SUPREME COURT JUDGEMENTS

RELATED TO CO-OPERATIVE SECTOR

Volume 1

Collected, compiled and edited
By
C.N. Parashivamurthy*
and
Dr. C.P. Dayanandamurthy**

---

* C.N.Parashivamurthy is a Retired Additional Registrar of Co-operative Societies, Govt. of Karnataka
**Dr. C.P.Dayanandamurthy is an Associate Professor in Damodan Sanjeevaiah National Law College Vishaka Pattana, Andrapradesh.

Published by:
Karnataka State Souharda Federal Cooperative Ltd.,
"Nirman Bhavan", Dr. Rajkumar Road, 1st Block
Rajajinagar, Bengaluru-560010

Tel: 080 2337 8375 - 80

email: souharda@souharda.coop
web: www.souharda.coop

First Edition : Nov 2018

Pages : 152

Price : Rs.150/-

Printed @
Banashankari Print Solutions
Rajajinagar, Bengaluru-560010
email: prajvalprints1996@gmail.com
M:9242910465

–: ಅಧ್ಯಕ್ಷರ ನುಡಿ :–

ಆತ್ಮೀಯ ಸಹಕಾರಿ ಬಂಧುಗಳೇ,

ಕರ್ನಾಟಕ ರಾಜ್ಯ ಸೌಹಾರ್ದ ಸಂಯುಕ್ತ ಸಹಕಾರಿಯು ಸಹಕಾರ ಕ್ಷೇತ್ರದ ಅಭಿವೃದ್ಧಿಗಾಗಿ, ಆರೋಗ್ಯಕರ ಬೆಳವಣಿಗೆಗಾಗಿ ಅನೇಕ ವಿಷಯಗಳ ಕುರಿತು ಪುಸ್ತಕಗಳನ್ನು, ಕೈಪಿಡಿಗಳನ್ನು ಹಾಗೂ ಪ್ರಕಟಣೆಗಳನ್ನು ಕಾಲಕಾಲಕ್ಕೆ ಪ್ರಕಟಿಸುತ್ತ ಬಂದಿದೆ. ಸಹಕಾರಿಗಳು ವ್ಯಾಜ್ಯಗಳನ್ನು ಬಗೆಹರಿಸಿಕೊಳ್ಳುವುದಕ್ಕಾಗಿ ನ್ಯಾಯಾಲಯಗಳ ನೆರವು ಪಡೆಯುವುದು ಸರ್ವೆಸಾಮಾನ್ಯ. ನೋಂದಣಿ, ಉಪವಿಧಿಗಳ ತಿದ್ದುಪಡಿ, ಸಹಕಾರಿ ಸಂಸ್ಥೆಗಳನ್ನು ಒಂದುಗೂಡಿಸುವುದು, ವಿಭಜಿಸುವುದು, ಚುನಾವಣೆಗೆ ಸಂಬಂಧಿಸಿದ ವಿಷಯಗಳು, ಆಡಳಿತ ಮಂಡಳಿ ರದ್ದುಪಡಿಸುವಿಕೆ, ಆಡಳಿತಾಧಿಕಾರಿಗಳ ನೇಮಕ, ವಿಚಾರಣೆ, ಅದಿಭಾರ ನಡುವಳಿಕೆಗಳು, ದಾವಾ ಪ್ರಕರಣಗಳು ಹಣ ದುರುಪಯೋಗ, ಆದೇಶ ಮತ್ತು ತೀರ್ಪುಗಳನ್ನು ಜಾರಿಮಾಡುವ ವಿಧಾನ ಹಾಗೂ ಸಮಾಪನೆ ಇತ್ಯಾದಿ ಇತರೆ ವಿಷಯಗಳಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ರಾಜ್ಯದ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಹಾಗೂ ಶ್ರೇಷ್ಠ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಹಲವಾರು ಮಹತ್ವದ ತೀರ್ಪುಗಳಾಗಿವೆ. ಇಷ್ಟೊಂದು ತೀರ್ಪುಗಳಿದ್ದಾಗ್ಯೂ ಸಹ, ಅನೇಕ ಬಾರಿ ಸಹಕಾರ ಸಂಸ್ಥೆಗಳು ಇವುಗಳ ಸರಿಯಾದ ಮಾಹಿತಿಗಳು ದೊರಕದೆ ಆತಂಕದಲ್ಲಿದ್ದು, ಅನಗತ್ಯವಾಗಿ ಕಾನೂನು ಸಲಹೆ ಪಡೆಯುವ ಹಾಗೂ ನ್ಯಾಯಾಲಯಗಳ ಮೊರೆಹೋಗುವುದನ್ನು ಸಂಯುಕ್ತ ಸಹಕಾರಿಯು ಗಮನಿಸಿದೆ. ಈ ತೊಂದರೆಗಳನ್ನು ನಿವಾರಿಸುವುದಕ್ಕಾಗಿಯೇ ಸಂಯುಕ್ತ ಸಹಕಾರಿಯು ಸಹಕಾರ ಕಾಯಿದೆಗಳಿಗೆ ಸಂಬಂಧಪಟ್ಟ ತೀರ್ಪುಗಳ ಕುರಿತ ಪುಸ್ತಕಗಳನ್ನು ಶ್ರೀ ಸಿ ಎನ್ ಪರಶಿವಮೂರ್ತಿಯವರಿಂದ ಪಡೆದು ಪ್ರಕಟಿಸುವ ಕಾರ್ಯವನ್ನು ಮಾಡುತ್ತಲಿದೆ.

ಸಹಕಾರ ಇಲಾಖೆಯು ನಿವೃತ್ತ ಹಿರಿಯ ಅಪರ ನಿಬಂಧಕರಾದ ಶ್ರೀ ಸಿ.ಎನ್.ಪರಶಿವಮೂರ್ತಿಯವರು ಇವುಗಳನ್ನು ಸಂಪಾದಿಸಿ, ತೀರ್ಪುಗಳ ಸಂಕ್ಷಿಪ್ತ ಸಾರಾಂಶವನ್ನು ಸಿದ್ಧಪಡಿಸಿ ಸಂಯುಕ್ತ ಸಹಕಾರಿಯು ಮುದ್ರಿಸಲು ಅವಕಾಶ ಮಾಡಿಕೊಟ್ಟಿದ್ದಾರೆ. ಈ ಮಹತ್ವದ ಕಾರ್ಯವನ್ನು ಮಾಡಿಕೊಟ್ಟ ಅವರಿಗೆ ಕೃತಜ್ಞತೆಗಳು. ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯದ ವಿಶ್ರಾಂತ ನ್ಯಾಯಮೂರ್ತಿಗಳಾದ ಮಾನ್ಯ ಶ್ರೀ ಜಸ್ಟೀಸ್ ಶಿವರಾಜ ವಿ ಪಾಟೀಲ್ ಇವರು ಈ ಪುಸ್ತಕವನ್ನು ಅಧ್ಯಯನ ಮಾಡಿ ಮುನ್ನುಡಿಯನ್ನು ಬರೆದುಕೊಟ್ಟಿದ್ದಾರೆ. ಅವರಿಗೂ ಕೂಡ ಸಂಯುಕ್ತ ಸಹಕಾರಿಯಿಂದ ಕೃತಜ್ಞತೆಗಳು.

ಸಹಕಾರ ಕಾಯಿದೆಗಳಿಗೆ ಸಂಬಂಧಪಟ್ಟ ಉಚ್ಚ ಮತ್ತು ಶ್ರೇಷ್ಠ ನ್ಯಾಯಾಲಯಗಳ ತೀರ್ಪಿನ ಸಾರಂಶಗಳ ಪುಸ್ತಿಕೆಯು ಸಹಕಾರಿಗಳಿಗೆ, ಸಹಕಾರಿ ಸಂಸ್ಥೆಗಳಿಗೆ ಅದರಲ್ಲೂ ಪ್ರಮುಖವಾಗಿ ಆಡಳಿತ ಮಂಡಲಿ ಸದಸ್ಯರಿಗೆ ಮಾರ್ಗದರ್ಶಿಯಂತೆ ಅಳವಡಿಸಿಕೊಳ್ಳಲು ಈ ಪುಸ್ತಕ ಅನುಕೂಲವಾಗುತ್ತದೆಂದು ಭಾವಿಸಿದೆ. ಸೌಹಾರ್ದ ಸಹಕಾರಿಗಳಿಗೆ, ಸಹಕಾರಿ ನೇತಾರರಿಗೆ, ವಕೀಲರಿಗೆ, ಇಲಾಖಾಧಿಕಾರಿಗಳಿಗೆ ಅತ್ಯಂತ ಪ್ರಯೋಜನಕಾರಿಯಾಗಬಹುದೆಂದು ಸಂಯುಕ್ತ ಸಹಕಾರಿಯು ಭಾವಿಸಿದೆ. ತಾವುಗಳು ಈ ಸಂಗ್ರಹ ಪುಸ್ತಕವನ್ನು ಓದಿ ಪ್ರಯೋಜನ ಪಡೆದುಕೊಂಡರೆ ಸಂಯುಕ್ತ ಸಹಕಾರಿಯ ಈ ಪ್ರಯತ್ನ ಸಾರ್ಥಕ. ಈ ಪ್ರಕಟಣೆಯ ಬಗ್ಗೆ ತಮ್ಮ ಅನಿಸಿಕೆಗಳನ್ನು ಹಾಗೂ ಸಲಹೆಗಳನ್ನು ಸ್ವಾಗತಿಸುತ್ತೇವೆ.

ಬಿ. ಹೆಚ್. ಕೃಷ್ಣಾರೆಡ್ಡಿ
ಅಧ್ಯಕ್ಷರು

Justice Shivaraj V. Patil

Formerly Judge,
High Court of Karnataka,
High Court of Madras,
Chief Justice, High Court of Rajasthan,
Supreme Court of India and
Member, National Human Rights Commission

"Sparsh",
254, 18th Cross,
Sadashivanagar,
Bangalore - 560 080
Ph. : +91-80-2361 0334, 2361 6644
e-mail : jsvp1940@gmail.com

ಮುನ್ನುಡಿ

ದೀರ್ಘಕಾಲ ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಸಹಕಾರಿ ಇಲಾಖೆಯಲ್ಲಿ ದಕ್ಷ ಮತ್ತು ಉತ್ತಮ ಸೇವೆ ಸಲ್ಲಿಸಿ ಶ್ರೀ ಸಿ.ಎನ್. ಪರಶಿವಮೂರ್ತಿಯವರು ಅಪರ ನಿಭಂದಕರಾಗಿ ನಿವೃತ್ತರಾಗಿದ್ದಾರೆ. ತಮ್ಮ ಸೇವಾವಧಿಯಲ್ಲಿ ಸಹಕಾರಿ ಕ್ಷೇತ್ರಕ್ಕೆ ಸಂಬಂಧಿಸಿದ ವಿಷಯಗಳ ಬಗ್ಗೆ ಸಹಕಾರ ಸಂಘಗಳ ಕಾಯ್ದೆ ಬಗ್ಗೆ ಚೆನ್ನಾಗಿ ತಿಳಿದುಕೊಂಡಿದ್ದಾರೆ. ಸಹಕಾರ ಕ್ಷೇತ್ರ ಬಹಳ ದೊಡ್ಡದಾಗಿ ಮತ್ತು ವಿಸ್ತಾರವಾಗಿ ಬೆಳೆದಿದೆ. ಕಾರಣ ಸಹಕಾರ ಕ್ಷೇತ್ರದಲ್ಲಿ ಮತ್ತು ಸಹಕಾರಿ ಸಂಘಗಳಿಗೆ ಸಂಬಂದಿಸಿದಂತೆ ಹಲವಾರು ಕಾನೂನುಗಳು, ನಿಯಮಗಳು, ಅಧಿನಿಯಮಗಳು ಮತ್ತು ನ್ಯಾಯಾಲಯದ ತೀರ್ಪುಗಳು ಹೊರಬಂದಿವೆ. ಸರಳವಾದ ಕಾನೂನು ಅವಶ್ಯಕತೆ ಇದ್ದಂತೆ, ನ್ಯಾಯಾಲಯಗಳ ತೀರ್ಪುಗಳನ್ನು ಅರ್ಥ ಮಾಡಿಕೊಳ್ಳುವುದು, ಯಾವ ಯಾವ ಸಂದರ್ಭಗಳಲ್ಲಿ ಮತ್ತು ಯಾವ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ನ್ಯಾಯಾಲಯ ತೀರ್ಪುಗಳಿವೆ ಎಂಬುದು ಈ ಕ್ಷೇತ್ರದಲ್ಲಿ ಸಂಬಂಧಪಟ್ಟ ಸರ್ವರಿಗೂ ಅರ್ಥವಾಗುವ ರೀತಿಯಲ್ಲಿ ಮತ್ತು ಅತ್ಯಂತ ಕಡಿಮೆ ಸಮಯದಲ್ಲಿ ಯಾವ ವಿಷಯದ ಮೇಲೆ ಉಚ್ಚ ನ್ಯಾಯಾಲಯ ಹಾಗೂ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯದ ತೀರ್ಪುಗಳು ಇವೆ ಎಂಬುದನ್ನು ತಿಳಿಸಿಕೊಡುವ ಅವಶ್ಯಕತೆ ಹೆಚ್ಚಾಗಿದೆ. ಅನೇಕರಿಗೆ ಇಂತಹ ತೀರ್ಪುಗಳನ್ನು ಅದರಲ್ಲೂ ದೀರ್ಘವಾದ ತೀರ್ಪುಗಳನ್ನು ಮತ್ತು ಕಾಯ್ದೆಗೆ ಸಂಬಂಧಪಟ್ಟ ಕ್ಲಿಷ್ಟವಾದ ವಿಷಯಗಳನ್ನು ತಿಳಿದುಕೊಳ್ಳುವುದು ಸಾಮಾನ್ಯವಾಗಿ ಕಷ್ಟಕರವಾಗುತ್ತದೆ.

ವಸ್ತುಸ್ಥಿತಿ ಹೀಗಿರುವಾಗ ಶ್ರೀಮಾನ್ ಪರಶಿವಮೂರ್ತಿರವರು ಪರಿಶ್ರಮ ವಹಿಸಿ ಅವರ ಅನುಭವದ ಹಿನ್ನೆಲೆಯಲ್ಲಿ "ಸಹಕಾರ ಕಾಯಿದೆಗಳಿಗೆ ಸಂಬಂಧಪಟ್ಟ ಮಾಹಿತಿ ಹಕ್ಕು ಕಾಯ್ದೆಯಲ್ಲಿನ ಉಚ್ಚ ಮತ್ತು ಶ್ರೇಷ್ಠ ನ್ಯಾಯಾಲಯಗಳ ತೀರ್ಪಿನ ಸಾರಾಂಶಗಳು" ಸಹಕಾರ ಕಾಯ್ದೆಗಳಿಗೆ ಸಂಬಂಧಪಟ್ಟ ಮಾಹಿತಿ ಹಕ್ಕು ನೀಡುವುದರ ಜೊತೆಗೆ ಉಚ್ಚ ಮತ್ತು ಶ್ರೇಷ್ಠ ನ್ಯಾಯಾಲಯಗಳ ತೀರ್ಪಿನ ಸಾರಾಂಶಗಳನ್ನು ಸಾಂದರ್ಭಿಕವಾಗಿ ಮತ್ತು ಸಮಂಜಸವಾಗಿ ನೀಡಿದ್ದಾರೆ. ಇದರಿಂದ ಸಹಕಾರ ಕ್ಷೇತ್ರದಲ್ಲಿ ಕೆಲಸ ಮಾಡುವವರೆಲ್ಲರಿಗೂ ಅನುಕೂಲವಾಗುತ್ತದೆ. ಸಮಯ ಉಳಿತಾಯ ಜೊತೆಗೆ ಕಾಯ್ದೆಗೆ ಸಂಬಂಧಪಟ್ಟಂತ ಸಮಸ್ಯೆಗಳು ಎದುರಾದಾಗ ನ್ಯಾಯಾಲಯಗಳ ತೀರ್ಪುಗಳಿಗೆ ಅನುಗುಣವಾಗಿ ನಿರ್ದಿಷ್ಟ ಮತ್ತು ನಿಶ್ಚಳವಾದ ನಿಲುವನ್ನು ತೆಗೆದುಕೊಳ್ಳುವಲ್ಲಿ ಸಹಕಾರವಾಗುತ್ತದೆ.

ಸರಿಯಾದ ತಿಳುವಳಿಕೆಯಾದಾಗ ಅನೇಕ ಸಂದರ್ಭಗಳಲ್ಲಿ ನ್ಯಾಯಾಲಯಗಳಿಗೆ ಹೋಗುವ ಅವಶ್ಯಕತೆ ಕಡಿಮೆಯಾಗಬಹುದು. ಆಗಸ್ಟ್ 2015 ರಲ್ಲಿ ಪ್ರಕಟವಾದ "Karnataka High Court Judgements - Related to Co-operation Sector" ನ ಮುಂದುವರೆದ ಭಾಗವಾಗಿ ಮತ್ತು ವಿಸ್ತೃತವಾಗಿ ಕರ್ನಾಟಕ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದ, ಬೇರೆ ರಾಜ್ಯಗಳ ಉಚ್ಚ ನ್ಯಾಯಾಲಯಗಳ ಮತ್ತು ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯದ ತೀರ್ಪುಗಳನ್ನು ಸಂಕ್ಷಿಪ್ತವಾಗಿ, ಸರಿಯಾಗಿ ಅರ್ಥವಾಗುವ ರೀತಿಯಲ್ಲಿ ಕೂಡ್ಡೀಕರಿಸಿ, ಸಂಪಾದಿಸಿ ಒಂದೆಡೆ

ಸಂಗ್ರಹ ಮಾಡಿ ಎರಡು ಸಂಪುಟಗಳಲ್ಲಿ ಶ್ರಮವಹಿಸಿ ಸಿದ್ಧಮಾಡಿದ್ದಾರೆ. ಈ ಕೃತಿಗಳು ಪ್ರಕಟವಾಗಿ ಲೋಕಾರ್ಪಣೆಯಾದಾಗ ಸಹಕಾರಿ ಕ್ಷೇತ್ರದಲ್ಲಿ ಮತ್ತು ಸಹಕಾರಿ ಸಂಘ ಸಂಸ್ಥೆಗಳಲ್ಲಿ ಕಾರ್ಯ ನಿರ್ವಹಿಸುವವರಿಗೂ ಮತ್ತು ಜನಸಾಮಾನ್ಯರಿಗೂ ಉಪಯೋಗವಾಗುವುದರ ಜೊತೆಗೆ ವಕೀಲರುಗಳಿಗೆ, ನ್ಯಾಯಾಧೀಶರುಗಳಿಗೆ ಸಮಯ ಉಳಿಸಿ ವಿಷಯಗಳ ಬಗ್ಗೆ ಸ್ವಲ್ಪ ಮಟ್ಟಿಗೆ ಸಹಕಾರಿಯಾಗಬಹುದು.

ಶ್ರೀ ಪರಶಿವಮೂರ್ತಿಯವರ ಈ ಕಾರ್ಯಕ್ಕೆ ನನ್ನ ಮೆಚ್ಚುಗೆ ಇದೆ. ಇದೇ ರೀತಿಯಾಗಿ ಅವರ ಸೇವೆ ಜನರಿಗೆ ಉಪಯೋಗವಾಗಲಿ ಮತ್ತು ಈ ದಿಕ್ಕಿನಲ್ಲಿ ಮುಂದುವರೆಯಲೆಂದು ಹಾರೈಸುತ್ತೇನೆ.

ಜಸ್ಟೀಸ್ ಶಿವರಾಜ್ ವಿ ಪಾಟೀಲ್
ವಿಶ್ರಾಂತ ನ್ಯಾಯಮೂರ್ತಿ, ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯ

–: ಮೊದಲ ಮಾತು :–

ಆತ್ಮೀಯ ಸಹಕಾರಿ ಬಂಧುಗಳೇ,

ಕರ್ನಾಟಕ ರಾಜ್ಯ ಸೌಹಾರ್ದ ಸಂಯುಕ್ತ ಸಹಕಾರಿ, ಬೆಂಗಳೂರು ಇವರು 2015ರಲ್ಲಿ, ವಿವಿಧ ನ್ಯಾಯಾಲಯಗಳು ನೀಡಿದ ತೀರ್ಪುಗಳ ಸಂಕ್ಷಿಪ್ತ ಸಾರಾಂಶವನ್ನು ಮೊದಲ ಪುಸ್ತಕವಾಗಿ ಪ್ರಕಟಿಸಿದೆ. ಅದಕ್ಕಾಗಿ ಸಂಯುಕ್ತ ಸಹಕಾರಿಗೆ ನನ್ನ ವಂದನೆಗಳು. ಎರಡನೇ ಪ್ರಯತ್ನವಾಗಿ ಉಚ್ಚ ಮತ್ತು ಶ್ರೇಷ್ಠ ನ್ಯಾಯಾಲಯ ನೀಡಿದ ತೀರ್ಪುಗಳ, ಸಹಕಾರ ಕಾಯಿದೆ ಬಗ್ಗೆ, ಒಂದೇ ಕಡೆ ಸಿಗದೆ ಇರುವುದರಿಂದ, ಸಂಕ್ಷಿಪ್ತವಾಗಿಯಾದರೂ ಇದು ಲಭ್ಯವಾಗಲಿ ಎಂಬುದೇ ಈ ಪ್ರಯತ್ನ. ಆಂಗ್ಲಬಾಷೆಯಲ್ಲಿ ತೀರ್ಪುಗಳನ್ನು ಸಂಗ್ರಹಿಸಿ, ಸಂಪಾದಿಸಿದ ಪುಸ್ತಕಗಳನ್ನು ಸಂಯುಕ್ತ ಸಹಕಾರಿ ಪ್ರಕಟಿಸುತ್ತಿದೆ. ಆ ತೀರ್ಪುಗಳಲ್ಲಿನ ಸಾರಾಂಶವನ್ನು ಸಂಕ್ಷಿಪ್ತವಾಗಿ ಒಂದೇ ಕಡೆ ಲಭ್ಯವಾದರೆ ಸಹಕಾರಿಗಳಿಗೆ/ಸಹಕಾರ ಸಂಸ್ಥೆಗಳಿಗೆ/ನ್ಯಾಯಾವಾದಿಗಳಿಗೆ ಅನುಕೂಲವಾಗುತ್ತದೆಂದು ಭಾವಿಸಿ ಈ ಪ್ರಯತ್ನ.

ಮೊದಲ ಪುಸ್ತಕಕ್ಕೆ ಡಾ. ಎಂ. ರಾಮಾಜೊಯಿಸ್ ಅವರು ತಮ್ಮ ಅಭಿಪ್ರಾಯವನ್ನು ಮತ್ತು ಆ ಪುಸ್ತಕದ ಉಪಯುಕ್ತತೆ ಬಗ್ಗೆ ಉಲ್ಲೇಖಿಸಿರುವುದಕ್ಕೆ ನಾನು ಚಿರರುಣಿ. ಅದೇ ರೀತಿ ಸಂಯುಕ್ತ ಸಹಕಾರಿಯ ಹಿಂದಿನ ಅಧ್ಯಕ್ಷರಾಗಿದ್ದ ಶ್ರೀ ಗುರುನಾಥ್ ಜಾಂತೀಕರ್ ಅವರೂ ಸಹ ತಮ್ಮ ಅನಿಸಿಕೆ ದಾಖಲಿಸಿ ಪ್ರೋತ್ಸಾಹಿಸಿದ್ದಾರೆ,

ಪ್ರಸ್ತುತ ಈಗ ಬಿಡುಗಡೆಯಾಗುತ್ತಿರುವ ಪುಸ್ತಕಕ್ಕೆ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯದ ವಿಶ್ರಾಂತ ನ್ಯಾಯಮೂರ್ತಿಗಳಾದ ಮಾನ್ಯ ಶ್ರೀ ಜಸ್ಟೀಸ್ ಶಿವರಾಜ ವಿ ಪಾಟೀಲ್ ಇವರು ಮುನ್ನುಡಿಯನ್ನು ಬರೆದು ಮೆಚ್ಚುಗೆ ವ್ಯಕ್ತಪಡಿಸಿದ್ದಾರೆ. ಸಂಯುಕ್ತ ಸಹಕಾರಿಯ ಇಂದಿನ ಅಧ್ಯಕ್ಷರಾಗಿರುವ ಶ್ರೀ ಬಿ ಹೆಚ್ ಕೃಷ್ಣಾರೆಡ್ಡಿಯವರು ಈ ಪುಸ್ತಕಕ್ಕೆ ತಮ್ಮ ಮೊದಲ ಮಾತನ್ನು ದಾಖಲಿಸಿ ಪ್ರೋತ್ಸಾಹಿಸಿದ್ದಾರೆ, ಇವರೆಲ್ಲರಿಗೂ ನಾನು ಚಿರರುಣಿ.

ನಾನು ಈ ಪುಸ್ತಕವನ್ನು ತಯಾರಿಸಲು ಹಲವಾರು ತಿಂಗಳುಗಳ ಶ್ರಮದಲ್ಲಿ ನನ್ನ ಹೆಂಡತಿ ಶ್ರೀಮತಿ.ಸರೋಜ.ಪಿ.ಮೂರ್ತಿ ಇವರ ಸಹಕಾರ ಸ್ಮರಿಸಲೇಬೇಕು. ಅದೇ ರೀತಿ ನನ್ನ ಮಕ್ಕಳಾದ ಡಾ. ಸಿ.ಪಿ.ಕಾತ್ಯಾಯಿನಿ, ಡಾ. ಸಿ.ಪಿ.ದಯಾನಂದಮೂರ್ತಿ ಮತ್ತು ಡಾ. ಸಿ.ಪಿ.ನಂದಿನಿ ಇವರ ಕಳಕಳಿಗೆ ನನ್ನ ವಂದನೆ. ಅದೇ ರೀತಿ ಶ್ರೀ ಟಿ.ಪಿ.ಧರ್ಮೇಂದ್ರ, ಶ್ರೀಮತಿ.ಬಿ.ಸೋಮಾಮೂರ್ತಿ ಮತ್ತು ಶ್ರೀ ಜಗದೀಶ್‌ಚಂದ್ರ ಅಳಿಯಂದಿರು ಮತ್ತು ಸೊಸೆಯನ್ನು ನೆನೆಯಬೇಕು. ಮೊಮ್ಮಕ್ಕಳಾದ ಶ್ರೀ ಟಿ.ಡಿ.ಕುಶಲ್, ಶ್ರೀ ಟಿ.ಡಿ.ತೇಜೋವಂತ್ ಮತ್ತು ಶ್ರೀ ದಿವ್ಯಾಂಶರನ್ನು ನೆನೆಸುತ್ತೇನೆ.

ಈ ಪುಸ್ತಕ ಪ್ರಕಟಿಸಲು ಸಂಯುಕ್ತ ಸಹಕಾರಿ ತೆಗೆದುಕೊಂಡ ಕ್ರಮ ಮತ್ತು ಸಹಕಾರ ನೆನೆಯಲೇಬೇಕು. ಪ್ರಮುಖವಾಗಿ ಶ್ರೀ ಬಿ.ಎಚ್. ಕೃಷ್ಣಾರೆಡ್ಡಿ, ಅಧ್ಯಕ್ಷರು, ಶ್ರೀ ಜಗದೀಶ ಕವಟಗಿಮಠ, ಉಪಾಧ್ಯಕ್ಷರು, ಶ್ರೀ ಗುರುನಾಥ್ ಜಾಂತಿಕರ್, ನಿಕಟಪೂರ್ವ ಅಧ್ಯಕ್ಷರು, ಶ್ರೀ ಹೆಚ್.ವಿ.ರಾಜೀವ್, ನಿಕಟಪೂರ್ವ ಉಪಾಧ್ಯಕ್ಷರು ಮತ್ತು ಶ್ರೀ ಶರಣಗೌಡ. ಜಿ. ಪಾಟೀಲ್, ವ್ಯವಸ್ಥಾಪಕ ನಿರ್ದೇಶಕರು ಹಾಗೂ ಸಂಯುಕ್ತ ಸಹಕಾರಿಯ ಕಾನೂನು ವಿಭಾಗದ ಶ್ರೀ ಶ್ರೀಕಾಂತ್ ಬರುವೆ ಮತ್ತು ಹಿಂದಿನ ಅಧ್ಯಕ್ಷರಾಗಿದ್ದ ಶ್ರೀ ಸತೀಶ್‌ಚಂದ್ರ ಇವರ ಸಹಕಾರ ಇಲ್ಲದೇ ಈ ಪ್ರಕಟಣೆ ಸಾಧ್ಯವಾಗುತ್ತಿರಲಿಲ್ಲ. ಸಂಯುಕ್ತ ಸಹಕಾರಿಯು ಹಿರಿಯ ಅಧಿಕಾರಿಗಳು ಮತ್ತು ಸಿಬ್ಬಂದಿಯನ್ನು ಈ ಸಂದರ್ಭದಲ್ಲಿ ನೆನೆಸುತ್ತೇನೆ. ಜೆಎಸ್‌ಎಸ್ ಹಿರಿಯ ವಿದ್ಯಾರ್ಥಿಗಳ ಗೃಹ ನಿರ್ಮಾಣ ಸಹಕಾರ ಸಂಘದ ಕುಮಾರಿ ಅನಿತ, ಬೆರಳಚ್ಚು ಮಾಡಿಕೊಟ್ಟಿದ್ದಕ್ಕೆ ನನ್ನ ವಂದನೆಗಳು. ಈ ಪುಸ್ತಕ ಪ್ರಕಟಣೆಯಿಂದ ಸಹಕಾರ ಇಲಾಖೆ ಅಧಿಕಾರಿಗಳಿಗೆ, ಅದರಲ್ಲಿ ದಾವಾ ಮತ್ತು ಅಧಿಭಾರ ಅರ್ಜಿ ತೀರ್ಮಾನ ಮಾಡುವಾಗ, ತುರ್ತಾಗಿ ತೀರ್ಪುಗಳ ಲಭ್ಯತೆ ಇಲ್ಲದೇ ಇದ್ದಾಗ, ಈ ಸಂಕ್ಷಿಪ್ತ ತೀರ್ಪುಗಳು ಸಹಕಾರಿಯಾಗಲೆಂದು, ಆಶಿಸುತ್ತೇನೆ.

–ಸಿ. ಎನ್. ಪರಶಿವಮೂರ್ತಿ

In Memory of Late. Smt.Parvathamma Nanjappa

and

Late. Patel Nanjappa

PART – I

Sl. No.	W.P No.	Relevant Act and Case	Judge	Where Reported	Page No.
1	Cr.A. No. 1166 of 2014 [Arising out of S.L.P. (Cr.) No. 84 of 2013] with Cr.A. No. 1181 of 2014 (Arising out of S.L.P. (Cr.) No. 85 of 2013)	Dayanand Ramkrishna Shet v State of Karnataka, 2014 Indlaw SC 351	C. Nagappan, T. S. Thakur	2014 Indlaw SC 351; 2014 ALL MR (Cri) 2610; 2014 CRLJ 2746; 2014 (4) KarLJ 341; 2014 (4) Law Herald (P&H) 2847; 2014 (3) RCR(Criminal) 229; 2014(7) SCALE 9	1 - 2
2	C.A. No. 9017 of 2013 (Arising out of S.L.P. (C) No. 24290 of 2012) with C.A. Nos. 9020, 9029 & 9023 of 2013 (Arising out of S.L.P. (C) No. 24291 of 2012, 13796 and 13797 of 2013)	Thalappalam Ser. Co-op. Bank Limited and others v State of Kerala and others	K.S. Radha-krishnan, A.K. Sikri	2013 Indlaw SC 663; AIR 2013 SC (Supp) 437; 2014(1) ALL MR 451; 2013 (6) AWC 6215; 2014 (1) CLT(SC) 187; 2013 (6) CTC 98; 2013 (4) KLT 232; 2014 (3) Law Herald (P&H) 1999; 2013 (7) MLJ 407; 2013 (4) RCR(Civil) 912; 2013(12) SCALE 527	3 – 8
3	C.A. No. 3914 of 2013 [Arising out of S.L.P. (C) No. 12497 of 2008] with C.A. No. 3916 of 2013 [Arising out of S.L.P. (C) No. 17029 of 2009] and C.A. No.3915 of 2013 [Arising out of S.L.P. (C) No. 28828 of 2008]	S. Malla Reddy and others v Future Builders Co-operative Housing Society and others	M.Y. Eqbal, P. Sathasivam	2013 Indlaw SC 252; (2013) 9 SCC 349; AIR 2013 SC 3693; 2013 (4) ALD(SC) 40; 2013(3) ALL MR 922; 2013 (4) AWC 3845; 2013 (3) CTC 343; JT 2013 (6) SC 518; 2014 (1) MahLJ 771; 2014 (1) MPLJ 318; 2013 (171) PLR 650; 2013 (2) RCR(Civil) 957; 2013 (120) RD 524; 2013(6) SCALE 170; [2013] 6 S.C.R. 230	9 - 12

4	CIVIL APPEAL NO(s). 7425-7426 OF 2002 with Civil Appeal NO. 774-778 of 2005	Bangalore City Coop Hsg.Socy. Ltd v State Of Karnataka And Ors.	G.S. Singhvi, A.K. Ganguly	2012 Indlaw SC 577; (2012) 3 SCC 727; JT 2012 (2) SC 87; 2012 (3) RCR(Civil) 779; [2012] 3 S.C.R. 295	13 – 17
5	C.A. No. 2188 of 2008 With C.A. Nos. 2189-2212 of 2008 And C.A. No. 4588 of 2008	A. P. Dairy Development Corporation Federation v B. Narasimha Reddy and others	Balbir Singh Chauhan, P. Sathasivam	2011 Indlaw SC 633; (2011) 9 SCC 286; 2012 (1) ALD(SC) 108; JT 2011 (10) SC 145; 2012 (5) RCR(Civil) 831; 2011(9) SCALE 688; [2011] 14 S.C.R. 1	18 - 21
6	C.A. No. 1622 of 2010 [Arising out of S.L.P. (C) No. 7572 of 2009] With C.A. No. 1623/2010 @ S.L.P. (C) No. 10489 of 2009, C.A. No. 1624/ 2010 @ S.L.P. (C) No. 10490 of 2009, C.A. No. 1625/2010 @ S.L.P. (C) No. 10491 of 2009, C.A. No. 1626/ 2010 @ S.L.P. (C) No. 10492 of 2009, C.A. No. 1627/2010 @ S.L.P. (C) No. 10494 of 2009, C.A. No. 1628/ 2010 @ S.L.P. (C) No. 10497 of 2009, C.A. No. 1629/2010 @ S.L.P. (C) No. 10498 of 2009 [From the Judgement and Order Dt. 30.09.2008 of the High Court of Karnataka Circuit Bench at Dharwad in ITA No. 1568 of 2005]	Totgars Cooperative Sale Society Limited v Income Tax Officer, Karnataka	S.H. Kapadia, Aftab Alam	2010 Indlaw SC 91; (2010) 3 SCC 223; AIR 2010 SC (Supp) 645; [2010] 322 ITR 283; JT 2010 (2) SC 74; 2010(2) SCALE 224; [2010] 2 S.C.R. 496; [2010] 188 TAXMAN 282	22 - 24

7	Criminal Appeal Nos. 733-734 Of 2009 [Arising Out Of S.L.P. (Criminal) Nos. 7687-7688 Of 2007]	K. Ashoka v N. L. Chandrashekar and Others	S.B. Sinha, Cyriac Joseph	2009 Indlaw SC 491; (2009) 5 SCC 199; (2009) 2 SCC (Cr) 730; AIR 2009 SC 3288; 2009 CRLJ 2952; 2009 (5) KarLJ 545; 2010 (5) RCR(Criminal) 522; 2009(5) SCALE 587; [2009] 5 S.C.R. 961	25 - 27
8	C.A. No .2442 of 2009 (Arising Out of S.L.P. (C) No.25505 of 2007) With C.A. Nos. 2443,2446, 2447, 2449, 2452, 2454, 2456, 2458, 2460, 2462, 2464, 2467, 2469, 2471, 2472, 2473, 2474, 2475, 2477, 2478, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2489, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2502, 2503, 2504, 2505, 2506, 2507, 2508-2525, 2526, 2527, 2528, 2529, 2530-2531, 2532, 2533 of 2009 (Arising Out of S.L.P. (C) Nos.9, 11, 12, 20, 26, 52, 87, 184, 185, 202, 205, 249, 342, 345, 351, 353, 357, 386, 389, 396, 462, 585, 586,624, 692, 770, 779, 784, 804, 806, 816, 817, 825, 1360, 1716, 1772, 2205, 2208, 2211, 2235, 5123, 2249, 2478, 5102-5119, 6418, 6477, 6995, 7502, 4879-4880 of 2008, 24873 of 2007 and 17705 of 2008)	Madhya Pradesh State Co-Operative Dairy v Rajnesh Kumar Jamindar and Others	S.B. Sinha, A.K. Ganguly	2009 Indlaw SC 532; (2009) 15 SCC 221; 2009 (2) ESC 367; 2009 (121) FLR 917; 2009(6) SCALE 17; [2009] 6 S.C.R. 182	28 - 31

9	Appeal (Civil) 9 of 2008 (Arising out of SLP No. 13664/2005)	Reserve Bank of India v M. Hanumaiah and Others	Aftab Alam, G.P. Mathur	2008 Indlaw SC 31; (2008) 1 SCC 770; AIR 2008 SC 994; JT 2008 (1) SC 247; 2008 (2) KarLJ 469; 2008(1) SCALE 34; [2008] 1 S.C.R. 16	32 - 35
10	Appeal (civil) 2952 of 2007 (Arising out of Special Leave Petition (C)No.11821 of 2005)	Mahatma Gandhi Sahakra Sakkare Karkhane v National Heavy Engineering Co-Operative Limited and Another	B. Sudershan Reddy, Tarun Chatterjee	2007 Indlaw SC 720; (2007) 6 SCC 470; AIR 2007 SC 2716; 2008 (1) BC 133; JT 2007 (9) SC 212; 2007 (5) KarLJ 517; 2007(9) SCALE 177; 2007 (8) SCJ 452; [2007] 8 S.C.R. 274	36 - 38
11	Appeal (Civil) 432 of 2004 with [C.A. Nos.433/ 2004, C.A. No.434/2004, C.A. No.436/ 2004, S.L.P. (C) Nos.15651-15652/2005, S.L.P. (C) No.5592/2004, S.L.P. (C) No.5598/2004, S.L.P. (C) No.5890/2004, C.A. No.36/2 006, C.A. No.37/ 2006, C.A. No.38/2 006, C.A. No.916/ 2006, C.A. No.2819/2006, C.A. No.2820/ 2006, C.A. No.2821/2006, C.A. No.2822/ 2006 and S.L.P. (C) Nos.25246-25247/2 005]	Greater Bombay Cooperative Bank Limited v Messrs United Yarn Tex. Private Limited and Others	Lokeshwar Singh Panta, B.N. Agrawal, P.P. Naolekar	2007 Indlaw SC 295; (2007) 6 SCC 236; AIR 2007 SC 1584; 2007 (6) AWC 5409; 2007 (3) Bom.C.R. 56; [2007] 137 Comp Cas 63; 2007 (2) DRTC 1; JT 2007 (5) SC 201; 2007 (3) KLT 302; 2007 (3) MahLJ 434; 2007(5) SCALE 366; [2007] 4 S.C.R. 823	39 - 41

PART – II

4	Appeal (Civil) 92 of 1998	Secretary, Thirumurugan Co-Operative Agricultural Credit Society v M. Lalitha (Dead) Through Lrs. and Others	Shivaraj V. Patil, D.M. Dharma-dhikari	2003 Indlaw SC 1251; (2004) 1 SCC 305; AIR 2004 SC 448; 2004 (4) Bom.C.R. 273; 2003 CCC 394; [2004] 118 Comp Cas 253; 2004 (1) CompLJ 339; 2004 (1) CPJ 1; 2004 (2) MahLJ 581; 2003(10) SCALE 635; 2003 (1) SCW 6873; [2003] Supp6 S.C.R. 659	58 - 59
5	Appeal (Civil) 4646-4648 of 2000	Commissioner of Income Tax v Karnataka State Co-Operative Apex Bank	S.P. Bharucha, Ashok Bhan, Y.K. Sabharwal	2001 Indlaw SC 282; (2001) 7 SCC 654; AIR 2001 SC 3332; 2001 (169) CTR 486; [2001] 251 ITR 13; [2001] 251 ITR 194; JT 2001 (7) SC 42; 2001(5) SCALE 411; 2001 (6) SLT 60; [2001] Supp2 S.C.R. 35; 2001 (6) Supreme 327	60 - 61
6	Appeal (Civil) 3162 of 1997	Ram Sahan Rai v Sachiv Samanaya Prabandhak and Another	G.B. Pattanaik, B.N. Agrawal	2001 Indlaw SC 20275; (2001) 3 SCC 323; (2001) SCC (L&S) 584; AIR 2001 SC 1173; 2001 (2) AWC 927; 2001 (1) CLR 1028; 2001 (89) FLR 109; JT 2001 (3) SC 95; 2001 (1) LLJ 1073; 2001(2) SCALE 136; [2001] 1 S.C.R. 1145; 2001 (2) SLT 269; 2001 (2) Supreme 109; 2001 (1) UPLBEC 856	62 - 63

7	Civil Appeals Nos. 5224-25 of 2000	Janatha Bazar (South Kanara Central Cooperative v Secretary, Sahakari Noukarara Sangha and Others	M.B. Shah, D.P. Mohapatra	2000 Indlaw SC 472; (2000) 7 SCC 517; AIR 2000 SC 3129; 2000 (4) AWC 3309; JT 2000 (10) SC 589; 2000 (2) LLJ 1395; 2000(6) SCALE 446; [2000] Supp3 S.C.R. 367	64 - 66
8	Civil Appeal Nos. 1930-1936 of 1999 Etc	Jt. Registrar Of Cooperative Societies, Kerala v T.A.Kuttappan & Ors.	S. Rajendra Babu, Y.K. Sabharwal	2000 Indlaw SC 446; (2000) 6 SCC 127; AIR 2000 SC 2378; JT 2000 (6) SC 458; 2000 (2) KLT 480; 2000(4) SCALE 686; [2000] 3 S.C.R. 1204; 2000 (5) SLT 273; 2000 (4) Supreme 226	67 – 68
9	C.A. No. 1572 of 1998 (Arising out of S.L.P. (C) No. 21938 of 1997)	Umesh Shivappa Ambi and Others v Angadi Shekara Basappa and Others	S. Rajendra Babu, Ms. Justice Sujata V. Manohar	1998 Indlaw SC 1700; (1998) 4 SCC 529; AIR 1999 SC 1566; JT 1998 (5) SC 347; 1998 (9) SLT 23; 1998 (9) Supreme 175	69 - 70
10	Appeal (civil) 4318 of 1997	Rajendra Prasad Yadav and Others v State of Madhya Pradesh and Others	K. Ramaswamy, D.P. Wadhwa	1997 Indlaw SC 3323; (1997) 6 SCC 678; AIR 1997 SC 3723; JT 1997 (6) SC 354; [1997] Supp1 S.C.R. 716	71 - 76
11	Civil Appeal Nos. 4271-73 of 1997	K.Shantharaj And Another v M.L. Nagaraj And Others	K. Ramaswamy, D.P. Wadhwa	1997 Indlaw SC 2314; (1997) 6 SCC 37; AIR 1997 SC 2925; JT 1997 (5) SC 680; 1997(4) SCALE 379; [1997] Supp1 S.C.R. 389; 1997 (6) Supreme 204; 1997 (2) UJ 121	77 - 79

PART – III

4	Civil Appeal No. 1196 (NT) of 1992 and Civil Appeal Nos. 2211-12 of 1996	Madhya Pradesh Co-Operative Bank Limited v Additional Commissioner of Income Tax	A.M. Ahmadi, B.L. Hansaria	1996 Indlaw SC 3486; (1996) 2 SCC 541; 1996 (1) AD(SC) 936; 1996 (134) CTR 92; [1996] 218 ITR 438; JT 1996 (1) SC 487; 1996(1) SCALE 511; [1996] 1 S.C.R. 773; 1996 (1) Supreme 602; [1996] 84 TAXMAN 640	89 - 91
5	S.L.P. (Civil) No. 6254 of 1991	Belgaum Gardeners Cooperative Production Supply and Sales Society Limited v State of Karnataka	P.B. Sawant, Kuldip Singh, M. Fathima Beevi	1992 Indlaw SC 993; (1993) Supp1 SCC 96A; AIR 1992 SCW 119	92
6	Civil Appeal No. 491 of 1985 From the Judgment and Order dated 26th July, 1984 of the Allahabad High Court in W.P. No. 4899 of 1983.	Om Prakash Maurya v U.P. Cooperative Sugar Factories Federation, Lucknow And Ors. AIR 1986 SC 1844	K.N. Singh, O. Chinnappa Reddy	1986 Indlaw SC 191; (1986) Supp SCC 95; (1986) SCC (L&S) 421; AIR 1986 SC 1844; 1986 (12) ALR 539; 1986 ATC 95; 1986 (53) FLR 281; JT 1986 SC 370; 1986 LabIC 1198; 1986 (2) LLJ 145; 1986 (2) LLN 453; 1986(1) SCALE 1211; [1986] 3 S.C.R. 78; 1986 (2) SLR 651; 1986 (2) UJ 137	93 - 95

7	Civil Appeal Nos. 206 , 2861 , 250 , 320 , 1607, 3548 , 379 , 769 1280 of , 979 and 1476-1483 Of 1985. From the Judgments and Orders dated 10.1.79 , 28.9.79 , P 16.1.79 , 26.4 79 , 27.9.79 , 15.1.79 , 8.1.79. 19.4.79 , of the Punjab and Haryana High Court in C.W.P. Nos. 4327/78, 3430/79 , 4713/ 78 , 4937/78 , 1345/79 , 3217/ 79 , 5121/78 , 24/78 , 5195/18, 4340/78 , 4613 178 , 4793178 , 41J3/78 , 4386/78 , 4545/18 , 4585 /18 and 1257/79.	Daman Singh And Ors. v State Of Punjab And Ors	O. Chinnappa Reddy, R.B. Misra, Y.V. Chandrachud, D.A. Desai, E.S. Venkata ramiah	1985 Indlaw SC 206; (1985) 2 SCC 670; AIR 1985 SC 973; 1985 (2) CCC 529; [1986] 60 Comp Cas 1; 1985(1) SCALE 644; [1985] 3 S.C.R. 580; 1985 UJ 1080	96-98
8	Criminal Appeal No. 520, of 1976. Appeal by Special Leave from the judgment and order dated the 17th September, 1975 of the Delhi High Court in Criminal Misc. (M) 212 of 1974	S.S. Dhanoa v Municipal Corporation, Delhi & Ors.	A.P. Sen, Baharul Islam, O. Chinnappa Reddy	1981 Indlaw SC 248; (1981) 3 SCC 431; (1981) SCC (Cr) 733; (1982) SCC (L&S) 6; AIR 1981 SC 1395; 1981 CRLJ 871; 1981 CRLR 456; 1981 CrLR (SC) 456; 1981 (43) FLR 272; 1981 (2) LLJ 231; 1982 (1) LLN 271; 1981(1) SCALE 919; [1981] 3 S.C.R. 864; 1981 (2) SLR 217; 1981 UJ 803	99-101
9	Civil Appeal Nos. 2085 of 1978 and 7-8 of 1979. Appeals by special leave from the Judgment and Order dated 18.5.1977 of the Allahabad High Court in C.M.W. Nos. 5061/73, 5063/73 and 5080/73.	General Govt. Servants Co-Operative Housing Society Ltd.,Agr v Wahab Uddin & Ors. Etc. Etc.	Baharul Islam, R.S. Pathak, O. Chinnappa Reddy	1981 Indlaw SC 206; (1981) 2 SCC 352; AIR 1981 SC 866; 1981 ALJ 299; 1981 (7) ALR 200; 1981(1) SCALE 630; [1981] 3 S.C.R. 46; 1981 UJ 301	102-103

10	Civil Appeal No. 236 of 1969	Gujarat State Cooperative Land Development Bank Ltd. v P. R. Manded And Ors.	R.S. Sarkaria, O. Chinnappa Reddy	1979 Indlaw SC 291; (1979) 3 SCC 123; (1979) SCC (L&S) 225; AIR 1979 SC 1203; 1979 (38) FLR 353; 1979 (20) GLR 701; 1979 LabIC 592; 1979 (1) LLN 527; [1979] 2 S.C.R. 1023; 1979 (2) SLR 128	104-105
11	Civil Appeal No. 747 of 1975. Appeal by Special Leave from the Judgment and order dated the 5-12-74 of the Punjab and Haryana High Court in Civil Writ Petition No. 6344/74.	Kulchhinder Singh & Ors. v Hardayal Singh Brar & Ors	V.R. Krishna Iyer, Y.V. Chandrachud	1976 Indlaw SC 114; (1976) SCC (L&S) 513; (1976) 3 SCC 828; AIR 1976 SC 2216; 1977 (34) FLR 53; 1976 (2) LLJ 204; [1976] 3 S.C.R. 680; 1976 SLJ 423; 1976 (2) SLR 22; 1976 UJ 350	106-108
12	Civil Appeal, No. 971 of 1973. (Appeal by special leave from the Judgment and Order dated 1st June, 1973 of the Mysore High Court at Bangalore in W. P. No. 1949 of 1972.)	State Of Mysore v Allum Karibasappa And Others	A.N. Ray, Kuttyil Kurien Mathew	1974 Indlaw SC 104; (1974) 2 SCC 498; AIR 1974 SC 1863; [1975] 1 S.C.R. 601; 1974 UJ 51	109-111
13	C.A. No. 1047 of 1968.	Deoki Nandan Parashar v Agra Distt. Co-Operative Bank, Agra and Others	D.G. Palekar, K.S. Hegde, A.N. Grover	1972 Indlaw SC 505; (1973) 3 SCC 303; AIR 1972 SC 2497; 1972 LabIC 1622; 1972 SLR 803	112-114

14	civil Appeal No. 1128 of 1967. 20-1 S.C. India/71 Appeal from the judgment and order dated September 1, 1964 of the Andhra Pradesh High Court in Writ Petition No.907 of 1963.	Regional Provident Fund Commissioner, Andhra v Shri T. S. Hariharan	I.D. Dua, Vishishtha Bhargava, J.M. Shelat	1971 Indlaw SC 103; (1971) 2 SCC 68; AIR 1971 SC 1519; 1971 (22) FLR 260; 1971 LabIC 951; 1971 (1) LLJ 416; [1971] S.C.R. 305; [1971] Supp S.C.R. 305	115-117
15	Civil Appeals Nos. 2093 and 2094 of 1968	Co-operative Central Bank Limited and Others v Additional Industrial Tribunal A P and Others	Vishishtha Bhargava, C.A. Vaidyia-lingam, J.M. Shelat	1969 Indlaw SC 341; (1969) 2 SCC 43; AIR 1970 SC 245; [1970] 40 Comp Cas 206; 1969 (19) FLR 56; 1970 LabIC 285; 1969 (2) LLJ 698; 1970 (1) MLJ(SC) 68; [1970] 1 S.C.R. 205	118-121
16	Civil Appeal No. 4 of 1960	Pandit Jhandu Lal and Others v State of Punjab and Others	Bhuva-neshwar Prasad Sinha, Pralhad Balacharya Gajendra-gadkar, K. Subba Rao, Kailas Nath Wanchoo, J.L. Kapur	1960 Indlaw SC 264; AIR 1961 SC 343; 1961 (1) SCJ 529; [1961] 2 S.C.R. 459	122-124
17	Civil Appeals Nos. 228 to 230 of 1958.	Bihar State Co-Operative Bank Limited v Commissioner of Income Tax	J.L. Kapur, A.K. Sarkar, Mohammad Hidayatullah	1960 Indlaw SC 418; AIR 1960 SC 789; [1960] 39 ITR 114; 1960 (2) MLJ(SC) 54; 1960 SCJ 773; [1960] 3 S.C.R. 58	125-128

Dayanand Ramkrishna Shet v State of Karnataka, 2014 Indlaw SC 351

Bench	C. Nagappan, T. S. Thakur
Where Reported	2014 Indlaw SC 351; 2014 ALL MR (Cri) 2610; 2014 CRLJ 2746; 2014 (4) KarLJ 341; 2014 (4) Law Herald (P&H) 2847; 2014 (3) RCR(Criminal) 229; 2014(7) SCALE 9
Case Digest	**Subject:** Criminal- **Keywords: Karnataka Co-operative Societies Act, 1959 - Summary:** Criminal - Indian Penal Code, 1860, ss. 409, 467 - Embezzlement - Conviction - Modification of sentence - Sustainability - Appellants were tried for the offences punishable u/ss. 409 and 467 of IPC and the Trial Court acquitted them of the charges - same the State preferred appeal, HC allowed the appeal and set aside the judgment of acquittal and found both the accused guilty of the charges framed - Hence instant appeal - Whether sentences could be modified - Held, charges in instant case pertained to embezzlement of the amount of Rs.43,500/- for the period from 30-3-1995 to 3-11-1995 - Total amount of Rs.5,76,000/- allegedly embezzled by appellants already deposited before the Trial Court pursuant to SC's order dt. 2-1-2013 - Appellants were aged persons as on date and were said to be not keeping good health - Therefore, SC inclined to modify the sentence awarded to appellants suitably - SC reduced the sentences awarded to appellants to the period already undergone by them - Deposit of Rs.5,76,000/- made by appellants in the instant case would not prejudice them in so far as other cases pending against them and the said deposit should be deemed to be compensation towards embezzlement allegedly committed by appellants and the same should be released to the complainant-bank, if not already released - Appeals partly allowed.

Case No : Cr.A. No. 1166 of 2014 [Arising out of S.L.P. (Cr.) No. 84 of 2013] with Cr.A. No. 1181 of 2014 (Arising out of S.L.P. (Cr.) No. 85 of 2013)

4. Briefly the facts of the case are as follows :

Accused no.1- Dayanand Ramkrishna Shet was the Manager and accused no.2-Marthappa Radhakrishna Shet was the Assistant Manager in Suvarnakarar Co- operative Society Ltd. and they were empowered to sanction the loans to the customers of the bank on the security by pledging gold and gold ornaments. During the audit conducted for the period from 1.4.1997 to 31.3.1998, PW26-Balakrishna Subraya Naik found that an amount to the tune of Rs.5,76,000/- has been misappropriated by the accused nos.1 and 2 by forging the documents and falsifying the accounts. On the complaint at the instance of the Deputy Registrar of Co-operative Society a case under Crime no.285 of 1999 came to be registered on 1.12.1999 against both the accused for

the offences punishable mainly u/ss. 467 and 409 read with S. 34 IPC for the misappropriation of the amount of Rs.43,500/- during the period from 30.3.1995 to 3.11.1995 and after investigation the final report came to be filed. The Trial Court framed charges u/ss. 467 and 409 read with S. 34 IPC and the prosecution examined PW1 to PW35 and marked Exs. P1 to P72 besides MOs 1 to 22. Ex.D1 was marked as side of the defence. The Trial Court acquitted both the accused only on the ground that the sanction to prosecute as required under the provisions of the Karnataka Co-operative Society Act was not obtained. The State preferred the appeal and the High Court set aside the judgment of acquittal by allowing the appeal and convicted and sentenced both the accused as directed above.

5. Challenging the conviction and sentence both the accused preferred independent appeals and this Court by common order dated 2.1.2013 directed both the appellants to deposit a sum of Rs.2,88,000/- each being the sum embezzled by them, before the Trial Court within four weeks and subject to that condition issued notice to the respondent to the question of sentence only and further directed the Trial Court to release the said amount to the complainant bank.

6. The learned counsel for the appellants submitted that the appellants have deposited the entire sum as directed and have also paid the fine and the appellants are now aged 64 and 52 years respectively and not keeping good health. We also heard the learned counsel appearing for respondent-State.

7. The charges in the present case pertained to embezzlement of the amount of Rs.43,500/- for the period from 30.3.1995 to 3.11.1995. We also find that the total amount of Rs.5,76,000/- allegedly embezzled by the appellants have already been deposited before the Trial Court pursuant to our order dated 2.1.2013. The appellants are aged persons as on date and are said to be not keeping good health. In the totality of the circumstances, therefore, we are inclined to modify the sentence awarded to the appellants suitably.

8. Accordingly, we reduce the sentences awarded to the appellants in both the appeals to the period already undergone by them. The deposit of Rs.5,76,000/- made by the appellants in the present case will not prejudice them in so far as other cases pending against them and the said deposit shall be deemed to be compensation in terms of S. 357 Cr.PC towards embezzlement allegedly committed by the appellants and the same shall be released to the complainant-bank, if not already released. With the above modification in sentence, these appeals are partly allowed and disposed of.

Appeals partly allowed

Thalappalam Ser. Co-op. Bank Limited and others v State of Kerala and others

Bench	K.S. Radhakrishnan, A.K. Sikri
Where Reported	2013 Indlaw SC 663; AIR 2013 SC (Supp) 437; 2014(1) ALL MR 451; 2013 (6) AWC 6215; 2014 (1) CLT(SC) 187; 2013 (6) CTC 98; 2013 (4) KLT 232; 2014 (3) Law Herald (P&H) 1999; 2013 (7) MLJ 407; 2013 (4) RCR(Civil) 912; 2013(12) SCALE 527
Case Digest	**Subject:** Constitution; Trusts & Associations **Keywords:** Freedom Of Speech And Expression, Speech And Expression, Maintainability, Himachal Pradesh Co-operative Societies Act, 1968, Kerala Co-operative Societies Act, 1969, City of Nagpur Corporation Act, 1948, Universal Declaration of Human Rights Act, 1948, Rent and Mortgage Interest Restrictions Act, 1923, Multi-State Cooperative Societies Act, 1984, Constitution (Ninety-seventh Amendment) Act, 2011, International Covenant on Civil and Political Rights Act, 1966, Mysore Cooperative Societies Act, 1959 **Summary:** (1) Right to Information Act, 2005-Section 2 (h)-Disclosure of information-Co-operative Societies registered under Kerala Co-operative Societies Act, 1969 not fall within definition of "public authority" as defined under Section 2 (h)-Hence, not legally obliged to furnish any information sought for by citizen under R.T.I. Act-Citizen cannot have access to any information of such societies through Registrar of Co-operative Societies, who is public authority within meaning of Section 2 (h).(2) Right to Information Act, 2005-Section 8 (1) (j)-Exemption from disclosure of information-Personal information-Public authority not legally obliged to give or provide information even if it is held, or under its control, if that information falls under Section 8 (1) (j).(3) Right to Information Act, 2005--Section 2 (h)-Citizens' right to get information-Statutorily recognized by R.T.I. Act-But at the same time limitations are provided in R.T.I. Act itself, which is discernible from Preamble and other provisions of R.T.I. Act-Citizens have right to get information, but can have access only to information "held" and under "control of public authorities", with limitations-If information not statutorily accessible by public authority, as defined in Section 2 (h), evidently those information will not be under "control of public authority"-Resultantly not possible for citizens to secure access to those information which are not under control of public authority.(4) Right to Information Act, 2005-Section 2 (h)-Expression "public authority"-Scope and ambit-Restricted by statutory definition under Section 2 (h) limiting it to categories mentioned therein which exhaust itself, unless context otherwise

	requires.(5) Constitution of India-Articles 19 (1) (a) and 21-Citizens' right to get information-Right to information and right to privacy-Are not absolute rights-Both the rights, one of which falls under Article 19 (1) (a) and other under Article 21-Can obviously be regulated, restricted and curtailed in larger public interest-Absolute or uncontrolled individual rights do not and cannot exist in any modern State.

Case No : C.A. No. 9017 of 2013 (Arising out of S.L.P. (C) No. 24290 of 2012) with C.A. Nos. 9020, 9029 & 9023 of 2013 (Arising out of S.L.P. (C) No. 24291 of 2012, 13796 and 13797 of 2013)

The Judgment was delivered by : K. S. Radhakrishnan, J.

3. A Full Bench of the Kerala High Court, in its judgment reported in AIR 2012 Ker 124, answered the question in the affirmative and upheld the Circular No.23 of 2006 dated 01.06.2006, issued by the Registrar of the Co-operative Societies, Kerala stating that all the co-operative institutions coming under the administrative control of the Registrar, are "public authorities" within the meaning of S. 2(h) of the RTI Act and obliged to provide information as sought for. The question was answered by the Full Bench in view of the conflicting views expressed by a Division Bench of the Kerala High Court in Writ Appeal No.1688 of 2009, with an earlier judgment of the Division Bench reported in Thalapalam Service Co-operative Bank Ltd. v. Union of India AIR 2010 Ker 6 2009 Indlaw KER 349, wherein the Bench took the view that the question as to whether a co-operative society will fall u/s. 2(h) of the RTI Act is a question of fact, which will depend upon the question whether it is substantially financed, directly or indirectly, by the funds provided by the State Government which, the Court held, has to be decided depending upon the facts situation of each case.

6. We may, for the disposal of these appeals, refer to the facts pertaining to Mulloor Rural Co-operative Society Ltd. In that case, one Sunil Kumar stated to have filed an application dated 8.5.2007 under the RTI Act seeking particulars relating to the bank accounts of certain members of the society, which the society did not provide. Sunil Kumar then filed a complaint dated 6.8.2007 to the State Information Officer, Kerala who, in turn, addressed a letter dated 14.11.2007 to the Society stating that application filed by Sunil Kumar was left unattended. Society, then, vide letter dated 24.11.2007 informed the applicant that the information sought for is "confidential in nature" and one warranting "commercial confidence". Further, it was also pointed out that the disclosure of the information has no relationship to any "public activity" and held by the society in a "fiduciary capacity". Society was, however, served with an order dated 16.1.2008 by the State Information Commission, Kerala, stating that the Society has violated the mandatory provisions of S. 7(1) of the RTI Act rendering themselves liable to be punished u/s. 20 of the Act. State Information Officer is purported to have relied upon a circular No.23/2006 dated 01.06.2006 issued by the Registrar, Co-operative Societies bringing in all societies under the administrative control of the Registrar of Co-operative Societies, as "public authorities" u/s. 2(h) of the RTI Act.

7. Mulloor Co-operative Society then filed Writ Petition No.3351 of 2008 challenging the order dated 16.1.2008, which was heard by a learned Single Judge of the High Court along with other

writ petitions. All the petitions were disposed of by a common judgment dated 03.04.2009 holding that all co-operative societies registered under the Societies Act are public authorities for the purpose of the RTI Act and are bound to act in conformity with the obligations in Chapter 11 of the Act and amenable to the jurisdiction of the State Information Commission. The Society then preferred Writ Appeal No.1688 of 2009. While that appeal was pending, few other appeals including WA No.1417 of 2009, filed against the common judgment of the learned Single Judge dated 03.04.2009 came up for consideration before another Division Bench of the High Court which set aside the judgment of the learned Single Judge dated 03.04.2009, the judgment of which is reported in AIR 2010 Ker 6 2009 Indlaw KER 349. The Bench held that the obedience to Circular No.23 dated 1.6.2006 is optional in the sense that if the Society feels that it satisfies the definition of S. 2(h), it can appoint an Information Officer under the RTI Act or else the State Information Commissioner will decide when the matter reaches before him, after examining the question whether the Society is substantially financed, directly or indirectly, by the funds provided by the State Government. The Division Bench, therefore, held that the question whether the Society is a public authority or not u/s. 2(h) is a disputed question of fact which has to be resolved by the authorities under the RTI Act.

8. Writ Appeal No.1688 of 2009 later came up before another Division Bench, the Bench expressed some reservations about the views expressed by the earlier Division Bench in Writ Appeal No.1417 of 2009 and vide its order dated 24.3.2011 referred the matter to a Full Bench, to examine the question whether co-operative societies registered under the Societies Act are generally covered under the definition of S. 2(h) of the RTI Act. The Full Bench answered the question in the affirmative giving a liberal construction of the words "public authority", bearing in mind the "transformation of law" which, according to the Full Bench, is to achieve transparency and accountability with regard to affairs of a public body.

11. The State Government, it is seen, vide its letter dated 5.5.2006 has informed the Registrar of Co-operative Societies that, as per S. 2(h) of the Act, all institutions formed by laws made by State Legislature is a "public authority" and, therefore, all co-operative institutions coming under the administrative control of the Registrar of Co-operative Societies are also public authorities.

12. We are in these appeals concerned only with the co- operative societies registered or deemed to be registered under the Co-operative Societies Act, which are not owned, controlled or substantially financed by the State or Central Government or formed, established or constituted by law made by Parliament or State Legislature.

Co-operative Societies and Art. 12 of the Constitution:

14. This Court in Executive Committee of Vaish Degree College, Shamli and Others v. Lakshmi Narain and Others (1976) 2 SCC 58 1975 Indlaw SC 62, while dealing with the status of the Executive Committee of a Degree College registered under the Co-operative Societies Act, held as follows:

"10.....It seems to us that before an institution can be a statutory body it must be created by or under the statute and owe its existence to a statute. This must be the primary thing which has got to be established. Here a distinction must be made between an institution which is not created

by or under a statute but is governed by certain statutory provisions for the proper maintenance and administration of the institution. There have been a number of institutions which though not created by or under any statute have adopted certain statutory provisions, but that by itself is not, in our opinion, sufficient to clothe the institution with a statutory character....."

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

12. It is well settled that general regulations under an Act, like the Companies Act *or the* Cooperative Societies Act*, would not render the activities of a company or a society as subject to control of the State. Such control in terms of the provisions of the Act are meant to ensure proper functioning of the society and the State or statutory authorities would have nothing to do with its day-to-day functions."*

18. We have, on facts, found that the Co-operative Societies, with which we are concerned in these appeals, will not fall within the expression "State" or "instrumentalities of the State" within the meaning of Art. 12 of the Constitution and hence not subject to all constitutional limitations as enshrined in Part III of the Constitution. We may, however, come across situations where a body or organization though not a State or instrumentality of the State, may still satisfy the definition of public authority within the meaning of S. 2(h) of the Act, an aspect which we may discuss in the later part of this Judgment.

Constitutional provisions and Co-operative autonomy:

19. Rights of the citizens to form co-operative societies voluntarily, is now raised to the level of a fundamental right and State shall endeavour to promote their autonomous functioning. The Parliament, with a view to enhance public faith in the co-operative institutions and to insulate them to avoidable political or bureaucratic interference brought in Constitutional (97th Amendment) Act, 2011, which received the assent of the President on 12.01.2012, notified in the Gazette of India on 13.01.2012 and came into force on 15.02.2012.

20. Constitutional amendment has been effected to encourage economic activities of co-operatives which in turn help progress of rural India. Societies are expected not only to ensure autonomous and democratic functioning of co- operatives, but also accountability of the management to the members and other share stake-holders. Art. 19 protects certain rights regarding freedom of speech. By virtue of above amendment u/art. 19(1)(c) the words "co- operative societies" are added. Art.

19(1)(c) reads as under: "19(1)(c) - All citizens shall have the right to form associations or unions or co-operative societies". Art. 19(1)(c), therefore, guarantees the freedom to form an association, unions and co-operative societies. Right to form a co-operative society is, therefore, raised to the level of a fundamental right, guaranteed under the Constitution of India. Constitutional 97th Amendment Act also inserted a new Article 43B with reads as follows :-

"the State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co- operative societies".

31. The RTI Act, therefore, deals with bodies which are owned, controlled or substantially financed, directly or indirectly, by funds provided by the appropriate government and also non-government organizations substantially financed, directly or indirectly, by funds provided by the appropriate government, in the event of which they may fall within the definition of S. 2(h)(d)(i) or (ii) respectively. As already pointed out, a body, institution or an organization, which is neither a State within the meaning of Art. 12 of the Constitution or instrumentalities, may still answer the definition of public authority u/s. 2(h)d (i) or (ii).

32. The above position has been reiterated by this Court in Chief Justice of Andhra Pradesh and others v. L.V.A. Dixitulu and others (1979) 2 SCC 34 1978 Indlaw SC 498. In Corporation of the City of Nagpur Civil Lines, Nagpur and another v. Ramchandra and others (1981) 2 SCC 714 1981 Indlaw SC 216, while interpreting the provisions of S. 59(3) of the City of Nagpur Corporation Act, 1948, this Court held as follows :

"4. It is thus now settled by this Court that the term "control" is of a very wide connotation and amplitude and includes a large variety of powers which are incidental or consequential to achieve the powers-vested in the authority concerned....."

33. The word "control" is also sometimes used synonyms with superintendence, management or authority to direct, restrict or regulate by a superior authority in exercise of its supervisory power. This Court in The Shamrao Vithal Co- operative Bank Ltd. v. Kasargode Pandhuranga Mallya (1972) 4 SCC 600 1971 Indlaw SC 314, held that the word "control" does not comprehend within itself the adjudication of a claim made by a co-operative society against its members. The meaning of the word "control" has also been considered by this Court in State of Mysore v. Allum Karibasappa & Ors. (1974) 2 SCC 498 1974 Indlaw SC 104, while interpreting S. 54 of the Mysore Cooperative Societies Act, 1959 and Court held that the word "control" suggests check, restraint or influence and intended to regulate and hold in check and restraint from action.

34. We are of the opinion that when we test the meaning of expression "controlled" which figures in between the words "body owned" and "substantially financed", the control by the appropriate government must be a control of a substantial nature. The mere 'supervision' or 'regulation' as such by a statute or otherwise of a body would not make that body a "public authority" within the meaning of S. 2(h)(d)(i) of the RTI Act.

In other words just like a body owned or body substantially financed by the appropriate government, the control of the body by the appropriate government would also be substantial and not merely supervisory or regulatory. Powers exercised by the Registrar of Cooperative Societies and others under the Cooperative Societies Act are only regulatory or supervisory

in nature, which will not amount to dominating or interfering with the management or affairs of the society so as to be controlled. Management and control are statutorily conferred on the Management Committee or the Board of Directors of the Society by the respective Cooperative Societies Act and not on the authorities under the Co-operative Societies Act.

52. Registrar of Cooperative Societies functioning under the Cooperative Societies Act is a public authority within the meaning of S. 2(h) of the Act. As a public authority, Registrar of Co-operative Societies has been conferred with lot of statutory powers under the respective Act under which he is functioning. He is also duty bound to comply with the obligations under the RTI Act and furnish information to a citizen under the RTI Act. Information which he is expected to provide is the information enumerated in S. 2(f) of the RTI Act subject to the limitations provided under S. 8 of the Act. Registrar can also, to the extent law permits, gather information from a Society, on which he has supervisory or administrative control under the Cooperative Societies Act.

Consequently, apart from the information as is available to him, u/s. 2(f), he can also gather those information from the Society, to the extent permitted by law. Registrar is also not obliged to disclose those information if those information fall under S. 8(1)(j) of the Act. No provision has been brought to our knowledge indicating that, under the Cooperative Societies Act, a Registrar can call for the details of the bank accounts maintained by the citizens or members in a cooperative bank. Only those information which a Registrar of Cooperative Societies can have access under the Cooperative Societies Act from a Society could be said to be the information which is "held" or "under the control of public authority". Even those information, Registrar, as already indicated, is not legally obliged to provide if those information falls under the exempted category mentioned in S. 8(j) of the Act. Apart from the Registrar of Co-operative Societies, there may be other public authorities who can access information from a Co-operative Bank of a private account maintained by a member of Society under law, in the event of which, in a given situation, the society will have to part with that information. But the demand should have statutory backing.

53. Consequently, an information which has been sought for relates to personal information, the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual, the Registrar of Cooperative Societies, even if he has got that information, is not bound to furnish the same to an applicant, unless he is satisfied that the larger public interest justifies the disclosure of such information, that too, for reasons to be recorded in writing.

54. We, therefore, hold that the Cooperative Societies registered under the Kerala Co-operative Societies Act will not fall within the definition of "public authority" as defined u/s. 2(h) of the RTI Act and the State Government letter dated 5.5.2006 and the circular dated 01.06.2006 issued by the Registrar of Co-operative Societies, Kerala, to the extent, made applicable to societies registered under the Kerala Co-operative Societies Act would stand quashed in the absence of materials to show that they are owned, controlled or substantially financed by the appropriate Government. Appeals are, therefore, allowed as above, however, with no order as to costs.

Appeals allowed

S. Malla Reddy and others v Future Builders Co-operative Housing Society and others

Bench	M.Y. Eqbal, P. Sathasivam
Where Reported	2013 Indlaw SC 252; (2013) 9 SCC 349; AIR 2013 SC 3693; 2013 (4) ALD(SC) 40; 2013(3) ALL MR 922; 2013 (4) AWC 3845; 2013 (3) CTC 343; JT 2013 (6) SC 518; 2014 (1) MahLJ 771; 2014 (1) MPLJ 318; 2013 (171) PLR 650; 2013 (2) RCR(Civil) 957; 2013 (120) RD 524; 2013(6) SCALE 170; [2013] 6 S.C.R. 230
Case Digest	**Subject:** Civil Procedure; Land & Property **Keywords:** Caveat, Andhra Pradesh Co-Operative Societies Act, Permissibility, Suit for declaration of title, Withdrawal of admissions in written statement, Amending of written statement **Summary:** Civil Procedure - Land & Property - Code of Civil Procedure, 1908, O. 6 rr. 5, 16, 17, O. 8, r. 9 - Constitution of India, 1950, art. 227 - Suit for declaration of title - Withdrawal of admissions in written statement - Amending of written statement - Permissibility - Plaintiff (respondent/society) filed a suit against appellants (defendant), who was promoter of plaintiff-society for declaration of title in respect of suit property and for perpetual injunction restraining the defendants from interfering with possession - Defendant no. 1 alleged to have executed an agreement on 8-3-1978 in favour of the Chief Promoter of Society, inter alia, agreeing that defendant no.1 would get the land measured and obtain legal opinion and pay the money to land owner - It was agreed that sale deed would be obtained in the name of defendant no. 1 and a patta would be got transferred in his name or of his nominee for the benefit of Society - Thereafter, defendant filed an application before Trial Court to change the counsel, which was permitted - Defendant filed applications before Trial Court to strike out the pleadings in written statement or to expunge the written statement and permit to file fresh written statement, which was dismissed and on revision before HC, HC dismissed the same and against which appeals were filed before SC, which were also dismissed - Thereafter, defendant filed a fresh petition under O. 6 r. 17 of CPC seeking leave of Court to amend written statement, which was rejected to register the application by Trial Court and the rejection order was challenged before HC in revision, and HC directed the Trial Court to register the application and disposed of - Accordingly Trial Court registered the applicant and permitted the defendants to amend the written statement - Aggrieved plaintiff challenged order allowing amending of written statement by filing revision u/art. 227 of Constitution before HC, which was

	allowed by impugned order - Hence, instant appeals - Plaintiff contended that application for amendment was liable to be rejected on the sole ground that it was filed 13 years after the institution of suit and that too when the trial of the suit had begun and plaintiff's witness was cross- examined and that disruptive plea could not be allowed to be taken by way of amendment in written statement and that ground taken by defendants for amending the written statement was already discussed in the earlier petition filed under O. 6 r. 16 of CPC and that under O. 8 r. 9 and O. 6 r. 5 of CPC - Said applications were rejected by Trial court and order was affirmed by SC also - Held, even before the suit was instituted by plaintiff-Society, defendants had filed a caveat duly supported by affidavit through the same advocate wherein the entire claim of the plaintiff was admitted - Only grievance made in caveat was that without settlement of the amount due as agreed under the Memorandum of Agreement, plaintiff was trying to lay out the suit land and to dispose of the same without paying the amount due - While considering the petitions under O. 8 r. 9 and O. 6 r. 16 of CPC both Courts have also gone into the question as to whether those admissions could be withdrawn by permitting the defendants to file a fresh written statement or by striking out of the earlier written statement - O. 6 r. 16 of CPC was based on the principle of ex debito justitia - Court was empowered under that Rule to strike out any matter in the pleadings that appeared to be unnecessary, scandalous, frivolous or vexatious or which tends to prejudice, embarrass or delay the fair trial of the suit - On the other hand, O. 6 r. 17 of CPC empowered the Court to allow either party to alter or amend his own pleading and on such application the Court might allow the parties to amend their pleadings subject to certain conditions enumerated in the said Rule - Although defendant-appellants filed the petition for striking out their own pleading i.e. written statement, labelling the petition as under O. 6 r. 16 of CPC, but in substance the application was dealt with as if under O. 6 r. 17 of CPC inasmuch as the Trial Court discussed the facts of the case and did not permit the defendants to substitute the written statement whereunder there was an admission of the suit claim of plaintiff - Relevant portion of the order revealed that Trial Court while rejecting the petition held that defendant could not be allowed to substitute their earlier written statement filed in suit whereunder there was an admission of the claim of plaintiff - Similarly in revision filed by defendants, HC considered issue as to whether defendants could withdraw the admission made in written statement and finally came to the conclusion that defendant could not be allowed to resile from the admission made in written statement by taking recourse to O. 8 r. 9 or O. 6 r. 16 of CPC by seeking to file a fresh written statement - In the aforesaid premises, filing of a fresh petition by defendants under O. 6 VI r. 17 of CPC after about 13 years when the hearing of the suit had already commenced and some of the witnesses were examined, was wholly misconceived - HC in impugned order rightly

	held that filing of subsequent application for the same relief was an abuse of the process of Court - Relief sought for by defendants in a subsequent petition under O. 6 r. 17 of CPC was elaborately dealt with on the two earlier petitions filed by defendant under O. 6 r. 16 and O. 8 r. 9 of CPC and, thus, subsequent petition filed by defendants labelling the petition under O. 6 r. 17 of CPC was wholly misconceived and was not entertainable - Appeals dismissed.

Case No : C.A. No. 3914 of 2013 [Arising out of S.L.P. (C) No. 12497 of 2008] with C.A. No. 3916 of 2013 [Arising out of S.L.P. (C) No. 17029 of 2009] and C.A. No.3915 of 2013 [Arising out of S.L.P. (C) No. 28828 of 2008]

4. The plaintiff-respondent M/s. Future Builders Co-op. Housing Society (in short "the plaintiff Society") filed a suit against the defendant-appellants for declaration of title in respect of the property mentioned in the schedule of the plaint (in short "the suit property") and for perpetual injunction restraining the defendants from interfering with possession. The case of the plaintiff-Society is that the Society is a registered Society under the Andhra Pradesh Co-operative Societies Act with the object to acquire or purchase land for the benefit of its members and render it fit for habitation. The Society was founded by several promoters including the first defendant-S. Malla Reddy (appellant herein). The plaintiff's further case is that for the purpose of registration under Co-operative Societies Act, it was necessary to show to the Registrar that they have entered into an agreement for purchase of land for the benefit of its members. It was alleged that before the Society was registered, its promoters identified the suit land as fit for the purpose and negotiated with the owner and entrusted the work to the first defendant for effecting purchase after measurement and a sum of Rs. 10,000/- was paid to him. The first defendant alleged to have executed an agreement on 8.3.1978 in favour of the Chief Promoter of the Society, inter alia, agreeing that the first defendant will get the land measured and obtain legal opinion and pay the money to the land owner. It was agreed that the sale deed would be obtained in the name of the first defendant and a patta would be got transferred in his name or of his nominee for the benefit of the Society.

   The Society was registered on 28.08.1981 and defendant No.1 having obtained a Sale Deed dated 02.01.1979 and transfer of patta in the name of himself and defendant Nos. 2 to 4 (appellants herein), who are his wife and sons in respect of the suit property, had delivered possession to the Society and they further agreed to secure the patta in the name of the plaintiff- Society. A Memorandum of Agreement dated 16.09.1981 was also executed to the effect that the plaintiff would hold the land as owner. It was alleged by the plaintiff-Society that the defendants, in spite of several requests and demands, were postponing the transfer of patta in respect of the suit property in its name on one pretext or the other. Hence, suit.

13. From bare perusal of the written statement, it is manifestly clear that the defendant-appellants categorically admitted not only the case of the plaintiff but also acknowledged receipt of Rs. 1,00,000/- and their willingness for transfer of patta in favour of the plaintiff. The defendants, on the basis of such admission, prayed to the court that the suit be decreed but without any costs.

24. Although the defendant-appellants filed the petition for striking out their own pleading i.e. written statement, labelling the petition as under Order VI Rule 16 CPC, but in substance the application was dealt with as if under Order VI Rule 17 CPC inasmuch as the trial court discussed the facts of the case and did not permit the defendants to substitute the written statement whereunder there was an admission of the suit claim of the plaintiff-Society. The relevant portion of the order quoted hereinabove reveals that the trial court while rejecting the aforementioned petition held that the defendant-appellants cannot be allowed to substitute their earlier written statement filed in the suit whereunder there was an admission of the claim of the plaintiff-Society (respondent herein).

    Similarly in the revision filed by the defendants, the High Court considered all the decisions referred by the defendants on the issue as to whether the defendants can withdraw the admission made in the written statement and finally came to the conclusion that the defendant- appellants cannot be allowed to resile from the admission made in the written statement by taking recourse to Order VIII Rule 9 or Order VI Rule 16 CPC by seeking to file a fresh written statement. In the aforesaid premises, filing of a fresh petition by the defendants under Order VI Rule 17 CPC after about 13 years when the hearing of the suit had already commenced and some of the witnesses were examined, is wholly misconceived. The High Court in the impugned order has rightly held that filing of subsequent application for the same relief is an abuse of the process of the court. As noticed above, the relief sought for by the defendants in a subsequent petition under Order VI Rule 17 CPC was elaborately dealt with on the two earlier petitions filed by the defendant-appellants under Order VI Rule 16 and Order VIII Rule 9 CPC and, therefore, the subsequent petition filed by the defendants labelling the petition under Order VI Rule 17 CPC is wholly misconceived and was not entertainable.

25. After giving our full consideration on the matter, we do not find any error in the impugned order passed by the High Court. Hence, these appeals have no merit and are accordingly dismissed. No order as to costs.

Appeals dismissed

Bangalore City Coop Hsg.Socy.Ltd v State Of Karnataka And Ors.

Bench	G.S. Singhvi, A.K. Ganguly
Where Reported	2012 Indlaw SC 577; (2012) 3 SCC 727; JT 2012 (2) SC 87; 2012 (3) RCR(Civil) 779; [2012] 3 S.C.R. 295
Case Digest	**Subject:** Civil Procedure; Land & Property **Keywords:** Government Company, Notification, Land Acquisition Officer, Constitution (Seventeenth Amendment) Act, 1964, Karnataka High Court Act, 1961, Mysore High Court Act, 1884, Land Acquisition (Mysore Extension and Amendment) Act, 1961, Karnataka Housing Board Act, 1962 **Summary:** Land & Property - Civil Procedure - Land Acquisition Act, 1894, ss. 4(1), 6(1), 48 - Notification - Acquisition - Malafides - Sustainability - State Govt. issued notification u/s. 4(1) of the Act for acquisition of land for industrial purpose - Respondent No. 3 filed objection against proposed acquisition of her land and pointed out that same were garden lands and claimed that proposed acquisition was contrary to provisions of the Act and that lands comprised were only source of livelihood of their family - Land Acquisition Officer passed award and determined market value of acquired land which was approved by State Govt. and handed over possession of land to appellant/Society - However, taking over of possession of respondents' land and transfer thereof to appellant was only on papers and physical possession continued with them - Respondent No. 3 filed writ petition challenging acquisition of her land before HC - Appellant also filed Writ Petition questioning legality of notification issued u/s. 48(1before HC - Single Judge dismissed both writ petitions - On appeal, DB allowed appeal of respondent No. 3 holding that Land Acquisition Officer had submitted report without giving opportunity of hearing to respondent No. 3 and this was sufficient to nullify acquisition of her land and dismissed appeal of appellant - Hence, instant appeals - Whether acquisition of land was for a public purpose within meaning of s. 3(f)(vi) and whether acquisition was vitiated due to manipulations, malafides and extraneous considerations - Held, even though appellant had not framed any housing scheme, acquisition in question should be deemed to have been made for a public purpose u/s. 3(f)(vi) of the Act, simply because in representation made by him to Revenue Minister of State, Executive Director of appellant had indicated that land would be used for providing sites to poor and people belonging to backward class and on receipt of recommendations of SLCC State Govt. had directed Special Deputy Commissioner to issue notification u/s. 4(1) of the Act - However, appellant had agreed to pay more than rupees 5 crores for facilitating issue of Notifications u/ss. 4(1) and 6(1)

	and sanction of layouts and plans by BDA within a period of less than 1 year - In House Building Cooperative Society v. Syed Khader and others (1995) 2 SCC 677 1995 Indlaw SC 1559 relied on - Further, in instant case Estate Agent, with whom appellant had entered into an agreement had played crucial role in acquisition of land - Further, tenor of that agreement did not leave any manner of doubt that Estate Agent had charged huge money from appellant for getting notifications issued u/ss. 4(1) and 6(1) of the Act and sanction of layout plan by Bangalore Development Authority(BDA) - Respondents should not have produced any direct evidence that Estate Agent had paid money for facilitating acquisition of land but it was not too difficult for any person of reasonable prudence to presume that appellant had parted with crores of rupees knowing fully well that a substantial portion thereof would be used by Estate Agent for manipulating State apparatus - However, error in impugned judgment of DB was not sufficient for nullifying conclusion that acquisition of land was not for a public purpose and that exercise undertaken by State Govt. was vitiated due to influence of extraneous considerations - Therefore, no justification to invoke doctrine of prospective overruling and legitimize what had been found by DB to be ex-facie illegal - Thus, view taken by DB that framing of scheme and approval thereof could be presumed from direction given by State Govt. to Special Deputy Commissioner to take steps for issue of notification u/s. 4(1) could not be treated as good law and mere fact that SC had revoked certificate granted by HC could not be interpreted as SC's approval of view expressed by HC on validity of acquisition - Appeals dismissed.

Case No : CIVIL APPEAL NO(s). 7425-7426 OF 2002 with Civil Appeal NO. 774-778 of 2005

The Judgment was delivered by : G. S. Singhvi, J.

1. These appeals are directed against two sets of judgments and orders passed by the Division Benches of the Karnataka High Court whereby the acquisition of lands by the State Government for the benefit of the appellant was quashed. Civil Appeal Nos. 7425-26/2002 are directed against judgment dated 16.03.1998 passed by the High Court in Writ Appeal No. 9913/1996 and order dated 09.07.1999 passed in Civil Petition No. 366/1998. Civil Appeal Nos. 774-78/2005 are directed against judgment dated 06.02.2004 passed in Writ Appeal No. 4246/1998, C/W W.A. No. 6039/1998 and orders dated 11.02.2004 and 15.09.2004 passed in I.A. No. 1 for rectification in Writ Appeal No. 4246/1998, C/W W.A. No. 6039/1998 and Review Petition Nos. 166 and 170 of 2004, respectively.

2. Although, the High Court quashed the acquisition proceedings mainly on the grounds of violation of the provisions of the Land Acquisition Act, 1894 (for short, 'the 1894 Act') and the manipulations made by the appellant through the Estate Agent for acquiring the land, during the pendency of these appeals the parties filed voluminous papers and arguments were advanced by both the sides by relying upon those documents as also the records summoned by the Court from the State Government.

18. The question whether the acquisition of the land in question can be treated as one made for public purpose as defined in S. 3(f) needs to be prefaced by making a reference to the following provisions of the 1894 Act: "S. 3(cc) as amended by Act No.68 of 1984 3.(cc) the expression "corporation owned or controlled by the State" means any body corporate established by or under a Central, Provincial or State Act, and includes a Government company as defined in s. 617 of the Companies Act, 1956 (1 of 1956), a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, being a society established or administered by Government and a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State, being a co-operative society in which not less than fifty-one per centum of the paid-up share capital is held by the Central Government, or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments; S. 3(e) as amended by Act No.68 of 1984

19. An analysis of the definitions noted hereinabove shows that all the cooperative societies have been classified into two categories. The first category consists of the cooperative societies in which not less than 51% of the paid-up share capital is held by the Central Government or any State Government or partly by the Central Government and partly by one or more State Governments. The second category consists of the cooperative societies other than those falling within the definition of the expression 'corporation owned or controlled by the State' [S. 3(cc)]. The definition of the term 'company' contained in S. 3(e) takes within its fold a company as defined in S. 3 of the Companies Act, 1956 other than a government company referred to in clause (cc), a society registered under the Societies Registration Act or under any corresponding law framed by the State legislature, other than a society referred to in cl. (cc) and a cooperative society defined as such in any law relating to cooperative societies for the time being in force in any State, other than a cooperative society referred to in cl. (cc). The definition of the expression 'public purpose' contained in S. 3(f) is inclusive. As per cl. (vi) of the definition, the expression 'public purpose' includes the provision of land for carrying out any educational, housing health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the appropriate Government, by a Local Authority, or a society registered under the Societies Registration Act, 1860 or any corresponding law in force in a State or a cooperative society as defined in any law relating to cooperative societies for the time being in force in any State.

    To put it differently, the acquisition of land for carrying out any education, housing, health or slum clearance scheme by a registered society or a cooperative society can be regarded as an acquisition for public purpose only if the scheme has been approved by the appropriate Government before initiation of the acquisition proceedings. If the acquisition of land for a cooperative society, which is covered by the definition of the term 'company' is for any purpose other than public purpose as defined in S. 3(f), then the provisions of Part VII would be attracted and mandate thereof will have to be complied with.

21. We shall now examine whether the appellant had, in fact, framed a housing scheme and the same had been approved by the State Government. The first of these documents is representation dated 7.12.1984 made by the Executive Director of the appellant to the Minister of Revenue,

Government of Karnataka. The other two documents are letter dated 21.5.1988 sent by the State Government to Deputy Commissioner, Bangalore to issue notification u/s. 4(1) of the 1894 Act and agreement dated 7.8.1988 entered into between the Executive Director of the appellant and the State Government. A close and careful reading of these documents reveals that although, in the representation made by him to the Revenue Minister, the Executive Director of the appellant did make a mention that the object of the society is to provide house sites to its members who belong to working class and other backward class people belonging to weaker class of society and the members are poor and siteless people, there was not even a whisper about any housing scheme.

The direction issued by the State Government to Deputy Commissioner, Bangalore to issue the preliminary notification for an extent of 207 acres 29 guntas land also does not speak of any housing scheme. The agreement entered into between the appellant through its Executive Director and the State Government does not contain any inkling about the housing scheme framed by the appellant. It merely mentions about the proposed formation of sites and construction of houses for the members of the appellant and payment of cost for the acquired land. The agreement also speaks of an inquiry having been got made by the State Government in conformity with the provisions of the 1894 Act and the grant of consent for the acquisition of land for the benefit of society's members.

25. The Division Bench of the High Court held that the whole acquisition was vitiated due to malafides and manipulations done by the House Building Cooperative Societies through the Estate Agent. The Division Bench also referred to S. 23 of the Contract Act, judgment of this Court in Rattan Chand Hira Chand v. AsKar Nawaz Jung JT 1991 (1) SC 433 1991 Indlaw SC 875 and held as under:

27. The three Judge Bench also approved the view taken by the High Court that the acquisition of land was vitiated because the decision of the State Government was influenced by the Estate Agent with whom the appellant had entered into an agreement. Paragraphs of the judgment, which contain discussion on this issue are extracted hereunder:

41. We have given serious thought to the submission of the learned counsel but have not felt convinced that this is a fit case for invoking the doctrine of prospective overruling, which was first invoked by the larger Bench in I.C. Golak Nath v. State of Punjab AIR 1967 SC 1643 : (1967) 2 SCR 762 1967 Indlaw SC 1493 while examining the challenge to the constitutionality of Constitution (Seventeenth Amendment) Act, 1964. That doctrine has been applied in the cases relied upon by learned counsel for the appellant but, in our opinion, the present one is not a fit case for invoking the doctrine of prospective overruling because that would result in conferring legitimacy to the influence of money power over the rule of law, which is the edifice of our Constitution. The finding recorded by the Division Bench of the High Court in Narayana Reddy's case that money had played an important role in facilitating the acquisition of land, which was substantially approved by this Court in three cases, is an illustration of how unscrupulous elements in the society use money and other extraneous factors for influencing the decision making process by the Executive.

In this case also the Estate Agent, namely, M/s. Rejendra Enterprises with whom the appellant

had entered into an agreement dated 21.2.1988 had played crucial role in the acquisition of land. The tenor of that agreement does not leave any manner of doubt that the Estate Agent has charged huge money from the appellant for getting the notifications issued under Ss. 4(1) and 6(1) of the 1894 Act and sanction of layout plan by the BDA. The respondents could not have produced any direct evidence that the Estate Agent had paid money for facilitating the acquisition of land but it is not too difficult for any person of reasonable prudence to presume that the appellant had parted with crores of rupees knowing fully well that a substantial portion thereof will be used by the Estate Agent for manipulating the State apparatus. Therefore, we do not find any justification to invoke the doctrine of prospective overruling and legitimize what has been found by the Division Bench of the High Court to be ex-facie illegal.

42. Before concluding we consider it necessary to observe that in view of the law laid down in the 1st H.M.T. case 1995 Indlaw SC 1559, which was followed in 2nd H.M.T. case and Vyalikawal House Building Cooperative Society's case, the view taken by the Division Bench of the High Court in Narayana Raju's case that the framing of scheme and approval thereof can be presumed from the direction given by the State Government to the Special Deputy Commissioner to take steps for issue of notification u/s. 4(1) cannot be treated as good law and the mere fact that this Court had revoked the certificate granted by the High Court cannot be interpreted as this Court's approval of the view expressed by the High Court on the validity of the acquisition.

43. In the result, the appeals are dismissed. However, keeping in view the fact that some of the members of the appellant may have built their houses on the sites allotted to them, we give liberty to the appellant to negotiate with the respondents for purchase of their land at the prevailing market price and hope that the landowners will, notwithstanding the judgments of the High Court and this Court, agree to accept the market price so that those who have built the houses may not suffer. At the same time, we make it clear that the appellant must return the vacant land to the respondents irrespective of the fact that it may have carved out the sites and allotted the same to its members. This must be done within a period of three months from today and during that period the appellant shall not change the present status of the vacant area/sites. The members of the appellant who may have been allotted the sites shall also not change the present status/ character of the land. The parties are left to bear their own costs.

Appeals dismissed

A. P. Dairy Development Corporation Federation v B. Narasimha Reddy and others

Bench	Balbir Singh Chauhan, P. Sathasivam
Where Reported	2011 Indlaw SC 633; (2011) 9 SCC 286; 2012 (1) ALD(SC) 108; JT 2011 (10) SC 145; 2012 (5) RCR(Civil) 831; 2011(9) SCALE 688; [2011] 14 S.C.R. 1
Case Digest	**Subject:** Administrative; Practice & Procedure; Trusts & Associations **Keywords:** Operation, A.P. Cooperative Societies Act, 1964, Andhra Pradesh Mutually Aided Co-operative Societies (Amendment) Act, 2006, Hindi Sahitya Sammelan Act, 1962, East Punjab Urban Rent Restriction (Amendment) Act, 1956, Andhra Pradesh Mutually Aided Cooperative Societies Act, 1995, A.P. Cooperative Societies Rules, 1964 **Summary:** Trusts & Associations - Administrative - Practice & Procedure - AndhraPradesh Cooperative Societies Act, 1964 s. 32(7), ss. 4,. 43 - Companies Act, 1956 - Constitution of India, 1950 - Societies Registration Act, 1860 - Registration - Operation Union - Validity - - An integrated milk project was introduced by State Govt. with assistance of UNICEF - In year 1974, a company under the 1956 Act, fully owned by State Govt. was constituted and entire dairy infrastructure and assets of Department of State stood transferred to said Corporation - Employees of Dept. were absorbed in Corporation - Andhra Pradesh Dairy Development Cooperative Federation Ltd. Federation) was registered as a Cooperative Society and all assets and dairy infrastructure were transferred to Federation - On commencement of the 1955 Act existing co- operative societies registered under the 1964 Act could opt to be covered by the 1995 Act with certain conditions, and further societies had to enter into Memorandum of Understanding (MoU) - A very large number of new societies came into existence and were registered under the 1995 Act - There had been some irregularities in getting registration under the 1995 Act by certain societies registered under the 1964 Act and some of them did not execute MoU - Thus, Statutory Authority issued show cause notices to such societies u/s. 4(3) of the 1995 Act - Eight writ petitions were filed by 8 District Milk Unions challenging said show cause notices before HC - Federation filed original petition in various Co-operative Tribunals seeking dissolution of its societies u/s. 40 of the 1995 Act - Co-operative Tribunal dismissed original petition - WP's were filed before HC by various District Milk Producers Co-operative Unions challenging Ordinance and Govt. Order passed by State Govt. - HC by impugned judgment allowed writ petitions - Hence, instant appeals - Whether the 2006 Act 2006 was arbitrary, discriminatory or unreasonable or has taken away

	accrued rights of Milk Dairy Societies registered directly under the 1995 Act or got conversion of their respective registration under the 1964 Act to 1995 Act - Held, the 2006 Act had been enacted without taking note of basic principles of co-operatives incorporated in s.3 of the 1995 Act - The 2006 Act had been enacted without taking note of the basic principles of co-operatives - Co-operatives could be a democratic organization as its affairs would be administered by persons elected or appointed in a manner agreed by members and accountable to them - Further, forcing members of society to act under compulsion/direction of State rather than on their free will was considered tantamountous - Impugned judgments and orders sustained- Appeal dismissed.

Case No : C.A. No. 2188 of 2008 With C.A. Nos. 2189-2212 of 2008 And C.A. No. 4588 of 2008

The Judgment was delivered by: Dr. B. S. Chauhan, J.

1. All these appeals have been preferred against the impugned judgment and order dated 1st May, 2007 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Writ Petition No. 2214 of 2006, by which the High Court has struck down the provisions of Andhra Pradesh Mutually Aided Co-operative Societies (Amendment) Act, 2006 (hereinafter called as 'Act 2006') as unconstitutional and further declared that even if the Act 2006 is to be considered constitutional, provisions providing that the Boards of Directors appointed under the Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995 (hereinafter called 'Act 1995') shall be deemed to have been continued under the provisions of A.P. Co-operative Societies Act, 1964 (hereinafter called 'Act 1964'), and further G.O.Ms. No.10 Animal Husbandry, Dairy Development & Fisheries (Dairy-II) Department, dated 4.2.2006 and the consequential proceedings/orders of the Milk Commissioner and Registrar of Milk Co-operatives and the District Collectors concerned in these regards, are quashed.

45. In M. Ramanathan Pillai v. State of Kerala & Anr., (1973) 2 SCC 650 1973 Indlaw SC 182, this Court relied upon American Jurisprudence, 2d. at page 783 wherein it has been stated as under:

"Generally, a State is not subject to an estoppel to the same extent as an individual or a private corporation. Otherwise, it might be rendered helpless to assert its powers in government. Therefore, as a general rule the doctrine of estoppel will not be applied against the State in its governmental, public or sovereign capacity."

46. In State of Kerala & Anr. v. The Gawalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. etc., (1973) 2 SCC 713 1973 Indlaw SC 190, a similar view has been re-iterated by this Court observing as under:

"We do not see how an agreement of the Government can preclude legislation on the subject. The High Court has rightly pointed out that the surrender by the Government of its legislative powers to be used for public good cannot avail the company or operate against the Government as equitable estoppel."

47. Therefore, it is evident that the Court will not pass any order binding the Government by its promises unless it is so necessary to prevent manifest injustice or fraud, particularly, when

government acts in its governmental, public or sovereign capacity. Estoppel does not operate against the government or its assignee while acting in such capacity.

48. The Government has inherent power to promote the general welfare of the people and in order to achieve the said goal, the State is free to exercise its sovereign powers of legislation to regulate the conduct of its citizens to the extent, that their rights shall not stand abridged. The co-operative movement by its very nature, is a form of voluntary association where individuals unite for mutual benefit in the production and distribution of wealth upon principles of equity, reason and common good. So, the basic purpose of forming a co- operative society remains to promote the economic interest of its members in accordance with the well recognised co-operative principles. Members of an association have the right to be associated only with those whom they consider eligible to be admitted and have right to deny admission to those with whom they do not want to associate. The right to form an association cannot be infringed by forced inclusion of unwarranted persons in a group. Right to associate is for the purpose of enjoying in expressive activities. the Constitutional right to freely associate with others encompasses associational ties designed to further the social, legal and economic benefits of the members of the association. By statutory interventions, the State is not permitted to change the fundamental character of the association or alter the composition of the society itself. The significant encroachment upon associational freedom cannot be justified on the basis of any interest of the Government. However, when the association gets registered under the Co-operative Societies Act, it is governed by the provisions of the Act and rules framed thereunder. In case the association has an option/choice to get registered under a particular statute, if there are more than one statutes operating in the field, the State cannot force the society to get itself registered under a statute for which the society has not applied.

59. Cooperative law is based on voluntary action of its members. Once a society is formed and its members voluntarily take a decision to get it registered under the Act X, the registration authority may reject the registration application if conditions prescribed under Act X are not fulfilled or for any other permissible reason. The registration authority does not have a right to register the said society under Act Y or even a superior authority is not competent to pass an order that the society would be registered under the Act Y. Such an order, if passed, would be in violation of the first basic cooperative principle that every action shall be as desired by its members voluntarily. Introducing such a concept of compulsion would violate Art. 19(1)(c) of the Constitution of India. It is not permissible in law to do something indirectly, if it is not permissible to be done directly. (See: Sant Lal Gupta & Ors v. Modern Co-operative Group Housing Society Ltd. & Ors., JT 2010 (11) SC 273) 2010 Indlaw SC 865

Act 2006 had been enacted without taking note of the basic principles of co-operatives incorporated in S. 3 of the Act 1995 which provide that membership of a co-operative society would be voluntary and shall be available without any political restriction. The co-operative society under the Act would be a democratic organisation as its affairs would be administered by persons elected or appointed in a manner agreed by members and accountable to them.

60. The legislature has a right to amend the Act 1995 or repeal the same. Even for the sake of the argument, if it is considered that legislature was competent to exclude the milk cooperative

dairies from the operation of the Act 1995 and such an Act was valid i.e. not being violative of Art. 14 of the Constitution etc., the question does arise as to whether legislature could force the society registered under the Act 1995 to work under the Act 1964. Importing the fiction to the extent that the societies registered under the Act 1995, could be deemed to have been registered under the Act 1964 tantamounts to forcing the members of the society to act under compulsion/ direction of the State rather than on their free will. Such a provision is violative of the very first basic principles of cooperatives. More so, the Act is vitiated by non-application of mind and irrelevant and extraneous considerations.

61. In view of the above, we do not see any cogent reason to interfere with the impugned judgment and order. The appeals lack merit and are accordingly dismissed. No costs.

Appeal dismissed.

Totgars Cooperative Sale Society Limited v Income Tax Officer, Karnataka

Bench	S.H. Kapadia, Aftab Alam
Where Reported	2010 Indlaw SC 91; (2010) 3 SCC 223; AIR 2010 SC (Supp) 645; [2010] 322 ITR 283; JT 2010 (2) SC 74; 2010(2) SCALE 224; [2010] 2 S.C.R. 496; [2010] 188 TAXMAN 282
Case Digest	**Subject:** Income Tax & Direct Taxes **Keywords:** Karnataka Co-operative Societies Act, 1959 **Summary:** (A) Income Tax & Direct Taxes - Income Tax Act, 1961, ss. 56, 57 and 80P(2)(a)(i) - A/y 1991- 1992 - Deduction in respect of income of Co-Operative societies - Assessee invested surplus funds in short-term deposits with the banks and in government securities on which interests accrued to the assessee - Assessee provides credit facilities to its members and also markets the agricultural produce of its members - Assessee claimed deduction u/s. 80P(2)(a)(i) of the Act on such interest which was denied by assessing officer (AO) and held that interest income which the assessee had disclosed under the head 'Income from business' was liable to be taxed under the head 'Income from other sources' - AO's order was upheld by tribunal and HC - Hence, present appeal - Whether such interest income would qualify for deduction as business income u/s. 80P(2)(a)(i) of the IT Act, 1961? - Held, no - Assessee retained the sale proceeds of agricultural produce of its members in many cases - It is this 'retained amount' which was payable to its members, from whom produce was bought, which was invested in short-term deposits/securities - Such an amount, which was retained by the assessee, was a liability and it was shown in the balance-sheet on the liability-side - Therefore, such interest income cannot be said to be attributable either to the activity mentioned in s. 80P(2)(a)(i) of the Act or in s. 80P(2)(a)(iii) of the Act - Therefore, AO was right in taxing the interest income u/s. 56 of the Act - Appeals dismissed. (B) Income Tax & Direct Taxes - Income Tax Act, 1961, s. 80P(2)(a)(i) - A/y 1991- 1992 - Deduction in respect of Income of Co-Operative societies - Whether tribunal was right in law in holding that the income by way of interest on deposits held with scheduled banks, bonds and other securities was chargeable to tax u/s. 56 under the head 'Income from other sources' without allowing any deduction in respect of cost of funds and proportionate administrative and other expenses u/s. 57 of IT Act? - Held, it involves interpretation of ss. 56 and 57

	of the Act - It also involves applicability of the said sections to the facts of the present case - Said question remitted to HC for consideration in accordance with law - Appeals dismissed.

Case No : C.A. No. 1622 of 2010 [Arising out of S.L.P. (C) No. 7572 of 2009] With C.A. No. 1623/2010 @ S.L.P. (C) No. 10489 of 2009, C.A. No. 1624/2010 @ S.L.P. (C) No. 10490 of 2009, C.A. No. 1625/2010 @ S.L.P. (C) No. 10491 of 2009, C.A. No. 1626/2010 @ S.L.P. (C) No. 10492 of 2009, C.A. No. 1627/2010 @ S.L.P. (C) No. 10494 of 2009, C.A. No. 1628/2010 @ S.L.P. (C) No. 10497 of 2009, C.A. No. 1629/2010 @ S.L.P. (C) No. 10498 of 2009 [From the Judgement and Order Dt. 30.09.2008 of the High Court of Karnataka Circuit Bench at Dharwad in ITA No. 1568 of 2005]

1. Assessee(s) is a cooperative credit society. During the relevant assessment years in question, it had surplus funds which the assessee(s) invested in short-term deposits with the Banks and in Government securities. On such investments, interests accrued to the assessee(s). Assessee(s) provides credit facilities to its members and also markets the agricultural produce of its members. The substantial question of law which arises in this batch of civil appeals is Whether such interest income would qualify for deduction as business income under Section 80P(2)(a)(i) of the Income Tax Act, 1961?

5. The Assessing Officer held, on the fActs and circumstances of these cases, that the interest income which the assessee(s) had disclosed under the Head "Income from business' was liable to be taxed under the Head "Income from other sources". In this connection, the Assessing Officer held that the assessee-Society had invested the surplus funds as, and by way of, investment by an ordinary investor, hence, interest on such investment has got to be taxed under the Head "Income from other sources". Before the Assessing officer, it was argued by the assessee(s) that it had invested the funds on short-term basis as the funds were not required immediately for business purposes and, consequently, such Act of investment constituted a business Activity by a prudent businessman; therefore, such interest income was liable to be taxed u/s. 28 and not u/s. 56 of the the Act, and, consequently, the assessee(s) was entitled to deduction under Section 80P(2)(a)(i) of the the Act. This argument was rejected by the Assessing Officer as also by the Tribunal and the High Court, hence, these civil appeals have been filed by the assessee(s).

6. It was the case of the assessee(s) before us that the assessee(s) is a cooperative credit society. It's business is to provide credit facilities to its members and to market the agricultural produce of its members. According to the assessee(s), it's Activity constituted "eligible Activity" under Section 80P(2)(a)(i) of the the Act, hence, it was entitled to the benefit of deduction from its gross total income. In this connection, it was urged that, under Section 80P(2) of the Act, the whole of the amount of "business profits" attributable to any one of the enumerated Activities is entitled to deduction. According to the assessee(s), one need not go by the source/head of such interest income because no sooner interest income accrued to the assessee(s) on above mentioned specified deposits/securities, it became business income attributable to the Activity carried on by the assessee(s) by providing credit facilities to its members or marketing of agricultural produce of its members and no sooner such interest income falls under the head "business profits" attributable to one or more of such eligible Activities, such interest income became eligible for deduction under the said section. The assessee(s) further contended, before us, that, under Regulations 23

and 28 read with Ss. 57 and 58 of the Karnataka Cooperative Societies Act, 1959, a statutory obligation was imposed on cooperative credit societies to invest its surplus funds in specified securities and, in view of such statutory obligation, the above-mentioned interest income derived from short-term deposits and securities must be considered as income derived by the assessee(s) from its business Activities.

19. The notice u/s. 148 of the Act was served on 31st May, 2001, i.e., prior to the approval of the Additional Commissioner of Income Tax. In the circumstances, it was urged that the notice u/s. 148 of the Act was invalid and consequential re-assessment u/s. 147 read with Section 144A of the Act was bad in law. We find no merit in this argument. At the outset, we may state that the point raised on validity of the notice u/s. 148 of the Act essentially concerns fActual aspect. The Tribunal is the final fAct finding Authority under the Income Tax Act. It has given a finding of fAct that, though the written communication of the sanction, which has no prescribed format, was received by the Assessing Officer on 8th June, 2001, yet, it cannot be said that sanction was not accorded prior to 31st May, 2001. The Tribunal has recorded a finding of fAct that there was a detailed correspondence between the concerned officers prior to 31st May, 2001, in the context of re-opening of assessment. It may also be mentioned that there is a vital difference between grant of sanction and communication of such sanction. As stated by the Tribunal, no particular form has been prescribed in the matter of grant of sanction. For the afore-stated reason, the Tribunal came to the conclusion that approval/sanction for re-opening of assessment in terms of S. 148 of the Act read with S. 151 existed even prior to 31st May, 2001. We see no reason to interfere with this finding of fAct given by the Tribunal. In this matter, one question advanced by the assessee(s) before the Authorities below has remained un-answered.

That question is as follows:

"Whether, on the fActs and in the circumstances of the case, the Tribunal was right in law in holding that the income by way of interest on deposits held with scheduled banks, bonds and other securities was chargeable to tax u/s. 56 under the head 'Income from other sources' without allowing any deduction in respect of cost of funds and proportionate administrative and other expenses under section 57?"

20. The above question requires an answer. It involves interpretation of S. 56 and S. 57 of the Act. It also involves applicability of the said sections to the fActs of the present case. We, accordingly, remit the said question to the High Court for consideration in accordance with law. Subject to what is stated above, these civil appeals filed by the assessee(s) are dismissed with no order as to costs.

Appeal dismissed.

K. Ashoka v N. L. Chandrashekar and Others

Bench	S.B. Sinha, Cyriac Joseph
Where Reported	2009 Indlaw SC 491; (2009) 5 SCC 199; (2009) 2 SCC (Cr) 730; AIR 2009 SC 3288; 2009 CRLJ 2952; 2009 (5) KarLJ 545; 2010 (5) RCR(Criminal) 522; 2009(5) SCALE 587; [2009] 5 S.C.R. 961

Case No : Criminal Appeal Nos. 733-734 Of 2009 [Arising Out Of S.L.P. (Criminal) Nos. 7687-7688 Of 2007]

1. **N.G.E.F. Employees House Building Cooperative Society Limited (for short, "the society") is a society incorporated and registered under the Karnataka Cooperative Societies Act, 1959** (for short, "the Act"). Appellant herein was a Director of the society. He filed a complaint petition alleging inter alia that the respondents herein who were the office-bearers of the society, earned a huge amount for themselves by alloting a site bearing No. 509 measuring 30' x 40' for a sum of Rs. 2,40,000/- to one Gopal, a name lender who in turn, sold the said site for a sum of Rs. 28,00,000/- to one Hanumanthegowda by a deed of sale dated 3.7.2006. However, in the sale deed, the consideration amount was shown as Rs.10,20,000/-. It was contended that the respondents in connivance with the said Gopal made illegal gain as the market value of the said property was about Rs.28 lakhs.

2. The following facts are admitted. The land in question was acquired in the year 1985-86. The society formed a layout and sites were allotted to its members. However, few sites remained vacant. One of the persons whose lands were acquired for the society, namely, Munivenkatappa (father of Gopal) allegedly had requested the society to release one acre of land for his personal use, pursuant whereto, the society resolved to release 337" x 132" of land in favour of his family. Another application was filed by M. Gopal, son of said Munivenkatappa, in terms whereof request was again made to the said society for allotment of the land. The said request was received on 27.3.2006 and allotment of a site bearing No. 509 measuring 30' x 40' for a sum of Rs.2,40,000/- was made and a deed of sale was executed in his favour on 7.4.2006. A possession certificate was also issued. Within a period of three months, said Gopal sold the said property in favour of Hanumanthegowda for a sum of Rs.28,00,000/-. However, in the sale deed, the consideration amount was shown as Rs.10,20,000/-.

3. Indisputably, **a complaint was filed before the Joint Registrar of Cooperative Societies t**o cause an investigation thereinto. On or about 29.12.2006, a report was submitted by him opining that the office bearers of the society, namely, the respondents herein in connivance with Gopal and by making him a tool in their hands, allotted the site which was sold for a sum of Rs. 27,60,000/-. A recommendation for recovery of the amount from the office bearers of the society was also made. In his report, it was furthermore stated:

"There is no site called No.509 in the approved plan of the Society. The Society has not produced any documents/records to show that the said Site No. 509 is released by BDA. The site No. 142 is existing and the same is allotted to one Smt. Shailaja Swamy and registered the same in her name by the Society as on 23/2/1995 itself. The certified copy of the Sale Deed is produced herewith and marked as "Annexure 13". As per the Orders of the Hon'ble High Court of Karnataka, it has come to know that the alternative/another site was given to Smt. Shailaja Swamy during the period of Special Officer. The copy of the same is marked as "Annexure 14". It is further come to know that Smt. Shailaja Swamy had approached the Hon'ble High Court of Karnataka by filing a writ petition against the Society on the grounds that the alternative site allotted to him cannot be made Khatha in her name because the said site is a C.A. site, which has been allotted and registered to her by the Society. When this matter is going on, how can the Society allot the same i.e. No. 142 by naming it as Site No. 509 and illegally allotting to Sri Gopal and registering the same by the Society. This is an illegal act committed by the Board of Directors."

13. The allegations made in the complaint petition disclose commission of a cognizable offence. A conspiracy is said to have been entered into for putting the society and consequentially the members to a great loss. A conspiracy is also said to have been hatched for the aforementioned purpose as a result whereof not only an allotment was made in favour of a person who was not entitled thereto but also allotted plot was assigned in favour of a third party for a huge sum.

14. Whether the allegations made in the complaint petition are correct or not have to be considered during trial. The High Court in its impugned judgment proceeded inter alia on the premise that the appellant has no locus standi. It may be true that Gopal and Hanumanthegowda had not been impleaded as accused but that by itself may not be a ground for quashing the order of cognizance taken against the respondents. If the role played by them in regard to that part of the conspiracy is only to make Gopal a member and got the land allotted in his name by way of camouflage, appellant as a member of the society had a locus standi to file a complaint.

15. The High Court furthermore, in our opinion, is not correct to opine that no document has been produced by the appellant to show that Gopal made an assignment of the land in favour of Hanumanthegowda. Evidently, no document can be produced for the purpose of showing that the Actual amount of consideration for the said transaction amounted to Rs.28,00,000/- although ostensibly the amount of Rs.10,20,000/- has been shown to be amount of consideration in the registered document. It may be true that the question as to whether the report of the Registrar can be relied upon for the purpose of showing as to how the Act of cheating has been committed by the respondents is a matter which must be considered at the time of trial but there cannot be any doubt whatsoever that so long as the report is not set aside, the same could form the basis for forming of an opinion at least for the purpose of proceeding against the respondents that they manipulated the records of the cooperative society to make unlawful gain for themselves and causing unlawful loss to the society. In Indian Oil Corpn. 2006 Indlaw SC 430 (supra) whereupon Ms. Suri has placed strong reliance, this Court in the facts and circumstances of the case therein although opined that no case of "criminal breach of trust" as defined under Section 405 of theIPC has been made out, holding:

16. The opinion of the High Court that the averments made in the complaint petition are imaginary is not based on any material. Even assuming that the complainant had a score to settle against the accused, the same by itself may not be a ground to quash the entire criminal proceedings particularly in view of the fact that at least a prima facie case has been established in view of the report of the Registrar.

17. Section 109 of the Act provides for commission of offences under the said Act. Therein, no statutory embargo has been placed for a court to take cognizance of an offence under the provisions of IPC. If the allegations made in the complaint petition or in the first information report make out a case under theIPC, Section 111 of the Act, to which our attention has been drawn, would constitute no bar for maintenance thereof being applicable only in respect of offences committed under the said Act. The said statutory interdict therefore cannot be extended in regard to commission of an offence under any other Act.

18. For the reasons aforementioned, the impugned judgment of the High Court cannot be sustained, which is set aside accordingly. The appeals are allowed.

19. It is made clear that we have not entered into the merit of the matter and, thus, all contentions of the parties shall remain open.

Appeal allowed

Madhya Pradesh State Co-Operative Dairy v Rajnesh Kumar Jamindar and Others

Bench	S.B. Sinha, A.K. Ganguly
Where Reported	2009 Indlaw SC 532; (2009) 15 SCC 221; 2009 (2) ESC 367; 2009 (121) FLR 917; 2009(6) SCALE 17; [2009] 6 S.C.R. 182
Case Digest	**Subject:** Constitution; Labour & Industrial Law; Trusts & Associations **Keywords:** Sovereign Function, Research, Age Of Superannuation, Co-Operative, Public Sector, Controlled, State Action, Cooperative Societies, Operation, Madhya Pradesh Cooperative Societies Act, 1960, Primary Societies, M.P. State Cooperative Dairy Federation Ltd. Employees Recruitment, Classification and Conditions of Service Regulations, 1985, Madhya Pradesh Civil Service (Pension) Rules, 1976 **Summary:** Constitution - Trusts & Associations - Labour & Industrial Law - Constitution of India - Madhya Pradesh Cooperative Societies Act, 1960 - M.P. State Cooperative Dairy Federation Ltd. Employees Recruitment, Classification and Conditions of Service Regulations, 1985 - Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 - Compulsory retirement - Whether Madhya Pradesh State Co-operative Dairy Federation Limited is a 'State' within the meaning of art. 12? - Held. Federation was a part of the Department of the Government - It not only carries on commercial activities, it works for achieving the better economic development of a section of the people - It seeks to achieve the principles laid down in art. 47 of the Constitution of India, viz., nutritional value and health - It undertakes a training and research work - Guidelines issued by it are binding on the societies - It monitors the functioning of the societies under it - It is an apex body - Appellant would come within the purview of the definition of 'State' as contained in art. 12 - An order of compulsory retirement is found to be stigmatic inter alia, in the event the employer has lost confidence - No infirmity in the judgment of the High Court - It is not a case where order of compulsory retirement had been passed by way of punishment - Respondents - employees were not charged with any misconduct - Order of compulsory retirement was issued in terms of the reg. 13 - 50% back wages should have been granted - Appeals dismissed.

Case No : C.A. No .2442 of 2009 (Arising Out of S.L.P. (C) No.25505 of 2007) With C.A. Nos. 2443,2446, 2447, 2449, 2452, 2454, 2456, 2458, 2460, 2462, 2464, 2467, 2469, 2471, 2472, 2473, 2474, 2475, 2477, 2478, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2489, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2502, 2503, 2504, 2505, 2506, 2507, 2508-2525, 2526, 2527, 2528, 2529,

2530-2531, 2532, 2533 of 2009 (Arising Out of S.L.P. (C) Nos.9, 11, 12, 20, 26, 52, 87, 184, 185, 202, 205, 249, 342, 345, 351, 353, 357, 386, 389, 396, 462, 585, 586,624, 692, 770, 779, 784, 804, 806, 816, 817, 825, 1360, 1716, 1772, 2205, 2208, 2211, 2235, 5123, 2249, 2478, 5102-5119, 6418, 6477, 6995, 7502, 4879-4880 of 2008, 24873 of 2007 and 17705 of 2008)

1. Whether Madhya Pradesh State Co-operative Dairy Federation Limited (for short "the Federation") is a 'State' within the meaning of Art. 12 of the Constitution of India is the question involved in these appeals. Before us, there are 52 matters. Out of 52 concerned employees, 16 Writ Petitions were allowed by a learned Single Judge. Writ appeals filed there against by the Federation were dismissed but only 50% back wages had been granted to the employees. Respondents have not questioned the correctness of the said judgment. Remaining 36 writ petitions were dismissed by a learned Single Judge. However, writ appeals filed there against have been allowed directing reinstatement of the concerned respondents with only 20% back wages.

2. **Federation is a society registered and incorporated under the provisions of the Madhya Pradesh Cooperative Societies Act, 1960 (for short "the Act"). It is an apex society classified as a Central Society. It is registered u/s. 9 of the Act**. The Government of Madhya Pradesh through its Veterinary Department had been carrying out in certain areas of the State activities of supply of milk through its offices established for the said purpose. A company known as Madhya Pradesh State Dairy Development Corporation Limited was incorporated on or about 22.03.1975 for carrying out the business of sale of milk and its products. It was registered under the Indian Companies Act, 1956. Its object was development and procurement of milk and for bringing out a 'white revolution'.

4. In terms of S. 55 of the Act, the Registrar framed regulations known as the M.P. State Cooperative Dairy Federation Ltd. Employees Recruitment, Classification and Conditions of Service Regulations, 1985 (for short "the Regulations"). Indisputably, terms and conditions of employment of the employees of the Federation are governed by the said Regulations; Regulation 13 whereof provides for compulsory retirement of an employee on attaining the age of 55 years or on completion of 25 years of service. Regulation 13 was amended with effect from 24.12.2001 providing for compulsory retirement of an employee of the Federation on attaining the age of 50 years or completion of 20 years of service. It reads as under:

"13. Compulsory Retirement:

1) The appointing officer has the powers that he can without giving any reason compulsory retire any employee on completion of twenty years of his service and on this ground any claim for special compensation would not be rejected, however, this power would be exercised in those circumstances when the appointing officer is of the view that it is in the interest of the Federation and it can be done by giving 3 months prior intimation otherwise not.

2) Any employee who has completed 20 years of service at any time would be able to retire from the Federation, however, before retiring at least three months notice in writing has to be given to the concerned officer in this regard. If he wants to retire before the completion of the period of notice, then he would be paid the amount equivalent to the salary and allowances which is less than three months."

5. Indisputably, pursuant to or in furtherance of Regulation 13 of the Regulations, a Scrutiny Committee as also a Review Committee were constituted for the purpose of finding out as to how many employees can be compulsorily retired in terms thereof. It is also not in dispute that during the period 1975 to 1981, no guideline had been laid down in regard to the mode and manner for recording of annual confidential reports. Such parameters, however, were introduced in the year 1986-87.

6. Respondents indisputably have completed 20 years of service. A Scrutiny Committee constituted therefore scrutinized the service records of the respondents for about 20 years. The formula for determination of the fitness of the concerned employees to continue in the service of the Federation was the same which is made applicable to the case of the government servants; in terms whereof the entire service records of the employees were required to be considered where for the grading in the confidential reports was to be made on the following basis:

(iv) The Scrutiny Committee and the Review Committee having not only consisted of the officers of the State but also the Registrar of the Cooperative Societies, it was futile to move to the Registrar of the Cooperative Societies for setting aside the impugned circulars issued with regard to compulsory retirement.

35. It is also a well-settled principle of law that an authority discharging a public function must act fairly. It, for the aforementioned purpose, cannot take into consideration an irrelevant or extraneous matter which is not germane for the purpose for which the power is sought to be exercised. The Scrutiny Committee as also the Review Committee was required to pose unto themselves a correct question of law so as to enable them to find out a correct answer. It was, therefore, imperative that the criteria laid down in the circulars issued by the State of Madhya Pradesh should have been scrupulously followed.

36. Federation, therefore, in our opinion, having regard to the fact that there was no material to show that the respondents - employees had become dead wood, inefficient or corrupt, must be held to have abused its power.

39. A bare perusal of the said Regulation would clearly show that it applies in a case where an order of dismissal and/ or compulsory retirement by way of punishment is set aside. It is not a case where order of compulsory retirement had been passed by way of punishment. Respondents - employees herein were not charged with any misconduct. The order of compulsory retirement was issued in terms of the Regulation 13 of the Regulations only. Various decisions have been placed before us with regard to grant of back wages. Even the learned Single Judge had granted 50% back wages in favour of 16 employees. The Division Bench did not interfere therewith. We, therefore, fail to understand as to why the Division Bench thought fit to grant 20% back wages in respect of other employees. The decisions placed before us show that this Court keeping in view the facts and circumstances of each case had refused to grant 75% back wages.

40. We, therefore, are of the opinion that 50% back wages should have been granted.

42. The learned counsel submits that his client suffered disability in 1991. The 1995 Act, thus, did not come into force at that point of time. His services were continued not as a disabled person within the provisions of the 1995 Act. He was treated equally and, thus, we see no reason as to

why the entire back wages should be granted in his favour whereas all other employees would be given 50% of their back wages. Furthermore, such a contention had not been raised before the Division Bench. It may be true that in a given case, this Court may allow the appellant to raise such a contention, as was done in the case of Kunal Singh v. Union of India and Another [(2003) 4 SCC 524 2003 Indlaw SC 135] whereupon strong reliance has been placed, but it is not automatic.

43. It is evident from the record that even before the learned Single Judge the said contention was not raised at the first instance. Only in the review petition, the said contention was raised. But, the said review petition was dismissed. As indicated hereinbefore, the said contention was again not raised before the Division Bench. We, therefore, are not inclined to agree with the contention that in terms of the 1995 Act, the appellant should be given 100% back wages. For the reasons aforementioned, the appeals filed by the Federation are dismissed and that of the employees are allowed to the extent aforementioned with costs. Counsel's fee assessed at Rs. 10,000/- in each appeal.

Petition dismissed.

Reserve Bank of India v M. Hanumaiah and Others

Bench	Aftab Alam, G.P. Mathur
Where Reported	2008 Indlaw SC 31; (2008) 1 SCC 770; AIR 2008 SC 994; JT 2008 (1) SC 247; 2008 (2) KarLJ 469; 2008(1) SCALE 34; [2008] 1 S.C.R. 16
Case Digest	**Subject:** Banking & Finance; Corporate; Insurance; Practice & Procedure **Keywords:** Co-Operative Bank, Appeal allowed, Deposit Insurance And Credit Guarantee Corporation Act, 1961, Co-Operative Societies, Without Prejudice, Banking Companies Act, **Maharashtra Cooperative Societies Act, 1960,** Winding Up Of a Banking Company, Karnataka Cooperative Societies Act, 1959 **Summary:** Banking Regulation Act - Whether the principles of natural justice have any application at the stage when the Registrar Co-operative Societies, on being so required in writing by the Reserve Bank of India passes an order removing the Committee of Management of a Co-operative Bank and appointing an Administrator to manage its affairs for such period, as may be specified by the Reserve Bank of India? - Held, on receipt of a requisition in writing from the Reserve Bank of India the Registrar Cooperative Societies is statutorily bound to issue the order of supersession of the committee of management of the cooperative bank - At that stage the affected bank/its managing committee has no right of hearing or to raise any objections - Appeal allowed.

Case No : Appeal (Civil) 9 of 2008 (Arising out of SLP No. 13664/2005)

1. Whether the principles of natural justice have any application at the stage when the Registrar Co-operative Societies, on being so required in writing by the Reserve Bank of India passes an order removing the Committee of Management of a Co-operative Bank and appointing an Administrator to manage its affairs for such period, as may be specified by the Reserve Bank of India? This is the question that falls for consideration in this case.

3. On inspection of Kalidasa Cooperative Bank Ltd. (respondent No.16) (hereinafter referred to as the Cooperative Bank or the Bank) made on June 30, 1994 under Section 35 read with Section 56 of the Banking Regulation Act the Reserve Bank of India (the appellant before us) found a number of serious irregularities in its affairs. It sent a copy of the inspection report to the Cooperative Bank and called the members of its board of directors for discussion on the findings in the report. It also forwarded a copy of the inspection report to the Joint Registrar, Cooperative Societies. The Joint Registrar advised the Reserve Bank to make requisition for supersession of the committee of management of the Bank.

4. The Reserve Bank, however, withheld any action in that regard but called the members of the board of directors of the Bank for several rounds of discussions at different levels. The board of directors was repeatedly urged to take stringent actions to improve the financial health of the Bank. Apparently, no remedial measures were taken and the affairs of the Cooperative Bank continued in a state of financial distress. **Finally, the Reserve Bank issued a requisition to the Registrar Cooperative Societies, Karnataka on January 22, 2002 requiring him to supersede the board of directors of the Cooperative Bank and to appoint an Administrator for a period of one year as provided under Section 30(5) of the Karnataka Cooperative Societies Act.** The requisition was made in public interest and for preventing the affairs of the Bank being conducted in a manner detrimental to the interest of the depositors and for securing proper management of the Bank.

5. In compliance with the requisition made by the Reserve Bank the Registrar Cooperative Societies issued an order on January 31, 2002 superseding the board of directors of the Bank and appointing an Administrator in its place.

6. The order of supersession issued by the Registrar was challenged before the Karnataka High Court by respondents 2 to 13 (members of the committee of management of the Cooperative Bank that was in existence at that time) in W.P.No.6706 of 2003 (CS-RES). **The writ petition was allowed by a learned Single Judge of the Court by order dated September 21, 2002. It is a brief order in which after noticing the relevant provision as contained in Section 30(5) of the Karnataka Cooperative Societies Act, the learned Judge simply observed as follows:**

the order, I find that the supersession is at the instance of the Reserve Bank of India since it is referred to in the impugned order. Further, the reason given by the Reserve Bank of India in order to supersede the Committee of Management in the public interest has not been disclosed in the impugned order. Further, no opportunity of hearing also has been afforded before passing an order by the Cooperative Bank. In the result, I pass the following order :

7. Against the order passed by the learned Single Judge, the Reserve Bank of India preferred Writ Appeal No.6120 of 2002 (CS-RES). When the appeal was taken up on March 31, 2003, the Court was told that fresh elections for the committee of management were to take place on March 20. The Division Bench took the view that this development had rendered the writ appeal in fructuous and disposed it of as such, leaving it open to the Reserve Bank to proceed against the Bank, if necessary, in accordance with law.

8. Mr. R. N. Trivedi, learned senior counsel, appearing on behalf of the appellant, submitted that both the learned Single Judge and the Division Bench of the High Court seriously erred in the matter, the learned Single Judge by introducing the elements of natural justice where none existed and the Division Bench by treating the appeal as in fructuous.

9. The learned counsel submitted that the Division Bench overlooked the main issue and failed to appreciate that as long as the Registrar was held obliged to give an opportunity of hearing to the cooperative bank it was pointless to say that it would be open to Reserve Bank of India to proceed against the bank, if necessary, in accordance with law. Counsel further submitted that the learned Single Judge had set aside the supersession order on two grounds. The first ground was wrong on facts and the second was flawed legally. It was incorrect to say that the order of the Registrar did not disclose the reasons for supersession. The reasons were stated in the preamble of the order.

10. Moreover, the reasons for supersession were stated in detail in the requisition made by the Reserve Bank. But it was the second ground in regard to the opportunity of hearing to the cooperative bank that was fundamentally bad as it tended to defeat the very object and purpose of supersession of the managing committee of the bank. Learned counsel submitted that the order of the learned Single Judge would in effect give rise to a process of adjudication at the level of the Registrar. In other words, the Reserve Bank which is the apex expert body in the country in regard to banking affairs would be required to go to the Registrar and satisfy him about the need for supersession of the management of the bank. What is worse is that this process of adjudication might take a few weeks time and thus completely frustrate the need for an urgent intervention by the Reserve Bank in order to protect the interests of small depositors.

11. We are satisfied that Mr. Trivedi is right in his submission and though the managing committee of the Cooperative Bank for the supersession of which action was taken by the Reserve Bank may no longer be in existence the issue involved in the case needs to be decided as it is likely to crop up in future in regard to the respondent-bank or other cooperative banks.

12. In order to examine the question it would be best to begin with the legal provision. Section 30 of the Karnataka Co- operative Societies Act, 1959

13. Sub-sections (1) to (4) relate to removal of the committee of the cooperative society and sub-section (5) relates to supersession of the managing committee of a cooperative bank. It is to be seen that in case of removal of the committee of a cooperative society compliance with the principles of natural justice is expressly required inasmuch in sub-section (1) it is stipulated that the Registrar would pass the order of removal only after giving the committee an opportunity to state its objections. On the other hand the requirement of any hearing is absent in sub- section (5) which starts with a non-obstante clause that also covers the provisions of the earlier sub-sections of Section 30.

14. Mr. Trivedi submitted that in case of supersession of the management of a cooperative bank there was no application of the principles of natural justice for two reasons; one was that the **Reserve Bank of India was the apex expert body in the country in banking matters and once the Reserve Bank of India was satisfied in regard to the need of supersession of the bank s management, the Registrar cooperative societies who had no experience in the affairs of banks was simply obliged to carry out the instructions of the Reserve Bank;** secondly, once the decision of supersession was taken it was necessary to have it effected speedily because any delay would cause irreparable loss and harm to the interests of small depositors of the bank. It was, therefore, by design that no opportunity of hearing was mentioned in sub-section (5) even though it was stipulated earlier (in sub-section (1)) in the same section.

23. Sub-section (3) of Section **110A of the Mahrashtra Cooperative Societies Act, 1960, came up for consideration before a Division Bench of this Court in the case of Mahendra Husanji vs. State of Maharashtra, 1992 Mah.L.J.1442. The Division Bench of this Court, after considering the provisions of sub-section (3) of Section 110A of the Maharashtra Cooperative Societies Act, has held that the Reserve Bank of India can issue directions only when the situation contemplated by Section 110A of the Act exists. The directions issued are binding on the Registrar. In other words, once a direction is issued by the Reserve Bank of India, the Registrar has no discretion in the matter, but to supersede and appoint an Administrator**.

Once that be so, and as there is no discretion left in respondent No.5, it must mean that the right of hearing is excluded. Once that be so, there was no question of issuing a show cause notice to the petitioner herein before passing the impugned order. In fact, though not directly in issue in the case of L.V.Sasmile vs. State of Maharashtra 1992 CTJ 729, another Division Bench, considering the material on record, had directed the appointment of an Administrator under **Section 110A of the Maharashtra Cooperative Societies Act. That also would indicate that there is no requirement under Section 110 for hearing.**

24. In our opinion the Bombay High Court has taken the correct view of the matter.

25. On hearing Mr.Trivedi, counsel for the appellant, and on a careful consideration of the relevant provisions of law and the decisions cited before us we have no hesitation in accepting the submissions made on behalf of the appellant. We accordingly answer the question (framed in the beginning of the judgment) in **the negative and hold and find that on receipt of a requisition in writing from the Reserve Bank of India the Registrar Cooperative Societies is statutorily bound to issue the order of supersession of the committee of management of the cooperative bank**. At that stage the affected bank/its managing committee has no right of hearing or to raise any objections.

26. The question may here arise whether the principles of natural justice are completely excluded from the process or it may be that against the requisition, the affected bank may move the Reserve Bank itself and try to show that it had wrongly arrived at the decision for its supersession. The other course may be that after the supersession order was issued by the Registrar that may be challenged before a court of law and in that proceeding one of ground for assailing the order might be that the decision of the Reserve Bank was arrived at without giving the affected cooperative bank a proper opportunity of hearing. We, however, refrain from going into that question as it does not arise in the facts of the present case.

27. In light of the discussions made above, both the orders passed by the learned Single Judge and the Division Bench appear quite untenable. Both the orders are accordingly set aside.

28. However, since the matter has become quite old it needs to be clarified that the order of supersession passed by the Registrar on January 31, 2002 shall not be automatically revived but in case the Reserve Bank of India is of the opinion that the situation so warrants it may issue a fresh requisition to the Registrar Cooperative Societies, Karnataka, who would on that basis pass the order of supersession as held in the judgment.

Mahatma Gandhi Sahakra Sakkare Karkhane v National Heavy Engineering Co-Operative Limited and Another

Bench	B. Sudershan Reddy, Tarun Chatterjee
Where Reported	2007 Indlaw SC 720; (2007) 6 SCC 470; AIR 2007 SC 2716; 2008 (1) BC 133; JT 2007 (9) SC 212; 2007 (5) KarLJ 517; 2007(9) SCALE 177; 2007 (8) SCJ 452; [2007] 8 S.C.R. 274
Case Digest	**Subject:** Arbitration & ADR; Contract & Commercial **Keywords:** Injunction Restraining, Karnataka Co-operative Societies Act, 1959 **Summary:** Arbitration and Conciliation Act, 1996 - Agreement to commission the plant and furnished a bank guarantee - Respondent failed to commission the plant - Injunction against the appellant restraining it from encashing the bank guarantee - Whether the bank guarantee in question is a conditional one or not? - Held, mere fact that the bank guarantee refers to the principal agreement without referring to any specific clause in the preamble of the deed of guarantee does not make the guarantee furnished by the bank to be a conditional one - What is relevant is the terms incorporated in the guarantee executed by the bank - On careful analysis of the terms and conditions of the guarantee, it can be found the guarantee to be an unconditional one - Respondent cannot be allowed to raise any dispute and prevent the appellant from encashing the bank guarantee - Appeal allowed.

Case No : Appeal (civil) 2952 of 2007 (Arising out of Special Leave Petition (C)No.11821 of 2005)

1. The appellant herein is a Co-operative Society registered under the provisions of the Karnataka Co-operative Societies Act, 1959. It has established a sugar factory at Hunji, Balki Taluk, Bidar District, Karnataka with a capacity of 2500 TCD per day with a provision to expand the same upto 4000 TCD per day. The appellant had undertaken expansion of its sugar factory from 2500 TCD to 4000 TCD crushing capacity per day and accordingly invited tenders. The offer of the first respondent which is also a Co-operative Society registered under the Multi-State Co- operative Societies Act which is involved in supply, erection and commissioning of Sugar Plants was accepted in the meeting of the State Level Advisory Committee held on 10th August, 2000. The first respondent undertook to design, procure manufacture, supply transport and deliver at the site and to do the supervision of erection and commissioning of the Sugar Plant and Machinery in conformity with the agreed specifications vide agreement dated 1st November, 2000. The clauses of the agreement dated 1st November, 2000 which are relevant to be noticed are reproduced as under:

5. Be it as it may, the Board of Directors of the appellant Society resolved in its meeting dated

13th March, 2004 to invoke the bank guarantee of Rs. 92.40 furnished by the first respondent. The appellant accordingly sent a letter requesting the Commissioner of Cane Development and Director of Sugar to counter sign the invocation letter on the ground that the respondent herein had failed to commission the plant as agreed.

6. The case of the respondent in nut shell is that the project fell into rough weather purely on account of the inability of the appellant Society to arrange the requisite funds. It is however admitted that after exchange of several acrimonious letters and notices, the parties finally agreed on a final course with a revised time frame to erect and commission the plant in a meeting held on 1st July, 2003. It is pursuant to that agreement the respondent furnished the bank guarantee in question and the appellant released the amount of Rs.140.41 lakhs on 5th July, 2003 and required the respondent to implement the trial run by 25th July, 2003. It is submitted that the contract between the parties envisaged four different kinds of bank guarantees to ensure particular set of obligations by the respondent. Cls. 16.4 and 17.5 deal with the bank guarantees for timely delivery of civil drawings and cl. 17.6 deals with bank guarantee for advance payments; for timely delivery and commissioning of plant is dealt with clauses 8, 16, 16.3, 17.4,17.9 and for ensuring performance of the plant is dealt with by clauses 9, 16.2, 17.3 and 17.9.

9. The trial court after an elaborate consideration of the matter dismissed the application filed by the respondent herein and refused to grant any injunction restraining the appellant from encashing the bank guarantee as prayed for by the respondent. The trial court came to the conclusion that invocation of the bank guarantee and its encashment by the appellant cannot be held to be fraudulent or untenable and further held that the respondent has failed to prove that there will be irretrievable injustice in case bank guarantee is invoked.

10. Being aggrieved by the order passed by the trial court rejecting the injunction application, the respondent herein filed MFA No.6188/04 challenging the legality and the correctness of the order passed by the trial court. The High Court upon reappreciation of the evidence and material available on record reversed the order passed by the trial court and accordingly granted injunction restraining the appellant herein from encashing the bank guarantee. The appellate court has taken the view that the bank guarantee appears to be a conditional one and "under the documents the guarantor is entitled to know that the appellant has failed to conduct the trial test and the commissioning of the project as agreed." The appellate court however also took a strange view that the invocation of the bank guarantee without informing to the bank as to the fact of alleged breach of agreement itself amounts to fraud. The Appellate Court also took the view that the letter invoking the bank guarantee should be counter signed by the Commissioner of Sugar, Bangalore, but the same has been signed by some other authority and not by the Commissioner of Sugar.

11. Being aggrieved by the orders passed by the High court restraining the appellant from invoking the bank guarantee the present appeal has been preferred.

30. For all the aforesaid reasons, we hold that the respondent herein did not make out any case for grant of injunction restraining the appellant herein from encashing the bank guarantee. For the reasons stated above, the impugned judgment of the Appellate Court is set aside and the appeal is allowed.

31. Before parting with the judgment, it is made clear that the observations, if any made, in this order shall have no bearing whatsoever upon the dispute pending before the Arbitrator which is required to be disposed of on its own merits uninfluenced by the observations, if any, made in this order. No costs.

Appeal allowed.

Greater Bombay Cooperative Bank Limited v Messrs United Yarn Tex. Private Limited and Others

Bench	Lokeshwar Singh Panta, B.N. Agrawal, P.P. Naolekar
Where Reported	2007 Indlaw SC 295; (2007) 6 SCC 236; AIR 2007 SC 1584; 2007 (6) AWC 5409; 2007 (3) Bom.C.R. 56; [2007] 137 Comp Cas 63; 2007 (2) DRTC 1; JT 2007 (5) SC 201; 2007 (3) KLT 302; 2007 (3) MahLJ 434; 2007(5) SCALE 366; [2007] 4 S.C.R. 823
Case Digest	**Summary:** Recovery of Debts due to Banks and Financial Institutions Act, 1993 - Appellant-bank advanced amounts by way of term loans to the respondent-Company - Whether the RDB Act applies to debts due to co-operative banks constituted under the MCS Act, 1960; the MSCS Act, 2002 and the APCS Act, 1964?; Whether the State Legislature is competent to enact legislation in respect of co-operative societies incidentally transacting business of banking in the light of Entry 32, List II of Seventh Schedule of the Constitution? - Held, burden of the Civil Courts in the matter of suits by banks and financial institutions was shifted to the Debt Recovery Tribunals - Disputes between co-operative banks and their members were being taken care of by the State Co-operative Acts and they were to remain where they were - Co-operative banks established under the Maharashtra Co-operative Societies Act, 1960; the Andhra Pradesh Co-operative Societies Act, 1964; and the Multi-State Co-operative Societies Act, 2002 transacting the business of banking, do not fall within the meaning of "banking company" as defined in s. 5 (c) of the Banking Regulation Act, 1949 - Provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 by invoking the Doctrine of Incorporation are not applicable to the recovery of dues by the co-operatives from their members - Direction to place these matters before Hon'ble the Chief Justice of India for constitution of an appropriate Bench for early disposal of these cases - Order accordingly.

Case No : Appeal (Civil) 432 of 2004 with [C.A. Nos.433/2004, C.A. No.434/2004, C.A. No.436/2004, S.L.P. (C) Nos.15651- 15652/2005, S.L.P. (C) No.5592/2004, S.L.P. (C) No.5598/2004, S.L.P. (C) No.5890/2004, C.A. No.36/2 006, C.A. No.37/2006, C.A. No.38/2 006, C.A. No.916/2006, C.A. No.2819/2006, C.A. No.2820/2006, C.A. No.2821/2006, C.A. No.2822/2006 and S.L.P. (C) Nos.25246-25247/2 005]

"This batch of appeals/SLPs involved an important issue regarding right of recovery of debts by the co-operative banks constituted under the Co-operative Societies Acts *of the States of Maharashtra and Andhra Pradesh. The issue has arisen in the context of enactment of the* Recovery of Debts Due to Banks

and Financial Institutions Act, 1993. *Under the* Co-operative Societies Acts*, there is a mechanism for recovery of debts by the Banks constituted under those Acts, which are also called Co-operative Banks. After the enactment of* the 1993 Act*, question arose as to whether such Co-operative Banks would have right of recovery under the respective* Co-operatives Societies Acts *or they will have to proceed under* the 1993 Act*. These aspects and some other issues, including the issue of legislative competence of the States to enact the provisions relating to Co-operative Banks, came up for consideration before the Bombay High Court and the High Court of Andhra Pradesh at Hyderabad. Both the High Courts have pronounced judgments on the issues and these judgments are under appeal in these cases. Looking to the issues involved and the far- reaching consequences which such a decision will leave, we are of the view that these matters be decided by a larger Bench.*

This has also been brought to our notice that as a consequence of the impugned judgments of the two High Courts, recoveries worth thousands of crores of rupees are held up and for that reason these matters need to be decided as early as possible.

Let these matters be placed before Hon'ble the Chief Justice of India for Constitution of an appropriate larger Bench for early disposal of these cases.

We are informed that so far as the batch of appeals/SLPs arising from the judgment of the Bombay High Court is concerned, the stay applications have already been disposed of. The stay applications in the appeals/SLPs arising from the judgment of the Andhra Pradesh High Court are yet to be finally disposed of. Let the stay applications in the matters arising from the judgment of the Andhra Pradesh High Court be placed before this Court on Wednesday the 7th December, 2005. If any party is desirous of filing any reply, the same be filed by Monday the 5th December, 2005.

SLP (C) Nos. ...CC 9992-9993/2005, SLP (C) Nos.21685-21701/2005 and SLP(C) No. 22621/ 2005

Examining the provisions of the* U.P. Co-operative Societies Act *in the light of the observations of the Privy Council we do not have the slightest doubt that in pith and substance the Act deals with "Cooperative Societies". That it trenches upon banking incidentally does not take it beyond the competence of the State Legislature. It is obvious that for the proper financing and effective functioning of Cooperative Societies there must also be Cooperative Societies which do banking business to facilitate the working of other Cooperative Societies, Merely because they do banking business such Cooperative Societies do not cease to be Cooperative Societies, when otherwise they are registered under the Cooperative Societies Act *and are subject to the duties, liabilities and control of the provisions of the Cooperative Societies Act*. We do not think that the question deserves any more consideration and, we, therefore, hold that the U.P. Cooperative Societies Act *was within the competence of the State Legislature. This was also the view taken in Nagpur District Central Cooperative Bank Ltd. v. Divisional Joint Registrar, Cooperative Societies, AIR 1971 SC 365 and Sant Sadhu Singh v. the State of Punjab, AIR 1970 PLH 528* 1970 Indlaw PNH 177*."

53. None of the contentions of the learned counsel for the respondents supporting the judgments and orders of the High Courts impugned before this Court on the question of interpretation clause as well as the question of Constitutional clause formulated hereinabove can be sustained.

54. For the reasons stated above and adopting pervasive and meaningful interpretation of the provisions of the relevant Statutes and Entries 43, 44 and 45 of List I and Entry 32 of List II of

the Seventh Schedule of the Constitution, we answer the Reference as under:-

"Co-operative banks" established under the Maharashtra Co-operative Societies Act, 1960 [MCS Act, 1960]; the Andhra Pradesh Co-operative Societies Act, 1964 [APCS Act, 1964]; and the Multi-State Co-operative Societies Act, 2002 [MSCS Act, 2002] transacting the business of banking, do not fall within the meaning of "banking company" as defined in S. 5 (c) of the Banking Regulation Act, 1949 [BR Act], Therefore, the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 [RDB Act] by invoking the Doctrine of Incorporation are not applicable to the recovery of dues by the co-operatives from their members.

55. The field of co-operative societies cannot be said to have been covered by the Central Legislation by reference to Entry 45, List I of the Seventh Schedule of the Constitution. Co-operative Banks constituted under the Co-operative Societies Acts enacted by the respective States would be covered by co-operative societies by Entry 32 of List II of Seventh Schedule of the Constitution of India.

56. The Registry of this Court shall place these matters before Hon'ble the Chief Justice of India for Constitution of an appropriate Bench for early disposal of these cases.

Appeal disposed of.

Ghaziabad Zila Sahkari Bank Limited v Additional Labour Commissioner and Others

Bench	AR. Lakshmanan, Tarun Chatterjee
Where Reported	2007 Indlaw SC 663; (2007) 11 SCC 756; 2007 (2) ADJ 25; AIR 2007 SC (Supp) 425; 2007 (2) ALJ 719; 2007 (2) AllCJ 1060; 2007 (2) AWC 1974; 2007 (2) Bom.C.R. 301; 2007 (2) ESC 233; 2007 (113) FLR 50; JT 2007 (2) SC 566; 2007 (4) LLN 32; 2007(2) SCALE 165; [2007] 1 S.C.R. 1007
Case Digest	**Subject:** Corporate; Trusts & Associations **Keywords:** Objects, Dealers, Legislation, Reserve Bank, Workmens Compensation Act, 1923, Operation, U.P. **Cooperative Societies** Act, 1965, U.P. Cooperative Societies Employees Service Regulations, 1975, M.P. Industrial Workmen (Standing Orders) Act, 1959, M.P. Industrial Relations Act, 1960, M.P. Cooperative Societies Act, U.P. Industrial Dispute Rules, 1967, Service Rules, 1975 **Summary:** Corporate **- U.P. Cooperative Societies Act, 1965**, ss. 122 and 128 - Industrial Disputes Act, 1947 - U.P. Cooperative Societies Employees Service Regulations, 1975 - Madhya Pradesh Shops and Establishments Act, 1958 - M.P. Industrial Workmen (Standing Orders) Act, 1959 - M.P. Industrial Relations Act, 1960 - General Clauses Act, 1897 - Companies Act, 1956 - Minimum Wages Act, 1948 - Foreign Exchange Regulation Act, 1973 - Industrial Disputes Act, 1947 - M.P. Cooperative Societies Act - U.P. Industrial Dispute Rules, 1967 - Service Rules, 1975

Case No : Appeal (Civil) 5230 of 2004 with Civil Appeal No. 5231 of 2004

3. According to the appellant under the U.P. Cooperative Societies Act, 1965 (hereinafter called 'the Act') read with U.P. Cooperative Societies Employees Service Regulation, 1975 framed by U.P. Cooperative Industrial Service Board and which has also been approved by the Governor and published in the official gazette under Section 122 of the U.P. Cooperative Societies Act, 1965, a full-fledged remedy and mechanism to agitate the grievances of the employees of Cooperative Societies are already contained. According to the appellant, the U.P. Cooperative Societies Act, 1965 being a special enactment will prevail over the U.P. Industrial Disputes Act and in any view of the matter application made by the employees of the Bank under Section 6H(1) of the U.P. I.D. Act on the basis of an agreement improperly entered into is not maintainable. Therefore, it is submitted that the Addl. Labour Commissioner U.P. Ghaziabad exceeded his jurisdiction in passing the order dated 15 March 2003.

4. By the said order, the Addl. Labour Commissioner allowed the payment of Rs.11,10,398/- as an ex-gratia payment to the employees of the appellant-Bank for the year 1999-2000 from the public

fund. According to the Bank, if such a payment is allowed, then there are 50 more such banks and employees of said Banks who will claim same relief on the ground of parity and discrimination which will erode the public money running in several crores as similar payments made were the reasons for liquidation of District Cooperative Bank, Gonda. It was further contended that if the above payment is allowed, then all credit Cooperative Societies will crumble down and the cooperative movement shall vanish in the entire State of U.P.

BACKGROUND FACTS:

5. The U.P. Cooperative Societies Employees Service Regulations, 1975 were framed by the U.P. Cooperative Institutional Service Board constituted by the State Government. The Government issued a circular prohibiting ex-gratia payment (over and above pay) by Cooperative Societies. In September, 1989, the Registrar, Cooperative Societies issued circulars prohibiting payment of ex-gratia amounts on 11 September 1987, 10 May 1995, 29 October 1997 and 17 February 2000 since the same was contrary to Rules. Accordingly, ex-gratia payments to employees were suspended. However, on 13 January 2001, the Board of Directors passed a resolution for grant of ex-gratia to employees on 13 January 2001. Agreement for ex-gratia payment for 1999-2000 was entered by the Chairman of the Union without Registrar's permission under Regulation 42.

33. According to Mr.Gupta, the Registrar's directions and order dated 07 March 2001, 19 March 2001 and 22 June 2001 requiring the Board of Directors to reconsider its offending resolutions and finally annulling the same in exercise of his powers under Section 128 are statutory in nature and have become finally binding under Section 102 as no appeal was filed under Section 98 of the Cooperative Societies Act. Mr.Gupta then made further submissions with regard to Section 128, Rule 130 and 131. According to the learned senior counsel the ALC and the High Court wrongly treat the Secretary's functions and procedure under Rule 130 as substituting rather than merely supplementing the Chairman's power and procedure, including suo motu power and procedure under Section 128 of the Act, read with Rule 131. It was further submitted that the Secretary as well as the Registrar fully complied with the procedure under Section 128 and 130.

51. The present appeal has arisen out of proceedings under the U.P.I.D. Act and not the U.P. Cooperative Societies Act. The Union on behalf of 167 workmen and for enforcing a right to receive ex gratia payment, whose payment has, admittedly continued for more than 23 years and agreed to by the Bank in terms of the settlement dated 23 March 2001 filed an application under Section 6-H which provides that where any money is due to a workman from an employer under a settlement, the workman may make an application to the State Government for the recovery of the money due to him.

52. The present dispute is not "any dispute relating to the Constitution, management or the business of a cooperative society" and, therefore, the machinery provided in Section 70 or 128 of the U.P. Cooperative Societies Act would not be available to the employees of the Bank to enforce the settlement.

53. The employees are constrained to approach the Additional Labour Commissioner under Section 6-H(1) of the Act to enforce the payment. It is the Bank which has sought to introduce the provisions of the Cooperative Societies Act in 6-H proceedings and not the ALC or the employees as alleged. It is also noteworthy that the respondents are seeking to enforce the settlement and

not any resolution of the Board of Directors of the Bank and the Registrar Cooperative Societies, UP does not have any power to annul the settlement even under Regulation 42 of the 1975 Regulations. It was, therefore, submitted that even if it is accepted for the sake of arguments, without admitting, that the Registrar had the power under Section 128 to annul a Resolution of the Board of Directors relating to the terms and conditions of service of the employees, even on such annulment, the employees would be entitled to enforce the terms of the settlement, notwithstanding such annulment as the Resolutions of the Board of Directors are not the subject matter of the provisions of the U.P. Industrial Disputes Act.

57. Applying these tests, we have no doubt at all that the dispute covered by the first issue referred to the Industrial Tribunal in the present cases could not possibly be referred for decision to the Registrar under Section 61 of the Act. The dispute related to alteration of a number of conditions of service of the workmen which relief could only be granted by an Industrial Tribunal dealing with an industrial dispute. The Registrar, it is clear from the provisions of the Act, could not possibly have granted the reliefs claimed under this issue because of the limitations placed on his powers in the Act itself. It is true that Section 61 by itself does not contain any clear indication that the Registrar cannot entertain a dispute relating to alteration of conditions of service of the employees of a registered society; but the meaning given to the expression "touching the business of the society", in our opinion, makes it very doubtful whether a dispute in respect of alteration of conditions of service can be held to be covered by this expression. Since the word "business" is equated with the Actual trading or commercial or other similar business activity of the society, and since it has been held that it would be difficult to subscribe to the proposition that whatever the society does or is necessarily required to do for the purpose of carrying out its objects, such as laying down the conditions of service of its employees, can be said to be a part of its business, it would appear that a dispute relating to conditions of service of the workmen employed by the society cannot be held to be a dispute touching the business of the society. Further, the position is clarified by the provisions of Sub-section (4) of Section 62 of the Act which limit the power to be exercised by the Registrar, when dealing with a dispute referred to him under Section 61, by a mandate that he shall decide the dispute in accordance with the provisions of the Act and the Rules and bye-laws. On the face of it, the provisions of the Act, the Rules and the bye-laws could not possibly permit the Registrar to change conditions of service of the workmen employed by the society. For the purpose of bringing facts to our notice in the present appeals, the Rules framed by the Andhra Pradesh Government under the Act, and the bye-laws of one of the appellant Banks have been placed on the Paper-books of the appeals before us. It appears from them that the conditions of service of the employees of the Bank have all been laid down by framing special bye-laws. Most of the conditions of service, which the workmen want to be altered to their benefit, have thus been laid down by the bye-laws, so that any alteration in those conditions of service will necessarily require a change in the bye-laws. Such a change could not possibly be directed by the Registrar when, under Section 62(4) of the Act, he is specifically required to decide the dispute referred to him in accordance with the provisions of the bye-laws. It may also be noticed that a dispute referred to the Registrar under Section 61 of the Act can even be transferred for disposal to a person who may have been invested by the Government with powers in that behalf, or may be referred for disposal to an arbitrator by the Registrar. Such person or arbitrator, when deciding the dispute, will also be governed by the mandate in

Section 62(4) of the Act, so that he will also be bound to reject the claim of the workmen which is nothing else than a request for alteration of conditions of service contained in the bye-laws. It is thus clear that, in respect of the dispute relating to alteration of various conditions of service, the Registrar or other person dealing with it under Section 62 of the Act is not competent to grant the relief claimed by the workmen at all. On the principle laid down by this Court in the case of the Deccan Merchants Co-operative Bank Ltd., therefore, it must be held that this dispute is not a dispute covered by the provisions of Section 61 of the Act. Such a dispute is not contemplated to be dealt with under Section 62 of the Act and must, therefore, be held to be outside the scope of Section 61. Further this court observed in R.C.Tiwari v. M.P. State Co-operative Marketing Federation Ltd. & Ors. (1997) 5 SCC 125 1997 Indlaw SC 950, that:-

60. We are therefore of the view that the Asst. Labour Commissioner (ALC)'s jurisdiction was wrongly invoked and his order dated 15 March 2003 under section 6H, U.P. Industrial Disputes Act, 1947 is without jurisdiction and hence null and void and it can be observed that, in view of the said general legal principle, it is immaterial whether or not the government has enforced section135 (UPCS Act) because, in any case the said provision (S.135) had been included in the Act only by way of clarification and abundant caution.

69. Also the Registrar's directions and order dated 07 March 2001, 19 March 2001 and 22 June 2001 requiring the BOD to reconsider its (offending) resolutions and finally annulling the same in exercise of his powers under S.128 are statutory in nature. They are still valid and occupy the field. They become final and binding under s102 in because, no appeal was filed under S.98 of the CS Act and no arbitration reference was made under S.70 and 71 of the CS Act.

70. The ALC and the High Court wrongly appreciated the Secretary's functions and procedure under Rule 130 as subsisting rather than merely supplementing the Chairman's power and procedure, including suo moto power and procedure, under S.128 of the Act r/w Rule 131. This court in this regard has observed in the case of Nedurimilli Janardhana Reddy vs. Progress of Democratic Students Union & Ors., 1994 6 SCC 506 1994 Indlaw SC 1057 that:

78. In the instant case, the Additional Labour Commissioner allowed the payment as an ex-gratia payment to the employees of the Cooperative Bank from the public fund. The meaning of the word 'Bonus' according to the new English dictionary is a boon or gift, over and above, what is normally due as remuneration to be received. This imports the concept of some ex-gratia payment. It was ex-gratia payment on account of which it is not possible to employ a term of service on the basis of employed contract. In our view, the payment made as ex-gratia payment would not constitute any precedent for future years. The ex-gratia payment made in the instant case was neither in the nature of production bonus nor incentive bonus nor customary nor any statutory bonus. It cannot be regarded as part of the contract 'employment'. Therefore, the ex-gratia payment made by the bank cannot be regarded as remuneration paid or payable to the employees in fulfillment of the terms of the contract of employment within the meaning of definition under Section 2(22) of the I.D. Act, 1947.

79. We have already noticed the powers of the Registrar to determine the terms of the employment of the Society from time to time, frame regulations to regulate the emoluments and other conditions of service etc. under Section 121 of the U.P. Cooperative Societies Act, 1965 (hereinafter called 'the Societies Act, 1965'). We have also noticed the Registrar's power to annul the Resolution

of the Cooperative Societies or cancel the orders passed by an officer of the Society in certain cases under Section 128. The Registrar under the above Section can cancel any order passed by an officer of a Cooperative Society, if he is of the opinion that the Resolution or the order, as the case may be, is not covered by the objects of the society or is in contravention of the provisions of the Act, the Rules or the bye-laws of the Society. Rule 130 gives the power to the Secretary of the Cooperative Society to move the Chairman of the Society in writing to refer the matter to the Registrar for his decision. We have already noticed in Section 135, the provisions contained in the Industrial Disputes Act, 1947 (Act, 1947) and the U.P. Industrial Disputes Act, 1947 (U.P. Act, 1947) shall not apply to Cooperative Societies. The Appellants viz. Ghaziabad Zila Sehkari Bank Ltd. is a Cooperative Societies registered under the provisions of the U.P. Cooperative Societies Act, 1965 (Societies Act, 1965). The services of the employees of the Bank are governed by the provisions of the U.P. Cooperative Societies Employees Service Regulation, 1975 (Service Regulations, 1975) framed by the U.P. Cooperative Institutional Service Board. The emoluments and other kinds of allowances payable to the employees of the Bank are also governed by the provisions contained in the Service Regulations, 1975. In the instant case, it is relevant to mention that no agreement or settlement between the bank and its employees have above been arrived at before the Conciliation Officer nor any money is due to the employees under the provisions of Section 6-J(2) of the U.P Act, 1947 or under any settlement or any award given under the provisions of this Act. Therefore, the application under Section 6-H(1) is an illegal settlement arrived at between the Chairman and the Employees' Association viz. Respondent No. 3 and 4. Regulation 42

83. In our opinion, the impugned judgment suffers from complete non-application of mind on the merits of the case in as much as whole pleadings even before the Labour Commissioner or before the High Court was that the payment of ex-gratia to the employees are against the objects of the society and it is in contravention of Regulation 42 of the Service Regulations, 1975 and contrary to the provisions of the Act, 1965 and contrary to the provisions of the Rules 1968, Government orders/circulars of Ld. Registrar and other laws applicable, the Chairman of the bank suo motu, without there being any power or legal authority unilaterally entered into a private settlement with the employees of the bank on 23 March 2001. It is relevant to mention here that to avoid such a situation of illegal agreements by the Chairman who is an elected representative and to protect misuse of public fund by the employees amongst themselves, the cooperative Act Rules and Regulations framed thereunder requires prior permission of the Registrar Co-operative Societies for grant of any pecuniary benefits because Regulation 42 of the U.P. Cooperative Societies Employees Service Regulations 1975 provides that any allowance or pecuniary benefits to employees shall be given only by the special order of the Registrar Cooperative Societies, U.P. which order was missing throughout.

88. Since payment of ex-gratia amount of the employees of the bank is a policy matter, the State Government of U.P. has filed Special Leave Petition before this Court questioning the correctness of the orders passed by the High Court for the leave of this Court. The impugned judgment of the High Court suffers from the error of complete non-application of mind on the merits of the case in as much as whole pleadings either before the Commissioner and before the High Court was that the payment of ex-gratia to the employees are against the objects of the society and it is in contravention of the provisions of the U.P. Act, 1947, rules and regulations, we have no

other option to set aside the same and allow both the appeals filed by the bank as well as the State of U.P. as already indicated in the paragraphs above. The payments already made need not be recovered at this distance of time from the employees of the bank. However we make it clear that the employees are not entitled to ex-gratia payment from now onwards. In the facts and circumstances, we order no costs.

Appeals allowed.

Zoroastrian Co-Operative Housing Society Limited v District Registrar Co-Operative Societies (Urban)

Bench	P.K. Balasubramanyan, B.N. Agrawal
Where Reported	2005 Indlaw SC 331; (2005) 5 SCC 632; AIR 2005 SC 2306; 2005 (3) Bom.C.R. 514; [2005] 125 Comp Cas 235; JT 2005 (4) SC 337; 2005(4) SCALE 156; [2005] 3 S.C.R. 592
Case Digest	**Subject:** Trusts & Associations **Keywords:** Operation, Gujarat Co-operative Societies Act, 1961, Bombay Co-operative Societies Act, 1925, Gujarat Cooperative Societies Rules, 1965 **Summary:** [A.] Trusts & Associations - Land & Property - Land Acquisition Act, 1894, s. 41 - Gujarat Co-operative Societies Act, 1961, ss. 169, 3, 41, 5, 9 - Indian Contract Act, 1872, ss.11, 23 - Constitution Of India, 1950, arts. 12, 14, 15, 19(1)(c), 26, 300A - Transfer Of Property Act, 1882, s. 10 - Gujarat Cooperative Societies Rules, 1965, rr. 12, 12(2) - Applied for acquisition of certain lands for purpose of erecting houses - Right of Society to insist that property has to be dealt by R2 only in terms of bye-laws of Society upheld - Land to be assigned either wholly or in parts only to persons qualified to be members of Society in terms of its bye-laws - R3 restrained from entering property or putting up any construction therein on basis of any transfer by R2 in disregard of bye-laws of Society and without prior consent of Society - Appeal allowed.

Case No : Appeal (Civil) 1551 of 2000

The Judgment was delivered by : P. K. Balasubramanyan, J.

1. The Zoroastrian Co-operative Housing Society is a society registered on 19.5.1926, under the Bombay Co-operative Societies Act, 1925. The Society applied to the Government of Bombay for acquisition of certain lands in Ahmedabad District, then in the State of Bombay, under the Land Acquisition Act, 1894 for the purpose of erecting houses for residential use of its members and to further the aims and objects of the Society. On the Government of Bombay agreeing to the proposal, the Society entered into an agreement on 17.2.1928 with the Government under Section 41 of the Land Acquisition Act. Certain lands were acquired. From the lands thus acquired at its cost and given to it, the Society allotted plots of land to the various members of the Society in furtherance of the objects of the Society. On the re-organization of States, the Society became functional in the State of Gujarat and came within the purview of the Gujarat Co-operative Societies Act, 1961. Section 169 of that Act, repealed the Bombay Co-operative Societies Act, 1925 and in sub-section (2) provided that all societies registered or deemed to be registered under the Bombay Act, the registration of which was in force immediately before the

commencement of the Gujarat Act, were to be deemed to be registered under the Gujarat Act. The Gujarat Act came into force on 1.5.1962.

5. After the Society was formed and registered as indicated earlier, the Society got lands acquired by the State by invoking the Land Acquisition Act, 1894. The Society entered into an agreement in that behalf with the Government under Section 41 of the Act on 17.2.1928.

6. The said agreement recited that the Government of Bombay was satisfied that the land should be acquired under the Land Acquisition Act "for the purpose of erecting houses thereon". It was also stated that the Government was satisfied that the acquisition of the land was needed for the furtherance of the objects of the Society and was likely to prove useful to the public and it consented to put in operation the provisions of the Land Acquisition Act. An extent of 6 acres 12 guntas was thus acquired and handed over to the Society, on the Society bearing the cost of that acquisition. The Society in its turn allotted portions of the land to its members for the purpose of putting up residential houses in the concerned plots.

45. In our view, the High Court made a wrong approach to the question of whether a bye-law like bye-law No.7 could be ignored by a member and whether the Authorities under the Act and the court could ignore the same on the basis that it is opposed to public policy being against the constitutional scheme of equality or non-discrimination relating to employment, vocation and such. So long as the approved bye-law stands and the Act does not provide for invalidity of such a bye- law or for interdicting the formation of co-operative societies confined to persons of a particular vocation, a particular community, a particular persuasion or a particular sex, it could not be held that the formation of such a society under the Act would be opposed to public policy and consequently liable to be declared void or the society directed to amend its basic bye-law relating to qualification for membership.

47. The appellant Society was formed with the object of providing housing to the members of the Parsi community, a community admittedly a minority which apparently did not claim that status when the Constituent Assembly was debating the Constitution. But even then, it is open to that community to try to preserve its culture and way of life and in that process, to work for the advancement of members of that community by enabling them to acquire membership in a society and allotment of lands or buildings in one's capacity as a member of that society, to preserve its object of advancement of the community. It is also open to the members of that community, who came together to form the co-operative society, to prescribe that members of that community for whose benefit the society was formed, alone could aspire to be members of that society. There is nothing in the Bombay Act or the Gujarat Act which precludes the formation of such a society. In fact, the history of legislation referred to earlier, would indicate that such coming together of groups was recognized by the Acts enacted in that behalf concerning the co-operative movement. Even today, we have Women's co-operative societies, we have co-operative societies of handicapped persons, we have co-operative societies of labourers and agricultural workers. We have co-operative societies of religious groups who believe in vegetarianism and abhore non-vegetarian food.

52. The fact that the rights of a member or an allottee over a building or plot is attachable and saleable in enforcement of a decree or an obligation against him cannot make a provision like the one found in the bye-laws, an absolute restraint on alienation to attract Section 10 of the Transfer

of Property Act. Of course, it is property in the hands of the member on the strength of the allotment. It may also be attachable and saleable in spite of the volition of the allottee. But that does not enable the Court to hold that the condition that an allotment to the member is subject to his possessing the qualification to be a member of the cooperative society or that a voluntary transfer by him could be made only to the society itself or to another person qualified to be a member of the society and with the consent of the society could straight away be declared to be an absolute restraint on alienation and consequently an interference with his right to property protected by Article 300A of the Constitution of India. We are, therefore, satisfied that the finding that the restriction placed on rights of a member of the Society to deal with the property allotted to him must be deemed to be invalid as an absolute restraint on alienation is erroneous. The said finding is reversed.

53. In view of what we have stated above, we allow this appeal, set aside the judgments of the High Court and the orders of the Authorities under the Act and uphold the right of the Society to insist that the property has to be dealt by respondent No.2 only in terms of the bye- laws of the Society and assigned either wholly or in parts only to persons qualified to be members of the Society in terms of its bye-laws. The direction given by the authority to the appellant to admit respondent No.3 as a member is set aside. Respondent No.3 is restrained from entering the property or putting up any construction therein on the basis of any transfer by respondent No.2 in disregard of the bye-laws of the Society and without the prior consent of the Society.

54. The Writ Petition filed by the appellant in the High Court is allowed in the above manner. The appellant will be entitled to its costs here and in the court below.

Appeal Allowed

Siddheshwar Sahakari Sakhar Karkhana Limited and v Comissioner of Income Tax, Kolhapur and Others

Bench	P. Venkatarama Reddi, Mrs. Justice Ruma Pal
Where Reported	2004 Indlaw SC 893; (2004) 12 SCC 1; AIR 2004 SC 4716; 2004 (191) CTR 66; [2004] 270 ITR 1; JT 2004 (7) SC 295; 2004(7) SCALE 519; 2005 (Supp) Bom.C.R. 229; [2004] Supp4 S.C.R. 155; [2004] 139 TAXMAN 434
Case Digest	**Subject:** Banking & Finance; Income Tax & Direct Taxes; Trusts & Associations **Keywords:** Fixed Deposit, Capital Receipt, Legal Heirs, Co-Operative Bank, Capital Redemption Reserve, Finance Corporation Of India, Co-Operative Society, Agricultural Income-Tax **Summary:** Income Tax and Direct Taxes - Income Tax Act, 1961 - Maharashtra Co-operative Societies Act, 1960 - Bye laws framed thereunder - Whether compulsory deductions made by sugar cooperative societies on account of non-refundable and refundable deposits and other funds are revenue receipts liable to be taxed under the Income Tax Act - Non- Refundable and refundable deposits cannot be treated as the income of the assessee - Amount collected as deposit remains intact, though it could be utilized from time to time for meeting certain liabilities of capital nature - On facts, directions issued - Appeals Disposed Of.

Case No : Appeal (Civil) 6973-6975 of 2000, C.A.Nos. 6976-7026, 7028-7038, 7461-7465/2000, 177- 269/2001, 7923-7924/2001, 4293/2002 , 4878/2002 , C.A. Nos. 1013-1017 of 2002, (Civil) Nos. 5407, 5338, 5882, 17143 of 2001, 523-527, 18548, 23892 of 2002, 2747 and 4871 of 2003.

3. The appellant in each of the appeals carries on the business of manufacturing sugar. Its members are predominantly sugarcane farmers. According to the policy of the Government, the sugarcane growing areas in the State of Maharashtra have been divided into different territorial units. Each unit has a factory for manufacturing sugar and the sugarcane growers within the territory are obliged to sell their sugarcane only to the said factory. The project cost of the appellant was met partly by share capital and partly by way of capital subsidy provided by either the Central Government (Ministry of Industrial Development) or financial institutions such as IDBI, IFCI etc. The share capital was contributed not only by the members but also by the State Government. So long as the State Government held share capital in the Society, the Government was entitled to fix the sugarcane price which it did. The bye-laws provided for deduction of amounts towards refundable and non- refundable deposits from the cane price payable to the grower members. There were also instructions of the Director of Sugars to this effect. Apart from that, pursuant to the orders passed or circulars issued by the State Government/Director of Sugars, amounts were being deducted for being credited into various Funds such as Chief Minister's Relief Fund, Y.B. Chavan Memorial Fund, Area Development Fund etc. The amounts credited to these Funds are meant to be utilized either by the Society directly as per the guidelines issued by the Director

or remitted to the Government or trustees for socio-economic development of the operational area. Till the assessment year 1984-85, these collections/deposits were not treated as income of the assessee on the footing that they were not trading receipts.

11. The Tribunal summed up the position as follows:

"To sum up, according to our understanding, the true nature and purpose of the bye-law 61A is to collect contribution towards share capital from the cane growers by deducting the amount from the sugarcane purchase price payable to them in a slow and graduated manner so that the funds so retained by the assessee could in the meantime be used for repaying the term loans taken from the financial institutions. This is a process and a method devised and adopted in such a way that the cane growers will ultimately become the shareholders contributing the necessary capital not at one time but by degrees without causing to themselves, any kind of financial strain. The incentives provided in devising the scheme are payment of interest by treating the retained money as loan in the meantime and secondly eventual conversion of the same towards share capital. Thus there is no element of income embedded in it nor can it be said that these moneys were collected or received by the assessee as and by way of income".

12. The REASONING OF THE HIGH COURT in support of its conclusions is summarized as follows:

The fixation and payment of the price of sugarcane form part of the trading operations of the assessee. The deposits have been recovered by the Society as part of trading operations and therefore it constitutes "part of trading receipts". Such deductions provided a periodical return and a source of income to the Society. A reading of the bye-laws clearly indicates that the deposits are trading receipts, the primary purpose of collecting the 'deposits' being to discharge the liabilities of the society but not to issue the shares at a later point of time as held by the Tribunal. The assessee is empowered to hold on to the deposits till the repayment of the Government share capital and the loans taken from the financial institutions. In the case of deposits, a fixed maturity period is prescribed and on maturity, the depositor has a right to repayment. In the present case, there is no such period nor any such right has been given. There is no separate contract of fixed deposits between the Society and the members and no separate fund came to be created as the sums were credited to the individual accounts. The refund is within the discretion of the Board of Directors who may refuse to repay on the ground of weak financial position of Society. The payment of interest is not a conclusive factor.

13. The High Court observed:

"In our opinion, in a matter of this type, the correct test to be applied is whether the amounts sought to be deducted reached the assessee as his income, if so, it would constitute trading receipts. On the facts of this case, it is clear that the amount reached the assessee as its income."

14. After referring to the case of Commissioner of Income Tax Vs. Bazpur Cooperative Sugar Factory Ltd. [(1988) 3 SCC 553 1988 Indlaw SC 492], the High Court held:

"In the present case also, under the bye-laws, the rate of deposits was fixed by the society and not by the cane growers. In the present case also, under the bye-laws, no event or contingency has been contemplated under which the share holders could demand repayment of the deposit.

Hence, merely because the Karkhana has agreed to pay the interest, will not be a conclusive test to come to the conclusion that the liability has accrued to the society on deduction."

In our view, the retention of the deposited money with the Society in order to utilize the same for repayment of term loans etc., does not denude the amount of its character of 'deposit' carrying with it the obligation to repay. Nor is it necessary, as the High Court was inclined to think, that the separate identity of the deposited amounts should be kept up. The absence of the right to secure repayment on demand is again not inconsistent with the receipt being a deposit. Liability to return need not be immediate and unconditional, following a demand by the depositor. Even if such liability gets crystallized on the happening of a specified contingency, it is still a liability which can be legally enforced by the depositor. The existence of such liability is an antithesis to the idea of ownership of the money by the Society.

31. Deposits are of various types with variations in their features and incidents. It would be apposite, in this context to refer to certain passages dealing with deposits from well known treatises. In Corpus juris secundum (volume -26A) the following passages occur: The deposits are classified as Special Deposits, General Deposits and other Deposits.

Special Deposit:

A special deposit is one in which the identical subject matter deposited must be kept and redelivered, or applied to a particular purpose.

General Deposit:

A general deposit is one in which the identical subject matter need not be returned and, as distinguished from a deposit for safe-keeping, this form of deposit has been termed a deposit for exchange, that is, one in which the depositary is only bound to return a thing corresponding in kind to that which is deposited. In determining whether or not a deposit is special, the character of the business of the depositary is entitled to considerable weight, but is not controlling.

The obligation to convert the deposits into shares subsequent to the repayment of certain types of loans coupled with the right given to the member to seek transfer of the amount lying to his credit and the obligation to refund the deposit to the depositor on cessation of his membership or to his legal heirs in case of death subject of course to certain restrictions, are all pointers that the assessee can exercise dominion over the deposits only in a limited sphere. On a consideration of the bye-laws as a whole, it is difficult to hold that either the assessee or the depositor exercises complete dominion over the deposited amounts. If so, it is not possible to countenance the plea that the title to the deposits will throughout remain in the hands of the Society and the depositor has no stake or interest therein, once it reaches the assessee's hands.

39. Viewed from the point of view of the primary purpose of deposit a test which has been formulated by this Court in Bazpur case though without much of discussion, we are of the view that the answer cannot be the same as in Bazpur case. In this connection the Tribunal recorded the finding that the purpose of collecting non- refundable deposits "was not only to repay term loans taken from financial institutions and to repay the government share capital, but also to convert the so called deposits into shares". The Tribunal expressed the view that the whole idea was to increase the capital base of the assessee in a phased manner by retaining some portion of the money payable to cane-growers, while at the same time compensating the depositors by way

of interest. However, the High Court was not inclined to accept the finding of the Tribunal. The High Court commented:

" on the contrary the above bye-laws clearly indicate that the primary purpose of collecting the deposits i.e. the deductions was to discharge the liabilities of the Society".

40. We are unable to endorse the view taken by the High Court. Meeting the financial commitments of the Society may be one of the purposes for which the deposits were collected but that is not all. The augmentation of the share capital which may be in the overall interests of the members as well as the Society is an equally important purpose which cannot be overlooked. At any rate, the view taken by the Tribunal appears to be a reasonable view and the High Court need not have disturbed that finding.

As already observed, the supervisory role of the Directorate of Sugar to ensure that the amount is properly utilized to promote the objectives with which the fund was formed, does not make a material difference on the quality and character of the receipt. We are therefore of the view that the deductions made out of cane price towards Cane Development Fund should be treated as the income of the assessee. We are, of course, not expressing any view whether it is a permissible deduction under the provisions of the Income Tax Act. If any such claim is made, the Tribunal shall examine the same when the matters are taken up by it to consider the issue of tax liability in relation to Area Development Fund. Though the item relating to collections towards Members' Small Savings Scheme has also been included in the memorandum of appeal, no argument has been advanced on this aspect and therefore we need not deal with this.

55. We therefore allow the appeals of the Commissioner of Income Tax partly in respect of the amounts collected by the respondent-Societies towards Cane Development Fund and Area Development Fund. We declare that the amount collected towards Cane Development Fund shall be treated as the income of the assessees and any claim for deduction shall be entertained and decided by the Tribunal. As regards the Area Development Fund, the matters are remitted to the Income Tax Appellate Tribunal, Pune Bench for fresh determination subject to the observations made in this judgment. In respect of other items, the appeals shall stand dismissed.

In the ultimate analysis, the assessees' appeals are allowed and the Commissioner's appeals are partly allowed to the extent indicated above.

Appeal partly allowed.

A. Umarani v Registrar, Cooperative Societies and Others

Bench	S.B. Sinha, N. Santosh Hegde, A.K. Mathur
Where Reported	2004 Indlaw SC 606; (2004) 7 SCC 112; (2004) SCC (L&S) 918; AIR 2004 SC 4504; 2005 (1) ALD(SC) 33; 2004 (3) CLR 85; 2004 (3) ESC 432; JT 2004 (6) SC 350; 2004(6) SCALE 350; 2004 (5) SLR 395; 2004 (6) Supreme 143
Case Digest	**Subject:** Service; Trusts & Associations **Keywords:** Tamil **Nadu Co-operative Societies Act, 1983**, Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, Tamil Nadu Co-operative Societies Act. 1961, Tamil Nadu Land Development Banks Act, 1934, Madras Cooperative Societies Rules, 1963, Tamil Nadu Cooperative Societies Rules, 1988, J&K Medical Recruitment Rules **Summary:** Service -Tamil Nadu Cooperative Societies Act, 1961 - Tamil Nadu Land Development Banks Act, 1934 - Madras Cooperative Societies Rules, 1963 - Whether State had requisite authority to direct regularisation of services of employees of cooperative societies by a Govt.Order? - Govt. Order directing regularisation - Held, in any view of matter an order could not have been passed with retrospective effect condoning actions on part of cooperative societies which were in flagrant violations of provisions of Act and Rules - An appointment made in violation of mandatory provisions of Statute ignoring minimum educational qualification and other essential qualification would be wholly illegal - Such illegality cannot be cured by taking recourse to regularisation - Appeals Dismissed.

Case No : Appeal (civil) 1413 of 2003 With CIVIL APPEAL NOs. 3774, 3775, 3776, 4446, 6415, 6416, 7282, 9854, 9933, 10244-10245 of 2003, C.A. No.4495 of 2004 (@ S.L.P.(C) No. 1096 of 2004), Civil Appeal No. 447 of 2004

2. Cooperative Societies and Land Development Banks constituted and registered in the State of Tamil Nadu used to be governed under Tamil Nadu Cooperative Societies Act, 1961 (for short "the 1961 Act") and the Tamil Nadu Land Development Banks Act, 1934. The State framed rules under the 1961 Act known as Madras Cooperative Societies Rules, 1963.

3. the 1961 Act and 1934 Act were repealed and replaced by Tamil Nadu Cooperative Societies Act, 1983 (for short "the 1983 Act"). Pursuant to or in furtherance of the powers conferred thereunder, the State framed rules known as the Tamil Nadu Cooperative Societies Rules, 1988 (for short "the 1988 Rules"). The 1983 Act and the 1988 Rules came into force with effect from 13.4.1988.

4. It is not in dispute that a large number of employees, i.e., about 39% of the total strength of the employees of the cooperative societies in the State of Tamil Nadu, were appointed without

notifying the vacancies to the Employment Exchanges and without following the other mandatory provisions of the Act and the Rules framed thereunder relating to recruitment.

5. It is not in dispute that a large number of appointees furthermore did not have the requisite educational qualification or other qualification like cooperative training etc. The reservation policy of the State was also not followed by the cooperative societies. The Recruitments were made beyond the permissible cadre strength.

6. With a view to condone the serious lapses on the part of the Cooperative Societies in making such appointments in illegal and arbitrary manner, the Government of the State of Tamil Nadu issued various orders from time to time in terms whereof such appointments were sought to be regularised fixing a cutoff date therefore. Firstly, G.O.Ms No. 790 dated 5.7.1971 was issued ratifying the irregular appointments made otherwise than through employment exchange upto 5.7.1971. Further, by G.O.Ms No. 1352 dated 7.11.1978, the cut off date was extended upto 31.12.1977. Yet again, by G.O.Ms. No. 605 dated 3.6.1980, the cut off date was extended upto 31.12.1979. By G.O.Ms. No. 312 dated 30.11.1987 the cut off date was furthermore extended upto 8.7.1980. Ultimately, by G.O.Ms. No. 86 dated 12.3.2001 the cut off date was extended upto 11.3.2001 and thereby the Government of Tamil Nadu sought to regularise appointments made after 8.7.1980 in the Cooperative Societies without notifying the Employment Exchange in respect of those employees who had completed 480 days of service in two years purported to be in terms of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (for short 'the 1981 Act').

56. In State of Himachal Pradesh through the Secretary, Agriculture to the Govt. of Himachal Pradesh Vs. Nodha Ram and Others [AIR 1997 SC 1445 1996 Indlaw SC 1147], this Court stated the law in the following terms:

"4. It is seen that when the project is completed and closed due to non-availability of funds, the employees have to go along with its closure. The High Court was not right in giving the direction to regularise them or to continue them in other places. No vested right is created in temporary employment. Directions cannot be given to regularise their services in the absence of any existing vacancies nor can directions be given to the State to create posts in a non-existent establishment. The Court would adopt pragmatic approach in giving directions. The directions would amount to creating of posts and continuing them despite non availability of the work. We are of the considered view that the directions issued by the High Court are absolutely illegal warranting our interference. The order of the High Court is therefore, set side."

57. A Division Bench of this Court in Surendra Kumar Sharma Vs. Vikas Adhikari and Another [(2003) 5 SCC 12 2003 Indlaw SC 448] upon noticing the decision of this Court in Delhi Development Horticulture Employees' Union 1992 Indlaw SC 957 (supra) observed:

" A good deal of illegal employment market has developed, resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchanges for years. Not all those who gain such back-door entry in the employment are in need of the particular jobs. Though already employed elsewhere, they join the jobs for better and secured prospects. That is why most of the cases which come to the courts are of employment in government departments, public undertakings or agencies. Ultimately it is the people who bear the heavy burden of the surplus labour. The other equally injurious effect of indiscriminate regularization has been that many of the agencies have stopped undertaking casual or temporary works though they are urgent and

essential for fear that if those who are employed on such works are required to be continued for 240 or more days have to be absorbed as regular employees although the works are time-bound and there is no need of the workmen beyond the completion of the works undertaken. The public interests are thus jeopardized on both counts."

59. Although we do not intend to express any opinion as to whether the cooperative society is a "State" within the meaning of Article 12 of the Constitution of India but it is beyond any cavil of doubt that the writ petition will be maintainable when the action of the cooperative society is violative of mandatory statutory provisions. In this case except the Nodal Centre functions and supervision of the cooperative society, the State has no administrative control over its day to day affairs. The State has not created any post nor they could do so on their own. The State has not borne any part of the financial burden. It was, therefore, impermissible for the State to direct regularization of the services of the employees of the cooperative societies. Such an order cannot be upheld also on the ground that the employees allegedly served the cooperative societies for a long time.

60. In Jawaharlal Nehru Technological University Vs. T. Sumalatha (Smt.) and Others [(2003) 10 SCC 405 2003 Indlaw SC 605], a Division Bench of this Court rejected a similar contention stating:

"8 The learned counsel therefore contends that there is every justification for absorbing the respondents concerned on regular basis in recognition of their long satisfactory service. The learned counsel further contends that the ad hoc arrangement to employ them on consolidated pay should not go on forever. The contention of the learned counsel cannot be sustained for more than one reason and we find no valid grounds to grant the relief of regularization. There is nothing on record to show that the employees concerned were appointed after following due procedure for selection. Apparently, they were picked and chosen by the university authorities to cater to the exigencies of work in the Nodal Centre."

69. Yet again recently in Ramakrishna Kamat & Ors. Vs. State of Karnataka & Ors. [JT 2003 (2) SC 88 2003 Indlaw SC 464], this Court rejected a similar plea for regularization of services stating :

" We repeatedly asked the learned counsel for the appellants on what basis or foundation in law the appellants made their claim for regularization and under what rules their recruitment was made so as to govern their service conditions. They were not in a position to answer except saying that the appellants have been working for quite some time in various schools started pursuant to resolutions passed by zilla parishads in view of the government orders and that their cases need to be considered sympathetically. It is clear from the order of the learned single judge and looking to the very directions given a very sympathetic view was taken. We do not find it either just or proper to show any further sympathy in the given facts and circumstances of the case. While being sympathetic to the persons who come before the court the courts cannot at the same time be unsympathetic to the large number of eligible persons waiting for a long time in a long queue seeking employment ."

70. For the reasons aforementioned, we do not find any merit in these appeals which are dismissed accordingly. No costs.

Appeal dismissed

Secretary, Thirumurugan Co-Operative Agricultural Credit Society v M. Lalitha (Dead) Through Lrs. and Others

Bench	Shivaraj V. Patil, D.M. Dharmadhikari
Where Reported	2003 Indlaw SC 1251; (2004) 1 SCC 305; AIR 2004 SC 448; 2004 (4) Bom.C.R. 273; 2003 CCC 394; [2004] 118 Comp Cas 253; 2004 (1) CompLJ 339; 2004 (1) CPJ 1; 2004 (2) MahLJ 581; 2003(10) SCALE 635; 2003 (1) SCW 6873; [2003] Supp6 S.C.R. 659
Case Digest	**Subject:** Constitution; Consumer Protection **Keywords:** Tamil Nadu Co-operative Societies Act, 1983, Standards Of Weights And Measures Act, 1976, Indian Sale Of Goods Act, 1930, Prevention of Adulteration Act. 1954 **Summary:** Constitution - Consumer Protection Act, 1986, s. 3 - Tamil Nadu Co-Operative Societies Act, 1983, ss. 90 and 156 - Jurisdiction under Consumer Protection Act, 1986 - Held, where statute gives a finality to orders of special tribunals jurisdiction of civil courts must be held to be excluded if there is adequate remedy to do what civil courts would normally do in a suit - Further, where there is an express bar of jurisdiction of court, an examination of scheme of particular Act to find adequacy or sufficiency of remedies provided may be relevant but is not decisive to sustain jurisdiction of civil court - Merely because rights and liabilities are created between members and management of society under Act and forums are provided, it cannot take away or exclude jurisdiction conferred on forums under Act expressly and intentionally to serve a definite cause in terms of objects and reasons of Act, reference to which is already made above - Further held, National Commission was right in holding that view taken by State Commission that provisions under Act relating to reference of disputes to arbitration shall prevail over provisions of Act is incorrect and untenable - Appeals remanded to State Commission for their adjudication on other issues on merits without going to question of maintainability of disputes before forum under Act - Appeal disposed of.

Case No : Appeal (Civil) 92 of 1998

The Judgment was delivered by : Shivaraj V. Patil, J.

1. The respondents, being the members of the appellant-society, had pledged paddy bags for obtaining loan. The appellant-society issued notices to the respondents demanding payment of loan amount with interest thereon. The respondents filed petitions in the District Consumer Disputes Redressal Forum, Thiruchirapally seeking direction to the appellant to release the paddy bags pledged on receipt of the loan amount or in the alternative to direct the appellant to

pay the market value of the baddy bags with interest thereon from the date of pledging till the date of release and also to pass an order for compensation for mental agony and suffering. The appellant contested the claims of the respondents before the District Forum raising a preliminary objection that Consumer Forum had no jurisdiction to decide the dispute between members and cooperative society in view of Section 90 of the Tamil Nadu Cooperative Societies Act, 1983 (for short 'the Act'). The District Forum, in the light of the pleadings of the parties, raised the following points for determination:-

"1) Whether the complainants are consumers and whether there is any consumer disputes within the meaning of the Consumer Protection Act *and whether this Forum has no jurisdiction to entertain the complaints of this nature and decide the issue?*

2) Whether there is any deficiency in service and negligence on the part of the opposite party in all the complaints?

3) Whether the complainants in all the complaints are entitled to the reliefs prayed for?"

2. The District Forum answered the points 1 and 2 in favour of the respondents and granted relief.

3. The appellant took up the matters in appeal before the State Consumer Disputes Redressal Commission. The respondents also filed appeal to the extent they were aggrieved in regard to payment of interest from 14.9.1992. The State Commission, by the common order, allowed the appeals filed by the appellant and dismissed the appeals filed by the respondents. The State Commission held that complaints filed by the respondents were themselves not maintainable having regard to Section 90 of the Act. Hence, the State Commission did not deal with the other contentions.

4. Aggrieved by the order of the State Commission, the respondents approached the National Consumer Disputes Redressal Commission by filing revision petition. The National Commission, after hearing the learned counsel for the parties and dealing with the contentions advanced by them, found fault with the order of the State Commission. Consequently, the revision petition was allowed. The order of the State Commission was set aside restoring the order passed by the District Forum. Hence, this appeal.

26. Thus, having regard to all aspects we are of the view that the National Commission was right in holding that the view taken by the State Commission that the provisions under the Act relating to reference of disputes to arbitration shall prevail over the provisions of the 1986 Act is incorrect and untenable. The National Commission, however, did not take note of the fact that the State Commission had not decided the other contentions raised in the appeals on merits. We are inclined to accept the alternative submission made on behalf of the appellant for remanding the case to the State Commission for deciding the other issues on merits while affirming that the complaints before the district forum made by the respondents were maintainable and the district forum had jurisdiction to deal with the disputes. In this view, while affirming the order of the National Commission as to the maintainability of the disputes before the forum under the Act, we remand the appeals to the State Commission for their adjudication on other issues on merits without going to the question of maintainability of the disputes before the forum under the 1986 Act.

Commissioner of Income Tax v Karnataka State Co-Operative Apex Bank

Bench	S.P. Bharucha, Ashok Bhan, Y.K. Sabharwal
Where Reported	2001 Indlaw SC 282; (2001) 7 SCC 654; AIR 2001 SC 3332; 2001 (169) CTR 486; [2001] 251 ITR 13; [2001] 251 ITR 194; JT 2001 (7) SC 42; 2001(5) SCALE 411; 2001 (6) SLT 60; [2001] Supp2 S.C.R. 35; 2001 (6) Supreme 327
Case Digest	**Subject:** Banking & Finance; Income Tax & Direct Taxes **Keywords:** Government securities, Co-Operative Bank, Co-Operative Society **Summary:** Income Tax & Direct Taxes - Income Tax Act, 1961, ss. 81, 80P and 80 P(2)(a)(i) - Question relates to s. 81 which is now s. 80P of Income Tax Act, 1961 - Whether Appellate Tribunal was right in law in holding that interest income arising from investment made out of reserve fund is exempt u/s. 80 P(2)(a)(i) of IT Act, 1961? - Held, assessee-Co-operative bank is required to place part of its funds with State Bank or Reserve Bank of India to enable it to carry on its banking business - Any income derived from funds so placed arises from business carried on by it and assessee has not, by reason of s. 80 P(2)(a)(i), to pay income tax thereon - Income derived therefrom would be income from assessee's business - Nothing in phraseology of that provision which makes it applicable only to income derived from working or circulating capital - Appeal dismissed.

Case No : Appeal (Civil) 4646-4648 of 2000

1. These appeals have been referred to a Bench of three learned Judges, in view of the apparent conflict between the two judgments (of Benches of two learned Judges of this Court) in M.P. Cooperative Bank Limited, Jabalpur v. Additional Commissioner of Income Tax, Madhya Pradesh, Bhopal, [1996] 2 SCC 541 1996 Indlaw SC 3486 and Commissioner of Income Tax, Bangalore v. Bangalore District Cooperative Central Bank Limited, [1998] 6 SCC 129. 1998 Indlaw SC 1868

2. The question in appeal relates to, what was Section 80(i) and is now Section 80-P of the Income Tax Act, 1961, which reads thus :

   "80-P. (i) Where, in the case of an assessee being a cooperative society, the gross total income includes any income referred to in subsection (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

   (2) The sums referred to in sub-section (1) shall be the following, namely:

   (a) In the case of a cooperative society engaged in-

(i) Carrying on the business of banking or providing credit facilities to its members, or

(ii)- (vii) The whole of the amount of profits and gains of business attributable to any one or more of such activities"

3. The question in appeal reads:

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the interest income arising from the investment made out of reserve fund is exempt under Sec.80-P (2) (a) (i) of the Income Tax Act ?"

5. This judgment was cited before the Bench of two learned Judges which decided the case of the Bangalore District Cooperative Central Bank Limited It was considered as having been rendered on its own facts and not applicable to the case of Bangalore District Cooperative Central Bank Limited in view of the finding of the Tribunal that the income in question was attributable to the business of that assessee. The court referred to the Banking Regulation Act, the Karnataka Cooperative Societies Act and the Karnataka Cooperative Societies Rules, which showed that the investments that had been made by the assessee were in compliance with the statutory provisions and in order to carry on the business of banking. They were necessary and, consequently, they were part of the business activities of the assessee falling within the scope of Section 80-P(2)(a)(i). We do not agree with the finding of the Bench which decided the Bangalore District Cooperative Central Bank Limited case that the decision in the case of M.P. Cooperative Bank Limited was rendered on its own facts. The latter decision was clearly a reasoned decision.

6. The question is whether we agree with the reasoning in M.P. Cooperative Bank Limited. There is no doubt, and it is not disputed, that the assessee- Cooperative bank is required to place a part of its funds with the State Bank or the Reserve Bank of India to enable it to carry on its banking business. This being so. any income derived from funds so placed arises from the business carried on by it and the assessee has not, by reason of Section 80-P(2)(a)(i), to pay income tax thereon.

The placement of such funds being imperative for the purposes of carrying on the banking business, the income derived therefrom would be income from the assessee's business. We are unable (o lake view that found favour with the Bench that decided the case of M.P. Cooperative Bank Limited that only income derived from circulating or working capital would fall within Section 80-P(2)(a) (i). There is nothing in the phraseology of that provision which makes it applicable only to income derived from working or circulating capital.

7. In the premises, we take the view that the decision of this court in the case M.P. Cooperative Bank Limited does not set down the correct law and that the law is as we have put it above. The question, accordingly, is answered in the affirmative and in favour of the assessee. The civil appeals are dismissed. No order as to costs.

Appeal dismissed

Ram Sahan Rai v Sachiv Samanaya Prabandhak and Another

Bench	G.B. Pattanaik, B.N. Agrawal
Where Reported	2001 Indlaw SC 20275; (2001) 3 SCC 323; (2001) SCC (L&S) 584; AIR 2001 SC 1173; 2001 (2) AWC 927; 2001 (1) CLR 1028; 2001 (89) FLR 109; JT 2001 (3) SC 95; 2001 (1) LLJ 1073; 2001(2) SCALE 136; [2001] 1 S.C.R. 1145; 2001 (2) SLT 269; 2001 (2) Supreme 109; 2001 (1) UPLBEC 856
Case Digest	**Subject:** Corporate; Labour & Industrial Law **Keywords:** Uttar Pradesh Cooperative Societies Act, 1965, Uttar Pradesh Cooperative Land Development Bank Act, 1964 **Summary:** Service - Uttar Pradesh Cooperative Societies Act, 1965 - Uttar Pradesh Cooperative Land Development Bank Act, 1964 - Whether respondent was required to comply with statutory provisions before terminating services of appellant? - Held, an examination of different rules and regulations, indicates that state Govt. exercises all - pervasive control over bank and its employees - Statutory rules prescribe an entire gamut of procedure of initiation of disciplinary proceedings by framing a set of charges after complying with requirements of giving a show - cause and an opportunity of hearing to delinquent - In matter of passing an order of dismissal of an employee, it did not follow mandatory provisions of rules and regulations and order was passed in gross violation of principles of natural justice - Appeal allowed.

Case No : Appeal (Civil) 3162 of 1997

The Judgment was delivered by : G. B. Pattanaik, J.

1. Plaintiff is the appellant and assails the Judgment of the learned Single Judge of Allahabad High Court in Second Appeal No.683 of 1996. The plaintiff filed the suit for declaration that the order of his removal from service dated 15.4.87 was illegal, arbitrary, null and void and without jurisdiction and the same may be set aside and it may be declared that the plaintiff is continuing in service and for all other consequential benefits. It was alleged in the plaint that he was appointed as a Clerk in the District Co-operative Bank, Defendant No. 2 and was posted in the accounts section. He had taken leave on medical grounds and had left the bank after handing-over charge to one Virendra Nath. The Acting Secretary, who according to the plaintiff was not competent to frame any charges against him, issued a set of charges, alleging the mis-conduct of serious nature for illegal absence from duties and finally, it was indicated that the plaintiff has been removed from service on finding him guilty of the charges, without holding any inquiry and without affording an opportunity to the plaintiff to defend himself.

10. This being the position and in view of the judgment of this Court in U.P.State Co-operative Land Development Bank Ltd. vs. Chandra Bhan Dubey and Ors., 1999(1) SCC 741 1998 Indlaw SC

2070, the conclusion is irresistible that the defendant bank is undoubtedly an instrumentality of the State. Once it is held that the defendant is a statutory body and is a State and in the matter of passing an order of dismissal of an employee, it did not follow the mandatory provisions of the rules and regulations and the order was passed in gross violation of principle of natural justice, then the third exception to the general principle that contract of personal service cannot ordinarily be specifically enforced, as indicated in S.R.Tiwaris case 1964(2) SCR 551963 Indlaw SC 335 which has also been relied upon in Vaish Degree College case 1976(2) SCC 58 1975 Indlaw SC 62 would apply and, therefore, the conclusion of the High Court must be held to be erroneous in the facts and circumstances of the present case.

11. The decision of this Court in Integrated Rural Development Agency 1995 Supp.(2) SCC 495 1995 Indlaw SC 1579 will have no application at all, as in that case the agency in question was held not to be an instrumentality of the State nor the State had any control over the affairs of the society and in such a case, therefore, the relationship of master and servant is purely one of contract and in that case, the relief of specific performance of contract of service cannot be granted. But the aforesaid decision in our considered opinion, is of no application to the facts and circumstances of the present case. In the aforesaid premises, we have no hesitation in coming to the conclusion that the High Court committed serious error of law in interfering with the judgment and decree of the lower Appellate Court. We, therefore, set aside the impugned judgment and decree of the High Court in Second Appeal No. 683 of 1996 and affirm the judgment of the 1st Additional District Judge, Ghazipur, and consequently, the suit is decreed.

12. We, however, further hold that though the plaintiff would be allowed his continuity of service and any other benefits, flowing from such continuity of service, but he will not be entitled to any salary from the date of his termination on 15.4.1987 till the judgment of the lower Appellate Court dated 9.9.1992. This appeal is accordingly allowed with the aforesaid directions and observations.

There however will be no order as to costs.

Appeal allowed

Janatha Bazar (South Kanara Central Cooperative v Secretary, Sahakari Noukarara Sangha and Others

Bench	M.B. Shah, D.P. Mohapatra
Where Reported	2000 Indlaw SC 472; (2000) 7 SCC 517; AIR 2000 SC 3129; 2000 (4) AWC 3309; JT 2000 (10) SC 589; 2000 (2) LLJ 1395; 2000(6) SCALE 446; [2000] Supp3 S.C.R. 367
Case Digest	**Subject:** Labour & Industrial Law **Keywords:** Conductor, Karnataka Cooperative Societies Act, 1959 **Summary:** Service - Industrial Disputes Act, 1947, sch. 2, item 3, s. 11A - Reinstating the employee in service despite charges being established - Justification and relevancy of quantum of misappropriation, past record - Held, unjustified and irrelevant - Appeal allowed.

Case No : Civil Appeals Nos. 5224-25 of 2000

1. The question involved in these appeals is Whether High Court was justified in confirming the order passed by the Labour Court reinstating the respondents-workmen with 25% back wages inspite of specific finding of fact that the charges of breach of trust and misappropriation of goods for the value given in the said charges had been clearly established. Apparently, it would be an unjustified direction to reinstate an employee against whom charge of misappropriation is established. A proved act of misappropriation cannot be taken lightly even though number of such misappropriation cases remain undisclosed and such employees or others amass wealth by such means. In any case, misappropriation cannot be rewarded or legalised by reinstatement in service with full or part of back wages.

2. The matrix of the facts as culled out from the case are that the appellant is a Co-operative Society registered under the Karnataka Co- operative Societies Act, 1959. The Management charged four of its employees, namely Smt. Seetha B., Sri D. Chandrashekhar, Sri Madhukar Shetty and Sri B. Damodhar Naik, with breach of trust and misappropriation of the value of goods amounting to Rs.24,239.97 and Rs.19,884.06 during the period 1.7.1977 to 30.6.1978. The said charges were based on shortage of goods noticed on stock verification for the above said period. After holding an enquiry, the management dismissed all the above employees. Thereafter, the employees Union raised an industrial dispute and on 26.6.1981 a reference was made by the Government to the Labour Court, Managalore, u/s. 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) in I.D. No.45/1981. The Labour Court considered the documentary evidence produced by the Management; the audit report for the relevant period from 1.7.1977 to 30.6.1978; the admissions of the indicted workmen who deposed that the goods were sent to their counters for sale by means of supply slips and the fact that they have not accounted for the shortage of goods noticed, the value of which is given in the audit report, and recorded the finding that the

charges of breach of trust and misappropriation of the goods entrusted to them of the value given in the charges have been clearly established. In the award passed by the Labour Court, there is a thorough discussion of the evidence adduced by the Management and the Workmen and sufficient reasons are given in support of the finding that the charges alleged against the workmen are proved. After recording evidence and hearing both the sides, the Labour Court vide its award dated 30.1.1995 held that the charges of breach of trust and misappropriation by the employees were proved. However, the Labour Court in exercise of its discretionary power under Section 11A of the Act ordered their reinstatement with 25% of back wages. The Labour Court further ordered for continuity of their service by imposing penalty of stoppage of 5 increments with cumulative effect and for fixing their pay on the basis of imposition of such penalty from the date of their dismissal till the date of reinstatement. Against the award of the Labour Court, both the parties filed writ petitions before the High Court of Karnataka. The Learned Single Judge confirming the award passed by the Labour Court dismissed both the writ petitions.

3. Being aggrieved by the common order passed by the learned Single Judge, both the parties filed Writ Appeals No. 8795 of 1996 and 1954 of 1997 before the Division Bench of the High Court. The Division Bench found that the Labour Court had arrived at its conclusion after thoroughly considering the entire evidence and, therefore, it did not call for any interference. Further, with regard to the question whether the Labour Court was justified in interfering with the order of dismissal passed by the Disciplinary Authority in exercise of its powers under Section 11A of the Act, the High Court came to the conclusion that the Labour Court gave reasons for coming to its conclusion and those reasons could be considered as justifiable and sufficient grounds to interfere with the punishment imposed by the employer. By common judgment and order dated 18.9.1998, the writ appeals were dismissed. Hence, these appeals by special leave.

4. As stated above, the learned Single Judge and the Division Bench in writ appeals confirmed the findings given by the Labour Court that charges against the workmen for breach of trust and misappropriation of funds entrusted to them for the value mentioned in the charge-sheet had been established. After giving the said findings, in our view, the Labour Court materially erred in setting aside the order passed by the Management removing the workmen from the service and reinstating them with 25% back wages. Once act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and re- instating the employees in service. Law on this point is well settled. [Re.: Municipal Committee, Bahadurgarh v. Krishnan Behari and Others 1996 Indlaw SC 3265]. In U.P. State Road Transport Corporation v. Basudeo Chaudhary and Another 1996 Indlaw SC 2633] this Court set aside the judgment passed by the High Court in a case where a conductor serving with the U.P. State Road Transport Corporation was removed from service on the ground that alleged misconduct of the conductor was attempt to cause loss of Rs. 65/- to the Corporation by issuing tickets to 23 passengers for a sum of Rs.2.35 but recovering @ Rs.5.35 per head and also by making entry in the waybill as having received the amount of Rs.2.35, which figure was subsequently altered to Rs.2.85. The Court held that it was not possible to say that Corporation removing the conductor from service has imposed a punishment which is disproportionate to his misconduct. Similarly in Punjab Dairy Development Corporation Ltd. and Another v. Kala Singh and Others 1997 Indlaw SC 3113], this Court considered the case of a workman who was working as a Dairy Helper-cum-Cleaner for collecting the milk from various centres and was charged for the misconduct that he inflated

the quantum of milk supplies in milk centres and also inflated the quality of fat contents where there were less fat contents. The Court held that in view of proof of misconduct a necessary consequence will be that Management has lost confidence that the workman would truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to exercise the power under Section 11A of the I.D. Act to grant relief with minor penalty.

5. In view of the aforesaid settled legal position, the High Court materially erred in confirming the directions given by the Labour Court in reinstating the respondent-workmen with 25% back wages. For giving the aforesaid direction, the Labour Court considered that there is no evidence regarding past misconduct by the employees and, therefore, it can be observed that they have rendered several years of service without any blemish and to some extent, there was lapse on the part of the Management.

6. In case of proved misappropriation, in our view, there is no question of considering past record. It is the discretion of the employer to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the employer in such cases.

7. In the result, the appeals are allowed. The impugned order passed by the High Court confirming the award dated 30.1.1995 passed by the Labour Court is set aside. There shall be no order as to costs.

Appeals allowed.

Jt. Registrar Of Cooperative Societies, Kerala v T.A.Kuttappan & Ors.

Bench	S. Rajendra Babu, Y.K. Sabharwal
Where Reported	2000 Indlaw SC 446; (2000) 6 SCC 127; AIR 2000 SC 2378; JT 2000 (6) SC 458; 2000 (2) KLT 480; 2000(4) SCALE 686; [2000] 3 S.C.R. 1204; 2000 (5) SLT 273; 2000 (4) Supreme 226
Case Digest	**Subject:** Indirect Tax; Service; Trusts & Associations; Agriculture & Agri. Products **Keywords:** Kerala Cooperative Societies Act, 1969, Karnataka Cooperative Societies Act, 1959, Supersession **Summary:** Corporate - Kerala Cooperative Societies Act, 1969, s. 32(1)(b) - Co-operative Society - Supersession of committee of Management - Registrar can appoint an administrator or administrators or a committee as provided in Section 32(1)(a) and (b) of the Act - Determination of power of Administrator appointed during supersession to enroll new members - Held, has no power to enrol new members - Appeal dismissed.

Case No : Civil Appeal Nos. 1930-1936 of 1999 Etc

The Judgment was delivered by : Y. K. Sabharwal, J.

1. These appeals by special leave are against a common order made in O.P.Nos.12184, 14840, 14686, 15700, 17258, 18398 and 20913/97. Section 32 of the Kerala Cooperative Societies Act, 1969 [hereinafter referred to as 'the Act'] enables the Registrar of Cooperative Societies to supersede the Committee of Management under the circumstances set forth in sub-Section (1) thereto. After supersession of the Committee of Management, the Registrar can appoint an administrator or administrators or a Committee as provided in Section 32(1)(a) and (b) of the Act. Such Committee or administrator or administrators so appointed shall, subject to the control of the Registrar and to such instructions as he may from time to time give, have power to exercise all or any of the functions of the Committee or of any officer of the society and take all such action as may be required in the interests of the society.

2. When the administrator appointed on supersession of the Committee of Management of certain Cooperative Societies wanted to enrol new members to the society the same was objected to and the original petitions under Article 226 of the Constitution were filed before the High Court on the ground that the Registrar is only expected to carry on day-to-day functions of the society and see that election is conducted and a new Committee in accordance with the Act, Rules and bye-laws of the society is constituted. It was contended before the court that the earlier decision in George vs. Joint Registrar, 1985 KLT 836 2005 Indlaw KER 55, is no longer good law in the light of the decision of this Court in K. Shantharaj & Anr. vs. M. L. Nagaraj & Ors., 1997 (6)

SCC 37 1997 Indlaw SC 2314. The Full Bench of the High Court, after referring to the earlier decision of the High Court and the decision of this Court in K. Shantharaj's1997 Indlaw SC 2314[supra] held that the admission of a member is not mere 'function' of the Committee, but is a 'power' of the Committee to admit members or not as provided in Bye Laws of the Society. The Committee can exercise only certain functions and not any powers and, therefore, the administrator or a Committee appointed as aforesaid has no power to enrol new members. This order is in challenge in these appeals.

8. In that context, it was stated that he should conduct elections as enjoined under law, that is, he is to conduct elections with the members as on the rolls and by necessary implication, he is not vested with power to enrol new members of the society. We may add that a Cooperative Society is expected to function in a democratic manner through an elected Committee of Management and that Committee of Management is empowered to enrol new members. Enrolment of new members would involve alteration of the composition of the society itself and such a power should be exercised by an elected Committee rather than by an administrator or a Committee appointed by the Registrar while the Committee of Management is under supersession. This Court has taken the view, it did, bearing in mind these aspects, though not spelt out in the course of the judgment.

9. Even where the language of Section 30-A of the Karnataka Act empowered a special officer to exercise and perform all the powers and functions of Committee of Management of a Cooperative Society fell for consideration, this Court having expressed that view, we do not think, there is any need to explore the difference in the meaning of the expressions "have power to exercise all or any of the functions of the Committee" in the Act and "exercise all or any of the functions of the Committee" in the Karnataka Act as they are not different and are in substance one and the same and difference in language will assume no importance. What is of significance is that when the Committee of Management of the Cooperative Society commits any default or is negligent in the performance of the duties imposed under the Act, rules and the bye-laws, which is prejudicial to the interest of the society, the same is superseded and an administrator or a Committee is imposed thereon.

10. The duty of such a Committee or an administrator is to set right the default, if any, and to enable the society to carry on its functions as enjoined by law. Thus, the role of an administrator or a Committee appointed by the Registrar while the Committee of Management is under supersession, is, as pointed out by this Court, only to bring on an even keel a ship which was in doldrums. If that is the objective and is borne in mind, the interpretation of these provisions will not be difficult. Thus, we are of the view that this Court in K. Shantharaj's case1997 Indlaw SC 2314 [supra] took the view that an administrator or a special officer in the Karnataka Act is not vested with the power to enrol new members of the Cooperative Society in this context.

11. While reiterating that view in regard to the Kerala Act, we afford further reasons to support the said view and dismiss these appeals, though for reasons different from those expressed by the High Court. However, in the circumstances of the case, there shall be no orders as to costs.

Appeal dismissed

Umesh Shivappa Ambi and Others v Angadi Shekara Basappa and Others

Bench	S. Rajendra Babu, Ms. Justice Sujata V. Manohar
Where Reported	1998 Indlaw SC 1700; (1998) 4 SCC 529; AIR 1999 SC 1566; JT 1998 (5) SC 347; 1998 (9) SLT 23; 1998 (9) Supreme 175
Case Digest	**Subject:** Election; Trusts & Associations **Keywords:** Co-Operative Bank **Summary:** Election - Trusts & Associations - Constitution of India, 1950, art. 226 - Karnataka Cooperative Societies Act, 1959, s. 70 - Interference in election disputes - Jurisdiction of HC - Election for 11 Directors of Respondent 3 Cooperative Bank (Society) was held and result was declared - Respondent No. 1 had also filed his nomination paper which was earlier rejected - HC petition filed thereagainst was dismissed holding that the proper remedy for the respondent No. 1 was to file an election petition u/s. 70 of the Act - On appeal, DB held that the nomination of the respondent No. 1 was wrongly rejected - Hence, instant appeal. Held, the Court will not ordinarily interfere where there is an appropriate or equally efficacious remedy available, particularly in relation to election disputes. In the instant case, u/s. 70(2)(C) of the Act any dispute arising in connection with the election of a President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer or member of Committee of the Society has to be referred to the Registrar by raising a dispute before him. The Registrar is required to decide this in accordance with law. This was, therefore, not a fit case for intervention u/art. 226 of the Constitution. Hence, the impugned judgment is set aside and the order of the Single Judge is restored. Appeal allowed.

Case No : C.A. No. 1572 of 1998 (Arising out of S.L.P. (C) No. 21938 of 1997)

The Order of the Court was as follows:

Leave granted.

1. Election for 11 Directors of Respondent 3 Cooperative Bank (Society) for the years 1997-98 to 1999-2000 was conducted. The election results were declared on 23-9-1997. Since there was no contest, the appellants who were the candidates, were declared elected. The first respondent had also filed his nomination paper which was earlier rejected. Thereafter, the first respondent filed a writ petition before the Karnataka High Court challenging the rejection of his nomination paper.

2. The learned Single Judge dismissed the writ petition holding that the proper remedy for the first respondent was to file an election petition u/s. 70 of the Karnataka Cooperative Societies Act, 1959.

   In appeal, however, the Division Bench has set aside the order of the learned Single Judge and has held that the nomination of the first respondent was wrongly rejected. It has further directed that a fresh calendar of events be published for holding an election to the posts of 11 Directors of the respondent Cooperative Society.

3. It is now well settled that once an election is over, the aggrieved candidate will have to pursue his remedy in accordance with the provisions of law and this (High) Court will not ordinarily interfere with the elections u/art. 226 of the Constitution. in K. K. Shrivastava v. Bhupendra Kumar Jain 1977 Indlaw SC 3471977 Indlaw SC 347. The Court will not ordinarily interfere where there is an appropriate or equally efficacious remedy available, particularly in relation to election disputes.

4. In the present case, u/s. 70(2)(C) of the Karnataka Cooperative Societies Act, 1959 any dispute arising in connection with the election of a President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer or member of Committee of the Society has to be referred to the Registrar by raising a dispute before him. The Registrar is required to decide this in accordance with law.

5. This was, therefore, not a fit case for intervention u/art. 226. Hence, the impugned judgment is set aside and the order of the learned Single Judge is restored. The period of 6 months prescribed in the order of the learned Single Judge for the decision of the Registrar will run from the date of the raising of the dispute before him.

   The appeal is allowed accordingly.

Appeal allowed.

Rajendra Prasad Yadav and Others v State of Madhya Pradesh and Others

Bench	K. Ramaswamy, D.P. Wadhwa
Where Reported	1997 Indlaw SC 3323; (1997) 6 SCC 678; AIR 1997 SC 3723; JT 1997 (6) SC 354; [1997] Supp1 S.C.R. 716
Case Digest	**Subject:** Banking & Finance; Election; Trusts & Associations **Keywords:** Joint Hindu Family, Co-Operative Bank, General Elections, Right To Vote, Co-Operative Society, Quo Warranto, Electoral College **Summary:** Trusts & Associations - Elections - Madhya Pradesh Co-operative Societies Act, 1960, ss. 49(8)(ii), 48 B(1), 49(1)(6)(7 A)(7 AA) and 7-A(i)(ii) - Constitution of India, 1950, Part IX (Brought in Constitution (Sixty-third Amendment) Act, 1992 - Three-tier system of co-operative societies in State of MP with village level Primary co-operative credit societies, district co-operative central banks, and Apex Bank - Formation, registration, membership and election - Registrar, Co-operative Societies - Members, officers, committee (to which management of society is entrusted), officers, representative of societies - Final authority of society vests in general body of members - Conduct of periodical elections - District Co-operative Central Bank(Central Bank) had sent their 45 delegates to MP State Co-operative Bank Ltd. (Apex Bank) - First meeting of Board of Directors of Apex Bank was held and from that date its term of office of three years started running - President and Vice-President, and other office bearers from Board of Directors came to be elected, resulting in constitution of Board of Directors and Managing Committee of Apex Bank - Term of representatives of Central Bank (Board of Directors) and of their office bearers was co-terminus with term of managing committee of Central Bank - Term was later amended as five years from three years as per bye-laws 41(1) - By resolution, Apex Bank applied to Registrar to hold elections - Registrar not conducted election, officers and Managing Committee filed petition in High Court which directed that elections be conducted in accordance with procedure prescribed under law - Ordinance passed by State Govt. terminating term of committees with directions to Registrar to take over management of all primary societies, central banks and of Apex Bank - As a consequence, committees of all societies were superseded - Another writ petition filed - High Court declared Ordinance as unconstitutional being ultra vires legislative power - Status quo ante to be maintained till elections are held, in accordance with law - Ordinance was enacted in Act - Charge was again taken over by Registrar - (A) Whether Registrar was justified u/s. 49(8)(ii) of Act

	to assume charge of Apex Bank? - Provisions of Act, bye laws of Apex Bank contentions perused - Conjoint reading - Managing Committee shall ensure passing of a resolution by Board of Directors requesting Registrar to conduct elections to Board of Directors within specified period as per Act, rules or bye-laws - Held, u/ss. (7 A) or (7 AA) of s. 49, within term or extended term, Managing Committee should pass a resolution within 90 days before expiry of term of Board of Directors and request Registrar, Co-operative Societies to conduct elections to posts of President and two Vice-Presidents of Board of Directors and immediately thereafter Board of Directors would constitute managing committee as elected by Board of Directors - If Registrar fails to do so, managing committee shall also ensure that Board of Directors appoints an election officer to conduct elections, as per bye-laws, to posts of President, two Vice-Presidents and members of Managing Committee immediately thereafter - (B) Whether due to failure to conduct elections of President, two Vice-Presidents from among elected Board of Directors and continuation of managing committee of Apex Bank, on expiry of period of 5 years from date of election of board, Board of Directors, President and two Vice-Presidents and members of managing committee shall be deemed to have vacated their office? - Court observed and analysed three-tier system of election which is inter-linked and is inseparable - For completion of electoral process of Apex Bank, election to primary societies and in turn election to managing committee of each of District Central Banks and election of one representative from each of 45 central banks as members of Apex Bank, as two steps are condition precedent and is necessary - Until then, constitution of Board of Directors and managing committee of Apex Bank cannot be done - In view of unbreakable inter-link, Board cannot be saddled with liability of statutory vacation of office on expiry of term, unless Registrar had elections conducted to central banks or Apex Co-operative societies, as case may be - Preceding thereto, election to managing committee of primary societies is mandatory - Held, Registrar was unjustified to assume charge of Board of Director and managing committee of Apex Bank - True legal position declared - Appeal dismissed.

Case No : Appeal (civil) 4318 of 1997

1. This appeal by special leave arises from the judgment of the Division Bench of the Madhya Pradesh High Court, Jabalpur Bench passed on January 22, 1997 in Writ Petition No. 5143/96.

2. S. 2(a-i) of the Madhya Pradesh Co-operative Societies Act, 1960 (Act 17 of 1961) (for short, 'the Act') defines "Apex Society" to mean a society whose principal object is to provide facilities for the operation of other societies affiliated to it and whose area of operation extends to the whole State of Madhya Pradesh. S. 2(c-i) defines 'Central Society' to mean a Co-operative Land Development Bank or any other society whose area of operation is confined to a part to the State and which has as its principal object the promotion of the principal object and the provision of facilities for the operation of same type of societies and for other societies affiliated to it and not less than five members of which are societies. S. 2(c-ii) defines 'Central Cooperative Bank'

to mean a resource society registered or deemed to be registered under this Act. S. 2(d) defines 'Committee' to mean the Board of a management by whatever name called constituted u/s. 48. S. 2(j) defines 'Farming Society" to mean a society formed with the object of promoting development of land and better methods of cultivation, and includes a better farming society, tenant farming society, collective farming society, joint farming society, irrigation society and a crop protection society.

3. S. 2(r) defines 'Member' to mean a person joining in the application for the registration of a society or a person admitted to membership after registration in accordance with this Act, the rules and the bye-laws applicable to such society and includes the State Government when it subscribes to the share capital of a society. S. 2(t-i) defines 'Officer' to mean a person elected or appointed by a society according to its bye-laws to any office of such society and includes Chairman, Vice- Chairman, President, Vice-President, Managing Director etc., Member of the Committee and any other person elected or appointed under this Act, the rules or the bye-laws to give directions in regard to the business of such society. S. 2(u-i) defines 'Primary Society" to mean a society which is neither an Apex Society nor a Central Society. S. 2(x-i) defines 'Representative' to mean a member of the society to represent the society in other societies. S. 2(z- i) (aa) defines 'State Co-operative Bank' to mean the Madhya Pradesh State Cooperative Bank, Limited.

4. S. 4 of the Act obligates the registration of a society and envisages that subject to the provisions of this Act, a society which has as its objects the promotion of the economic interest of its members or their general welfare in accordance with co-operative principles or a society established with the object of facilitating the operations of such a society, may be registered under this Act. The registration has been envisaged u/s. 9 and the societies have been classified into 11 categories in sub-s. (1) of S. 10. The details of which are not material for the purpose of this case. Sub-section (1-a) of S. 10 further empowers the Registrar to classify the societies enumerated in cls. (i) to (xi) of sub-section (1-a) which again makes three heads, namely: (a) Apex Society; (b) Central Society; and (c) Primary Society.

14. Admittedly, three-tier system of Co-operative Societies exists in the State of Madhya Pradesh with the village level Primary Co-operative Credit Societies (for short "Primary Societies"); the District Co- operative Central Banks (for short, the 'Central Banks'); and the Apex Bank. The term of all the Societies, Central Banks and Apex Bank was extended for period ranging from one year to the maximum of 1-1/2 years, by operation of the amendment brought to the Madhya Pradesh Co-operative Societies Act, 1960 (for short, "the Act"), till April 30, 1990. By Resolution dated April 26, 1990, the Apex Bank applied to the Registrar to hold elections. Since that was not being done, Officers and Managing Committees filed M.P. No. 908/90 in the High Court which directed that elections be conducted in accordance with the procedure prescribed under the law. On the even date, the Ordinance No. 2 of 1990 replaced by Act (14 of 1990) was passed by the State Legislature terminating the term of the Committees; the Registrar was directed to take over management of all the Primary Societies, Central Banks and of the Apex Bank.

15. As a consequence, the Committees of all the Societies were superseded by proceedings dated April 26, 1990. Consequently, they again filed writ petition bearing M.P. No. 1111/90. The High Court by its judgment date June 2 1, 1993 reported as A.P. Sastri & Others v. State of Madhya

Pradesh, (1993) 2 M.P.J.R. 33, declared the amendment Act (14 of 1990) amending S. 49(8) of the Madhya Pradesh Co-operative Societies Act, 1960 (for short, 'the Act') as ultra vires the legislative power. The Division Bench declared as under:

"Indeed the factual situation is that the petitioner Societies had passed resolution and requested the respondent Registrar to appoint the Returning Officer for holding new elections. In a situation like this, the real question is whether the Registrar by not performing his obligations under the Act *and not holding election before the expiry of the term of the existing committee, can be permitted to be benefited by his own default. If the matter is considered in the context of default of the Registrar on the Returning Officer appointed by him, and the decision is required to be taken in the context of democratic destiny and the rights of the members to manage the Society, the provision would appear, prima facie, unreasonable and arbitrary".*

27. However, it is pertinent to note that the Co-operative set up in the state of M.P. is three tier set up i.e. Primary Society at the village level, Central Society at the district level and apex Society at the state level. The representatives elected by the Primary Society from the electoral college for the central Societies along with some other representatives and the representatives elected by the central Societies from electoral college for apex Societies.

"Thus, in view of the aforesaid set up until and unless the elections of representatives at the Primary Society level are not complete the electoral college for the central Society is not complete and therefore elections of the central Society level can only be held after the elections for representatives of the Primary Society I which are complete. Similar is the position as regard the apex Society i.e. elections in apex Society cannot take place until unless the elections of representatives at the central Society level is not complete, and the electoral college so formed is not complete."

35. By operation of sub-s. (8)(ii) if the members of the Committee having continued to hold office by operation of the first proviso to sub-s. (8)(i), fails to appoint a returning officer under the second proviso and, if the committee thereby, commits default to hold elections and does not hand over the charge, on expiry of the term under sub-section (7-A) or extended term under sub-section (7-AA) to the Registrar or any officer authorised by him on his behalf, they all shall be deemed to have vacated their seats and the Registrar shall assume charge and hold elections as early as possible.

"Thus the combined reading of the sections envisages that elections to the Managing Committee shall be held by the Registrar, at the request by the Committee, before expiry of the term of the outgoing committee within the time schedule prescribed therein. If the Registrar fails to perform the said duty, the Managing Committee, while remaining in office, is enjoined to have the elections conducted within 180 days or at least not less than 90 days before the expiry of the term of the Managing Committee. But if the committee commits default in conducting the elections, the members of the committee are deemed to have vacated their seats. Thereby, by statutory operation, no Managing committee remains in office. The Registrar, therefore, should assume charge of the Society. On assumption thereof, while conducting the business of the Society simultaneously he should hold elections as expeditiously as possible so that the Managing Committee elected on democratic principle immediately assumes office and conducts the business of the Society in the manner laid down under the Act*, Rules and the bye-laws of the Society and achieves the object of the Society and realises the collective aspiration of the members of the Society."*

However, they shall be entitled to remain in office until their successor of the Board of Directors, the President and two Vice-Presidents and Managing Commit-tee respectively assume the offices. The relevant provisions of the Act extracted hereinbefore and the byelaws of the Apex Bank should be read together. the Act and the rules made there under and the byelaws of the society constitute an integral scheme for the purpose of management of the society registered or deemed to be registered under the Act. It is settled principle of interpretation that all the provisions should be harmoniously interpreted to give effect to all the provisions and no part thereof rendered surplus age or otiose.

72. It would, therefore, be clear that the Board of Directors headed by the President and two Vice-Presidents elected by the Board of Directors itself has statutory duty to ensure conduct of elections to the Committee of the Board of Directors (Managing Committee) and the management of the Apex Bank. The Managing Committee again is headed by the President of the Apex Bank contemplated in bye-law 47(3), for the purpose of internal management on behalf of the Board of Directors. The ultimate power and responsibility in managing the affairs of the Apex Bank by the Committee of the Apex Bank is that of the Board of Directors. So the Managing Committee discharges the functions and performs the duties for and on behalf of the Board of Directors.

75. It would, therefore, be mandatory that by operation of Ss. 48 and 49, elections to the Managing Committee of the Central Banks or Apex Co- operative Societies as per their bye-laws, as representative of Central Bank or President of the Apex Co-operative Societies to represent the Apex Bank who are called, under the bye-laws of the Apex Bank, Directors, shall be necessary. The term of the representatives is co-terminus with the term of the Managing Committee of the Central Bank or the Apex Co-operative Societies. They shall, however, be entitled to remain in office along with other nominated members of the Board of Directors of the Apex Bank under the bye-laws of the Apex Bank until the respective successors assume office. the constitution of the Board of Directors and also constitution of the Board of Directors and also constitution of the Managing Committee of the Apex Bank is not complete without the election of the representatives by the concerned Central Banks or President of Apex Cooperative Societies.

76. The President and Vice-President of the Apex Bank cannot be elected. The Managing Committee cannot be constituted without electing the members of the Managing Committee from among the Board of Directors, as per the bye- laws. In view of the unbreakable inter-link, the Board cannot be saddled with the liability of statutory vacation of the office on expiry of the term, unless the Registrar had the elections conducted to the Central Banks or Apex Co-operative Societies, as the case may be. Preceding thereto, the election to the Managing Committee of Primary Societies is mandatory.

100. If the apex society commits default in not ensuring the timely conduct of elections of the committees of the member central societies as per the Act and the byelaws it can be proceeded against u/s. 53 of the Act which provides that if in the opinion of the Registrar, the committee of any society is negligent on the performance of its duties etc. the committee can be removed by Registrar after following the procedure prescribed. That is however not the case here. Here the Action of the Registrar which has been challenged is u/cl. (ii) of sub-s. (8) of S. 49 of the Act. Cl. (i) of sub-s. (8) which puts obligations on the outgoing committee of the society to hold elections prior to the expiration of its term would apply, in the case of the apex society only to the election of President and two Vice-Presidents as per its byelaws.

101. Provisions of the Act apply to all cooperative societies whether primary, central or apex and each society may have different byelaws. It is not necessary that all the provisions of the Act would apply to all the societies whatever their nature. For example under Selection 48-B every committee of society shall at the time of election of Chairman or Vice- Chairman also elect two representatives who shall represent it in other society and representatives so elected shall not be withdrawn by the committee till the next election of the committee. This provision cannot have any application to the apex body which, as noted above, has not to send any representative to any of the societies. This provision may be applicable to primary and central societies.

102. Since the Board failed to take steps to hold elections of the President and two Vice-Presidents in terms of sub-s. (8) of S. 49 of the Act, the impugned action of the Registrar would therefore appear to be right and in accordance with law.

103. The respondents in their counter affidavit have taken a stand that elections of primary and district bodies have taken place and now election of the board of the apex body would be held by April 11, 97, meaning, perhaps, thereby that the election of the new board is dependent on the elections first to be held of the primary society and then of the central society. This interpretation to my mind is not correct and the Court is not bound by the interpretation put by any of the parties. The parties can be under some misconception or some bona fide mistake.

104. If the election to the Board of the apex body is to be dependent on the election first to be held by the primary and then by the district bodies, possibly with different byelaws, it can be anybody's guess as to when the election to the Board of the apex body would be held. There are numerous primary bodies and also district bodies. There can be intervention by the court in the election process of any of the societies and as a matter of fact it has been mentioned in the counter affidavit that the courts have stayed the elections of primary bodies of three places. All this is apart from the fact that the byelaws of the apex body do not contemplate any election to the Board by the members of the apex body.

106. In any case since it is stated that the whole process of election to primary and central societies is complete and that election to the Board of the apex body was to be held on April 11, 1997, the writ petition filed by the appellants, therefore becomes in fructuous and it would be futile to issue any writ at this stage. The appeal is, therefore, dismissed. No costs.

Appeal dismissed.

K.Shantharaj And Another v M.L. Nagaraj And Others

Bench	K. Ramaswamy, D.P. Wadhwa
Where Reported	1997 Indlaw SC 2314; (1997) 6 SCC 37; AIR 1997 SC 2925; JT 1997 (5) SC 680; 1997(4) SCALE 379; [1997] Supp1 S.C.R. 389; 1997 (6) Supreme 204; 1997 (2) UJ 121
Case Digest	**Subject:** Trusts & Associations; Agriculture & Agri. Products **Keywords:** Co-operative society elections, Enroll of members, Conduct of elections **Summary:** Election - Karnataka Cooperative Societies Act, 1959 - Co-operative society elections - Enroll of members - Conduct of elections - Legality - Committee was superseded by Administrator who was appointed by Govt. to manage affairs of the Society - During period of administration, Administrator had enrolled new members and given schedule of programme for conducting elections to Committee - Respondents challenged order of appointment of Administrator before HC - Single Judge, set aside order of appointment and held that Administrator had no power to enroll new members, but he could conduct elections to Committee of Society as per schedule of programme - Aggrieved petitioner preferred appeal before DB, which was confirmed the order of Single Judge - Hence, instant appeal - Whether HC was justified in passing the impugned order - Held, power of Administration given under the statute to conduct elections should be confined within parameters set under the relevant provisions of the Act - DB had minutely and carefully gone into all questions and agreed with Single Judge that Administrator had no power to enroll new members, but he had the powers to organise election process in accordance with provisions of the Act, rules and bye-laws of society - HC had not committed any error and justified in passing the impugned order - Appeal dismissed.

Case No : Civil Appeal Nos. 4271-73 of 1997

The Order of the Court was as follows :.

2. The indisputable facts are that the committee was superseded by the Administrator who has been appointed by the Government to manage the affairs of the Society, pending further action. During the period of the administration, the Administrator had enrolled new members and given schedule of programme for conducting the elections to the Committee. The respondents challenged the order of appointment of the Administrator. The learned single Judge, while setting aside the order of appointment, held that the Administrator has no power to enroll new members; but he could conduct elections to the Committee of the Society as per the schedule of the programme. That was confirmed by the Division Bench.

It would be clear from the language of the se provisions that the Administrator or special officer, subject to control of any of the functions of the society as per law.

3. He should conduct elections as is enjoned the reunder. In Other words, he is to conduct election with the members as on the roles and by necessary implication, he is not vested with power to enrol new members of the Society.

4. The learned single Judge in his judgment has held thus: The new members enrolled by the Administrator is without authority of l aw and in utter disregard to the Bye-laws of the society and they have no right to participate in the election. Since the order of supersession is declared invalid, the election has to be conducted from the stag e it was intercepted from the stage it was intercepted at the earliest opportunity. The members who are enrolled during the pendency of the writ petition hall not participate in the election and the Administrator shall notify the election with fresh calender of events and hold the election with the members who were the n in existence when W.P. No. 16378/92 was filed, The General Body or the Board of Directors elected by the General Body shall consider the application of the new members enrolled by the Administrator keeping in view the criteria or the eligibility contemplated under Bye- law 15 and dispose of their law aft erdue consideration.

5. The Division Bench after elaborate consideration has agreed with the above conclusion reached by the learned single Judge and held thus:

"Accordingly, he is not entitled to enroll new members. But it has to be noted that the wording of S. 33(2) of the Kerala Co- operative Societies Act is slightly different from the wording of S. 30 of the Act. In the Kerala Act, the Administrator of the functions of the committee. Moreover, as stated earlier, the difference in the authority vested in an Administrator and a Special Officer, as is made in Karnataka Act is not considered in the Kerala decision. the difference in the authority vested in an Administrator and a Special officer in the Karnataka Act, is very significant which is absent in the Kerala Act. In that view of the matter, the dictum laid down by the Division bench of Kerala High Court, cannot have any application while determining the comparative authority of an administrator and Special officer appointed under S. 30 and 30A of the Karnataka Act respectively.In view of what is stated above, we confirm the decision of the learned single Judge and dismiss the se appeals. the direction regarding election given by the earned single judge shall be carried out by the concerned respondent within two months from the date of receipt of a copy of this Judgement."

6. Shri Santosh Hedge, learned senior counsel, contends that since the Administrator has power to conduct elections, by necessary implication, he has power to update the electoral lists by either enrolling the new members or substituting the legal representatives of the members in accordance with the bye-laws; therefore , he has power to enroll the members. We find that the re is no force in the contention. The power of Administration given under the statute to conduct elections should be confined within the parameters set under the relevant provisions of the Act, Rules and Bye-laws. The division Bench has minutely and carefully gone into all the questions and agreed with the learned single judge that the Administrator has no power to enroll new members; but he has the powers to organise election process in accordance with the provisions of the Act, the rules and the bye-laws of the society. In that view of the matter, we think that the High Court has not committed any error of law warranting interference.

7. The appeal is accordingly dismissed. However, we confirm the direction issued by the learned single Judge for enrollment of new members by the board or the Board of Directors, as the case may be, in accordance with the bye- law No.15 and dispose the m of No costs.

Appeal dismissed.

Institution of A. P. Lokayukta/UPA-Lokayukta, A. P. and Others v T. Rama Subba Reddy and Another

Bench	S.B. Majmudar, N.P. Singh
Where Reported	1996 Indlaw SC 2028; (1997) 9 SCC 42; 1997 (1) AD(SC) 213; JT 1996 (11) SC 266; 1996(9) SCALE 357; 1997 (2) SLJ 1; [1996] Supp10 S.C.R. 49
Case Digest	**Subject:** Constitution **Keywords:** Road Transport Corporation Act, 1950, Andhra Pradesh Cooperative Societies Act, 1964, State Financial Corporations Act, 1951 **Summary:** Practice & Procedure - Andhra Pradesh Lokayukta Act, 1983, ss. 2(k) - Andhra Pradesh Cooperative Societies Act, 1964 - Jurisdiction of Lokayukta - Public Servant - Complaints against writ petitioners were lodged before Lokayukta and objections by writ petitioners on jurisdiction of Lokayukta was rejected by Lokayukta by various orders - Hence, writ petitioners approached HC vide 5 writ petitions, and DB of HC allowed said writ petitions holding that Lokayukta had no jurisdiction to entertain complaints against writ petitioners - Hence, instant appeals - Whether Lokayukta/Upa-Lokayukta functioning under 1983 Act had jurisdiction to entertain complaints regarding impugned actions of writ petitioners. Held, writ petitioners were either working in State Road Transport Corporation or in Co-operative Societies registered under 1964 Act. They could not be said to be persons appointed to a public service or post in connection with the affairs of State and they were not full fledged Govt. servants. Hence, attempt on part of appellants to attract jurisdiction of Lokayukta against writ petitioners was rightly found to be unsustainable by HC. DB of HC was right in taking view that actions of all respondent-writ petitioners could not be looked into by Lokayukta under the relevant provisions of 1983 Act and were rightly held to be outside the purview and jurisdiction of Lokayukta functioning under 1983 Act. Hence, appeals are dismissed. Appeals disposed of. Ratio - Lokayukta or Upa-Lokayukta, could investigate any action of a public servant who falls within the scope and ambit of definition of 'public servant' as found in s. 2(k) of 1983 Act.

Case No : C.As. Nos. 2020-2024 of 1986 (From the Judgment and Order Dt. 18 February 1986 of the Andhra Pradesh High Court in W.Ps. Nos. 16716 of 1984, 1883, 4562, 10217 and 12166 of 1985)

The Judgment was delivered by : S. B. Majmudar, J.

1. These five appeals arise on certificates of fitness granted by the High Court of Andhra Pradesh at Hyderabad under Article 100(1) of the Constitution of India. They bring in challenge on behalf of the Institution of Andhra Pradesh Lokayukta/Upa-Lokayukta and the State of Andhra Pradesh respectively, a common judgment rendered by the said High Court in five writ petitions moved by the writ petitioners who are contesting respondents in these appeals. A common question of jurisdiction of the Lokayukta/Upa- Lokayukta functioning under the Andhra Pradesh Lokayukta Act, 1983 (hereinafter referred to as 'the Act') to entertain complaints regarding the impugned actions of the writ petitioners falls for consideration in these appeals.

2. For appreciating the aforesaid question the background facts leading to these proceedings deserve to be noted. Civil Appeal No.2020 of 1986 moved by Lokayukta and Upa- Lokayukta, Andhra Pradesh arises out of the decision of a Division Bench of the High Court in Writ Petition No.16716 of 1984. The original writ petitioner who is the contesting respondent in this appeal was at the relevant time Chief Executive Officer of Andhra Pradesh State Cooperative Union Limited duty registered under the provisions of the Andhra pradesh Cooperative Societies Act, 1964. A complaint was filed against his functioning as Chief Executive Officer by one A. Pratap Reddy. It was received by the Lokayukta functioning under the Act on 6th March 1984. The contesting writ petitioner's objection before the Lokayukta that he had no jurisdiction to entertain the complaint was rejected by order dated 17th November 1984. The said order was brought in challenge by the respondent-writ petitioner before the High Court in the aforesaid writ petition, A Division Bench of the High Court took the view that the Lokayukta had no jurisdiction to entertain the said complaint. Accordingly the writ petition was allowed and proceedings before the Lokayukta were quashed giving rise to the present appeal.

7. That the aforesaid common controversy in the present cases requires to be resolved in the light of the relevant provisions of the Act. The Act, as its Preamble shows, was enacted to make provision for the appointment and functions of Lokayukta and Upa-Lokayukta for investigation of Administrative action taken by or on behalf of the Government of Andhra Pradesh or certain Local and Public Authorities in the State of Andhra Pradesh (including any omission and commission in connection with or arising out of such potion) in certain cases and for matters connected therewith.

19. In our view the aforesaid rival contentions canvassed by learned counsel for the contesting parties regarding the applicability of Section 2(k)(v)(2) would have required closer scrutiny by us but for the fact that the concerned respondent-writ petitioners in these appeals would get out of the sweep of Section 2(k)(v)(2) even assuming that they were corporations covered by the second part of the said provision and that it was not necessary for the corporation in which they worked to have been established under a State Act and could be established under a Central Act. Therefore, on the facts of the present case it is not necessary for us to decide the question whether a public servant working in any corporation established by the State not under a State Act but under a Central Act but which is owned and controlled wholly or partially by the State Government would satisfy the requirements of the definition Section 2(k)(v)(2) or not. We leave that question open for decision in an appropriate case. We may note that learned Advocate General appearing for the State of Andhra Pradesh had conceded before the High Court that as the Andhra Pradesh State Road Transport Corporation is established by the State of Andhra Pradesh not under State Act but under the Central Act, namely, the Corporations Act, Section 2(k)(v)(2) would not cover

in its sweep such a corporation. Even leaving aside the question whether such a concession on a pure question of law could bind the appellant-State, as we will presently see this question is not required to be resolved in the present proceedings.

21. Before parting with these matters, it may be necessary to note that the legislative intent behind the enactment is to see that the public servants covered by the sweep of the Act should be answerable for their actions as such to the Lokayukta who is to be a Judge or a retired Chief Justice of the High Court and in appropriate cases to the Upa-Lokayukta who is a District Judge of Grade-I as recommended by the Chief Justice of the High Court, so that these statutory authorities work as real ombudsmen for ensuring that people's faith in the working of these public servants is not shaken. These statutory authorities are meant to catre to the need of public at large with a view to seeing that public confidence in the working of public bodies remains in tact. When such authorities consist of high judicial dignitaries it would be abvious that such authorities should be armed with appropriate powers and sanction so that their orders and opinions do not become mere paper directions. The decisions of Lokayukta and Upa-Lokayukta, therefore, must be capable of being fully implemented.

22. These authorities should not be reduced to mere paper tigers but must be armed with proper teeth and claws so that the efforts put in by them are not wasted and their reports are not shelved by the concerned disciplinary authorities. When we turn to Section 12, sub-section (3) of the Act, we find that once report is forwarded by the Lokayukta or Upa-lokayukta recommending the imposition of penalty of removal from the office of a public servant, all that is provided is that it should be lawful for the Government without any further inquiry to take action on the basis of the said recommendation for the removal of such servant from his office and for making him ineligible for being elected to any office etc. Even if it may be lawful for the Government to act on such recommendation, it is nowhere provided that the Government will be bound to comply with the recommendation of the Lokayukta or Upa-lokayukta. The question may arise in a properly instituted public interest litigation as to whether the provision of Section 12(2) of the Act implies a power coupled with duty which can be enforced by writ of mandamus by the High Court or by writ of any other competent court but apart from such litigations and uncertainty underlying the results thereof, it would be more appropriate for the legislature itself to make a clear provision for due compliance with the report of Lokayukta or Up-lokayukta system does not get eroded and these institutions can effectively justify their creation under the statute.

23. As a result of the aforesaid discussion, it must be held that all the original writ petitioner whose writ petitions same to be allowed by the High Court were rightly held to be outside the purview and jurisdiction of the Lokayukta functioning under the Act. These appeals are liable to fall and are accordingly dismissed. In the facts and circumstances of the case, however, there will be no order as to costs in all these appeals.

Appeal dismissed

Venkataswamappa v Special Deputy Commissioner (Revenue)

Bench	K. Ramaswamy, K. Venkataswami
Where Reported	1996 Indlaw SC 2371; (1997) 9 SCC 128; 1996 (7) AD(SC) 254; AIR 1997 SC 503; 1997 (1) AWC 2118; 1996 (4) CLT 213; JT 1996 (10) SC 262; 1996(6) SCALE 681; [1996] Supp5 S.C.R. 330; 1996 (7) Supreme 584
Case Digest	**Subject:** Land & Property; Practice & Procedure **Keywords:** Land Acquisition **Summary:** Land & Property - Indian Limitation Act, 1908 - Land Acquisition Act, 1894, s. 4 - Land acquired for providing houses to members of co-operative Society - Writ petition filed against notification for acquisition of land filed - Proceedings remaining pending - (A) Whether publication of acquisition in newspaper coming before publication in Gazette vitiates notification? - (B) Whether time taken from date of filing of writ petitions till date of receipt of order of Supreme Court to be excluded? - Held, (A) publication of notification in one of newspapers before published in Gazette is only an irregularity in procedural steps required to be taken - It does not vitiate validity of notification published in Gazette - (C) Entire time taken must be excluded - Appeals dismissed.

Case No : Civil Appeal Nos. 1006-25 of 1990

The Order of the Court was as follows :

2. The appellants have challenged the validity of the notification published under Section 4(1) of the Land Acquisition Act of 1894, (for short, "the Act") acquiring 80 acres of land in favour of the second respondent - N.T.I. House Building Cooperative Society. Notification under Section 4(1) was published on February 23, 1989. Enquiry under Section 5-A was conducted. The appellant participated in the enquiry. Before the declaration could be taken up, the appellants filed the writ petition in March 1989 challenging the validity of the notification. Before the learned single Judge, the appellants had taken five grounds of objections as enumerated in para 2 of the judgment of the learned single Judge. He dealt with each of the points separately and negatived the same. The Division Bench summarily dismissed the appeal. Thus, these appeals by special leave.

8. As stated earlier, it was only an irregularity in the procedural steps to be taken under the Act. It is to be seen that the object of the publication of Section 4(1) is to put a notice to the owners that the land is proposed to be acquired for a public purpose and that they are prevented to deal with the lands in any manner detrimental to the public purpose. Obviously, therefore, the publication in the newspaper would put the owners on notice of the proposed acquisition even prior to the Actual publication. Admittedly, in one of the newspapers notification was published after the

publication in the Gazette, namely, February 1, 1989. The substance was also published, as indicated in the proceedings of the Land Acquisition Officer conducted under Section 5-A, on March 20, 1989, the last of the dates was taken for the purpose of notification under Section 4(1). In that view we hold that there was no infrAction of the compliance of the requirement under Section 4(1) of the Act.

9. It is then contended that since the limitation period of one year from the date of the publication under Section 4(1) had elapsed and the stay granted by the High Court or this Court was only of dispossession of the appellants from the lands, the notification under Section 4(1) now stands lapsed by Explanation 1 to proviso to Section 6(1). We find no force in the contention. It is seen that the writ petitions came to be filed in March 1989 in the same month in which the substance of the publication of the notification under Section 4(1) was made and the proceedings were pending before the learned single judge, the Division Bench and in this Court.

10. Under these circumstances, the entire time taken from the date of the filing of the writ petitions till the date of the receipt of the order of this Court stands excluded and the limitation of one year would start thereafter only. Accordingly, we hold that the notification under Section 4(1) has not been +lapsed. It is now on record that the appellants have already filed their objections; enquiry under Section 5-A was conducted and report obviously must have been furnished to the Government for taking further steps in the matter. It would, therefore, be necessary for the Government to consider the objections and have the declaration under Section 6 published, if the Government is of the opinion that the public purpose still subsists.

11. The appeals are accordingly dismissed with the above observations. The State Government is directed to publish the declaration, if the objections are overruled, within four months from the date of the receipt of this order. No costs.

Appeal dismissed

State Bank of Patiala and Others v S.K.Sharma

Bench	B.P. Jeevan Reddy, K.S. Paripoornan
Where Reported	1996 Indlaw SC 693; (1996) 3 SCC 364; (1996) SCC (L&S) 717; 1996 (3) AD(SC) 349; AIR 1996 SC 1669; 1996 (2) CLR 29; 1996 (132) CTR 273; JT 1996 (3) SC 722; 1996 (2) LLJ 296; 1996 (1) LLN 819; [1996] 3 S.C.R. 972; 1996 (3) Supreme 511
Case Digest	**Subject:** Service **Keywords:** Andhra Pradesh Cooperative Societies Act, 1964 **Summary:** Constitution of India, 1950, arts. 311 and 14 - Code of Civil Procedure, 1908, s. 99 - Code of Criminal Procedure, 1974, s. 465 - State Bank of India(Subsidiary Banks) Act, 1959, s. 63 - State Bank of Patiala (Officers) Service Regulations, 1979, Regn. 68(x)(b)(iii) - Natural justice - Disciplinary enquiry - Temporary misappropriation by bank officer - Six witnesses were examined and recorded - Other bank official also examined - Charges found established by enquiry officer in spite of non-examination of complainant - Held, finding by High Court that it is a case of no evidence as complainant was not examined - Not proper - No objection raised regarding substantial compliance with rule - Cannot be said that he had no fair hearing or enquiry.

Case No : Civil Appeal No. 5129 of 1996

The Judgment was delivered by: B. P. Jeevan Reddy, J.

Leave granted. Heard counsel for the parties.

1. This appeal preferred against the judgment and decree of the Punjab and Haryana High Court dismissing the second appeal filed by the appellant raises certain basic questions concerning natural Justice in the context of disciplinary proceedings.

5. At the conclusion of the enquiry, a report was submitted by the enquiry officer holding both the charges established. The competent authority accepted the report and ordered the removal of the respondent from the service. An appeal and a review submitted by the respondent were dismissed. The respondent thereupon instituted a suit in the court of learned Sub-Judge, IInd Class, Bhatinda for a declaration that the order of removal is void and illegal and for a declaration that he continues to be in service with all consequential benefits. The Trial Court rejected all the grounds urged by the respondent in support of his case except one, viz., that "the list of witnesses and list of documents were not supplied along with charge-sheet and then the same were not supplied by the presenting officer during the course of enquiry". On the only ground that "this argument of the learned, counsel for the plaintiff was not meted out by the learned counsel for the defendants in, his written arguments", the Trial Court held the allegation established. It found that the said

failure to supply is violative of Regulation 68(X)(b)(iii) of the State Bank of Patiala (Officers') Service Regulations, 1979 and on that basis, decreed the suit. On appeal, the judgment and the decree of the Trial Court was affirmed. The Appellate Court found the following facts: during the course of enquiry, the presenting officer filed a provisional list of documents/ witnesses (P-2) on June 2,1987. The list contained nine documents including the statements of Kaur Singh, Patwari, and Balwant Singh, complainant. The said documents were marked as P-3 to P-11. Though a copy of the list of documents/statements was supplied to the respondent- plaintiff, copies of the documents P-3 to P-11 were not supplied to him.

6. He was however, advised , examine and take notes of the said documents/ statements. This opportunity was given only half an hour before the commencement of the enquiry proceedings. The Appellate Court found that in the above circumstances, there was a clear violation of Regulation 68 which has prejudicially affected the respondent's defence. The second appeal filed by the Bank was dismissed by a learned single Judge of the High Court affirming the said finding. The learned Judge in fact assigned one more ground in support of the respondent's case, viz., that inasmuch as Balwant Singh was not examined, it is a case of no evidence'. Before entering upon the discussion of issues arising herein, it is well to reiterate the well-accepted proposition that the scope of judicial review in these matters is the same whether it is a writ petition filed u/ art. 226 of the Constitution of India or a suit filed in the civil court.

In other words the test is: all things taken together whether the delinquent officer/employee had or did not have a fair hearing. We may clarify that which provision falls in which of the aforesaid categories is a matter to he decided in each case having regard to the nature and character of the relevant provision.

13. It would be appropriate to pause here and clarify a doubt which one may entertain with respect to the principles aforestated. The several procedural provisions governing the disciplinary enquiries whether provided by rules made under the proviso to Art. 309 of the Constitution under regulations made by statutory bodies in exercise of the power conferred by a statute or for that matter, by way of a statute] are nothing but elaboration of the principles of natural justice and their several facets. It is a case of codification of the several facets of rule of audi alteram partem or the rule against bias. One may ask, if a decision arrived at in violation of principles of natural justice is voids how come a decision arrived at in violation of rules regulations/statutory provisions incorporating the said rules can be said to be not void in certain situations. It is this doubt which needs a clarification - which in turn calls for a discussion of the question whether a decision arrived at in violation of any and every facet of principles of natural Justice is void.

It is in this context, it was observed that it is not open to an authority which has not given a notice or hearing to the affected person to say that even if it had given such an opportunity the affected person had nothing worthwhile to say or that the result would not have been different even if such a notice or hearing is given. Of course no definite opinion was expressed on this aspect in Ridge v.Baldwin, as pointed out by the Privy Council in Maradana Mosque Trustees v. Mahmud (1967 (1) A.C.13 at 24). enquiry, The record of enquiry shall thereafter be considered by the president or the deputy president who was entitled to cause such further enquiry as he may think appropriate and then make his final decision. If the decision was to dismiss the employee, the decision was to be conveyed by the head of the department to the employee who was given a right of appeal to the Establishments Committee.

In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/ employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudicate, including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision g expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity inspite of the delinquent officer/employee asking for it. The prejudice is self- evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice - or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action the Court or the Tribunal should make a distinction between a total violation of natural justice [rule of audi alteram] and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between no opportunity" and no adequate opportunity, i.e., between "no notice"/"no hearing" "no fair hearing".

While applying the rule of audi alteram partem [the primary principle of natural justice] the Court/ Tribunal/Authority must always bear in mind the ultimate and over-riding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

There may be situations where the interests of state or public interest may call for a curtailing of the rule of audi alteram partem. . In such situations, the Court may have to balance public/ State interest with the requirement of natural justice and arrive at an appropriate decision.

Now, in which of the above principles does the violation of sub-cl. (iii) concerned herein fall? In our opinion, it falls under Principles No.3 and 4(a) mentioned above. Though the copies of the statements of two witnesses [Kaur Singh, Patwari and Balwant Singh] were not furnished, the respondent was permitted to peruse them and take notes therefrom more than three days prior to their examination.

Of the two witnesses, Balwant Singh was not examined and only Kaur Singh was examined. The respondent did not raise any objection during the enquiry that the non-furnishing of the copies of the statements is disabling him or has disabled him, as the case may be, from effectively cross- examining the witnesses or to defend himself. The Trial Court has not found that any prejudice has resulted from the said violation. The Appellate Court has no doubt said that it has prejudiced the respondent's case but except merely mentioning the same, it has not specified in what manner and in what sense was the respondent prejudiced in his defence.

The High Court, of course, has not refereed to aspect of prejudice at all.

For the above reasons, we hold that no prejudice has resulted to the respondent on account of not furnishing him the copies of the statements of witnesses. We are satisfied that on account of the said violations it cannot he said that the respondent did not have a fair hearing or that the disciplinary enquiry against him was not a fair enquiry.

Accordingly, we allow the appeal and set aside the judgment of the High Court affirming the judgments of the Trial Court and Appellate Court. the suit filed by the respondent shall stand dismissed. No costs.

Appeal allowed.

Madhya Pradesh Co-Operative Bank Limited v Additional Commissioner of Income Tax

Bench	A.M. Ahmadi, B.L. Hansaria
Where Reported	1996 Indlaw SC 3486; (1996) 2 SCC 541; 1996 (1) AD(SC) 936; 1996 (134) CTR 92; [1996] 218 ITR 438; JT 1996 (1) SC 487; 1996(1) SCALE 511; [1996] 1 S.C.R. 773; 1996 (1) Supreme 602; [1996] 84 TAXMAN 640
Case Digest	**Subject:** Income Tax & Direct Taxes **Keywords:** Fixed Deposit, Government securities, Exemption From Tax, Co-Operative Bank, Co-Operative Society **Summary:** Income Tax & Direct Taxes - Income Tax Act, 1961, s. 81 - Co-operative Societies Act, 1912, s. 44 - Madhya Pradesh Govt's Instructions No CR 25/26, D/-07-10-1960 - Whether income from interest accruing on Govt. securities earmarked for reserve fund or provident fund can be said to be income derived by assessee from business of banking within meaning of s. 81 to qualify for exemption? - Held, interest earned there from was included in profit and loss account of assessee and was shown as earnings - It does not form part of stock in trade or working or circulating capital as deposits was permitted to be withdrawn when money was required to meet losses or society had to be wound up - Income under consideration does not qualify for exemption u/s. 81 - Appeal dismissed.

Case No : Civil Appeal No. 1196 (NT) of 1992 and Civil Appeal Nos. 2211-12 of 1996

1. The assessee in all these cases is a Co-operative Society registered under the Madhya Pradesh Co-operative Society registered under the Madhya Pradesh Co-operative Societies (Amalgamation) Act, 1957, hereinafter called 'the Act'. While framing assessment for the relevant assessment years in question, the Income tax Officer, included in the taxable income of the assessee interest earned on securities earmarked against reserves and interest earned on Provident fund deposits. The assessee contended that it was entitled to the benefit of Section 81 of the Income Tax Act as in force at all material times. The Income Tax Officer rejected this claim of exemption from tax put forward by the assessee. Since the assesee's contention did not find favour at the higher levels also, including the reference to the High Court, the assessee has approached this Court.

4. The assessee is an Apex Body controlling all District co-operative banks. It is registered under the provisions of the co-operative Societies Act, 1912 read with Section 6 of the Act. The assessee filed returns for the relevant years claiming that the entire income was from banking business and, therefore, exempt from tax under Section 81 of the Income Tax Act. The Income Tax Officer rejected the claim in regard to interest being exempt under the said provision. There is no dispute, and indeed there can be none, that the assessee is engaged in carrying on the

business of banking which, inter alia, includes the Activity of providing credit facilities to its members. In the course of its business it receives deposits and makes advances to borrowers at a rate of interest higher than what it pays on deposits. A part of these deposits are, however, invested in the form of government securities with the State Bank of India or the Reserve Bank. Under Section 44 of the Co-operative Societies Act, the assessee is required to invest or deposit its funds to maintain a cover to the extent necessary and further provides that the Reserve Fund of the Society shall be invested and utilised as may be laid down by the Registrar, which it does by investing in government securities purchased with the bank's funds. The question is whether the interest earned by the assessee from government securities placed with the State Bank or the Reserve Bank can qualify for exemption under Section 81 of the Income Tax Act?

8. There can be no doubt that the object of section 81 was to encourage the co-operative movement in the country by providing tax exemption to those co-operatives engaged in activities set out in clauses (a) to (f) thereof. One such activity is the carrying on of the business of banking or providing credit facilities to its members by a co-operative society. The section, therefore, provides that income-tax shall not be payable by a co-operative society in respect of the profits and gains of business carried on by it, if it arises from the business of banking or providing credit activities for its members. However, if such a co-operative society also engages itself in activities other than the business of banking or providing credit facilities the profits derived from such business shall not be exempt from tax if it exceeds rupees fifteen thousand. It is, therefore, obvious that the entire income derived by a co-operative society from the business of banking or providing credit facilities to its members is exempt from income tax, but if that society also engages itself in any other activity and earns profit therefrom, the income so derived becomes liable to assessment and payment of income tax if it exceeds the ceiling amount. The normal banking activity is to receive deposits and utilise such deposits by advancing loans, etc., to borrowers. Since the rate at which interest is paid to depositors is lower than the rate charged from borrowers, the difference in the rates generates income for the banks. The banks may have to maintain certain reserves to meet with emergencies, e.g. a spurt in withdrawals by depositors for diverse reasons.

14. This Court held that the first amount did not qualify for exemption because it represented only interest on security deposit and could not be mixed up with other sums received in the course of business. Even the learned counsel for the assessee did not press for exemption so far as that claim is concerned. The second claim was allowed on the ground that the money had to be provided to run the business and generate profit and the funding was, therefore, in the nature of 'investment' within the meaning of the relevant provision, in that, the money was ultimately to be utilised by the member society for the purchase of stocks. The distinction is obvious, namely, where the money is ultimately to be used for business purpose, either directly or through the member-bank, the interest thereon would qualify for exemption and not otherwise. The second case to which our attention was drawn is of Assam Co-operative Apex Marketing Society, Ltd. vs. CIT (Addl.) (1993) 201 ITR 338 1993 Indlaw SC 928 (SC). In that case the appellant was appointed as the procuring agent for paddy by the Assam Government. The members of the appellant were primary marketing societies and societies at the village level, with membership of agriculturists, being the members of the former. Thus no agriculturist was the direct member of the appellant. So, the produce was received by the village level societies from its agriculturist-members and was then passed on to the primary societies which in turn made it over to the appellant. A Commission

was charged for the procuring activity which was divided between the three, the appellant and the village society each taking 19 paise in a rupee and the remaining 62 paise went to the primary society. The question was whether the appellant's share in the commissioner could be brought to tax. The Tribunal as well as the High Court on reference held that the assessee was not entitled to exemption and this Court affirmed the finding on the following line of reasoning.

"A reading of clause (i) of section 81 shows that the idea and intention behind the said clause was to encourage basic level societies engaged in cottage industries, marketing agricultural produce of its members and those engaged in purchasing and supplying agricultural implements, seeds, etc., to their members and so on. The words 'agricultural produce of its members' must be understood consistent with this object and if so understood, the words mean the agricultural produce produced by the members. it is not so understood, even a co-operative society comprising traders dealing in agricultural produce would also become entitled to exemption which could never have been the intention of Parliament. The agricultural produce produced by the agriculturist can legitimately be called agricultural produce in his hands but in the hands of traders, it would be appropriate to call it agricultural commodities; it would not be his agricultural produce. Accordingly, it must be held in this case that since the agricultural produce marketed by the assessee was not the agricultural produce produced by its members, namely, the primary co-operative society, the assessee cannot claim the benefit of the said exemption."

16. Before we part, we must take note of Shri Salve's contention that the proviso to section 81 would apply in the case of that co-operative society alone which is engaged in an activity other than those mentioned in clauses (a) to (f) which not being so as regards the appellants, the proviso has no application; and so, no part of its profit of gain can attract income tax. We do not think this to be the correct reading of the proviso, notwithstanding the use of the word "also". According to us, what the proviso seeks to convey is that even if a co-operative society is engaged only in the business of banking, but part of its activity is not attributable to engagement in such activity, income derived from that part of activity would become taxable. And as held above, the income derived from the investment in Government securities placed with the State bank of India/ Reserve bank of India cannot be regarded as an essential part of its banking activity inasmuch as the same does not form part of its stock-in-trade or working/circulating capital. Therefore, we see no force in Mr. Salve's premises.

17. For the above reasons we see no merit in these appeals and dismiss the same with costs.

Appeals Dismissed

Belgaum Gardeners Cooperative Production Supply and Sales Society Limited v State of Karnataka

Bench	P.B. Sawant, Kuldip Singh, M. Fathima Beevi
Where Reported	1992 Indlaw SC 993; (1993) Supp1 SCC 96A; AIR 1992 SCW 119
Case Digest	**Subject:** Trusts & Associations; Agriculture & Agri. Products **Keywords:** Karnataka Cooperative Societies Act, 1959 **Summary:** Practice & Procedure - Petitioner is a society registered under Karnataka Cooperative Societies Act, 1959 and as such High Court was not justified in reaching conclusion that petitioner was doing commercial business - No merit in special leave petition - And point was not raised before HC - Supreme Court held, declind to go into this question as there is no factual basis before it - Petition dismissed.

Case No : S.L.P. (Civil) No. 6254 of 1991

The Order of the Court was as follows:

We have heard learned counsel for the parties.

1. In view of our order in SLP (Civil) No. 3946 of 1991 dated April 24, 1992 there is no merit in the special leave petition and the same is dismissed. Learned counsel appearing for the petitioner states that the petitioner is a society registered under the Karnataka Cooperative Societies Act, 1959 and as such the High Court was not justified in reaching the conclusion that the petitioner was doing commercial business. This point was not raised before the High Court.
2. The Division Bench dismissed the writ appeal following its judgment in Writ Appeal No. 1501 of 1988 [Civil Appeal No. 1853 of 1992, arising out of SLP (Civil) No. 3946 of 1991]. We are not inclined to go into this question as there is no factual basis before us.

The special leave petition is dismissed.

Petition dismissed.

Om Prakash Maurya v U.P. Cooperative Sugar Factories Federation, Lucknow And Ors. AIR 1986 SC 1844

Bench	K.N. Singh, O. Chinnappa Reddy
Where Reported	1986 Indlaw SC 191; (1986) Supp SCC 95; (1986) SCC (L&S) 421; AIR 1986 SC 1844; 1986 (12) ALR 539; 1986 ATC 95; 1986 (53) FLR 281; JT 1986 SC 370; 1986 LabIC 1198; 1986 (2) LLJ 145; 1986 (2) LLN 453; 1986(1) SCALE 1211; [1986] 3 S.C.R. 78; 1986 (2) SLR 651; 1986 (2) UJ 137
Case Digest	**Subject:** Labour & Industrial Law **Keywords:** Appointing Authority, Uttar Pradesh Co-operative Societies Act 1975, Uttar Pradesh Cooperative Societies Employee service Regulation 1975, Uttar Pradesh Co-operative Sugar Factories Federation Service Rules 1976 **Summary:** Service - Reversion - Uttar Pradesh Cooperative Societies Act, 1975, s. 121(1) - Uttar Pradesh Cooperative Societies Employee Service Regulation, 1975, regn. 17 - Employee of U.P. Co-operative Sugar Factories Federation - Continuing in post after completion of maximum period of probation provided under regulation - Whether order of High Court of Allahabad (Lucknow Bench) dismissing appellant's writ petition made u/art. 226 of Constitution of India, 1950 challenging order D/- 2-9-1983 reverting appellant from post of Commercial Officer to that of Superintendent is correct? - On expiry of appellant's initial probationary period of one year, appointing authority extended same for another period of one year which also expired on 4-9-82 - During period of probation, appellant's services were neither terminated nor was he reverted to his substantive post instead he was allowed to continue on post of Commercial Officer - On the expiry of maximum probationary period of two years, the appellant could not be deemed to continue on probation, instead he stood confirmed in the post by implication - Appellant acquired status of a confirmed employee on post of Commercial Officer and appointing authority could not legally revert him to the lower post of Superintendent - Held, appellant's services were regulated by the regulations - Since under those regulations appellant's probationary period could not be extended beyond maximum period of two years, he stood confirmed on expiry of maximum probationary period and thereafter he could not be reverted to a lower post treating him on probation - Order of reversion is illegal - Order of HC set aside - Order of reversion quashed - Directed that appellant shall be treated in service and paid his wages and other allowances - Appeal allowed.

Case No : Civil Appeal No. 491 of 1985 From the Judgment and Order dated 26th July, 1984 of the Allahabad High Court in W.P. No. 4899 of 1983.

This appeal is directed against the order of the High Court of Allahabad (Lucknow Bench) dismissing the appellant's writ petition made under Art. 226 of the Constitution challenging the Order dt. 2.9.1983 reverting the appellant from the post of Commercial Officer to that of Superintendent.

The appellant joined service in Kisan Sahkari Chini Mills Ltd., Bisalpur District Pilibhit, a sugar factory run and managed by the Uttar Pradesh Co-operative Mills Federation. While the appellant was working as Office Surperintendent, he was selected for promotion to the post of Commercial Officer and by Order dt. August 29, 1980 appointed on probation for one year against a regular vacancy with a condition that his probationary period may be extended further and during the period of probation he could be reverted to the post of Office Superintendent without any notice. On 2.7.1981 the appellant was transferred from Bisalpur to Majohla Sugar Factory where he continued to work as Commercial Officer. By an Order dt. 2.10.1981 the appellant's probationary period was extended for one year till 4.9.1982, the period so extended expired on 4.9.82 but no further order either extending the probationary period or confirming him on the post was issued, and the appellant continued to work as Commercial Officer.

1. The Managing Director of the U.P. Co-operative Sugar Mill Federation Ltd. a "Co-operative society" registered under the U.P. Co- operative Societies Act, 1965, which runs and manages a number of sugar factories in the State of Uttar Pradesh, issued order on 2.9.83 reverting the appellant to the post of Office Superintendent. The appellant challenged the validity of the reversion order before the High Court on the sole ground that on the expiry of the probationary period he stood confirmed, and he could not be reverted treating him on probation. The High Court held that on the expiry of the probationary period the appellant could not be deemed to be confirmed as there was no rule prohibiting the extension of probationary period.

In the instant case the order of appointment promoting the appellant on the post of Commercial Officer merely indicated that his probationary period could be extended and he could be reverted to the post of Office Superintendent without any notice. Stipulation for extension of probationary period in the appointment order must be considered in accordance with the proviso to Regulation 17(1) which means that the probationary period could be extended for a period of one year more. Un disputably on the expiry of the appellant's initial probationary period of one year, the appointing authority extended the same for another period of one year which also expired on 4.9.82. During the period of probation appellant's services were neither terminated nor was he reverted to his substantive post instead he was allowed to continue on the post of Commercial Officer. On the expiry of the maximum probationary period of two years, the appellant could not be deemed to continue on probation, instead he stood confirmed in the post by implication. The appellant acquired the status of a confirmed employee on the post of Commercial Officer and the appointing authority could not legally revert him to the lower post of Superintendent.

5. The scheme of sec. 121 and sec. 122 postulates that primacy has to be given to regulations framed by the authority under sec. 122 of the Act. If there are two sets of rules regulating the conditions of service of employees of Cooperative societies the regulations framed under sec. 122 and approved by the State Government shall prevail. In this view the provisions of the U.P. Co- operative Sugar Factories Federation Service Rules 1976 do not override Service Regulations of 1975. It appears that this position was realised by the State Government and for that reason it issued Notification No. U.O. 402(II)/C-I-76 dt. August 6, 1977 constituting the Commissioner and Secretary Sugar Industry and Cane Development Department as authority under sub-sec.

(1) of sec. 122 for the recruitment, training and disciplinary control of employees of the U.P. Co-operative Factories Federation Ltd.

6. But even if any such power can be inferred, admittedly no rules or regulations regulating the conditions of service of the employees of the Co-operative Sugar Factories Federation have as yet been framed. Learned counsel for the respondents conceded that draft service regulations have been prepared but those have not been approved by the Government as required by sub-sec. (2) of the Act. In absence of approval of the State Government as required by sub-sec. (2) of sec. 122, regulations, if any, framed by the Commissioner and Secretary Sugar Industry and Cane Development Department do not acquire any legal force. In this view 1975 Regulations framed by the Institutional Service Board continue to apply to the employees of the U.P. Co-operative Sugar Factories Federation Ltd.

In view of the above discussion it is manifestly clear that the appellant's services were regulated by the U.P. Co- operative Societies Employees Service Regulations, 1975. Since under those Regulations appellant's probationary period could not be extended beyond the maximum period of two years, he stood confirmed on the expiry of maximum probationary period and thereafter he could not be reverted to a lower post treating him on probation. The Order of reversion is illegal. We accordingly allow the Appeal, set aside the order of the High Court and quash the order of reversion dt. 2.9.1983 and direct that the appellant shall be treated in service and paid his wages and other allowances. The appellant is entitled to his costs which is quantified as Rs. 1,000.

Appeal allowed.

Daman Singh And Ors. v State Of Punjab And Ors.

Bench	O. Chinnappa Reddy, R.B. Misra, Y.V. Chandrachud, D.A. Desai, E.S. Venkataramiah
Where Reported	1985 Indlaw SC 206; (1985) 2 SCC 670; AIR 1985 SC 973; 1985 (2) CCC 529; [1986] 60 Comp Cas 1; 1985(1) SCALE 644; [1985] 3 S.C.R. 580; 1985 UJ 1080
Case Digest	**Subject:** Constitution; Trusts & Associations **Keywords:** Andhra Pradesh Cooperative Societies Act 1964, Constitution (Fourth Amendment) Act, 1955, Tibbia College Act, 1952, Bihar and Orissa Cooperative Societies Act 1959, Karantaka Cooperative Societies Act 1959, Constitution (Sixty-Fourth Amendment) Act, 1990 **Summary:** Criminal - Punjab Co-operative Societies Act, 1961, ss.1, 13(8), 13(9), 13(10) and 30 - Constitution of India, 1950, arts.20, 31A(1)(c), sch. 7 list 1 entry 43 and list 2 entry 32 - Question of the validity of the relevant provisions of the Cooperative Societies Acts in force in respective States providing for the compulsory amalgamation of Cooperative Societies - The validity of the 1961 Act challenged on ground that: Co-operative societies are not protected by art. 31A(1) (c) and their interest need not be in public interest - Provisons of s.13 and art. 31A(1) (c) are void as they offended basic structure of Constitution by affecting dignity of human being and violate principles of natural justice - Is fresh notification for delegating authority necessary u/s. 3(3) - Held, validity can't be challenged on those grounds - Provisons of s.13 and art. 31A(1) (c) held to be not void - Fresh notification not necessary - Petition dismissed.

Case No : Civil Appeal Nos. 206 , 2861 , 250 , 320 , 1607 , 3548 , 379 , 769 1280 of , 979 and 1476-1483 Of 1985. From the Judgments and Orders dated 10.1.79 , 28.9.79 , P 16.1.79 , 26.4 79 , 27.9.79 , 15.1.79 , 8.1.79.19.4.79 , of the Punjab and Haryana High Court in C.W.P. Nos. 4327/78 , 3430/79 , 4713/78 , 4937/78 , 1345/79 , 3217/79 , 5121/78 , 24/78 , 5195/18, 4340/78 , 4613178 , 4793178 , 41J3/78 , 4386/78 , 4545/18 , 4585/18 and 1257/79.

The Judgment was delivered by : O. Chinnappa Reddy, J.

1. The opinion of the High Courts appears to be unanimous on the question of the validity of the relevant provisions of the Cooperative Societies Acts in force in their respective States providing for the compulsory amalgamation of Cooperative Societies. The Full Benches of the High Courts of Andhra Pradesh, Karnataka, Punjab and Haryana and a Division Bench of the Patna High Court, AIR 1978 AP 121 1977 Indlaw AP 127 (FB), AIR 1978 Karnataka 148 1978 Indlaw KAR 176 (FB), 1976 Punjab Law Journal 302 (FB), AIR 1968 Patna 211 1967 Indlaw PAT 70, There is also an excellent discussion by Vaidya, J. in ILR 1972 AP 1140 have upheld the validity of such

provisions. But litigants, particularly those who are in a position to command funds arc rarely deterred by such unanimity of judicial opinion. So, several Co-operative Societies of Punjab have chosen to prefer appeals to this Court questioning the vires of sec. 13 (8) of the Punjab Cooperative Societies Act which provides for the compulsory amalgamation of cooperative societies if it is necessary in the interests of the cooperative societies. The questions raised are simple and straight and are capable of but single, straight forward answers. Unfortunately a large number of appeals have piled up in this court on these questions and we are told that a large number of writ petitions said to involve these or similar questions are pending in the various High Courts in the country awaiting the decision of this Court. We earnestly hope that this decision will put an end to this branch of the litigation and will serve to push forward the cooperative movement We think it is needless to refer to the nature and history of the cooperative movement except to say that the promotion of the cooperative movement is one of the Directive principles of State Policy - As usual in these and such cases, the counter-affidavits, where they have been filed, leave much to be desired and are least helpful. But, as pointed out by us often enough, the vires of legislation is not to be decided on the basis of affidavits of underlings of the executive who can hardly be described as authorised to speak for the legislature. But even from the, meagre material available to us from the record, it is Obvious that the provisions relating to amalgamation of Cooperative Societies in different State, enactments were introduced pursuant to a policy decision arrived at an All India Conference. This is evident from the circumstance that these provisions were enacted by the various State legislatures roughly at about the same time. A reference to the policy decision at an All India Conference may be found in the Full Bench Judgments of the Andhra Pradesh and Karnataka High Courts. It is unnecessary to say more on this aspect of the case.

16. Another submission of the learned counsel was that the notification authorising the Assistant. Registrar of Co- operative Societies to exercise all the powers of Registrar under the Act could enable the Assistant Registrar to perform only such functions as the Registrar was authorised to perform under the Act as on the date of the notification. The Assistant Registrar would not be entitled to exercise the powers entrusted to the Registrar by amendment of the Act subsequent to the date of the notification unless a fresh notification was issued. We do not think that a fresh notification would be necessary where the Assistant Registrar even initially was authorised generally to perform all the functions of a Registrar. A fresh notification would probably be necessary where the Assistant Registrar was authorised to perform certain specified functions only of the Registrar. That is not claimed to be the situation here.

17. The final submission of Shri Ramamurthi was that several other questions were raised in the writ petition before the High Court but they were not considered. We attach no significance to this submission. It is not unusual for parties and counsel to raise innumerable grounds in the petitions and memoranda of appeal etc., but, later, confine themselves, in the course of argument to a few only of those grounds, obviously because the rest of the grounds are considered even by them to be untenable. No party or counsel is thereafter entitled to make a grievance that the grounds not argued were not considered. If indeed any ground which was argued was not considered it should be open to the party aggrieved to draw the attention of the court making the order to it by filing a proper application for review or clarification. The time of the superior courts is not to be wasted in inquiring into the question whether, a certain ground to which no reference is found in the judgment of the subordinate court was argued before that court or not ? Shri Arvind Kumar,

learned counsel for one of the appellants very airily made a submission that Art. 31-A (1) (c) introduced by the Constitution (64th amendment) Act and s. 13(8) of the Punjab Co-operative Societies Act offended the Basic Structure of the Constitution as they affected the dignity of the human being and were therefore void. We find overselves unable to appreciate how the dignity of a human being can even remotely be said to be affected by the amalgamation of a cooperative society of which an individual is a member with another cooperative society. We expect counsel appearing in this court, particularly when they appear before the Constitution Bench, to avoid advancing such totally unsustainable propositions. The time of this court is public time and as the mountainous arrears show the time is becoming increasingly dear and precious. We can only appeal to counsel to carefully examine with a greater sense of responsibility the submission which they propose to make before actually advancing them in court. All the appeals are dismissed with costs which we quantify each Rs. 2,500 in each appeal.

S.S. Dhanoa v Municipal Corporation, Delhi & Ors.

Bench	A.P. Sen, Baharul Islam, O. Chinnappa Reddy
Where Reported	1981 Indlaw SC 248; (1981) 3 SCC 431; (1981) SCC (Cr) 733; (1982) SCC (L&S) 6; AIR 1981 SC 1395; 1981 CRLJ 871; 1981 CRLR 456; 1981 CrLR(SC) 456; 1981 (43) FLR 272; 1981 (2) LLJ 231; 1982 (1) LLN 271; 1981(1) SCALE 919; [1981] 3 S.C.R. 864; 1981 (2) SLR 217; 1981 UJ 803
Case Digest	**Subject:** Corporate **Keywords:** Body Corporate, Oil and Natural Gas Commission, All India Services (Discipline and Appeal) Rules, 1969, Bombay Cooperative Societies Act, 1925, All India Services (Discipline and Appeal) Rules 1969 **Summary:** Companies Act, 1956 - Oil and Natural Gas Commission- IPC, 1860,s.21,cl.12- CrPC,197 - Bombay Cooperative Societies Act, 1925; Prevention Of Food Adulteration Act, 1954- All India Services (Discipline and Appeal) Rules, 1969- Whether the appellant ,a member of the Indian Administrative Service, whose services were placed at the disposal of the a society registered under the Bombay Cooperative Societies Act, 1925 is a public servant within meaning of IPC,1860,s.21.cl.12 and for the purposes of s. 197, CrPC,1973? - During period of deputation,a government employee not an officer in the service or pay of either the Government or a local authority or a corporation established by or under an Act or a Government company - In context of cl. (12) of s.2, IPC,1860, the expression 'corporation' must be given a narrow legal connotation, and means a corporation created by the Legislature and not a body or society brought into existence by an act of a group of individuals and not created by a statute -Held, appellant not a public servant within the meaning of cl. Twelfth of s. 21,IPC,1860 and for the purposes of s. 197, CrPC,1973 - Appeal Dismissed

Case No : Criminal Appeal No. 520, of 1976. Appeal by Special Leave from the judgment and order dated the 17th September, 1975 of the Delhi High Court in Criminal Misc. (M) 212 of 1974

The Judgment was delivered by: Sen, J.

1. This appeal by special leave from a judgment of the Delhi High Court upholding an order of the Metropolitan Magistrate, Delhi, raises a question of some public importance. The question is as to whether the appellant, who is a member of the Indian Administrative Service, and whose services were placed at the disposal of the Cooperative Store Ltd., a society registered under the Bombay Cooperative Societies Act, 1925 (hereinafter called the Society), was a public servant within the meaning of cl. Twelfth of s. 21 of the Indian Penal Code, 1860, for purposes of s. 197 of the Code of Criminal Procedure, 1973. The question arises in this way.

2. The appellant is a member of the Indian Administrative Service. By notification No. 27-942-Estt. 1, dated 23rd April, 1972, issued by the Government of India in the Ministry of Agriculture (Department Agriculture), the services of the appellant, who was a Joint Commissioner (State Liaison) in that Ministry, were placed at the disposal of the Department for his appointment as the General Manager, Super Bazaar, Connaught Place, New Delhi with effect from April 7, 1972, on which date he took over charge as General Manager. At the request of the Managing Committee of the Society, the Government of India extended the period of his deputation for a further period of one year with effect from April 7, 1973. On completion of his period of deputation, the appellant reverted as Joint Secretary in the Ministry of Agriculture.

3. On October 10, 1973, the Food Inspector purchased a sealed bottle of honey from the Super Bazaar at the INA Market. The Public Analyst's report showed the honey to be adulterated. On April 5, 1974, the Municipal Corporation, Delhi, filed a complaint against the appellant and other officials of the Super Bazaar as also against the manufacturer of honey for having committed an offence punishable under s. 7 read with s. 16 of Prevention of Food Adulteration Act, 1954. On being summoned by the Metropolitan Magistrate, Delhi, to appear before him as an accused, the appellant raised a preliminary objection that the taking of cognizance of the alleged offence by the Magistrate was barred under s. 197 of the Code of Criminal Procedure, 1973, for want of sanction of the Central Government, since the act complained of was nothing but an act done by him in the discharge of his duties as a public servant.

13. That the incumbents of supervisory and other key posts including those of General Manager, Deputy General Manager, Finance Manager, Asst. General Manager, Purchase Manager, Sales Manager and Accounts Manager, by whatever other designation they may be known shall not be appointed or removed from their posts by the Debtor except with the prior approval of the Creditor in writing. The Super Bazaar at Connaught Place and at various other places are run by the Cooperative Store Limited under the control of the Ministry of Agriculture (Department of Cooperation). The incumbents of supervisory and other key posts including that of the General Manager cannot be appointed or removed without the prior approval of the Central Government. The whole purpose of cl. 6 of the Agreement in the matter of appointment of General Manager and other incumbents holding key posts is to safeguard interests of the Central Government.

14. Legally speaking, the Super Bazaars are owned and managed by the Society and not by the Central Government and, therefore, the appellant was not employed in connection with the affairs of the Union within the meaning of s. 197 of the Code of Criminal Procedure, 1973.

16. The legal fiction contained in Explanation to r. 2 (a), is for a limited purpose. This is evident by the use of the words "for purposes of these rules". Rule 2 (c) of the All India Services (Discipline and Appeal) Rules, 1969 defines Government to mean (i) in the case of a member of the Service serving in connection with the affairs of a State, or who is deputed for service in any company, association or body of individuals whether incorporated or not, which is wholly or substantially owned or controlled by the Government of a State, or in a local authority set up by an Act of Legislature of a State, the Government of that State; and (ii) in any other case, the Central Government. That again is for purposes of these rules. These provisions cannot be pressed into service for improving upon the language of cl. Twelfth of s. 21 of the Indian Penal Code, 1860.

17. Before parting with the case, we would like to advert to one aspect. It is common ground that the honey in question was sold in a sealed container bearing the manufacture's warranty as to quality as required under r. 12-A of the Prevention of Adulteration Rules, 1955. That being so, the learned Magistrate shall first determine whether or not the appellant was protected under s. 19 (2) of the Prevention of Food Adulteration Act, 1954.

18. Subject to this observation, the appeal fails and is dismissed. There shall be no order as to costs.

Appeal dismissed.

General Govt. Servants Co-Operative Housing Society Ltd.,Agr v Wahab Uddin & Ors. Etc. Etc.

Bench	Baharul Islam, R.S. Pathak, O. Chinnappa Reddy
Where Reported	1981 Indlaw SC 206; (1981) 2 SCC 352; AIR 1981 SC 866; 1981 ALJ 299; 1981 (7) ALR 200; 1981(1) SCALE 630; [1981] 3 S.C.R. 46; 1981 UJ 301
Case Digest	**Subject:** Land & Property **Keywords:** Notification, Land Acquisition (Companies) Rules, 1963, Uttar Pradesh Tenancy Act, 1939 **Summary:** Land Acquisition Act , 1894, ss. 3(b) and 6 - Constitution, arts.136 and 226 - Land Acquisition (Companies) Rules, 1963, r. 4 - Displaced Persons (Compensation and Rehabilitation) Act - Non compliance of r. 4 of the 1963 Rules while acquisition of land for housing society - Rules, 1963, r. 4 is mandatory - Not followed - 1963 Auction sale - Person depositing consideration - (A) Validity of notification u/s. 6 of the 1894, Act - (B) Locus standi - Held, invalid - Such person has locus standi to maintain writ petition - Appeal dismissed.

Case No : Civil Appeal Nos. 2085 of 1978 and 7-8 of 1979. Appeals by special leave from the Judgment and Order dated 18.5.1977 of the Allahabad High Court in C.M.W. Nos. 5061/73, 5063/73 and 5080/73.

The Judgment was delivered by: Baharul Islam, J.

1. The above appeals arise out of land acquisition proceedings and involve similar questions of fact and the same question of law. This common judgment, therefore, will dispose of all the three appeals. It will be sufficient if we refer to the material facts of Civil Appeal No. 2085 of 1978 only.

2. The land involved, belonged to one Imam Khan as an occupancy tenant. Before the partition of India, he migrated to Pakistan, where after his rights in the lands were declared evacuee property. Subsequently, in pursuance of a notification issued u/s. 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, the Central Government acquired the lessee rights. As a result of the notification, these rights vested in the Central Government free from all encumbrances. The Central Government thereafter sold these rights by auctions in August/September 1962. The first Respondent purchased a plot of land for a sum of Rs. 21,700. He deposited the entire amount with the Managing Officer, Evacuee Property, Agra. A sale certificate was issued to him on September 12, 1962.

16. Sub-rule (1) requires the Government to direct the Collector to submit a report to it on the matters enumerated in cls. (i) to (vi) of the sub-rule (1) which is for the benefit of the Company. The purpose is to avoid acquisition of land not suitable for a Company. Cl. (ii) of sub-rule (1)

requires that the Company has to make all reasonable efforts to get such lands by negotiation with the person interested therein on payment of reasonable prices and that such efforts have failed. The purpose of cl. (ii) seems to be to avoid unnecessary land acquisition proceedings and payment of exorbitant prices. The purpose of clauses (iii), (iv) and (v) is obvious. The purpose of cl. (vi) is to avoid acquisition of good agricultural land, when other alternative land is available for the purpose. Sub rule 2 of rule 4 requires the Collector to give reasonable opportunity to the Company so that the Collector may hold an inquiry into the matters referred in sub-rule (1). The Collector has to comply with Clauses (i), (ii) and (iii) of sub-rule 2 during the course of the inquiry under sub-rule (1).

17. The Collector under sub-rule 3 then has to send a copy of his report of the inquiry to the appropriate Government and a copy of the report has to be forwarded by the Government to the Land Acquisition Committee constituted under Rule 3 for the purpose of advising the Government in relation to acquisition of land under Part VII of the Act, the duty of the Committee being to advise the Government on all matters relating to or arising out of acquisition of land under Part VII of the Act (Sub-rule (5) of Rule 3). No declaration shall be made by the appropriate Government u/s. 6 of the Act unless the Committee has been consulted by the Government and has considered the report submitted by the Collector under section 5A of the Act. In addition, under cl. (ii) of sub-rule (4) of rule 4, the Company has to execute an agreement u/s. 41 of the Act. The above consideration shows that rule 4 is mandatory; its compliance is no idle formality, unless the directions enjoined by rule 4 are complied with, the notification u/s. 6 will be invalid. A consideration of rule 4 also shows that its compliance precedes the notification u/s. 4 as well as compliance of s. 6 of the Act.

18. In the instant case, as stated earlier, the first respondent on receipt of the notice u/s. 9(3) of the Act submitted a representation. After the representation, a brief written note of the arguments was also supplied (Annexure 6). The first respondent's objections, inter alia against the acquisition of the land were:

    (1) that the land being that of the Government cannot be legally acquired ;

    (2) that the land or lessee rights having been once acquired by the Central Government under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, it cannot be acquired by the State Government ; and

    (3) that the proceedings for the acquisition of the land for the appellant were illegal as the mandatory procedure for acquisition of land for private companies has not been followed. It was also stated in the representation that no efforts to purchase the rights of the first respondent by negotiation were made. The inquiry report submitted by Collector does not show that he applied his mind to the provisions of rule 4 as stated above, or to the objections of the first respondent. In fact there was no report under rule 4. The report that was submitted was one under section 5A of the Act. We have examined this aspect of the matter to see that although the enquiry was belated and not in accordance with law, there has been no failure of justice. In our opinion there has been failure of justice.

19. Agreeing with the finding of the High Court, although for different reasons, we hold that the notification u/s. 6 is invalid for non-compliance of rule 4 of the Rules. As a result we dismiss the appeals with costs.

Appeals dismissed.

Gujarat State Cooperative Land Development Bank Ltd. v P. R. Manded And Ors.

Bench	R.S. Sarkaria, O. Chinnappa Reddy
Where Reported	1979 Indlaw SC 291; (1979) 3 SCC 123; (1979) SCC (L&S) 225; AIR 1979 SC 1203; 1979 (38) FLR 353; 1979 (20) GLR 701; 1979 LabIC 592; 1979 (1) LLN 527; [1979] 2 S.C.R. 1023; 1979 (2) SLR 128
Case Digest	**Subject:** Indirect Tax; Labour & Industrial Law; Service; Trusts & Associations **Keywords:** Contract Of Employment, Co-Operative Bank, Business Of Society **Summary:** Service - A.P. Cooperative Societies Act 1964, s. 61 - Banking Companies Act, 1949, s. 5(b) and (c) - Bombay Cooperative Societies Act 1925, s. 54 - Bombay Industrial Relation Act 1946, s. 2(4) - Constitution, art. 226 - Gujarat Cooperative Societies Act 1961, ss. 96, 97(1), 98 and 166(1) - Specific Relief Act, 1963, s. 21(b) - (A) Whether the expression "any dispute" spoken of in s. 54 of the Act of 1925, and s. 96 of the Act of 1961, can be resolved by the Registrar or his nominee under the relevant Cooperative Societies Act? - Held, the expression "any dispute" does not cover a dispute of the kind raised by respondent 2 against appellant-Bank and is incapable of being resolved by the Registrar - (B) Whether a dispute raised by a servant against his employer, the Cooperative Society, for setting aside his removal from service and for reinstatement in service with back wages, is one within the purview of said provisions? Held, dispute raised is outside the scope of the expression "touching the management of the Society" used in s. 96(1) of the Act of 1961, and Registrar has no jurisdiction to deal with and determine it - Such a dispute falls within the jurisdiction of Labour Court under the Bombay Industrial Relation Act 1946 - Appeal dismissed.

Case No : Civil Appeal No. 236 of 1969

The Judgment was delivered by : Ranjit Singh Sarkaria, J.

1. The appellant is the Gujarat State Cooperative Land Development Bank Ltd. (hereafter referred to as the Bank). It is a Society registered under the Bombay Cooperative Societies Act, 1925, as applicable to the erstwhile State of Saurashtra. According to the appellant's writ petition, it is doing banking business. It has 127 Branches spread all over the State of Gujarat. One of its Branches is in Dasada, Surendranagar District. The Head Office of the Bank is at Ahmedabad.
2. The second respondent, Babu Bhai Negracha, was serving as an Additional Supervisor in the Dasada Branch of the Bank. His services were terminated by an order, dated February 21, 1962, by giving him one month's pay in lieu of notice under Staff Regulation No. 15.

37. In this connection, it may be noticed that just as in S. 96(1), in S. 61 of the Andhra Pradesh Corporation Societies' Act, 1964, also, which came up for consideration in Cooperative Central Banks' case before this Court, the term management does occur in the collocation of words "constitution, management or business". But no specific argument seems to have been then raised that a dispute between the Society and its former servants relating to the conditions of service, comes within the purview of the expression 'touching the management of the Society'. Perhaps, it was taken for granted that if the dispute was not comprehended by the expression "business of the Society", it would not be covered by the words "management of the Society", either. Although there is little discussion in the judgment about the ambit and import of the expression "management", yet in conclusion, it was clearly and emphatically held that the dispute in that case was "outside the scope of s. 61."

38. We will now, focus attention on the expression "management of the Society" used in S. 96(1) of the Act of 1961. Grammatically, one meaning of the term 'management' is: 'the Board of Directors' or 'the apex body' or Executive Committee at the helm which guides, regulates, supervises, directs and controls the affairs of the Society'. In this sense, it may not include the individuals who under the over-all control of that governing body or Committee, run the day-to-day business of the Society. (see Words and phrases, by West Publishing Co. Permanent Edition, Vol. 26, page 357, citing, Warner & Swasey Co. v. Rusterholz D. C. Minn. Another meaning of the term 'management', may be: 'the act or acts of managing or governing by direction, guidance, superintendence, regulation and control the affairs of a Society.'

42. We find no merit in this contention, also A similar argument was advanced before this Court in Cooperative Central Bank's Case, ibid, and was repelled inter alia, with the reasoning that the bye-laws of the Bank, containing the conditions of service were in the nature of a contract between the Bank and its employees and a change of such bye-laws, embodying the conditions of employment, "could not possibly be directed by the Registrar where, under s. 62 (4) of the (ANDHRA) Act, he is specifically required to decide the dispute referred to him in accordance with the provisions of the bye-laws". It was further observed that a dispute referred to the Registrar can even be transferred for disposal to a person who may have been invested with powers in that behalf, or may be referred for disposal to an arbitrator. But neither the Registrar nor his nominee will be competent to grant the relief requiring a change in the service conditions of the employees, under section 62 of the Andhra Act. Such a relief could be granted only by the Industrial Tribunal which under the Industrial Disputes Act, has the jurisdiction even to vary contracts of service between an employer and employees. This reasoning is applicable mutatis mutandis to the instant case.

43. For all the foregoing reasons, the appeal fails and is dismissed with costs. In token of our gratitude for the valuable assistance rendered to us by Shri Rama Reddy as amicus curiae, we direct that an honorarium of Rs. 1500/- be paid to him, which shall be taxed as costs awarded against the appellant.

Kulchhinder Singh & Ors. v Hardayal Singh Brar & Ors.

Bench	V.R. Krishna Iyer, Y.V. Chandrachud
Where Reported	1976 Indlaw SC 114; (1976) SCC (L&S) 513; (1976) 3 SCC 828; AIR 1976 SC 2216; 1977 (34) FLR 53; 1976 (2) LLJ 204; [1976] 3 S.C.R. 680; 1976 SLJ 423; 1976 (2) SLR 22; 1976 UJ 350
Case Digest	**Subject:** Constitution; Labour & Industrial Law; Tort **Summary:** Trusts & Associations - Punjab Cooperative Societies Act, 1961 - Constitution of India, 1950 art. 12 - Punjab Land Mortgage Bank Act, 1957 - Cooperative Societies Act, 1954 - Selection - Contrary to service rules - Challenged - Appellant was serving in Punjab State Cooperative Land Mortgage Bank which was registered under 1954 Act and promoted as assistant - Later on 1954 Act was repealed and replaced by 1961 Act - Promotions to three categories were made by direct recruitment contrary to service rules and appellant's name had not appeared in selection list prepared by said society - Aggrieved appellants filed writ before HC which was dismissed and held cooperative bank was 'State' u/art.12 of Constitution and no writ lies against such body- Hence, instant appeal - Whether writ may be issued against society registered under 1961 Act, setting aside selection list at the instance of appellants who were not included therein. Held, controversy is in substance will turn on the construction and scope of the agreement when the claim to a quota as founded cannot be decided in writ jurisdiction without going back on well-settled guidelines and even subverting the normal processual law-except perhaps in extreme cases which shock the conscience of the Court or other extra-ordinary situation, an aspect we are not called upon to explore here. Hence, instant is aware of the wide amplitude of writ jurisdiction and its potent use to correct manifest injustice but cannot agree that contractual obligations in the ordinary course, without even statutory complexion, can be enforced by this short, though, wrong cut. Appeal dismissed.

Case No : Civil Appeal No. 747 of 1975. Appeal by Special Leave from the Judgment and order dated the 5-12-74 of the Punjab and Haryana High Court in Civil Writ Petition No. 6344/74.

The Judgment was delivered by : V. R. Krishna Iyer, J.

1. This Civil Appeal, by special leave under Art. 136, raises a common question of great moment, the decision of which may have a wider litigative fall-out than may appear on the surface. The first question expressed, manu brevi, is as to whether a writ may issue, under Art. 226, against a Society registered under the Punjab Cooperative Societies Act (Act XXV of 1961) setting aside a selection list at the instance of the aggrieved appellants who were not included therein.

2. The High Court (both the learned Single Judge and the Division Bench) following an earlier judgment of that Court in Dharam Pal v. State of Punjab 1992 Indlaw SC 144 held the writ petition to be incompetent, directed as it was against a Cooperative Society.

13. His specific grievance in the present case is that promotions to three categories of higher posts, viz., Assistant Inspecting Officers, Junior Accountants and Accountants were made by direct recruitment contrary to what he contends are service rules but, in substance, are the result of collective bargaining with the management, as the writ petition itself reveals.

14. These triple categories of new posts have been filled, admittedly, without reference to the quota set apart for promotes, the defence of the respondent being that these new cadres are not covered by the agreement referred to in the writ petition.

15. The High Court was approached when a real apprehension of direct recruitment arose, praying for a writ, order or direction in the nature of mandamus requiring the respondent not to proceed with the processes resulting in filling up the posts of Accountants, Junior Accountants and Assistant Inspecting Officers in violation of the quota of 75% claimed by the appellant, under the agreement alleged to be binding on the Cooperative Bank and the employees. Of Course, the recruitment went on and the new appointees are also arrayed as respondents in the writ petition. However, the High Court dismissed the writ petition on the preliminary ground that the writ was, in fact, directed against a Cooperative Bank registered under the Cooperative Societies Act and no writ would lie against such a body in the circumstances set out in the writ petition. Indeed, the distinction between a body with a personality created by and owing its existence solely to a statute and an entity which is recognised by and is registered under a statute is real, dramatic and makes for a world of difference in jural impact. Considerable argument was addressed before us based on the rulings reported as Mohanlal; Tewary, Sukhdev; and Praga Tools, apart from the ruling of this Court in Lakshmi Narain.

16. The question as to whether a Cooperative Society is a public authority has fallen for judicial notice and Amir Jamia contains an elaborate discussion of the controversial topic covering decisions, English and Indian. It is also true that at least Madhya Pradesh (Dukhooram-1961 v. M. P. 269) and Calcutta (Madan Mohan- 1966 Cal. 23) have considered whether a writ will issue against a Cooperative Society, simpliciter, Kumkum Khanna deals with a private college governed by a University Ordinance.

21. At its best, the writ petition seeks enforcement of a binding contract but the neat and necessary repellant is that the remedy of Art. 226 is unavailable to enforce a contract qua contract. We fail to see how a supplier of chalk to a government school or cheese to a government hospital can ask for a constitutional remedy under Art. 226 in the event of a breach of a contract, bypassing the normal channels of civil litigation. We are not convinced that a mere contract agreeing to a quota of promotions can be exalted into a service rule or statutory duty. What is immediately relevant is not whether the respondent is State or public authority but whether what is enforced is a statutory duty or sovereign obligation or public function of a public authority. Private law may involve a State, a statutory body, or a public body in contractual or tortuous actions. But they cannot be siphoned off into the writ jurisdiction.

22. The controversy before us in substance will turn on the construction and scope of the agreement when the claim to a quota as founded cannot be decided in writ jurisdiction without going back

on well-settled guidelines and even subverting the normal processual law-except perhaps in extreme cases which shock the conscience of the Court or other extra-ordinary situation, an aspect we are not called upon to explore here. We are aware of the wide amplitude of Art. 226 and its potent use to correct manifest injustice but cannot agree that contractual obligations in the ordinary course, without even statutory complexion, can be enforced by this short, though, wrong cut.

23. On this short ground the appeal must fail and be dismissed. We do so, but without costs.

State Of Mysore v Allum Karibasappa And Others

Bench	A.N. Ray, Kuttyil Kurien Mathew
Where Reported	1974 Indlaw SC 104; (1974) 2 SCC 498; AIR 1974 SC 1863; [1975] 1 S.C.R. 601; 1974 UJ 51
Case Digest	**Subject:** Trusts & Associations **Keywords:** Mysore Cooperative Societies Act 1959 **Summary:** Karnataka Co-operative Societies Act, 1959 - Scope of s. 54 - Validity of notifications u/s. 54 superseding management of Co-operative Bank - Including President and Vice-President - Considering the meaning of 'Control' - Held, action of Govt. was ultra vires the Act and in violation of the principles of natural justice and the notifications must be set aside - Appeal Dismissed.

Case No : CIVIL APPELLATE JURISDICTION : Civil Appeal, No. 971 of 1973. (Appeal by special leave from the Judgment and Order dated 1st June, 1973 of the Mysore High Court at Bangalore in W. P. No. 1949 of 1972.)

The Judgment was delivered by : A. N. Ray, J.

1. This is an appeal by special leave from the judgment dated 1 June, 1973 of the High Court of Mysore. The respondent Karibasappa was the President of the Bellary District Co-operative Central Bank Limited, Hospet. He challenged two notifications dated 11 August, 1972 issued by the State Government. The notifications were issued in exercise of the, powers conferred by sections 54 and 121 Of the Mysore Co-operative Societies Act, 1959 hereinafter referred to as the Act.

2. The management and administration of the Bank was conducted by the Committee consisting of the President, the Vice- President, and ten elected members from various constituencies and certain nominees of the State Government. At no time the Government nominated more then three persons as its representatives.

3. The Bank had a share capital of Rs. 75 lakhs. The State Government contributed Rs.23.8 lakhs. The Reserve Bank of India advanced a loan' of Rs. 135 lakhs. The Apex Bank also gave a loan of Rs. 200 lakhs.. The State Government guaranteed the repayment of loans to the Reserve Bank of India.

5. Broadly stated, the notifications recited that the State had given Rs. 23. 80 lakhs to the Bank and it was necessary, in public interest to take powers to exercise control over the conduct of the business of the Bank to safeguard the public funds. The State Government in exercise of the powers conferred by section 54 of the Act should have the right to nominate as its representatives, fifteen persons on the Board of Management and to appoint one among them as the President, one as the Vice-President and one other as the Managing Director of the Bank. The President,

the Vice- President and the Managing Director under the notification should exercise powers and discharge their functions subject to the supervision, direction and control of the State Government. The notification further stated that section 29 which conferred power on the State Government subject to any notification under section 54 or section 121 to have the right to nominate as its representatives not more than three persons or one third of the total number of members of the Committee of the Cooperative Society, whichever is less would be modified by substituting the words "have the right to nominate as its representatives 15 persons of the Committee of the Co-operative Society of whom one shall be appointed as Managing Director". The notification conferred power on the Managing Director subject to the policy decision of the Board, the right to conduct the business of the Bank and to sanction expenditure on establishment and certain other powers.

6. The second notification nominated fifteen persons to form the Board of Directors of the Bank. The Deputy Commissioner Bellary was appointed the President of the Bank. The Bank challenged the notifications on three grounds. First, the Action of the Government was ultra vires the Act; second, the Action was bad in violation of principles of natural justice; third, the Action was taken because of political rivalry with an evil eye to remove the President from the office. The High Court upheld the first two contentions and set aside the order.

7. Section 54 of the Act provides that where State aid amounting to not less than two lakhs of rupees is given to any co-operative society, the State Government, if it is satisfied that it is necessary in public interest so to do, may by notification in the official gazette take power to exercise such control over the conduct of business of such society as shall suffice in the opinion of the State Government to safeguard the interests of the State. Section 121 enacts that the State Government may, by general or special order published in the official gazette, exempt any cc-operative society or any class of societies from any of the provisions of this Act or may direct that such provisions shall apply to such society or class of societies with such modifications as may be specified in the order. At this stage, reference may be made to section 30 of the Act which provides for supersession of Committee. If, in the opinion of the Registrar, the Committee of any Co- operative Society persistently makes default or is negligent in the performance of the duties imposed on it by this Act or the, Rules or the bye-laws, or commits any act which is pre judicial to the interests of the society or its members, or is otherwise not functioning properly, the Registrar may, after giving the committee an opportunity to state its objections, if any, by order in writing, remove the committee and appoint a new committee consisting of one or more members of the society in its place or appoint one or more Administrators who need not be members of the society. S. 30 further provides that the Registrar can manage the affairs of the society for such period or periods not exceeding two years. There is also a provision for extension of the period so that the aggregate period does not exceed four years.

s. 29 to which reference has already been made provides for the nomination by the Government of persons on the committee of the Society where the State Government has subscribed to the share capital of a co-operative society or guaranteed the repayment of loans. The members nominated by the Government under s. 29 of the Act does not exceed three or one-third of the total number of members of the Committee, whichever is less.

s. 54 of the Act indicates that the power thereunder is to be exercised in public interest. The control

over the business of the Society contemplated under s. 54 should be such as is sufficient in the opinion of the State Government to safeguard the interests of the State. In the present case, the impeached orders suffer from two insurmountable infirmities. One is that the entire committee of Management has been superseded. There is a provision under s. 30 of the Act to supersede the management. The State Government does not take recourse to the =don. Indirectly the State Government has overthrown- the Committee of Management including the President and the Vice-President. The President and the Vice-President are officers within the meaning of s. 2(g) of the Act. Section 54 does not confer any power to remove the President and the Vice- President of the Society. Section 54 contemplates exercise of control over the conduct of the business. The word "control" suggests check, restraint or influence. Control is intended to regulate and hold in check and restrain from action. In the guise exercising control the State has displaced the committee of Management and substituted its own Committee. The State has indirectly intended to achieve what it is directly prohibited from doing under section 54 of the Act.

8. The second vice of the notification is that it is in violation of principles of natural justice. Section 30 of the Act contemplates a notice where the State intends to supersede the Management. The Committee has been deprived of their right to manage the affairs of the Society. They have been deprived of the right arbitrarily and in utter defiance of the powers under the statute. The High Court rightly set aside the impeached notifications.

9. For these reasons, the appeal fails and is dismissed. The State will pay costs to the respondents.

Deoki Nandan Parashar v Agra Distt. Co-Operative Bank, Agra and Others

Bench	D.G. Palekar, K.S. Hegde, A.N. Grover
Where Reported	1972 Indlaw SC 505; (1973) 3 SCC 303; AIR 1972 SC 2497; 1972 LabIC 1622; 1972 SLR 803
Case Digest	**Subject:** Labour & Industrial Law **Summary:** Agra District Co-operative Bank Ltd. Service Rules, 1958, r. 101 - Withrawal of Order - Order passsed by Registrar u/r. 101 - Whether it can be withdrawn by an Officer who succeeds him - Held, cannot be simply withdrawn by an Officer who succeeds him - Appeal Allowed.

Case No : C.A. No. 1047 of 1968.

The Judgment was delivered by : PALEKAR, J.

1. This is an appeal by special leave from the judgment and Order, dated October 25, 1967, passed by the Allahabad High Court in Civil Miscellaneous Writ No. 3713 of 1967.

2. The petitioner Deoki Nandan Parashar was an employee of the Agra District Co-operative Bank, Agra. He joined service as an Office Assistant in 1963 and was confirmed in that post a year later, on May 14, 1964. On October 16, 1964 the petitioner was promoted as Executive Officer and was confirmed in that post after one year's probation expiring on October 16, 1965.

3. The Annual General Meeting of the Bank was fixed on August 25, 1966. An emergency meeting of the Board of Directors was called on the previous day for disposing of urgent business in connection with the proposed Annual General Meeting. At that meeting one A. P. Sharma, who was a Director, moved a resolution for terminating the services of the petitioner. It was passed. A letter was issued to the petitioner, on August 25, 1966, intimating to him the termination of his services. A cheque was also issued for two months' in lieu of notice.

4. Aggrieved by this Order which was passed without previous notice, the petitioner went in appeal to the Registrar, Co-operative Societies under Rule 101 of the Agra District Co-operative Bank Ltd., Agra Service Rules, 1958 hereinafter described as the "service rules". The Registrar held that the termination of the petitioner's services all of a sudden in an emergent meeting of the Board of Directors on the eve of the Annual General Meeting without giving him an opportunity for submitting his explanation, was in utter disregard of Rule No. 21 of the Service Rules. Such an action on the part of the Board of Directors was against all cannons of equity, justice and good conscience and, therefore, the order required to be set aside. He further added that the resolution of the Society terminating the petitioner's service was foreign to the objects of the Society and was, therefore, inoperative and liable to be deleted from the records of the Society.

   "This wrong order of the Registrar has been withdrawn by the present Registrar. for the petitioner

submits that the present Registrar has no power to withdraw an order of his predecessor. Assuming that that is so, the main question is whether we should exercise discretion for interference in the circumstances of this case. We have already held that the order of the former Registrar is palpably wrong. The impugned order of the present Registrar withdraws that order. His order, therefore, advances manifest justice. Accordingly, we decline to interfere."

In that view the High Court dismissed the petitioner's writ petition.

12. The predecessor's order had set aside the resolution of the Board terminating the petitioner's service and the petitioner had been reinstated. The successor Registrar simply purported to withdraw his predecessor's order without giving any reasons for his action; nor was the petitioner given an opportunity to show cause against the purported withdrawal. The order made by the First Registrar, whether on merits it was right or wrong, was an order made with jurisdiction under Rule 101 of the Services Rules, and such a quasi-judicial order passed by a statutory authority like the Registrar in exercise of his jurisdiction was not liable to be simply withdrawn by an officer who succeeds him.

15. We do not, however, want to deal with this argument here because it is clear to us that the learned Judges were plainly in error in determining the correctness or otherwise of the order passed by the first Registrar because there was no challenge to it. The High Court had to deal only with the complaint of the petitioner as made out in his petition. But so far as that is concerned, it has refused to enter into an investigation of the matter on the ground that the withdrawal order had advanced manifest justice. We asked Mr. Shukla appearing on behalf of the respondent Bank, to point out to us any authority statutory or otherwise, which enable the successor Registrar to set aside, without notice to parties, a quasi-judicial order passed by his predecessor more than a year previously, Mr. Shukla was unable to invite our attention to any statute or legal authority in this connection. The petitioner had alleged mala fides. But for the purposes of disposing of this appeal it is not necessary for us to deal with it in this appeal. The Registrar had no jurisdiction whatsoever "to withdraw" his predecessor's order and his action in withdrawing it must be regarded as a nullity and of no effect. The consequence will be that the former order of the Registrar passed on September 3, 1966, will continue to hold the field.

18. It is contended that Rule 101 does not apply to an order terminating the services of an employee because other provisions have been made for appeal under the rules. In this connection, reference was made to Rule 26 which says that an employee aggrieved by an order of punishment may appeal to the Board of Directors. Prima facie this rule will apply when the authority is subordinate to the Board of Directors. Where a subordinate authority passes an order of punishment an appeal is provided against that order to the Board of Directors. Where the Board of Directors passes an order of dismissal it will be, prima facie, incongruous to say that an appeal from the decision of the Board of Directors shall be the Board of Directors only. Rule 101 refers to all matters relating to an employee not covered by the other rules. Rule 26 does not cover the case of an appeal against the order made by the Board of Directors against an employee. That is specifically provided under Rule 101.

19. We do not want to give a final decision on that point because it was not raised before the High Court and we do not have the benefit of the views of the High Court in that respect. All the parties before the High Court apparently proceeded on the basis that the appeal to the Registrar lay under

Rule 101 and that the order, dated September 3, 1966, was passed by the Registrar in exercise of his powers under Rule 101. The Registrar acted under that rule as giving him authority to entertain the appeal of an employee against his dismissal. His authority to entertain the appeal was not challenged either before him or the High Court. We cannot, therefore, permit the second ground also before this Court.

20. In the result the appeal is allowed, the order of the High Court is set aside and it is directed that the order of the Registrar, dated October 17, 1967 and the consequential order, dated October 21, 1967, passed by the Administrator of Respondent Bank should be treated as null and void and as of no effect. The appellant shall get his costs throughout from respondent No. 1.

Appeal allowed.

Regional Provident Fund Commissioner, Andhra v Shri T. S. Hariharan

Bench	I.D. Dua, Vishishtha Bhargava, J.M. Shelat
Where Reported	1971 Indlaw SC 103; (1971) 2 SCC 68; AIR 1971 SC 1519; 1971 (22) FLR 260; 1971 LabIC 951; 1971 (1) LLJ 416; [1971] S.C.R. 305; [1971] Supp S.C.R. 305
Case Digest	**Subject:** Labour & Industrial Law; Trusts & Associations **Keywords:** Co-Operative Society **Summary:** Employees' Provident Funds and Miscellaneous Provisions Act, 1952, ss. 1(3)(a) and (b) - Employment - Duration - As contemplated by s. 1(3)(a) and (b) - For determining the number of persons employed in an establishment - Held, employment of a person for any purpose whatsoever and for however short a duration or for a period of one year is not the employment contemplated by s. 1(3)(a) and (b) for the purpose of determining the number of persons employed in an establishment - Appeal Dismissed.

Case No : civil Appeal No. 1128 of 1967. 20-1 S.C. India/71 Appeal from the judgment and order dated September 1, 1964 of the Andhra Pradesh High Court in Writ Petition No.907 of 1963.

The Judgment was delivered by : I. D. Dua, J.

1. The appellant in this appeal by certificate granted by the Andhra Pradesh High' Court oft February 25, 1965 under Art. 133 (1) (b) of the Constitution is the Regional Provident Fund Commissioner, Andhra Pradesh. A large number, of writ petitions, by various parties were filed in the High Court praying for writs in the nature of mandamus directing the appellant to-forbear from enforcing or taking other proceeding under the provisions of the Employees' Provident Funds Act, 1957 (hereinafter called the Act) and, Provident Fund Scheme,' 1952. With 'the exception of perhaps one writ petition, all the rest, including W. P. 907 of 1963 presented by T. S. Hariharn, Proprietor, New Cochin Cafe, Ongole, respondent in; this Court were dismissed. Certificates under Article. 133 (i) (b) of the Constitution were secured by the appellant in almost all the cases but. the present is the only appeal which now survives, all the rest having been dismissed for non-prosecution. The writ, petition of the respondent was dismissed which means that the f inal order made by the High, Court was in favour of the appellant.
2. The only grievance raised by the appellant's learned counsel in this court was that the High-Court bad in the course of its judgment expressed the view that Clause (a),and (b)of sub-s. (3) of Section I of the Act do not cover casual labour and since this expression of opinion which he considers to be legally erroneous would be binding on the appellant in administering the Act, it was necessary to have the correct legal position enunciated by this Court. According to the appellant's learned counsel the following passages in the judgment of the High Court clearly bring out the arguments both for and against the legal position canvassed by him:

"We have next to consider whether cls. (a) and (b) of S. 1 (3) are wide enough to cover casual labour. It is maintained by the learned Government Pleader that requirement as to the numerical strength is satisfied if twenty persons are engaged in connection with the work of an establishment even for a day or a fraction thereof. This argument is sought to be reinforced by the unreported judgment of a Division Bench of the Madras High Court in Writ Appeal No. 193 (183) of 1962. It is true that this ruling vouches the proposition advanced by the learned Government Pleader. The learned Judges there observed: 'It is admitted on behalf of the applicant that fifty people worked at least for one day in each year. This, in our opinion, will be sufficient to bring the case within the purview of S. 1 (3) of the Act. *the Act is an ameliorative measure extended to benefit the permanent workers of an establishment. What is necessary for those permanent workers to get the benefit is that there should be fifty workers in that factory. In our view, it would be sufficient if that condition is satisfied at least for one day.'*

With great respect, we are unable to subscribe to the rule stated therein. It is true that this legislative measure is an ameliorative one. All the same, it cannot be overlooked that benefits are intended to be conferred on workmen in establishments that are in a position to employ twenty or more persons. It may be incidentally mentioned here that originally, i. e., prior to the Amendment Act, 46 of 1960 the number of employees in the establishment that would be brought within the scope of S. 1 (3) was fixed at fifty. We find it difficult to agfee with the view that twenty or more persons can be said to be employed or that an establishment employs twenty or more persons merely because on one day or two days the services of twenty or more persons were engaged for a particular purpose. To accept this contention would be to unduly enlarge the content of the section. To attract the applicability of S. 1 (3) the number of persons should come up to minimum of twenty. The underlying idea seems to be that the establishment should have twenty persons on its muster rolls and working regularly.

Could it be asserted that a factory gives employment to twenty- persons merely because twenty persons are engaged by that factory on a particular day for some special job. In our opinion, the answer must be in the negative. The sub-section contemplates the required number of people working continuously in the factory or other establishment in a year."

5. The question requiring our determination is a very short one. As there is no representation on behalf of the respondent in this Court and, therefore, we do not have the benefit of the respondent's point of 'view we propose to confine ourselves strictly to the limited question of the scope of cls. (a) and (b) of subs. (3) of Section I and this judgment is not intended to be considered as expressing any opinion on other controversial aspects. Before considering the relevant provisions of the Act it may be pointed out that according to the respondent's writ petition presented in the High Court in August 1963, the New Cochin Cafe (treated as a hotel) was started in Ongole town on November 20, 1956 and the respondent usually employed only 18 or 19 persons. In 1961 there was total failure of rains, in the Ongole region and that town was particularly hard hit. The respondent had, to employ two or three persons on contract basis. for supplying water to the hotel. Those persons were engaged from June to September 1961. The appellant has not questioned the correctness of these assertions for the purpose of this appeal.

The narrow question which directly arises for our consideration is whether Cl. (b) of sub-s. (3) of S. 1 when it speaks of the establishment employing 20 or more persons means that the person so

employed may be employed by the establishment for any purpose whatsoever and for however short a duration or that the employment must be for some minimum period in the establishment. The language used in the clause does not give any clear indication., We have, therefore, to construe this word in the light of the legislative, scheme, the object and purpose of enacting this clause and the ultimate effect of adopting one or the other construction. The relevant s.s of the statute have already been reproduced.

13. The appellant's learned counsel argued that in the present case ,the respondent has to employ a few persons every year regularly from June to September for supplying water to the hotel because ,of failure of rains. This, according to him, would be a regular ,employment and the High Court was wrong in holding to the contrary. There is no finding of the High Court to this effect and indeed no attempt was made before also to substantiate this bald assertion We are, therefore, unable to accept this contention on, the present., record. The general approach of the High Court to the problem raised in this case seems. to us to be, broadly speaking, correct; so is its final conclusion. ,The only observation of the-High 'Court which required consideration is that the sub-section in question contemplates the required number of per-, sons to work in the establishment continuously for one year. On this point we have clarified the legal position. As the High Court has dismissed the writ petition after clarifying the points of law raised leaving it to the appropriate authority to finally decide the controversy on a consideration of all the facts and circumstances we do not propose to say anything more in this appeal which has, been heard ex parte, With the aforesaid clarification of the legal, position we. dismiss this appeal. As there is no representation, on behalf of the respondent there will be no order as to costs.

Appeal dismissed.

Co-operative Central Bank Limited and Others v Additional Industrial Tribunal A P and Others

Bench	Vishishtha Bhargava, C.A. Vaidyialingam, J.M. Shelat
Where Reported	1969 Indlaw SC 341; (1969) 2 SCC 43; AIR 1970 SC 245; [1970] 40 Comp Cas 206; 1969 (19) FLR 56; 1970 LabIC 285; 1969 (2) LLJ 698; 1970 (1) MLJ(SC) 68; [1970] 1 S.C.R. 205
Case Digest	**Subject:** Corporate; Labour & Industrial Law **Keywords:** Co-Operative Society **Summary:** A.P. Co-operative Societies Act, 1964, ss. 16, 16 (5) and 61 - Industrial Disputes Act, 1947, s. 15 - Companies Act, 1956, s. 36 - Industrial Employment (Standing Orders) Act, 1946, s. 2(g) - Constitution, art. 13 - (A) Co-operative Societies - (1) Dispute capable of being resolved by Registrar u/s. 61 - Jurisdiction of Industrial tribunal under 1947 Act - (2) 'Dispute touching business of society' - Dispute relating to alterations of conditions of service - If within jurisdiction of Registrar u/s. 61 - (3) Bye-laws of co-operative society framed in pursuance of provisions of the Act - Whether possess force of law - (4) Amendments in by-laws - Contemplated for, what - (B) Industrial Disputes Act, 1947, s.15 - Jurisdiction of Industrial Tribunal - Not limited to merely administering existing laws and enforcing existing contracts - Held, jurisdiction is barred - It cannot be held to be dispute touching 'business' of society as such dispute is not contemplated to be dealt with u/s. 62 and is, therefore, outside scope of s. 61, it could only be dealt with by Industrial Tribunal under 1947 Act and provisions of s.16 (5) are irrelevant - They cannot be held to have force of law - They are not contemplated in interests of workmen or for purpose of resolving industrial disputes, but in the interest of Society or co-operative movement - (B) Industrial Tribunal can even vary contract of service between employer and employees - Appeal Dismissed.

Case No : Civil Appeals Nos. 2093 and 2094 of 1968

The Judgment was delivered by : Vishishtha Bhargava, J.

1. An industrial dispute arose between 25 Cooperative Central Banks in the State of Andhra Pradesh and their workmen represented by the Andhra Pradesh Bank Employees Federation, Hyderabad, which was referred by the Government of Andhra Pradesh to the Industrial Tribunal, Hyderabad, under section 10(1) (d) of the Industrial Disputes Act No. 14 of 1947. The subject-matter of the dispute was divided into three issues. The first issue comprised a number of service conditions, viz., (1) Salary, Scales and Adjustments, (2) Dearness Allowance, (3) Special Allowances, (4) other Allowances, (5) Uniforms and Washing Allowances for subordinate staff, (6) Conveyance

Charges, (7) Provident Fund and Gratuity, (8) Leave Rules, (9) Joining Time on Transfer, (1) Rules relating to departmental enquiry against employees for misconduct, (11) Probationary Period and Confirmation, (12) Working Hours and Overtime Allowance, (13) Age of Retirement,, (14) Security, (15) Common Good Fund, (16) Service Conditions and (17) Promotions. The second and the third issues both related to the question whether the transfers of some employees of two of the Banks, The Vijayawada Co-operative Central Bank, Ltd., Vijayawada, and The Vizianagaram Co-operative Central Bank Ltd., Vizianagaram, were justified and, if not, to what reliefs were the employees entitled. Before the Industrial Tribunal, one of the grounds raised on behalf of the Banks was that the reference of the disputes to the Tribunal was invalid, because such disputes were required to be referred for decision to the Registrar of the Co-operative Societies under section 61 of the Andhra Pradesh Co-operative Societies Act No. 7 of 1964 (hereinafter referred to as 'the Act'), and the effect of the provisions of the Act was to exclude the jurisdiction of the Industrial Tribunals to deal with the same disputes under the Industrial Disputes Act.

3. The Tribunal, and the High Court, in rejecting the plea taken -on behalf of the Banks, expressed the view that the disputes actually referred to the Tribunal were not capable of being decided by the Registrar of the Co-operative Societies under S. 61 of the Act and, consequently, the reference to the Industrial Tribunal under the Industrial Disputes Act was competent. Learned counsel appearing on behalf of the Banks took us through the provisions of the Act to indicate that, besides being a local and special Act, it is a self-contained Act enacted for the purpose of successful working of Co-operative Societies, including Cooperative Banks, and there are provisions in the Act which clearly exclude the applicability of other laws if they happen to be in conflict with the provisions of the Act. It is no doubt true that the Act is an enactment passed by State Legislature which received the assent of the President, so that, if any provision of a Central Act, including the Industrial Disputes Act, is repugnant to any provision of the Act, the provision of the Act will prevail and not the provision of the Central Industrial Disputes Act. The general proposition urged that the jurisdiction of the Industrial Tribunal under the Industrial Disputes Act will be barred if the disputes in question can be competently decided by the Registrar under s. 61 of the Act is, therefore, correct and has to be accepted. The question, however, that has to be examined is whether the industrial dispute referred to the Tribunal in the present cases was such as was required to be referred to the Registrar and to be decided by him) under section 61 of the Act.

14. We are unable to accept the submission that the bye-laws of a co-operative society framed in pursuance of the provisions of the Act can be held to be law or to have the force of law.

15. It has no doubt been held that, if a statute gives power to a Government or other authority to make rules, the rules so framed have the force of statute and are to be deemed to be incorporated as a part of the statute. That principle, however, does not apply to bye-laws of the nature that a cooperative society is empowered by the Act to make. The byelaws that are contemplated by the Act can be merely those which govern the internal management, business or administration of a society. They may be binding between the persons affected by them, but they do not have the force of a statute. In respect of bye-laws laying down conditions of service of the employees of a

society, the bye-laws would be binding between the society and the employees just in, the same manner as conditions of service laid down by contract between the parties. In fact, after such bye-laws laying down the conditions of service are made and any person enters the employment of a society, those conditions of service will have to be treated as conditions accepted by the employee when entering the service and will thus bind him like conditions of service specifically forming part of the contract of service. The bye-laws that can be framed by a society under the Act are similar in nature to the Articles of Association of a Company incorporated under the Companies Act and such Articles of Association have never been held to have the force of law. In a number of cases, conditions of service for industries are laid down by Standing Orders certified under the Industrial Employment (Standing Orders) Act, 1946, and it has been held that, though such Standing Orders are binding between the employers and the employees of the industry governed by those Standing Orders, they do not have such force of law as to be binding on industrial Tribunals adjudicating an industrial dispute. The jurisdiction which is granted to Industrial Tribunals by the Industrial Disputes Act is not the jurisdiction of merely administering the existing laws and enforcing existing contracts. Industrial Tribunals have the right even to vary contracts of service between the employer and the employees which jurisdiction can never be exercised by a civil court or a Registrar acting under the Co-operative Societies Act, so that the circumstance that, in granting relief on issue No. 1, the Tribunal will have to vary the special bye-laws framed by the Cooperative Bank does not lead to the inference that the Tribunal would be incompetent to grant the reliefs sought in this reference.

17. We may also, in this connection, take notice of the submission made by learned counsel that the Registrar could have granted relief, under S. 16 (5) of the Act if he thought that it was advisable to grant that relief to the workmen. in our opinion, this submission must be rejected for two reasons. The first reason is that action taken by the Registrar under s. 16(5) of the Act will not be a decision on a dispute referred to him under s. 61 of the Act. When dealing with the dispute under s. 61 of the Act, the Registrar is bound to decide the dispute in accordance with the existing bye-laws, so that, if the dispute relates to alteration of conditions of service laid down in the bye-laws, he will be incompetent to grant the relief claimed. It is also to be noticed that a dispute referred to a Registrar under s. 61 of the Act may be transferred for disposal to a person who has been invested by the Government with powers in that behalf or may be referred for disposal to an arbitrator. On the face of it, such person or arbitrator cannot possibly exercise the powers of the Registrar under, s. 16(5) of the Act. The second reason is that, under S. 16(5) of the Act, the power given to the Registrar to propose amendments in the bye-laws and to enforce them if the proposal is not accepted by a society is to be exercised only when the Registrar is of the opinion that it is necessary or desirable to do so in the interests of such society or of the co-operative movement.

19. We may also take notice of an argument advanced at the last stage by learned counsel appearing on behalf of the Banks that, in any case, matters covered by issues Nos. 2 and 3 referred to the Tribunal could have been competently decided by the Registrar, and the reference in respect of those two issues at least should be held to be incompetent. We do not think that at this stage

there is any need for us to decide this question, because such a point was not raised at all in the petitions filed under Art. 226 of the Constitution before the High Court. In those petitions, the competence of the reference to the Industrial Tribunal as a whole was challenged on the ground that it was barred because of the jurisdiction of the Registrar to deal with the dispute under section 61 of the Act. Consequently, we need not deal with the question whether a particular issue forming part of the reference has been,.competently referred or not.

20. The appeals fail and are dismissed with costs. One hearing fee.

Appeals dismissed

Pandit Jhandu Lal and Others v State of Punjab and Others

Bench	Bhuvaneshwar Prasad Sinha, Pralhad Balacharya Gajendragadkar, K. Subba Rao, Kailas Nath Wanchoo, J.L. Kapur
Where Reported	1960 Indlaw SC 264; AIR 1961 SC 343; 1961 (1) SCJ 529; [1961] 2 S.C.R. 459
Case Digest	**Subject:** Constitution; Land & Property; Municipalities & Local Governments; Trusts & Associations **Keywords:** Land Acquisition, Condition Precedent, Compulsory Acquisition of Land and Property, Society **Summary:** Land & Property - Co-operative Societies Act, 1912 - Constitution Of India, 1950 - Land Acquisition Act, 1894 - Appellants are owners of, what is said to be, agricultural land in district of Ambala - On 27-05-1955, first respondent, i.e., the State of Punjab, through Secy., Labour Department, issued a notification u/s. 4 of Land Acquisition Act - Later same day another notification u/s. 6 of Act was issued which stated that it appeared to Governor of Punjab that land is required to be taken by Govt. for a public purpose, namely, for construction of a labour colony under Govt. sponsored husing scheme for the Industrial Workers of Thapar Industrial Workers' Co-operative Housing Society Ltd. (which is second respondent in this case) - Whether or not proceedings were vitiated by reason of admitted fact that no proceedings u/Part VII of Act had been taken in making acquisition? - Held, provisions of Part VII, r/w s. 6 of Act, lead to this result that declaration for acquisition for a Co. shall not be made unless compensation to be awarded for property is to be paid by a Co. - Declaration for acquisition for a public purpose, similarly, cannot be made unless compensation, wholly or partly, is to be paid out of public funds - Therefore, in case of an acquisition for a Co. simpliciter declaration cannot be made without satisfying requirements of Part VII - But, that does not necessarily mean that an acquisition for a Co. for a public purpose cannot be made otherwise than under provisions of Part VII, if cost or a portion of cost of acquisition is to come out of public funds - In other words, essential condition for acquisition for a public purpose is that cost of acquisition should be borne, wholly or in part, out of public funds - It appears that part at any rate of compensation to be awarded for acquisition is to come eventually from out of public revenues it must be held that acquisition is not for a Co. simpliciter - It was not, therefore, necessary to go through procedure prescribed by Part VII - Appeal dismissed.

Case No : Civil Appeal No. 4 of 1960

The Judgment was delivered by : Bhuvaneshwar Prasad Sinha, J.

1. This appeal, by special leave granted on May 29, 1959, is directed against the decision of the Letters Patent Bench (G. D. Khosla, C. J., and Dulat, J.) dated January 28, 1959, affirming that of the learned single Judge (Bishan Narain, J.) dated February 17, 1958, whereby he dismissed the appellants' Writ Petition under Art. 226 of the Constitution.

2. It appears that the appellants are the owners of, what is said to be, agricultural land, measuring about 86 bighas odd, in village Munda Majra, Tehsil Jagadhari, in the district of Ambala. On October 27, 1954, the Additional District Magistrate of Ambala ordered the land aforesaid to be requisitioned under the Punjab Requisitioning & Acquisition of Immoveable Property Act (XI of 1953) for the construction of houses by members of the Thapar Industries Co-operative Housing Society Ltd., Yamuna Nagar. Possession of the land was taken on November 5, 1954. The appellants, at once, instituted a suit on November 14, 1954, in the Court of the Subordinate Judge, Jagadhari, challenging the requisition proceedings. The suit was ultimately decreed by the Court on June 21, 1955, and the possession of the property in question was restored to the petitioners. On May 27, 1955, the first respondent, i. e., the State of

15. In their Writ Petition, as originally filed in the High Court, it was not categorically stated by the appellants that the compensation in respect of the land in question was paid, or was to be paid, by the Company. It may be stated here, by the way, that it is common ground that the second respondent is a Company within the meaning of the Act, being a registered society under the Co-operative Societies Act. It is also common ground that the purpose for which the land was being acquired was for erecting residential quarters for industrial labour, which had organised itself into the Co- operative Housing Society, the second respondent. It was only at a later stage of the proceedings in the High Court, that is to say, in the replication filed on behalf of the appellants to the Written Statement filed by the Government, in answer to the appellant's Writ Petition, that, for the first time, it was alleged by the appellants that "the entire amount of compensation has been borne by the respondent society". This allegation has not been either supported or countered by evidence on either side. But it has been pointed out by the learned single Judge that it was clear from the Government Housing Scheme that a substantial amount to be expended on this Scheme comes out of the Revenues, in the form of subsidies and loans. It was stated at the Bar, with reference to the terms and conditions of the Government Housing Scheme, that 25% to 50% of the cost of land and structures to be built upon the land was to be advanced by Government out of public funds, in the shape of subsidy and loan. It would, thus, appear that the High Court was not right in the assumption made as aforesaid. It is clear from the statement of facts on record that the respondent No. 2 is a 'Company', within the meaning of the Act; that the land is acquired for the benefit of the Company, and at its instance, and that a large proportion of the compensation money was to come out of public funds, the other portion being supplied by the Company or its members. There is also no doubt that the structures to be made on the land would benefit the members of the Co-operative Society.

18. S. 6 is, in terms, made subject to the provisions of Part VII of the Act. The provisions of Part VII, read with s. 6 of the Act, lead to this result that the declaration for the acquisition for a Company shall not be made unless the compensation to be awarded for the property is to be paid by a company. The declaration for the acquisition for a public purpose, similarly, cannot be made unless

the compensation, wholly or partly, is to be paid out of public funds. Therefore, in the case of an acquisition for a Company simpliciter, the declaration cannot be made without satisfying the requirements of Part VII. But, that does not necessarily mean that an acquisition for a Company for a public purpose cannot be made otherwise than under the provisions of Part VII, if the cost or a portion of the cost of the acquisition is to come out of public funds. In other words, the essential condition for acquisition for a public purpose is that the cost of the acquisition should be borne, wholly or in part, out of public funds. Hence, an acquisition for a Company may also be made for a public purpose, within the meaning of the Act, if a part or the whole of the cost of acquisition is met by public funds. If, on the other hand, the acquisition for a Company is to be made at the cost entirely of the Company itself, such an acquisition comes under the provisions of Part VII. As in the present instance, it appears that part at any rate of the compensation to be awarded for the acquisition is to come eventually from out of public revenues, it must be held that the acquisition is not for a Company simpliciter. It was not, therefore, necessary to go through the procedure prescribed by Part VII. We, therefore, agree with the conclusion of the High Court, though not for the same reasons.

Bihar State Co-Operative Bank Limited v Commissioner of Income Tax

Bench	J.L. Kapur, A.K. Sarkar, Mohammad Hidayatullah
Where Reported	1960 Indlaw SC 418; AIR 1960 SC 789; [1960] 39 ITR 114; 1960 (2) MLJ(SC) 54; 1960 SCJ 773; [1960] 3 S.C.R. 58
Case Digest	**Subject:** Income Tax & Direct Taxes **Keywords:** Government securities, Profits **Summary:** Income Tax & Direct Taxes - Co-operative Societies Act, 1912 - Indian Income Tax Act, 1922,ss.6,10 - Investment - Interest - Profits - Exemption - Appellant Bank registered under 1912 Act, to carry on general business of banking - Appellant received by way of interest on deposits with Bank of India sums of Rs.7,192, Rs.20,250, Rs.22,600 were not assessed when assessment made but subsequently assessed as being income under head other sources - Appellate Assistant Commissioner assumed that fixed deposits with Imperial Bank was an investment apart from business of appellant and interest from these deposits was not exempt from Income-tax and interest from investments was no part of appellants business profits exempt from taxation - Income Tax Appellate Tribunal assumed that interest derived from investment cannot be regarded as profits of business and was not exempt from Income Tax - HC decided against appellant - Hence instant appeal - Whether interest derived from deposits were considered as profit of banking business - Held, it cannot be said that funds of Bank which were not lent to borrowers but were not laid out in form of deposits in another bank to add to profit instead of lying idle necessarily ceased to be a part of stock-in-trade of bank, or that interest arising not form part of its business profits - HC was in error in treating interest derived from deposits as not arising from business of Bank and not falling within income exempted under Notification - Order of HC set aside - Appeal allowed.

Case No : Civil Appeals Nos. 228 to 230 of 1958.

The Judgment was delivered by : J.L. Kapur, J.

1. The appellant is a Bank registered under the Co-operative Societies Act, 1912 (Act II of 1912) and is deemed to be registered under the Bihar & Orissa Co-operative Societies Act, 1935 (Bihar Act VI of 1935) which in Bihar has replaced the Co-operative Societies Act of 1912. It was carrying on banking business in the State of Bihar.

2. One of the objects of the Bank is to carry on general business of banking not repugnant to the provisions of the Bihar Act and rules framed thereunder for the time being in force (Bye-Law 3(a) vi). In the calendar years 1945, 1946 and 1947, the appellant Bank received by way of interest

on deposits with the Imperial Bank of India the sums of Rs. 7, 192, Rs. 20, 250 and Rs. 22, 600 respectively. It is these sums which are the subject matter of dispute in these three appeals which relate to the respective assessment years 1946-47, 1947-48 and 1948-49. These sums were not assessed when assessment was made under s. 23(3) of the Income-tax Act, but subsequently under s. 34 they were assessed as being 'income' under the head 'other sources'. This order was upheld by the Appellate Assistant Commissioner and by the Income-tax Appellate Tribunal. A case was then stated to the High Court under s. 66(1) of the Act, but was decided against the appellant. The appellant brought three appeals in this court in regard to the three assessment years. In each one of them the respondent is the Commissioner of Income-tax, Bihar and Orissa. As the appeals involve a common question of law they were consolidated and can conveniently be disposed of by one judgment.

4. The Appellate Assistant Commissioner, however, repelled the contention of the appellant. He held that the business of the appellant consisted of 'lending money, and selling agricultural and other products to its constituents' which could be planned ahead and required no provision for extraordinary claims. He remarked that it appeared from the balance-sheets that in the accounting year 1945 the Bank invested Rs. 13, 50, 000 as fixed deposits, which, in the following year was raised to Rs. 15, 00, 000 and it was only in the accounting year 1947 that the fixed deposits 'were realised on maturity with interest'. He was also of the opinion that the length of the period during which this money 'was kept locked in this way' showed clearly that 'not the exigencies of pressing necessities, but the motives of investment of surplus fund had actuated the deposits'. He therefore held that the fixed deposits with the Imperial Bank were held as an investment quite apart from the business of the appellant and the interest from these deposits was not exempt from Income-tax. He further held that the exemption as to the profit of a Co-operative Society extended to its sphere of co-operative activities and therefore interest from investments was no part of the appellant's business profits exempt from taxation. Against this order an appeal was taken to the Income-tax Appellate Tribunal and it was there contended that the Bank did not make the deposits as investments, but in order that cash might be available to the appellant 'continuously' for the carrying on of the purposes of its business, and that the deposits were intimately connected with the business of the appellant and therefore the interest should have been held to be profits arising from the business activities of the Bank, and that the finding that the short-term deposits in the Imperial Bank were separate from the appellant's banking business was erroneous. The Income-tax Appellate Tribunal, by its order dated April 11, 1955, held :- "(1) That the interest was an income rightly to be included under the head of 'other sources'.

(2) The profits of a Co-operative Society indicates the profit derived from the business which can be truly called the business of the Co-operative Society. Investments by the society either in securities or in shares or in bank fixed deposits are made out of surplus funds. The interest or dividend derived from such investment cannot be regarded as part of the profits of the business qua such bank and therefore, it is not exempt from income-tax (Vide Hoshiarpur Central Co-operative Bank v. Commissioner of Income-tax (1953 Indlaw PNH 19, 350),)"

5. Against this order a case was stated at the instance of the appellant under s. 66(1) of the Act, and the following two questions of law were referred for the opinion of the High Court;

10. In the instant case the co-operative society (the appellant) is a Bank. One of its objects is to carry

on the general business of banking. Like other banks money is its stock-in-trade or circulating capital and its normal business is to deal in money and credit. It cannot be said that the business of such a Bank consists only in receiving deposits and lending money to its members or such other societies as are mentioned in the objects and that when it lays out its moneys so that they may be readily available to meet the demand of its depositors if and when they arise, it is not a legitimate mode of carrying on of its banking business. The Privy Council in The Punjab Co-operative Bank Ltd. v. The Commissioner of Income-tax, Lahore (1940 Indlaw PC 21) where the profits arose from the sale of Government securities pointed out at p. 645 that in the ordinary cases the business of a Bank essentially consists of dealing with money and credit. Depositors put their money in the Bank at a small rate of interest and in order to meet their demands if and when they arise the Bank has always to keep sufficient cash or easily realisable securities. That is a normal step in the carrying on of the banking business. In other words 'that is an act done in what is truly the carrying on or carrying out of a business'. It may be added that another mode of conducting business of a Bank is to place its funds in deposit with other banks and that also is to meet demands which may be made on it. It was however argued that in the instant case the moneys had been deposited with the Imperial Bank on long term deposits inasmuch as they were deposited for one year and were renewed from time to time also for a year; but as is shown by the accounts these deposits fell due at short intervals and would have been available to the appellant had any need arisen.Stress was laid on the use of the word 'surplus' both by the tribunal as well as by the High Court and it was also contended before us that in the bye-laws under the heading 'business of the bank' it was provided that the bank could 'invest surplus funds when not required for the business of the bank in one or more ways specified in s. 19 of the Bihar Act (Cl. 4 III(i) of the Bye-Laws). Whether funds invested as provided in s. 19 of the Bihar Act would be surplus or not does not arise for decision in this case, but it has not been shown that the moneys which were in deposit with other banks were 'surplus' within that bye-law so as to take it out of banking business. As we have pointed out above, it is a normal mode of carrying on banking business to invest moneys in a manner that they are readily available and that is just as much a part of the mode of conducting a Bank's business as receiving deposits or lending moneys or discounting hundies or issuing demand drafts. That is how the circulating capital is employed and that is the normal course of business of a bank. The moneys laid out in the form of deposits as in the instant case would not cease to be a part of the circulating capital of the appellant nor would they cease to form part of its banking business. The returns flowing from them would form part of its profits from its business. In a commercial sense the directors of the company owe it to the bank to make investments which earn them interest instead of letting moneys lie idle. It cannot be said that the funds of the Bank which were not lent to borrowers but were not laid out in the form of deposits in another bank to add to the profit instead of lying idle necessarily ceased to be a part of the stock-in-trade of the bank, or that the interest arising therefrom did not form part of its business profits. Under the bye-laws one of the objects of the appellant bank is to carry on the general business of banking and therefore subject to the Co-operative Societies Act, it has to carry on its business in the manner that ordinary banks do. It may be added that the various heads under s. 6 of the Income Tax Act and the provisions of that Act applicable to these various heads are mutually exclusive. S. 12 is a residuary section and does not come into operation until the preceding heads are excluded. Commissioner of Income-tax v. Basant Rai

Takhat Singh (1933 Indlaw PC 1, 201).In our opinion, the High Court was in error in treating interest derived from deposits as not arising from the business of the Bank and therefore not falling within the income exempted under the Notification. The appeal must therefore be allowed and the judgment and order of the High Court set aside. The appellant will have its costs in this Court and in the Court below.