

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

WEDNESDAY, THE 7TH DAY OF SEPTEMBER 2016/16TH BHADRA, 1938

WP(C).No. 26608 of 2016 (A)

PETITIONER(S):

THE MANAGING COMMITTEE,
THIRUVALLA EAST CO-OPERATIVE BANK
LIMITED NO. 3260, ERAVIPEROOR,
PATHANAMTHITTA DISTRICT,
REPRESENTED BY ITS PRESIDENT,
K. JAYAVARMA.

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENT(S):

1. THE STATE CO-OPERATIVE ELECTION COMMISSION,
COBANK TOWERS, VIKAS BHAVAN P.O.,
THIRUVANANTHAPURAM-695 022.
2. THE JOINT REGISTRAR OF CO-OPERATIVE,
SOCIETIES (GENERAL), PATHANAMTHITTA-689 645.
3. GIJI GEORGE,
MEPRATH CHARIVUKALAYIL,
KOZHIMALA P.O.,
VALLAMKULAM, TIRUVALLA,
PATHANAMTHITTA DISTRICT-689 645.

R1 & R2 BY SPECIAL GOVERNMENT PLEADER
SRI.K.S.MOHAMAD HASHIM
R3 BY ADVS. SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 31-08-2016 THE COURT ON 07-09-2016, DELIVERED THE
FOLLOWING:

msv/

WP(C) .No. 26608 of 2016 (A)

APPENDIX

PETITIONER(S) ' EXHIBITS

- P1 TRUE COPY OF THE COMPLAINT DATED 27/07/2016 ISSUED BY THE
3RD RESPONDENT
- P2 TRUE COPY OF THE COMMUNICATION DATED 28/07/2016 GIVEN BY
THE 1ST RESPONDENT
- P3 TRUE COPY OF THE REPLY DATED 03/08/2016 GIVEN BY THE BANK
TO THE 2ND RESPONDENT
- P4 TRUE COPY OF THE ORDER PASSED BY THE 1ST RESPONDENT
DATED 06/08/2016

RESPONDENT(S) ' EXHIBITS:

- EXT.R3(a) : TRUE COPY OF THE COMPLAINT FILED BY THE 3RD RESPONDENT
BEFORE THE JOINT REGISTRAR (GENERAL) OF CO-OPERATIVE
SOCIETIES, PATHANAMTHITTA DTD.7.6.2016.
- EXT.R3(b) : TRUE COPY OF THE REPORT DTD.19.7.2016 SUBMITTED BY THE
ASSISTANT REGISTRAR (GENERAL), THIRUVALLA TO THE JOINT
REGISTRAR (GENERAL) OF CO-OPERATIVE SOCEITIES,
PATHANAMTHITTA.

//TRUE COPY//

P.S.TO JUDGE

Msv/

SHAJI P. CHALY, J.

W.P.(C) No.26608 of 2016

Dated this the 7th day of September, 2016

JUDGMENT

This writ petition is filed by the Managing Committee of the Thiruvalla East Co-operative Bank Ltd. No.3260, seeking to quash Ext.P4 order by which, 1st respondent rejected the request of the Bank to conduct election on 10.09.2016, and for other related reliefs. Material facts for the disposal of the writ petition are as follows:

2. The term of the present Managing Committee of the Bank will expire on 11.11.2016 on completion of 5 years tenure as provided in Sec.28 of the Kerala Co-operative Societies Act, 1969, [hereinafter called 'the Act'] and the bye-laws of the Bank. Therefore, the Managing Committee of the Bank as per a resolution dated 08.07.2016 resolved to conduct election to the Managing Committee by scheduling the poll, if required, on 10.09.2016. While elections were notified in 2009, there were clashes instigated at the instance of rivals, and damage was caused to the properties of the school where election was held. Therefore, the Manager of the local school,

where election proposed to be held, had expressed his unwillingness to spare the institution for conducting election.

3. That apart, it is also stated that in view of the ensuing Onam holidays commencing from 10.09.2016, manager of one of the schools has consented to provide the school premises on the said date. It is the non-availability of polling station, persuaded the Committee to adopt a resolution for holding the election during Onam holidays.

4. It is also urged, the resolution thus adopted by the petitioner was forwarded to the 1st respondent through the office of the Assistant Registrar (General), Thiruvalla and the Joint Registrar of Co-operative Societies (General), Pathanamthitta. The Assistant Registrar and the Joint Registrar recommended holding of the election as resolved by the Managing Committee of the Bank, and forwarded the same to 1st respondent, is the contention. On realizing recommendation made by the petitioner under the Act, 3rd respondent gave a complaint to the 1st respondent alleging that, in the event of conducting the election as resolved by the Bank, same will be in violation of Articles 243ZJ, Sec.28 of the Act and Rule 35A(1) of the Kerala Co-operative Societies

Rules, 1969 [hereinafter called 'the Rules']. According to the 3rd respondent, if elections are held, the newly elected committee will be losing two months tenure in the office. A copy of the complaint is produced as Ext.P1. On submitting the complaint, the 1st respondent, according to the petitioner, on the next day itself sought comments of the 2nd respondent as well as the comments of the Bank, evident from Ext.P2. On receipt of Ext.P2, Bank submitted a detailed reply explaining the factual and legal position as well as the precedents on the issue, evident from Ext.P3. However, 1st respondent has now passed Ext.P4 order rejecting the resolution passed by the Committee on the ground that the newly elected Committee will not have 5 years of office. It is also held that the existing committee may be denied of 5 years in office which is not only in violation of the laws but also against the bye-laws of the Bank. According to the petitioner, Ext.P1 complaint is politically motivated and the order passed by the 1st respondent is also actuated by *malafide* considerations. Therefore, the rejection of the resolution as per Ext.P4 cannot be sustained under law. It is in this background, this writ petition is filed.

5. Third respondent has filed a counter affidavit disputing the allegations and claims and demands made by the petitioner. It is also stated that, the last election to the Managing Committee of the bank was held on 12.11.2011 and the 5 year term of the Managing Committee in accordance with Sec.28 of the Act will expire only on 11.11.2016. By the 97th amendment to the Constitution of India, Part IX B was introduced dealing with aspects relating to Co-operative Societies and contends, by virtue of the provisions of Part IX B, the election is to be conducted with the object of ensuring that, the newly elected committee assumes office immediately on expiry of the term of office of the members of the outgoing committee.

6. It is also submitted, attempt is being made by the petitioner to conduct election on an early date with the deliberate intention of thwarting the various enquiries being conducted against the misdeeds of the Managing Committee and the consequential action the committee would have to face on the basis of such enquiries. It is further stated, the last general body meeting of the Bank was held on 29.09.2015, without complying with the mandatory requirements under

Rule 8A of the Rules. The general body meeting was convened without giving proper notice to the members, thereby ensuring, only members supporting the present Managing Committee attended the meeting. Even though very few members only attended the general body meeting, attendance register of the general body and the minutes were subsequently forged by including more members with the intention of enhancing the number of active members in accordance with the requirement under Secs.16A and 19A, as well as Rule 18A of the Act and the Rules respectively. Consequent to the falsification and fabrication of records in that manner, the attendance of the general body meeting is shown to be 749 as against the attendance of only around 100 members in the past four general body meetings. According to the 3rd respondent, in the light of the apparent and deliberate forgery and fabrication by the petitioner, with the *malafide* intention of enlarging the number of active members supporting them, so as to come back to power by deceitful means, has filed a complaint before the 2nd respondent, evident from Ext.R3(a).

7. It is also submitted by the 3rd respondent, 2nd respondent has directed the Assistant Registrar (General), Thiruvalla to conduct an enquiry into the allegations in the complaint and the said authority has submitted a report that, the annual general body meeting convened on 29.09.2015 was without proper notice and hence invalid. It is also stated, accordingly a recommendation is made after issuing show cause notice to the Bank, the annual general body meeting would be declared as invalid and the resolutions adopted in the meeting could be rescinded exercising the power under Rule 176 of the Rules, evident from Ext.R3(b) report. That apart, it is also stated, consequent to Ext.R3(b) report, 2nd respondent had given notice to the Bank and had sought explanation.

8. Heard learned counsel for the petitioner, learned Special Government Pleader and the learned counsel appearing for the 3rd respondent, perused the documents on record and the pleadings put forth by the respective parties.

9. In my view, the material question put forth for consideration is with respect to the power of the 1st respondent under the Act and Rules to reject a resolution passed by the Bank to conduct election on 10.09.2016, on the ground,

election is requested to be conducted much ahead of the statutory limit of 60 days, and therefore violative of Rule 35A. According to the 1st respondent, Sec.28B deals with the role of the State Co-operative Election Commission. Sub-section (1) of Sec.28 provides that the Committee shall be in office for a period of 5 years in accordance with the bye-laws. Further, explanation to Sec.28(1) states, notwithstanding anything contained in the bye-laws, for the purpose of calculating the term of the Committee, 5 years from the date of election will be taken to be the term of the Committee. Therefore, according to the 1st respondent, the elected committee is to continue in office for a period of 5 years and the successive committee is also entitled to continue in the office for a period of 5 years. According to the 1st respondent, the contention advanced by the petitioner that the Election Commission is statutorily obliged to notify the election in terms of the resolution adopted by the Committee is not in accordance with Sec.28B of the Act and Rule 35B of the Rules, which thus means, 1st respondent is vested with powers to reject a resolution passed by the Managing Committee on sufficient reasons in accordance with the power accorded to the 1st

respondent under Sec.28B and Rule 35B of the Act and the Rules. It is also found that, in terms of Rule 35A of the Rules, the Managing Committee is not entitled to pass a resolution to conduct the election much ahead of the statutory limit of 60 days and further that a few days prior to the said date is reasonable. But in the case at hand, the Committee met and passed resolution more than 4 months before the expiry of the term of the existing committee, which is not in accordance with law, is the view expressed by the 1st respondent.

10. Learned counsel for the petitioner contended, 1st respondent is bound under law to conduct the election in terms of the resolution passed by the Managing Committee, and invited my attention to the provisions of Rule 35A of the Rules. Rule 35A and sub-rules (1) to (3) of the said Rule read thus:

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

(1) The committee shall meet at least 60 days prior to the date of expiration of its term and pass a resolution fixing the date, time and place for the conduct of the election to the new committee. A copy of such resolution shall be sent to the State Co-operative Election Commission by registered post within a week, through the Registrar.

Explanation.- The expression "Registrar" means (a) in the case of societies having State wide jurisdiction or having jurisdiction over more than one district, the Registrar of Co-operative Societies, (b) in the case of societies where the jurisdiction of which is confined to one district and in the case of Primary Societies, the jurisdiction of which exceeds one circle, the Joint Registrar of the district concerned and (c) in the case of Primary Societies the jurisdiction of which does not exceed one circle, the Assistant Registrar of the circle concerned.

(2) The Co-operative Election Commission may on receipt of such a resolution appoint Returning Officer from among the officers of the concerned Administrative Department for the conduct of election. The Returning Officer so appointed may be given such remuneration as may be fixed by Government from time to time. The Returning Officer shall take necessary steps for the conduct of election and the Committee shall render all necessary assistance to the returning officer for the conduct of election to the committee.

(3) The State Election Commission shall notify the details of election to the committee of the society, in two vernacular dailies having wide circulation in the area. A copy of the information shall also be affixed on the Notice Board of the head office and the branches, if any, of the Society. The notification shall contain the following particulars:-

(i) The number of vacancies to be filled up by election;

(ii) Any area or constituency that is specified in the bye-laws from which members are to be elected;

(iii) The date on which and the place at which the preliminary notification of the list of members qualified to vote as the voter shall be published;

(iv) The dates between which objections shall be filed and the date on which, the hours between which, and the place at which, the objections, if any, shall be scrutinized;

(v) The date on which, and the place at which, the final voters list shall be published;

(vi) The date on which, the place at which and hours between which nomination paper shall be filed by the contesting candidate or by his proposer or seconder;

(vii) The date and hour when the nomination paper will be scrutinized;

(viii) The date on which, the place at which and the hours between which, polling if necessary will take place”.

11. Therefore, according to the learned counsel, when the Managing Committee passes a resolution, by incorporating sufficient details in terms of the sub-rules, at least 60 days prior to the date of expiration of its term, and forwarded through the respective statutory authority, then the 1st respondent is bound to accept the same and conduct the election accordingly. Learned counsel has also invited my attention to sub-rule (2), which according to the counsel, is a powerful indicator to show that on receipt of the resolution, 1st respondent shall proceed to appoint the Returning Officer from among the officers of the concerned Administrative Department for the conduct of election. Further, learned counsel has invited my attention to sub-rule (3) and contended that the State Election Commission shall notify the details of

the election to the Committee of the Society in two vernacular dailies having wide circulation in the area and carry out the procedure contemplated thereunder with sufficient details as per the respective sub-clauses. Learned counsel also invited my attention to sub-rule (4), where, the Chief Executive of the concerned society is to prepare, update the list as per the Rules and submit voters list duly approved by the Committee to the Electoral Officer and render all assistance required by the Electoral Officer, who in turn will take steps to publish the draft voters list etc. etc. Therefore, contention of the learned counsel is, under sub-rule (1), what is intended is only a minimum period of 60 days for meeting of the Committee prior to the expiration of its term, which thus means, the existing committee is vested with powers to pass a resolution and request to conduct the election on an early date, which can in no way be interfered with by the 1st respondent. That apart, it is contended, there is no power conferred on the Election Commission to interfere with the resolution passed by the Managing Committee in any manner, save, otherwise than on violation of the mandatory requirements contemplated under the said Rules.

12. Learned counsel has also invited my attention to Sec.28B of the Act dealing with appointment of the Election Commission and contended, no power is vested with the 1st respondent to reject a resolution passed by the Managing Committee.

13. Learned counsel, in that regard, has invited my attention to the judgment of this Court in '**Sudevan v. Joint Registrar**' [1992 (2) KLT 18], which dealt with the powers of the Registrar of Co-operative Societies who was the authority to conduct the election in accordance with the law existed then, had occasion to consider a similar question and held, there is no power vested with the Election Commission to reject a resolution passed by a Managing Committee of the society.

14. Learned counsel has also invited my attention to the judgment of this Court in '**Abu M.K. v. State Co-operative Election Commission and others**' [ILR 2008 (3) Ker. 392 : 2008 (3) KHC 419], to canvass the proposition, the wisdom to fix the date for the election is of the Committee, and specifically invited my attention to paragraphs 4, 5 and 6 of the said judgment. Paragraph 5 of the said judgment assumes

importance in the factual circumstances, which read thus:

"5. Section 28B of the Kerala Co-operative Societies Act, 1969, the "Act", for short, provides for the constitution of the State Co-operative Election Commission for the superintendence, directions and control of the conduct of election to the committee of the society. The election in question is governed by Rule 35A of the Kerala Co-operative Societies Rules, 1969, hereinafter referred to as the "Rules". The Rule provides the manner in which the election to the members of the committee shall be conducted by the State Co-operative Election Commission. Sub-rule (1) thereof provides, among other things, that the committee shall meet at least 60 days prior to the date of expiration of the term and pass the resolution fixing the date, time and place for the conduct of the election to the new committee. Rule 35(1) enjoins and empowers the committee to fix the date for the conduct of the election. Adverting to Section 28(1) of the Act, it can be noticed that the committee is constituted by the general body of the society for the purpose of being entrusted with the management on the affairs of the society. It is therefore explicitly clear that the democratic right of the general body of a co-operative society to elect its committee is exercised by having the date of election fixed by the committee, which is in office by a democratic process."

15. Learned counsel also invited my attention to the judgment of this Court in '**Suresh Kumar D. v. Kerala State Co-operative Election Commission and others**' [ILR 2013 (1) Ker. 565], wherein the procedure under Rule 35A(1) was dealt with, and held, the Committee is competent to fix the date of election and unless there is violation of any statutory provisions, the date fixed by the Committee has to be approved. So also, learned counsel has invited my attention to the judgment of the Apex Court in '**State of U.P. v. C.O.D Chheoki Employees' Co-operative Society Ltd. and others**' [(1997) 3 SCC 681], where it is held, there is no fundamental right to a member of a Co-operative society for an independent right qua the society and he cannot assail Constitutionality of the Act, Rules and bye-laws. Therefore, learned counsel contends that going by the provisions of the Act and the Rules, and the law laid down by this Court in the judgments cited *supra*, the impugned order passed by the 1st respondent suffers from vice of arbitrariness and illegality and warrants interference of this Court.

16. That apart, yet another contention advanced by the learned counsel is that, the election to the Bank in question

has a checkered history and whenever election was conducted, interference of this Court was sought for, and produced interim order dated 23.10.2009 in W.P.(C) Nos.29627 & 30106 of 2009, whereby this Court directed to conduct the election by appointing an Advocate Commissioner to oversee the election proceedings. According to learned counsel, even though a writ appeal was preferred against the said order, it ultimately culminated in contempt proceedings against the Election Commission and the officers of the Co-operative Department.

17. On the other hand, learned Special Government Pleader appearing for respondents 1 and 2 submitted that Ext.P4 order passed by the 1st respondent is in accordance with law. To canvass the proposition that the Election Commission is vested with powers to reject a resolution passed by the Executive Committee, he invited my attention to Sec.28B(1) of the Act, which read thus:

"28B. State Co-operative Election Commission.- (1) Notwithstanding anything contained in this Act or in the rules, the Government shall by notification in the gazette, constitute a State Co-operative Election Commission for the superintendence, direction and control of the preparation of electoral rolls and for the conduct of all elections to co-operative societies including election to the President/Vice President and Representative General Body".

Therefore, it is the contention of the Special Government Pleader that, by virtue of the powers conferred thereunder on the 1st respondent for the superintendence, direction and control of the preparation of the electoral roll and for the conduct of all elections to the Co-operative Societies, 1st respondent is vested with ample power to reject a resolution if the 1st respondent finds that same is not in accordance with law.

18. So also, learned Special Government Pleader contended that, the period of 60 days prior to the expiration of the period of the Committee means, it should be within a reasonable period ahead of 60 days. However, in this case, the Committee has passed a resolution on 08.07.2016, to conduct the election on 10.09.2016, which is much ahead of expiry of the period of the Committee. Therefore, the Committee will not be in office for the full term of 5 years and so also the newly elected committee will not be in a position to hold the office for a period of 5 years in view of the mandatory provision contained under Sec.28(1) of the Act, since the explanation makes it explicitly clear that the term of the newly elected committee will be 5 years from the date of election.

Learned Special Government Pleader also submitted, since the term of the Committee is yet to be completed, if the present committee does not vacate office, a newly elected committee cannot be in office for a period of 5 years, consequent to the mandatory requirement contained under explanation to Sec.28 of the Act.

19. Learned counsel for the 3rd respondent has advanced arguments fully in support of the arguments put forth by the learned Special Government Pleader and in support of Ext.P4 order passed by the 1st respondent. Learned counsel has contended that as per the provisions of Part IX B of the Constitution of India, the issue with respect to the administration of the Co-operative Societies are dealt with, and accordingly as per the mandate of the Constitutional provisions, the Administrative Committee is to function in terms of the stipulations contained thereunder. However, I am reminded of the judgment of the Full Bench of this Court in **'Pradeep U.R. and another v. Kerala State Co-operative Election Commission, Thiruvananthapuram and others'** [2016 (4) KHC 93], following the judgment of the Gujarat High Court, held, the provisions of Part IX B of the Constitution are

unconstitutional. Therefore, the said provisions may not have any bearing at all. Yet another circumstance pointed out by learned counsel is that the general body meeting of the Bank conducted by the Managing committee is recommended to be rescinded as per Ext.R3(b) order consequent to Ext.R3(a) complaint filed by the 3rd respondent and ordering an enquiry by the 2nd respondent in terms of the same. According to the counsel, the election cannot be conducted in view of Ext.R3(b). In my considered opinion, the said subject matter is also beyond the scope of consideration in this writ petition, since the sole issue put forth by the petitioner is in respect of the power of the 1st respondent to pass an order rejecting the resolution of the society requiring to conduct election on a particular date. However, learned counsel has invited my attention to Rule 35A and canvassed the proposition, not much earlier than 60 days, a committee is not vested with authority to pass a resolution and seek to conduct the election. Learned counsel has pointed out two aspects with respect to the Act and Rules; (1) a committee is put in office for a period of 5 years, so the existing committee is to continue in office for a period of 5 years by virtue of Sec.28 of the Act. (2) If after

the election, the committee does not vacate the office, then the newly elected committee will not get a full term of 5 years in view of the mandatory requirement contained under Sec.28 of the Act. Therefore, it is the contention of the learned counsel, the decision taken by the 1st respondent as per the impugned order is in accordance with law, requiring any manner of interference. So also, learned counsel has pointed out that, by virtue of the powers conferred under Sec.28B of the Act and Rule 35A of the Rules, the 1st respondent is not expected to be a mute spectator, to the steps taken by the committee to conduct the election, and if the resolution is in violation of the provisions of the Act and the Rules, 1st respondent is vested with sufficient powers to correct the same in accordance with law.

20. Learned counsel has invited my attention to the judgment of this court in '**Sugathan v. Joint Registrar**' [1993 (1) KLT 927], where this Court had occasion to consider the legality of the resolution to hold elections passed 180 days earlier to the date of expiry of the term of the existing committee prior to the introduction of Rule 35A of the Act, and held, the resolution passed far earlier than 60 days of the date

of expiration of term of the committee is not a resolution in accordance with Rule 35(1) of the Rules. Learned counsel has also pointed out, the term "at least" contained under Rule 35 (1) was considered and held that "at least 60 days" means, between the date of resolution and the date of expiry of the term and the said words do not mean that such a resolution could be passed 180 days in advance of the date of expiry of the term of the committee. It is also contended, the term "least" was interpreted by this Court as a superlative of "little", meaning thereby the smallest, either in size or degree. Therefore, it is the contention of the counsel that the resolution passed by the 1st respondent to conduct the election much ahead of expiry of the term of the committee is with ulterior motive to ensure that the election is conducted at their whims and fancies and make attempt to manage the election so as to have members of their choice in the Managing Committee.

21. Taking into account the respective submissions made across the Bar, I am of the considered opinion that the question revolves round Rule 35A of the Rules and Secs.28 and 28B of the Act. It is true that the committee is to pass a

resolution at least 60 days prior to the expiry of the term of the committee to conduct election. Here is a case where the committee has passed a resolution on 08.07.2016, true, 4 months before the expiry of the term of the Committee, to conduct the election by holding the polling, if required, on 10.09.2016. So, what is important under Rule 35A is the date on which the election is to be scheduled. The date for election scheduled is just ahead of 60 days of the expiry of the term of the Managing Committee. It is not the date of resolution that is to be provided importance, because the date of passing of resolution has no bearing for the continuance of the existing committee and the induction of the newly elected committee. The said two aspects with respect to vacating the office by the existing committee and assumption of office by the newly elected committee is only after conduct of the election and not by passing a resolution by the existing Managing Committee. That apart, apprehension expressed by the 1st respondent as well as the respective counsel appearing for the respondents may not have much bearing with respect to the term of the newly elected committee for a full period of 5 years, because Rule 38 of the Rules takes care of the said situation, which

read thus:

"38. Constitution of committee, resignation and removal from membership.- (1) *When a committee is constituted under Section 28, the Returning Officer shall inform the details of elections to the State Co-operative Election Commission, forthwith. The Election Commission shall appoint a Presiding Officer to elect the President and other office bearers. The Presiding Officer shall convene the committee within seven days of election to the committee or before the expiry of the term of existing committee, whichever is earlier, and the committee so convened shall elect its president and other office bearers as per Rule 43, and also by resolution authorise the officers concerned to take charge from the outgoing office bearers.*

(2)	x	x	x	x	x	x	x	x
(3)	x	x	x	x	x	x	x	x
(4)	x	x	x	x	x	x	x	x
(5)	x	x	x	x	x	x	x	x
(6)	x	x	x	x	x	x	x	x".

22. On a reading of Rule 38, it is distinct and clear, the Presiding Officer shall convene the meeting within 7 days of election to the committee, or before the expiry of the term of the existing committee, whichever is earlier, and the said committee shall elect its President and office bearers in accordance with the Rules, and thereby authorise the officers concerned to take charge from the outgoing office bearers. Therefore, it can be seen that there is no much force in the said contention advanced by learned counsel for the respondents. Moreover, the judgment rendered by this Court

in '**Sugathan**' *supra*, was dealing with circumstances contemplated under the Rules then in force and it dealt with the powers of the Registrar, then empowered to conduct election, which is to be honoured by the 1st respondent. The State Co-operative Election Commission came into being by virtue of Sec.28B of the Act only with effect from 07.03.2001.

23. In my view, the judgments rendered by this court cited *supra* in '**Abu M.K.**' and '**Suresh Kumar D.**', where it held, the committee is vested with enough powers to pass a resolution sufficiently earlier to the term of expiry of the committee. Moreover, it was the decision of a democratically elected body to surrender office on an earlier date, thus enabling the incoming committee to take over the management and have its full term. Therefore, any manner of interference with the said democratic political will, is not expected from an executive authority. Yet another aspect, in my considered opinion is, the power conferred on the 1st respondent under Sec.28B of the Act is streamlined under Rule 35A of the Rules, and therefore, nothing more and nothing less. Power is specific thus disabling the 1st respondent to pass Ext.P4 and reject the resolution. True, any aggrieved person

may have a right to challenge any action in accordance with law, but the said right cannot be intertwined with the power of the 1st respondent conferred under Rule 35A of the Rules.

24. In '**Abu M.K.**' *supra*, this Court had occasion to consider the law laid down in '**Sugathan's**' case *supra*, and held that it is to be applied and understood in the context in which its application is called for, on the facts and in the circumstances of a given case. Moreover, in the said case, the consideration was with respect to drawing of resolution 180 days prior to the expiry of the Committee. Such a factual scenario is not available in the case at hand. Therefore, I find force in the contention advanced by learned counsel for the petitioner that the Election Commission do not have power to reject a resolution passed by the committee ahead of 60 days before expiry of the term of the committee. Taking into account the cumulative circumstances and reading of the provisions of the Act and Rules and the law laid down by this Court in the aforesaid two judgments, I am of the considered opinion that the 1st respondent did not have power to interfere with the resolution proposed by the petitioner Managing Committee.

23. Reckoning the facts and circumstances, I hold that Ext.P4 order passed by the 1st respondent is illegal and arbitrary and therefore it is quashed. However, the resolution so passed by the petitioner to conduct the election on 10.09.2016 may not have much bearing now, since there is no sufficient time left with the 1st respondent to carry on the proceedings contemplated under Rule 35A of the Rules, and in my considered opinion, at least 30 days time is required to conduct the election. Therefore, I direct the 1st respondent to take steps to conduct the election in terms of the resolution passed by the petitioner on or before 10.10.2016. It is made clear, 1st respondent will be at liberty to issue necessary directions in accordance with law and in terms of the directions contained above.

The writ petition is allowed accordingly.

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.S. to Judge

St/-
02.09.2016