HC-KAR

NC: 2025:KHC:49827
WP No. 35584 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF NOVEMBER, 2025

BEFORE

R

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 35584 OF 2025 (GM-RES)

BETWEEN

SRI. K N SHANTH KUMAR
SON OF LATE K.A. NETTAKALLAPPA,
AGED ABOUT 64 YEARS,
RESIDING AT NO.298/A, 1ST MAIN, 8TH BLOCK,
JAYANAGAR,
BENGALURU 560 070.

.... PETITIONER

(BY SRI. S.S. NAGANAND, SR. ADVOCATE FOR
SRI. S. RAJENDRA., ADVOCATE)

AND

1. ELECTORAL OFFICER
KARNATAKA STATE CRICKET ASSOCIATION,
DR. B. BASAVARAAJU, I.A.S. (RETD.),
1ST FLOOR, M. CHINNASWAMY STADIUM,
CUBBON ROAD, BANGALORE - 560001.

2. KARNATAKA STATE CRICKET ASSOCIATION,
AN ASSOCIATION REGISTERED UNDER
THE KARNATAKA SOCIETIES REGISTRATION ACT,
1960,
NO. 1, M. CHINNASWAMY STADIUM,
CUBBON ROAD, SHIVAJI NAGAR,
BANGALORE 560001.
REPRESENTED BY ITS CEO.

3. SRI. B. K. VENKATESH PRASAD,
SON OF SRI. BAPU KRISHNARAMA RAO,
AGED ABOUT 56 YEARS,
RESIDING AT NO.83, 3RD MAIN, 1ST CROSS,
DEFENCE COLONY, INDIRANAGAR,

BENGALURU -560038

4. KALPANA VENKATACHAR,
DAUGHTER OF SRI. VENKATACHAR,
AGED ABOUT 64 YEARS,
RESIDING AT NO.1667, 16TH MAIN, 32ND CROSS,
BSK II STAGE, BENGALURU 560 070

…. RESPONDENTS

(BY SRI. AVYAN RAO., ADVOCATE FOR R1;
SRI. UDAYA HOLLA., SR. ADVOCATE FOR
SRI. SURAJ SAMPATH., ADVOCATE FOR C/R2;
SRI. A.S. VISHWAJITH., ADVOCATE FOR
SRI. KARN GUPTA., ADVOCATE FOR R3;
SMT. LAKSHMI MENON., &
SMT. TANIA DAS.K., ADVOCATE FOR R4)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI OR ANY OTHER WRIT, ORDER OR DIRECTION QUASHING THE ORDER DATED 24.11.2025 PASSED BY THE R1 (ANNEXURE-A) AND ETC.

THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 27.11.2025, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CAV ORDER

1. The Petitioner is before this Court seeking for the following reliefs;

a) Issue a Writ of Certiorari or any other Writ, Order or Direction quashing the order dated 24.11.2025 passed by the Respondent No.1 (Annexure A).

b) Issue a Writ of Mandamus or any other Writ, Order or Direction directing the Respondent No.1 to declare the Petitioner as a valid candidate for the purpose of

contesting the elections of the Respondent No.2 Association and carry on the Election process of the Petitioner in terms of the duly published Election Calendar.

c) Declare that the provisions of clause 3B(D) (b) are not applicable to individuals contesting the election for the post of office bearers in accordance with rule 6(A) (i) with its proviso.

d) Issue such other Writs, Directions or Orders, which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case, in the interest of justice and equity.

2. The Petitioner claims to be the president of M/s Deccan Herald and Prajavani Sports Club for more than two decades. He also claims to be a philanthropist and avid sportsman, past president of the Karnataka Olympics Association and Trustee of M/s.Netkalappa Centre for Sports.

3. The Petitioner filed his nomination for the post of President of the respondent No.2-Karnataka State Cricket Association (for short hereinafter referred to as ***"KSCA"***). His nomination was scrutinised on 24.11.2025, when it was rejected on the ground that

M/s Deccan Herald and Prajavani Sports Club, which is an Institutional Member of the KSCA, was in arrears to the KSCA. It is in that background that the Petitioner is before this Court seeking the aforesaid reliefs.

4. Sri.S.S.Naganand, learned Senior Counsel appearing for the Petitioner, submitted that;

4.1. At the time when the nomination papers of the Petitioner was taken up for scrutiny, there were no arrears even though when at the time of submitting the nomination papers there were arrears, the said arrears had been paid at 3.06 pm before the nomination was taken up for scrutiny at 5:30 pm and as such, there being no arrears at that particular point of time, the nomination Form of the Petitioner could not have been rejected on account of there being arrears.

4.2. In this regard he relies upon **Rule 3B(D)(b),** which is reproduced hereunder for easy reference;

> ***3B GENERAL PROVISIONS ON MEMBERS/ASSOCIATES:***
>
> *(D) ARREARS:*
>
> *(b) In case of a Life Member whose any payment of more than Rs.100/- is in arrears and a Founder Institutional member whose subscription or payment of more than Rs.100/- is in arrears, such Life members or Founder Institutional Members shall not be allowed to attend/contest or vote at any meeting or be allowed to enjoy the privileges of the Association as long as they are in arrears.*

4.3. His submission is that in case of a life member whose any payment of more than Rs.100/- is in arrears and the founder Institutional Member, whose subscription or payment of more than Rs.100/- is in arrears, such life member or founder Institutional Member shall not be allowed to attend/contest or vote at any meeting or be allowed to enjoy the privileges of the Association ***as long as they are in arrears***, would only mean that the embargo

thereunder is as long as they are in arrears and if arrears had been paid, the embargo under Rule 3B(D)(b) would not apply, hence the embargo for contesting would be only so long as they are in arrears would not apply to the Petitioner, who has made payment of the arrears prior to the scrutiny.

4.4. The embargo under Rule 3B(D)(b) is not a disqualification, there being a separate provision for disqualification under By-law (6). Bylaw (6) not having any disqualification insofar as arrears are concerned. Thus, the nomination form could not have been rejected on the grounds of disqualification as done by the Electoral Officer. In this regard, he relies upon the decision of the Constitutional Bench of the Hon'ble Apex Court in ***K. Prabhakaran v. P. Jayarajan***[1] more particularly, para 1, 2, 41,

[1] (2005)1 SCC 754

61 thereof, which are reproduced hereunder easy reference;

1. *Election to 14, Kuthuparamba Assembly Constituency was held in the months of April-May 2001. There were three candidates, including the appellant K. Prabhakaran and the respondent P. Jayarajan contesting the election. Nominations were filed on 24-4-2001. The poll was held on 10-5-2001. The result of the election was declared on 13-5-2001. The respondent was declared as elected.*

2. *In connection with an incident dated 9-12-1991, the respondent was facing trial charged with several offences. On 9-4-1997, the Judicial Magistrate, First Class, Kuthuparamba held the respondent guilty of the offences and sentenced him to undergo imprisonment as under:*

Offences	*Sentence*
Under Section 143 read with Section 149 IPC	*RI for a period of one month*
Under Section 148 read with Section 149 IPC	*RI for six months*
Under Section 447 read with Section 149 IPC	*RI for one month*
Under Section 353 read with Section 149 IPC	*RI for six months*
Under Section 427 read with Section 149 IPC	*RI for three months*
Under Section 3(2)(e) under the PDPP Act *read with Section 149 IPC*	*RI for one year*

41. *The correct position of law is that nomination of a person disqualified within the meaning of sub-section (3) of Section 8 of RPA on the date of scrutiny of nominations under Section 36(2)(a) shall be liable to be rejected as invalid and such decision of the returning Officer cannot be held to be illegal or ignored merely because the conviction is set aside or so altered as to go out of the ambit of Section 8(3) of RPA consequent upon a decision of a subsequent date in a criminal appeal or revision.*

61. *To sum up, our findings on the questions arising for decision in these appeals are as under:*

1. The question of qualification or disqualification of a returned candidate within the meaning of Section 100(1)(a) of the Representation of the People Act, 1951 (RPA for short) has to be determined by reference to the date of his election which date, as defined in Section 67-A of the Act, shall be the date on which the candidate is declared by the returning Officer to be elected. Whether a nomination was improperly accepted shall have to be determined for the purpose of Section 100(1)(d)(i) by reference to the date fixed for the scrutiny of nomination, the expression, as occurring in Section 36(2)(a) of the Act. Such dates are the focal point for the purpose of determining whether the candidate is not qualified or is disqualified for being chosen to fill the seat in a House. It is by reference to such focal point dates that the question of disqualification under sub-sections (1), (2) and (3) of Section 8 shall have to be determined. The factum of pendency of an appeal against conviction is irrelevant and inconsequential. So also a subsequent decision in appeal or revision setting aside the conviction or sentence or reduction in sentence would not have the effect of wiping out the disqualification which did exist on the focal point dates referred to hereinabove. The decisive dates are the date of election and the date of scrutiny of

nomination and not the date of judgment in an election petition or in appeal thereagainst.

2. For the purpose of attracting applicability of disqualification within the meaning of "a person convicted of any offence and sentenced to imprisonment for not less than two years", — the expression as occurring in Section 8(3) of RPA, what has to be seen is the total length of time for which a person has been ordered to remain in prison consequent upon the conviction and sentence pronounced at a trial. The word "any" qualifying the word "offence" should be understood as meaning the nature of offence and not the number of offence/offences.

3. Sub-section (4) of Section 8 of RPA is an exception carved out from sub-sections (1), (2) and (3). The saving from disqualification is preconditioned by the person convicted being a member of a House on the date of the conviction. The benefit of such saving is available only so long as the House continues to exist and the person continues to be a member of a House. The saving ceases to apply if the House is dissolved or the person ceases to be a member of the House.

4.5. By relying on **K.Prabhakaran's** case, his submission is that the question of qualification or disqualification of a returned candidate is required to be considered on the decisive date, that is, the date of scrutiny of nomination, which he submits is a time of scrutiny of the

nomination paper and applying the Constitutional Bench judgment in **K.Prabhakaran's** case he submits that the Electoral Officer ought to have taken into consideration that by time scrutiny was taken up or completed, the alleged embargo or disqualification was not in existence.

4.6. He relies upon the decision of the Hon'ble Bombay Court in **Ramesh Rajaram Patil -v- Addl. Commissioner, Aurangabad Division and Others**[2] more particularly, para 4, 5, 11, 17 and 20 thereof, which are reproduced hereunder for easy reference:

> ***4.*** *The Petitioner is a producer member of respondent No. 3 Karkhana which is a specified society for the purposes of Maharashtra Co-operative Societies Act, 1960. The elections for the managing committee were declared on 16-6-1994 and the last date for filing the nomination papers was 22-6-1994. The date fixed for scrutiny was 23-6-1994.*
>
> ***5.*** *At the time of the scrutiny, respondent No. 4 filed an objection (vide Exhibit A-, page 12) that the Petitioner was a defaulter inasmuch as an amount of Rs. 3,427.25 was due to the Karkhana from him. The scrutiny was,*

[2] 1995 (1) Maharashtra law journal 208

therefore, adjourned under proviso to rule 23(5) of the Specified Co-operative Societies Elections to Committees Rules, 1971 by the Returning Officer to 24-6-1994 on application. On that day, the Petitioner tendered before the Returning Officer a challan from A.D.C.C. Bank, Aurangabad, showing the deposit of amount of Rs. 3,000/- in the account of the respondent No. 3 Karkhana on 24-6-1994, i.e. the adjourned date of scrutiny. The Returning Officer took a view that the relevant date for determining the disqualification on account of default under section 73-FF of the Maharashtra Co-operative Societies Act, 1960 was 16-6-1994 and as the Petitioner was a defaulter on that date, though the amount was paid on a subsequent date, he was disqualified for being elected to the managing committee. He, therefore, rejected the nomination paper filed by the Petitioner.

11. *There is one more angle with which the facts in this case may be viewed. The date on which the Petitioner had purchased seeds from the Karkhana was not before the Returning Officer. In order to constitute a default under explanation (c) (ii) to section 73-FF(1)(i), "a member who has purchased any goods or commodities on credit..... and fails.....to pay the price of such goods or commodities.....after receipt of notice of demand by him from the concerned society or within thirty days.....or from the date of delivery of goods to him....., whichever is earlier;" will be a defaulter. In this case, there was no evidence before the Returning Officer from which it could either be held that the payment was not made within thirty days of service of notice of demand (because such a notice was not proved to have been served much less, the date of service) or that the payment was not made within thirty days of delivery of goods. The Returning Officer does not appear to have required the objector or the Karkhana to adduce any evidence on those points. Under rule 23(2) of the Specified Co-operative Societies Elections to Committees Rules, he was duty bound to hold such summary inquiry as he thought necessary and under rule 23(5) he should have allowed an opportunity to the Petitioner to rebut the objection. True it is that he had adjourned the matter for inquiry to the following day; but, he had not taken suitable steps to satisfy himself that the*

Petitioner did really fall within the scope of the definition of the expression "defaulter", the relevant portion of which is quoted above. The finding of the Returning Officer that the Petitioner was a defaulter and the consequent rejection of nomination paper were, therefore, not warranted by law. Both must be quashed and set aside.

17. *If that disqualification is a curable disqualification, there is no reason to suppose that a person, who has, with awareness or with unawareness, remained in arrears of the dues to the society till the date on which he filed the nomination should not be allowed to mend his mistake and do away with the temporary curable disqualification that he had earned. If this is so, there is no reason to suppose that the Returning Officer has to consider the question of disqualification with reference to the date on which the nomination paper was filed and not with reference to the date on which the decision of the scrutiny was to be recorded.*

20. *It may be noted that in any event, permitting an eligible member to context the election does not mean injustice to the other contestants or the body of members in general. Likewise, permitting a member, otherwise eligible, to contest the election to remove the curable disqualification before the date of the decision to be recorded by the Returning Officer does not necessarily mean any injustice to the rival contestants or to the general body of the members. Again, if a person, having an alleged disqualification, is wrongly allowed to context the election, and if he is elected, the aggrieved party is not left by the Statute without any remedy. The Act does provide an adequate remedy in that behalf. Therefore, we do not see any legal hurdle in holding that a member, who was temporarily disqualified on account of a curable disqualification, could be allowed to mend the matters and to get wiped the temporary curable disqualification before the decision to be recorded by the Returning Officer.*

4.7. By relying on **Ramesh Rajaram Patil's** case, he submits that the facts in the said matter are

more or less identical to that in the present matter, wherein the date of scrutiny had been fixed on 23.06.1994, the nomination having been rejected on the ground that as on the date of filing of the nomination, the candidate was a defaulter, was rejected has been set aside by the Hon'ble Bombay High Court by holding that the disqualification has to be considered on the date on which the decision of scrutiny was recorded.

4.8. His submission is that there being a curable defect in the nomination form, if the defect were to be cured before the scrutiny was completed, the Electoral Officer ought not to have rejected the nomination form on account of arrears of dues.

4.9. He relies upon the decision in **L.Ramakrishnappa -v- Presiding Officer**[3], more particularly para 20 thereof, which is reproduced hereunder for reference;

> ***20.*** *To sum up, our conclusions on the two questions of law arising for consideration, are as follows:*
>
> *(1) Under Article 226 of the Constitution, this Court has the jurisdiction to interfere with the illegality committed in the course of holding election to the offices of any authority/body which is regulated by statutory provisions (other than election to the Parliament and State Legislature), notwithstanding the existence of an alternative remedy, by way of filing Election Petition, if violation of law is established. In other words, such a Writ Petition is maintainable.*
>
> *(2) However, the jurisdiction of this Court under Article 226 being an extraordinary one, this Court as a general rule, will not and should not entertain a Petition in matters connected with such elections even if any illegality is shown to have been committed, if the law provides an effective alternative remedy and the illegality is such in respect of which adequate relief could be granted in an Election Petition. In other words, this Court will not and should not entertain Writ Petition lightly, as held by the Supreme Court in the case of Muthuswamy [(1988) 1 SCC 572 : AIR 1988 SC 616.] .*
>
> *(3) In exceptional cases in which the illegality committed is patent and does not depend upon the investigation of disputed questions of fact and interference is called for to prevent, abuse of power and the taking of advantage of such illegality by its beneficiaries for some time, waste of public time and money and to avoid inconvenience to the public institution concerned, this Court has not only the*

[3] ILR 1991 KAR 4421

power but also under a duty to interfere provided the party aggrieved approaches this Court forthwith and in good time.

4.10. By relying on **L.Ramakrishnappa's** case, his submission is that while exercising powers under Article 226 the Constitutional Court would have the jurisdiction to interfere with the illegality committed in the course of holding election to the office of any Authorities/Body notwithstanding the existence of an alternate remedy by way of filing of Election Petition or a Suit and as such, a writ petition would be maintainable.

4.11. Though the Division Bench of this Court in **Ramakrishnappa's** case has held that the jurisdiction of the Court under Article 226 being extraordinary one, should be exercised if the circumstances so demand, his submission is that this particular fact situation will come within the said exception inasmuch as the

Electoral Officer has applied a wrong date for considering disqualification, inasmuch as the Electoral Officer has considered the date of nomination, whereas it is the date of scrutiny which is required to be taken into consideration.

4.12. He relies upon the decision of this Court in **D.L.Suresh Babu and another -v- The Institute of Chartered Accountants of India and another**[4], more particularly para 20, 21, 34 and 42 thereof, which is reproduced hereunder for easy reference:

> ***20.*** *In Muddamallappa's case, that being one of the earliest cases, a Division Bench of this Court speaking through Somnath Iyer, J. (as he then was) examining the power of a High Court to interfere with rejection of a nomination paper under the Mysore Village Panchayats and Local Boards Act, 1959 and the Rules before the completion of elections in the light of the principles enunciated by the Supreme Court in Ponnuswami's case observed thus:*
>
> *"The principle that there should be no interruption of an election while it is in progress and that no attack should be made on the validity of any proceeding relating to such election until its completion, is, as I understand it, a sound*

[4] 1982 SCC OnLine Kar 148

principle of election law which, ordinarily justifies the refusal of the exercise of such jurisdiction. But, to say that is not the same thing as saying that even in a case where the impugned order of an Election Officer is so plainly absurd or where the order made by him cannot but be regarded as one which it was impossible for him to make under the statutory provisions under which he was functioning, we should, nevertheless, even in such a case, decline to exercise our jurisdiction. In cases falling within that exceptional category, it is clear that it would be our plain duty to correct at the earliest stage such egregious errors which, if the election is allowed to continue unimpeded, would inevitably result in wasteful expenditure of public time and money."

21. *In Fakirappa Yellappa Kali's case, Rama Jois, J. in the context of the bar created by sub-article (3) of Article 226 of the Constitution, substituted by the 42nd Amendment of the Constitution, that was then in force, reviewing all the earlier cases of the Supreme Court and this Court ruled that it was open to this Court to interfere with the rejection of a nomination in exceptional circumstances. With the Amendment of Article 226 by the 44th Amendment of the Constitution, that part of the discussion in Fakirappa Yellappa Kali's case, dealing with the existence of an alternative remedy is no longer relevant and the position is that the law as it stood prior to 1st February 1977 or prior to the 42nd Amendment of the Constitution stands restored.*

34. *An Act must be read as a whole and effect must be given to every part of the statute is elementary. As I apprehend, the mandate of Explanation-I of Regulation 67(10) borrowed from similar provisions found in other election laws of the country, directs the panel or the returning Officer to ignore technical defects in a nomination paper and reject it only for defects of a substantial character only. But, unfortunately, the panel has made a mountain out of a mole and has rejected them on extremely technical considerations contrary to the specific and clear mandate of Explanation-I of Regulation No. 67(10) of the Regulations. Without any doubt, the panel, if it had kept before it the said provision was bound to hold that the nomination papers of the petitioners did*

not suffer from a defect of a substantial character and accepted them, which would have been in accord with the principle enunciated by the Supreme Court in Karnail Singh v. Election Tribunal Hissar [10, E.L.R. 189.] , Pratap Singh v. Shri Krishna Gupta [A.I.R. 1956 Supreme Court 140.] ; and the Division Bench ruling of the Patna High Court in Dahu Sao v. Rangalal Chaudhary (22 E.L.R. 299). With all respect to the panel, I am constrained to say that the rejection of the nomination papers of the petitioners was for a plainly absurd and egregious reason and, therefore, calls for my interference.

42. *In the light of my above discussion, I make the following orders and directions:*

(a) I quash the impugned orders (Annexure-D in Writ Petition No. 20488 1982 and Annexure-B in W.P. No. 20743 of 1982).

(b) I declare that the nomination papers of the petitioners in Writ Petitions Nos. 20488 and 20743 of 1982 to the Central and Regional Councils respectively are valid and direct respondent No. 1 to include them as valid nomination papers to the Central and Regional Councils respectively and complete the elections on the basis of the calendar of events already issued (Annexure-R2) in accordance with the Act and the Regulations.

4.13. By relying on **D.L. Suresh Babu's** case, he submits that the principle that there should be no interruption of an election while it is in progress, though is a sound principle of election law justifying the refusal of the exercise of writ jurisdiction, in a case where the impugned

order of an election officer is so plainly absurd or where the order made by him cannot but be regarded as one which it was impossible for him to make, this Court ought to exercise jurisdiction. If the rejection of the nomination paper was for reasons which were plainly absurd or egregious, this Court ought to exercise jurisdiction and on that basis, he submits that the order of the Electoral Officer-respondent No.1 is required to be quashed.

5. Sri.K.N.Phanindra., learned Senior Counsel appearing for respondent No.1-Electoral Officer, who had been called upon to obtain instructions and make his submission, submits that,

5.1. When the nomination form of the Petitioner had been taken up for scrutiny, necessary documents not being available with the Chief Executive Officer of the KSCA, he was called upon to secure the same, and in the

meanwhile, the scrutiny of the other nomination forms for the post of Vice President, etc., was taken up.

5.2. When the nomination form for the post of president was taken up, more particularly that of the Petitioner at 5.30 pm, the payment receipt of the arrears was made available. However, the nomination form was rejected on the ground that as on the date of the submission of the nomination form, the Institutional Member of which the Petitioner is the president was in arrears of Rs.200/-.

5.3. His submission is that since the elections are being carried out under the supervision of this Court and this Court had appointed the supervising Officer, the supervising Officer and the Electoral Officer will abide by any direction or order passed by this Court.

6. Sri.Udaya Holla., learned Senior Counsel appearing for Respondent No.2-KSCA submits that;

6.1. There is a mistake on part of KSCA inasmuch as the KSCA has not informed of any arrears on part of the members or Institutional Members, though there is a system to inform individual members of arrears, there is no system put in place by KSCA to inform the Institutional members of arears or defualt.

6.2. Shri Udaya Holla, however submits that the Petitioner had made payment of the arrears at 3.06 pm on 24.11.2025 and in that regard, has filed a memo of documents today enclosing the printout of the transaction details and the ledger entry which has been passed by the KSCA. The transaction details indicate that a sum of Rs.500/- has been paid under transaction ID.546515299, on 24.11.2025 at 3.06.29 PM and has been accounted for in the

ledger on the very same date in the software used by the KSCA, viz., Tally.

6.3. His submission is that the payments by the institution member, namely Deccan Herald and Prajavani, was made prior to the nomination form of the Petitioner being taken up for scrutiny.

7. Sri A.S.Vishwajith, the Counsel appearing for Respondent No.3, submits that;

7.1. What is required to be considered is the date of the nomination and not the scrutiny of papers and in that regard, he relies upon the decision of the Hon'ble Apex Court in ***Mangoo Singh v. Election Tribunal, Bareilly and Ors*** [5] more particularly para 5, 6, 7 and 10 thereof, which are reproduced hereunder for easy reference;

> ***5.*** *The first contention of learned Counsel for the appellant relates to and arises out of the expression "for*

[5] 1957 SCC online 36,

being chosen as" occurring in the section. The argument is this. It is submitted that a person is "chosen as a member of a board" when the poll takes place and a majority of voters vote for him as their chosen candidate; therefore the relevant date for the operation of the disqualification is the date of the poll, and inasmuch as on October 10, 1953, which was several days before the date of the poll, the appellant was no longer in arrears of municipal tax in excess of one year's demand by reason of the payment made on that date, the disqualification did not attach to him on the date of the poll. We are unable to accept this argument. It is worthy of note that an identical expression "shall be disqualified for being chosen as" occurs in Article 102 of the Constitution and Section 7 of the Representation of the People Act, 1951. This expression occurring in Section 7 of the Representation of the People Act, 1951 was considered by this Court in Chatturbhuj Vithaldas Jasani v. Moreshwar Parashram [(1954) SCR 817] . In that case the question was when the disqualification mentioned in clause (d) of Section 7 of the Representation of the People Act, 1951 arose and it was held that the date for putting in the nominations was one of the crucial dates. On this point, the following observations made in that case are apposite:

"Now the words of the section are 'shall be disqualified for being chosen'. The choice is made by a series of steps starting with the nomination and ending with the announcement of the election. It follows that if a disqualification attaches to a candidate at any one of these stages, he cannot be chosen."

It was pointed out in N.P. Ponnuswami v. Returning Officer Namakkal Constituency, Namakkal, Salem Dist [(1952) 1 SCC 94 : (1952) SCR 218] that "election" is a continuous process consisting of several stages and embracing many steps of which nomination is one; nomination is the foundation of a candidate's right to go to the polls and must be treated as an integral part of the election. If a person is disqualified on the date of nomination, he cannot be chosen as a candidate because the disqualification mentioned in Section 13-D attaches to him on that date.

6. *This is also clear from para 22(2) of the U.P. Municipalities (Conduct of Election of Members) Order, 1953. That sub-para states—*

"22.(2) The Returning Officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination, and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, refuse any nomination on any of the following grounds:

(a) that the candidate is not qualified to be chosen to fill the seat under the Act; or

(b) that the candidate is disqualified for being chosen to fill the seat under the Act; or

(c) that there has been any failure to comply with any of the provisions of paras 16 and 17; or

(d) that the signature of the candidate or any proposer or seconder is not genuine or has been obtained by fraud."

If the disqualification of clause (g) of Section 13-D of the Act is to come into operation only on the day of the poll, then it is quite unnecessary for the Returning Officer to consider that disqualification at the time of scrutiny; and indeed it will be improper for him to refuse nomination on the ground of such disqualification. Clause (b) of para 22(2) uses the same expression "disqualified for being chosen" — showing clearly enough that the starting point of the act of choosing is not on the date of the poll only. The process of choosing commences on the date of filing nominations.

7. *We now turn to the second proviso to Section 13-D. The submission of learned Counsel for the appellant is that, as stated in the proviso, the disqualification is transient and ceases to operate as soon as the arrears are paid; on October 10, 1953, the appellant was no longer disqualified and therefore, he could be chosen on the date of the poll, that is, on October 26, 1953. The argument is*

that in the case of such a transient disqualification, the second proviso must be so read as to mean that a disqualification subsisting on the day of nomination can be wiped off completely by subsequent payment of arrears of tax; otherwise a disqualification at the time of nomination will disentitle a person to stand for election; even though it ceases to operate before the day of the poll. This argument also we cannot accept as correct; it is really the first argument in a different form. The wiping off of the disqualification under the second proviso has no retrospective effect, and the disqualification which subsisted on the day of filing nominations did not cease to subsist on that day by reason of a subsequent payment of the arrears of municipal tax. On this point we accept as correct the view expressed in Ahmed Hossain v. Aswini Kumar [AIR (1953) Cal 542] , where a similar question under the Bengal Municipal Act (Ben. 15 of 1932), fell for consideration. The question was if a person disqualified on the date of nomination could shake off his pre-existing disqualification by acquiring a new right between the date of nomination and the date of scrutiny. What happened in that case was this : on the material date, that is, the last date for submission of nominations, a person was in arrears for more than three months in payment of the tax which he was liable to pay, and he came within the mischief of clause (g) of amended Section 22(1) of the Bengal Municipal Act. The contention was that the name of the press of which the candidate was the proprietor and not his name was recorded in the books of the municipality as the assessee and that the name of the candidate was in the electoral roll by reason of his educational qualifications. This contention was repelled and it was observed that if a person was disqualified on the date of the nomination, he could not shake off his pre-existing disqualification by acquiring a new right between the date of nomination and the date of scrutiny. There is also other judicial authority which supports the same view. In Harford v. Linskey [(1899) 1 QB 852, 858] a similar question arose for decision under the Municipal Corporations Act, 1882, Section 12 whereof enacted that "a person shall be disqualified for being elected and for being a councillor" if and while he is interested in contracts with the corporation. The Petitioner in that case

admitted that at the time of his nomination he was interested in contracts with the corporation, but contended that he could and would have got rid of his disqualification before the day fixed for the poll, and was therefore not disqualified for nomination. The question was whether he was so disqualified. Wright, J., delivering the judgment of the Court observed—

"In the absence of any guide, we think it safest to hold that in cases of elections under the Municipal Corporations Acts a person, who at the time of the nomination is disqualified for election in the manner in which this Petitioner was disqualified, is disqualified also for nomination. The nomination is for this purpose an essential part of the election, and if there are no competitors it of itself constitutes the election by virtue of the express words of Section 56. A different construction might produce much confusion. On the nomination day no one could know whether the persons nominated will at the poll be effective candidates or not. It is true that in the case put the disqualification may be removed before the election is completed; but what is to be the effect if the disqualification continues until the poll begins, or until the middle of the polling day, or until the close of the poll? Will votes given before the removal of the disqualification be valid? If not, how is the number of them to be ascertained? It seems to us unreasonable to hold that the Act means to leave the matter in such a state of uncertainty, and for these reasons we think that this Petitioner was disqualified for nomination or election."

The same state of uncertainty and confusion, to which a reference has been made in the aforesaid observations, will arise if the construction which learned Counsel for the appellant has pressed for our acceptance is adopted in the case before us.

***10.** Nor do we think that the word "demand" attracts the operation of Section 168. It may be readily conceded that the word "demand" ordinarily means something more than what is due; it means something which has been demanded, called for or asked for. But the meaning of a word must take colour from the context in which it is used. In clause (g) the context in which the word*

> *"demand" is used has a very obvious and clear reference to the amount of arrears or dues on which the disqualification depends; therefore, the expression used is — 'arrears in the payment of municipal tax or other dues in excess of one year's demand'. The word "demand" in that context and in the collocation of words in which it has been used can only mean 'in excess of one year's municipal tax or other dues'. We have been referred to several meanings of the word "demand" in standard English dictionaries and Law lexicons. When the context makes the meaning of a word quite clear, it becomes unnecessary to search for and select a particular meaning out of the diverse meanings a word is capable of, according to lexicographers. It it sufficient for our purpose to state that even in standard dictionaries and law lexicons, it is well recognised that the word "demand" may mean simply a 'claim' or 'due', without importing any further meaning of calling upon the person liable to pay the claim or due.*

7.2. By relying on **Mangoo Singh's case**, he submits that election is a continuous process consisting of several stages and embracing many steps of which nomination is one. Nomination being the foundation of a candidate's right to go to the polls is required to be treated as an integral part of the election. If a person is disqualified on the date of nomination, he cannot be chosen as a

candidate because the disqualification attached to him as on the date of nomination.

7.3. In the present case, the Petitioner being disqualified on account of arrears of subscription charges as on the date of nomination, the same would continue to apply. The same would have to be taken into consideration, which has been rightly done by the Electoral Officer.

7.4. He relies upon the decision of the Full Bench of the Hon'ble Apex Court in **Pashupati Nath Singh -v- Harihar Prasad Singh**[6], more particularly para 3, 4, 12, 13 and 16 thereof, which are reproduced hereunder for easy reference;

> ***3.*** *The High Court held that the nomination of the Petitioner was rightly rejected by the Returning Officer on the ground that he was not qualified to be chosen to fill a seat in the State legislature since he had not made and subscribed the requisite oath or affirmation as enjoined by clause (a) of Article 173 of the Constitution, either before*

[6] 1968, SCC online, SC 143

the scrutiny of nominations or even subsequently on the date of scrutiny.

4. *The short question which arises in this appeal is whether it is necessary for a candidate to make and subscribe the requisite oath or affirmation as enjoined by clause (a) of Article 173 of the Constitution before the date fixed for scrutiny of nomination paper. In other words, is a candidate entitled to make and subscribe the requisite oath when objection is taken before the Returning Officer or must he have made and subscribed the requisite oath or affirmation before the scrutiny of nomination commenced? The answer to this question mainly depends on the interpretation of Section 36(2) of the Act. It will, however, be necessary to refer to some other sections of the Act in order to fully appreciate the effect of the words used in that section. Section 32 of the Act provides for nomination of candidates for election, thus:*

"Any person may be nominated as a candidate for election to fill a seat if he is qualified to be chosen to fill that seat under the provisions of the Constitution and this Act or under the provisions of the Government of Union Territories Act, 1963, as the case may be."

12. *Mr Gokhale, who appears for the Petitioner, contends that on objection being taken under Section 36(2) that the Petitioner had not made and subscribed an oath or affirmation according to the form set out above, he was entitled to make and subscribe the oath or affirmation immediately before the objection was considered by the Returning Officer. He says that as soon as a candidate takes the oath or makes and subscribes the oath or affirmation he would become qualified within the terms of Article 173 of the Constitution, and this qualification would exist "on the date fixed for the scrutiny" because the date of scrutiny of nomination paper — in this case January 21, 1967 — would not have passed away by the time the oath or affirmation is taken or subscribed.*

13. *It seems to us that the expression "on the date fixed for scrutiny" in Section 36(2)(a) means "on the whole of the day on which the scrutiny of nomination has to take*

place". In other words, the qualification must exist from the earliest moment of the day of scrutiny. It will be noticed that on this date the Returning Officer has to decide the objections and the objections have to be made by the other candidates after examining the nomination papers and in the light of Section 36(2) of the Act and other provisions. On the date of the scrutiny the other candidates should be in a position to raise all possible objections before the scrutiny of a particular nomination paper starts. In a particular case, an objection may be taken to the form of the oath; the form of the oath may have been modified or the oath may not have been sworn before the person authorised in this behalf by the Election Commission. It is not necessary under Article 173 that the person authorised by the Election Commission should be the Returning Officer.

16. *In this connection it must also be borne in mind that law disregards, as far as possible, fractions of the day. It would lead to great confusion if it were held that a candidate would be entitled to qualify for being chosen to fill a seat till the very end of the date fixed for scrutiny of nominations. If the learned Counsel for the Petitioner is right, the candidate could ask the Returning Officer to wait till 11.55 p.m. on the date fixed for the scrutiny to enable him to take the oath.*

7.5. By relying on **Pashupati Nath Singh's** case, his submission is that the date fixed for scrutiny would be the beginning of the day, i.e., on the whole of the day on which the scrutiny or nomination has to take place and that the qualification should exist from the earliest moment of the day of scrutiny and if at any

point of time during that day, there is a disqualification, the candidate would have to be disqualified since law does not recognise and or disregards fractions of the day. The interpretation that has to be given to the day of scrutiny is the beginning of the day of scrutiny.

7.6. He relies on the decision in **V.Narayanachari -v- The Commissioner and the Returning Officer, Corporation of the City of Bangalore and others**[7] **,** more particularly para one [unnumbered] and 54, which are reproduced hereunder for easy reference;

> *The Petitioner was one of the candidates for election to the City of Bangalore Municipal Corporation from the 43rd Division. He presented his nomination paper on the 21st of November, 1970, According to the calendar of events relating to the election, the last date for presentation of nomination papers was the 23rd November, 1970 and the date fixed for scrutiny of the nomination papers was the 25th of November, 1970. At the scrutiny M. Obanna Raju, another candidate for election from the same Division (Impleaded as the 8th respondent in this Writ petition) raised an objection to the reception of the nomination paper of the Petitioner on the ground that the Petitioner had not paid the property tax payable to the Corporation by him in respect of his property in Division No. 43. The*

[7] 1970 SCC OnLine Kar 220

Petitioner produced a receipt for payment of taxes made by him at 3.30 P.M. on the same day, viz., the 25th of November, 1970. According to the receipt, payment made was of taxes for the years 1968-1969, 1969-1970 and 1970-1971. Thereupon, the Returning Officer (the first respondent) rejected the nomination paper recording his decision in that regard as follows:

"It is clear from the receipt produced by Sri Narayanachari that he has paid on 25-11-1970 and so there were arrears to Corporation on the day he filed nomination on 23-11-1970. Hence objection is upheld and nomination of Sri Narayanchari is rejected."

54. *Now on the facts of this case it is clear that upto 3-30 P.M. on the 25th of November, 1970, the Petitioner had not paid the property tax in respect of his property payable for the years 1968-1969, 1969-1970 and 1970-1971. Under Section 104 of the City of Bangalore Municipal Corporation Act, property tax shall be paid by the person primarily liable (owner of the premises is one of the persons so liable) within 30 days after the commencement of every half year; by an amendment under Act XIII of 1970 which came into force on the 8th of June 1970, sixty days are substituted for thirty days. There can be no doubt therefore that property tax payable by the Petitioner for 1968-1969, 1969-1970 and for the first half year of 1970-1971 was in arrears on the date he presented his nomination paper, viz., 21-11-1970.*

7.7. By referring to the Division Bench Judgment of this Court in **V.Narayanachari's** case his submission is that in that case, the arrears of property tax was paid on the date of the scrutiny that is, 25.11.1970 at 3.30 pm and as such, as on the date of the presentation of the

nomination paper, there being a disqualification, the payment prior to scrutiny cannot be taken into consideration.

7.8. He relies upon the decision of the Division Bench of this Court in **Jayamuthu -v- State Election Commissioner for Cooperative Housing Federation**[8], more particularly 23 thereof, which is reproduced hereunder for easy reference;

> ***23.*** *Taking up the first contention, at the outset, it is held that there can be no distinction between a case of improper rejection of a nomination of a candidate in an election and improper acceptance of a nomination in the context of filing of a writ petition in order to assail the same though there is a vital difference between the two, in that, in the former case, the aggrieved party cannot participate in the election process and in the latter case the aggrieved party would be entitled to participate in the election. However, on getting the election of the successful party-whose nomination was illegally accepted-being set aside in a properly constituted election petition, the aggrieved party would get the relief. But the point is, whether, because of the aforesaid difference, it can be held that in the case of an improper rejection of nomination, a writ petition could be filed by the aggrieved party and not at the instance of an aggrieved party, when it is a case of improper or*

[8] WA 3482 of 2015 & connected matters DD 21.04.2017

illegal acceptance of a nomination. We do not think that such distinction could be made for the purpose of Article 226 of the Constitution. In either case, whether it is a case of improper acceptance of a nomination or improper rejection of a nomination, the same would require proof of facts which cannot be adjudicated upon in a writ petition, merely on the basis of affidavit and counter affidavits. As the reasons for improper rejection or improper acceptance of nomination could be for myriad reasons and merely because in a particular case proof of disputed question of facts would not arise, it cannot be held that the writ petition could be maintained. Therefore, when once the election process has commenced, courts ought not to interfere in the election process and particularly the High Court under Article 226 of the Constitution should not interfere with an election process. While saying so, we rely upon an early decision and time tested precedent of the Hon'ble Supreme Court in the case of N.P.Ponnuswami, which case arose precisely on the question of improper rejection of nomination of a candidate therein. Though in that case Article 329(b) of the Constitution applied, nevertheless the principles propounded therein would apply with all force to all elections.

7.9. By relying on **Jayamuthu's** case, his submission is that there is no distinction between improper acceptance of nomination or improper rejection of a nomination, both of which would require proof of facts which cannot

be adjudicated upon in a writ petition, merely on the basis of affidavits and counter-affidavits. The rejection or acceptance could be for myriad reasons which give rise to disputed questions of fact, since this Court would be required to examine the date and time on which the arrears were paid, same is an inquiry into disputed question of fact, which cannot be done in a proceeding under Article 226 and 227, there being an alternative efficacious remedy in filing of an Election Petition or a Suit, the Petitioner would be required to be relegated to such an alternate remedy.

7.10. His submission is that the Institutional Member having defaulted and having been in arrears of though a meagre sum of Rs.200/-, the fact remains that there are arrears as on the date of nomination and as on the date on which the scrutiny of nomination was fixed, the payment

made even if it were to be prior to scrutiny being completed would result in disqualification and as such, the order passed by the Electoral Officer is proper and correct and does not require interference.

7.11. Though there are several other judgments produced, he does not rely upon them. On the basis of the above contentions, he submits that the petition is to be dismissed.

8. Sri.Karan Gupta, learned Counsel appearing on behalf of Ms.Lakshmi Menon, learned Counsel for Respondent No.4 would reiterate the submission of Sri.A.S.Vishwajith, learned Counsel and further submits that;

8.1. Respondent No.4 has withdrawn her nomination post the rejection of the nomination of the Petitioner. Her nomination has been accepted for one other post and if the nomination of the Petitioner were to be accepted and Respondent

No.4 wanting to withdraw her nomination, there would be a domino effect inasmuch as a member can only contest for one post and as such, the acceptance of her nomination for the one other post would also continue.

8.2. On specific enquiry as to whether Respondent No.4 wishes to withdraw the withdrawal of the nomination made by Respondent No.4, he categorically submits that Respondent No.4 does not wish to withdraw her withdrawal of nomination. He also submits that the petition is required to be dismissed.

9. Heard, Sri.S.S.Naganand, Learned Senior Counsel for the Petitioner, Sri.K.N.Panindra, Learned Senior Counsel for Respondent No.1, Sri.Udaya Holla, Learned Senior Counsel for Respondent No.2, Sri.A.S.Vishwajith, Learned Counsel for Respondent No.3, Sri.Karan Gupta, learned Counsel for

Respondent No.4 on behalf of Ms. Lakshmi Menon, learned Counsel. Perused papers.

10. The points that would arise for determination are;

1. Whether the disqualification of a candidate is required to be considered as on the date of filing of the nomination or as on the date on which the scrutiny of the nomination is made? If on the date of scrutiny of nomination, is it at any point of the day of the date of scrutiny of nomination or at the beginning of the day fixed for scrutiny of nomination?

2. Whether this Court is required to exercise its powers under Articles 226 and 227 of the Constitution of India as regards the rejection of a nomination of the Petitioner in the present case?

3. What order?

11. Before I answer any of the points above, it would required to place on record the context in which the above elections are being held, inasmuch as the Electoral Officer having earlier postponed the election, the postponement having been challenged by the KSCA, this Court vide order dated

21.11.2025, had set aside the postponement and directed the elections to be held as per the modified calendar of events stated therein. For the purpose of inspiring confidence in all stakeholders and to facilitate the expeditious completion of the electoral process, this Court had also appointed a former Judge of this Court to oversee and supervise the conduct of the elections. It was directed that after completion of the electoral process, the Electoral Officer shall file a concise report before this Court, recording compliance with the directions issued, and confirming that the election has been conducted in a free, fair and transparent manner. In that background, I am of the considered opinion that the elections are being conducted under the supervision of this Court, it would also be the duty of this Court to ensure that the elections are conducted in a free, fair, and transparent manner.

12. **ANSWER TO POINT NO.1**: **Whether the disqualification of a candidate is required to be**

considered as on the date of filing of the nomination or as on the date on which the scrutiny of the nomination is made? If on the date of scrutiny of nomination, is it at any point of the day of the date of scrutiny of nomination or at the beginning of the day fixed for scrutiny of nomination?

12.1. Much has been sought to be made out by Counsel for the Petitioner and Counsel for Respondents No.3 and 4 as regards the date which is to be considered for disqualification. The Petitioner contending that at the time when scrutiny is made, there should be no disqualification, whereas Counsel for Respondents No.3 and 4, though initially contended that it is the date of nomination, subsequently have contended that it is the date on which the scrutiny is fixed, but however submit that that date has to be considered as the beginning of the day fixed for scrutiny.

12.2. What is required to be considered by this Court is that the Electoral Officer has disqualified the

Petitioner on the ground that the Petitioner was disqualified as on the date of filing of the nomination and not on the ground that, as on the date the nomination forms were taken up for scrutiny, he was disqualified. That is to say, the contentions of the Respondents No.3 and 4 are not in support of the order of the Electoral Officer, but are an alternative argument to contend that even if the date of scrutiny were to be taken into consideration, it is the beginning of that day which is to be considered. Essentially, the said argument is an alternative argument or a hypothetical argument inasmuch as what this Court would have to consider is the order passed by the Electoral Officer.

12.3. The order of the Electoral Officer, which has been produced along with the memo dated 26.11.2025 is reproduced hereunder for easy reference:

Scrutiny of nomination paper of Sri K.N.Shantha Kumar, post of President.

The scrutiny is conducted under the supervision of the Hon'ble Justice Subhash Adi, Format Judge of the High Court of Karnataka as per the Hon'ble High Court of Karnataka Order in W.P.No.34890/2025(GM-KSR) C/W W.P.no.34902/2025(GM-KSR) and the order is passed and pronounced after the scrutiny accordingly.

Since the candidate sought the assistance of an Advocate, I requested the Supervisory Authority for an assistance in drafting the order. At my request Supervisory Authority prepared the draft and gave the same for my consideration and I considered the same and passed this order.

At the time of scrutiny of the nomination of Mr. K.N.Shanthakumar to the post of Hon. President another candidate contesting to the same post namely Sri.B.K.Venkateshprasad raised an objection as to the declaration and the nomination form filed by Mr. K.N.Shanthakumar inter-alia stating that the nomination is defective as under the prescribed form for the nomination at note no. 3 it is mentioned that "Only Life members and authorized representative of founder institutional members will have the right to participate and vote at the above meeting provided they are not in arrears of any fees".

By referring to the said clause submitted that Mr.K.N.Shantha Kumar representing Institutional Member is in arrears and is ineligible to contest the election.

The CEO, KSCA submitted that, the said institution for which Mr.K.N.Shanthakumar represents is in arrears of Rs.200/- i.e. IM 120 "Deccan Herald and Prajavani SC".

Mr.K.N.Shanthakumar representative by Mr.Rajendra Advocate submitted that, under the byelaw No. 3B(D)(a) that in the event of any arrears more than Rs.100 from any founder institution members or associate (as the case may be) remain unpaid for more than two months. Managing Committee may at its discretion remove the name of such member or Associate from the list of members or Associates as defaulter after due notice of 30 days. Referring to this clause submitted that, there is no list of defaulter published and as such the institution to which Mr. K.N. Shanthakumar represents has a right to contest, vote as long as the institution is removed from the list.

Whereas Clause specifically states that in case of life member whose any payment of more than Rs.100 is in arrears and Founder Institutional Member whose subscription or payment of more than Rs. 100 is in arrear, such an LM and founder Institutional Members shall not be allowed to contest or vote or allowed to enjoy the privileges of association as long as they are in arrears.

The form prescribed for the nomination specifically states candidates not to be in arrears. Candidate knew as on the date of nomination the institution he was representing was in arrears. Neither the candidate nor the lawyer advocate representing the candidate dispute that it was in arrears at the time filing of nomination.

Clause 3B (D) (b) of byelaw also states for contesting election to the post of office bearer or Managing Committee not to be in arrears.

As an Electoral Officer I am bound to consider the nomination in consonance with the byelaws and as per the prescribed nomination form. Both in the byelaw as well as in the form there is a

bar for contesting or attending meeting or casting vote if an institution is in arrears.

In view of the same the nomination of K.N.Shantha Kumar cannot be accepted and same is rejected.

The rejection order is placed in the presence of candidate and the learned counsels representing the Counsels K.N.Shantha Kumar.

12.4. A perusal of the above indicates that order of rejection of the nomination form of the Petitioner was made exclusively taking into consideration that the Institutional Member of which the Petitioner is the president/nominee was in default as on the date of filing of the nomination and not that, it was in default as on the date on which the scrutiny of nomination was fixed. *Ex-facie*, the order passed by the Electoral Officer is contrary to the applicable law and the judgment of the constitutional Bench of the Hon'ble Apex Court in **K.Prabhakaran's** case (supra), wherein the

Constitutional Bench has categorically held that the disqualification is to be considered as on the date of scrutiny.

12.5. If that were to be taken into consideration, the order passed by the Electoral Officer is contrary to the decision of the Constitutional Bench of the Apex Court in ***K.Prabhakaran's case.***

12.6. Coming to the alternative argument, the submission of Sri.A.S.Vishwajith, learned Counsel for Respondent No.3 by relying on ***Pashupatinath Singh's case*** is that the date of scrutiny would be the commencement of the day of scrutiny and not during the day of scrutiny and so long as the disqualification was persisting as at the beginning of the day of scrutiny, the nomination paper is required to be rejected.

12.7. In **Pashupatinath Singh's** case, the date of scrutiny of nomination papers was fixed as

21.01.1967 without the starting or ending time having been fixed and the disqualification was on the ground that the oath, in the prescribed format, had not been taken by the candidate, since the candidate had not made and subscribed to the requisite oath or affirmation as enjoined by clause (a) of Article 173 of the Constitution either before the scrutiny of nomination or even subsequently on the date of scrutiny, which fact is detailed in para 3 of the said judgment which has been extracted supra.

12.8. Though the Hon'ble Apex Court in ***Pashupati Nath Singh's case*** has dealt with what is the date of scrutiny, but the fact remains that in that matter the concerned candidate had not subscribed to the requisite oath either before the scrutiny of nomination or even subsequently on the date of scrutiny and in that background, Sub-section (2) of Section 36 of

the Representation of People Act 1951, was referred to and the Hon'ble Apex Court came to a conclusion that on the date of scrutiny under Section 36 (2)(a) would mean on the whole of the day on which the scrutiny or nomination has to take place.

12.9. The facts in the present matter are different, inasmuch as not only the date of scrutiny of nomination has been fixed, but the time also has been fixed as between 11 am to 4.00 PM. It is not in dispute and cannot be disputed that the institution of which the Petitioner is a member had made payment of the arrears at 3.06 PM on 24.11.2025, i.e. before the period of scrutiny got over. Insofar as this aspect is concerned, the submission of the independent authority like the Electoral Officer would be relevant inasmuch as upon instruction Shri K. N Phanindra, learned Senior Counsel has

categorically stated that when scrutiny of the nomination paper of the Petitioner was taken up, the receipt for having made payment of the areas was available on record, but however, the Electoral Officer had passed the impugned order, taking into consideration that as on the date of nomination, there was a disqualification attached to the Petitioner.

12.10. The receipt which has been placed on record by the Petitioner, when compared to the transaction details produced by the KSCA, would indicate that the payment was made at 3.06 pm. As per the submission of learned Counsel for the Electoral Officer that though the scrutiny of the nomination for the post of president had been taken up earlier, since all documents were not available, the same was postponed and was only taken up at 5.30 pm. In view of the categorical submission which has

been made, it is clear that at the time when the nomination form had been taken up for scrutiny, there were no arrears on part of the Institutional Member, which the Petitioner represents.

12.11. This would also have to be seen with reference to byelaw 3B(D)(b), which imposes an embargo on a representative on an Institutional Member or a representative of the institution member contesting the election so long as the arrears are due i.e., the embargo stood lifted immediately on payment of the arrears as aforesaid, which payment occurred prior to the scrutiny of the nomination form being taken up, let alone being completed. Byelaw 3B(D)(b) is an embargo and not a disqualification, which is separately dealt with in Bye Law 6. Hence, the effect of byelaw 3B(D)(b) as an embargo would

only apply as long as there is/are arrears and would stand lifted once arrears are paid.

12.12. In my considered opinion, the endeavour of all stakeholders in the electoral process, including this Court, must always be to facilitate and not frustrate the widest possible participation of candidates in any election. The democratic legitimacy of an elective office is premised on the electorate, in this case, the members of the KSCA, having the fullest range of choices, and the law must therefore be interpreted in a manner that advances, rather than restricts, the right to contest.

12.13. It is in this backdrop that the objection regarding the alleged arrears assumes significance. Admittedly, the arrears that were due as on the date of filing of the nomination were fully discharged before the nomination paper was actually taken up for scrutiny. The

only contention is that the payment was made during the day of scrutiny rather than prior to the beginning of the day of scrutiny. In my considered opinion, such an objection is hyper-technical, elevating form over substance, and is inconsistent with the constitutional commitment to free and fair elections under the Constitution, which would equally aply to an association like the KSCA.

12.14. Defects that do not go to the root of the candidate's eligibility and that are capable of being remedied before the completion of scrutiny are to be treated as curable defects. The right to contest is a statutory right that must be applied in a manner consistent with democratic values and electoral fairness; exclusion of candidates should not be based on technical or procedural trivialities like arrears of Rs. 200 which defect was also cured.

12.15. Where the defect in a nomination paper does not affect a substantial requirement of the law and is capable of being corrected, the Returning Officer must provide an opportunity to cure the defect, in my considered opinion, election laws, while mandatory in essential aspects, ought not to be applied in such a manner as to defeat substantive justice.

12.16. A liberal interpretation has to be resorted to in such matters; procedural requirements should not operate as instruments of disenfranchisement or exclusion. Unless a defect is incurable or affects the core statutory preconditions for candidacy, the Returning Officer must adopt a facilitative approach.

12.17. In the present case, the essential statutory requirement is the clearing of arrears before the scrutiny is concluded, since the embargo is applicable so long as there are arrears. That

requirement was satisfied on payment of arrears before the nomination form was taken up for scrutiny. The payment of arrears during the day of scrutiny, prior to the Returning Officer taking up the nomination for actual examination, achieves the very object that the byelaws intends to secure. To insist on payment before the commencement of the calendar day of scrutiny, as opposed to before the act of scrutiny itself, would be to import a rigidity that the byelaw does not require/mandate nor does the calendar of events impose.

12.18. In light of the above discussion, the defect alleged by the Returning Officer is clearly a curable defect that was duly cured within the permissible window. This Court ought, therefore, to lean in favour of permitting the candidate to contest rather than excluding him on a hyper-technical ground. The electoral

Officer ought to have favoured an interpretation that advances electoral participation, upholds the substantive will of the electorate, and avoids technical disenfranchisement. A contrary interpretation would not only undermine settled principles but also impede the democratic function of allowing voters to choose from the broadest permissible field of candidates.

12.19. **Hence, I answer point No.1 by holding that the disqualification of a candidate is required to be considered as on the date on which the scrutiny of the nomination is made and not on the date of filing of the nomination. On the date of scrutiny, the defect would have to be cured before the nomination papers are taken up for scrutiny.**

13. **<u>ANSWER TO POINT NO.2:</u> Whether this Court is required to exercise its powers under Articles 226 and 227 of the Constitution of India as regards the rejection of a nomination of the Petitioner in the present case?**

13.1. Much has been sought to be made out by Counsel for Respondent No.3 Sri.Vishwajith and Sri.Karan Gupta, learned counsel that this Court ought not to exercise the jurisdiction under Articles 226 and 227 in an election matter and in that regard, reliance has been placed on the decisions indicated supra.

13.2. There can be no dispute as regards the proposition the law laid down in those decisions, but what this Court would also have to consider is that there is no absolute bar which has been imposed by the Hon'ble Supreme Court in those matters or by judgements passed by this Court. What has been held is that the powers under Articles 226 and 227 have to be sparingly used. The same

would be left to the discretion of this Court, and in the event of this Court being of the considered opinion that reasons exist for the exercise of such extraordinary power, this Court can do so. In that background, what I have to examine is whether there are any such extraordinary grounds or facts available for this Court to exercise such jurisdiction.

13.3. The facts are not in dispute. Nomination Forms having been filed, scrutiny was to be conducted between 11 a.m. to 4 p.m. on 24.11.2025, as on the date of filing of the nomination, the Institutional Member of which the Petitioner is a representative was in arrears; however, by 3.06 p.m. on 24.11.2025 the arrears were cleared, before the scrutiny of the nomination form was taken up at 5.30 p.m.

13.4. The submission of learned Counsel for Respondents No.3 and 4 being that there being

arrears of Rs.200/- the Petitioner ought not to be permitted to contest and the disqualification is valid. This aspect I have already dealt with in my answer to point No.1.

13.5. Coming back to the extraordinary circumstances, I am of the considered opinion that firstly, the Electoral Officer has rejected the nomination paper on the ground that, as on the date of filing of the nomination, the Institutional Member was in arrears and not on the ground that, as on the date of scrutiny, the Institutional Member was in arrears. Even if the test of on the date of scrutiny is applied, before the scrutiny was taken up the arrears had been cleared.

13.6. The submission of Sri.Udaya Holla., learned Senior Counsel for KSCA, being that the KSCA had not notified the arrears of Institutional Members and called upon the said Institutional

Member to make payment of the amounts, is relevant. Inasmuch as it is the duty of the Association/Society to keep informed of all members of such arrears, disqualification or breach of a member. The KSCA is therefore directed to devise a methodology to do so and implement the same within 60 days from the date of receipt of this order.

13.7. As indicated supra, this Court would essentially have to lean towards allowing the maximum number of candidates to participate in an election. The interest of the members of the Association will always be protected by permitting the maximum number of candidates to participate.

13.8. In the present case, the facts as they stand clearly indicating that the order of the Electoral Officer is *exfacie* wrong. The same is more than likely to be set aside in any Suit or Election

Petition filed before the ombudsman. That is only for the purpose of fulfilling that formality, I am of the considered opinion that I do not have to restrain myself from exercising powers under Articles 226 and 227 of the Constitution. This Court, also being a court of equity, is required to wholistically examine the matter and pass orders as would render justice in the circumstances.

13.9. 'A stitch in time saves nine' is what would be applicable in the present matter, inasmuch as relegating the Petitioner to a civil suit or an electionpetition before the Ombudsman would only delay the matter and achieve no substantial aspect, inasmuch as the elections would have to be once again held, the order of the Electoral Officer, as indicated Supra, being *ex-facie*, contrary to law. The same would also result in waste of money and resources of the

KSCA, which can well be avoided, since once the order of the Electoral Officer is set aside, fresh elections would have to be held by inviting fresh nomination at which point of time there is no disqualification which the Petitioner would suffer payments already having been made.

13.10. Taking the entire conspectus of facts into consideration, the facts not being in dispute, there is no serious trial which is required to be conducted to ascertain the truth of the matter, the payments having been made before the scrutiny of the nomination paper was taken up and completed, I am the considered opinion that, technicalities cannot be resorted to by the Respondents to deprive the Petitioner of contesting in the election.

13.11. **In that view of the matter, I answer point No.2 by holding that this Court is required**

to exercise its powers under Articles 226 and 227 of the Constitution of India as regards the rejection of a nomination of the Petitioner in the present case.

14. Answer to point No.3: **What order?**

14.1. In view of my answers to point No.1 and 2, I pass the following;

ORDER

i. The writ petition is ***allowed.***

ii. A certiorari is issued, the order dated 24.11.2025 passed by respondent No.1 is quashed.

iii. A mandamus is issued directing respondent No.1 to declare the petitioner to be a valid candidate for the purpose of contesting the elections of Respondent No.2-Association.

iv. The elections are to be carried out as per the calendar of events, which has been fixed.

v. The petitioner nor Respondent No.3, intending to withdraw, Respondent No.4 having already withdrawn and not intending to withdraw the withdrawal, the date of announcing the list of eligible candidates is postponed to **3 PM today, i.e. on 29.11.2025.**

vi. May the best candidate be successful.

vii. Hand delivery of operative portion of the order is ordered.

SD/-
(SURAJ GOVINDARAJ)
JUDGE

LN
List No.: 1 Sl No.: 1