

FULL BENCH

Before Mehar Singh, C.J., Daya Krishan Mahajan and R. S. Narula, JJ.

MUKHTIAR SINGH,—*Petitioner.*

versus

THE PUNJAB STATE, ETC. AND OTHERS,—*Respondents.*

Civil Writ No. 349 of 1965

January. 2, 1967.

Punjab Panchayat Samitis and Zila Parishads Act (III of 1961)—Ss. 5(2)(a) (ii) and 121—Punjab Panchayat Samitis (Primary Members) Election Rules (1961)—Rules 3, 22, 23 and 28—Member of a co-operative society not elected as its representative under rule 22(1)(a)—Whether can be nominated as a candidate for election of two members representing co-operative societies—Such member—Whether a 'voter' within the meaning of S. 121 and 'elector' within the meaning of rule 3 and entitled to file election petition—Name of the elected representative of co-operative society not mentioned in the list published according to rule 22(4)—Whether entitled to vote.

Held, that a member of a co-operative society, not being elected as its representative under rule 22(1)(a) of the Punjab Panchayat Samitis (Primary Members) Election Rules, 1961, can be nominated as a candidate for election of two members of a Panchayat Samiti representing the co-operative societies according to section 5(2)(a)(ii) of the Punjab Panchayat Samitis and Zila Parishad Act, 1961.

Held, that a member of a co-operative society, who is not the society's representative under rule 22(1)(a) *ibid* for election of two primary members of a Panchayat Samiti under section 5(2)(a)(ii) of the Act, is not a 'voter' within the scope of section 121 of the Act and rule 3 of the said Rules and cannot present an election petition questioning the election of a member of a Panchayat Samiti according to section 121 of the Act.

Held, that even if the name of a representative of a co-operative society does not figure in the list which is publicised according to sub-rule (4) of rule 22 *ibid*, he still has the right to cast his vote provided he has with him a copy of the resolution of his society, duly attested by the Chairman or the President of it, authorising him to represent the society at the election under section 5(2)(a) (ii) of the Act.

Case referred by the Hon'ble Mr. Justice R. S. Narula, on the 1st November, 1965 to a Full Bench for decision of the important questions of law involved in the case... The case was decided by a Full Bench consisting of the Hon'ble

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the Chief Justice Mr. Mehar Singh, the Hon'ble Mr. Justice D. K. Mahajan and the Hon'ble Mr. Justice R. S. Narula, on the 2nd January, 1967.

Petition under Articles 226/227 of the Constitution of India praying that a Writ of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the illegal declaration orders electing respondents Nos. 3 and 4 to the two seats and further praying that the publication of the result of the election in the Official Gazette, and the taking of the oaths by respondents Nos. 3 and 4, be ordered to be stayed pending final disposal of this writ petition.

S. S. SANDHAWALIA, ADVOCATE, for the Petitioner.

M. R. SHARMA, ADVOCATE FOR THE ADVOCATE-GENERAL, B. S. DHILLON, AND B. S. SHANT, ADVOCATES, for the Respondents

ORDER OF THE BENCH

The judgment of the Court was delivered by—

MEHAR SINGH, C.J.—An election of the Panchayat Samiti of Bholath Block in district Kapurthala took place on June 22, 1964. Mukhtiar Singh, petitioner in this petition under Articles 226 and 227 of the Constitution, and Pritam Singh, Harcharan Singh and Waryam Singh, respondents 3 to 5, filed nomination papers for election to that Panchayat Samiti. A list of the names of representatives of co-operative societies in the block concerned, elected in accordance with section 5(2)(a)(ii) of the Punjab Panchayat Samitis and Zila Parishads Act, 1961 (Punjab Act 3 of 1961), was posted outside his office by the Assistant Registrar of Co-operative Societies and a copy of the same was also sent by him to the Returning Officer pursuant to sub-rule (4) of rule 22 of the Punjab Panchayat Samitis (Primary Members) Election Rules, 1961, hereinafter to be referred as 'the 1961 Election Rules'. The list contained 115 names of electors or voters. At the poll, the Returning Officer allowed 30 more representatives of co-operative societies to vote. This he did in pursuance of sub-rule (3) of rule 28 of the 1961 Election Rules according to which—"If the number of such candidates exceeds the number of persons to be elected, an election shall be held by secret ballot. The votes of such electors who bring with them a copy of the resolution of the Society, duly attested by the Chairman or President, as the case may be, of that Society, authorising the elector to represent the Society shall only be taken." Those 30 voters or electors did bring with them copies of such resolutions. They were, therefore, permitted to vote at the election of the

Panchayat Samiti. As a result of the poll, the petitioner received 34 votes, respondent 3 received 44, respondent 4 received 37, and respondent 5 received 28. Two votes were declared invalid. Consequently, respondents 3 and 4 were declared elected to the Panchayat Samiti. On that the petitioner filed the present petition questioning the legality of the election of respondents 3 and 4 to the Panchayat Samiti of Bholath Block.

It was not made clear by respondents 1 and 2, the Punjab State and the Assistant Registrar of Co-operative Societies, in their first return how the extra 30 votes were allowed to be cast except to say that the voters had produced the requisite resolutions according to sub-rule (3) of rule 28 of the 1961 Election Rules. In a subsequent affidavit filed at this stage, it has been explained that there was a supplementary list of 14 more representatives that was publicised by the Assistant Registrar as laid down in sub-rule (4) of rule 22 of the 1961 Election Rules. This still leaves 16 more votes for consideration. A counter affidavit has also been filed by the petitioner and in that such a supplementary list with 13 names is admitted, but it is stated that with them many more were permitted to vote. So there were at least 16 representatives of the co-operative societies who produced the requisite resolutions in terms of sub-rule (3) of rule 28 though their names did not appear in the list as required by sub-rule (4) of rule 22 of the said Rules. The petitioner initially alleged that out of those 16 or out of 30, as he in the beginning stated in his petition, who were not shown in the first list, there were representatives of three co-operative societies who were not elected according to the rules within 20 days of the notice of election and they, therefore, could not represent their respective co-operative societies as electors for the election to the Panchayat Samiti. In the supplementary affidavit by respondent 2 it has been made clear that this is not factually true and that in the case of each one of such three co-operative societies, the election of the representatives took place within 20 days of the notice of election and in accordance with the rules.

The petitioner, though member of a co-operative society, is not representative of a co-operative society to elect members of the Panchayat Samiti. So apparently he could not file an election petition to question the election of respondents 3 and 4 within the scope of section 121 of the Act. In this petition the main ground of challenge against the election of those respondents has been that the Returning Officer has allowed 16 persons to vote at the election even

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though the names of those 16 persons were not in the list and were not publicised in the list according to sub-rule (4) of rule 22 of the 1961 Election Rules. The position on behalf of the respondents has been that those persons were entitled to vote according to sub-rule (3) of rule 28 of the same rules.

This petition came for hearing first before my learned brother, Narula J., and in view of certain conflict of decisions in this Court he has referred these four questions for consideration by a larger Bench—

- (1) Is it not correct that a member of a co-operative society who has never been elected as its representative under rule 22(1)(a) of the 1961 Election Rules can stand for election as a primary member of a Panchayat Samiti under section 5(2)(a) (ii) of the Act ?
- (2) If the answer to the first question is in favour of the member, would such a candidate be a 'voter' within the meaning of section 121 of the Act, or be an 'elector' within the meaning of rule 3 of the 1961 Election Petition Rules?
- (3) Has a candidate of the type described in the abovesaid two questions right to file an election petition under section 121 of the Act?
- (4) Whether the executive instructions contained in the above directions of the Government, dated April 3, 1964, validly cover the case of a purported representative of a co-operative society who brings with him a certificate (resolution) of his having been so elected though his name is not included in the original list forwarded to the Returning Officer under rule 22, if it is found that the particular representative has been elected after the expiry of 20 days prescribed under rule 22(1)(a) of the 1961 Election Rules?

It will be seen that the last part of question 4 is no longer a matter of controversy because now the affidavit of respondent 2 has made the factual position clear that there has been no society which has not elected its representative within 20 days of the election notice according to rule 22(1)(a) of the 1961 Election Rules.

In the Act, section 5 deals with the constitution of Panchayat Samitis, and sub-section (2)(a)(ii) of it reads—"Where a Panchayat

Samiti is to be constituted for a block, it shall consist of the following members: (a) primary members to be elected in the manner prescribed by the persons as provided hereunder:—(i)(ii) two members representing the co-operative societies within the jurisdiction of the Panchayat Samiti, by the members of such societies elected in the manner prescribed for the purpose of this section, from amongst the members of these societies; (iii)". In the 1961 Election Rules, rule 23 concerns filing of nomination papers and deposit of securities in the case of election of two members under section 5(2) (a) (ii) of the Act and sub-rule (1) reads— "Any person who is a member of a co-operative society within the jurisdiction of the Panchayat Samiti may be nominated as a candidate for the election of two members under sub-clause (ii) of clause (a) of sub-section (2) of section 5, provided he delivers in person, or sends through the representative of that Society, a nomination paper completed in all respects on the date, time and place specified in the election programme." It is clear from this sub-rule (1) of rule 23 of the 1961 Election Rules that any member of a co-operative society can be nominated for election of two members to a Panchayat Samiti of a block representing co-operative societies, and as much is also clear from the words "from amongst the members of these societies" as appearing at the end of sub-clause (ii) of clause (a) of sub-section (2) of section 5 of the Act. So a member of a co-operative society can be nominated as a candidate for election of two primary members of a Panchayat Samiti, representing the co-operative societies, according to section 5(2) (a) (ii) of the Act, and he is not necessarily to be a representative of a co-operative society to elect such two members. The answer to question 1, therefore, is in the affirmative that a member of a co-operative society not being elected as its representative under rule 22(1)(a) of the 1961 Election Rules, can be nominated as a candidate for election of two members of a Panchayat Samiti representing the co-operative societies according to section 5(2)(a)(ii) of the Act.

The subject of election petitions is dealt with in section 121 of the Act and 'any person, who is a voter for the election of a member' may, on satisfying the conditions in the section, present an election petition challenging the election of, among others, a member of a Panchayat Samiti on the grounds given in the section. According to section 2(9) of the Act 'member' means a member of the Panchayat Samiti or Zila Parishad as the case may be. So a voter for the election of a member as referred to in section 121 of the Act is a voter for the election of a member of a Panchayat Samiti as in this

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case. Every member of a co-operative society is not such a voter, though members of co-operative societies elect such voters to vote at the election of a Panchayat Samiti according to section 5(2) (a) (ii) of the Act read with rules 21 to 29 of the 1961 Election Rules. So the voter in section 121 of the Act obviously is representative of a co-operative society, elected to be a member of an electoral college, to elect a member to the Panchayat Samiti. The members of co-operative societies elect such representatives and the latter become voters for election of members of a Panchayat Samiti. Grounds for calling in question an election of, among others, a member of a Panchayat Samiti are given in rule 3 of the Punjab Panchayat Samitis and Zila Parishads (Election Petition Rules), 1961, and it is stated in the rule that the election of any person as a member of a Panchayat Samiti may be called in question by an elector through an election petition. In rule 2(c) of these rules the word 'elector' has been defined to mean a person, who is a voter for the election of a member. This means that the word 'elector' as used in rule 3 of these rules is a person, who is a voter for the election of a member of a Panchayat Samiti. In other words, he is the same voter who has been given the right to present an election petition under section 121 of the Act. According to rule 22(1)(a) of the 1961 Election Rules, a meeting of the general body of the members of a co-operative society has to be convened within 20 days of the receipt of the election notice to elect one representative of the society for election of two members as required by section 5(2)(a)(ii) of the Act. It is such a representative who votes at the election of those two members as required by section 5(2) (a) (ii). Again in the same rules, sub-rule (3) of rule 28 refers to 'the votes of such electors who bring with them a copy of the resolution of the society', and here is a reference to electors, who are representatives elected according to rule 22(1)(a) of the very same rules. When all these provisions are read together, it is abundantly clear that a member of a co-operative society, who is not the society's representative under rule 22(1)(a) of the 1961 Election Rules for election of two primary members of a Panchayat Samiti under section 5(2)(a)(ii) of the Act, is not a 'voter' within the scope of section 121 of the Act and rule 3 of the 1961 Election Petition Rules. So the answer to the second question is obviously in the negative.

With the answer to question 2 in the negative, it is obvious that the answer to question 3 cannot be otherwise than in the negative that a mere member of a co-operative society who is not a representative of the society under rule 22(1)(a) of the 1961 Election Rules to

elect two members to the Panchayat Samiti according to section 5(2)(a)(ii) and thus is not a voter or elector for the election of those two members, cannot present an election petition questioning the election of a member of a Panchayat Samiti according to section 121 of the Act. This is the reason why the petitioner, who is a mere member of a co-operative society and not its representative under rule 22(1)(a) of the 1961 Election Rules and hence not a voter or elector for the election of two members to the Panchayat Samiti according to section 5(2)(a)(ii) has filed this petition and did not file an election petition under section 121 of the Act. He had no alternative remedy by way of an election petition. Of course, in a petition like the present, his grounds of attack are far more limited as compared to those that can be urged in an election petition. This is the reason why the argument has only been confined to questions of law arising out of the meaning and scope of certain provisions of the Act and the election rules.

In regard to the last question, it has already been stated that the end part of it is no longer a matter of controversy because of the facts now given in the additional affidavit of respondent 2. The first part of this question, however, remains for consideration. There is respondent 1's letter No. GE-SI-64/13676 of April 3, 1964, asking the Returning Officers to allow the representatives of co-operative societies to vote at the time of election of two members to the Panchayat Samiti under section 5(2)(a)(ii) of the Act when such representatives produce resolutions of their societies according to sub-rule (3) of rule 28 of the 1961 Election Rules. The learned counsel for the petitioner has attacked the contents of the letter as executive instructions interfering with the operation of the statute and the rules made thereunder, but this is obviously misconceived because the letter is no more than the normal manner and method adopted by Government in informing its officers in plain language of the effect of a statute and the rules made under it. The question is whether the Returning Officer in the present case acted in accordance with the provisions of the Act and the rules in allowing 16 representatives of the co-operative societies to vote at the election of two members of the Panchayat Samiti according to section 5(2)(a)(ii) of the Act when their names did not appear in the list according to sub-rule (4) of rule 22, though they brought with them copies of resolutions of their respective societies, duly attested, authorising them to represent the societies for election of the two members as stated? There has been some divergence of opinion on this question. The question did arise first in *Ram Sarup-Ram Narain v. The*

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State of Punjab (1), in which certain representatives of co-operative societies were not permitted to vote, but the learned Judges found that the names of such representatives had been shown in a supplementary list publicised by the Assistant Registrar in accordance with sub-rule (4) of rule 22 of the 1961 Election Rules. So this case, on facts, is somewhat different from the present case. In Civil Writ No. 1346 of 1964, decided on November 2, 1964, *Harbans Singh v. State of Punjab*, Jindra Lal J., in *Puran Chand v. The Assistant Registrar* (2), P. C. Pandit J., in *Lukti Majra Agriculture Service Co-operative Society Ltd. v. The State of Punjab* (3), Narula J., and in *Nathu Ram v. State of Punjab* (4), P. D. Sharma J., have taken the view that if the name of a representative of a co-operative society does not appear in the list publicised under sub-rule (4) of rule 22, though he brings the requisite resolution with him according to sub-rule (3) of rule 28, he is not entitled to vote for the election of two members to a Panchayat Samiti according to section 5(2)(a)(ii) of the Act. There was an appeal against the decision in *Nathu Ram's case* under clause 10 of the Letters Patent and that decision was reversed by a Division Bench consisting of Falshaw C.J. and myself. The case is reported as *Telu Ram v. Nathu Ram* (5). It is this conflict which has led to the reference of this last question to a larger Bench.

The main grounds upon which the first set of four cases by the learned Single Judges proceed are (i) that the list publicised under rule 22(4) is in fact an electoral roll in which the name of a person must exist before he has the right of vote, (ii) that rule 28(3) of the 1961 Election Rules is merely meant for the identity of the voter or the elector, and (iii) that unless rules 28(3) and 22(4) are read together, rule 22(4) would become redundant and unnecessary, an approach which is never to be imputed to the legislature in making a redundant provision. In *Telu Ram v. Nathu Ram* (5) Falshaw C.J., with whom I agreed, observed—"It seems that a number of Judges of this Court have taken the view that unless the name of a representative selected by a co-operative society as a member of the electoral college appears in the list prepared under rule 22(4) by the Assistant Registrar, he is not qualified to vote even when he is

(1) A.I.R. 1964 Punj. 62.

(2) 1965 Curr. L.J. (Pb.) 338.

(3) 1965 Curr. L.J. (Pb.) 723.

(4) 1965 P.L.R. 672.

(5) I.L.R. (1966) 1 Punj. 687=1966 P.L.R. 93.

able to present before the Returning Officer proper credentials in the form of a duly authenticated copy of the resolution of the Society by which he was selected as required in sub-rule (3) of rule 28. * * * * *

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It is to be borne in mind that the list prepared by the Assistant Registrar under rule 22(4) is not an ordinary electoral roll in which there is an elaborate procedure for challenging the names entered therein or getting the names entered therein which are omitted. It is not an electoral roll at all in the ordinary sense, but merely a list of an electoral college the members of which are to be selected by their own co-operative societies. In my opinion sub-rule (4) of rule 22 cannot be construed to mean that if duly elected representatives of co-operative societies turn up at the election with proper credentials they should not be permitted to vote under rule 28(3).” The election of the representatives of co-operative societies for the purpose of electing two members representing such societies in the Panchayat Samiti is to be according to section 5(2)(a)(ii) in the manner prescribed for the purpose, and the manner prescribed in that respect in the 1961 Election Rules is to be found in Part II of the Rules beginning with rule 21. Clause (a) in sub-rule (1) of this rule deals with the drawing up of an election programme, clause (b) with the preparation of a list of co-operative societies within the jurisdiction of every Panchayat Samiti to be constituted in the district, and clause (c) with the publication of such list of co-operative societies. Sub-rule (2) of this rule then provides that “any member of co-operative society which is not included in the list published under clause (c) of sub-rule (1) may apply to the Assistant Registrar, not later than 25 days prior to the date fixed for filing of nomination papers to include such co-operative society in the list and the Assistant Registrar after satisfying himself about the validity of the application shall include such Society in the list”. So if there is any omission in the list of co-operative societies within the jurisdiction of a Panchayat Samiti, that can be made good by recourse to sub-rule (2) of rule 21. Sub-rule (1) of rule 22 provides for a notice of election for election of representatives so as to elect two members of a Panchayat Samiti according to section 5(2)(a)(ii) of the Act. Clause (a) of the sub-rule says that such election of representatives must be within 20 days of the date of the notice, clause (b) says that the Chairman or the President of the Society concerned has then to ‘send the name of the representative thus elected to the Assistant Registrar on the day the election is held’, and clause (c) provides

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that the Chairman or the President of the Society shall direct the society's representative to present himself with a copy of the society's resolution, authorising him to represent it, before the Returning Officer at the time and place specified in the programme for election. Sub-rule (2) deals with the announcement of the election programme and sub-rule (3) says that if the election of the representatives is not held according to sub-rule (1), clause (a), then the society concerned forfeits its representation for the purpose. Sub-rule (4) of this rule, which is material for the present purpose, reads—"The Assistant Registrar shall, for each Block in his district, prepare a separate list of the names of representatives of the co-operative societies in that Block received by him under clause (b) of sub-rule (1). He shall post a copy of this list outside his office and shall also send a copy thereof to each Returning Officer." The next rule which is material is rule 28 of which sub-rule (3), as already reproduced, says that "If the number of such candidates exceeds the number of persons to be elected, an election shall be held by secret ballot. The votes of such electors, who bring with them a copy of the resolution of the Society, duly attested by the Chairman or President, as the case may be, of that Society, authorising the elector to represent the Society shall only be taken." The learned counsel for the petitioner contends that the provisions of rule 22 reveal a precise scheme of time within which the election of representative of each co-operative society must be completed and then the Assistant Registrar is enjoined to prepare a list of the names of the representatives of the co-operative societies, which list is then posted outside his office as also sent to the Returning Officer, and this close-knit scheme for the purposes of election under section 5(2)(a)(ii) has been prepared designedly and is indicative of the intention of the rule-making authority that the rule must be strictly adhered to. Even so the learned counsel is not able to urge any sound reason in support of his approach that the list in sub-rule (4) of rule 22 is in the nature of an electoral roll. In *Tetu Ram's case* it was pointed out that there is no provision for the correction of that list either by addition of names omitted or deletion of names included which ought not to have been included. If the rule-making authority intended any such correction in the list, it could at least have made an amendment in the rule in line with the newly-added sub-rule (2) to rule 21 as has been reproduced above whereunder correction can be made in the list of co-operative societies in the jurisdiction of a Panchayat Samiti. Another reason for not holding the list in sub-rule (4) of rule 22 as something akin to an electoral roll is that even if the name of a person appears in the list,

he has no right to vote at an election for two members from the co-operative societies according to section 5(2)(a)(ii), and he only gets the right to vote when he has with him a copy of the resolution of his society, duly attested, as provided in sub-rule (3) of rule 28. If the list referred to in sub-rule (4) of rule 22 was an electoral roll, the appearance of a person's name would have been, *prima facie*, an apparent evidence of his right to vote and this, as pointed out, is not so. Therefore, the list referred to in sub-rule (4) of rule 22 is not an electoral roll or something akin to an electoral roll. The learned counsel for the petitioner then contends that if the list is not treated something akin to an electoral roll, the whole purpose and object of the close-knit and well-set programme of time provided in rule 22 loses its meaning because a person, who wishes to contest an election under section 5(2)(a)(ii) does not and will not even know the electorate, who are going to cast votes in the election. But, as pointed out in *Telu Ram's case*, the list is not an electoral roll for it gives the names of the electoral college which elects two members under section 5(2)(a)(ii). The college is not likely to be too big or such as a candidate seeking election would not be able to take into consideration and attend to on the day of election. In the present case the maximum number in the electoral college was only 145. But this approach cannot turn the list in sub-rule (4) of rule 22 into an electoral roll when in substance that is not so. The list has not the attributes attaching to it that normally attach to an electoral roll. In this connection another argument urged by the learned counsel for the petitioner has been that the provisions of the rules are mandatory with the result that the Assistant Registrar is enjoined by sub-rule (4) of rule 22 to post a copy of the list outside his office and also to send a copy to the Returning Officer. If he does not do so, and the election even then takes place, it has been pressed that that would not be an election according to the rules. Absence of such formalities will obviously not invalidate the election provided those who vote at the election are possessed of proper and authentic credentials and produce the same in accordance with sub-rule (3) of rule 28. In that case non-compliance with such a formality will not have a substantial or a material bearing on the election and the result of the election. So that there is no force in this contention.

If sub-rule (3) of rule 28 only dealt with the question of identity of the voter or the elector nothing could have been more simply stated in that sub-rule. But it does not refer to the question of identity. It refers to the credentials of the voter or the elector and

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provides specifically that he who possesses the requisite credentials shall 'only' be allowed to vote. This excludes any other person, whether shown in the list according to sub-rule (4) of rule 22 or not, from having the right to vote at the election. It is obvious that sub-rule (3) of rule 28 is not meant for the matter of facility of identity of the voter or the elector, but is a provision which says in so many words who alone shall be permitted to vote at an election under section 5(2)(a)(ii).

There is then the question of reading sub-rule (4) of rule 22 and sub-rule (3) of rule 28 together, but even when those two sub-rules are read together, what is provided in sub-rule (3) of rule 28 giving right and authority to a voter to be allowed to vote, cannot be taken away merely because the list is not as full and complete as it ought to be under sub-rule (4) of rule 22. The list itself gives no right to a person named in it to vote at the election, and consequently what is in the list or what is omitted from the list cannot possibly affect the right of the voter or elector to vote as, according to sub-rule (3) of rule 28, the essential basis of the right of the voter or the elector is not the appearance of his name in the list under rule 22(4), but the possession of copy of the resolution of his co-operative society, duly attested, authorising him to represent his society. Such authorisation is only dealt with in sub-rule (3) of rule 28 and not in sub-rule (4) of rule 22. But because this is so, it does not mean that sub-rule (4) of rule 22 is a redundant provision. It is a provision properly set in the scheme of election as beginning with rule 21. It is something that will in the normal course take place. But any defect in it cannot invalidate the election if otherwise the credentials of the voter or elector are not open to attack and conform to sub-rule (3) of rule 28. A case of the type as the present where some representatives of co-operative societies who are voters or electors for the election under section 5(2)(a)(ii) are not to be found in the list under sub-rule (4) of rule 22 is not that is expected to be a matter of routine. The normal course is to follow the steps in the election and the stages referred to in rules 21 and 22, along with other relevant rules, but a defect in a step like the one concerning the list under sub-rule (4) of rule 22 does not, as pointed out, invalidate the election, not otherwise open to any objection. So while sub-rule (4) of rule 22 is not redundant and is well set in the scheme of things for the election with which the rules in Part II of the 1961 Election Rules deal, it does not control the right of the voter or the elector whose credentials give him that right consistent with sub-rule (3) of rule 28.

So the answer to the first part of question 4 is that even if the name of a representative of a co-operative society does not figure in the list which is publicised according to sub-rule (4) of rule 22, he still has the right to cast his vote provided he has with him a copy of the resolution of his society, duly attested by the Chairman or the President of it, authorising him to represent the society at the election under section 5(2)(a)(ii).

In the present case, therefore, there has been no defect according to law which invalidates the election of respondents 3 and 4. No breach of any statutory provision or any statutory rule has been shown that affects the legality or the validity of the election of those respondents. This petition, therefore, fails and is dismissed, but, in the circumstances of the case, the parties are left to their own costs.

B.R.T.