

Hyderabad Karnataka Education Society

Vs

Registrar of Societies and Others

Civil Appeals Nos. 6983-84 of 1999

(S. B. Majmudar, A. P. Misra JJ)

07.12.1999

JUDGMENT

S. B. MAJMUDAR J.:-

1. Leave granted.

2. Both these appeals under Article 136 of the Constitution of India seek to challenge a common judgment and order dated 25-3-1997 rendered by a Division Bench of the High Court of Karnataka at Bangalore in Writ Appeals Nos. 7486 and 7487 of 1996, whereby two writ petitions Nos. 3630 and 33463 of 1994 filed in the High Court that Rule 7 as well as the substituted Rule 7-A framed by the appellant Society ran counter to Section 2(b) of the Karnataka Societies Registration Act, 1960 (hereinafter referred to as "the Act"). These rules were therefore, struck down. An additional reason for striking down the rules, according to the High Court, was the fact that the rules were harsh in their operation. In order to appreciate the grievance of the appellant. Society regarding the impugned, rules, it is necessary to note a few relevant introductory facts.

Background facts

3. The appellant Society was earlier registered on 3.4-1958 under the provisions of the Hyderabad Societies Registration Act, 1958. At that time it was functioning in the territory of ex-Nizam's State at Gulbarga. After the said territory become part of Karnataka State, the Act became operative and governed the functioning of the appellant Society. On 6-6-1961, the Hyderabad Societies Registration Act was repealed by the present Act of 1960 which came into force with effect from 6-6.1961. The appellant Society, therefore, became "deemed to be registered" under the present Act. Respondents 2 to 10 original writ petitioners in the two writ petitions before the High Court were admitted as ordinary members of the appellant Society during the period 1975-79. The appellant Society's contention was that they became defaulters in the payment of annual subscription of the relevant years and, therefore, ceased to be treated as ordinary members of the Society and their membership automatically ceased as per earlier Rule 7 as well as the subsequent substituted Rule 7, which earlier stood on the statute-book, was substituted by Rule 7-A with effect from 30-3 1981. Though both the rules are in pari materia, the operative Rule 7-A, which has been struck down by the High court in the operative Rule 7-A, which has been struck down by the High Court in the impugned judgment, squarely falls for our consideration.

4. Some of the members, who according to the appellant Society had cease to be members of the Society due to their default in payment of subscription within the prescribed time as laid down by the relevant rule, challenged the said Rule 7-A in the civil court at Gulbarga. That suit came to be

dismissed on 9-2 –1991. In the meantime, some other members similarly situated challenged the validity of the rule by filing Writ Appeals Nos. 725 to 727 of 1992 which were dismissed by a Division Bench of the High Court on 4-3-1991 holding that the appellant Society could not be subjected to writ jurisdiction. So far as the civil suit is concerned, its dismissal came to be confirmed by the appellate court, but in second appeal the suit itself was permitted to be withdrawn. It is thereafter that the present Respondents 2 to 10 moved the High Court under Articles 226 and 227 of the Constitution of India by filing Writ Petitions Nos. 3630 and 33463 of 1994 challenging the validity of Rule 7-A. the learned Single Judge, after hearing the parties, dismissed the writ petitions on merits holding that Rule 7-A was not inconsistent with Section 2(b) of the Act. The learned Single judge took the view that Section 2(b) provided that a member on resignation would cease to be a member, therefore, Rule 7-A which laid down automatic ceasing of the membership of a defaulter ran parallel to Section 2(b) as the defaulter can be treated to have resigned from membership and, therefore, the rule was not inconsistent with Section 2(b) of the Act.

5. It is this common judgment of the learned Single Judge in two writ petitions moved by Respondents 2 to 10 herein that resulted in two writ appeals on their part before the Division Bench of the High Court. These two writ appeals being Writ Appeals Nos. 7486 and 7487 of 1996, as noted earlier, came to be allowed by the Division Bench, which took the view that Rule &-A, and for that matter the earlier Rule 7, were ultra took the view that Rule 7-A, and for that matter the earlier Rule 7, were ultra vires Section 2(b) of the Act and even otherwise they were harsh and were liable to be struck down being arbitrary. Certain consequential directions were issued by the Division Bench of the High Court in the impugned judgment to the Registrar of Societies functioning under the Act. It is obvious that these consequential directions would not survive if the main basis of the impugned judgment is found to be unsustainable.

Rival contentions

6. Learned Senior Counsel for the appellant, Shri Sanyal submitted that the writ petitions against the appellant Society were not maintainable in law. However, he did not pursue this point further and attacked the impugned judgment on merits. He submitted that the Division Bench had patently erred in taking the view that the impugned Rule 7-A ran parallel to Section 2(b) and did not violate it. He also contended placing reliance on various judgments of this Court and on a decision of the Full Judge Bench of the Andhra Pradesh High Court to which we will make reference hereinafter that a bye-law or a rule is contract between the parties and would remain binding on the parties. That there was no provision for issuing a notice to the member who was in default of payment of subscription for the year in question as the thrust of the bye-laws was very well known to all members and these bye-laws were binding on them and if they, by their own volition, failed to pay up the subscription within the three months' period allowed to them, they automatically ceased to be members. That such a provision in the bye-law cannot be said to be contrary to nay express provisions of the Act. That there was no question of issuing a notice or hearing the defaulter concerned as it is his inaction that brings out the consequential adverse result erroneous in law and the consequential directions issued by the Registrar of Societies were also unsustainable. Learned Senior Counsel for the appellant, Shri Sanyal Further contended that the respondents concerned were in arrears of subscription for a number of years and that they never disputed this fact but years thereafter all of a sudden they came out with a case that they were prepared to pay all arrears at a time for all the past years and they should be treated to have continued as members. That such a stand of the respondents was clearly contrary to the Act and the rules and there would survive no occasion of the appellant to hear them on any supposed dispute regarding payment or non-payment of the relevant subscription for the years in question. That such an occasion would have arisen if at all the respondents had

contended that either they had actually paid the subscription for each year within the permissible three months as laid down by the bye-law or that they were prevented from making such payment for reasons beyond their control and volition and even if such a sufficient cause for the delay was tried to be made out, it could not have been put forward after a number of years when the relevant years and already expire long back. He, however, submitted that even this question would not arise, as admittedly Respondents 2 to 10 have never contended, as aforesaid. Learned Senior Counsel, Shri Sanyal further contended that there is no question of the rule being harsh as it operator to the full knowledge of the member concerned and it is the inaction on the part of the member concerned which visit the automatic consequence of non-membership to him or her. That for such a situation of the member's own creation no harshness can be alleged so far as the operation of the rule is concerned. He, therefore, submitted that these appeals deserved to be allowed.

7. Shri Shankar, learned counsel for the respondents original writ petitioners, on the other hand, submitted that on a correct interpretation of Sections, on the other hand, submitted that if an existing member defaults in paying up the subscription for the years concerned within the time prescribed by Rule 7-A, it cannot be said that automatically, he will become a non-members as Section 2(b) does not contemplate such a contingency. All that is provided therein is that he will not have a right to vote nor will he be counted a s member of proceedings under the Act especially Section 11 thereof. As the impugned rule goes beyond the requirements of Section 2(b) and tries to lay down automatic cessation of membership on a ground not contemplated by Section 2(b), the High Court rightly held Rule 7-A to be ultra vires Section 2(b). It was also contended that there may be cases wherein a member who might not have paid subscription for the relevant subsequent year within three months, as provided in Rule 7-A, Amy control or that he had actually paid the amount within the time but it was not noted in the society's account books for diverse reasons. That such defence also is ruled out by the impugned Rule 7-A by linking automatic termination of membership with the physical fact of non-payment of a paltry subscription of Rs 25 per year or more within the time prescribed by the rule. Such drastic consequence of the rule is obviously harsh and violates all canons of natural justice. It enjoins a member to pay in time or perish. Even on that score, the High Court's judgment is well sustained. He, therefore, contended that the ultimate decision rendered by the High Court and the consequential directions issued to the Registrar of Societies cannot be faulted.

8. In the light or the aforesaid rival contentions, the following points arise for our consideration:

1. Whether Rule 7-A and the earlier Rule 7 are violative of Section 2(b) of the Act.
2. Whether the aforesaid rules are harsh and unconscionable.
3. Whether the consequential directions issued by the High Court are justified in law.

Point 1

9. Before dealing with this point, it is necessary to note the relevant statutory provisions and the scheme of the impugned rules in the light of which this point has to be decided. The Act is enacted to provide for the registration of literary, scientific, charitable and other societies functioning in the State of Mysore / Karnataka.

10. Section 2(b) defines the term "members" as under:

" 'Member' means a person who having been admitted to membership of a society in accordance with the rules and regulations thereof, *shall have paid his subscription*

and shall not have resigned in accordance with such rules and regulations; but in all proceedings under this Act, no person shall be entitled to vote or to be counted as a member whose subscription, at the time shall have been in arrears of a period exceeding three months;"

(Emphasis supplied)

11. Section 5 deals with the mode of forming societies and lays down as under:

"5. *Mode of forming societies.* Any seven or more persons, above the age of eighteen years associated for any purpose specified in Section 3 may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act and the rules made thereunder, in respect of registration, from themselves into a society under this Act."

12. Section 6(1) deals with requirements with respect to memorandum. It reads as under:

"6. *Requirements with respect to memorandum* – (1) The memorandum of association of every society shall state

- a. the name of the society;
- b. the object of the society;
- c. the names, addresses and occupations of the members of the governing body to show, by the rules of the society, the management of its affairs is entrusted;
- d. the place at which the registered office of the society is to be situated."

Then follows sub-section (2) of Section 6, which along with the proviso is relevant and, therefore, it is extracted as under:

"(2) there shall be registered with the memorandum of association, the rules and regulations of the society, which shall contain provisions relating to admission of members, general meetings, proceedings at such meetings including voting by members, the governing body and proceedings of meetings of the governing body:

Provided that, save as otherwise provided in this Act, no rule or regulation of a society shall exclude any member from being entitled to vote."

13. The Registrar functioning under the Act is entrusted with the task of registration of societies on being satisfied that all requirements of the Act and the rules made thereto are complied with by the society concerned. Section 8 deals with registration of societies. Sub-section (1), thereof, reads as under"

"(1) There shall be presented to the Registrar for registration the memorandum of association and the rules and regulations of the society along with a registration fee of one hundred rupees."

14. Section 9 deals with alteration of the memorandum of association.

15. Section 10 deals with change of name of the society and its rules and regulations.

16. Then follows Section 11 which deals with general meeting. Sub-section (1) thereof reads as under:

"(I) Every society registered under this Act shall hold every year a general meeting called the annual general meeting at which the report of the management of the society for the previous year together with an audit copy of the balance-sheet, income and expenditure account and the auditor's report shall be submitted for approval."

Special general meeting may be convened at any time on the requisition of the President or the Chairman, if any, of the governing body, or on the requisition of not less than one-third of the number of members of the governing body, or one-tenth of the total number of members of the society, entitled to vote who shall state in writing the business for which they which the meeting to be convened and the governing body shall, within ten days from the date of the receipt of the requisition, proceed duly to call a meeting for the consideration of the business stated on a day not later than forty days from the date of the receipt of the requisition."

17. Section 18 deals with recovery of penalty accruing under a bye-law and lays down as under:

"18. Recovery of penalty accruing under bye-law.- Whenever by any bye-law duly made in accordance with the rules and regulations of the society, or, if the rules passed at a general meeting of the members of the society, convened for the purpose by a majority of not less than three-fifths of the members present at such meeting, any pecuniary penalty is imposed for the breach of nay rule or bye-law of the society, such penalty, when accrued, may be recovered in any court having jurisdiction where the defendant shall reside, or the society shall be situated, as the governing body thereof shall deem expedient."

18. Section 19 deals with members liable to be sued a strangers and which provides a remedy to the society to recover the arrears so subscription of any members, who according to the rules of the society, falls to pay arrears of subscription.

19. Section 21 deals with procedure for amalgamation of societies. It reads as under

"21. *Procedure for amalgamation of societies.* - Whenever it shall appeal to the governing body of any society registered under this Act, which has been established for any particular purpose or purposes, that it is advisable to amalgamate such society, either wholly or partially with any other society, such governing body may submit the proposition to the members of the society in a written or printed report, and may convene special general meeting for the consideration thereof according to the rules and regulations of the society. But no such proposition shall be deemed to have been approved unless such report shall have been delivered or sent by post to every member of the society, twenty-one days previous to the date of the special general meeting convened by the governing body for the consideration thereof, and unless such proposition shall have been agreed to by the votes, cast in favour of the proposition by members who being entitled so to do, vote in person, or where proxies are allowed, by proxy, and such votes are not less than three times the number of votes, if any, cast against the resolution by members so entitled and voting and confirmed by a similar majority of votes at a second special general meeting

convened by governing body after an interval of thirty days after the former meeting."

20. Section 22 deals with provision of dissolution of societies and adjustment of their affairs.

21. Section 23 deals with the disability of the member to receive any profits on dissolution.

22. Section 25 deals with inquiry by the Registrar, etc. Sub-section (1), thereof, reads as under:

"(1) The Registrar may, on his own motion and shall on the application of the majority of the members of the governing body or of not less than one-third of the members of the society, hold an inquiry or direct some person authorised by him by order in writing in accordance with the rules made in this behalf to hold an inquiry into the constitution, working and financial condition of a registered society."

It is in the light of the aforesaid relevant statutory scheme that we have to examine the scope and ambit of the impugned Rule 7-A. The said rule will have to be read in the light of the preceding Rule 3 to 6, which read as under:

"3. The Society consists of patrons, life members and ordinary members.

4. Any person who contributes Rs. 5000 or more to the Society is a patron of the Society.

5. Any person who contributes not less than Rs 2500 shall be a life member of the Society.

6. Any person who contributes not less than Rs 25 per annum shall be an ordinary member of the Society.

7-A. The membership fee of an ordinary member is payable in advance annually in the month of December. An ordinary member who fails to pay his subscription before the end of March of any year will automatically cease to be member."

23. Rule 7-B deals with admission of new members with which we are not concerned. The aforesaid rules framed by the Society clearly show that there are three types of members of the appellant Society. Their status will depend upon the amount of contribution which they pay. If a person pays Rs 5000 or more to the Society in lump sum, he will be a patron of the society who has not to contribute anything more to the Society. If a person society. He has also not to pay anything further to be continued on the roll of the Society as a life members. The aforesaid two categories of members, having paid the respective amounts once and for all, will remain permanent members of the Society subject to not incurring any disqualification laid down by the rules.

24. In the present proceedings, we are concerned with Respondent 2 to 10 who were once upon a time enrolled as ordinary members of the appellant Society. Their liability was to contribute not less than Rs 25 per year to be continued as ordinary members for the year in question. Even if such a paltry amount is not paid by the ordinary member, the consequence thereof will be as laid down by the impugned Rule 7-A. It enjoins that membership fee of an ordinary member is payable in advance annually in the month of December. Meaning thereby, if a person is enrolled as an ordinary member for the year 1999, if he wants to continue as a member of the next year i.e. 2000 he can pay

Rs 25 or more as he chooses by December 1999 so that he will be treated as a continued ordinary member for the next year i.e. 2000. But then follows the second part of Rule 7-A which lays down that if an ordinary member fails to pay his subscription of Rs 25 per year or more as he may choose before the end of the month of March of the year concerned, namely the year 2000, he will automatically cease to be an ordinary member of the Society for that year. Meaning thereby, if such an ordinary member of 1999 does not pay Rs 25 for the year 2000 latest by March 2000, then from April 2000 he will automatically cease to be a member. Respondents 2 to 10 vehemently contended before the High Court and that too successfully that this type of automatic ceasing of an ordinary member for the next year runs counter to Section 2(b) of the Act, as noted earlier. The very first part of the said section lays down that a "member" is a person who having been admitted to membership of a society in accordance with the rules and regulations thereof, shall have paid his subscription. It is obvious that membership of an ordinary member has to be seen in connection with the year in question because as per Rule 6, an ordinary member has to contribute not less than Rs 25 per years to be treated as an ordinary member of the Society. Thus, if a person has to be treated as an ordinary member for the year 2000, it should be shown by him that he was initially admitted to the ordinary membership of the society in accordance with the rules and regulations. The said section further provides that such a member shall have paid his subscription. Now, this obviously means that even though a person may have been enrolled as an ordinary member in an earlier year if he has not paid his subscription for the year in question, he would not be treated to be a member for that year. Thus in order to remain a member of a society, amongst others, the very first requirement of Section 2 (b) is that he should have been admitted to the membership of the society in accordance with rules and regulations and shall have paid his subscription. That obviously should also be as per the rules and regulations of the society. The impugned Rule 7-A deals with the concept of "admission" of a person to the ordinary membership of the Society and the mode and manner of payment of subscription by him for being treated as an ordinary member for the year in question. It lays down that an ordinary member who fails to pay his subscription by the end of March of any relevant year will not be treated to be a continued member for that year. Thus three months' period is available to the member to pay the paltry amount of Rs 25 by way of subscription to remain on the roll of members for that year. This provision in Rule 7-A, therefore, has a direct nexus with the provision of Section 2(b), which deals with admission of members to a society as per the rules and regulations and the requirement of payment of subscription thereunder. It is difficult to appreciate how Rule 7-A laying down these condition can be said to fall foul on the touchstone of the first part of Section 2(b). There is no dispute between the parties that such an enrolled member shall have to sign the roll and list of members of the Society. The Division Bench of the High Court was right when it took the view disagreeing with the reasoning of the learned Single Judge that a defaulting member, so far as the subscription is concerned, cannot be said to have voluntarily resigned from his membership. It must, therefore, be held that Rule 7-A squarely falls in line with the first part of Section 2(b) which enjoins that a member shall be treated to be a member of the Society for the year concerned if he is admitted to that membership in accordance with the rules and regulations and shall have paid the subscription as laid down therein. If he does not pay his subscription for the year in question within the time permitted by Rule 7-A, and then necessarily he must be held not to be duly admitted to the membership of the Society in accordance with the rules for the year in question. Such a rule cannot be said to be going contrary to the requirement of Section 2(b). On the contrary, it runs parallel to it.

25. To illustrate the working of Rule 7-A read with Section 2(b), it is easy to visualise, as noted earlier, that if an ordinary member who has paid Rs 25 and more for subscription of membership for the year 1999 fails to pay the further amount of Rs 25 or more as he would like to contribute for

ordinary membership for the year 2000 up to the end of March 2000 then in April 2000, he will cease to be an ordinary member of the Society for the year 2000. If that happens he will not be entitled to vote or be counted as a member. Subscription at that time shall have been in arrears for a period exceeding three months as laid down in the latter part of Section 2(b). Even this provision is not violated by Rule 7-A. The reason is obvious. If an ordinary member, enrolled for the year 1999, has not paid Rs 25 for the year 2000 by the end of March 2000 then in April 2000 he is said to be in arrears for a period exceeding three months, as April is the fourth month of the year 2000. Section 2(b) lays down that such a person shall not be entitled to vote at any of the meetings of the society convened during the year nor will he be counted as a member provided it is shown that his subscription at the relevant time in the year 2000 is in arrears for a period exceeding three months. Thus Section 2(b), by itself, lays down the nullifying consequences on the membership of an ordinary member if he remains in arrears of subscription for that year beyond March of that year. Rule 7-A also lays down the same. To highlight this position another illustration may be taken. If Rule 7-A had provided that an ordinary member who fails to pay subscription before the end of February of any year, will automatically cease to be a member, then it could be visualised that the rule would make him a non-member from March of that year being in arrears for a period exceeding two months in that year. The it would have directly conflicted with the thrust of Section 2(b) which would not permit any society to treat a person to be a non-member for a given year if he is in arrears for a period exceeding two months in that year. They it would have directly conflicted with the trust of Section 2(b) which would not permit any society to treat a person to be a non-member for a given year if he is in arrears of subscription for5 that year for a period not exceeding three months. But Rule 7-A, in its present form, instead of doing violence to Section 2(b), falls in line with it. Rule 7-A lays down the very same provision for non-membership as provided by Section 2(b). Thus, instead of treating the said rule to be ultra vires, it must be held that it is quite parallel to the said rule to be ultra vires, it must be held that it is quite parallel to the section and in complete harmony with it.

26. Before parting with the discussion on this point, it is necessary to note one submission of learned counsel for the respondents, Shri Shankar. He submitted that even if an ordinary member has not paid the subscription for a period exceeding three months in a given year all that can result is that such a person is not entitled to vote at the meeting of the society, whether the annual general meeting of the special general meeting, as laid down by Section 11 nor can he be counted as a member in all the proceedings under the Act. He submitted that as per Section 2(b), the proceedings contemplated by the Act are those which take place in the general meeting or special meeting as laid down by Section 11. It is difficult to agree with this contention. Various proceedings are contemplated by the Act. Section 6(2) deals with registration of the memorandum of association along with registration of rules and regulations of the society, which shall contain provisions relating the admission of members. These requirements and proceedings pertaining thereto would naturally contain provisions for admission of members for given years, which in their turn, would also include the provisions regarding non-payment of subscription by such members for given years treating them as non-members if they are defaulters in paying subscription for the year in question. Therefore, Section 11 is not the only provision which deals with the right of a person to be counted as a member in connection with the general meetings or special meetings dealt with by the said section. Apart from Section 6(2), other relevant sections are sections 18, 21, 22 and 23, as noted earlier, wherein also the capacity of a person to act as a member would go under a cloud if he is found to be in arrears for a period exceeding three months for the year in question. It is, therefore, not possible to agree with the contention of learned counsel for the respondents that even if an ordinary member has remained in arrears for a period of three months so far as subscription for that

year is concerned all that he will lose will be a right to vote or act as a member only in the general meetings or special meetings contemplated by Section 11 and for all other purposes he would continue to be a member. Such a contention would squarely conflict with the statutory provision of Section 6(b), as discussed earlier. For all these reasons, therefore, with respect, it is not possible to agree with the reasoning and conclusion of the Division Bench of the High Court that Rule 7-A is violative of Section 2(b) of the Act.

27. The High Court in the impugned judgment has also taken the view that Rule 7-A cannot be sustained for the additional reason that it violates the proviso to Section 6(2) of the Act. It is difficult to appreciate this line of reasoning. All that the said proviso guarantees is that no rule or bye-law of a society can deprive a member of his right to vote, but before the said proviso can be pressed into service, the member concerned who makes a grievance regarding his deprivation of right to vote as a member has to be found to have subsisted on the roll of the society as a member. If he had validly cease to be a member of the society because of the operation of any rule or bye-law then he cannot be said to have been deprived of the right to vote as he is no longer a member. All that the proviso guarantees is that if a person is validly registered as an existing member on the rolls of the society, then no validly registered as an existing member on the rolls of the society, then no rule can deprive him of this right to vote. Consequently, on the touchstone of this proviso also the legal efficacy of rule treating a person not to be a member under given contingencies cannot be said to have got vitiated.

28. Before leaving the discussion on this point, we may mention hat learned Senior Counsel for the appellant, Shri Sanyal placed reliance on some of the decisions of this Court in *T.P. Daver v. Lodge Victoria* No. 363, S.C. Belgaum (AIR 1963 SC 1144 : (1964) 1 SCR1) *Coop. Central Bank Ltd. v. Addl. Industrial Tribunal, A. P.* ((1969) 2 SCC 43) *Kulchhinder Singh v Hardayal Singh Brar* ((1976) 3 SCC 828 : 1976 SCC (L & S) 513 : (1988) 2 SCR 260) and *Tekraj Vasandi v Union of India* ((1988) 1 SCC 236 : 1988 SCC (L & C) 300 : (1988) 2 SCE 260 and on the Full Bench judgment of the Andhra Pradesh High Court in the case of *Sri Kanaseema Coop. Central Bank Ltd. v. N. Seetharama Raju* (AIR 1990 AP 171 : 1990 Lab IC NOC 63 (AP) (FB)) and contended that the bye-law or an illegal contract for that matter can bind any of the contracting parties. It is this question which has to be examined and answered, and as seen above, it stands answered in favour of the appellant Society.

29. Mr. Sanyal also invited our attention to Maxwell the Interpretation of Statures, 12 End., pp. 150 and 151 regarding the correct rules of interpretation of bye-law and Halsbury's Laws of England, vol. 10, Item 215, at 118. The latter reads as follows:

"215 Cessation of membership by non-payment of subscriptions. – It is usually provided in the rules of a registered society or brand that if contributions are in arrears for a stated period membership ceases. A collecting society is required to give twenty-eight days' written notice before an interest or benefit in an insurance can be forfeited, but, in other cases, whether or not a notice is required depends only on the provisions in the rules..."

In our view, in the light of what we have seen earlier, once it is held that the impugned Rule 7-A and its predecessor Rule 7, which is in *pari materia*, do not offend Section 2(b) in any manner, no further dilation on this aspect is required. Point 1 is accordingly answered in the negative in favour of the appellant Society and against the respondent writ petitioners.

Point 2

30. That takes us to the consideration of the second ground on which the High Court has voided Rule 7-A. It is held that the rule is very harsh in its operation and, therefore, it is arbitrary.

31. Now a mere look at the said rule shows that whenever an ordinary member fails to pay a paltry amount of Rs 25 year as subscription for remaining as a member for that year by the end of March of that year despite having got a locus poenitentiae to pay up this paltry amount from the beginning of the year within three months, he will automatically cease to be a member for that year. It is difficult to appreciate how an opportunity and facility for paying a paltry amount of Rs 25 within the first three months in a given year can be said to be harsh from any viewpoint. It is true that on the expiry of three months without payment of Rs 25 as membership fee for that year by the beginning of April i.e. the fourth months of that year he will automatically cease to be a member. No notice will be required to be served to him in this connection. It is obvious that every member known very well that because he has not paid Rs 5000 or more in lump sum he is not a patron of the Society. He also know that because he has not paid Rs 25000 or more at a time up to Rs 4999 he cannot be said to be life member. The first two types of members are not required to pay anything more. Their payments are once and for all and they always remain on the roll of the society as members of the category concerned unless they are removed on any proved misconduct or disqualification.

32. Thus remains the question of an ordinary members who has to pay a small amount of Rs 25 for being continued as an ordinary member for the year concerned. He has been given three months' time to pay up this small amount, still if he does not do so, he has to thank himself. By the fourth month he will cease to be treated as an ordinary member for that year. The Society is not expected to give him further notice to show cause why he should not be treated to be an ordinary member for that year because he has not paid his subscription during the period of the first three months and has not availed of that opportunity. Such a notice is implicit in the rule itself which is well known to all members who are enrolled as such in previous years. It is the members own inaction which makes him get out of ordinary membership for that year on the fourth month states. Consequently, there would remain no occasion for any member for the Society to complain about failure of natural justice in not being issued a notice to show cause why he should not be treated as an ordinary member from April of that year. He is not being removed as an ordinary member on account of any alleged misconduct for which a show-cause notice may be required on the principles of natural justice. Therefore, on that score also the rule cannot be treated to be harsh or arbitrary.

33. However, one aspect of the matter will have to be considered in greater detail so as to sustain this rule on the touchstone of reasonableness. Take a case wherein an ordinary member on the roll of the Society of the year 1999 may not be treated to have paid Rs 25 up to the end of March 2000, as Rs 25 might not have credited to this account in the Society's books during the relevant months but he may have a good defence to show that he had already tendered the same amount, but due to some mistake of the receiving cashier or clerk of the Society the amount may not have been credited in this account. Such a defence would naturally be required to be considered by the Society before treating him to have automatically ceased to be an ordinary member for that year on the onset of the fourth month. Similarly, the defaulting member, apart from the defence of actual payment not being noted by the Society in its books of account for any reason, may have a sufficient cause for not paying this amount within the prescribed period from January to the end of March of that year. He may, for reasons beyond his control might have been prevented from remitting the said amount due to his prolonged sickness or absence from the place of work for unavoidable reasons or for any

other sufficient cause. If such a case is put forward for consideration of the Society and if the authorities of the Society agree with him and hold after hearing him that he had actually paid the amount within time but it was not noted in the Society's books or in the alternative even if he had not paid the said amount within the time prescribed, he had not paid the said amount within the time prescribed, he had a sufficient cause for non-payment due to unavoidable sickness or for other reasons beyond his control, then once such a case is made out by the defaulting member to the satisfaction of the Society, it has to be held that such an ordinary member, cannot be said to have failed to pay his subscription before the end of March. Therefore, he will not incur automatic cessation of his membership for that year. It has to be kept in view that Rule 7-a, when reasonably constructed, must mean that it will apply if it is shown that an ordinary member, by his own volition, wilfully and consciously without any real impediment and not for reasons beyond his control, had not paid his subscription before the end of March of any given year, and consequently he would automatically cease to be a member for that year. In order to show that he is not hit by Rule 7-A, it will be open to the alleged defaulter ordinary member to point out to the Society relevant grounds of defence and if he does so before the year in question runs, out, and if his defence is accepted by the authorities concerned of the Society then his membership would not be hit by the provisions or Rule 7-A. To that extent, while sustaining Rule 7-A, an appropriate reading down of the said provision for saving it from the vice of unreasonableness and arbitrariness has to be resorted to. If it is not so read down, then Rule 7-A would obviously fail on the touchstone of reasonableness and would become void and inoperative.

34. In this connection, we may refer to the American Jurisprudence, 2nd Ed. By Jurisprudence Publishers Inc., Vol. 6 In the chapter dealing with "Associations and Clubs" at. 463 in para 35 the topic of "necessity and sufficiency of notice and hearing" is considered. While dealing with a rule or bye-law of an association, society, or club providing for the automatic suspension of membership, the following observations are made:

"A rule or by-law of an association, or club providing for the automatic suspension, without notice, of a member who fails to pay his dues or assessments is generally considered to be valid and enforceable by the organization. But this principle has been limited to situations where relevant facts are not disputed, and has been held not to be applicable where the facts are in dispute or the accused denies the charges, or where the penalty for an offense admitted by him is not automatic and fixed by the rules, since in the latter case the member has a right to present mitigating evidence and to state other facts which have a bearing on the punishment to be imposed..."

35. It must, therefore, be held that Rule 7-A has to be read down as under to sustain its legality and validity:

1. If an ordinary member is shown not to have paid up his annual subscription by applying to the Society before the expiry of the year concerned or if he proves to the satisfaction of the Society that there was any sufficient cause which prevented him from paying up Rs 25 by the end of March of that year, then he will not be deemed to have automatically ceased to be such an ordinary member for that year. However, for that purpose even without the Society being required to issue any show-cause notice, it will be for the member concerned to apply to the Society by raising a dispute about automatic cessation of this ordinary membership by putting forward for consideration of the Society his relevant defence against the alleged non-compliance with rule-7-A by the end of March and if an application raising such a

dispute is filed and if any valid ground is made out by the member concerned and if the Society accepts such application and the ground made therein, then for that year, Rule 7-A will not be treated to have dismembered him from his ordinary membership. However, such an application has to be moved by him, latest before that end of the year

36. We may now illustrate the working of the read-down rule. If an ordinary member duly registered for the year 1999 is alleged to have violated Rule 7-A for the next year 2000 by not tendering Rs 25 by way of subscription for being continued as an ordinary member for that year, and if the period during which he can pay up as per the rule by 31-3-2000 is over, such an application for being continued as an ordinary member for that year, and if the period during which he can pay up as per the rule by 31-3-2000 is over, such an application can be moved by the member, latest before 31-3-2000. If he satisfies the authorities concerned of the Society about the genuineness of his case by either showing that he had actually paid up Rs 25 or more by 31-3-2000, or that he had sufficient cause for not tendering that amount within that time, then Rule 7-A will not dismember him. But such an application has to be submitted by him for consideration latest by 31-12-2000. In other words if such a member allows the year concerned to expire, then he would miss the bus and would lose the locus penitential for being continued as an ordinary member for the year 2000 and cannot move an application for being continued as an ordinary member for the year 2000 at any time after 31-12-2000. If he thereafter applies in the next year i.e. 2001 his application can be processed for being considered as a new member to be enrolled and for being granted admission as such after following the procedure for being considered as a new member to be enrolled and for being granted admission as such after following the procedure of Rule 7-B. Only up to the aforesaid extent Rule 7-A shall be treated to have been read down.

37. Before parting with the discussion on this point, it must be held that of the facts of the present case there will remain no occasion for us to remand the proceedings to the appellant Society for considering the cases of Respondents 2 to 10 for being saved from the operation of Rule 7-A for the years in question for the simple reason that it is an admitted position on record, as we have noted earlier, that the respondents never came forward with a case that too before the expiry of the year by making out any sufficient cause for the delay and that too before the expiry of the year concerned. On the contrary, their case is that they were admittedly in arrears for number of years. They have no case of consideration about having either paid up the amounts or having made out sufficient cause before the expiry of the year concerned as to why they could not do so in time. All that they wanted to submit was that they were at a time paying in lump sum past arrears of subscription for a number of years. That obviously would not entitle them to get the benefit of even the read-down Rule 7-A. They have obviously missed the bus. All that they can now submit is applications for fresh membership subject to following the procedure laid down by Rule 7-B for admission as fresh and new members.

38. Learned Senior Counsel for the appellant Society, Shri Sanyal fairly stated that if such applications are moved for fresh membership for a new year they would be processed as per the rules and regulations of the Society. He was right when he contended that no other relief can be granted to the respondent. He rightly submitted that if the contention of learned counsel for the respondents is accepted and if after the passage of a number of years all arrears are allowed to be paid up at a time, then it would be going contrary to Rule 7-A read with Section 2(b) and would almost amount to granting retrospective ordinary memberships to the respondents for years which have gone behind since long and during all these past years they had ceased to be ordinary

members and could not have taken part in the proceedings of the society under the Act and the rules and bye-laws as members. That many resolutions of the Society and even elections for the relevant years of office bearers of the Society would get adversely affected if such retrospective back membership is given to the respondent. That such an exercise in the scheme of the Act and the rules is certainly contraindicate. The said submission of learned Senior Counsel for the appellant Society is well sustained and must be accepted. Accordingly, Point 2 is held in the negative in favour of the appellant Society and against the respondent writ petitioners subject to the aforesaid reading down of Rule 7-A or for that matter the earlier Rule 7.

Point 3

39. As a result of our findings on Point 1 and 2 in favour of the appellant Society, it has to be held that the impugned judgment of the Division Bench of the High Court cannot be sustained and will have to be set aside. We, however, observe that for the purpose of the present proceedings we have assumed that writ petition filed by the respondents were maintainable against the appellant Society as learned Senior Counsel for the appellant Society, Shri Sanyal having raised this contention had not pressed it further had had invited our decision on merits. We have, accordingly, examined the same on merits. Once the conclusion is reached that Rule 7-A and its predecessor Rule 7 were legal and valid subject to the reading down as aforesaid, the consequential directions issued by the High Court in the impugned judgment would obviously fall through along with the main judgment. The appellant Society, of course, will be bound to comply with Rule 7-A in future transactions and claims of ordinary members subject to the reading down of the said rule as per this judgment. Point 3 is also, therefore, answered in the negative in favour of the appellant society and against the respondent writ petitioners.

40. In the result, these appeals are allowed. The interim order passed earlier in these proceedings shall stand vacated. The impugned judgment of the Division Bench of the High Court is set aside. The writ petitions filed by the respondent writ petitioners in the High Court will stand dismissed subject to the reading down of the impugned Rule 7-A and its predecessor rule 7.

41. In the facts and circumstances of the case, there will be no order as to costs.