of the U.P. Act is *pari-materia* with that of the Act in question. He has placed reliance on Rule 443 (6) of the U.P. Act which postulate that every voter shall have as many votes as there are persons to be elected and no voter could cast more than one vote to any one candidate. Likewise, he has also placed reliance on the provisions of Section 25 of the Delhi Act and argued that the provisions of the Delhi Act are also *pari-materia* to the provisions of Section 20 of the Act in question. Referring to Rules 14 and 16 of the Delhi Co-operative Societies Rules, 1973 (for brevity, 'Delhi Rules'), he has submitted that it also granted as many votes as the number of candidates, to a member who wants to exercise his franchise. On the anvil of the provisions of Section 20 and 25 of the U.P. Act and the Delhi Act, learned counsel has submitted that interpretation of the Haryana Act cannot be any different than the one assumed by the Rules of U.P. and Delhi. Accordingly, he has submitted that in any case his alternative argument should succeed that the provisions of Rule 34 of Appendix 'A' of the Rules must be read down to mean that a member would have as many votes as the number of candidates to be elected.

(12) Ms. Ritu Bahri, learned State counsel has argued that the total tenure of the Executive comprising of seven members is one year and the elections were held in the year 2007. The Executive has over stayed its tenure of one year and the issue is no longer alive before this Court. She has further submitted that this rule in any case is in operation since 1984, which is working to the satisfaction of every member without any difficulty. According to the learned State counsel, Rule 34 of Appendix 'A' of the Rules cannot be declared *ultra vires* of Section 20 of the Act as the word 'one vote' used in Section 20 of the Act has to be given its plain and literal meaning. She has maintained that the concept of reading down would be attracted only if there is any ambiguity in Rule 34 of Appendix 'A' of the Rules read with Section 20 of the Act. According to her, on the plain reading of the said provisions no ambiguity is surfaced which may warrant reading down Rule 34 of Appendix 'A' of the Rules.

(13) Mr. Lokesh Sinhal learned counsel for respondent No. 5, however, has argued that apart from the fact that Rule 34 of Appendix

'A' of the Rules is consistent with the provisions of Section 20 of the Act, the stage for examining the validity of the Rule is over. According to the learned counsel no cause of action survives after the election are over and the members have even completed their tenure of one year. He has submitted that the petitioners are assuming hypothetically that there could be a case that out of seven, election may result in electing only two. He has maintained that if such an eventuality would arise then there may be a cause to the petitioner to approach this Court.

(14) It would first be necessary to examine the provisions of Section 20 of the Act, which reads thus :—

“20. **Vote of members**—Every member of a co-operative society shall have one vote in affairs of the society:

Provided that :—

- (a) in the case of equality of votes, the chairman shall have a second or casting vote;
- (b) an associate member shall not have the right to vote;
- (c) where the Government is a member of the co-operative society, each person nominated by the Government on the committee shall have one vote;
- (d) a member in default of any sum due from him to the society shall not be eligible to exercise his right to vote;

Explanation :—For the purpose of this clause, the expression, 'member' does not include a society.

- (e) a society brought under the process of winding up or in liquidation shall not be eligible to exercise its right of vote.”

(15) The first question in the facts and circumstances of the case, which would emerge for determination of this Court, is whether expression '*one vote in affairs of the society*' used in Section 20 of the Act would mean literally that a member would have right to cast

one single vote in the whole affairs of the society or he would have as many votes as the number of candidates contesting the election. The expression 'affairs' has been defined in Oxford Dictionary as '*business, concern, interest, matter; 2. circumstance, episode, event, happening, incident, occurrence, thing; 3. amour.....*'. The expression has also been defined in the Webster's Encyclopedic Unabridged Dictionary to mean '*1. anything done or to be done; anything requiring action or effort; business; concern; an affair of great importance. 2. affairs, matters of commercial or public interest or concern; the transactions of public or private business..... 3. an event or a performance; a particular action, operation, or proceeding: When did this affair happen.....5. a private or personal concern; a special function, business, or duty: That is none of your affair*'. Therefore, the expression 'affair' cannot be interpreted to mean a fraction of affairs. It has to be given its full meaning. On a fair and reasonable construction it would have to mean that a member would have his say in every business, interest, event and happening of the society. The minimum required to be done would be to allow him to speak his mind through the election by polling vote not to a fraction of the affairs of the society but in all its aspects embracing business concern, interest and happening of the society. Therefore, in every business and matter concerning society or the affairs of the society, every member of the Cooperative Society would be deemed to have granted one vote. Chapter IV of the Act deals various aspects of the Cooperative Societies including its management through summoning of meetings, nomination and co-option on committee, election of office bearers, appointment of Managing Directors etc. The extreme literal meaning to be given to the expression 'one vote' is that a member of cooperative society would have only one vote where it is election of the office bearer or any other election then it would obviously mean that the member could vote only once exercising one vote which would be an absurd interpretation in law. Could it be then said that in the election of multi-member managing committee, the voting members who are to elect them, would have only one vote in their election? If such an interpretation is given to the expression 'one vote in the affairs of the society' then a member of the cooperative society would not be able to voice his concern as his vote would be reduced to a fraction of voice. If the managing committee is consisted of say

ten members then one vote given by a member of the society would have the value of 1/10th of the vote. Therefore, the provision cannot be interpreted to mean that a member of the society would have one vote for only one of the member in the multiple member Managing Committee. We cannot impute such an object to the legislation while interpreting Section 20 of the Act. We are further of the view that if such a view is taken then it would be antithetic to democratic process because a member is a member of the society and not a member only for a part of it. His voice must echo in the election or rejection of every member of the managing committee.

16 Once the aforesaid meaning and the object of Section 20 of the Act is clear then the question would be the nature of power of the Government to frame Rules under Section 13(1) read with clause (x) of sub-section (2) of Section 131 of the Act. The relevant provision of Section 131(1) and (2)(x) of the Act are extracted below for ready reference:

“131. **Power to make rules**—(1) The Government may, for any co-operative society class of such societies make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(i) to (ix) xxx xxx xxx

(x) the election and nomination of members of committee, the appointment or election of officers and the suspension and removal of the members and other officers and the powers to be exercised and the duties to be performed by the committee and other officers;”

(17) In pursuance of power conferred by clause (x) of Section 131(2) of the Act, the Haryana Government has framed the Rules. Rule 3(ii) of the Rules talks of ‘Co-operative Principles’ contemplating, *inter aila*, democratic control over the affairs of the society. Rule 25 of the Rules, which has specifically been framed in pursuance of power

conferred under Section 131(2)(x) of the Act, provide that the members of the committee of a co-operative society are required to be elected in accordance with the provisions contained in Appendix 'A', which in turn contains the Rules for election of the members of the society. Rule 34 of Appendix 'A' of the Rules is the subject matter of controversy in the instant petition and it would be necessary to read the same, which is as under :—

“34. Fixation of the date for election and voting—(1)

Notwithstanding anything contained in the bye-laws of a co-operative society no zones for election to the committee of a primary co-operative society shall be constituted. The election shall be held by secret ballot and each voter shall have right to exercise the vote for a candidate of his choice from amongst all the candidates at the election in a general body meeting of the co-operative society called for the purpose of election.

(2) The Manager of every Primary Co-operative Society shall at least sixty days before the expiration of the tenure of the committee, intimate to the “Assistant Registrar of Co-operative Society” hereinafter called as the “Assistant Registrar” in whose jurisdiction the co-operative society concerned falls, the date of which the tenure of the committee expires.

(3) The election shall be held on the date fixed by the Assistant Registrar. In case the Manager fails to intimate the date as required under sub-para (2), the Assistant Registrar shall fix the date of election within a week when it comes to notice that the tenure of the committee has expired or likely to expire. The date of election fixed by the Assistant Registrar shall be communicated to the Manager of the Primary Co-operative Society concerned.

(4) The election shall be conducted by the Returning Officer.” (emphasis added).

(18) The dispute revolves around the italicised portion Rule 34(i) of Appendix 'A' of the Rules. The argument raised is that the power of the rule making authority under clause (x) of sub-section (2)

of Section 131 of the Act extends to frame rules providing for on or any of the matters specified therein. Clause (x) specified that the rules may provide for election and nomination of members of committee; the appointment or election of officers; the suspension and removal of the members; other officers and the powers to be exercised and the duties to be performed by the committee and other officers. The question would be whether the rule could provide for the right to exercise the vote for a candidate to elect a member of his choice. If it is presumed that the power to provide for exercise of vote flows from clause (x) of sub-section (2) of Section 131 of the Act then could the rule making authority restrict the right of a candidate to exercise only one vote for one candidate of his choice from amongst all the candidates at the election in a general body meeting of the cooperative society.

(19) The right to vote conferred on the member of the society does not flow from the power of the State Government conferred by Section 131(2)(x) of the Act. The right to vote of the members has been taken care of by Section 20 of the Act, which specifically provide that every member of cooperative society shall have one vote in affairs of the society, which we have already been interpreted to mean that in a multiple member cooperative society each member would have the right to exercise as many votes as the number of candidates to be elected. Therefore, the section itself occupies the field and Section 131(2)(x) of the Act only clothe the Government with the power to frame Rules to carry out the purpose of the Act. In other words, the State Government is not empowered to restrict the right as conferred on the members of the society by reducing his right to vote to fraction. Therefore, we are of the view that the italicised portion of Rule 34 of Appendix 'A' of the Rules does not flow from authorisation given to the State Government by Section 131(2)(x) of the Act. Accordingly, we hold that the italicised portion of Rule 34 of Appendix 'A' of the Rules is outside the scope of power and competence of the Government as per the provisions of Section 131(2)(x) of the Act. Hence, we declare the portion of Rule 34 of Appendix 'A' of the Rules, namely, "*and each voter shall have right to exercise the vote for a candidate of his choice from amongst all the candidates at the election in a general body meeting of the co-operative society called for the purpose of election*", as ultra vires of Section 131(2)(x) of the Act.

(20) The provisions of Section 20 of the Haryana Act are *pari materia* to similar Acts enacted in the State of U.P. and Delhi. In the

State of U.P., the State Government framed Rule 443(6) of the Uttar Pradesh Co-operative Societies Rules, 1968, for the purpose of achieving the object of the U.P. Act wherein the interpretation given is that a member would have as many votes as the number of candidates are to be elected. Likewise, Section 25 of the Delhi Act is also *pari materia* of Section 20 of the Haryana Act. There also similar interpretation has been adopted by the Government as against the one adopted by the Haryana Government. Therefore, some additional support is available to interpret Section 20 of the Act and Rule 34 of Appendix 'A' of the Rules.

(21) The argument of Ms. Ritu Bahri, learned State counsel, that the elections were held in the year 2007 and the tenure of the Managing Committee has expired and the issue is no longer alive, has failed to impress us because to answer the question raised in this petition, would not be merely academic, as suggested by Ms. Bahri. It is conceded that the tenure of the earlier Managing Committee has come to an end and the election is likely to be held again. It is well known principle of public policy that multiplicity of litigation must be avoided. There is no suggestion from the State Government to have a re-look on Rule 34 of Appendix 'A' of the Rules and, therefore, the issue is very much alive before this Court as the election process can be initiated any time. It has specifically stated through counsel for the respondents that the society is waiting for the disposal of the instant petition and the elections are likely to be held in accordance with the opinion expressed in this judgment. Therefore, we are not impressed with the argument that the issue is rendered academic and should not be adjudicated upon.

(22) For the reasons aforementioned, the offending portion of Rule 34 of Appendix 'A' of the Rules is declared *ultra vires* of Section 131(2)(x) of the Act. We further hold that according to Section 20 of the Act, a member would have as many votes as number of candidates to be elected. The next elections of the Society must be held in accordance with law.

(23) The writ petition stands disposed of in the above terms.

R.N.R.