2026 INSC 347

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4352 OF 2026
[Arising out of SLP (C) No. 38579 of 2025]

RAM CHANDRA CHOUDHARY & ORS … APPELLANT(S)

VERSUS

ROOP NAGAR DUGDH UTPADAK SAHAKARI SAMITI LIMITED AND OTHERS … RESPONDENT(S)

J U D G M E N T

R. MAHADEVAN, J.

Leave granted.

2. The present Civil Appeal arises out of the judgment and order dated 18.05.2022 passed by the Division Bench of the High Court of Rajasthan at Jodhpur[1] in D.B. Special Appeal Writ No. 704 of 2015, whereby the intra-court appeal preferred by the State of Rajasthan came to be dismissed and the common judgment dated 24.07.2015 rendered by the learned Single Judge in S.B. Civil Writ Petition No. 7465 of 2010 (*Hari Ram Bishnoi v. State of Rajasthan and others*) and connected matters, was affirmed.

[1] Hereinafter referred to as "the High Court"

3. By the aforesaid common judgment, the learned Single Judge allowed a batch of writ petitions and declared Bye-law Nos. 20.1(2), 20.1(4), 20.2(7) and 20.2(9) as framed by various District Milk Producers' Co-operative Unions in the State of Rajasthan, including those chaired by the present appellants to be *ultra vires* the provisions of the Rajasthan Co-operative Societies Act, 2001 and consequently *non est* in the eyes of law. The learned Single Judge further directed that all ensuing elections to the said Unions shall be conducted by the State Co-operative Election Authority strictly in accordance with law, without reference to the impugned bye-laws. However, it was clarified that elections already conducted in the year 2010 shall not be disturbed.

4. For the sake of convenience, the impugned bye-laws are extracted below:

> *"20.1 Any President of society which he represents shall not be entitled to take part in elections of Board and continue to remain his member if:*
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> *20.1(2) In the previous Audit it is classified as A or B category, provided State Government shall have right to grant relaxation to take part in the meeting in view of some special circumstances in view of White Revolution of state. But they shall not be able to take part in elections which were kept unclassified.*
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> *20.1(4) Except in natural calamity, the same did not remain closed for more than 90 days.*
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> *20.2 President of society shall not be eligible for election or after election, shall not be eligible to continue in Board of Director, if*
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> *20.2(7) Except the circumstances which are outside, he represents the society and has supplied the milk for at least 270 days to Sangh.*
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> *20.2(9) He represents the society which has failed to supply the minimum quantity of milk."*

5. Despite due service of notice, there was no representation on behalf of Respondent No. 1 – writ petitioner either in person or through any learned counsel. We have heard Mr. Kapil Sibal, learned senior counsel appearing on behalf of the appellants, learned counsel appearing for Respondent No. 2 as well as learned standing counsel representing Respondent No. 3 – State of Rajasthan.

FACTUAL BACKGROUND

6. The appellants are Chairpersons of five District Milk Producers' Co-operative Unions in the State of Rajasthan, registered under the Rajasthan Co-operative Societies Act, 1965. The said enactment stood repealed and replaced by the Rajasthan Co-operative Societies Act, 2001[2] which came into force from 13.11.2002 along with the Rajasthan Co-operative Societies Rules, 2003[3].

6.1. The bye-laws in question, framed under the statutory authority of Section 8 read with Schedule B, Clause 1 (da), (i), ® and (v) of the Act, 2001, govern the functioning of the Co-operative Societies. They introduced additional eligibility conditions for candidates (representatives of Primary Milk Unions) seeking to contest elections to the Management Committee (Board of Directors of the District Milk Producers' Co-operative Societies[4]).

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[2] For short, "the Act, 2001"

[3] For short, "the Rules, 2003"

[4] Hereinafter referred to "the District Milk Unions"

6.2. Aggrieved thereby, a batch of writ petitions came to be instituted by certain Primary Milk Producers' Co-operative Societies, challenging the *vires* of the aforesaid bye-laws. It is pertinent to note that the present appellants were not impleaded as parties to the said writ proceedings.

6.3. By a common judgment dated 24.07.2015, the learned Single Judge held the writ petitions to be maintainable, 4ecognized the *locus standi* of the writ petitioners and declared the impugned bye-laws to be *ultra vires* the Act, 2001 while protecting elections already concluded in the year 2010. The State of Rajasthan carried the matter in appeal; however, the Division Bench by its judgment dated 18.05.2022, dismissed the Special Appeal Writ and affirmed the findings of the learned Single Judge.

6.4. Pursuant to the impugned judgment, the Registrar, in exercise of powers under Section 11 of the Act, 2001, issued notice dated 08.02.2023 directing amendment of the aforesaid bye-laws, followed by a further notice dated 13.02.2023 proposing to finalise such amendments in the absence of objections.

6.5. It is in these circumstances that the present appellants, who were not parties to the original writ proceedings but claim to be directly affected by the impugned judgment, have preferred the present appeal.

SUBMISSIONS OF THE PARTIES

7. Mr. Kapil Sibal, learned senior counsel appearing for the appellants at the outset, questioned the maintainability of the writ proceedings under Article 226

of the Constitution. It was submitted that the writ petitions were instituted by representatives of certain Primary Milk Producer Co-operative Societies across 10 out of 16 milk-producing districts of Rajasthan, challenging bye-laws 20.1(2), 20.2(7), and 20.2(9) adopted by various District Milk Unions, including those headed by the present appellants. It was contended that such writ petitions were not maintainable inasmuch as the District Milk Unions are neither "State" nor "instrumentality or agency of the State" within the meaning of Article 12 of the Constitution. Furthermore, the nature of relief sought did not involve enforcement of any public duty.

7.1. It was further submitted that the appellants are private co-operative societies registered under the erstwhile Rajasthan Co-operative Societies Act, 1965 now governed by the Act, 2001, the Rules, 2003, and their duly registered bye-laws. It is a settled position of law that mere regulatory control by statute over a private body does not render such entity amenable to writ jurisdiction. In this regard, reliance was placed on ***Federal Bank Ltd v. Sagar Thomas***[5]***,*** wherein this Court held that regulatory provisions ensuring discipline in commercial activities do not confer the status of "State" upon a private entity.

7.2. The learned senior counsel further relied upon ***Supriyo Basu v. W.B. Housing Board***[6] to contend that a co-operative society, being a body constituted through agreement among its members and merely governed by statute, is not

[5] (2003) 10 SCC 733
[6] (2005) 6 SCC 289

amenable to writ jurisdiction unless a mandatory statutory provision is violated. It was submitted that no such violation exists in the present case. Further reliance was placed on ***A. Umarani v. Registrar of Cooperative Societies***[7] and ***Akalakunnam Village Service Cooperative Bank Ltd. v. Binu N.***[8] to contend that writ jurisdiction cannot be invoked in the absence of breach of statutory duty.

7.3. It was also contended that the writ petitions suffered from gross delay and laches as the impugned bye-laws had been in operation for nearly 8-9 years prior to their challenge without any sufficient explanation for such delay. Reliance was placed on ***P.S. Sadasivaswamy v. State of Tamil Nadu***[9] in this regard.

7.4. The learned senior counsel emphasised that the Act, 2001 provides a complete and efficacious statutory mechanism for redressal of disputes. Section 58(2)(c) read with Section 60 vests jurisdiction in the Registrar to adjudicate disputes relating to elections, which are disputes touching the constitution, management or business of a co-operative society. Section 100 accords finality to such decisions by treating them as decrees of a civil court. Further appellate and revisional remedies are provided under Sections 104, 105, 106, and 107. It was submitted that the writ petitioners having failed to exhaust these remedies,

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[7] (2004) 7 SCC 112
[8] (2014) 9 SCC 294
[9] (1975) 1 SCC 152

could not have invoked Article 226. In this connection, reliance was placed on ***Titaghur Paper Mills Co. Ltd. v. State of Orissa***[10] and ***Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh***[11].

7.5. It was further submitted that the writ proceedings were vitiated by non-joinder of necessary parties. Out of 16 District Milk Unions in Rajasthan, only a few were impleaded, yet the High Court proceeded to strike down the impugned bye-laws across all Unions, thereby rendering a *"judgment in rem"* without affording an opportunity of hearing to affected parties. Such an approach is contrary to settled law as held in ***Dattatreya v. Mahaveer***[12].

7.6. It was also urged that the High Court failed to issue notice to similarly situated co-operative societies, thereby violating the principles of natural justice.

7.7. On merits, it was submitted that the "right to vote" and the "right to contest elections" are distinct. While Section 20 of the Act, 2001 governs voting rights, the right to contest elections is subject to eligibility conditions. The impugned bye-laws do not curtail the right to vote but merely prescribe qualifications for contesting elections. It is a settled principle that neither the right to vote nor the right to contest is a fundamental or absolute right but a statutory right capable of being regulated. Reliance was placed on ***Rama Kant***

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[10] (1983) 2 SCC 433
[11] (1996) 1 SCC 327
[12] (2004) 10 SCC 665

Pandey v. Union of India[13]***, K. Krishna Murthy v. Union of India***[14] and ***Supreme Court Bar Association v. B.D. Kaushik***[15].

7.8. It was further contended that the impugned bye-laws are merely enabling provisions prescribing eligibility criteria for candidates seeking to contest elections to the Management Committee (Board of Directors of District Milk Unions). These bye-laws have been framed under Section 8 read with Schedule B Clauses 1(da), (i), (r), and (v) of the Act, 2001 and are statutorily recognised under Section 32. They operate in a distinct field from disqualifications, which are exhaustively governed by Section 28 of the Act, 2001 read with Rule 34 of the Rules, 2003. Thus, the impugned provisions are supplementary and not in derogation of statutory disqualifications.

7.9. The learned senior counsel further submitted that the impugned bye-laws are in furtherance of the object and purpose of the Act, 2001 namely, to promote efficiency, accountability, and sustained milk production through the cooperative movement. The conditions stipulated, such as minimum supply requirements, operational continuity, and categorization based on audit, ensure that only genuine and active societies participate in governance. These provisions incentivise productivity and strengthen the co-operative framework.

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[13] (1993) 2 SCC 438
[14] (2010) 7 SCC 202
[15] (2011) 13 SCC 774

7.10. It was also submitted that similar provisions exist in the bye-laws of other co-operative institutions, such as Sale Purchase Co-operative Society, District Co-operative Consumer Wholesale Store Ltd and Co-operative Land Development Banks, thereby demonstrating that the impugned bye-laws are neither unique nor arbitrary but consistent with established co-operative practices.

7.11. Finally, it was submitted that the impugned judgments are liable to be set aside on the principle of *Actus curiae neminem gravabit (an act of the court shall prejudice no one)* as they were rendered to the prejudice of several District Milk Unions including the appellants, who were not impleaded or heard. This constitutes a clear violation of natural justice. It was emphasised that the impugned bye-laws have contributed significantly to strengthening the dairy co-operative movement in Rajasthan, which is among the leading milk producing States in India.

7.12. Accordingly, it was prayed that the impugned judgments of the learned Single Judge and the Division Bench be set aside, and the validity of the impugned bye-laws be upheld.

8. The learned counsel appearing on behalf of Respondent No. 2 submitted that the Act, 2001 is a self-contained code enacted with the objective of promoting production, procurement, processing, and marketing of milk and milk products, and for the economic development of the dairy and animal husbandry

sector. The dairy co-operative movement in the State of Rajasthan operates through a three-tier integrated structure, consisting of Primary Milk Producers' Co-operative Societies at the village level, District Milk Producers' Co-operative Unions at the district level, and the Rajasthan State Co-operative Dairy Federation at the State level. Membership at the village level is voluntary and open, and such Primary Societies constitute ordinary members of the District Unions. The management at all three levels is democratic in nature, with elected bodies functioning in accordance with the provisions of the Act, 2001 the Rules, 2003 and the bye-laws framed thereunder.

8.1. The learned counsel submitted that Section 8 read with Schedule B confers express power upon co-operative societies to frame bye-laws on matters relating to membership, rights and liabilities of members, representation, participation in elections, and management of the society. Reference was made to Clauses 1(da), 1(e), 1(i), 1(r), 1(v) and 1(w) of Schedule B to demonstrate that the subject matter of eligibility, participation, and representation is well within the scope of the bye-law making power. Sections 10 and 11 further recognise the authority to amend bye-laws and the supervisory role of the Registrar in that regard. It was also emphasised that Section 32 clearly stipulates that elections to the committees of co-operative societies shall be conducted in accordance with the provisions of the Act, 2001, the Rules, 2003, and the bye-laws.

8.2. It was contended that the impugned bye-laws do not create disqualifications but merely prescribe eligibility criteria and enabling conditions for participation in elections. The distinction between eligibility and disqualification is well recognised in law. While disqualifications are specifically governed by Section 28 of the Act, 2001 read with Rule 34 of the Rules, 2003, the prescription of eligibility conditions falls within the permissible domain of bye-laws. In this regard, reliance was placed on Sections 16, 18, 19, and 20 of the Act, 2001, which make it abundantly clear that the rights of membership, voting, and participation are subject to compliance with conditions specified in the bye-laws.

8.3. The learned counsel submitted that the impugned bye-laws have been framed with the legitimate object of ensuring that only genuine and active participants in the cooperative dairy structure are entrusted with the management of District Milk Unions. The provisions contained in the bye-laws, such as categorization of societies based on audit (Bye-law 20.1(2)), exclusion of societies remaining non-functional for a substantial part of the year (Bye-law 20.1 (4)), requirement of minimum days of milk supply (Bye-law 20.2(7)), and minimum quantity of supply (Bye-law 20.2(9)), are all rational measures aimed at ensuring efficiency, accountability, and continuity in the functioning of the co-operative system. These conditions prevent dormant or non-performing

societies from participating in governance and ensure that those who are actively contributing to the co-operative movement represent its interests.

8.4. It was further submitted that the impugned bye-laws are in consonance with the co-operative principles enshrined in Schedule A of the Act, 2001, such as, voluntary and open membership, democratic member control, member economic participation, autonomy and independence, education, training and information and co-operation among co-operatives. The bye-laws, far from being arbitrary, strengthen the co-operative framework by promoting active participation and responsible governance.

8.5. The learned counsel also emphasised that Section 117 of the Act, 2001 bars the jurisdiction of courts in matters relating to the registration or amendment of bye-laws. Furthermore, Sections 58 and 60 vest exclusive jurisdiction in the Registrar to adjudicate disputes relating to elections and management of co-operative societies. Section 28(13) also empowers the Registrar to determine issues relating to disqualification. It was thus submitted that the writ petitioners ought to have first approached the Registrar, instead of directly invoking the writ jurisdiction of the High Court.

8.6. It was contended that the learned Single Judge erred in striking down the impugned bye-laws by incorrectly treating eligibility conditions as disqualifications and by failing to appreciate the statutory framework empowering such provisions. The Division Bench further erred in affirming the

same without properly considering the distinction between eligibility and disqualification, the scope of the bye-law making power and the availability of alternative remedies. The impugned judgments therefore suffer from serious legal infirmities.

8.7. In conclusion, it was submitted that the impugned bye-laws are within the statutory competence of the co-operative societies, are reasonable, non-arbitrary, and in furtherance of the object and scheme of the Act, 2001. They do not violate any statutory or constitutional provision. The interference by the High Court with a valid exercise of statutory power is therefore unsustainable in law. Accordingly, it was prayed that the impugned judgment dated 18.05.2022 passed by the High Court be set aside and the validity of the impugned bye-laws be upheld.

9. The learned counsel appearing for the State submitted that the writ petitioners, having failed to supply milk for a minimum of 270 days in a year, did not fulfill the essential eligibility criteria prescribed under the bye-laws and were, therefore, not entitled to contest or participate in the elections to the District Milk Unions. It was contended that such requirement reflects the minimum level of participation necessary in a dairy co-operative and a member failing to meet the same cannot claim a right to be part of the decision-making process.

9.1. It was further submitted that the disqualifications enumerated under Section 28 of the Act, 2001 are general in nature and apply uniformly to all co-operative societies irrespective of their specific functions. However, the Act itself, under Sections 5, 6, 8, 16, 18 and 27 contemplates that each co-operative society shall be governed by its own bye-laws which are tailored to its particular nature, business, and operational requirements. These provisions read with Schedule B empower societies to prescribe qualifications and disqualifications necessary for regulating their internal affairs, including participation in elections.

9.2. The learned counsel emphasised that the bye-laws of the Dugdh Utpadak Sangh have been framed strictly in consonance with the provisions of the Act, 2001 and duly registered thereunder. Such bye-laws provide for various matters including the term of office, qualifications for membership, rights and liabilities of members, and other conditions essential for the efficient functioning of the society. The prescription of minimum service utilization, including supply of milk for a specified number of days, forms an integral part of such regulatory framework.

9.3. The learned counsel further submitted that the dairy co-operative structure in the State is a three-tier system comprising primary societies, district milk unions, and the State Federation, all of which are interlinked and interdependent. In order to sustain and strengthen this integrated structure, it is

imperative that the management at each level is entrusted to members who are actively contributing to the objectives of the co-operative movement.

9.4. Placing reliance on Section 16(2) of the Act, 2001, it was contended that the statute itself recognises the importance of active participation by providing for expulsion of members who fail to attend meetings or comply with bye-law requirements relating to minimum utilization of services. This indicates that the legislative intent supports the imposition of such conditions to ensure accountability and participation.

9.5. It was also submitted that the election process for primary societies and district unions has already been initiated, and in several cases, elections have been conducted in accordance with the existing bye-laws. The judgment of the learned Single Judge dated 24.07.2015, which declared certain bye-laws as *ultra vires*, was confined to a limited number of dairy unions, while others continue to be governed by the same provisions. This has resulted in an incongruous and potentially discriminatory situation across the State, thereby affecting the uniformity of the electoral process.

9.6. Referring to Section 8 of the Act, 2001 read with Clause 1(da) of Schedule B, the learned counsel submitted that the bye-laws are required to specify norms relating to minimum utilization of services or attendance and such provisions are an essential component of the governance framework of

co-operative societies. The impugned bye-laws, according to the State, have been framed precisely in accordance with these statutory requirements.

9.7. It was further contended that under Section 18 of the Act, 2001 a member is not entitled to exercise rights of membership unless he fulfills the minimum level of service utilization as specified in the bye-laws. Therefore, the prescription of such conditions for participation in elections is a logical extension of the statutory scheme.

9.8. The learned counsel also relied upon Section 27 to submit that the constitution of the committee of a society is to be governed by its bye-laws, as different societies engage in different types of activities and require different qualifications for their members. Accordingly, the impugned bye-laws are consistent with the legislative framework.

9.9. On the aspect of audit classification, it was submitted that the same is carried out under Section 54 of the Act, 2001 read with Rule 73 of the Rules, 2003 and such classification reflects the operational efficiency and compliance status of societies. The requirement of minimum service utilization is in consonance with these parameters and ensures that only performing societies participate in governance.

9.10. It was also urged that the impugned bye-laws have not been framed under Section 123(2)(xxvi) of the Act, but derive their authority from Section 18 read

with Clause 1(da) of Schedule B. Therefore, the finding of the learned Single Judge regarding impermissible delegation of legislative power is erroneous.

9.11. Lastly, it was contended that the challenge to the bye-laws was not maintainable in the absence of the Rajasthan Co-operative Dairy Federation (RCDF) which is the apex body in the co-operative dairy structure and a necessary party to the proceedings. Therefore, the impugned judgment of the High Court be set aside by this Court.

DISCUSSION AND FINDINGS

10. We have considered the submissions made by the parties and also perused the materials available on record.

11. The State of Rajasthan is one of the leading milk-producing States in India, as is evident from the data published by the National Dairy Development Board. The dairy sector in the State has evolved on a co-operative model structured as a three-tier system comprising (i) Primary Milk Producers' Co-operative Societies at the village level; (ii) District Milk Producers' Co-operative Unions at the district level; and (iii) the Rajasthan State Co-operative Dairy Federation Limited at the State level.

11.1. This framework constitutes an integrated co-operative mechanism, wherein Primary Societies are organically linked with the District Milk Unions and in turn, with the State Federation. At each of these three levels, the

Executive Committees / Board of Directors are democratically elected bodies. The members are entitled to participate in the electoral process in accordance with the provisions of the Act, 2001, the Rules, 2003 framed thereunder and the respective bye-laws governing such bodies.

12. The present dispute concerns elections to the Boards of Directors of various District Milk Unions of which the Primary Societies are constituent members. The controversy centers around Bye-law Nos. 20.1(2), 20.1(4), 20.2(7) and 20.2(9) framed by the District Milk Unions which prescribe qualifications for contesting in the elections to the Board of Directors.

12.1. These bye-laws were challenged in writ proceedings by certain representatives of the Primary Societies and were set aside by the learned Single Judge, as affirmed by the Division Bench of the High Court. Aggrieved thereby, the present appellants, who were not parties to the writ proceedings, have approached this Court by way of the present appeal.

13. As stated above, the appellants herein were not arrayed as parties to the writ proceedings before the High Court. They contend that the impugned judgment directly and adversely affects their legal rights and interests. It is well settled that a person who is aggrieved by a judgment even if not formally impleaded as a party, is entitled to maintain an appeal with the leave of the Court. The test of maintainability is not confined to formal party status but

extends to whether the impugned decision has civil consequences or prejudicially affects the rights of the appellants.

13.1. In ***Ram Janam Singh v. State of U.P.***[16], this Court held as follows:

> *"8. The appellant, admittedly, was not impleaded as a party to the said writ application, but as he is directly affected like many other officers, who had entered into the State Civil Service before the respondent, filed the connected special leave petition challenging the validity of the judgment aforesaid. In view of the fact that the appellant had entered into Civil Service of the State Government before the respondent, it is not in dispute that he is affected in the matter of seniority by the impugned judgment. It was held by this Court in the case of Prabodh Verma v. State of U.P. [(1984) 4 SCC 251 : 1984 SCC (L&S) 704 : AIR 1985 SC 167] that a writ application in which the necessary parties likely to be affected have not been impleaded, the High Court should not proceed with such writ application without insisting on such persons or some of them in representative capacity being made respondents. It was further held that if petitioner refuses to join them, the High Court ought to dismiss the petition for non-rejoinder of necessary parties. Admittedly, none was impleaded even in a representative capacity. But it can be urged on behalf of the respondent that he had not sought any relief against any individual. He had sought the intervention of the High Court to declare Rule 3(1) of 1973 Rules and Rule 3(b) of 1980 Rules as ultra vires so far they made applicable the benefit of those rules to only specified class of persons and restricted to others who were similarly situated. As such respondent was not required to implead private respondent, (sic appellant), who might be affected by the verdict of the Court. Even if this stand is accepted, can it be said that persons who have been affected by the judgment of the High Court in the connected writ application cannot challenge the correctness thereof either by filing a review petition before the High Court or by filing a special leave petition before this Court? According to us, the answer is in negative. The appellant has a locus standi to challenge the said judgment although he was not a party to the same and the special leave petition filed on his behalf cannot be rejected on that ground. The delay in filing the special leave petition has also been fully explained in the facts and circumstances of the case, which is condoned."*

13.2. Thus, the judgment, in effect, operates *in rem* insofar as it alters the legal regime applicable to similarly situated entities without affording them an

[16] (1994) 2 SCC 622

opportunity of hearing. In such circumstances, the appellants clearly fall within the category of "persons aggrieved" and are therefore entitled to maintain the present appeal.

MAINTAINABILITY OF THE WRIT PROCEEDINGS

14. At the outset, it is necessary to consider the preliminary objection raised by the learned senior counsel for the appellants regarding the maintainability of the writ petitions under Article 226 of the Constitution of India. The High Court in the impugned judgment, proceeded to examine the validity of the bye-laws framed by the District Milk Unions without first addressing the foundational issue as to whether the writ petitions themselves were maintainable, having regard to the nature and character of the respondent societies, as well as the statutory dispute-resolution mechanism provided under the Act, 2001. Since the issue pertains to the very assumption of jurisdiction, it goes to the root of the matter and must be adjudicated as a threshold question.

14.1. It is well settled that the jurisdiction of the High Courts under Article 226, though wide and plenary, is not unbridled. While it extends beyond the confines of Article 32 and may, in appropriate cases, be invoked even against bodies not falling within the definition of "State" under Article 12, such jurisdiction is ordinarily exercised where the impugned action bears a public law element. A writ would lie against a non-State entity only where it performs public duties,

discharges public functions or is alleged to have acted in breach of statutory or constitutional obligations of a public character.

14.2. Conversely, disputes which pertain purely to the internal management, governance or electoral processes of co-operative societies do not, as a matter of course, attract writ jurisdiction merely because such societies owe their incorporation to a statute. The existence of a statutory framework regulating such societies does not by itself convert internal disputes into matters of public law. The exercise of jurisdiction under Article 226 in such cases must therefore be tested on well-established principles, including the nature of the right asserted, the character of the duty alleged to have been breached, and the availability of an efficacious alternate statutory remedy.

14.3. This Court has, in a long line of decisions, delineated the contours for determining when a body, though not "State" within the meaning of Article 12, may nevertheless be amenable to writ jurisdiction. The relevant considerations include whether the body is entrusted with public duties, performs functions of a public nature, or is subject to deep and pervasive State control so as to partake the character of an instrumentality of the State.

14.4. However, the mere existence of regulatory or supervisory control, howsoever extensive, is not determinative. Such control must be of a degree that fundamentally alters the character of the body. In the absence of such indicia,

disputes which are essentially private or internal in nature fall outside the ambit of judicial review under Article 226.

14.5. The question whether the respondent societies can be regarded as "State" must be examined in light of the tests laid down in ***Ajay Hasia v. Khalid Mujib Sehravardi***[17], which include indicia such as deep and pervasive State control, financial dependence, and functional integration with governmental activities. These principles have been applied to co-operative bodies in ***General Manager, Kishan Sahkari Chini Mills Ltd. v. Satrughan Nishad and others***[18], where this Court held that mere regulatory supervision or limited State participation does not suffice to confer the status of an instrumentality of the State. Tested on these parameters, the respondent Unions cannot be held to be "State" within the meaning of Article 12.

14.6. In ***Thalappalam Service Co-operative Bank Ltd. and others v. State of Kerala and others***[19], this Court, while examining the status of co-operative societies, held as follows:

> ***"20.*** *The societies are, of course, subject to the control of the statutory authorities like Registrar, Joint Registrar, the Government, etc. but it cannot be said that the State exercises any direct or indirect control over the affairs of the society which is deep and all pervasive. The supervisory or general regulation under the statute over the cooperative societies, which are body corporate does not render activities of the body so regulated as subject to such control of the State so as to bring it within the meaning of the "State" or instrumentality of the State…"*

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[17] (1981) 1 SCC 722
[18] (2003) 8 SCC 639
[19] (2013) 16 SCC 82

> ***"21.*** *We have, on facts, found that the cooperative societies, with which we are concerned in these appeals, will not fall within the expression "State" or "instrumentalities of the State" within the meaning of Article 12 of the Constitution and hence not subject to all constitutional limitations as enshrined in Part III of the Constitution…"*
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> ***"44.*** *We are of the opinion that when we test the meaning of expression "controlled" which figures in between the words "body owned" and "substantially financed", the control by the appropriate Government must be a control of a substantial nature. The mere "supervision" or "regulation" as such by a statute or otherwise of a body would not make that body a "public authority" within the meaning of Section 2(h)(d)(i) of the RTI Act. In other words just like a body owned or body substantially financed by the appropriate Government, the control of the body by the appropriate Government would also be substantial and not merely supervisory or regulatory. The powers exercised by the Registrar of Cooperative Societies and others under the Cooperative Societies Act are only regulatory or supervisory in nature, which will not amount to dominating or interfering with the management or affairs of the society so as to be controlled. The management and control are statutorily conferred on the Management Committee or the Board of Directors of the Society by the respective Cooperative Societies Act and not on the authorities under the Cooperative Societies Act."*

14.7. In ***Federal Bank Ltd. v. Sagar Thomas*** *(supra)*, this Court held that a writ under Article 226 would lie against a non-State entity only when it is shown to be discharging a statutory or public duty of a public character. Mere regulatory control or the existence of a statutory framework governing its activities would not render such a body amenable to writ jurisdiction. The relevant observations are as follows:

> ***"31.*** *…. 1t is no doubt held that a mandamus can be issued to any person or authority performing public duty, owing positive obligation to the affected party. The writ petition was held to be maintainable since the teacher whose services were terminated by the institution was affiliated to the university and was governed by the ordinances, casting certain obligations which it owed to that petitioner. But it is not the case here….. no writ would lie against the private*

body except where it has some obligation to discharge which is statutory or of public character.

32. *Merely because Reserve Bank of India lays the banking policy in the interest of the banking system or in the interest of monetary stability or sound economic growth having due regard to the interests of the depositors etc. as provided under Section 5(c)(a) of the Banking Regulation Act does not mean that the private companies carrying on the business or commercial activity of banking, discharge any public function or public duty. These are all regulatory measures applicable to those carrying on commercial activity in banking and these companies are to act according to these provisions failing which certain consequences follow as indicated in the Act itself. As to the provision regarding acquisition of a banking company by the Government, it may be pointed out that any private property can be acquired by the Government in public interest. It is now a judicially accepted norm that private interest has to give way to the public interest. If a private property is acquired in public interest it does not mean that the party whose property is acquired is performing or discharging any function or duty of public character though it would be so for the acquiring authority.*

33. *For the discussion held above, in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or a company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor put any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant Bank. The respondent's service with the Bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under Article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the Bank. That being the position, the appeal deserves to be allowed."*

14.8. In the present case, the District Milk Unions are autonomous, member-driven bodies governed by the provisions of the Act, 2001, the Rules framed

thereunder, and their bye-laws. They are neither departments of the State nor owned, financially controlled, or administratively dominated by the State in a manner that would render them instrumentalities of the State within the meaning of Article 12. The fact that such societies are subject to statutory regulation, oversight by the Registrar or supervision by the State Co-operative Election Authority does not detract from their essential character as independent co-operative institutions. Furthermore, the disputes raised pertain essentially to the internal governance and electoral framework of co-operative societies and do not disclose any breach of a statutory or public duty of a public law character.

14.9. In view of the aforesaid discussion, we are of the considered opinion that the writ petitions ought not to have been entertained in the exercise of jurisdiction under Article 226.

15. Even otherwise, the writ petitions were not liable to be entertained in view of the express statutory scheme and the availability of a comprehensive adjudicatory mechanism under the Act, 2001. The relevant provisions of the Act, 2001 are extracted below:

> *S.58. Disputes which may be referred to arbitration-*
> *(2) For the purpose of sub-section (1), the following disputes shall also be deemed to be the disputes touching the constitution, management, or the business of a co-operative society:*
> *..*
> *(c) any dispute arising in connection with the election of any officer of the society.*

S.60 - Reference of disputes to arbitration
(1) The Registrar may, on receipt of the reference of a dispute under section 58 -
(a) decide the dispute himself, or
(b) transfer it for disposal to any person who has been invested by the Government with powers in that behalf, or
(c) refer it for disposal to an arbitrator having the eligibility, prescribed therefor.

S.100 - Execution of orders, Etc.

(1) Notwithstanding anything contained in the Transfer of Property Act, 1882 (Central Act 4 of 1882) or any other law for the time being in force, every order made by the Registrar under sub-section (2) of section 57 or under section 99, every decision or award made under section 60, every order made by the Liquidator under section 64 and every order made by the Tribunal under section 105 and 106 and every order made under section 104 shall, if not carried out,-

(a) on a certificate signed by the Registrar, or any person authorised by him in this behalf, be deemed to be a decree of a civil court and shall be executed in the same manner as a decree of such court; or

(b) be executed according to the law and under the rules for the time being in force for the recovery of arrears of land revenue:

...

S.104 - Appeal to the Registrar and the State Government

S.105 - Constitution of and appeals to the Tribunal

S.106 - Review of orders by Tribunal

S.107 - Power of revision of the Government and the Registrar

S.125 - Power of Registrar to rescind certain resolutions-
If in the opinion of the Registrar, any resolution passed at the meeting of any co-operative society or committee thereof is opposed to the objects of the society or is prejudicial to the interests of the society or its members at large, or is against the provisions of the Act, the rules or the bye-laws of the society or is otherwise in excess of the powers of the society, the Registrar, may, after giving the society an opportunity of being heard, rescind the resolution.

15.1. Section 58(1) of the Act, 2001 confers exclusive jurisdiction upon the Registrar to decide disputes "touching the constitution, management or the business of a co-operative society" and by necessary implication, excludes the jurisdiction of civil courts in respect of such disputes. The scope of this provision is further widened by Section 58(2)(c), which categorically declares that any dispute arising in connection with the election of an officer of a society shall be deemed to be a dispute touching its constitution or management. Section 58(3) accords finality to the Registrar's determination as to whether a dispute falls within the ambit of the provision.

15.2. The statutory scheme is reinforced by Section 60 which enables the Registrar to adjudicate the dispute himself or refer it to a competent authority or arbitrator. Section 100 provides for execution of orders and accords enforceability akin to a civil court decree. The Act further provides a complete hierarchy of remedies, including an appeal under Section 104, a further appeal to the Co-operative Tribunal under Section 105, and powers of review and revision under Sections 106 and 107. In addition, Section 125 empowers the Registrar to rescind any resolution or bye-law found to be contrary to the Act, Rules, or the interests of the society.

15.3. The existence of such a self-contained, multi-tiered remedial framework evinces a clear legislative intent that disputes relating to elections and internal governance of co-operative societies be resolved within the statutory domain.

15.4. In the present case, the dispute raised pertains to the validity of bye-laws governing eligibility to contest elections to the Management Committee of District Milk Unions. Such issues are intrinsically connected with the internal management and electoral process of the society and fall squarely within the ambit of Sections 58(1) and 58(2)(c) of the Act, 2001. The writ petitions before the High Court directly challenged the validity of bye-laws governing eligibility to contest elections to the Board of Directors of the District Milk Unions. Such a challenge is inextricably connected with the election process and internal governance of the societies. The grievance raised by the writ petitioners squarely fell within the ambit of a "dispute arising in connection with the election of an officer of the society" under Section 58(2)(c). It is not in dispute that the writ petitioners did not invoke the statutory remedies available under the Act, nor was it demonstrated that such remedies were inefficacious or illusory.

15.5. As already discussed above, the respondent societies neither qualify as "State" within the meaning of Article 12 nor are they shown to be discharging any public duty of a statutory or public character. Bye-laws framed under the Act constitute subordinate legislation deriving their power from the parent statute. A challenge to their validity on the ground of inconsistency with the Act or the Rules raises a question of statutory legality, which squarely falls within the competence of the authorities constituted under the Act. It is not a case involving a challenge to the constitutional validity of the parent statute. The

mere fact that the challenge is couched in terms of the bye-laws being *ultra vires* the Act or suffering from excessive delegation does not justify invocation of writ jurisdiction at the threshold.

15.6. It is well settled that although the existence of an alternative remedy does not operate as an absolute bar to the exercise of jurisdiction under Article 226, the High Courts ordinarily refrain from entertaining writ petitions, where an efficacious statutory remedy is available, particularly in matters concerning elections or where the statute provides for specialised forums. This principle assumes greater significance where the statute not only creates such forums but also manifests an intention to channel disputes through that mechanism.

15.7. No exceptional circumstances were either pleaded or demonstrated to warrant deviation from this settled rule. There was no challenge to the vires of the Act, no allegation of lack of jurisdiction on the part of the Registrar, nor any case of manifest violation of fundamental rights incapable of being addressed within the statutory framework.

15.8. In entertaining the writ petitions and adjudicating upon the validity of the bye-laws, the High Court effectively bypassed the statutory dispute resolution mechanism and rendered the remedies under Sections 58 and 104-105 nugatory. Such an approach is contrary to the legislative scheme and undermines the discipline of exhausting statutory remedies.

15.9. In ***Titaghur Paper Mills Co. Ltd. v. State of Orissa*** *(supra)*, this Court categorically held that where a statute creates a right or liability and also provides a machinery for redressal, the aggrieved party must exhaust such statutory remedies, and a writ petition would not be maintainable. The following paragraphs are pertinent:

> ***"6.*** *We are constrained to dismiss these petitions on the short ground that the petitioners have an equally efficacious alternative remedy by way of an appeal to the Prescribed Authority under sub-section (1) of Section 23 of the Act, then a second appeal to the Tribunal under subsection (3)(a) thereof, and thereafter in the event the petitioners get no relief, to have the case stated to the High Court under Section 24 of the Act. In Raleigh Investment Company Limited v. Governor-General in Council, Lord Uthwatt, J. in delivering the judgment of the Board observed that in the provenance of tax where the Act provided for a complete machinery which enabled an assessee to effectively raise in the courts the question of the validity of an assessment denied an alternative jurisdiction to the High Court to interfere…"*
>
> ***"11.*** *Under the scheme of the Act, there is a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the Prescribed Authority under sub-section (1) of Section 23 of the Act. If the petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under subsection (3) of Section 23 of the Act, and then ask for a case to be stated upon a question of law for the opinion of the High Court under Section 24 of the Act. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of…"*

15.10. Similarly, in ***Umesh Shivappa Ambi and others v. Angadi Shekara Basappa and others***[20]**,** this Court reiterated that particularly in matters relating to election disputes, the High Court should not ordinarily interfere under Article

[20] (1998) 4 SCC 529

226 when a specific statutory remedy is available. The relevant paragraphs read as under:

> ***"4.*** *It is now well settled that once an election is over, the aggrieved candidate will have to pursue his remedy in accordance with the provisions of law and this (sic High) Court will not ordinarily interfere with the elections under Article 226 of the Constitution. (See in this connection para 3 in K.K. Shrivastava v. Bhupendra Kumar Jain.) The Court will not ordinarily interfere where there is an appropriate or equally efficacious remedy available, particularly in relation to election disputes. In the present case, under Section 70(2)(C) of the Karnataka Cooperative Societies Act, 1959 any dispute arising in connection with the election of a President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer or member of Committee of the Society has to be referred to the Registrar by raising a dispute before him. The Registrar is required to decide this in accordance with law."*
>
> ***"5.*** *This was, therefore, not a fit case for intervention under Article 226. Hence, the impugned judgment is set aside and the order of the learned Single Judge is restored…"*

15.11. Applying the aforesaid principles, it is evident that the dispute raised by the writ petitioners falls squarely within the statutory framework governing co-operative societies. The statute provides a specific and efficacious mechanism for adjudication of such disputes, which has been bypassed by the writ petitioners without any justification.

15.12. Accordingly, the writ petitions, insofar as they assailed the validity of the bye-laws governing eligibility to contest elections, ought to have been rejected at the threshold, the writ petitioners having an efficacious remedy under the Act, 2001.

MERITS

16. Even assuming that the writ petitions were maintainable, the High Court fell into manifest error in striking down the impugned bye-laws on merits. The reasoning adopted by the High Court proceeds on an erroneous understanding of the statutory scheme governing elections to co-operative societies under the Act, 2001 as well as the nature and scope of the rights sought to be regulated by the impugned bye-laws.

Statutory framework governing elections

17. At the outset, it is necessary to examine the statutory framework governing elections to the Management Committee of a co-operative society. Section 32 of the Act, 2001 provides that elections to the Committee of a co-operative society shall be conducted in accordance with the provisions of the Act, the Rules framed thereunder, and the bye-laws of the society. The statutory mandate, therefore, expressly integrates the Act, the Rules and the bye-laws into a composite framework governing the electoral process.

17.1. The Act lays down the broad structural features relating to elections, including the constitution of committees, voting rights and disqualifications. The Rules regulate the procedural aspects of the election process, including the conduct of elections. The bye-laws, in turn, operate within this statutory framework to regulate society-specific aspects of governance, including qualifications, representation, rights and duties of members, and norms relating

to participation in the affairs of the society, subject always to consistency with the Act and the Rules.

17.2. The statutory scheme does not treat bye-laws as external or extraneous to the election process. On the contrary, the Act expressly contemplates that elections shall be conducted not only in accordance with the Act and the Rules, but also in accordance with the bye-laws, so long as such bye-laws are within the bounds of the enabling provisions of the statute. Any interpretation which excludes bye-laws from operating in the field of elections would render Section 32 otiose and defeat the legislative intent.

17.3. The nature and role of bye-laws assume significance in this context. In ***Co-operative Central Bank v. Additional Industrial Tribunal***[21]**,** this Court held that bye-laws govern the internal management and administration of a co-operative society. Though they may not have the force of a statute, they are binding inter se the members and regulate their rights and obligations within the co-operative framework. The Court clarified that such bye-laws operate akin to mutually accepted conditions governing the internal affairs of the society. The following paragraphs are pertinent:

> ***"7****...It is true that Section 61 by itself does not contain any clear indication that the Registrar cannot entertain a dispute relating to alteration of conditions of service of the employees of a registered society; but the meaning given to the expression "touching the business of the society", in our opinion, makes it very doubtful whether a dispute in respect of alteration of conditions of service can be held to be covered by this expression. Since the word "business" is equated*

[21] (1969) 2 SCC 43

with the actual trading or commercial or other similar business activity of the society, and since it has been held that it would be difficult to subscribe to the proposition that whatever the society does or is necessarily required to do for the purpose of carrying out its objects, such as laying down the conditions of service of its employees, can be said to be a part of its business, it would appear that a dispute relating to conditions of service of the workmen employed by the society cannot be held to be a dispute touching the business of the society. Further, the position is clarified by the provisions of sub-section (4) of Section 62 of the Act which limit the power to be exercised by the Registrar, when dealing with a dispute referred to him under Section 61, by a mandate that he shall decide the dispute in accordance with the provisions of the Act and the Rules and bye-laws…Such a change could not possibly be directed by the Registrar when, under Section 62(4) of the Act, he is specifically required to decide the dispute referred to him in accordance with the provisions of the bye-laws. It may also be noticed that a dispute referred to the Registrar under Section 61 of the Act can even be transferred for disposal to a person who may have been invested by the Government with powers in that behalf, or may be referred for disposal to an arbitrator by the Registrar….It is thus clear that, in respect of the dispute relating to alteration of various conditions of service, the Registrar or other person dealing with it under Section 62 of the Act is not competent to grant the relief claimed by the workmen at all…"

***"10.** We are unable to accept the submission that the bye-laws of a cooperative society framed in pursuance of the provisions of the Act can be held to be law or to have the force of law. It has no doubt been held that, if a statute gives power to a Government or other authority to make rules, the rules so framed have the force of statute and are to be deemed to be incorporated as a part of the statute. That principle, however, does not apply to bye-laws of the nature that a Cooperative society is empowered by the Act to make. The bye-laws that are contemplated by the Act can be merely those which govern the internal management, business or administration of a society. They may be binding between the persons affected by them, but they do not have the force of a statute. In respect of bye-laws laying down conditions of service of the employees of a society, the bye-laws would be binding between the society and the employees just in the same manner as conditions of service laid down by contract between the parties. In fact, after such bye-laws laying down the conditions of service are made and any person enters the employment of a society, those conditions of service will have to be treated as conditions accepted by the employee when entering the service and will thus bind him like conditions of service specifically forming part of the contract of service…"*

17.4. In ***A.P. Dairy Development Corporation Federation v. B. Narasimha Reddy and others***[22]**,** this Court recognised that once a co-operative society is

[22] (2011) 9 SCC 286

constituted under a statute, its functioning, composition, and governance are necessarily subject to statutory regulation, including through bye-laws. The following paragraphs are apposite:

> ***"28**. In view of the above, it becomes evident that the right of citizens to form an association is different from running the business by that association. Therefore, the right of individuals to form a society has to be understood in a completely different context. Once a cooperative society is formed and registered, for the reason that cooperative society itself is a creature of the statute, the rights of the society and that of its members stand abridged by the provisions of the Act. The activities of the society are controlled by the statute. Therefore, there cannot be any objection to statutory interference with their composition or functioning merely on the ground of contravention of individual's right of freedom of association by statutory functionaries."*
>
> ***"47**... Members of an association have the right to be associated only with those whom they consider eligible to be admitted and have right to deny admission to those with whom they do not want to associate. The right to form an association cannot be infringed by forced inclusion of unwarranted persons in a group. Right to associate is for the purpose of enjoying in expressive activities. The constitutional right to freely associate with others encompasses associational ties designed to further the social, legal and economic benefits of the members of the association. By statutory interventions, the State is not permitted to change the fundamental character of the association or alter the composition of the society itself. The significant encroachment upon associational freedom cannot be justified on the basis of any interest of the Government. However, when the association gets registered under the Cooperative Societies Act, it is governed by the provisions of the Act and the Rules framed thereunder. In case the association has an option/choice to get registered under a particular statute, if there are more than one statute operating in the field, the State cannot force the society to get itself registered under a statute for which the society has not applied."*
>
> ***"55**... The affairs of the cooperatives are to be regulated by the provisions of the 1995 Act and by the bye-laws made by the individual cooperative society. The 1995 Act provides for multiplicity of organisations and the statutory authorities have no right to classify the cooperative societies, while under the 1964 Act the Registrar can refuse because of non-viability, conflict of area of jurisdiction or for some class of cooperative."*
>
> ***"56.** Under the 1964 Act, it is the Registrar who has to approve the staffing pattern, service conditions, salaries, etc. and his approval is required for taking someone from the Government on deputation, while under the 1995 Act the staff is accountable only to the society. Deputation, etc. is possible only if a cooperative so desires. The size, term and composition of the Board fixed under*

the 1964 Act and the Registrar is the ultimate authority for elections, etc. and he can also provide for reservations in the Board…"

17.5. Similarly, in ***Thalappalam Service Co-op. Bank Ltd. and others v. State of Kerala and others*** *(supra),* this Court reaffirmed that co-operative societies, though not statutory bodies, are governed by statute and internally regulated through their bye-laws, with the general body retaining primacy over governance. The relevant paragraphs read thus:

"18. *We can, therefore, draw a clear distinction between a body which is created by a statute and a body which, after having come into existence, is governed in accordance with the provisions of a statute. The Societies, with which we are concerned, fall under the latter category that is governed by the Societies Act and are not statutory bodies, but only body corporate within the meaning of Section 9 of the Kerala Cooperative Societies Act having perpetual succession and common seal and hence have the power to hold property, enter into contract, institute and defend suits and other legal proceedings and to do all things necessary for the purpose, for which it was constituted. Section 27 of the Societies Act categorically states that the final authority of a Society vests in the general body of its members and every Society is managed by the managing committee constituted in terms of the bye-laws as provided under Section 28 of the Societies Act. Final authority so far as such types of societies are concerned, as the statute says, is the general body and not the Registrar of Cooperative Societies or State Government."*

Nature of Rights: Right to Vote v. Right to Contest

18. The next aspect that arises for consideration is the nature of the right sought to be regulated by the impugned bye-laws. The High Court failed to advert to the well settled distinction between the right to vote and the right to contest an election, both of which are statutory in nature, but operate in distinct fields. The reasoning of the High Court proceeds on the assumption that any

restriction touching participation in the election process is impermissible, without first identifying the precise right sought to be regulated.

18.1. It is well settled that neither the right to vote nor the right to contest an election is a fundamental right. In ***Jyoti Basu and others v. Debi Ghosal and others***[23] and ***Javed and other v. State of Haryana and others***[24]**,** this Court authoritatively held that these rights are purely statutory in nature and exist only to the extent conferred by statute. While the right to vote enables a member to exercise franchise in accordance with the statutory scheme, the right to contest an election or to be elected is a distinct and additional right which may legitimately be made subject to qualifications, eligibility conditions, and disqualifications. This position was reiterated in ***K. Krishna Murthy v. Union of India*** *(supra)*, where this Court emphasised that rights of political participation are not absolute and remain subject to statutory control, including eligibility criteria and disqualifications. The following paragraphs are pertinent:

> ***"35****...In fact the petitioners have also urged us to reconsider some earlier decisions of this Court which have dealt with the status of the rights of political participation such as the right to vote, the right to nominate candidates and the right to contest elections. It may be recalled that the right to vote has been held to be a statutory right and not a fundamental right and the same position has been consistently upheld in subsequent decisions. (See decision in N.P. Ponnuswami v. Returning Officer, which has been followed in Jyoti Basu v. Debi Ghosal, Mohan Lal Tripathi v. District Magistrate, Rai Bareilly, Rama Kant Pandey v. Union of India and Kuldip Nayar v. Union of India) This implies that the rights of political participation are not absolute in nature and are subject to statutory controls such as those provided in the Representation of the People Act, 1951 among others. Undoubtedly, reservations in elected local bodies do*

[23] AIR 1982 SC 983
[24] (2003) 8 SCC 369

place restrictions on the rights of political participation of persons who do not belong to the reserved categories. In this respect, the petitioners have contended that this Court should examine the reasonableness of such restrictions with regard to the objective of ensuring "free and fair elections" [as observed in Indira Nehru Gandhi v. Raj Narain, SCC at p. 94, para 213] as well as the expanded understanding of Article 21 of the Constitution."

***"78.** In this respect, it may be noticed that the Constitution empowers the Election Commission of India to prepare electoral rolls for the purpose of identifying the eligible voters in elections for the Lok Sabha and the Vidhan Sabhas. This suggests that the right to vote is not an inherent right and it cannot be claimed in an abstract sense. Furthermore, the Representation of the People Act, 1951 gives effect to the constitutional guidance on the eligibility of persons to contest elections. This includes grounds that render persons ineligible from contesting elections such as that of a person not being a citizen of India, a person being of unsound mind, insolvency and the holding of an "office of profit" under the executive among others. It will suffice to say that there is no inherent right to contest elections since there are explicit legislative controls over the same."*

18.2. In ***Supreme Court Bar Association v. B.D Kaushik*** *(supra),* this Court upheld restrictions on voting and candidature, clarifying that such provisions merely regulate the exercise of the right and do not extinguish it. It was categorically held that the right to vote and the right to contest are statutory rights, and reasonable restrictions governing eligibility do not render such provisions invalid. The following paragraphs are apposite:

***"33.** It is well settled by a catena of reported decisions of this Court that the right to vote is not an absolute right. Right to vote or to contest election is neither a fundamental right nor a common law right, but it is purely a statutory right governed by statute/rules/regulations. The right to contest an election and to vote can always be restricted or abridged, if statute/rules or regulations prescribe so. Voting right restrictions also existed in Rules 18 and 18-A before Rule 18 was amended. By amendment a further restriction is imposed by the resolution adopted in the general body meeting. The argument that by the said amendment of Rule 18 the aims and objects of SCBA are amended without prior approval of the Registrar of Societies and, therefore, the same is illegal, cannot*

be accepted. The impugned order makes it more than clear that this ground has heavily weighed with the learned Judge in granting the injunction."

***"44.** It is important to notice that what the impugned Rule does is that it only declares the eligibility of a member to contest and vote and does not take away ipso facto the right to vote. The impugned Rule only prescribes the eligibility or makes a person ineligible in the circumstances stated therein which is in the nature of a reasonable restriction as the right to vote is neither a common law right nor fundamental right but a statutory right prescribed by the statute as has been held in several reported decisions of this Court. What is necessary to be noticed here is that the impugned clause in the Rule is not the only clause prescribing ineligibility to vote as there are other eligibility conditions or ineligibility restrictions within Rule 18, which may also make a person ineligible to vote. The challenge, therefore, to this ineligibility of filing a declaration not to vote at the elections to any other Bar Association is erroneous in law."*

18.3. Thus, a clear doctrinal distinction emerges: the right to vote is the right to participate in the electoral process by exercising franchise; and the right to contest is a distinct and additional right, enabling a person to seek election to an office. The latter is inherently subject to stricter regulation, including qualifications, disqualifications, and institutional requirements.

18.4. The Act, 2001 recognises this distinction. Section 19 confers upon a member the right to vote, subject to statutory conditions. The right to contest an election or to continue as a member of the committee, however, is governed by separate provisions relating to eligibility, disqualifications, and the bye-laws regulating representation and governance. The two rights, though related to the electoral process, operate in different fields and are governed by distinct statutory considerations.

18.5. A careful reading of the impugned bye-laws makes it evident that they do not regulate or curtail the right of members to cast their vote. The bye-laws are directed at the eligibility of the President or representative of a primary co-operative society to contest elections to, or to continue as a member of, the Board of Directors of the District Milk Unions. The conditions prescribed therein are referable to candidature and continuation in office, and not to the exercise of franchise by the members of the society.

18.6. The use of expressions such as "participate in elections" in the bye-laws cannot be read in isolation or divorced from context. When read holistically, and particularly in conjunction with provisions expressly dealing with eligibility for election and continuation in office, it is evident that the term "participation" is used in the sense of participation as a candidate, and not as a voter. Any contrary interpretation would lead to an incongruous result and attribute to the bye-laws an intent they do not bear.

18.7. The High Court, by equating regulation of eligibility to contest elections with a restriction on the right to vote, conflated two distinct statutory rights and consequently applied an erroneous standard of scrutiny. The impugned bye-laws operate solely in the domain of candidature and holding of office, without impinging upon the right to exercise franchise. The very premise of the High Court's reasoning is therefore fundamentally flawed and unsustainable in law.

Eligibility v. Disqualification

19. The next issue that arises for consideration is whether the impugned bye-laws amount to disqualifications or merely prescribe eligibility criteria for contesting elections. The answer to this question is determinative of the standard of scrutiny to be applied.

19.1. The statutory scheme draws a clear and well-recognised distinction between the two. Disqualifications, as contemplated under Section 28 of the Act, 2001 operate as statutory disabilities that attach upon the existence of specified negative circumstances, such as conflict of interest, default, insolvency or other conditions expressly enumerated by the legislature and render a person ineligible despite otherwise satisfying the baseline eligibility criteria. Disqualification, therefore, presupposes eligibility but operates to negate it on account of a supervening or disabling factor.

19.2. Eligibility, on the other hand, pertains to threshold conditions governing entry into the electoral arena. Such conditions are typically positive, objective, and qualification-oriented, and are designed to ensure that those who seek to contest elections or hold office possess a minimum level of functional connection, participation or suitability in relation to the affairs of the society. The absence of eligibility does not attract any penal or stigmatic consequence; it merely postpones the right to contest until the prescribed conditions are fulfilled.

19.3. A careful examination of the impugned bye-laws reveals that they do not impose any disabling or punitive bar of the nature contemplated under Section 28 of the Act. The conditions relating to audit classification, continuity of operations, minimum supply of milk or minimum number of days of participation are uniformly applicable, objective in nature, and intrinsically linked to the functional performance of the primacy co-operative society and its representative. Such conditions neither attach a stigma nor operate as permanent exclusions, and they are capable of being satisfied in subsequent election cycles upon compliance. These criteria are therefore intrinsic to the concept of representative and accountable governance within a co-operative framework.

19.4. In ***Noel Harper v. Union of India***[25]**,** this Court upheld regulatory conditions founded on intelligible differentia having a rational nexus with the object sought to be achieved. It was held that uniformly applicable conditions designed to advance statutory objections cannot be characterised as arbitrary merely because they regulate participation. Such a framework recognises that structured eligibility conditions are integral to ensuring institutional integrity and effective governance. The following paragraphs are pertinent:

> ***"119.*** *We fail to understand as to how such a provision (amended Section 7) can be regarded as discriminatory or so to say vague or irrational much less manifestly arbitrary. The restriction therein applies to a class of persons who are permitted to accept foreign donation for being utilised by themselves for the definite purposes, without any discrimination and it is so done to uphold the objective of the principal Act. Thus, there is clear intelligible differentia with a direct nexus sought to be achieved with the intent of the principal Act. Such*

[25] (2023) 3 SCC 544

> *strict regime had become inevitable because of the experience gained by the authorities concerned over a period of time, including about the abuse of the earlier dispensation under the unamended provision."*

19.5. The High Court, however, proceeded on the erroneous premise that any condition affecting participation in elections must necessarily amount to a disqualification, and consequently tested the validity of the impugned bye-laws solely with reference to Section 28 of the Act. This approach overlooks the fundamental conceptual and statutory distinction between eligibility and disqualification. Section 28 cannot be read as exhaustively occupying the field of eligibility, nor can the absence of a particular condition therein render invalid an eligibility criterion prescribed elsewhere within the statutory framework.

19.6. As already mentioned, once this distinction is properly appreciated, it becomes evident that the impugned bye-laws operate in a field anterior to disqualification. They regulate who may enter the electoral fray or continue in office based on minimum functional and performance-related thresholds, and do not seek to add to or alter the statutory disqualifications enumerated under Section 28. By conflating these two distinct concepts, the High Court misdirected itself in law and applied an incorrect standard of scrutiny.

19.7. In conclusion, the impugned bye-laws do not introduce any new disqualifications nor do they trench upon Section 28. They merely prescribe eligibility criteria grounded in participation, performance and functional

engagement, which are fully consistent with the statutory scheme and the principles governing co-operative institutions. The invalidation of the bye-laws on the premise that they impose disqualifications is, therefore, legally unsustainable.

Source of power to frame bye-laws

20. The next issue concerns whether the District Milk Unions possessed the statutory authority to frame the impugned bye-laws. This requires identification of the source, scope, and limits of the delegated power under the Act, 2001.

20.1. Section 8 of the Act, 2001 empowers a co-operative society to frame bye-laws for the conduct of its affairs in respect of the subject matters enumerated in Schedule B. The delegation under Section 8 is neither unstructured nor unguided; it is expressly confined to specified heads relating to the internal governance, functioning and representative character of a co-operative society. Schedule B(1), insofar as the present controversy is concerned, specifically includes Clause (da) and Clause (v). Clause (da) authorises the framing of bye-laws prescribing "norms regarding minimum essential utilisation of the services of the society or minimum essential attendance at meetings or other dealings with the society, to be fulfilled by a member". Clause (v) empowers a society "to send a representative to another society".

20.2. Clause (v) assumes particular significance in the context of a federal co-operative such as a District Milk Union. The committee of such a Union is constituted through representation of its member primary societies. Participation in its management is therefore not in an individual capacity but through a nominee or representative of a member-society. The entitlement of a member-society to send its representative necessarily depends upon its status as a functioning and participating unit within the co-operative structure.

20.3. When read with Clause (da), which permits prescription of minimum participation in the activities of the society, these provisions clearly enable regulation of the entitlement of a member-society to be represented in the governance of a higher-tier co-operative institution.

20.4. The impugned bye-laws prescribe conditions relating to audit classification, continuity of operations, minimum number of days of milk supply and minimum quantity of milk supplied by a primary co-operative society whose President seeks to represent the society on the Board of Directors of the District Milk Unions. Conditions requiring sustained utilisation of the services of the society and minimum functional participation are directly referable to Clause (da), while norms governing the entitlement of a member-society to send its representative fall squarely within Clause (v).

20.5. Section 18 of the Act, 2001 reinforces this position. It stipulates that no member shall exercise the rights of membership unless such member has fulfilled obligations such as payment of dues or availed the minimum level of services as may be specified in the bye-laws. The statute thus expressly recognises that the exercise of membership rights may be conditioned upon participation in the activities of the society. Representation in the management of a federal co-operative, being an incident of such membership participation, may therefore be legitimately regulated through bye-laws prescribing minimum function involvement.

20.6. The scheme of the Act, 2001 indicates that a federal co-operative operates through its member primary societies and that its management is intended to reflect the participation of active and functioning units. Bye-laws prescribing minimum utilisation of services ensure that representation is confined to such functioning members, and prevent dormant or non-functional entities from influencing the affairs of the Union.

20.7. The object of the impugned bye-laws is thus to ensure that only active and functional member-societies participate in governance. Such a classification is rational, consistent with co-operative principles and bears a direct nexus to the object of the Act, namely, ensuring democratic and effective management by genuinely participating members.

20.8. The legal position governing the validity of subordinate legislation is well settled. In ***State of T.N. v. P. Krishnamurthy***[26]**,** this Court held that subordinate legislation carries a presumption of validity and may be invalidated only on limited grounds including lack of legislative competence, violation of constitutional or statutory provisions, inconsistency with the parent Act, or manifest arbitrariness. The Court emphasised that the inquiry must be directed at whether the subordinate legislation conforms to the object, scheme and scope of the enabling Act. The following paragraphs are apposite:

> *"Whether the rule is valid in its entirety?*
>
> *15. There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a subordinate legislation can be challenged under any of the following grounds:*
>
> *(a) Lack of legislative competence to make the subordinate legislation.*
>
> *(b) Violation of fundamental rights guaranteed under the Constitution of India.*
>
> *(c) Violation of any provision of the Constitution of India.*
>
> *(d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.*
>
> *(e) Repugnancy to the laws of the land, that is, any enactment.*
>
> *(f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules).*
>
> *16. The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity.*
>
> *17. In Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [(1985) 1 SCC 641 : 1985 SCC (Tax) 121] this Court referred to several grounds on*

[26] (2006) 4 SCC 517

which a subordinate legislation can be challenged as follows: (SCC p. 689, para 75)

> *"75. A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary."*
>
> *(emphasis supplied)*

18. In Supreme Court Employees' Welfare Assn. v. Union of India [(1989) 4 SCC 187 : 1989 SCC (L&S) 569] this Court held that the validity of a subordinate legislation is open to question if it is ultra vires the Constitution or the governing Act or repugnant to the general principles of the laws of the land or is so arbitrary or unreasonable that no fairminded authority could ever have made it. It was further held that the Rules are liable to be declared invalid if they are manifestly unjust or oppressive or outrageous or directed to be unauthorised and/or violative of the general principles of law of the land or so vague that it cannot be predicted with certainty as to what it prohibited or so unreasonable that they cannot be attributed to the power delegated or otherwise disclose bad faith.

19. In Shri Sitaram Sugar Co. Ltd. v. Union of India [(1990) 3 SCC 223] a Constitution Bench of this Court reiterated: (SCC pp. 251-52, para 47)

> *"47. Power delegated by statute is limited by its terms and subordinate to its objects. The delegate must act in good faith, reasonably, intra vires the power granted, and on relevant consideration of material facts. All his decisions, whether characterised as legislative or administrative or quasi-judicial, must be in harmony with the Constitution and other laws of the land. They must be 'reasonably related to the purposes of the enabling legislation'. See Leila Mourning v. Family Publications Service [411 US 356 : 36 L Ed 2d 318 (1973)] . If they are manifestly unjust or oppressive or outrageous or directed to an unauthorised end or do not tend in some degree to the accomplishment of the objects of delegation, court might well say, 'Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires': per Lord Russel of Killowen, C.J. in Kruse v. Johnson [(1898) 2 QB 91 : (1895-99) All ER Rep 105] ."*

20. In St. John's Teachers Training Institute v. Regional Director, NCTE [(2003) 3 SCC 321] this Court explained the scope and purpose of delegated legislation thus: (SCC p. 331, para 10)

> *"10. A regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general course of action. Rules and regulations are all comprised in delegated legislations. The power to make subordinate legislation is derived from the enabling Act*

> *and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details. The legislature may, after laying down the legislative policy confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of policy. The need for delegated legislation is that they are framed with care and minuteness when the statutory authority making the rule, after coming into force of the Act, is in a better position to adapt the Act to special circumstances. Delegated legislation permits utilisation of experience and consultation with interests affected by the practical operation of statutes."*
>
> *(emphasis supplied)*

20.9. These principles have been reaffirmed in ***Naresh Chandra Agrawal v. ICAI***[27]**,** wherein this Court clarified the doctrine of *ultra vires* and laid down a structured test. It was also emphasised that where a statute confers a general power along with enumerated heads, the latter are illustrative and do not restrict the amplitude of the general power, so long as the subordinate legislation advances the object of the Act. The following paragraphs are apposite:

> *"15. There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a subordinate legislation can be challenged under any of the following grounds:*
>
> *(a) Lack of legislative competence to make the subordinate legislation.*
>
> *(b) Violation of fundamental rights guaranteed under the Constitution of India.*
>
> *(c) Violation of any provision of the Constitution of India.*
>
> *(d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.*
>
> *(e) Repugnancy to the laws of the land, that is, any enactment.*
>
> *(f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules)."*

[27] (2024) 13 SCC 241

(emphasis supplied)

37. *From reference to the precedents discussed above and taking an overall view of the instant matter, we proceed to distil and summarise the following legal principles that may be relevant in adjudicating cases where subordinate legislation are challenged on the ground of being "ultra vires" the parent Act:*

37.1. *The doctrine of ultra vires envisages that a rule-making body must function within the purview of the rule-making authority, conferred on it by the parent Act. As the body making Rules or Regulations has no inherent power of its own to make rules, but derives such power only from the statute, it must necessarily function within the purview of the statute. Delegated legislation should not travel beyond the purview of the parent Act.*

37.2. *Ultra vires may arise in several ways; there may be simple excess of power over what is conferred by the parent Act; delegated legislation may be inconsistent with the provisions of the parent Act; there may be non-compliance with the procedural requirement as laid down in the parent Act. It is the function of the courts to keep all authorities within the confines of the law by supplying the doctrine of ultra vires.*

37.3. *If a rule is challenged as being ultra vires, on the ground that it exceeds the power conferred by the parent Act, the Court must, firstly, determine and consider the source of power which is relatable to the rule. Secondly, it must determine the meaning of the subordinate legislation itself and finally, it must decide whether the subordinate legislation is consistent with and within the scope of the power delegated.*

37.4. *Delegated rule-making power in statutes generally follows a standardised pattern. A broad section grants authority with phrases like "to carry out the provisions" or "to carry out the purposes". Another sub-section specifies areas for delegation, often using language like "without prejudice to the generality of the foregoing power". In determining if the impugned rule is intra vires/ultra vires the scope of delegated power, courts have applied the "generality vs. enumeration" principle.*

37.5. *The "generality vs. enumeration" principle lays down that, where a statute confers particular powers without prejudice to the generality of a general power already conferred, the particular powers are only illustrative of the general power, and do not in any way restrict the general power. In that sense, even if the impugned rule does not fall within the enumerated heads, that by itself will not determine if the rule is ultra vires/intra vires. It must be further examined if the impugned rule can be upheld by reference to the scope of the general power.*

37.6. *The delegated power to legislate by making rules "for carrying out the purposes of the Act" is a general delegation, without laying down any guidelines as such. When such a power is given, it may be permissible to find out the object of the enactment and then see if the rules framed satisfy the Act of having been so framed as to fall within the scope of such general power confirmed.*

37.7. *However, it must be remembered that such power delegated by an enactment does not enable the authority, by rules/regulations, to extend the scope or general operation of the enactment but is strictly ancillary. It will*

> *authorise the provision of subsidiary means of carrying into effect what is enacted in the statute itself and will cover what is incidental to the execution of its specific provision. In that sense, the general power cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself.*
>
> ***37.8.*** *If the rule-making power is not expressed in such a usual general form but are specifically enumerated, then it shall have to be seen if the rules made are protected by the limits prescribed by the parent Act.*

20.10. Applying the aforesaid principles, the impugned bye-laws are clearly *intra vires* for the reasons that the source of power is directly traceable to Section 8 read with Schedule B (Clauses (da) and (v)), participation and representation are expressly contemplated by the Act, the bye-laws supplement and do not supplant the statutory framework and they further the purpose of ensuring functional, accountable and democratic governance.

20.11. The contention that the Act suffers from excessive delegation is equally untenable. The policy of the Act is clearly discernible from its scheme and from the specific subject matters enumerated in Schedule B. The delegation under Section 8 is structured, confined to defined heads, and circumscribed by the requirement of consistency with the Act and the Rules. The exercise of such power remains subject to statutory oversight by the Registrar and to judicial review on settled grounds.

20.12. The High Court's view that bye-laws cannot regulate electoral participation is equally unsustainable. Section 32 of the Act, 2001 expressly

incorporates bye-laws into the electoral framework, thereby recognising their role in structuring representation and governance within the co-operative.

20.13. While Section 123 empowers the State Government to frame Rules prescribing qualifications or disqualifications for membership and voting, such rule-making power does not exclude the authority of co-operative societies to regulate incidents of membership participation and representation through bye-laws in matters entrusted to them under Section 8 read with Schedule B. The two operate in distinct yet complementary spheres.

20.14. It is submitted that no specific Rules have been framed governing participation-linked conditions of representation in federal co-operatives. This does not create the source of power, but indicates that the Act presently leaves this field to be governed by bye-laws. Even where Rules are framed, the validity of bye-laws would fall to be tested on the touchstone of consistency, not exclusivity.

20.15. Viewed thus, the impugned bye-laws neither add to the statutory disqualifications under Section 28 nor trench upon the rule-making domain under Section 123. The Rules may prescribe general disqualifications and voting disabilities of a uniform character, whereas the impugned bye-laws regulate participation-linked entitlement of a member-society to be represented in the

management of a federal co-operative. They therefore operate in a distinct, permissible, and statutorily recognised field.

Non-joinder of necessary parties and impermissible *in rem* invalidity

21. An additional and fundamental infirmity lies in the manner in which the High Court adjudicated upon the validity of the impugned bye-laws.

21.1. The writ petitions were instituted only by certain District Milk Unions. However, the High Court proceeded to strike down the impugned bye-laws in their entirety, thereby rendering them inoperative across all similarly placed co-operative societies in the State including those who were neither impleaded nor heard. As already mentioned, such an adjudication clearly operates *in rem*, affecting a class of autonomous co-operative societies.

21.2. A determination of such wide amplitude could not have been rendered in the absence of all affected parties. At the very least, the High Court ought to have ensured issuance of notice and an opportunity of hearing to those societies whose rights and governance structures and internal regulations stood directly affected. The failure to do so strikes at the root of *audi alteram partem*, a foundational principle of natural justice.

21.3. In ***Dattatreya and others v. Mahaveer and others*** *(supra)*, this Court held that failure to implead affected parties in writ proceedings vitiates the adjudication where such parties are directly impacted. It was emphasised that

such omission is not a mere technical defect, but a substantive violation of the principle of fair hearing, especially where the outcome affects vested rights or prior legal positions. The following paragraph is pertinent:

> ***"10**…By not impleading the present respondents as parties in Writ Petition No. 5495 of 1992 the appellants deprived the respondents of an opportunity to challenge that order; rather they were kept in the dark about the whole proceeding. Any order to consider the application of the appellants moved in 1985 was likely to affect the order dated 3-7-1979 passed in favour of the respondents. The appellants knew it, being parties in the earlier proceedings of 1974. The fact thus remains that the material facts were not brought to the notice of the Court and the persons who were ultimately to be affected were avoided to be impleaded as parties. It was merely not a question of non-impleadment of necessary parties technically and strictly in accordance with the provisions of the Code of Civil Procedure rather was very much a question of proper parties being there before the court particularly in proceedings under Article 226 of the Constitution-…"*

21.4. In ***High Court Bar Association Allahabad v. State of U.P.***[28]**,** this Court underscored that orders affecting rights cannot be passed without hearing affected parties. It was further clarified that the jurisdiction of constitutional courts, though wide, is confined to doing justice between the parties before it, and cannot be exercised to the prejudice of non-parties who have derived rights under existing legal arrangements. The relevant paragraphs are extracted below:

> ***"20.** Elementary principles of natural justice, which are well recognised in our jurisprudence, mandate that an order of vacating interim relief or modification of the interim relief is passed only after hearing all the affected parties. An order of vacating interim relief passed without hearing the beneficiary of the order is against the basic tenets of justice. Application of mind is an essential part of any decision -making process…If an interim order is automatically vacated without any fault on the part of the litigant only because the High Court cannot hear the main case, the maxim "actus curiae neminem gravabit" will apply. No litigant should be allowed to suffer due to the fault of the court. If that happens, it is the bounden duty of the court to rectify its mistake."*

[28] (2021) 7 SCC 77

> ***"27.1.*** *The jurisdiction can be exercised to do complete justice between the parties before the Court. It cannot be exercised to nullify the benefits derived by a large number of litigants based on judicial orders validly passed in their favour who are not parties to the proceedings before this Court."*

21.5. Applying the aforesaid principles, the impugned judgment suffers from a clear jurisdictional and procedural infirmity. By invalidating bye-laws of societies that were not before the Court, the High Court effectively deprived them of an opportunity of hearing and unsettled their internal governance structures and affected their legal rights without due process.

21.6. Such an exercise is impermissible in proceedings under Article 226, which are fundamentally structured around adjudication of rights *inter parties*, unless the proceedings are properly constituted in a representative capacity or all affected parties are before the Court. Neither condition stood satisfied in the present case. The High Court therefore transgressed the limits of its writ jurisdiction.

CONCLUSION

22. For the aforesaid reasons, it is evident that the impugned bye-laws operate within the statutory scheme of the Act, 2001. They are traceable to the enabling power under Section 8 read with Schedule B and regulate eligibility and representation in a manner consistent with the object and scheme of the Act. The said bye-laws neither curtail any fundamental or statutory right nor do they introduce any disqualification dehors the statute. However, the High Court fell

into manifest error in striking down the impugned bye-laws. The impugned judgment proceeds on a misapprehension of the statutory framework, an erroneous conflation of the right to vote with the distinct right to contest, and a failure to appreciate the settled distinction between eligibility conditions and disqualifications. Additionally, the High Court committed a jurisdictional error in granting relief operating *in rem* in the absence of necessary and affected parties. The impugned judgment is therefore unsustainable in law and is liable to be set aside.

23. Accordingly, this appeal stands allowed. The impugned judgment and order of the High Court are set aside. There shall be no order as to costs.

24. Pending application(s), if any, shall stand disposed of.

……J.
[B.V. NAGARATHNA]

……J.
[R. MAHADEVAN]

NEW DELHI;
APRIL 10, 2026.