SUPREME COURT JUDGEMENTS

RELATED TO CO-OPERATIVE SECTOR

Volume 2

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 : 632

Price : Rs.500/-

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 ಕೂಢೀಕರಿಸಿ, 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	3047 of 2015 (Arising from S.L.P. (C) No. 6237/2014) with C.A. No. 3048 of 2015 (Arising from S.L.P. (C) No. 3799/2014) and C.A. No. 3049 of 2015 (Arising from S.L.P. (C) No. 5270/2014)	Vipulbhai M. Chaudhary v Gujarat Cooperative Milk Marketing Federation Limited and others	Kurian Joseph, Anil R. Dave	2015 Indlaw SC 397	1 - 6
2	1539 of 1974. Appeal by special leave from the Judgment and Order of the High Court of Bombay in LPA No. 80 of 1972.	Ramesh Himmatlal Shah v Harsukh Jadhavji Joshi	P.K. Goswami, A. Alagiriswami, P.N. Bhagwati	1975 Indlaw SC 178; (1975) 2 SCC 105; AIR 1975 SC 1470; 1975 BomLR 549; [1975] Supp S.C.R. 270	7 – 8
3	214 of 1972. (Petition under Article 32 of the Constitution of India for the enforcement of fundamental rights)	Veerpal Singh v Deputy Registrar, Co-Operative Societies, Meerut and Others	A.N. Ray, S.M. Sikri, D.G. Palekar, M. Hameedullah Beg, S.N. Dwivedi	1973 Indlaw SC 262; (1973) 1 SCC 593; AIR 1973 SC 1052; [1973] 3 S.C.R. 430	9 – 10
4	243 of 1971 and Civil Appeal No. 592 of 1972. Writ Petition No. 243 of 1971 Petition under Article 32 of the Constitution of India for the enforcement of fundamental	Uttar Pradesh Co-Operative Federation v The State Of U.P. & Ors.	A.N. Ray, S.M. Sikri, D.G. Palekar, M. Hameedullah Beg, S.N. Dwivedi	1973 Indlaw SC 74; (1973) 1 SCC 398; AIR 1973 SC 1068; [1973] 3 S.C.R. 402	11 - 12

	rights and Civil Appeal No. 592 of 1972. Appeal by a special leave from the judgment and order dated December				
5	1312 of 1967. Appeal by special leave from the judgment and decree Dt. 22 October 1962 of the Kerala High Court in Appeal Suit No. 804 of 1969.	Shamrao Vithal Co-Operative Bank Limited v Kasargod Pandhuranga Mallya	Hans Raj Khanna, K.S. Hegde	1971 Indlaw SC 314; (1972) 4 SCC 600; AIR 1972 SC 1248; [1972] 2 S.C.R. 162; 1972 UJ 204	13 – 15
6	2293 of 1970. Appeal by special leave, from the order Dt. 4 May 1970 of the Central Registrar of Co-operative Societies, New Delhi in Appeal No. CR/1/70.	Panchshila Industrial Co-Opera-Tive Societies(Multi Unit) v Gurgaon Central Co-Operative Bankltd. Gurgaon	S.M. Sikri, A.N. Ray, D.G. Palekar	1971 Indlaw SC 197; (1971) 2 SCC 500; AIR 1971 SC 2403; [1972] 1 S.C.R. 44	16 - 17
7	1059 of 1970. Appeal from the judgment and order dated February 18, 1970, of the Gujarat High Court in Special Civil Application No. 387 of 1968.	Nagar Panchayat, Una v Una Taluka Sahakari Kharid Vechan Sangh Ltd.	A.N. Grover, J.C. Shah	1970 Indlaw SC 161; (1971) 1 SCC 21; AIR 1971 SC 1078; [1971] 2 S.C.R. 407	18
8	2587 of 1985	Balasinor Nagrik Cooperative Bank Limited v Babubhai Shankerlal Pandya and Others	A.P. Sen, V. Balakrishna Eradi	1987 Indlaw SC 28708; (1987) 1 SCC 606; AIR 1987 SC 849; JT 1987 (1) SC 462; 1987(1) SCALE 348; 1987 (1) UJ 379	19 – 20

9	893 and 967 of 1979 and W. P. No, 295 of 1980	S. M. Mahendru and Company Etc v State of Tamil Nadu and Another	V.D. Tulzapurkar, R.S. Pathak, S. Mukharji	1984 Indlaw SC 247; (1985) 1 SCC 395; AIR 1985 SC 270; 1985 (1) MLJ(SC) 6; 1985 (1) RCR(Rent) 218; 1985 (1) RentLR 719; 1984(2) SCALE 961; [1985] 2 S.C.R. 416; 1985 UJ 385	21 – 22
10	11991 of 1983. From the Judgment and Order dated the 27th April, 1983 of the High Court of Bombay in Writ Petition No.392 of 1982. AND Civil Appeal No.1810/81. From the Judgment and Order dated the 8th July, 1981 of the High Court of Bombay in Writ Petition No.1484 of 1981	Babaji Kondaji Garad Etc v The Nasik Merchants Co-Operative Bank Ltd., Nasik & Ors.Etc	D.A. Desai, A. Varadarajan, O. Chinnappa Reddy	1983 Indlaw SC 159; (1984) 2 SCC 50; AIR 1984 SC 192; 1984 (1) Bom.C.R. 399; 1983(2) SCALE 696; [1984] 1 S.C.R. 767; 1984 UJ 239	23 – 25
11	10296 of 1983, Appeal by Special leave from the Judgment and Order dated the 30th September, 1983 of the Patna High Court in C.W.J.C. No. 4139 of 1983	Chandrika Jha v State of Bihar and Others	A.P. Sen, E.S. Venkataramiah	1983 Indlaw SC 156; (1984) 2 SCC 41; AIR 1984 SC 322; 1983 (31) BLJR 670; [1984] 55 Comp Cas 347; 1983(2) SCALE 888; [1984] 1 S.C.R. 646; 1984 UJ 1	26 – 27

12	1145 of 1971 (From the Judgment and Order Dt. 28 August 1969 of the High Court of Andhra Pradesh at Hydrabad in L.P.A. No. 45 of 1965)	A. P. Scheduled Tribes Cooperative Finance and Development Corporation v B. Pundiah and Others	O. Chinnappa Reddy, D.A. Desai	1983 Indlaw SC 326; (1983) 4 SCC 466; AIR 1983 SC 1290; 1983(2) SCALE 309; 1983 UJ 932	28 - 29
13	241 of 1982. Appeal by Special leave from the judgment and order dated the 14th September, 1981 of the Patna High Court in Criminal Revision No. 874 of 1981.	Sheonandan Paswan v State of Bihar and Others	V.D. Tulzapurkar, Baharul Islam, R.B. Misra	1982 Indlaw SC 72; (1983) SCC (Cr) 224; (1983) 1 SCC 438; AIR 1983 SC 194; 1983 CRLJ 348; 1983 CrLR(SC) 58; 1982(2) SCALE 1241; [1983] 2 S.C.R. 61	30 – 37
14	1843 of 981. Appeal by special leave from the judgment and order dated the 21st April, 1981 of the Bombay High Court in Appeal No. 168 of 1981.	O. N. Bhatnagar v Smt. Rukibai Narsindas and Others	A.P. Sen, S. Murtaza Fazal Ali, E.S. Venkataramiah	1982 Indlaw SC 122; (1982) 2 SCC 244; AIR 1982 SC 1097; 1982 (2) Bom.C.R. 401; 1982 MahLJ 484; 1982 (2) RCJ 123; 1982 (2) RCR(Rent) 54; 1982 (1) RentLR 759; 1982(1) SCALE 377; [1982] 3 S.C.R. 681; 1982 UJ 434	38 - 40

15	2219 of 1970.	Allahabad District Cooperative Limited v Hanuman Dutt Tewari	A.P. Sen, Baharul Islam, O. Chinnappa Reddy	1981 Indlaw SC 498; (1981) 4 SCC 431; (1981) SCC (L&S) 649; AIR 1982 SC 120; 1982 (1) LLN 283	41
16	433 of 1977	U. P. Co-Operative Cane Union Federation Limited and another v Liladhar and Others	D.A. Desai, P.N. Shingal	1980 Indlaw SC 68; (1980) Supp SCC 437; AIR 1981 SC 152; 1980 ALJ 1073; 1980 (41) FLR 288;	42 – 45
				1981 (1) LLJ 156; 1981 (1) LLN 13; [1981] 1 S.C.R. 558; 1981 (1) SLJ 40; 1980 (3) SLR 440	
17	288 of 1978 (Along with S.L.P. Nos. 7188 of 1979, 4214-4216 of 1980; W.Ps. Nos. 568-572, 579, 662, 765, 908, 1077 of 1979, 298 and 419 of 1980).	Virendra Pal Singh and Others v District Assistant Registrar, Cooperative Societies, Etah and Another	O. Chinnappa Reddy	1980 Indlaw SC 472; (1980) 4 SCC 109; (1980) SCC (L&S) 516	46 – 48
18	411 of 1980.	Tara Chand v Zamindar Cooperative Marketing-Cum-Processing Society Limited and Others	V.R. Krishna Iyer, A.D. Koshal, O. Chinnappa Reddy	1980 Indlaw SC 519; (1980) Supp SCC 667; AIR 1980 SC 1663; 1980 UJ 501	49

19	1258 of 1969	Registrar of Co-Operative Society v K. Kunhambu and Others	O. Chinnappa Reddy, R.S. Sarkaria	1979 Ind-law SC 301; (1980) 1 SCC 340; AIR 1980 SC 350; 1980 KLT 112; 1980 (2) MLJ(SC) 17; [1980] 2 S.C.R. 260; 1980 UJ 272	50 – 51
20	146/78, CIVIL APPEAL NOS. 322-324 OF 1979 AND SPECIAL LEAVE PETITION (CIVIL) NO. 2939/79	Management Of Shri Chalthan Vibhag Khan Udyog Sahakarimandal v B.S. Barot Member, Industrial Court, Gujarat, And Anr. Etc.	P.S. Kailasam, S. Murtaza Fazal Ali, A.P. Sen	1979 Ind-law SC 314; (1979) 4 SCC 622; (1980) SCC (L&S) 76; AIR 1980 SC 31; 1980 (40) FLR 458; 1979 LabIC 1379; 1979 (2) LLJ 383; 1980 (1) LLN 28; [1980] 1 S.C.R. 509; 1980 SLJ 31	52 – 53
21	41 and 42 of 1977	Dadasaheb Dattatraya Pawar and Others v Pandurang Raoji Jagtap and Others	Jaswant Singh, Y.V. Chandrachud, V.R. Krishna Iyer	1978 Ind-law SC 333; (1978) 1 SCC 504; AIR 1978 SC 351; [1978] 2 S.C.R. 524; 1978 UJ 102	54 - 57
22	503-504 of 1977. Appeals by Special Leave from the Judgment and Order dated 27-1-77 of the Andhra Pradesh High Court in Writ Petitions Nos. 3967 and 3987/76 respectively.	Chintapalli Agency Taluk Arrack Salesco-Operative Society Lt v Secretary (Food And Agriculture) Govt. Ofandhra Pradesh, Et	P.K. Goswami, P.N. Shingal, Jaswant Singh	1977 Ind-law SC 107; (1977) 4 SCC 337; AIR 1977 SC 2313; [1978] 1 S.C.R. 563; 1977 UJ 651	58 - 60

				1986 (2) CompLJ 238; 1986(1) SCALE 870; [1986] 2 S.C.R. 581; 1986 (2) UJ 551	
28	241 of 1982. Appeal by Special leave from the judgment and order dated the 14th September, 1981 of the Patna High Court in Criminal Revision No. 874 of 1981.	Sheonandan Paswan v State of Bihar and Others	V.D. Tulzapurkar, Baharul Islam, R.B. Misra	1982 Indlaw SC 72; (1983) SCC (Cr) 224; (1983) 1 SCC 438; AIR 1983 SC 194; 1983 CRLJ 348; 1983 CrLR(SC) 58; 1982(2) SCALE 1241; [1983] 2 S.C.R. 61	75 – 84
29	9671 OF 2010 [Arising out of SLP (C) No. 26547 of 2008]	Ishwar Nagar Co-Op. Housing Building Society v Parma Nand Sharma And Ors	Mukundakam Sharma, Anil R. Dave	2010 Indlaw SC 961; JT 2010 (12) SC 335; 2010(12) SCALE 74	85 – 88
30	9439 of 2003	Sant Lal Gupta and others v Modern Co-operative Group Housing Society Limited and others	Balbir Singh Chauhan, P. Sathasivam	2010 Indlaw SC 865; (2010) 13 SCC 336; 2011 (84) ALR 487; 2010 (262) E.L.T. 6; JT 2010 (11) SC 273; 2010 (4) RCR(Civil) 923; 2010(11) SCALE 27	89 – 91

31	2822 of 2015 (Arising out of S.L.P.(C) No. 21260 of 2011)	Arunbhai Kalyanbhai Sutariya v Nutan Nagrik Sahakari Bank Limited and another	Anil R. Dave, Kurian Joseph	2015 Indlaw SC 200; 2015(4) SCALE 140B	92
32	367 of 2011	St. Mary's Hotel (Private) Limited and another v Kottayam Dist. Co-oprative Bank Limited and others	Anil R. Dave, Kurian Joseph	2015 Indlaw SC 202; 2015 (2) BC 303; 2015(4) SCALE 141	93
33	8224 of 2012 (From the judgement and order Dt. 01/03/2012 in W.P.C No. 2547/2010 of the DELHI HIGH COURT)	Professor Ramesh Chandra v University of Delhi and others	S.J. Mukhopadhaya, C. Nagappan	2015 Indlaw SC 85; JT 2015 (2) SC 139; 2015 (2) MLJ 219; 2015(2) SCALE 203	94 – 97
34	10392 of 2014 (Arising out of S.L.P.(C) No. 26017 of 2013) with C.A. Nos. 10393-10394 of 2014 (Arising out of S.L.P. (C) Nos. 13201-13202 of 2012), C.A. Nos. 10395-10398 of 2014 (Arising out of S.L.P. (C)Nos. 12219-12222 of 2012), C.A. No. 10399 of 2014 (Arising out of S.L.P. (C) No. 29726 of 2013), C.A. No. 10400 of 2014 (Arising out of S.L.P. (C) No. 27573 of 2013), C.A. No. 10401 of 2014 (Arising out of S.L.P. (C) No. 29727 of 2013) and C.A. No. 10402 of 2014 (Arising out of S.L.P. (C) No. 29728 Of 2013	Rajkot Distt Cooperative Bank Limited v State of Gujarat and others	V. Gopala Gowda, Adarsh Kumar Goel	2014 Indlaw SC 790; AIR 2015 SC 489; JT 2014 (13) SC 255	98 - 101

35	7839 of 2014 (Arising out of S.L.P. (Civil) No. 9794 of 2013) with C.A. No. 7840 of 2014 (Arising out of S.L.P. (Civil) No. 10809 of 2013)	Akalakunnam Village Service Co-operative Bank Limited and another v Binu N. and others	M.Y. Eqbal, Ranjan Gogoi	2014 Indlaw SC 536; (2014) 9 SCC 294; AIR 2015 SC 1115; JT 2014 (9) SC 326; 2014(9) SCALE 473	102 – 104
36	1359 of 2014 (Arising out of S.L.P. (Cr.) No. 3020 of 2013) with Cr.A. No. 1362 of 2014 (Arising out of S.L.P. (Cr.) No. 3022 of 2013), Cr.A. No. 1361 of 2014 (Arising out of S.L.P. (Cr.) No. 3016 of 2013), Cr.A. No.1360 of 2014 (Arising out of S.L.P. (Cr.) No. 3014 of 2013), Cr.A. No. 1363 of 2014 (Arising out of S.L.P. (Cr.) No. 3074 of 2013)	Chandan Kumar Basu v State of Bihar	Ranjan Gogoi, Sudhansu Jyoti Mukhopad-haya	2014 Indlaw SC 438; 2014(8) SCALE 351	105 - 107
37	5448 of 2014 (S.L.P. (C) No. 692 of 2010) C.A. No. 5449 of 2014 (S.L.P. (C) No. 3105 of 2010), C.A. No. 5450 of 2014 (S.L.P. (C) No. 4679 of 2010), Contempt PetitioN (C) No.302 Of 2010 in S.L.P.(C) No. 4679 of 2010,	Md. Moinuddin and others v Commissioner for Co-operation and Registrar of Co-operative Societies and others	Fakkir Mo-hamed Ibrahim Kalifulla, Fak-kir Mohamed Ibrahim Kali-fulla, Surinder Singh Nijjar, Surinder Singh Nijjar	2014 Indlaw SC 747; (2014) 8 SCC 661; AIR 2014 SC 2680; 2014 (5) ALD(SC) 192; 2014(13) SCALE 611	108-112

	Contempt Petition (C) No. 251 of 2011 in S.L.P.(C) No. 4679 of 2010, C.A. No. 5451 of 2014 (S.L.P.(C) No. 12842 of 2014 @ CC No. 10023 of 2011)				
38	33644/2011	Satya Pal Anand v State of Madhya Pradesh and Another	A.K. Sikri	2014 Indlaw SC 329; (2014) 7 SCC 244; AIR 2014 SC 2361; 2014(4) ALL MR 432; JT 2014 (8) SC 154; 2014 (4) MPLJ 633; 2014 (3) RCR(Civil) 305; 2014(6) SCALE 761; 2014 (6) SLR 325	113-116
39	4854-4855 of 2014 (Arising out of S.L.P. (C) Nos. 1581-1582/2011 with C.A. Nos. 4856-4857 of 2014 (Arising out of S.L.P. (C) Nos. 4758-59/2011) (From the judgement and order Dt. 27/08/2010 in CW.P. No. 6491/2005, CW.P. No. 7742/2005, LPA No. 215/2007, LPA No. 216/2007 of the PUNJAB AND HARYANA HIGH COURT)	J. N. Chaudhary and others v State of Haryana and others	Gyan Sudha Misra, Pinaki Chandra Ghose	2014 Indlaw SC 295; AIR 2014 SC 2018; JT 2014 (6) SC 223; 2014(5) SCALE 666	117-1121

40	1938 of 2014 (Arising out of S.L.P. (Civil) Nos. 15252 of 2006)	Pratima Chowdhury v Kalpana Mukherjee and another	Jagdish Singh Khehar, P. Sathasivam	2014 Ind-law SC 77; (2014) 4 SCC 196; AIR 2014 SC 1304; 2014 (2) AWC 2062; JT 2014 (2) SC 586; 2014 (3) RLW 2244; 2014(2) SCALE 175; [2014] 2 S.C.R. 656	122-125
41	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. Rad-hakrishnan, 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	126-130

42	614 of 2007 with W.P. (Civil) No. 637 of 2007	Soma Suresh Kumar v Government of Andhra Pradesh and others	K.S. Radhakrishnan, A.K. Sikri	2013 Indlaw SC 589; (2013) 10 SCC 677; AIR 2013 SC (Supp) 816; 2013 (6) ALD(SC) 155; 2014 (1) ALT(SC) 20; 2013 (4) BC 233; [2013] 180 Comp Cas 277; 2014 (1) DRTC 9; JT 2013 (12) SC 486; 2013(11) SCALE 262; [2013] 10 S.C.R. 328	131-132
43	7939 of 2013 (Arising out of S.L.P.(C) No. 14563 of 2012)	Hill Properties Limited v Union Bank of India and others	K.S. Radhakrishnan, A.K. Sikri	2013 Indlaw SC 577; (2014) 1 SCC 635; 2014 (102) ALR 813; 2014 (1) Bom.C.R. 293; 2014 (1) CLT(SC) 121; [2014] 186 Comp Cas 284; 2014 (1) DRTC 155; JT 2013 (12) SC 388; 2014 (1) RCR(Civil) 84; 2014 (122) RD 63; 2013(11) SCALE 255; [2013] 10 S.C.R. 89	133-134

47	2683-2685 OF 2013 (Arising out of SLP (C) Nos. 30847-30849 OF 2012) WITH CIVIL APPEAL NOS. 2688-2688 OF 2013 (Arising out of SLP (C) Nos. 30867-30869 OF 2012) CIVIL APPEAL NOS. 2689-2690 OF 2013 (Arising out of SLP (C) Nos.28256-28257 OF 2012)	Margaret Almeida and others v Bombay Catholic Co-Operative Housing Society Ltd. & Ors.	Jagdish Singh Khehar, P. Sathasivam	2013 Indlaw SC 164; (2013) 6 SCC 538; AIR 2013 SC 1398; JT 2013 (8) SC 119; 2013(5) SCALE 133; [2013] 5 S.C.R. 871	146-152
48	2990-2991 OF 2012(Arising out of SLP(C) Nos.8397-8398 of 2012)	Rajendra Prataprao Mane & Ors. v Sadashivrao Mandalik K.T.S.S.K.	Altamas Kabir, J. Chelameswar	2012 Indlaw SC 101; (2012) 4 SCC 781; AIR 2012 SC 1714; 2012 (3) Bom.C.R. 553; JT 2012 (3) SC 446; 2012 (5) MahLJ 77; 2012 (2) RCR(Civil) 547; 2012(3) SCALE 572; [2012] 5 S.C.R. 131	153-155
49	4 – 6 of 2012 IN CIVIL APPEAL Nos. 1175 - 1177 OF 2012	Margret Almeida & Ors., Etc. Etc v Bombay Catholic Coop. Housing Society Limited & Ors	J. Chelameswar, P. Sathasivam	2012 Indlaw SC 61; (2012) 5 SCC 642; AIR 2012 SC 1438;	156-157

				2012(7) ALL MR 825; 2012 (91) ALR 871; 2012 (5) MahLJ 4; 2012 (3) RCR(Civil) 311; 2012 (116) RD 160; 2012(3) SCALE 25; [2012] 2 S.C.R. 395	
50	1175-1177 OF 2012 [Arising out of SLP (C) NO.28611-28613 OF 2011] WITH CIVIL APPEAL NO. 1178 OF 2012 [Arising out of SLP(C) No.29507 of 2011] CIVIL APPEAL NOS. 1179-1180 OF 2012 [Arising out of SLP(C) Nos. 30143-30144 of 2011]	Margret Almeida & Ors. Etc Etc v The Bombay Catholic Co-Operative Housing Society Ltd. & Ors. Etc. Et	J. Chelameswar, P. Sathasivam	2012 Indlaw SC 463; 2013(1) ALL MR 914; JT 2012 (2) SC 142; [2012] 2 S.C.R. 366	158-161
51	1374 OF 2009 (Arising out of SLP (Crl.) No.4129 of 2004)	M.M. Cooperative Bank Limited v J.P. Bhimani And Another	S.B. Sinha, Cyriac Joseph	2009 Indlaw SC 2046; (2009) 8 SCC 727; (2009) 3 SCC (Cr) 937; AIR 2009 SC (Supp) 1965; 2010 ALL MR (Cri) 1317;	162-164

				2009 CRLJ 4421; JT 2009 (13) SC 464; 2009 (3) RCR (Criminal) 965; 2009(10) SCALE 439; [2009] 11 S.C.R. 748	
52	3702 OF 2006 With C.A. Nos.3685 of 2006, 3703 of 2006, 3704 of 2006, 3705 of 2006, 3706 of 2006, 3707 of 2006, 3709 of 2006, 3710 of 2006, 3712 of 2006, 3713 of 2006, 3714 of 2006, 3715 of 2006, 3716 of 2006, 3717 of 2006, 3718 of 2006, 3721 of 2006, 3723 of 2006, 3724 of 2006, 3726 of 2006, 3727 of 2006, 3728 of 2006, 3729 of 2006, 3730 of 2006, 3731 of 2006, 3732 of 2006, 3733 of 2006, 3734 of 2006, 3737 of 2006, 3742 of 2006, 3744 of 2006, 3748 of 2006, 3749 of 2006, 3750 of 2006, 3751 of 2006, 3752 of 2006, 3753 of 2006, 3754 of 2006 and 3755 of 2006.	A. Manjula Bhashini & Others v The Managing Director, A.P. Women'S Cooperative Finance Corporation Ltd And Another	G.S. Singhvi, B.N. Agrawal	2009 Indlaw SC 950; (2009) 8 SCC 431; AIR 2010 SC 3143; 2009 (5) ALD(SC) 58; 2009 (4) ESC 590; JT 2009 (9) SC 229; 2009 (4) LLJ 57; 2009(9) SCALE 99; [2009] 10 S.C.R. 634	165-169

53	3493 of 2009(Arising Out of Slp (C) No. 13290 of 2008) With Civil Appeal No. 3494 of 2009(Arising Out of Slp (C) No. 15898 of 2008)	Pralhad and Others v Deorao & Ors.	S.B. Sinha, Cyriac Joseph	2009 Indlaw SC 768; JT 2009 (13) SC 286; 2009(8) SCALE 211; [2009] 8 S.C.R. 777	170-173
54	292-294 of 2005 With C.A. No. 1722 of 2005	Naresh Shankar Srivastava v State of Uttar Pradesh and Others	Mukundakam Sharma, S.B. Sinha	2009 Indlaw SC 761; (2009) 16 SCC 157; AIR 2009 SC 2450; 2009 (3) ESC 409; JT 2009 (9) SC 319; 2009(7) SCALE 244; [2009] 7 S.C.R. 1188; 2009 (2) UPLBEC 1303	174-177
55	914 OF 2009 (Arising out of S.L.P. (Cr.) No.3813 of 2005) With Cr.A. Nos. 915, 916, 917 and 918 OF 2009 (Arising out of S.L.P. (Cr.) Nos.3839, 3565, 3754 and 3771 of 2005)	Dharmeshbhai Vasudevbhai and Others v State of Gujarat and Others	S.B. Sinha, Cyriac Joseph	2009 Indlaw SC 603; (2009) 3 SCC (Cr) 76; (2009) 6 SCC 576; AIR 2009 SC (Supp) 1446; 2009 CRLJ 2969; JT 2009 (13) SC 638; 2009 (3) RCR (Criminal) 119; 2009 (7) SCALE 214; [2009] 7 S.C.R. 475; 2009 (2) UC 1021	178-179

56	2566 of 2009(Arising out of SLP (C) 12077 of 2007) 03, Civil Appeal No.2570 of 2009(Arising out of SLP (C) 11250 of 2008), Civil Appeal Nos. 2572-2573 of 2009(Arising out of SLP (C) 11345-11346 of 2008), Civil Appeal No. 2568 of 2009(Arising out of SLP (C) 11357 of 2008), Civil Appeal Nos.2574-2575 of 2009(Arising out of SLP (C) 23332-23333 of 2008), Civil Appeal No. 2567 of 2009(Arising out of SLP (C) 23335 of 2008), Civil Appeal No.2569 of 2009(Arising out of SLP (C) 20656 of 2008)	Pranita Powerloom Cooperative Society Limited and Others v State of Maharashtra and Others	V.S. Sirpurkar, Tarun Chatterjee	2009 Indlaw SC 517; (2009) 12 SCC 652; AIR 2009 SC (Supp) 1666; 2009 (4) Bom.C.R. 152; 2009(6) SCALE 209; [2009] 6 S.C.R. 891	180-183
57	2204 of 2009 (Arising out of Slp(C) No. 101 of 2008) with Civil Appeal No. 2205 of 2009 @ Slp(C) No. 2631 of 2008	Adarsh Ginning and Pressing Factory v State of Maharashtra and Others	S.H. Kapadia, Aftab Alam	2009 Indlaw SC 1619; (2009) 17 SCC 762	184
58	1 IN CIVIL APPEAL No. 3303 OF 2005 WITH I. A. No. 1 IN CIVIL APPEAL No. 3336 OF 2005, I. A. No. 1 IN CIVIL APPEAL No. 3337 OF 2005 AND I. A. No. 1 IN CIVIL APPEAL No. 3338 OF 2005	Indian Bank v Godhara Nagrik Coop. Credit Society Limited and Another	S.B. Sinha, Lokeshwar Singh Panta	2009 Indlaw SC 359; (2009) 2 SCC (Cr) 544; (2009) 4 SCC 629; 2009 (2) BC 281; JT 2009 (7) SC 42; 2009(5) SCALE 27; [2009] 4 S.C.R. 1036	185-186

				[2008] 144 Comp Cas 200; 2009 (1) DRTC 159; JT 2008 (5) SC 575; 2008 (4) RCR(Civil) 95; 2008(7) SCALE 363; [2008] 9 S.C.R. 450	
63	2727 OF 2008 (Arising out of SLP(C) No.16536 of 2005)	U. P. C. U. E. F. Limited v Cane Commissioner And R. C. C. S. And Others	Tarun Chatterjee, H.S. Bedi	2008 Indlaw SC 2545; (2008) 11 SCC 284; AIR 2009 SC (Supp) 554; 2008 (2) CLR 892; 2008 (118) FLR 1100; JT 2008 (5) SC 439; 2008 (2) LLN 748; 2008(6) SCALE 398; [2008] 6 S.C.R. 253	196-198
64	5373 OF 2007 (Arising out of S.L.P. (C) No. 4024 of 2006)	Delhi Development Authority v Arjun Lal Satija and Others	Arijit Pasayat, Lokeshwar Singh Panta, P. Sathasivam	2007 Indlaw SC 1432; (2007) 13 SCC 603; AIR 2007 SC (Supp) 1146; JT 2007 (13) SC 427; 2007(13) SCALE 468; 2007 (8) SCJ 762; [2007] 12 S.C.R. 527	199

65	Appeal (civil) 2990-2991 of 2005 C.A. Nos. 2990-2991 of 2005 With C.A. Nos. 2992-2993 of 2005 and C.A. Nos. 2994-2995 of 2005	Messrs Anita Enterprises and Another v Belfer Coop. Housing Society Limited and Others	B.N. Agrawal, P.P. Naolekar	2007 Indlaw SC 1276; (2008) 1 SCC 285; AIR 2008 SC 746; 2008(1) ALL MR 944; 2008 (1) Bom.C.R. 581; JT 2007 (13) SC 1; 2008 (1) RCR(Civil) 173; 2008 (1) RCR(Rent) 60; 2007(13) SCALE 83; [2007] 12 S.C.R. 1	200-203
66	Appeal (civil) 4808 of 2007	State of Punjab and Others v Bhatinda District Co-operative Milk Private Union Limited	S.B. Sinha, H.S. Bedi	2007 Indlaw SC 1321; (2007) 11 SCC 363; AIR 2007 SC (Supp) 473; 2007 (217) E.L.T. 325; JT 2007 (12) SC 314; 2007(12) SCALE 135; [2007] 11 S.C.R. 14; [2007] 10 VST 180	204-205
67	Appeal (civil) 4586 of 2007, (arising out of SLP(C) No. 8265/2006)	Ram Nandan Singh And Others v Ag Office Employees Co-Op House Construction Society Limited,Ranchi And Others	S.B. Sinha, H.S. Bedi	2007 Indlaw SC 1649; (2007) 14 SCC 102; JT 2007 (12) SC 86; 2007(12) SCALE 354; [2007] 10 S.C.R. 646	206-208

68	4481 OF 2007 (Arising out of SLP (C) No. 12236 OF 2006) WITH CIVIL APPEAL NO. 4483 OF 2007 (Arising out of SLP (C) NO. 19499 OF 2006) AND CIVIL APPEAL NO. 4482 OF 2007 (Arising out of SLP (C) NO. 3979 OF 2007)	Madhya Pradesh State Cooperative Bank Limited, Bhopal v Nanuram Yadav And Ors	P. Sathasivam, Tarun Chatterjee	2007 Indlaw SC 954; (2007) 8 SCC 264; (2007) 2 SCC (L&S) 883; AIR 2007 SC (Supp) 932; JT 2007 (11) SC 369; 2007 (4) LLN 117; 2007(11) SCALE 439; [2007] 10 S.C.R. 307	209-211
69	Appeal (Cr.) 519 of 2007 Cr.A. No. 519 of 2007[Arising out of S.L.P. (Cr.) No. 4529 of 2006]	Naresh Kumar Madan v State of Madhya Pradesh	S.B. Sinha, Markandey Katju	2007 Indlaw SC 333; (2007) 2 SCC (Cr) 404; (2007) 4 SCC 766; AIR 2008 SC 385; 2007 (3) ALT 146; JT 2007 (5) SC 544; 2007 (2) KLT 539; 2007 (2) RCR (Criminal) 582; 2007(5) SCALE 510; [2007] 4 S.C.R. 1040	212-213
70	Appeal (Civil) 1542 of 2007 [Arising out of S.L.P. (Civil) No. 8377 of 2005]	Bharat Co-Operative Bank (Mumbai) Limited v Co-Operative Bank Employees Union	D.K. Jain, K.G. Balakrishnan, Lokeshwar Singh Panta	2007 Indlaw SC 1008; (2007) 2 SCC (L&S) 82; (2007) 4 SCC 685;	214-216

				AIR 2007 SC 2320; 2007(4) ALL MR 749; 2007 (5) AWC 5314; 2007 (3) Bom.C.R. 673; 2007 (2) CLR 160; 2007 (114) FLR 155; JT 2007 (4) SC 572; 2007 (2) LLN 160; 2007 (4) MahLJ 506; 2007(5) SCALE 57; 2007 (6) SCJ 513; [2007] 4 S.C.R. 347	
71	Appeal (Civil) 1497 of 2007 (Arising out of SLP(C) No. 7380 of 2006)	Secretary Padippu K.S.Sangam Limited v C. Varghese	AR. Lakshmanan, Altamas Kabir	2007 Indlaw SC 233; (2007) 9 SCC 301; (2007) 2 SCC (L&S) 512; 2007 (5) AWC 5312; 2007 (113) FLR 827; 2007 (2) KLT 335; 2007 (3) LLN 595; 2007(4) SCALE 560; 2007 (7) SCJ 580	217-218

72	Appeal (civil) 1391 of 2007	(1) A.P. Cooperative Oil Seeds Growers Federation v (1) D. Achyuta Rao and Others; (2) M. Sheshagiri	B.P. Singh, Altamas Kabir	2007 Indlaw SC 209; (2007) 13 SCC 320; (2008) 2 SCC (L&S) 628; JT 2007 (4) SC 454; 2007(4) SCALE 382; 2007 (6) SCJ 341; [2007] 4 S.C.R. 1	219-221
73	Appeal (Civil) 1210 of 2007 [Arising out of S.L.P. (C) No. 17465 of 2004] with C.A. Nos. 1211/2007 @ S.L.P. (C) Nos. 18362-18363 of 2004, C.A. Nos. 1212/2007 @ S.L.P. (C) Nos. 19602-19603 of 2004	Anilbhai M. Patel and Others v Suryapur Bank Agent D.B.H. Samiti and Others	S.B. Sinha, Markandey Katju	2007 Indlaw SC 318; (2007) 4 SCC 83; AIR 2007 SC (Supp) 1; [2007] 136 Comp Cas 489; 2007 (2) DRTC 275; 2007 (2) G.L.R. 1753; JT 2007 (4) SC 258; 2007(4) SCALE 282; 2007 (7) SCJ 653; [2007] 3 S.C.R. 698; 2007 (2) UPLBEC 1456	222-225
74	Appeal (civil) 2661 of 2004	Madhya Pradesh Rajya Sahakari Bank Maryadit v State of Madhya Pradesh and Others	A.K. Mathur, H.S. Bedi	2007 Indlaw SC 138; (2007) 12 SCC 529; AIR 2007 SC (Supp) 540; JT 2007 (4) SC 16;	226-227

				2007(3) SCALE 451; 2007 (5) SCJ 748; [2007] 2 S.C.R. 1049	
75	Appeal (civil) 3986 of 2004WITH C.A. 3987/2004, 3988-3989/2004, 3990/2004, 3991/2004 AND 3992-3993/2004	Sumangalam Coop. Housing Society Ltd v Suo Motu, High Court Of Gujarat & Ors	Arijit Pasayat, Lokeshwar Singh Panta	2007 Indlaw SC 6; (2007) 2 SCC 301; AIR 2007 SC 671; 2007 (2) G.L.R. 937; JT 2007 (1) SC 211; 2007(1) SCALE 12; [2007] 1 S.C.R. 1	228-229
76	Appeal (Civil) 4771 of 2006 (Arising out of SLP (C) No. 17885 of 2005)	Bhogpur Co-Op Sugar Mills Limited v Harmesh Kumar	S.B. Sinha, Markandey Katju	2006 Indlaw SC 842; (2006) 13 SCC 28; AIR 2007 SC 288; 2006 (7) AWC 7608; 2006(11) SCALE 631; 2007 (4) SCJ 124; [2006] Supp8 S.C.R. 1021	230-231
77	Appeal (Civil) 4773 of 2006 (Arising out of S.L.P. (C) No. 24613 of 2005)	Shahabad Cooperative Sugar Mills Limited v Special Secretary to Government of Haryana Corp. and Others	S.B. Sinha, Dalveer Bhandari	2006 Indlaw SC 1405; (2006) 12 SCC 404; AIR 2007 SC 340; JT 2006 (10) SC 401; 2007 (1) Law Herald (P&H) 380;	232-234

				2007 (146) PLR 781B; 2007 (1) RCR(Civil) 113; 2006(11) SCALE 674; [2006] Supp8 S.C.R. 979	
78	Appeal (Civil) 4534 of 2004 With C. A. No. 1223/2006 C. A. No. 1844/2006	M.D. Bhadra Shahakari S.K. Niyamita v President, Chitradurga Mazdoor Sangh and Others	AR. Lakshmanan, Tarun Chatterjee	2006 Indlaw SC 876; (2006) 8 SCC 552; 2006 (7) AWC 7619; 2006(10) SCALE 614; [2006] Supp8 S.C.R. 212	235-236
79	Appeal (civil) 3698 of 2006	Ganesh Bank, Kurundwad Limited and Others v Union of India and Others	Arijit Pasayat, C.K. Thakker	2006 Indlaw SC 1267; (2006) 10 SCC 645; 2007 (5) AWC 5069; 2007 (1) BC 296; 2006 (6) Bom.C.R. 98; JT 2006 (8) SC 132; 2007 (146) PLR 429; 2006(8) SCALE 588; [2006] Supp5 S.C.R. 437; 2006 (3) UPLBEC 2919	237-239

80	Appeal (civil) 4488 of 2004	Morinda Cooperative Sugar Mills Ltd. v Morinda Coop. Sugar Mills Workers Union	Arijit Pasayat, Lokeshwar Singh Panta	2006 Indlaw SC 319; (2006) 6 SCC 80; 2006 (4) AWC 3248; 2006 (6) Bom.C.R. 69; JT 2006 (6) SC 374; 2006 (144) PLR 385; 2006(7) SCALE 57; [2006] Supp3 S.C.R. 473	240-241
81	Appeal (civil) 306-307 of 2005	A. Jitendernath v Jubilee Hills Cooperative House Building Society and Another	S.B. Sinha, P.P. Naolekar	2006 Indlaw SC 650; (2006) 10 SCC 96; 2006 (4) ALD(SC) 1; JT 2006 (7) SC 183; 2006(5) SCALE 130; 2006 (6) SCJ 338; [2006] Supp1 S.C.R. 702	242-244
82	Appeal (civil) 2122 of 2006	Dudhganga Vikas Sewa Santha Maryadit v District Collector-Kolhapur and Others	B.P. Singh, Altamas Kabir	2006 Indlaw SC 1400; (2006) 5 SCC 250; AIR 2007 SC 347; 2006 (4) Bom.C.R. 617; JT 2006 (5) SC 447; 2006(5) SCALE 338; [2006] Supp1 S.C.R. 729	245-246

83	Appeal (civil) 6052 of 2004	S.S. Rana v Registrar, Co-Operative Societies and Another	S.B. Sinha, P.P. Naolekar	2006 Indlaw SC 174; JT 2006 (5) SC 186; 2006(4) SCALE 638; 2006 (4) SCJ 543; [2006] Supp1 S.C.R. 311	247-249
84	Appeal (Cr.) 514 of 2001	N.K. Sharma v Abhimanyu	S.B. Sinha, R.V. Raveendran	2005 Indlaw SC 604; (2005) 13 SCC 213; (2006) 2 SCC (Cr) 135; AIR 2005 SC 4303; 2005 CRLJ 4529; JT 2005 (12) SC 491; 2005 (4) RCR(Civil) 424; 2005(8) SCALE 313; [2005] Supp4 S.C.R. 207	250-251
85	C.A. No. 2961 of 2000	Oswal Agro Mills Limited v Minister of State For Co-operation and others	D.M. Dharmadhikari, Tarun Chatterjee	2005 Indlaw SC 1485; (2005) 12 SCC 359	252 - 253
86	C.A. No. 997 of 2002	Deputy Registrar Coop. Societies and others v Bunnilal Chaurasia	H.K. Sema, Tarun Chatterjee	2005 Indlaw SC 1334; (2005) 11 SCC 570	254 – 255
87	Appeal (Civil) 31 of 2005(Arising out of S.L.P. (Civil) No. 22556 of 2003)	Ishwar Singh v State of Rajasthan and Others	Arijit Pasayat, S.H. Kapadia	2005 Indlaw SC 6; (2005) SCC (L&S) 260; (2005) 2 SCC 334; AIR 2005 SC 773;	256-257

				2005 (104) FLR 715; JT 2005 (1) SC 140; 2005 (1) LLN 1027; 2005(1) SCALE 68; [2005] 1 S.C.R. 96; 2005 (1) SLR 645; 2005 (2) UPLBEC 1242	
88	Appeal (Civil) 6522 of 2004 (arising out of SLP) No. 8717 of 2004)	N. Balaji v Virendra Singh and Others	P.P. Naolekar, P.K. Balasubramanyan	2004 Indlaw SC 858; (2004) 8 SCC 312; 2005 (3) Bom.C.R. 370; 2004 (114) DLT 304; JT 2004 (8) SC 449; 2004(8) SCALE 528; [2004] Supp5 S.C.R. 96; 2005 (1) UPLBEC 268	258-259
89	6304 of 2004 (Arising out of S.L.P. (C) No. 9010 of 2004)	Bhagwandas Laxmidas Thakkar v MD, Dakshini Brahman Coop. Bank Limited	R.C. Lahoti, P.K. Balasubramanyan, P.P. Naolekar	2004 Indlaw SC 1933; (2004) 13 SCC 406	260
90	Appeal (civil) 538 of 2004	New Friends Co-Operative House Building Society v Rajesh Chawla And Ors.	Arijit Pasayat, Doraiswamy Raju	2004 Indlaw SC 272; (2004) 5 SCC 795; AIR 2004 SC 2521;	261-262

				2004 (3) ALD(SC) 113; 2004 (3) AWC 2221; 2004 (111) DLT 381; JT 2004 (Supp1) SC 359; 2004 (3) RCR(Civil) 213; 2004(4) SCALE 799; [2004] Supp1 S.C.R. 489; 2004 (2) UPLBEC 2009	
91	Appeal (civil) 3523 of 1998	Gayatri De v Mousumi Co-operative Housing Society Limited and	AR. Lakshmanan, S. Rajendra Babu, G.P. Mathur	2004 Indlaw SC 344; (2004) 5 SCC 90; AIR 2004 SC 2271; 2004 (4) CHN 23; JT 2004 (5) SC 554; 2004 (3) RCR(Civil) 204; 2004(4) SCALE 741; [2004] Supp1 S.C.R. 356	263-265
92	Appeal (civil) 3040 of 1998 With C.A.No. 3041 of 1998	Mehsana District Central Co-Operative Bank and Others v State of Gujarat and Others	H.K. Sema, S.N. Variava	2004 Indlaw SC 961; (2004) 2 SCC 463; AIR 2004 SC 1576;	266-267

				2004 (4) Bom.C.R. 948; [2004] 118 Comp Cas 507; 2004 DRTC 36; JT 2004 (1) SC 628; 2004 (2) RCR(Civil) 102; 2004(2) SCALE 155; [2004] 1 S.C.R. 1125; 2004 (2) UPLBEC 1561	
93	Appeal (Civil) 10091 of 2003, Special Leave Petition (Civil) 3729 of 2003	Haryana State Co-Operative Land Development Bank Limited v Haryana State Co-Operative Land Development Banks Employees' Union and Another	Arijit Pasayat, Doraiswamy Raju	2003 Indlaw SC 1402; (2004) SCC (L&S) 257; (2004) 1 SCC 574; 2004 (1) CLR 317; 2004 (100) FLR 428; JT 2003 (10) SC 383; 2004 (1) LLJ 583; 2004 (1) LLN 527; 2003(10) SCALE 1112; [2003] Supp6 S.C.R. 1039	268-269
94	Appeal (Civil) 439 of 1997, Appeal (Civil) 8478 of 2003	The Apex Co-operative Bank of Urban Bank of v The Maharashtra State Co-operative Bank Limited	S.N. Variava, H.K. Sema	2003 Indlaw SC 917; (2003) 11 SCC 66; AIR 2004 SC 141;	270-274

				2004 (4) Bom.C.R. 337; [2003] 117 Comp Cas 618; JT 2003 (8) SC 170; 2003(9) SCALE 84; 2003 (1) SCW 5742; 2003 (6) SLT 632; [2003] Supp4 S.C.R. 1071; 2003 (8) Supreme 400; 2004 (1) UPLBEC 341	
95	Appeal (civil) 2732 of 1997	Gwalior Dugdha Sangh Sahakari Ltd v G.M. Govt. Milk Scheme, Nagpur And Ors.	S.B. Sinha, V.N. Khare	2003 Indlaw SC 693; (2003) 7 SCC 529; AIR 2003 SC 3283; JT 2003 (8) SC 333; 2004 (1) LLJ 456; 2004 (136) PLR 653; 2003 (3) RAJ 413; 2003 (4) RCR(Civil) 320; 2003(6) SCALE 735; 2003 (6) SLT 365; [2003] Supp2 S.C.R. 839; 2003 (6) Supreme 469; 2004 (1) UPLBEC 18	275-276

96	Appeal (Civil) 3729-3730 of 1999	Ludhiana Central Co-operative Bank Limited v Amrik Singh and Others	S. Rajendra Babu, Doraiswamy Raju	2003 Indlaw SC 647; (2003) 10 SCC 136; AIR 2003 SC 3103; 2003 (5) AWC 3664; 2003 (3) CLR 606; JT 2003 (7) SC 228; 2004 (1) LLJ 178; 2003 (4) LLN 11; 2003(6) SCALE 582; 2003 (1) SCW 4041; [2003] Supp2 S.C.R. 766; 2003 (3) UPLBEC 2393	277-280
97	6540-44 of 2003 (Arising out of S.L.Ps. (C) Nos. 15524-28 of 2001)	Charminar Cooperative Urban Bank Limited v Mohan Reddy and others	Ruma Pal, P. Venkatarama Reddi	2003 Indlaw SC 1527; (2008) 17 SCC 743	281-282
98	Appeal (civil) 2634-2635 of 2003	Sh. O.P. Choudhry v Rehabilitation Ministry Employees Co-operative House Building Society and others	G.P. Mathur, S. Rajendra Babu	2003 Indlaw SC 314; (2003) 10 SCC 170; AIR 2003 SC 3996; JT 2003 (3) SC 490; 2003(3) SCALE 600; [2003] 3 S.C.R. 309; 2003 (1) SCW 2906; 2003 (3) SLT 643; 2003 (3) Supreme 160	283-285

99	Appeal (Civil) 5180 of 2002	Prakash Narain Sharm v Burmah Shell Co-Operative Housing Society Limited	R.C. Lahoti, Brijesh Kumar	2002 Indlaw SC 1589; (2002) 7 SCC 46; AIR 2002 SC 3062; 2002 (3) ARBLR 1; 2002 (99) DLT 445; JT 2002 (6) SC 209; 2002 (3) RCR(Civil) 739; 2002(6) SCALE 55; 2002 (5) SLT 1; [2002] Supp1 S.C.R. 643; 2002 (5) Supreme 461	286-287
100	Appeal (civil) 6974 of 2001	Mor Modern Cooperative Transport Society Limited v Financial Commissioner and Secretary To Government of Haryana and Another	B.P. Singh, H.K. Sema, M.B. Shah	2002 Indlaw SC 1729; (2002) 6 SCC 269; 2002 (2) ACC 501; AIR 2002 SC 2513; 2002 (48) ALR 472; JT 2002 (5) SC 125; 2002 (3) RCR(Civil) 553; 2002(5) SCALE 145; 2002 (3) SCJ 290; 2002 (4) SLT 340; [2002] Supp1 S.C.R. 87; 2002 (5) Supreme 55	288-290

PART – II

Sl. No.	W.P No.	Relevant Act and Case	Judge	Where Reported	Page No.
1	Petition(s) for Special Leave to Appeal (Civil) No.13396/2000	S. Krishna Murthy v Government of A.P. and Others	S. Rajendra Babu, Doraiswamy Raju	2001 Indlaw SC 2584	293-294
2	C.A. No. 596 of 2000	Shri Sant Sadguru Janardan Swami (Moingiri v State Of Maharashtra And Others	V.N. Khare, B.N. Agrawal	2001 Indlaw SC 225; (2001) 8 SCC 509; AIR 2001 SC 3982; 2002 AllCJ 341; 2002 (2) Bom.C.R. 149; JT 2001 (8) SC 287; 2001(6) SCALE 585; 2001 (3) SCJ 682; 2001 (7) SLT 1; [2001] Supp3 S.C.R. 333; 2001 (7) Supreme 362	295-297
3	Petition(s) for Special Leave to Appeal (Civil) No.14428/2001	Ghanshyam Das Mundhra v Sajjan Sharma and Others	G.B. Pattanaik, Mrs. Justice Ruma Pal	2001 Indlaw SC 10382	298
4	C.A. No. 4398 of 1997; C.A. No. 1362/1980	Maneklal Mansukhbhai Co-operative Housing Society Limited v Rajendra Kumar Maneklal Shah and Another	V.N. Khare, B.N. Agrawal	2001 Indlaw SC 21282; 2002 (1) ALD(SC) 65; 2002 (47) ALR 243; JT 2001 (10) SC 83; 2001(6) SCALE 226	299-300

5	C.A. No. 493/1999	K. Selvamony v State of Tamil Nadu and Others	G.B. Pattanaik, B.N. Agrawal	2000 Indlaw SC 863	301-302
6	I.A. No.3 In C.A.. No.1911/1999	Messrs Sharaddha Associates v St.Patrick's Town Coop.Hsng.Soc.Ltd. and Others	R.C. Lahoti, Brijesh Kumar, R.C. Lahoti	2000 Indlaw SC 901	303
7	C.As. Nos. 1959-61 of 1998	Managing Director, A. P. Women's Coop. Finance Corporation Limited v Leela Naidu and Others	M.B. Shah, G.B. Pattanaik	2000 Indlaw SC 3744; (2001) 9 SCC 517	304-305
8	C.A. No. 1149 of 1990 With No. 1148 of 1990	State of Maharashtra and Others v Karvanagar Sahakari Griha Rachana Sanstha	B.N. Kirpal, S.S.M. Quadri	2000 Indlaw SC 3919; (2000) 9 SCC 295; JT 2000 (8) SC 68; 2000 (Supp) Bom.C.R. 864	306-307
9	C.A. No. 13713 of 1996	State of Punjab and Others v Guno Majra Co-Operative Agriculture Service	Doraiswamy Raju, V.N. Khare	2000 Indlaw SC 3967; (2000) 9 SCC 210; JT 2000 (10) SC 47	308-309
10	C.As. Nos. 5734-43 of 1999 (Arising out of S.L.Ps. (C) Nos. 7475-84 of 1999) with Nos. 5744-53 of 1999 (Arising out of S.L.Ps. (C) Nos. 11702-11 of 1999)	A. M. S. Sushanth and others v M. Sujatha and others	B.N. Kirpal, S. Rajendra Babu	1999 Indlaw SC 2118; (2000) 10 SCC 197	310
11	Appeal (Civil) 1351-53 Of 2002	Workmen of Nilgiri Coop. Mkt. Society Limited v State of Tamil Nadu and Others	S.B. Sinha, Y.K. Sabharwal	2004 Indlaw SC 480; (2004) SCC (L&S) 476; (2004) 3 SCC 514; AIR 2004 SC 1639;	311-315

				2004 (1) CLR 802; 2004 (101) FLR 137; JT 2004 (2) SC 51; 2004 (2) LLJ 253; 2004 (2) LLN 68; 2004(2) SCALE 311; [2004] 2 S.C.R. 159; 2004 (2) UPLBEC 1336	
12	C.A. No. 4149 of 1991	Indian Farmers Fertilizers Co-Operative Limited, Etc v Union of India and Others	N. Santosh Hegde, R.C. Lahoti, S.P. Bharucha	1999 Ind-law SC 196; (2000) 2 SCC 107; AIR 2000 SC 584; 2000 (88) ECR 1; 2000 (115) E.L.T. 11; JT 1999 (10) SC 1; 2000 (36) RLT 121; 1999(7) SCALE 478; 1999 (10) SLT 455; 1999 (10) Supreme 255	316-317
13	C.A. No. 2553-2554 of 2002	Ahmednagar Zilla S.D.V. and P. Sangh Limited and v State of Maharashtra and Others	S.B. Sinha, AR. Lakshmanan, V. N. Khare	2003 Indlaw SC 1003; (2004) 1 SCC 133; AIR 2004 SC 1329; 2003 (53) ALR 813; 2003(9) SCALE 594; 2003 (7) SLT 145; [2003] Supp5 S.C.R. 265; 2003 (8) Supreme 191	318-319

19	C.As. Nos. 4010 and 4010A-4010T of 1989	A. P. Coop. Central Agricultural Development Bank Limited v V. Venkateswar Rao and Another	B.N. Kirpal, V.N. Khare	1999 Indlaw SC 914; (1999) 3 SCC 158; JT 1999 (8) SC 375	332-333
20	Civil Appeal No. 16790 of 1996	Myurdhwaj Cooperative Group Housing Society Limited v Presiding Officer, Delhi Cooperative Tribunal and Others	A.P. Misra, G.B. Pattanaik	1998 Indlaw SC 1031; (1998) 6 SCC 39; AIR 1998 SC 2410; JT 1998 (4) SC 555; 1998(4) SCALE 53; [1998] 3 S.C.R. 574; 1998 (6) SLT 164; 1998 (5) Supreme 411	334-335
21	C.A. No. 3848 of 1983	Goa Central Cooperative Consumers v Bhagwant Narayan Tendulkar and Others	G.B. Pattanaik, G.N. Ray	1998 Indlaw SC 1539; (1998) 4 SCC 527; AIR 1999 SC 846; 1998 (4) Bom.C.R. 637; JT 1998 (5) SC 343; 1998(5) SCALE 27; 1998 (9) SLT 53; 1998 (9) Supreme 107	336-337
22	Civil Appeal No. 1597 of 1991	Surat Textile Market, Cooperative Shops and v Municipal Corporation Of The City Of Surat	S. Rajendra Babu, A.S. Anand	1997 Indlaw SC 2713; (1998) 1 SCC 497; AIR 1998 SC 482; JT 1997 (9) SC 638; 1997(7) SCALE 373; 1998 (1) SLT 214; [1997] Supp5 S.C.R. 459; 1998 (1) Supreme 54	338-339

23	C.A. No. 7455 of 1997 (Arising out of S.L.P. (C) No. 9559 of 1996)	Laxmi Cooperative Housing Society Limited v Kantilal Champaklal Kothari and Others	G.T. Nanavati, S.C. Agrawal	1997 Indlaw SC 1628; (1998) 9 SCC 629; 1998 (5) Bom.C.R. 720; JT 1998 (9) SC 46	340-341
24	C.A. No. 3087 of 1981	Hukmi Chand v Jhabua Cooperative Central Bank Limited, Jhabu(M.P.) and Another	D.P. Wadhwa, Ms. Justice Sujata V. Manohar	1997 Indlaw SC 1270; (1998) 2 SCC 291; (1998) SCC (L&S) 509; 1998 (2) CLR 230; 1998 (79) FLR 743; JT 1998 (4) SC 233; 1998 (2) LLJ 258	342-343
25		The Punjab State Co-Operative Bank Limited v Milkhan Singh (Deceased) By Lrs. And Anr.	G.N. Ray, G.B. Pattanaik	1997 Indlaw SC 2919; (1997) 7 SCC 758; AIR 1998 SC 271; [1998] 92 Comp Cas 652; JT 1997 (8) SC 216; 1997(6) SCALE 228; 1999 (1) SLJ 56; 1997 (5) SLR 613; 1997 (8) Supreme 383	344-345
26		Devi Singh v State Of Haryana & Ors.	K. Ramaswamy, K.T. Thomas	1997 Indlaw SC 1003; (1997) 10 SCC 752;	346-347

				AIR 1997 SC 2778; 1997 (3) CLT 69; JT 1997 (5) SC 683; 1997(4) SCALE 382; [1997] Supp1 S.C.R. 50; 1997 (6) Supreme 207	
27	Civil Appeal No. 3616 of 1997	Sri Ganganagar Urban Cooperative Bank Limited v Prescribed Authority and Others	K. Ramaswamy, D.P. Wadhwa	1997 Indlaw SC 436; (1997) 6 SCC 29; (1997) SCC (L&S) 1647; AIR 1997 SC 2687; 1997 (76) FLR 902; JT 1997 (5) SC 595; 1997 (2) LLJ 659; 1998 (1) LLN 348; 1997(4) SCALE 302; 1998 (1) SLJ 151; 1997 (4) SLR 583; [1997] Supp1 S.C.R. 43; 1997 (6) Supreme 14; 1997 (2) UJ 169	348-349
28	Special Leave Petition (C) No. 6456 of 1997	Ganpatbhai N. Solanki v District Collector, Vadodara & Anr.	K. Ramaswamy, G.B. Pattanaik	1997 Indlaw SC 1120; (1997) 9 SCC 612; AIR 1997 SC 2273;	350

				JT 1997 (4) SC 558; 1997(3) SCALE 507; [1997] 3 S.C.R. 391; 1997 (4) Supreme 23	
29	C.A. No. 1983 of 1997 (Arising Out of S.L.P. No. 5918 of 1996)	Usha Ranjan Bhattacharjee and Others v Abinash Chandra Chakraborty and Others	G.N. Ray, G.T. Nanavati	1997 Indlaw SC 2213; (1997) 10 SCC 344; JT 1997 (10) SC 356; 1998 (5) Supreme 321	351-352
30	C.A. No. 1883 and 1890 of 1979	U. P. Co-operative Cane Union Federation Limited v Commissioner of Income Tax	S.C. Agrawal, G.B. Pattanaik	1997 Indlaw SC 2791; (1997) 11 SCC 287; AIR 1999 SC 1597; 1999 (157) CTR 569; [1999] 237 ITR 574; JT 1998 (9) SC 376; [1999] 103 TAXMAN 376; 1999 (2) TLR 165	353-354
31	C.As. Nos. 603-05 of 1997 (From the Judgment and Order Dt. 10 March 1995 of the Allahabad High Court in C.M.W.Ps. Nos. 40006 and 40121 of 1994)	State of Uttar Pradesh v C. O. D. Chheoki Employees' Cooperative Society Limited and Others	K. Ramaswamy, S. Saghir Ahmad	1997 Indlaw SC 2275; (1997) 3 SCC 681; AIR 1997 SC 1413; 1997 ALJ 576; 1997 (29) ALR 520; JT 1997 (2) SC 265; 1997(1) SCALE 697; [1997] 1 S.C.R. 380; 1997 (2) UPLBEC 793	355-357

32	Special Leave Petition (C) No. 25281 of 1996.	A. Nadamuni and Others v Prohibition and Excise Commissioner, Nampally, Hyderabad and Others	G.T. Nanavati, K. Ramaswamy	1997 Indlaw SC 2243; (1997) 2 SCC 695; AIR 1997 SC 1021; JT 1997 (1) SC 698; 1997(1) SCALE 417; [1997] 1 S.C.R. 226; 1997 (2) Supreme 114	358-359
33	Civil Appeal No. 867 of 1993	Administrator, Konch Sahakari Kraya Vikraya Samiti Limited v Sarnam Singh and Others	S.P. Kurdukar, S.C. Sen, J.S. Verma	1997 Indlaw SC 2593; (1997) 11 SCC 144; 2000 (38) ALR 794; 2000 (1) AWC 367; JT 1998 (9) SC 281; 2000 (91) RD 162	360-361
34	C.A. No. 16944 of 1996 (Arising out of S.L.P. (C) No. 23687 of 1996)	Sakthi Coop. Industrial Estate v Kursheed Begum and Others	G.T. Nanavati, K. Ramaswamy	1996 Indlaw SC 2022; (1998) 8 SCC 528	362
35	C.As. Nos. 3238-40 of 1979 (From the Judgment and Order Dt. 15 February 1979 of the Allahabad High Court in W.P. No. 1108 of 1976)	Recovery Officer, Lakhimpur and Others v Ravindra Kaur Smt. and Others	N.P. Singh, S.B. Majmudar	1996 Indlaw SC 1624; (1997) 2 SCC 682; 1998 (32) ALR 377; 1998 (1) AWC 626; JT 1997 (10) SC 711; JT 1996 (Supp) SC 561; 1996(9) SCALE 37; [1996] Supp9 S.C.R. 529; 1997 (1) Supreme 560; 1997 (1) UPLBEC 382	363-365

36	Civil Appeal No. 14783 of 1996.	Goa State Cooperative Bank Limited v Pedne Taluka Prathmik Shikshak-pat Saunstha Limited and Others	K. Ramas-wamy, G.B. Pattanaik	1996 Indlaw SC 1520; AIR 1996 SC 1801; JT 1996 (Supp) SC 308; [1996] Supp8 S.C.R. 352	366-367
37	C.A. No. 3629 of 1996	Sagarmal v Distt. Sahkari Kendriya Bank Limited, Mandsaur and Another	B.N. Kirpal, J.S. Verma	1996 Indlaw SC 2085; (1997) 9 SCC 354; (1997) SCC (L&S) 1203; 1998 (3) LLJ 157	368
38	C.A. No. 4074 of 1988 and C.A. Nos. 4075-4076 of 1988	Patiala Central Coopera-tive Bank Limited v Patiala Central Co-Operative Bank Employees' Union and Another, Etc	S.C. Sen, B.P. Jeevan Reddy, S.B. Majmudar	1996 Indlaw SC 3860; 1997 (2) LLJ 631	369-371
39	Civil Appeal No. 4390 of 1988	Patiala Central Coopera-tivebank Limited v Patiala Central Cooperativebank Employees Union and Another	S.C. Sen, B.P. Jeevan Reddy, S.B. Majmudar	1996 Indlaw SC 1281; (1996) 11 SCC 202; 1996 (7) AD(SC) 293; AIR 1996 SC 3944; JT 1996 (9) SC 59; 1996 LabIC 2728; 1996(6) SCALE 773; 1997 (1) SLJ 20; 1996 (3) SLR 741; [1996] Supp6 S.C.R. 347; 1996 (7) Su-preme 548	372-374

40	Civil Appeal No. 7748 of 1996	J.P. Ravidas & Ors v Navyuvak Harijan Uthapan Multi Unit Industrial	K. Ramaswamy, G.B. Pattanaik	1996 Indlaw SC 3633; (1996) 9 SCC 300; AIR 1996 SC 2151; JT 1996 (5) SC 445; [1996] Supp1 S.C.R. 301; 1996 (3) UPLBEC 1988	375-376
41	C.A. No. 4235 of 1996	Sahkari Samitiyan Vyavasthapak Union and Others v State of Rajasthan and Others	K. Ramaswamy, G.B. Pattanaik	1996 Indlaw SC 2569; (1996) 8 SCC 391; 1996 (3) AD(SC) 277; 1996 (1) BC 517; JT 1996 (3) SC 292; 1996(2) SCALE 795; [1996] 3 S.C.R. 104; 1996 (2) SLR 310	377-379
42	Appeal (Civil) 3032 of 1990	Ajmer Central Co-Operative Bank Limited, Ajmer, Through The Managing Director v Prescribed Authority, Under The Rajasthan Shops and Commercial Establishments Act, Ajmer and Others	M.M. Punchhi, A.M. Ahmadi	1996 Indlaw SC 3995; (1996) 2 SCC 1; (1996) SCC (L&S) 384; AIR 1996 SC 2911; 1996 (1) CLR 193; JT 1996 (1) SC 52; [1996] 1 S.C.R. 160	380-381

43	Civil Appeal No. 12148 to 12150 of 1995	Union Of India [Railway Board] And Ors v J.V. Subhaiah And Ors. Etc. Etc.	K. Ramaswamy, Faizan Uddin, B.N. Kirpal	1995 Indlaw SC 1919; (1996) 2 SCC 258; (1996) SCC (L&S) 558; 1996 (1) AD(SC) 510; AIR 1996 SC 2890; AIR 1996 SCW 705; 1996 (33) ATC 194; JT 1995 (9) SC 488; 1996 LabIC 960; 1996(1) SCALE 193; 1996 (2) SLR 185; [1995] Supp6 S.C.R. 812	382-386
44	Civil Appeal No. 64 of 1979	Harkishan Dass And Others v State Of Haryana And Others	M.M. Punchhi, Ms. Justice Sujata V. Manohar	1995 Indlaw SC 784; (1996) 7 SCC 32; 1995 (4) CCC 90; JT 1995 (8) SC 335; 1995(6) SCALE 349; 1996 (1) SCJ 484; [1995] Supp4 S.C.R. 840	387-388
45	C.A. No. 522 of 1989	Maharashtra Rajya Sahkari Sakkar Karkhana Sangh Limited and Others v State of Maharashtra and Others	Mr.Justice R.M. Sahai, B.P. Jeevan Reddy, S.C. Sen	1995 Indlaw SC 1023; (1995) Supp3 SCC 475; AIR 1995 SCW 2338; JT 1995 (3) SC 581; 1995(2) SCALE 772; 1995 (3) SCJ 169; [1995] 3 S.C.R. 377	389-393

46	C.A. No. 3351/1981 with Nos. 3472/1987 and 6197/1983,	I. D. L. Chemicals Limited v T. Gattaiah and Others	Kuldip Singh, N. Venkatachala	1995 Indlaw SC 2220; (1995) Supp3 SCC 573; (1995) SCC (L&S) 1417; 1995 (31) ATC 507; 1996 (3) LLJ 346	394-395
47	Appeal (civil) 4343 of 1988	South Central Railway Employees Co-Operative Credit Society Employees' Union, Secunderabad v Registrar of Co-Operative Societies and Others	G.B. Pattanaik, S. Saghir Ahmad	1998 Indlaw SC 1363; (1998) 2 SCC 580; AIR 1998 SC 703; JT 1998 (1) SC 60; 1998 LabIC 491; 1998(1) SCALE 81; [1998] 1 S.C.R. 85; 1998 (2) SLJ 266; 1998 (1) SLR 458; 1998 (2) SLT 273; 1998 (1) Supreme 221	396-397
48		Devi Singh v State Of Haryana & Ors.	K. Ramaswamy, K.T. Thomas	1997 Indlaw SC 1003; (1997) 10 SCC 752; AIR 1997 SC 2778; 1997 (3) CLT 69; JT 1997 (5) SC 683; 1997(4) SCALE 382; [1997] Supp1 S.C.R. 50; 1997 (6) Supreme 207	398-399

49	Special Leave Petition (C) No. 11037 of 1996	Supreme Co-Operative Group Housing Society v Messrs H. S. Nag and Associates Private Limited	Faizan Uddin, G.B. Pattanaik, K. Ramaswamy	1996 Indlaw SC 2965; (1996) 9 SCC 492; AIR 1996 SC 2443; 1996 (2) ARBLR 273; 1996 (63) DLT 553; JT 1996 (6) SC 592; 1996(5) SCALE 343; [1996] Supp2 S.C.R. 658; 1996 (2) UJ 519	400-401
50	C.As. Nos. ... of 1995 in S.L.Ps. (C) Nos. 2878, 2957, 2870 and 2817 and 2841 of 1988	State of Madhya Pradesh and Others v Hukum Chand Mills Karamchari	S.B. Majmudar, S. Mohan	1995 Indlaw SC 1496; (1996) 7 SCC 81	402-403
51	C.A. No. 7423 of 1994	Dinesh Prasad Yadav v State of Bihar and Others	Kuldip Singh, B.L. Hansaria	1995 Indlaw SC 559; (1995) Supp1 SCC 340; AIR 1995 SCW 836; [1995] 82 Comp Cas 653; JT 1995 (2) SC 45; 1995(1) SCALE 153B; [1995] 1 S.C.R. 220	404-406
52	Civil Appeal No. 1490 of 1980	Sahakari Khand Udyog Mandali Limited v State of Gujarat	S.C. Sen, B.P. Jeevan Reddy	1994 Indlaw SC 1761; (1995) Supp1 SCC 8; AIR 1995 SC 572; JT 1994 (6) SC 295; 1994(4) SCALE 286; 1994 (95) STC 572; [1994] Supp3 S.C.R. 776	407-409

53	C.A. No. 1446 of 1976	Bihar State Cooperative Mkt. Union Limited v Dindyalsingh	M.K. Mukherjee, S. Mohan	1994 Indlaw SC 1106; (1995) Supp4 SCC 647	410
54	C.As. Nos. 4613 and 4928 of 1992	Shri Sant Eknath Sahakari Sakhar Karkhana Limited v Aurangabad Paper Mills Limited and Others	A.M. Ahmadi, B.L. Hansaria	1994 Indlaw SC 768; (1998) 8 SCC 678	411-412
55	C.A. Nos. 2339 to 2346 of 1989 (From the Judgment and Order Dt. 6 December 1986 of the Andhra Pradesh High Court in W.A. Nos. 316, 561-64, 575, 576 and 577 of 1986)	Srinivasa Cooperative House Building Society Limited v Madam G.Sastry	K. Ramaswamy, N. Venkatachala	1994 Indlaw SC 1392; (1994) 4 SCC 675; 1994 (2) CCC 1; JT 1994 (4) SC 197; 1994 (1) RentLR 584; 1994(2) SCALE 785; [1994] 3 S.C.R. 848	413-315
56	Special Leave petition (C) No. 630 of 1994. WITH Writ Petition (c) No. 20 of 1994	Shatish Chandra v Registrar of Coop. Societies	K. Ramaswamy, N. Venkatachala	1994 Indlaw SC 451; (1994) 4 SCC 332; [1994] 81 Comp Cas 482; 1994 (4) CompLJ 1; JT 1994 (3) SC 620; 1994(2) SCALE 829; [1994] 3 S.C.R. 618; 1994 (2) UJ 280	416-417

57	Appeal (Civil) 5118 of 1992, C.A. No. 5117 of 1992	Maharashtra State Cooperative Cotton Growers' Marketing Federation Limited and Another v Maharashtra State Cooperative Cotton Growers' Marketing Federation Employees' Union of Another	P.B. Sawant, Mr.Justice R.M. Sahai	1994 Indlaw SC 1275; (1994) Supp3 SCC 385; (1995) SCC (L&S) 36; AIR 1994 SC 1046; 1994 (1) CLR 677; 1994 (68) FLR 579; JT 1994 (1) SC 163; 1994 LabIC 959; 1995 (1) LLJ 53; 1994(1) SCALE 225; [1994] 1 S.C.R. 289; 1994 (1) SLR 496	418-421
58	C.A. No. 3120 of 1983	Pollachi Cooperative Marketing Society v K. N. Valuswami and Others	G.N. Ray, S.P. Bharucha	1993 Indlaw SC 518; (1994) Supp3 SCC 134	422-423
59		Suresh T. Kilachand v Sampat Shripat Lambate And Another	K. Jayachandra Reddy, G.N. Ray	1993 Indlaw SC 1498; (1994) SCC (Cr) 407; (1994) Supp1 SCC 543; AIR 1994 SC 583; 1993 (3) CCR 329; 1993 (3) Crimes 531; 1994 CRLJ 611; 1993 CrLR(SC) 623; JT 1993 (Supp) SC 332; 1993(3) SCALE 876; 1993 (2) UJ 688	424-425

60	C.A. No. 3947 of 1993 (From the Judgment and Order Dt. 19 October 1992 of the Bombay High Court in W.P. No. 4400 of 1992)	Ramchandra Ganpat Shinde and Another v State of Maharashtra and Others	K. Ramaswamy, Mr.Justice R.M. Sahai	1993 Indlaw SC 565; (1993) 4 SCC 216; AIR 1994 SC 1673; 1994 (1) Bom.C.R. 460; [1995] 82 Comp Cas 276; JT 1993 (4) SC 573; 1993(3) SCALE 471; [1993] Supp1 S.C.R. 589; 1993 (2) UJ 692	426-429
61	C.A. Nos. 292-93 of 1992 (Arising out of S.L.P. (Civil) Nos. 15189-90 of 1991)	Shyam Nandan Prasad and Others v State of Bihar and Others	M.M. Punchhi, A.M. Ahmadi	1993 Indlaw SC 555; (1993) 4 SCC 255; AIR 1993 SCW 3013; 1993 (3) CCC 55; JT 1993 (4) SC 590; 1993 (2) RentLR 758; 1993(3) SCALE 435; [1993] Supp1 S.C.R. 533; 1993 (2) UJ 573	430-431
62	Special Leave Petition (Civil) No. 4460 of 1993. From the Judgment and Order dated 15.1.1993 of the Himachal Pradesh High Court in Civil Writ Petition No. 566 of 1990.	Central Cooperative Consumers' Store Limited (Thro v Labour Court, H.P. And Anr.	N. Venkatachala, Mr.Justice R.M. Sahai	1993 Indlaw SC 1121; (1993) 3 SCC 214; (1993) SCC (L&S) 748; AIR 1994 SC 23; 1993 (24) ATC 773; 1993 (2) CLR 9;	432-433

				1993 (67) FLR 572; JT 1993 (3) SC 532; 1993 LabIC 1943; 1993 (2) LLJ 563; 1993(2) SCALE 842; [1993] 3 S.C.R. 477; 1993 (4) SLR 94; 1993 (2) UJ 123; 1993 (2) UPLBEC 1156	
63	C.A. No. 1104 of 1978	Kuver Nath Lal v Postal Co-Operative House Construction Society Led. and Others	K.N. Singh, P.B. Sawant	1991 Indlaw SC 719; (1993) Supp1 SCC 71	434-435
64	Civil Appeal No.2168 of 1980	Yogendra Prasad v Additional Registrar, Co-Operative Societies	K. Ramaswamy, M.M. Punchhi	1991 Indlaw SC 353; (1992) Supp1 SCC 720; AIR 1991 SC 2137; 1992 (1) BC 53; 1992 (1) BLJR 153; [1992] 74 Comp Cas 57; [1991] Supp1 S.C.R. 143; 1991 (2) UJ 635	436-437
65	Civil Appeal No. 3382 of 1991	H. C. Suman and Another v Rehabilitation Ministry Employees' Cooperative House Building Society Limited, New Delhi and Others	N. D. Ojha, S. Ranganathan, M. Fathima Beevi	1991 Indlaw SC 784; (1991) 4 SCC 485; AIR 1991 SC 2160;	438-441

				1991 (45) DLT 251; JT 1991 (3) SC 556; 1991(2) SCALE 448; [1991] 3 S.C.R. 839; 1991 (2) UJ 716	
66	C.A. No. 2711 (NT) of 1977	Assam Cooperative Apex Marketing Society Limited, Assam v Additional Commissioner of Income Tax, Assam	B.P. Jeevan Reddy, N. Venkatachala	1993 Indlaw SC 928; (1994) Supp2 SCC 96; AIR 1993 SC 2575; 1993 (1) BankCLR 584; 1993 (110) CTR 56; 1993 (113) CTR 58; [1993] 201 ITR 338; JT 1993 (Supp) SC 486; [1993] 67 TAXMAN 257; 1993 (2) TLR 1115	442-443
67	C.A. Nos. 4820-21 of 1991	Toguru Sudhakar Reddy and Another v Government of A. P. and Others	Kuldip Singh, N.M. Kasliwal	1992 Indlaw SC 596; (1993) Supp4 SCC 439; AIR 1994 SC 544	444-445
68	Civil Appeal No. 3237 of 1991	Prem Jeet Kumar v Surender Gandotra And Ors.	L.M. Sharma, J.S. Verma	1991 Indlaw SC 779; (1991) Supp2 SCC 215; AIR 1991 SC 2254;	446-447

				1991 (3) CCC 183; 1991 (45) DLT 210; 1991 (45) DLT 633; JT 1991 (3) SC 570; 1991(2) SCALE 459; [1991] 3 S.C.R. 782; 1991 (2) UJ 612	
69	Civil Appeal No. 3047 of 1992. From the Judgement and Order dated 30.7.1984 of the Patna High Court in Civil Writ Jurisdiction Case No. 373 of 1977.	Bihar State Co-Operative Marketing Union Limited v Uma Shankar Sharan And Anr.	L.M. Sharma, A.S. Anand	1992 Indlaw SC 565; (1992) 4 SCC 196; AIR 1993 SC 1222; JT 1992 (4) SC 590; 1992(2) SCALE 209; [1992] 3 S.C.R. 892; 1992 (2) UJ 625	448-449
70	S.L.P. (Civil) No. 10857 of 1991 (From the Judgment and Order Dt. 10 May 1991 of the Delhi High Court in W.P. No. 2885 of 1990) with W.P. Nos. 665 and 667 of 1991 (Under Article 32 of the Constitution of India)	Navjyoti Coop. Group Housing Society and Others v Union of India and Others	G.N. Ray, S. Mohan	1992 Indlaw SC 609; (1992) 4 SCC 477; AIR 1993 SC 155; AIR 1992 SCW 3075; 1992 (2) Bank-CLR 650; JT 1992 (5) SC 621; 1992(2) SCALE 548; [1992] Supp1 S.C.R. 709; 1993 (1) UJ 94	450-454

71	Civil Appeal Nos. 3321 and 3320 of 1990.	Indra Kumar Chopra and another v Pradeshik Co. Operative Dairy Federation Ltd. Andors.	Yogeshwar Dayal, L.M. Sharma, M.M. Punchhi	1992 Indlaw SC 1096; (1992) 4 SCC 17; (1992) SCC (L&S) 756; AIR 1992 SC 2093; 1992 (21) ATC 368; 1992 (65) FLR 603; JT 1992 (4) SC 459; 1992 LabIC 2162; 1993 (1) LLJ 226; 1992 (2) LLN 428; 1992(2) SCALE 125; [1992] 3 S.C.R. 755; 1993 (1) SLJ 143; 1992 (5) SLR 24; 1992 (2) UJ 424; 1992 (2) UPLBEC 1171	455-457
72	C.A. No. 2861 of 1992 (Arising out of S.L.P. (C) No. 6796 of 1992)	State of Rajasthan v Praful Ranwah	A.M. Ahmadi, K. Ramas-wamy, M.M. Punchhi	1992 In-dlaw SC 462; (1993) Supp1 SCC 556; AIR 1992 SC 1975; 1992 CRLJ 2761	458
73	C.A. Nos. 292-93 of 1992 (Arising out of S.L.P. (Civ-il) Nos. 15189-90 of 1991)	Shashikant Sonaji Deshmukh and Others v State of Maharashtra and Others	B.P. Jeevan Reddy, M.N. Venkatachaliah	1992 In-dlaw SC 852; (1992) Supp3 SCC 10	459-460

74	S.L.P. (Civil) No. 6449 of 1990 (From the Judgment and Order Dt. 27 October 1989 of the High Court of Madras in W.A. No. 1410 of 1987)	P. Vijaya Rajan v State of Tamil Nadu and Others	P.B. Sawant, Ranganath Misra	1991 Indlaw SC 324; (1992) Supp2 SCC 104; 1993(3) SCALE 251	461
75	Civil Appeal No. 2846 of 1989. From the Judgment and Order dated 24.4.1989 of the Bombay High Court in W.P.No. 4118 of 1986.	Puran Singh Sahni v Sundari Bhagwandas Kripalani Smt. and Others	K.N. Saikia, M.M. Punchhi	1991 Indlaw SC 532; (1991) 2 SCC 180; AIR 1991 SCW 779; 1991 (2) CCC 26; JT 1992 (2) SC 24; 1991 (1) RCJ 476; 1991 (1) RCR(Rent) 575; 1991(1) SCALE 303; [1991] 1 S.C.R. 592; 1991 (1) UJ 566	462-465
76	Civil Appeal No. 4979 of 1990.	Marine Times Publications Pvt. Ltd. v Shiriram Transport And Finance Co. Ltd. And Anr.	M.H. Kania, Mr.Justice R.M. Sahai	1990 Indlaw SC 513; (1991) 1 SCC 469; AIR 1991 SC 626; 1991 (2) BankCLR 18; JT 1990 (4) SC 332; 1991 MahLJ 347; 1990(2) SCALE 854; [1990] 2 S.C.R. 466; [1990] Supp2 S.C.R. 466; 1990 (2) UJ 732	466-467

77	Civil Appeal No. 1369 of 1990	Sanwarmal Kejriwal v Vishwa Cooperative Housing Society Ltd. And Ors.	A.M. Ahmadi, K. Jagannatha Shetty	1990 Indlaw SC 847; (1990) 2 SCC 288; AIR 1990 SC 1563; 1990 (1) Bom.C.R. 796; JT 1990 (2) SC 200; 1990 MahLJ 380; 1990 (2) RCR(Rent) 1; 1990 (1) RentLR 411; 1990(1) SCALE 398; [1990] 1 S.C.R. 862	468-371
78	Civil Appeal No.2168 of 1980	Yogendra Prasad v Additional Registrar, Co-Operative Societies	K. Ramaswamy, M.M. Punchhi	1991 Indlaw SC 353; (1992) Supp1 SCC 720; AIR 1991 SC 2137; 1992 (1) BC 53; 1992 (1) BLJR 153; [1992] 74 Comp Cas 57; [1991] Supp1 S.C.R. 143; 1991 (2) UJ 635	472-473
79	Civil Appeal Nos. 4676 and 4793 of 1989	Gajanan Narayan Patil And Ors. v Dattatraya Waman Patil And Ors.	B.C. Ray, Kuldip Singh, Mr.Justice R.M. Sahai	1990 Indlaw SC 715; (1990) 3 SCC 634; AIR 1990 SC 1023;	474-478

				1990 (1) BC 400; [1990] 69 Comp Cas 1; JT 1990 (1) SC 517; 1990(1) SCALE 305; [1990] 1 S.C.R. 491; 1990 (2) UJ 174	
80	Civil Appeal No. 4974 of 1990. From the Judgment and Order dated 20.6.1990 of the Bombay High Court in W.P. 2403 of 1989.	Pundalik v District Deputy Registrar, Co-Operative Societies, Chandrapur and Others	K.N. Saikia, M.M. Punchhi	1991 Indlaw SC 539; (1991) 2 SCC 423; 1992 (2) BankCLR 207; 1991 (3) Bom.C.R. 154; [1991] 72 Comp Cas 38; JT 1992 (2) SC 576; 1991(1) SCALE 299; [1991] 1 S.C.R. 675; 1991 (1) UJ 560	479-481
81	Civil Appeal No. 4042 of 1988. From the Judgment and Order dated 17.12. 1987 of the Bombay High Court in W.P. No. 1048 of 1982	Jackson Co-Operative Credit Society Limited v Co-Operative Banks and Societies Employees'	T.K. Thommen, M.M. Dutt	1989 Indlaw SC 554; (1989) 3 SCC 89; (1989) SCC (L&S) 424; AIR 1989 SC 1398; 1989 (1) CLR 636; 1989 (2) CompLJ 38; 1989 (58) FLR 906; JT 1989 (2) SC 31;	482-483

				1989 LabIC 1369; 1989 (1) LLJ 563; 1989 (1) LLN 797; 1989(1) SCALE 965; [1989] 2 S.C.R. 266; 1989 (2) UJ 249	
82	Civil Appeal Nos. 5 135 15 (NT) of 1975. From the Judgment and Order dated 24.9.1973 of the Gujarat High Court in Income Tax Reference No. 31 of 1971	Broach Distt. Co-Operative Cotton Sales, Ginning v Commissioner Of Income Tax, Ahmedabad.	R.S. Pathak, M.H. Kania	1989 Ind-law SC 596; (1989) SCC (Tax) 351; (1989) 2 SCC 679; AIR 1989 SC 1493; 1989 (2) CompLJ 164; 1989 (77) CTR 70; [1989] 177 ITR 418; JT 1989 (2) SC 267; 1989(1) SCALE 1138; [1989] 2 S.C.R. 720; [1989] 44 TAX-MAN 439; 1989 (2) UJ 150	484-486
83	Civil Appeal No. 1228(NT) of 1975. From the Judg-ment and Order dated 29.11.1973 of the Allahabad High Court in I.T. Reference No. 842 of 1971.	Commissioner Of Income Tax, Lucknow v U.P. Coop-erative Federation Ltd	Ranganath Misra, R.S. Pathak	1989 Ind-law SC 749; (1989) SCC (Cr) 183; (1989) 1 SCC 747; AIR 1989 SC 915;	487-488

				[1989] 65 Comp Cas 585; 1989 (2) CompLJ 43; 1989 (76) CTR 22; [1989] 176 ITR 435; JT 1989 (1) SC 258; 1989 SCALE 340; [1989] 1 S.C.R. 586; [1989] 43 TAXMAN 20	
84	Civil Appeal Nos. 563 and 564 of 1975. From the Judgment and Orders dated 15.11.71 and 9.5.72 of the Allahabad High Court in I.T.R. No. 67 of 1969 and 724 of 1971.	Commissioner Of Income Tax, U.P.-Ii, Lucknow v Bazpur Co-Operative Sugar Factory Limited	M.H. Kania, R.S. Pathak	1988 Ind-law SC 492; (1988) 3 SCC 553; AIR 1988 SC 1263; 1988 (2) CompLJ 198; 1988 (70) CTR 94; [1988] 172 ITR 321; JT 1988 (2) SC 597; 1988(1) SCALE 1016; [1988] 3 S.C.R. 1034; 1988 TAXLR 1095; [1988] 38 TAX-MAN 195	489-492

85	C.A. No. 4234 of 1985	Virendera Singh v General Manager, Lucknow Producers Co-Operative Milk Union	Ranganath Misra, S. Ranganathan	1987 Indlaw SC 28454; (1989) Supp2 SCC 498; (1990) SCC (L&S) 103	493-494
86	Civil Appeal No. 1583 (N) of 1973	Jai Mahavir Co-Operative Housing Society Limited v Panchal Keshavlal Narbheram and Others	G.L. Oza, V. Khalid	1987 Indlaw SC 28422; (1987) 3 SCC 425; AIR 1987 SC 1513; 1987 (1) CCC 1047; JT 1987 (2) SC 576; 1987(1) SCALE 777; [1987] 2 S.C.R. 894; 1987 (1) UJ 744	495-496
87	C.A. No. 1556 of 1966.	Dharni Dhar Bhalla v District Co-Operative Bank Limited	A.N. Grover, I.D. Dua	1969 Indlaw SC 492; (1969) 3 SCC 694; 1969 UJ 632	497-499
88	Civil Appeal No. 944 of 1966. Appeal by special leave from the judgment and order, dated March 30, 1’965 of the Bombay High Court in Special Civil Application No. 5 of 1964.	Jalgaon District Central Co-Operative Bankltd. v Pundalikrao Laxmanrao Suryawanshi & Ors.	I.D. Dua, J.M. Shelat, C.A. Vaidyialingam	1969 Indlaw SC 99; (1969) 2 SCC 713; AIR 1970 SC 1966; [1970] 2 S.C.R. 192	500-501

89	Criminal Appeal No. 51 of 1967. Appeal by special leave from the judgment and order dated October 3, 1966 of the Bombay High Court, Nagpur Bench in Criminal Revision Application No. 168 of 1966.	Rama Rao and Another v Narayan and Another	J.C. Shah, A.N. Grover	1968 Indlaw SC 343; (1969) 1 SCC 167; AIR 1969 SC 724; 1969 CRLJ 1064; [1969] 3 S.C.R. 185	502-504
90	C.A. No. 358 of 1967	Deccan Merchants Co-operative Bank Limited v Dalichand Jugraj Jain and Others	S.M. Sikri, K.S. Hegde, R.S. Bachawat	1968 Indlaw SC 309; AIR 1969 SC 1320; [1970] 40 Comp Cas 187; [1969] 1 S.C.R. 887	505-507
91		Commissioner of Income Tax, Bombay City Ii v Bombay State Co-operative Bank Limited	J.C. Shah, Vaidynathier Ramaswami	1967 Indlaw SC 360; [1968] 70 ITR 86	508-509
92	Civil Appeal No. 1975 of 1966	Madras Co-Operative Central Land Mortgage Bank v Commissioner Of Income-Tax, Madras	J.C. Shah, S.M. Sikri, Vaidynathier Ramaswami	1967 Indlaw SC 239; AIR 1968 SC 55; [1968] 38 Comp Cas 681; [1968] 67 ITR 89; [1968] 1 S.C.R. 30	510-511
93	Criminal Appeal No.18 of 1965	Thakur Jugal Kishore Sinha v Sitamarhi Central Co-Operative Bank Limited and Another	G.K. Mitter, J.M. Shelat	1967 Indlaw SC 456; AIR 1967 SC 1494; 1967 CRLJ 1380; [1967] 3 S.C.R. 163	512-517

94	C.A. No. 496 of 1965	CoOperative Credit Society Limited v Northern Railway Co-Industrial Tribunal, Jaipur, and Another	Vishishtha Bhargava, G.K. Mitter	1967 Indlaw SC 16; AIR 1967 SC 1182; 1967 (15) FLR 71; 1967 (2) LLJ 46; [1967] 2 S.C.R. 476	518-522
95	Civil Appeal No. 426 of 1964	Uttar Pradesh Co-Operative Federation Limited v Messrs Sunder Brothers of Delhi	Vaidynathier Ramaswami, K. Subba Rao	1966 Indlaw SC 90; AIR 1967 SC 249; [1966] Supp S.C.R. 215	523-525
96	C.A. No. 374 of 1965	Thirunagar Panchayat v Madurai Co-Operative House Construction Society	Vaidynathier Ramaswami	1966 Indlaw SC 333; AIR 1966 SC 1807; [1966] Supp S.C.R. 118	526-527
97	C.A. No. 1 of 1966	Everest Apartments Co-Operative Housing Society Limited v State of Maharashtra and Others	Mohammad Hidayatullah, K. Subba Rao, R.S. Bachawat	1966 Indlaw SC 385; AIR 1966 SC 1449; 1966 (68) BomLR 664; 1966 MahLJ 643; [1966] 3 S.C.R. 365	528-529
98	Civil Appeal No. 578 of 1961.	Vasudev Gopalkrishna Tamwekar v The Board Of Liquidators Happyhome Co-Operative Housing Soci	Bhuvaneshwar Prasad Sinha, N. Rajagopala Ayyangar, J.C. Shah	1963 Indlaw SC 190; AIR 1967 SC 369; 1964 (66) BomLR 205; 1964 MahLJ 410; [1964] 3 S.C.R. 964	530-532
99	Civil Appeal No. 100 of 1962.	Sugauli Sugar Works Private Limited v Assistant Registrar, Co-Operative Societies	Bhuvaneshwar Prasad Sinha, K. Subba Rao, N. Rajagopala Ayyangar, J.R. Madholkar, T.L. Venkatarama Aiyyar	1962 Indlaw SC 367; AIR 1962 SC 1367; 1962 (5) FLR 31; [1962] 3 S.C.R. 804; [1962] Supp3 S.C.R. 804	533-534

100	Petition No. 303 of 1960	Mannalal Jain v State of Assam and Others	S.K. Das, Bhuvaneshwar Prasad Sinha, A.K. Sarkar, N. Rajagopala Ayyangar, J.R. Madholkar	1961 Indlaw SC 425; AIR 1962 SC 386; 1962 (2) SCJ 93; [1962] 3 S.C.R. 936	535-538
101	Civil Appeal No. 1 of 1958	Registrar, Co-Operative Societies Dharam Chand and Others(In re) v Dharam Chand And Others	Kailas Nath Wanchoo, Pralhad Balacharya Gajendragad-kar, A.K. Sarkar, K.C. Das Gupta, N. Rajagopala Ayyangar	1961 Indlaw SC 311; AIR 1961 SC 1743; [1961] 31 Comp Cas 454; [1962] 2 S.C.R. 433	539-541
102	C.A. No. 238 of 1955	Hoshiarpur Central Compa-ny Operative Bank Limited v Commissioner of Income Tax, Simla	Mohammad Hidayatullah, S.K. Das, J.C. Shah	1960 Indlaw SC 334; AIR 1960 SC 1303; [1960] 40 ITR 421; 1961 (2) MLJ(SC) 9; 1961 (2) SCJ 70; [1961] 1 S.C.R. 107	542-544
103	Criminal Appeal No. 150 of 1954	Chandi Prasad Singh v State of Uttar Pradesh	T.L. Venkata-rama Aiyyar Vivian Bose	1955 Indlaw SC 30; AIR 1956 SC 149; 1956 ALJ 153; 1956 CRLJ 322; 1956 (1) MLJ 88; 1956 (1) MLJ(SC) 88; 1956 SCJ 146; [1955] 2 S.C.R. 1035	545-547

104	I.T.A.NO. 5019/2012	In The High Court of Karnataka, Dharwad Bench	The Hon'ble Mr. Justice Ravi Malimath And The Hon'ble Mr. Justice G. Narendad		548-549
105	Income Tax Appeal no. 5006/2013	In The High Court of Karnataka, Dharwad Bench	The Hon'ble Mr. Justice N. Kumar And The Hon'ble Mr. Justice C.R. Kumaras-wamy		550-551

Vol. I

Vipulbhai M. Chaudhary v
Gujarat Cooperative Milk Marketing Federation Limited and others

Bench	Kurian Joseph, Anil R. Dave
Where Reported	2015 Indlaw SC 397

Case No : C.A. No. 3047 of 2015 (Arising from S.L.P. (C) No. 6237/2014) with C.A. No. 3048 of 2015 (Arising from S.L.P. (C) No. 3799/2014) and C.A. No. 3049 of 2015 (Arising from S.L.P. (C) No. 5270/2014)

The Judgment was delivered by : Kurian Joseph, J.

1. Leave granted.

2. Whether in the absence of a specific provision on removal by no confidence in the Act, Rules or even Bye-laws of a Cooperative Society, the Chairperson/elected office bearer can be removed by a motion of no confidence, is the short but complex question.

3. Appellant was removed from the office of the Chairperson of the first respondent-cooperative society through a no confidence motion. Aggrieved, appellant filed a writ petition which was dismissed as per the impugned judgment and thus the appeal.

15. The cooperative societies having been conferred a constitutional status by the Ninety Seventh Amendment, the whole concept of cooperatives has undergone a major change. In 1993, the local self-governments, viz., panchayats and municipalities were also given constitutional status under Parts IX and IXA of the Constitution of India by the 73rd and 74th Amendments. The Statement of Objects and Reasons would show that the Constitution wanted the local bodies to function as vibrant democratic units of self-government. After two decades, cooperative societies were given the Constitutional status by including them under Part IXB. The main object for the said amendment was also to ensure "their autonomy, democratic functioning and professional management".

16. The National Policy on Cooperatives announced in March 2002 has recognized democracy, equality, equity and solidarity as values of cooperatives. Cooperative society has been declared as a democratic institution. Democratic principles have all through been recognized as one of the cooperative principles though the Constitutional affirmation of those principles came only in 2012.

18. In Bhanumati and others v. State of Uttar Pradesh through its Principal Secretary and others (2010) 12 SCC 1 2010 Indlaw SC 877, the cooperative principles governing democratic institutions have been discussed in detail; no doubt while dealing with the Panchayati Raj institutions. However, the basic democratic principles governing both the institutions, enjoying the Constitutional status, are the same and, therefore, it would be profitable to refer to the discussion on the principles. To quote:

"58. These institutions must run on democratic principles. In democracy all persons heading public bodies can continue provided they enjoy the confidence of the persons who comprise such bodies. This is the essence of democratic republicanism. This explains why this provision of no-confidence motion was there in the Act of 1961 *even prior to the Seventy-third Constitution Amendment and has been continued even thereafter. Similar provisions are there in different States in India.*

66. *Democracy demands accountability and transparency in the Activities of the Chairperson especially in view of the important functions entrusted with the Chairperson in the running of Panchayati Raj institutions. Such duties can be discharged by the Chairperson only if he/she enjoys the continuous confidence of the majority members in the panchayat. So any statutory provision to demonstrate that the Chairperson has lost the confidence of the majority is conducive to public interest and adds strength to such bodies of self- governance. Such a statutory provision cannot be called either unreasonable or ultra vires Part IX of the* Constitution*."*

19. In Pratap Chandra Mehta v. State Bar Council of Madhya Pradesh and others(2011) 9 SCC 573 2011 Indlaw SC 481 and in Usha Bharti v. State of Uttar Pradesh and others (2014) 7 SCC 663 2014 Indlaw SC 198, the concept of democratic principles governing the democratic institutions have been discussed. In a democratic institution, confidence is the foundation on which the superstructure of democracy is built. The bedrock of democratic accountability rests on the confidence of the electorate. If the representative body does not have confidence in the office bearer whom they selected, democracy demands such officer to be removed in a democratic manner.

22. In Bhanumati case2010 Indlaw SC 877 (supra), this Court elaborated on this principle:

"67. Any head of a democratic institution must be prepared to face the test of confidence. Neither the democratically elected Prime Minister of the country nor the Chief Minister of a State is immune from such a test of confidence under the Rules of Procedure framed u/arts. 118 and 208 of the Constitution*. Both the Prime Minister of India and Chief Ministers of several States heading the Council of Ministers at the Centre and in several States respectively have to adhere to the principles of collective responsibilities to their respective houses in accordance with Arts. 75(3) and 164(2) of the* Constitution*."*

23. In Pratap Chandra Mehta case2011 Indlaw SC 481 (supra), at paragraph-45, the principle has been discussed as follows:

"45. In the instant case, the election process as contemplated under the relevant laws is that the members of a State Bar Council are elected by the electorate of advocates on the rolls of the State Bar Council from amongst the electorate itself. The elected members then elect a Chairman, a Vice- Chairman and the Treasurer of the State Bar Council as well as constitute various committees for carrying out different purposes under the provisions of the Advocates Act. In other words, the body which elects the Chairman or Vice-Chairman of a State Bar Council always consists of members elected to that Council.

The democratic principles would require that a person who attains the position of a Chairman or Vice-Chairman, as the case may be, could be removed by the same electorate or smaller body which elected them to that position by taking recourse to a "no-confidence motion" and

in accordance with the Rules. The body that elects a person to such a position would and ought to have the right to oust him/her from that post, in the event the majority members of the body do not support the said person at that time. Even if, for the sake of argument, it is taken that this may not be generally true, the provisions of Rule 122-A of the M.P. Rules make it clear, beyond doubt, that a "no-confidence motion" can be brought against the elected Chairman provided the conditions stated in the said Rules are satisfied."

24. In Usha Bharti case2014 Indlaw SC 198 (supra) also, this Court eloquently held at paragraph-53 as follows:

"53. In our opinion, the provision for removing an elected representative such as Panchayat Adhyaksha is of fundamental importance to ensure the democratic functioning of the Institution as well as to ensure the transparency and accountability in the functions performed by the elected representatives."

40. Shri Kapil Sibal, learned Counsel appearing for the appellant, inviting reference to the doctrine of casus omissus and placing reliance on the Full-Bench decision of the High Court of Kerala in S. Lakshmanan, President, Thiruvilwamal Weavers Co- operative Society v. V.Velliankeri, Member of Board of Directors, Thiruvilwamala Weavers Co-operative Society Ltd. and others AIR 2002 Kerala 325 2002 Indlaw KER 298 and the decisions of the other High Courts submits that no such power of removal of the Chairperson by no confidence can be read into the provisions of the Act, Rules or Bye-laws. To quote from S. Lakshmanan case2002 Indlaw KER 298 (supra) :

"16. The Committee is elected by following the procedure prescribed under the Act *and the Rules and is guaranteed a tenure as prescribed in the Bye- laws, by virtue of Rule 39(1). It can only be removed by the procedure prescribed in* the Act *or the Rules or the Bye-laws. The only contingency under which the Committee may be removed before the end of its tenure is indicated in S. 33(1) of* the Act*. S. 33(1) of* the Act *envisages the passing of a no-confidence motion by the General Body which results in wholesale removal of the Committee. Barring this provision, there is no other provision by which an elected individual member of the Committee can be removed. We are, therefore, unable to accept the contention of the appellants that such a drastic power can be read into* the Act*, even where there are no provisions."*

41. In Veeramachaneni Venkata Narayana v. The Deputy Registrar of Co-operative societies, Eluru, West Godavari District and others I.L.R. [1975] A.P. 242, at paragraph-10, the view taken by the High Court of Andhra Pradesh, is as under:

"10. As sufficient safeguards are provided in the event of an office-bearer of the committee not conducting himself properly or not discharging his duties as required of him under the provisions of the Act*, the Rules and the bye-laws, the Legislature obviously did not intend to provide for the removal of an office-bearer of a committee by way of passing of 'no-confidence' motion against him."*

42. In Hindurao Balwant Patil and another v. Krishnaro Pashuram Patil and others AIR 1982 Bombay 216 1981 Indlaw MUM 290, the High Court of Bombay took the view that:

"10. the Act, Rules and the bye-laws do no confer any right upon the members of the Board of Directors to remove the Chairman and the Vice- Chairman by passing a mere vote of no

confidence. Therefore it will not be proper to confer such a wider power upon the board of directors by taking recourse to the doctrine of implied or inherent power."

43. In Jagdev Singh v. The Registrar, Co-operative Societies, Haryana and others AIR 1991 P & H 1491990 Indlaw PNH 139, the Full-Bench of High Court of Punjab and Haryana held as follows:

"22. the answer to the question posed in the beginning of the judgment, is that in absence of any provision in the Punjab Co-operative Societies Act, 1961, Rules and the Bye-laws made thereunder (as also in the Haryana Cooperative Societies Act, 1984, Rules and the Bye-laws made thereunder) for moving a no-confidence in the President of a Managing Committee/ Chairman of a Board of Directors of a Co- operative Bank, it is not permissible to move such a motion, inasmuch as such a power cannot be inferred nor such a power is inherent in the members of the Managing Committee/Director of the Bank. The Office bearers can only be removed in accordance with S. 27 of the Act read with Rules 25 and 26 of the Rules. With respect we are unable to agree with the law laid down by the Division Bench in Haji Anwar Khan's case (AIR 1980 Punjab & Haryana 306 1980 Indlaw PNH 201) (supra) (which was a case under the Wakf Act), to our mind, does not lay down correct law."

49. The conventional view is that the legislature alone makes the law. But as Bennion puts it:

"The truth is that courts are inescapably possessed of some degree of legislative power. Enacted legislation lays down rules in advance. The commands of Parliament are deliberate prospective commands. The very concept of enacted legislation postulates an authoritative interpreter who operates ex post facto. No such interpreter can avoid legislating in the course of exercising that function. It can be done by regarding the breadth or other obscurity of the express language as conferring a delegated legislative power to elaborate its meaning in accordance with public policy (including legal policy)" Bennion on Statutory Interpretation by Francis Bennion, 6th Edition, p.137.."

50. According to Donaldson J.:

"The duty of the courts is to ascertain and give effect to the will of Parliament as expressed in its enactments. In the performance of this duty the judges do not act as computers into which are fed the statues and the rules for the construction of statues and from whom issue forth the mathematically correct answer. The interpretation of statutes is a craft as much as a science and the judges, as craftsmen, select and apply to the appropriate rules as the tools of their trade. They are not legislators, but finishers, refiners and polishers of legislation which comes to them in a state requiring varying degrees of further processing." Corocraft Ltd v Pan American Airways Inc. [1968] 3 WLR 714 at 732."

51. In the celebrated case of Seaford Court Estates v. Asher [1949] 2 All ER 155 : [1949] 2 K.B. 481, Lord Denning has succinctly summarized the principle on the role of the court. To quote:

"Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. A judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of the Parliament, and he must do this not only from the language of the statue, but

also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give "force and life" to the intention of the legislature. . Put into homely metaphor it is this:

A judge should ask himself the question how, if the makers of the Act *had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not alter the material of which* the Act *is woven, but he can and should iron out the creases."*

52. In Rattan Chand Hira Chand v. Askar Nawaz Jung (Dead) by Lrs. and others (1991) 3 SCC 67 1991 Indlaw SC 875, this Court, at paragraph-17 of the judgment, has also dealt with the principles in following words:

"17. The legislature often fails to keep pace with the changing needs and values nor is it realistic to expect that it will have provided for all contingencies and eventualities. It is, therefore, not only necessary but obligatory on the courts to step in to fill the lacuna. When courts perform this function undoubtedly they legislate judicially. But that is a kind of legislation which stands implicitly delegated to them to further the object of the legislation and to promote the goals of the society.

Or to put it negatively, to prevent the frustration of the legislation or perversion of the goals and values of the society. So long as the courts keep themselves tethered to the ethos of the society and do not travel off its course, so long as they attempt to furnish the felt necessities of the time and do not refurbish them, their role in this respect has to be welcomed."

If a procedure is prescribed in any Act or Rule or Bye-law regarding election of an office bearer by the Board, as defined under Article 243ZH(b) of the Constitution of India, and for removal thereof, by way of a motion of no confidence, the same procedure has to be followed. In case there is no express provision under the Act or Rules or Bye-laws for removal of an office bearer, such office bearer is liable to be removed in the event of loss of confidence by following the same procedure by which he was elected to office.

54. Now that this Court has declared the law regarding the democratic set up of a cooperative society and that it is permissible to remove an elected office bearer through motion of no confidence, and since in many States, the relevant statutes have not carried out the required statutory changes in terms of the Constitutional mandate, we feel it just and necessary to lay down certain guidelines. However, we make it clear that these guidelines are open to be appropriately modified and given statutory shape by the competent legislature/authority. Having gone through the provisions regarding motion of no confidence in local self-governments, we find that there is no uniformity with regard to the procedure and process regarding motion of no confidence. Some States provide for a protection of two years, some for one year and a few for six months, to the office bearers in office before moving a motion of no confidence.

Having regard to the set up in local self-governments prevailing in many of the States as above, we direct that in the case of cooperative societies registered under any Central or State law, a motion of no confidence against an office bearer shall be moved only after two years of his assumption of office. In case the motion of no confidence is once defeated, a fresh motion shall not be introduced within another one year.

A motion of no confidence shall be moved only in case there is a request from one-third of the elected members of the Board of Governors/Managing Committee of the cooperative society concerned. The motion of no confidence shall be carried in case the motion is supported by more than fifty per cent of the elected members present in the meeting.

55. Though for different reasons, we agree with the view taken by the High Court of Gujarat. The contra views expressed by the High Courts of Andhra Pradesh, Bombay, Kerala and Punjab and Haryana are no more good law in view of the Ninety Seventh Amendment to the Constitution of India.

56. The appeals are accordingly dismissed. There shall be no order as to costs.

Appeal dismissed

Ramesh Himmatlal Shah v Harsukh Jadhavji Joshi

Bench	P.K. Goswami, A. Alagiriswami, P.N. Bhagwati
Where Reported	1975 Indlaw SC 178; (1975) 2 SCC 105; AIR 1975 SC 1470; 1975 BomLR 549; [1975] Supp S.C.R. 270
Case Digest	**Summary:** Maharashtra Co-operative Societies Act, 1961, ss. 17(2), 29, 31 and 47 - Maharashtra Co-operative Societies Rules, 1961, r. 24 - CPC, 1908, s. 60 - Tenancy - Flat in a tenant Co- partnership Housing Society registered under the Act - Whether flat can be attached and sold in execution of a decree against the allottee - Flat held, can be attached and sold - Appeal Allowed.

Case No : CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1539 of 1974. Appeal by special leave from the Judgment and Order of the High Court of Bombay in LPA No. 80 of 1972.

2. The appellant is the decree-holder. He obtained a money decree against the respondent judgment-debtor and took a warrant of attachment of flat No. 9 of Paresh Cooperative Housing Society Limited at Santacruz, Bombay. This flat (described as ownership flat in ,common parlance) was attached on August 8, 1970 and a warrant of attachment was served on the judgment-debtor while he was in jail in Rajkot. In due course a sale proclamation was also issued in respect of the flat while the judgment-debtor was yet in jail. At this stage of the proceedings the judgment-debtor's brother, Hasmukh Joshi (for brevity Hasmukh) took out a chamber summons challenging the execution on the ground that the flat did not belong to the judgment-debtor but belonged to him and to the judgment- debtor's wife and that the attachment should be raised. His chamber summons was made absolute but in appeal the order was set aside and the matter was remanded.

6. The point that arises for consideration in this appeal, as stated earlier, is whether the right of the judgment-debtor, who claims the right to occupation of flat No. 9, is liable to attachment and sale in execution of a decree. Before we proceed further it is necessary to go through the relevant provisions of the Maharashtra Cooperative Societies Act, 1960 (briefly- the Act),. The Maharashtra Cooperative Societies Rules, 1961 (briefly described as the Rules) and the Bye-laws of the Society. the Act was passed in the year 1961 to consolidate and amend the law relating to cooperative societies in the state of Maharashtra. S. 2 of the Act contains the definitions. By s. 2(5) 'by-laws' means by-laws registered under this Act and for the time being in force, and includes registered amendments of such by-laws". By s. 2(11) "dividend" means the amount paid, out of the profits of a society, to a member in proportion to the shares held by him. By s. 2(16)... housing society' means a society the object of which is providing its members with dwelling houses". By s. 2(9) "'member' means a person joining in an application for the registration of a cooperative society which is subsequently registered, or a person duly admitted to membership of a society after registration, and includes a nominal, associate or sympathiser member".

We have seen there is no absolute prohibition against transfer of a right to occupation of the flat or even to transfer a share. The auction-purchaser is presumed to know the limitations under which he has purchased the right to occupy the flat in court auction. If ultimately the Society turns down his application for membership. (which of course cannot be done except for valid reasons) it is upto him to take such course of action as available under the law. Such a remote contingency, per se, will not make the particular right of. the judgment-debtor in the flat non-attachable or non-saleable.

19. We have held that the right to occupation of a flat is property both attachable and saleable. Specific non- inclusion of a particular species of property under s. 60 is, therefore, not of any consequence if it is saleable otherwise. In the result the, judgment of the High Court is set aside and the judgment-debtor's chamber summons dated March 28, 1972, stands dismissed. The appeal is allowed, but there Will. be no order as to costs 'except that. the court-fees will be payable by, the appellant. We record our appreciation of the assistance rendered by Mr. Chatterjee as amicus curiae and also by Mr. Zaiwala, counsel for the appellant.

Appeal allowed

Veerpal Singh v Deputy Registrar, Co-Operative Societies, Meerut and Others

Bench	A.N. Ray, S.M. Sikri, D.G. Palekar, M. Hameedullah Beg, S.N. Dwivedi
Where Reported	1973 Indlaw SC 262; (1973) 1 SCC 593; AIR 1973 SC 1052; [1973] 3 S.C.R. 430
Case Digest	**Subject:** Banking & Finance **Keywords:** Co-Operative Society, Debt Laws **Summary:** Corporate Uttar Pradesh Co-operative Societies Rules, 1968, r.453(1)(o) Co-operative Societies Act, 1966, ss.118 and 128 - (A) Provisions of 1968 Rules - Disqualification to be member of Committee of management - Bye-laws of Bulandshahr Federation, Bye-law No 1(Ta) - 'Loan' - (B) Provisions of 1966 Act - Exercise of power to annual resolutions under - Wilful absence of Secretary - Chairman appointed an elected Director to record minutes - Resolution passed in meeting - If can be annulled for want of proper recording of minutes - Held, price of goods supplied by Federation to its constituent member, a Co-operative Union, if outstanding does not constitute a 'Loan' and consequently a delegate of that Union cannot be declared to be disqualified - Cannot be annulled on ground that minutes of meeting were not correctly recorded, further s.118 also protects proceedings of meeting - Order accordingly.

Case No : ORIGINAL JURISDICTION : Writ Petition No. 214 of 1972. (Petition under Article 32 of the Constitution of India for the enforcement of fundamental rights)

2. By the said order dated 2 May, 1972 the respondent Deputy Registrar removed Rajendra Singh, Yograj Singh and the petitioner Veerpal Singh from the Board of Directors of the District Co-operative Federation, Bulandshahr referred to as the Bulandshahr Federation and declared them to be disqualified to the office of the Directors of the Bulandshahr Federation for a period of three years from the date of the order.

4. The circumstances under which the aforesaid order came to be passed are these according to the Deputy Registrar. There was an inspection in the month of February, 1971 by the Deputy, Registrar. Co-operative Societies, Uttar Pradesh about the Constitution, working and financial condition of the Bulandshahr Federation. The Deputy Registrar found that the three, constituent members of the Federation, viz., Sehkari Sangh Raura, sehkari Sangh Jarcha and the Co-operative Union Inchagaon defaulters in respect of their dues to the Buldandshar Federation Therefore the delegates from these three constituent member at Raura, Jarcha and Unchagaon were not qualified to be elected as members of the Board of Directors of the Bulandshahr Federation.

5. The Federation did not comply with the requirements indicated in the report of the inspection note. The Deputy Registrar therefore passed the said order dated 2 May, 1972. It is necessary to refer

to certain other events which took place prior to the passing of the said order. The Bulandshahr Federation held its annual general meeting on 20 March, 1970. At the annual general meeting the committee of management was elected. The petitioner was elected one of the Directors constituting the committee of management of the Bulandshahr Federation. In the month of April 1970 the petitioner was unanimously elected as Chairman of the Bulandshahr Federation.

17. The Federation is not a credit society. The Federation does not-have any loan transactions with the Cooperative Unions. The Cooperative Unions did not have any loan transactions with the petitioner. The dues of the Cooperative Unions are in respect of supplies of goods by the Federation to the Cooperative Unions. These are commercial transactions. These are commercial debts. Price of goods supplied, if outstanding, does not constitute a loan within the meaning of the bye-law. The impugned order proceeded entirely on an illegal basis and wrong interpretation of the bye-law. The order is bad.

18. The other question which arises for consideration is whether the Registrar has power u/s. 128 of the Act to annul the resolutions of the society. The Registrar proceeded on the footing that the minutes of the meeting of the Federation held on 15 March, 1971 were not correctly recorded. The Deputy Registrar alleged that the Federation did not comply with the provisions of bye-law No. IO (Cha) read with bye-law No. 11 of the Federation in regard to the conduct of the meeting. Bye-law No. 11 deals with recording the proceedings of the meeting. That bye-law states that the minutes shall be recorded in the book to be kept for the purpose and the minutes shall be signed by the person presiding at the meeting as well as by the Secretary of the Federation. Bye-law No. IO (Cha) states that the Secretary shall, be the Chief Executive officer of the Federation and subject to control and supervision of the Chairman and the committee of management as provided in the rules or the bye-law. It is also stated in bye-law No. 10 (cha) that the Secretary shall inter alia sign and authenticate all documents in and on behalf of the Federation and is responsible for the, proper maintenance of various books and records of the Federation.

19. The facts with regard to the meeting of the Federation held on 15 March, 1971 are that the Secretary wilfully absented himself at the meeting. The Federation therefore contended that the Secretary disobeyed the instructions. The Chairman under bye-law No. 10 is responsible for the control, supervision and efficient administration of the Federation. The Chairman appointed an elected Director Shri Prahlad Swarup, Advocate for the purpose of recording the minutes. Under section 118 of the Act no act of a cooperative society or any committee of management shall be deemed to be invalid by reason of the existence of any defect in the Constitution inter alia of committee or in the appointment of an officer of a cooperative society or on the ground that such officer was disqualified for such appointment. The meeting of the Federation on 15 March, 1971 was properly conducted. The Chairman rightly appointed an elected Director to record the minutes in view of the wilful absence of the Secretary. Section 188 of the Act also protects the proceedings of the meeting. The Deputy Registrar acted illegally in annulling the resolutions of the Federation held on 15 March, 1971.

20. For these reasons the two orders of the Deputy Registrar dated 2 May, 1972 which are impeached the petitioner are set aside and quashed.

21. Petitioner will be entitled to costs to be paid by the respondent & The order dt. 12th October 1972 for payment of costs as Rs. 300 is cancel led.

Uttar Pradesh Co-Operative Federation v The State Of U.P. & Ors.

Bench	A.N. Ray, S.M. Sikri, D.G. Palekar, M. Hameedullah Beg, S.N. Dwivedi
Where Reported	1973 Indlaw SC 74; (1973) 1 SCC 398; AIR 1973 SC 1068; [1973] 3 S.C.R. 402
Case Digest	**Subject:** Corporate **Keywords:** Expulsion, Uttar Pradesh Co-operative Societies Act, 1965, Uttar Pradesh Co-operative Societies Rules 1968 **Summary:** Corporate - Uttar Pradesh Co-operative Societies Act, 1966, s.34 - Nominees of State Govt. on Committee of management of Co-operative Federation - Calculation of share capital of Federation for determining percentage of Govt. in share holding - Held, share capital calculated - And it could not be said that State Govt. was justified to exercise right u/s.34 of Act - Appeal allowed.

Case No : ORIGINAL/CIVIL APPELLATE JURISDICTION : Writ Petition No. 243 of 1971 and Civil Appeal No. 592 of 1972. Writ Petition No. 243 of 1971 Petition under Article 32 of the Constitution of India for the enforcement of fundamental rights and Civil Appeal No. 592 of 1972. Appeal by a special leave from the judgment and order dated December 8,
The Judgment was delivered by : A. N. Ray, J.

1. **The Civil Appeal is by special leave from the judgment dated 8 December, 1970 of the High Court at Allahabad dismissing the petition of the appellants. The appellants in the Allahabad High Court impeached the first order dated 19 September, 1970 passed under section 34 of the Uttar Pradesh Cooperative Societies Act, 1965 referred to as the Act nominating two-thirds of the total number of members of the committee of management of the Uttar Pradesh Co-operative Federation. The appellants are the Uttar Pradesh Co-operative Federation Ltd., Lucknow referred to as the Federation and Veerpal Singh who are both also the petitioners in the writ petition.**

2. This writ petition is directed against the second order of the Uttar Pradesh State Government dated 26 June, 1971 passed under section 34 of the Act nominating two-thirds of the total number of members of the committee of management of the Federation.

3. The question which falls for determination in the writ petition and the civil appeal is whether the State Government under section 34 of the Act could nominate two- thirds of the total number of members of the committee of management of the Federation.

4. The annual general meeting of the Federation was held on 30th March 1970. The committee of management of the Federation was elected at the annual general meeting. The appellant petitioner Veerpal Singh on 8 April 1970 was unanimously elected as Chairman of the Federation.

6. The Federation moved the Allahabad High Court against the said order of the State Government. The High Court stayed the operation of the said order nominating two-thirds of the members of the committee of management. The High Court dismissed the petition of the Federation on 8 December, 1970. On 18 December, 1970 the State Government cancelled the order dated 19 September, 1970.

7. The Additional Registrar, Co-operative Societies, Uttar Pradesh submitted an inspection report to the effect that the State Government had been misinformed about the share capital of the State Government in the Federation. The report stated that in fact the share capital of the State Government in the Federation was never 60 per cent. The report further stated that the matter should be thoroughly investigated and guilty persons should be punished.

13. Two questions arise. First, whether it could be said that the share holding of the co-operative banks at Rs. 53,000 was reduced from the share capital on the relevant dates in September, 1970 or in the month of June, 1971 Second, whether the sum of Rs. 50,000 out of share capital held by the District Co-operative, Federation, Saharanpur in the share capital of the Federation had been retired with the result of reduction of the share capital of the Federation.

24. The condition precedent to the exercise of rights of the State Government under section 34 is that the State Government owns 60 per cent or more of the share capital of the Federation. The entire basis of exercise of 'right of the Government was that shares worth Rs. 53,000 owned by the Co-operative banks and shares worth Rs. 50,000 owned by the District Co-operative Federation. Saharanpur were no longer part of the share capital. There is no foundation for the State Government to take up that plea. The shares in both the cases are still part of the share capital. The result is that it could not be said that the State Government was justified to exercise right under section 34 of the Act.

25. For the foregoing reasons the petition succeeds. The order of the State Government dated 26 June, 1971 is quashed.

26. The appeal is also allowed and the judgment of the High Court is set aside for the reasons indicated hereinbefore. Each party will pay and bear its own costs.

Shamrao Vithal Co-Operative Bank Limited v Kasargod Pandhuranga Mallya

Bench	Hans Raj Khanna, K.S. Hegde
Where Reported	1971 Indlaw SC 314; (1972) 4 SCC 600; AIR 1972 SC 1248; [1972] 2 S.C.R. 162; 1972 UJ 204
Case Digest	**Subject:** Corporate **Keywords:** Place Of Business, Objects **Summary:** Corporate - Multi-Unit Co-operative Societies Act, 1942, s. 2(1) - Bombay Co-operative Societies Act, 1925, s. 54 - Co-operative Society registered in one State having its branch also in other State - Law applicable - Held, Registrar in former State has no jurisdiction to adjudicate on dispute arising out of dealings of such society through its branch in other State - Appeal dismissed.

Case No : CIVIL APPELLATE JURISDICTION: C.A. No. 1312 of 1967. Appeal by special leave from the judgment and decree Dt. 22 October 1962 of the Kerala High Court in Appeal Suit No. 804 of 1969.

2. The appellant is a Co-operative Society registered in Bombay under the Bombay Act. The Head Office of the appellant is in Bombay and it has a branch in Mangalore. As the objects of the appellant were not confined to one State, it was governed by Multi-Unit Co-operative Societies Act of 1942 (herinafter referred to as the Central Act). The appellant made a claim u/s. 54 of the Bombay Act in respect of a transaction which took place in Mangalore against the respondent who is a resident of Kasaragod, and was a member of the appellant society. Both Mangalore and Kasaragod were at the relevant time in Madras Presidency. The Deputy Registrar of Co-operative Societies, Bombay gave an award regarding that claim. The award was sought to be executed as a decree in the Court of Subordinate Judge, Kasaragod. An objection to the execution of the decree was raised by the respondent on the ground that the Deputy Registrar of Co-operative Societies, Bombay had no jurisdiction to pass the award and the same could not be executed as a decree in the Courts in Kerala. This objection was upheld by the Subordinate Judge and he dismissed the execution application. On appeal, the decision of the learned Subordinate Judge was affirmed by the High Court. It was not disputed before the High Court that the appellant was governed by the provisions of the Central Act.

3. The contention raised on behalf of the appellant was that the passing of an award came within the expression ‘control’ occurring in .sub-s. (1) of s. 2 of the Central Act. This contention did not find favour with the High Court and in the result, the appeal was dismissed. We have heard Mr. Naik on behalf of the appellant. No one has appeared on behalf of the respondent. Before dealing with the argument advanced on behalf of the appellant, it would be apposite to reproduce s. 2 of the Central Act.

The same reads as under :-

"2. (1) A co-operative society to which this Act applies which has been registered in any State under the law relating to co-operative societies in force in that State shall be deemed in any other State to which its objects extend to be duly registered in that other State under the law there in force relating to co-operative societies, but shall, save as provided in sub-ss. (2) and (3), be subject for all the purposes of registration, control and dissolution to the law relating to co-operative societies in force for the time being in the, State in which it is actually registered.

(2) Where any such co-operative society has established before the commencement of this Act or establishes after the commencement of this Act a branch or place of business in a State other than in which it is actually registered, it shall, within six months from the commencement of this Act or the date of establishment of the branch or place of business, as the case may be, furnish to the Registrar of Co-operative Societies of the State in which such branch or place of business is situated a copy of its registered by-laws, and shall at any time it is required to do so by the said Registrar submit any returns and supply any in-formation which the said Registrar might require to be submitted or supplied to him by a co-operative society actually registered in that State.

(3) The Registrar of Co-operative Societies of the State in which a branch or place of business such as is referred to in sub-s. (2) is situated may exercise in respect of that branch or place of business any powers of audit and of inspection which he might exercise in respect of a co-operative society actually registered in the State".

8. **As the objects of the appellant society were extended to the Presidency of Madras, it should, in view of subs. (1) of s. 2 of the Central Act, be deemed to have .been registered under the law in force in the Presidency of Madras relating to co-operative societies. The law which was then in force, according to Mr. Naik, was the Madras Cooperative Societies Act, 1932** (hereinafter referred to as the Madras Act). Clause, (f) of s. 2 of that Act defines a registered society to mean a society registered or deemed to be registered under that Act. s. 51 of the Madras Act provides inter alia that if, any dispute touching the business of a registered society between a member and the society arises, such dispute shall be referred to the Registrar for decision. Registrar has been defined in cl. (g) of s. 2 of the Madras Act to mean that:

9. It would, therefore, follow that a dispute between the appellant and the respondent in respect of its dealings relating to its Mangalore branch would normally have to be adjudicated upon by the Registrar appointed under the Madras Act. The fact that for the purpose of control, the appellant society was .governed by the Bombay Act would not, in our opinion, justify a departure from the above normal rule. The word 'control' is synonymous with superintendence, management or authority to direct, restrict or regulate (See p. 442 of Words and Phrases (Vol 9) Permanent Edition). Control is exercised by a superior authority in exercise of its supervisory power. Adjudication of disputes is a judicial or quasi-judicial function and it would, in our opinion, by unduly straining the meaning of the word 'control' to hold that it also covers the adjudication of disputes between a co-operative society and its members. There is a clear distinction between jurisdiction to decide a dispute which is a judicial power and the exercise of control which is an administrative power and it would be wrong to treat the two as identical or equate one with the other.

10. Reference has been made on behalf of the appellant to the case of Panchshila Industrial Co-operative Societies (Mult Unit) v. The Gurgaon Central Co-operative Bank Ltd., Gurgaon ([1971] (2) 2.S.C.C. 500 1971 Indlaw SC 197). In that case, Deputy Registrar of Co-operative Societies, Rohtak had given an award in favour of the respondent bank which was a co-operative society governed by the provisions of Punjab Cooperative Societies Act. The appellant filed an appeal against that award before the Central Registrar. The Central Registrar dismissed the appeal on the ground that he was not the appropriate appellate authority in respect of the said award. On appeal to this Court, the decision of the Central Registrar was affirmed. It was held that the dispute between the parties fell within s. 55 of the **Punjab Co-operative Societies Act and those provisions were not affected by the Central Act. It would appear from the above that the question involved in that case was entirely different and the appellant can derive no assistance from it.**

11. Argument has also been advanced that there was no inherent lack of jurisdiction in the Deputy Registrar appointed under the Bombay Act for adjudicating upon the dispute between the parties and that it was at the best a case of lack of territorial jurisdiction. We find ourselves unable to accede to this contention because we are of the opinion that there was inherent lack of jurisdiction in the Registrar appointed under the Bombay Act for dealing with the dispute arising out of the dealings of the Mangalore branch of the appellant society with the respondent. The dispute between the parties as would appear from what has been discussed above could only be adjudicated upon in accordance with the provisions of the Madras Act.

12. The appeal consequently fails and is dismissed. As no one has appeared on behalf of the respondent, we make no order as to costs.

Appeal Dismissed

Panchshila Industrial Co-Opera-Tive Societies(Multi Unit) v Gurgaon Central Co-Operative Bankltd. Gurgaon

Bench	S.M. Sikri, A.N. Ray, D.G. Palekar
Where Reported	1971 Indlaw SC 197; (1971) 2 SCC 500; AIR 1971 SC 2403; [1972] 1 S.C.R. 44

Case No : C.A. No. 2293 of 1970. Appeal by special leave, from the order Dt. 4 May 1970 of the Central Registrar of Co-operative Societies, New Delhi in Appeal No. CR/1/70.

2. The only question which arises before us is whether the Central Registrar was the appropriate authority on the facts of this case. The relevant facts are these. The respondent Bank approached the Registrar of Cooperative Societies Haryana for resolving a dispute between the Bank and one of its members appellant before us. The Registrar by his order dated February 17, 1968, in exercise of the powers vested in him under S. 56 of the Punjab Co-operative Societies Act, 1961, referred the dispute to the Deputy Registrar Cooperative Societies Rohtak for decision. The arbitrator gave the award on October 7, 1969, directing that the appellant do pay to the respondent in all Rs. 16,05,658 - 20 together with interest at the rate of six and a half per cent per annum until the realisation of the principal amount viz. Rs. 11,52,535 00.

4. There is no doubt that the dispute between the respondent Bank and the appellant fell within S. 55 and was properly referred to arbitration under that section. It is however, contended that the appellant was registered in December 1955 under the Punjab Cooperative Societies Act, 1955, and by virtue of the States Reorganisation Act, 1956, and S. 5A of the Multi-Unit Co-operative Societies Act, 1942, the appellant has ceased to be governed by the provisions of the Punjab Co-operative Societies Act because it has become a multi-unit co-operative society. There is no doubt that by virtue of the States Reorganisation Act, 1956, and S. 5A of the Multi-Unit Co-operative Societies, Act, 1942, the appellant has become a multi-unit co-operative society and the Multi-Unit Co-operative Societies Act applies to it.

5. But that Act is for the incorporation, regulation and winding up of co-operative societies with objects not confined to one State, and it has no impact on S. 55 of the Punjab Co-operative Societies Act, 1961, inasmuch as the appellant remains a member of the co-operative society, namely, the respondent Bank. There is nothing in the provisions of the Multi-Unit Co-operative Societies Act to indicate that a multi-unit co-operative society cannot be a member of a co-operative society governed by the Punjab Act of 1961. If the appellant continues to be a member, then the terms of S. 55 apply and a dispute can be referred to arbitration under that section. An appeal against the at award lies under S. 68 of the Punjab Act of 1961 to the Government of the decision or order was made by the Registrar, and to the Registrar if the decision or order was made by any other person. It is quite clear therefore, that the Central Registrar had no jurisdiction to hear the appeal.

6. The learned counsel next contends that the Central Registrar should not have dismissed the appeal but returned the memorandum of appeal for presentation to the proper authority. **There is no statutory provision enabling the Central Registrar to do so. At any rate, if an appeal is filed before the appropriate authority under the Punjab Cooperative Societies Act, 1961, t**hat authority will no doubt take into consideration the provisions of S. 14 of the Limitation Act, 1963, read with S. 29(2) and decide whether the appeal should be entertained or not.

In the result the appeal fails and is dismissed with costs.

Nagar Panchayat, Una v
Una Taluka Sahakari Kharid Vechan Sangh Ltd.

Bench	A.N. Grover, J.C. Shah
Where Reported	1970 Indlaw SC 161; (1971) 1 SCC 21; AIR 1971 SC 1078; [1971] 2 S.C.R. 407

Case No : Civil Appeal No. 1059 of 1970. Appeal from the judgment and order dated February 18, 1970, of the Gujarat High Court in Special Civil Application No. 387 of 1968.
The Judgment was delivered by : A. N. Grover, J.

1. This appeal by certificate arises out of a writ petition filed by the respondent which is a Society registered **under the Bombay Cooperative Societies Act 1925 challenging the collection of octroi by the appellant which is the Una Nagar Panchayat**.

2. The appellant is a local body constituted under the Gujarat Panchayat Act 1961, hereinafter called the "Act, which came into force with effect from April 1, 1963. Prior to its enactment the Bombay Municipal Act 1901, as applied to Saurashtra, was in force in that region of the present State of Gujarat. Under its provisions Una Municipality was constituted. It was collecting octroi on commodities which were imported into the municipal limits of Una under the Saurashtra Terminal Tax and Octroi Ordinance 1949. Under S. 3 of that Ordinance the Government could impose the tax mentioned there under in the cities and towns specified or included later in Schedule 1. One of these taxes was a terminal tax on goods imported into or exported from the terminal tax limits. Octroi as defined by s. 2(2) included a terminal tax. Section 4 gave the power to the Government to make rules by notification for the purpose of carrying out the purposes of the Ordinance. Rules were framed under s. 4 in the Gujarati language. It was provided therein that the collection of Octroi and terminal tax would be done through the Sudhrai of the area entered in the schedule to the ordinance. It is apparent that under the Ordinance it was' the State Government which imposed the octroi or the terminal tax in the cities and towns specified in the Schedule and the Sudhrai was only an agency for collection thereof.

8. If on account of the absence of proper adaptation in the rules made under the Ordinance any difficulty is being experienced in the collection of octroi it is always open to the State Government to make those clarifications and adaptations and indeed it would be expedient and desirable to do so. So long as the new rules are not framed under the Ordinance or adaptations are not made there under the Nagar Panchayat can certainly make the (collection and through the officers who discharge the same duties as were being performed by their counterparts mentioned in the rules..

9. This is what seems to have been done up till 1967 without any objection by any one.

10. In the result the appeal succeeds and it is allowed with costs, in this Court as also in the High Court.

Balasinor Nagrik Cooperative Bank Limited v Babubhai Shankerlal Pandya and Others

Bench	A.P. Sen, V. Balakrishna Eradi
Where Reported	1987 Indlaw SC 28708; (1987) 1 SCC 606; AIR 1987 SC 849; JT 1987 (1) SC 462; 1987(1) SCALE 348; 1987 (1) UJ 379
Case Digest	**Subject:** Practice & Procedure; Trusts & Associations **Keywords:** Co-Operative Bank, Co-Operative Society **Summary:** Trusts and Associations - Gujarat Co-operative Societies Act, 1962, s.36(1), 2nd Proviso - Whether the failure of the Registrar to communicate his disapproval of a resolution passed by a society expelling a member u/s.36 (1) of Act within the period of three months as specified therein, entails in the consequences of rendering the Registrar functus officio - Held, registrar becomes functus officio - Appeal allowed.

Case No : C.A. No. 2587 of 1985

The Order of the Court was as follows:

1. The short point involved in this appeal by special leave is whether the failure of the Registrar to communicate his disapproval of a resolution passed by a society expelling a member under sub-section (1) of Section 36 of Section 36 of the Gujarat **Cooperative Societies Act**, 1961 within the period of three months as specified therein, entails in the consequences of rendering the Registrar functus officio.

2. By a resolution passed at its general meeting held on September 30, 1982 the Balasinor Nagrik Cooperative Bank Limited, the appellant herein, expelled respondent 1 Babubhai Shankerlal Pandya from the primary membership of the society under sub section (1) of Section 36 of the Act. On October 6, 1982 the society forwarded a copy of the resolution to the District Registrar as enjoined by the first proviso to Section 36(1). There was no response from the Registrar for a period of three months, in consequence whereof the society on January 24, 1983 addressed a letter to the District Registrar conveying its view that due to his failure to communicated his disapproval within the period specified, the resolution had become effective. Thereupon the Registrar by his letter dated July 15, 1983 expressed his disagreement with the construction placed by the society on his powers and directed the parties to appear before him on July 25, 1983. On that date the society appeared under protest. On September 19, 1983 the District Registrar passed the impugned order according his disapproval to the resolution passed by the society under sub-section (1) of Section 36 of the Act.

4. A learned Single Judge by his Judgment and order dated November 29, 1984 dismissed the writ petition. The society preferred a letters patent appeal against the Judgment of the learned Single

Judge but a Division Bench by its order dated February 20, 1985 dismissed the appeal on the ground that no appeal lay against an order of a learned Single Judge on a petition under Article 227.

9. According to its plain terms, the second proviso places a limitation on the powers of the Registrar. It appears to us that the obvious intention of the legislature was that once the period of three months stipulated expires, the Registrar becomes functus officio and his power to accord approval or disapproval to the resolution passed by the society for expulsion of a member under sub -section (1) of Section 36 of the Act lapses. The District Registrar therefore had no jurisdiction to set aside the resolution passed by the appellant-society under sub-section (1) of Section 36 for the expulsion of respondent 1 from the primary membership of the society after the expiry of a period of three months from October 6, 1982 i.e. the date of submission of the resolution. The construction placed by the learned Single Judge on sub-section (1) of Section 36 of the Act read with the two provisos thereto is patently erroneous and cannot be sustained.

10. The result therefore is that the appeal succeeds and is allowed. The Judgment and order passed by the High Court dismissing the writ petition is set aside. The writ petition filed by the appellant is allowed and the impugned order passed by the District Registrar as upheld by the Additional Registrar and the State Government is quashed.

11. We wish to make it clear that nothing in the Judgment shall be construed as an opinion touching the validity or otherwise of the resolution passed by the appellant-society under sub-section (1) of Section 36 of the Gujarat **Cooperative Societies Act**, 1961. We leave the question to be determined by the appropriate stutter authority, namely, by raising a dispute before the Registrar, Cooperative Society under sub-section (1) of Section 96 of the Act, if permissible. No costs.

Appeal allowed .

S. M. Mahendru and Company Etc v State of Tamil Nadu and Another

Bench	V.D. Tulzapurkar, R.S. Pathak, S. Mukharji
Where Reported	1984 Indlaw SC 247; (1985) 1 SCC 395; AIR 1985 SC 270; 1985 (1) MLJ(SC) 6; 1985 (1) RCR(Rent) 218; 1985 (1) RentLR 719; 1984(2) SCALE 961; [1985] 2 S.C.R. 416; 1985 UJ 385
Case Digest	**Subject:** Corporate **Keywords:** Warrant, Government Company, Co-Operative Society **Summary:** Rent Control - T.N. Buildings (Lease and Rent Control) Act, 1960, s. 29 - Constitution of India, 1950, art.14 - T.N. Co-operative Societies Act, 1961, ss. 4 and 62 - T.N. Co-operative Societies Rules, 1963, rr. 11 and 46 - Notification No.11(2) H.O. 6060/76 D/- 21-11-76 exempting buildings from provisions of the 1960 Act - Tenants filed writ petitions u/art.32 challenging the validity of the exemption granted to all buildings owned by all Co-operative Societies in the State of Tamil Nadu from all the provisions of the 1960 Act u/s. 29 thereof -Held, exemption does not offend art. 14 - Petition dismissed.

Case No : W. P. NO. 893 and 967 of 1979 and W. P. No, 295 of 1980

2. The facts giving rise to the aforesid challenge lie in a narrow compass. The petitioners are tenants in different portions on the ground floor of the building bearing Door No. 188, Mount Road, **Madras belonging to second respondent which is an Apex Society registered under the Tamil Nadu Cooperative Societies Act, 1961. It appears that the** property was purchased in 1961 by the second respondent from its previous owners M/s. Mohammed Ibrahim and Company, and soon thereafter the second respondent applied to the State Government under sec. 29 of the Act and sought exemption for it from all the provisions of the Act But on hearing the objections raised by the petitioners and other tenants the application was rejected. Respondent No- 2 thereupon made two attempts to evict the petitioners from their respective premises. The first was on the ground that the premises are required by it for its own occupation but at the end of a long drawn out litigation respondent No. 2 failed to obtain possession; the second was on the ground that it required the premises for demolition and new construction and it was during the tendency of this litigation that the State Government issued its Notification No. II (2) H.O. 6060/76 dated 21.11 1976 under sec. 29 of the Act whereby the State Government exempted the buildings A belonging to all Co-operative Societies in the State of Tamil Nadu from all the provisions of the Act. On the issuance of this Notification respondent No. 2 Withdrew its eviction petitions preferred on the ground of demolition and new construction and served notices upon the petitioners under sec. 106 of the Transfer of Property Act terminating their tenancies and filed civil suits against them in the City Civil Court, Madras for recovery of vacant possession of the premises in their respective occupation. The petitioners have filed their written statements and suits are awaiting

trial. But since the protection available to them has been withdrawn the petitioners arc facing the imminent prospect of suffering eviction decrees against them and therefore, have approached this Court by means of these writ petitions challenging the Constitutional validity of the Notification in question of the ground that the same is violative of Art. 14 of the Constitution and have obtained stay of further proceedings in the suits.

14. **The contention was negatived on the ground that the Housing Board and the Cooperative Housing Societies incorporated under the Cooperative Societies Act were not similarly situated and in that behalf this Court observed thus:**

"Further, though these Co-operative Housing Societies are no doubt incorporated bodies, they nevertheless may earn profits which may be distributed amongst their members. The Board, on the other hand, is incorporated body brought into existence for the purpose of framing housing schemes to solve the problem of acute shortage of housing in Bombay. There are no share-holders interested in the distribution of any profits. It is under the control of the Government and acts under the orders of the Government. In effect, it is a Government sponsored body not having any profits making motive. No material has been placed before us which may remotely be regarded as suggesting, much less proving, that Co-operative Housing Societies or their members stand similarly situated vis-a-vis the Board and its tenants."

5. Relying upon the above observations Counsel for the petitioners submitted that this Court had recognised the position that various activities are undertaken by Cooperative Societies with the motive of earning profits and as such there was and is no warrant for treating them differently from other private landlords in the context of two evils sought to be remedied by the Act and in this sense the exemption granted does not satisfy the test or nexus and therefore the same infringes Art. 14.

12. The Court was not concerned with the question as to whether a similar exemption if granted to buildings belonging to Cooperative Societies would be valid or rot. The difference pointed by this Court was sufficient to refute the charge of discrimination levelled against the particular piece of legislation (sec. 3-A of the Bombay Housing Boards Act 1951) but it 11 will be fallacious to rely upon this difference for the purpose of striking down the exemption granted in favour of buildings of Cooperative Societies under another enactment if such exemption is otherwise justified on the facts and circumstances obtaining in regard to such buildings. In fact as explained earlier the Co-operative principles which govern the functioning of these Co-operative Societies put a curb on their profit motive and as pointed there are statutory provisions which maintain their profit element at reasonable level which warrant the assumption that Cooperative Societies would not indulge in rack-renting or unreasonable eviction and it was in the light of this position as also after careful study of all relevant factors obtaining in their case the, State Government was satisfied that the grant of total exemption in favour of the buildings of all Co-operative Societies functioning in the entire State was necessary. The observations relied upon cannot therefore support the Petitioners' contention.

Babaji Kondaji Garad Etc v The Nasik Merchants Co-Operative Bank Ltd., Nasik & Ors.Etc

Bench	D.A. Desai, A. Varadarajan, O. Chinnappa Reddy
Where Reported	1983 Indlaw SC 159; (1984) 2 SCC 50; AIR 1984 SC 192; 1984 (1) Bom.C.R. 399; 1983(2) SCALE 696; [1984] 1 S.C.R. 767; 1984 UJ 239
Case Digest	**Summary:** Trusts & Associations - Indian Companies Act, 1956 - Constitution of India, 1950, arts. 15, 16, 43 and 46 - Maharashtra Co-operative Society Act, 1960, ss. 73, 73 B, 73G(1)(vii) and 144C - Maharashtra Specified-Cooperative societies Election of Committees Rules 1971, r. 61 - Validity of elections - Held, Collector, a statutory authority charged with a duty to hold election according to Act, must specify in election programme inter alia that there are reserved seats to be filled in by election and class in whose favour reservation is made - There is not even a whisper in election programme whether any of seats were reserved omission is glaring and fatal - Election has to be held to form committee, failure to hold election in accordance with Act including s. 73 B would vitiate whole election programme from commencement till end - Appeal allowed.

Case No : Civil Appeal No. 11991 of 1983. From the Judgment and Order dated the 27th April, 1983 of the High Court of Bombay in Writ Petition No.392 of 1982. AND Civil Appeal No.1810/81. From the Judgment and Order dated the 8th July, 1981 of the High Court of Bombay in Writ Petition No.1484 of 1981

1. **Construction of Sec. 73B of the Maharashtra Cooperative Societies Act, 1960 ('Act' for short) figures in these two appeals arising from the two decisions rendered by the Bombay High Court,** covering the same point and reaching the same conclusion, but the latter one does not take note of the earlier decision. Re: S.L.P. (Civil) No. 773283: The Nasik Merchants Co-operative Bank Ltd., the first respondent, is a co-operative Bank deemed to be registered under the Act and is governed by the Act. It was registered on June 11, 1959. It is a specified society within the meaning of the expression in Sec. 73G(1)(vii) of the Act. Accordingly the election of the members of the Committee and the election of the office-bearers by the Committee of the first respondent would be subject to the provisions of Chapter XI-A and has to be conducted in the manner prescribed in the Chapter. The Committee in which management of the first respondent vests, is designated as Board of Directors. The term of the members of the Board of Directors is five years. The election to the Board of Directors for the period 1981-82 to 1985-86 became due. As required by Sec. 144-C, the Collector having jurisdiction in the matter notified the programme of election on October 29, 1981. At the relevant time, the strength of the Board of Directors was 15 in number. 14 Directors were to be elected by members and one was to be nominated by the Central Co-operative Bank. It is not disputed but in fact conceded that the election programme notified by the Collector did not specify that the two seats on the Board of Directors of the first

respondent would be reserved seats; one for the members belonging to the Scheduled Castes or Scheduled Tribes and one for the weaker section of the members who have been granted loans from the society of an amount not exceeding Rs. 200 during the year immediately preceding as required by Sec. 73B of the Act. Poll was held on December 14, 1981 and the counting of votes took place on December 14, 1981 and the result was declared on December 17, 1981. Respondents 3 to 16 were declared elected. Thereupon the present petitioner, a member of the first respondent-Bank and belonging to the Joshi community which is recognised as a Scheduled Tribe moved an election petition under Sec. 144 before the Additional Commissioner, Nasik, calling in question the election of respondents 3 to 16 to the Board of Directors of the firs respondent-Bank inter alia on the ground that the whole of the election programme is vitiated on account of its non-compliance with the mandatory statutory provision enacted in Sec. 73B which prescribes reservation of seats; one in favour of Scheduled Castes or Scheduled Tribes and another in favour of weaker section from the members who had borrowed loans not exceeding Rs. 200 in the year preceding the year of election ('reservation for weaker section' for short). There were other grounds on which the election of respondents 3 to 16 was called in question but they are no more relevant and need not clutter the record here. The Additional Commissioner as per his judgment and order dated February 8, 1982 held that despite the failure of the first respondent-Bank to amend bye-law 41 (correct bye-law appears to be 40) even after repeated reminders by the District Deputy Registrar, the mandate of Sec. 73B will have precedence overt he unamended bye-law 40 and as the election process was set in motion in contravention of the mandatory provision contained in Sec. 73B and the relevant rules, the result of the election has been materially affected and accordingly declared the election of respondents Nos. 3 to 16 as void and ineffective and directed the Collector, Nasik to hold the election de novo.

16. With respect, we find it difficult to subscribe to this untenable approach that a view of law or a legal provision expressed by a Government Officer can afford reliable basis or even guidance in the matter of construction of a legislative measure. It is the function of the Court to construe legislative measures and in reaching the correct meaning of a statutory provision, opinion of executive branch is hardly relevant. Nor can the Court abdicate in favour of such opinion.

17. The provision contained in Chapter XI-A applies to election to the committees of specified societies categorised in Sec. 73B. Sec. 144-C requires the Collector to draw an election programme and arrange for conducting the election or under his control by the Returning Officer according to the programme. Now the election programme has to be published. The programme therefore, must in order to comply with legal formality show whether any of the seats to be filled in are reserved and specify the class in whose favour reservation has been made, so as to give notice to persons eligible for contesting election to reserved seats. This becomes manifestly clear from the form prescribed for filling in the nomination paper being Form No. 2 appended to the rules. In the case of reserved seats a further declaration has to be made in the nomination form that the candidate belongs to Scheduled Castes or Scheduled Tribes or Vimukta Jati or the weaker section candidate. And this declaration has to be signed by the candidate himself. Now therefore, the Collector, a statutory authority charged with a duty to hold election according to the Act, must specify in the election programme inter alia that there are reserved seats to be filled in by election and the class in whose favour reservation is made. This will be notice to the members eligible for contesting election to reserved seats so that they may fill in their nomination. There is not

even a whisper in the election programme whether any of the seats were reserved. The omission is glaring and fatal. As pointed out earlier, election has to be held to form the committee. Sec. 73 requires the Collector to hold election in accordance with the Act including Sec. 73B. The failure to hold election in accordance with the Act including Sec. 73B would vitiate the whole election programme from commencement till the end. It would all the more be so because the failure to hold election according to the provisions of the Act which denies an opportunity to the persons who are eligible to get elected to the reserved seats would certainly vitiate the whole election programme. One can safely conclude that the election is held in violation of Sec. 73B. Therefore, in our opinion, the High Court was in error in upholding the election, which is ex facie illegal, invalid and contrary to law.

18. Accordingly both these appeals succeed Civil Appeal arising from S.L.P. No. 7732/83 is allowed and the decision of the High Court is quashed and set aside and the one rendered by the Additional Commissioner is restored.

19. Civil Appeal No. 1810/81 is allowed and the judgment and order of the High Court are set aside. A writ be issued quashing and setting aside the election of respondents 3 to 12 to the Board of Directors of the Parbhani District Co- operative Bank Ltd.

20. The concerned statutory authority in both the cases should proceed to hold the election afresh as early as possible and should complete the process within a period of 3 months from today. In the meantime, the status quo as on today should continue. There will be no orders as to costs of hearing in this Court.

Chandrika Jha v State of Bihar and Others

Bench	A.P. Sen, E.S. Venkataramiah
Where Reported	1983 Indlaw SC 156; (1984) 2 SCC 41; AIR 1984 SC 322; 1983 (31) BLJR 670; [1984] 55 Comp Cas 347; 1983(2) SCALE 888; [1984] 1 S.C.R. 646; 1984 UJ 1
Case Digest	**Summary:** Trusts and Associations - Bihar and Orissa Co-operative Societies Act ,1935, ss. 14, 65A and 66 - Bihar Co-operative Societies Rules, 1959, r. 15 - District Central Co-operative Bank - Bye-laws empowered Registrar to nominate first Board of Directors - Orders extending their term, by Chief Minister of State by usurping powers of Registrar - Question as to legality and propriety of the action of the Chief Minister of a State in issuing certain directions, and incidentally the scope and extent of the power of a Minister to interfere with the working of a statutory functionary under his department - Orders held to be illegal in the light of art. 162 of Constitution - Appeal allowed.

Case No : Civil Appeal No. 10296 of 1983, Appeal by Special leave from the Judgment and Order dated the 30th September, 1983 of the Patna High Court in C.W.J.C. No. 4139 of 1983

2. The facts are that on the bifurcation on the district of Muzaffarpur and creation of the new districts of Muzaffarpur and Hajipur, a separate Central Co-operative Bank called the Vaishalli District Central Co-operative Bank for the district of Hajipur was registered with its registered bye-laws. Bye-law No.29 of the said registered bye-laws provides inter alia as follows:

3. The Registrar, Co-operative Societies, Bihar, in exercise of the powers conferred by bye-law 29 by his order dated July 22, 1981 nominated a Committee of Management of 17 members, including the appellant, to be the first Board of Directors of the Co-operative Bank for a period of six months i.e. upto December 31, 1981, or till further orders, whichever was earlier. The Committee of Management was specifically directed to get the election of the Board of Directors of the Central Bank held in accordance with the law within six months of the date of their nomination and the Registrar by the order had reserved his discretion to make changes in the nomination of the Board by the use of expression 'until further orders'. The Registrar by his letter dated October 1, 1981 directed the Committee of Management to complete the election of the Board of Directors of the Bank as per programme laid down therein by December 20, 1981 as the six months' term of the nominated Board was going to expire on December 31, 1981. Copies of the letter were endorsed to the District Co-operative Officer, Vaishalli for necessary action as also to the Executive Officer of the Bank stating that it would be his personal responsibility to get the desired steps taken in that connection as per the time schedule fixed. In accordance therewith, the District Co-operative Officer, Vaishalli by his letter dated October 23, 1981 directed the Executive Officer of the Co-operative Bank to get the election of the Board of Directors completed by December 20, 1981.

16. For the same reasons, it must be held that the Minister for Industries also exceeded his own authority in directing the manner in which the new Board of Directors was to be constituted by the Registrar under bye-law 29 by forwarding a list of 7 names to be nominated by him in the reconstituted Board and a further list of 8 names indicating that if the Committee of Management was superseded under another provision, it should consist of those 15 persons.

17. There is no warrant for the submission that the Registrar had no power to reconstitute the first Board of Directors under bye-law 29 or to curtail the extended term. While the proviso to bye-law 29 lays down that the first Board of Directors shall be nominated by the Registrar for a period not exceeding one year at a time and not exceeding three cooperative years in the aggregate, it does not entail the consequence that when the term of the first Board of Directors is extended from time to time, it must necessarily extend to three cooperative years. The expression "cooperative year" is defined in s.2 (bb) to mean the year beginning from the 1st of July to the 30th of June. The second part of the proviso expressly confers power on the Registrar to modify the nomination of such Board, if and when required. On a reading of bye-law 29 read along with the proviso, it is manifest that the first Board of Directors is entitled to hold office for a period not exceeding three cooperative years in the aggregate, unless it is reconstituted by the Registrar within the aforesaid period. That apart, the order passed by the Registrar dated July 22, 1981 nominating the first Board of Directors was for a period of six months i.e. upto December 31, 1981 or till further orders. The words "till further orders" appear in all the subsequent orders extending the term of the Board and therefore the Registrar had reserved to himself the right to curtail the extended term by reconstituting the Board, at any time. In the instant case, however, the impugned order issued by the Registrar to reconstitute the first Board of Directors was not made by him at his own discretion in the exercise of his powers under bye-law 29 but was made at the behest of the Minister for Industries and it must accordingly be held to be invalid.

18. In the circumstances of the case, we feel it proper to direct the Registrar, Cooperative Societies, Bihar to take over the **Vaishalli District Central Cooperative Bank and exercise all the powers and perform all the duties which under the Bihar and Orissa Cooperative Societies Act, 1935 and the Bihar Cooperative Societies Rules 1959** and the bye- laws of the Central Cooperative Bank are vested in the Committee of Management. The Registrar shall either himself or through an Officer in the Cooperative Department designated by him call a general meeting of the society at such time and place at the headquarters of the Central Cooperative Bank and to require the society to elect a new Board of Directors. We further direct that neither the members of the first Board of Directors constituted by the Registrar of July 22, 1981, nor the so-called Board of Directors reconstituted by him on September 6, 1983, shall interfere with the affairs of the society. In compliance with these direction, the Registrar of Cooperative Societies will issue immediate instructions for taking over the management of the Central Cooperative Bank and may designate an Officer in the Cooperative Department to discharge the duties and functions of the Committee of Management till a new Board of Directors is constituted in accordance with law.

19. The appeal is disposed of accordingly. There shall be no order as to costs.

A. P. Scheduled Tribes Cooperative Finance and Development Corporation v B. Pundiah and Others

Case AnalysisBench	O. Chinnappa Reddy, D.A. Desai
Where Reported	1983 Indlaw SC 326; (1983) 4 SCC 466; AIR 1983 SC 1290; 1983(2) SCALE 309; 1983 UJ 932
Case Digest	**Subject:** Socio-Economic **Summary:** Socio-Economic - Scheduled Areas Minor Forest Produce (Regulation of Trade) Regulation, 1979, s. 4 - Andhra Pradesh Regulation, regn. 1 - Seigniorage - Right to collect minor forest produce - Whether in view of coming into force of Regulation, right to collect minor forest produce by Corporation stands modified? - Held, by G.O. No. 142 D/- 23-01-1962 Govt. purported to grant lease of minor forest produce lease units in Godavari lower division for a period of six years - But in actual terms G.O. only authorised Corporation to collect seigniorage from purchasers of minor forest produce on all items collected by Agency tribes from unreserves of Rampa Agency tradesmen in name of tribals got a permanent injunction against same - But later Andhra Pradesh Regulations came into being defining rights of Corporation in collecting minor forest produce - Effect of various provisions of Regulation is to create a State monopoly in matter of trade in minor forest produce in Scheduled Areas through agency of Corporation - Corporation alone may buy minor forest produce and no one else - No one can now claim a right to sell minor forest produce collected by him to whomsoever he likes and no one other than Corporation may buy such minor forest produce - Appeal allowed.

Case No : C.A. No. 1145 of 1971 (From the Judgment and Order Dt. 28 August 1969 of the High Court of Andhra Pradesh at Hydrabad in L.P.A. No. 45 of 1965).

1. The economic exploitation of the tribals living in the Rampachodavaram and other Agency areas in Andhra Pradesh by tradesmen coming from the plains is a notorious fact of recent history. One of the measures taken by the Government of Andhra Pradesh to stem the exploitation of tribals and to promote their economic interests and social welfare, was to establish a Corporation known as the Andhra Pradesh Scheduled Tribes **Cooperative Finance and Development Corporation Ltd., a society registered under the Andhra Pradesh Cooperative Societies Act. Amongst the objects of the Corporation were :**

7. We do not have the slightest doubt that the effect of the various provisions of the Regulation is to create a State monopoly in the matter of trade in minor forest produce in Scheduled Areas through the agency of the Corporation. The Corporation alone may buy minor forest produce

and no one else. No one can now claim a right to sell the minor forest produce collected by him to whomsoever he likes and no one other than the Corporation may buy such minor forest produce. Therefore both the declaration and the injunction granted by the Division Bench of the High Court must be vacated. The appeal is allowed accordingly. There is no order as to costs.

Appeal allowed.

Sheonandan Paswan v State of Bihar and Others

Bench	V.D. Tulzapurkar, Baharul Islam, R.B. Misra
Where Reported	1982 Indlaw SC 72; (1983) SCC (Cr) 224; (1983) 1 SCC 438; AIR 1983 SC 194; 1983 CRLJ 348; 1983 CrLR(SC) 58; 1982(2) SCALE 1241; [1983] 2 S.C.R. 61
Case Digest	**Summary:** Criminal Procedure Code, 1973, ss. 24(8) and 321 - Appointment of Special Public Prosecutor without cancelling existing Special Public Prosecutor - Competency of latter Public Prosecutor to withdraw from prosecution - Former Public Prosecutor never appeared before Special Judge at any stage of hearing and was never in charge of Case Nor in actual conduct of case - After allotment of case latter was in charge of case and was actually conducting case - Appeared in case at least on 4 occasions before Special Judge - Held, appointment of latter prosecutor without termination of appointment of former cannot be said to be legally invalid and doctrine of de facto jurisdiction which has been recognised in India will operate in this case - Latter Public Prosecutor is competent officer to apply for withdrawal from prosecution under s. 321 of CrPC.

Case No : CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 241 of 1982. Appeal by Special leave from the judgment and order dated the 14th September, 1981 of the Patna High Court in Criminal Revision No. 874 of 1981.

The Judgment was delivered by : V. D. Tulzapurkar, J.

1. By this appeal, preferred on the basis of the special leave granted to him, the appellant is challenging the withdrawal from the prosecution of Respondents Nos. 2, 3 and 4 in a criminal case under s. 321 of the Criminal Procedure Code, 1973.

2. After obtaining the requisite sanction from the Governor on 19th February, 1979 a charge-sheet in Vigilance P. S. Case 9 (2) 78 was filed by the State of Bihar against Respondent No. 2 (Dr. Jagannath Misra), Respondent No. 3 (Nawal Kishore Sinha), Respondent No. 4 (Jiwanand Jha) and three other (K. P. Gupta, since deceased, N. A. Haidari and A. K. Singh, who later became approvers) for offences under ss. 420/466/471/109/120-B I.P.C. and under s. 5(1) (a), 5(1) (b) and 5(1) (d) read with s. 5(2) of the Prevention of Corruption Act, 1947. Inter alia, the gravamen of the charge against the respondent No. 2 was that at all times material he was either a Minister or the Chief Minister of Bihar and in that capacity by corrupt or illegal means or by otherwise abusing his position as a public servant, he in conspiracy with the other accused and with a view to protect Nawal Kishore Sinha in particular, sought to subvert criminal prosecution and surcharge proceedings against Nawal Kishore Sinha and others, and either obtained for himself or conferred on them pecuniary advantage to the detriment of Patna Urban Cooperative Bank, its members, depositors and creditors and thereby committed the offence of criminal misconduct

under s. 5(1) (d) read with s.5(2) of the Prevention of Corruption Act, 1947 and in that process committed the other offences specified in the charge-sheet, including the offence of forgery under s. 466 I.P.C.

23. The facts giving rise to the launching of the aforesaid prosecution against respondent Nos. 2, 3 and 4 and three others may be stated The Patna Urban Co-operative Bank was registered in May 1970 and commenced its banking business with Nawal Kishore Sinha as its Chairman, K. P. Gupta as its Honorary Secretary, M. A. Haidari as its Manager and A. K. Singh as a Loan Clerk (who also worked as the care-taker and Personal Assistant to N. K. Sinha). A Loan Sub-Committee consisting of N. K. Sinha the Chairman, K. P. Gupta the Secretary and one Shri Purnendu Narain, an Advocate used to look after the sanctioning and granting of loans. Under its bye-laws the Chairman was the ultimate authority in regard to all the functions of the Bank and the Honorary Secretary along with the Chairman had to exercise supervisory control over all the activities of the Bank while the Manager was concerned with its day to day working. Dr. Jagan Nath Mishra, then an M. L. C. and who subsequently became a Minister and the Chief Minister in the Bihar Cabinet helped the Bank and its Chairman (N. K. Sinha being his close associate and confidant) in several ways including mobilisation of resources for the Bank. Separate audits into the working of the Bank were conducted by the Reserve Bank of India as well as by the Co-operative Department of the Bihar Government for the years 1972-73 and 1973-74 during the course of which a large number of irregularities (such as non maintenance of cash books in a proper manner, grant of over draft facility without current account etc illegal practices, acts of defalcations and malversation of funds of the Bank came to light; in particular the Audit Reports disclosed that huge amounts running into lakhs of rupees had been squandered away by:

(a) giving loans to non-members,

(b) giving loans even without application, agreement or pronote,

(c) giving loans without hypothecations,

(d) giving short term loans instead of realising cash on sale proceeds even for hypothecated goods,

(e) giving loans to the same persons in different names and

(f) giving loans to fictitious persons and non-existing firms or industries etc. and the audit team of the Reserve Bank in its report came to the conclusion that the Chairman Shri Nawal Kishore Sinha and others were responsible and accountable for 'bad loans' to the tune of Rs. 12 lakhs and 'misappropriation and embezzlement' to the tune of Rs. 25 lakhs. On the basis of these audit reports at the instance of the Reserve Bank the management of the Bank through its Board of Directors was superseded on 10th of July, 1974 under the orders of the Registrar, Co-operative Societies, and Nawal Kishore Sinha the Chairman and other Directors on the Board were removed and an officer of the Co-operative Department, Government of Bihar, was appointed as the Special Officer to look after the affairs of the Bank.

24. On the strength of the aforesaid Audit Reports the Registrar, Co-operative Societies, agreeing with the Joint Registrar, put up a note dated 4.11.1974 to the Secretary, Co-operative saying that prima facie charges of defalcations, conspiracy, etc. were made out against the officials of the

Bank and legal action be taken against them after taking the opinion of the Public Prosecutor; the Secretary by his note dated 7.11.1974 sought the opinion of the Law Department on 18.11.1974 the Law Department recorded its opinion in the relevant file (being File No. IX/Legal-9/75 of the Department of Co-operation) that a case of conspiracy and criminal breach of trust against the loans and office bearers of the Bank was prima facie made out on 16.12.1974 a draft complaint was prepared by the Assistant Public Prosecutor, Patna for being filed before the Chief Judicial Magistrate, Patna on the same day (16.12.1974) an office noting was made by Shri Bimal on the file suggesting that the Law Department's advice on the draft complaint be obtained, which course of action was approved by the Secretary, Co-operation on 16.12.1974, by the Minister for Co-operative (Shri Umesh Prasad Verma) on 1.1.1975 and by the then Chief Minister (Shri A. Gaffoor) on 2.1.75.

Accordingly, the file was sent to the Law Department which reiterated its earlier advice for launching the prosecution and on the file being received back on 18.1.1975, the Secretary Co-operation endorsed the file on 21.1.1975 to A. P. P. Shri Grish Narain Sinha for necessary action i.e. to file the prosecution (vide the several notings made in File No. IX/Legal-9/75-relied upon by the respondents). In other words by 21.1.1975 the stage was set for launching a criminal prosecution against the loanees and the members of the Board of Directors of the Bank with Nawal Kishore Sinha as the principal accused and a complaint petition in that behalf duly approved by the Law Department and signed by Shri Jagdish Narain Verma, District Co-operative Officer, Patna on 25.1.1975 was also ready with the A. P. P. for being filed in the Court. But before the A. P. P. could file the complaint, Respondent No.2 (Jagan Nath Mishra, Agriculture and Irrigation Minister) wrote a buff-sheet note dated 24.1.1975 asking the Secretary, Co-operation to send the concerned file along with Audit Reports to him before the institution of the Criminal case.

25. Accordingly, after obtaining the approval of the then Co-operative Minister and the then Chief Minister for sending the file to respondent No. 2, the Secretary recalled the file and other papers from the A. P. P. on 28.1.1975 and on 24.2.1975 he sent the file to the Law Minister en route the then Chief Minister. It may be stated that under the Notification dated 30th April, 1974 issued under Art. 166 (3) of the Constitution read with Rule 5 of the Rules of Executive Business of the State of Bihar, the then Chief Minister Shri Abdul Gaffoor was inter alia holding the portfolio of Law also but according to the affidavit of Shri Neelanand Singh dated 19th October, 1982 filed on behalf of Respondent No.1 before us Shri A. Gaffoor as per his note dated 29-8-1974 addressed to the Chief Secretary and circulated to various departments had, with a view to lessen his heavy burden, requested Respondent No. 2 (Jagan Nath Mishra) to look after the work of the Law Department and as such endorsing the file on 24.2.1975 'to the Law Minister en-route the Chief Minister' would mean that the file must have gone to respondent No. 2 as there was no other person holding the Law portfolio excepting the Chief Minister himself under the Notification dated 30th April, 1974.

It is claimed by the appellant that Respondent No. 2 sat tight over the file for over two and half months till he became the Chief Minister whereas it is suggested on behalf of the Respondents that though the file was called for by Respondent No. 2 on 24-1-1975 it did not actually reach him till middle of May, 1975. However, ignoring the aforesaid controversy, the fact remains that the filing of the complaint got postponed from 24-1-1975 (the date of Buff-sheet order of

Respondent No. 2) till middle of May, 1975 and in the meantime on 11.4.1975 Respondent No. 2 replaced Shri A. Gaffoor as the Chief Minister and in the middle of May 1975 as the Chief Minister Respondent No. 2 passed two orders which are very eloquent.

28. In effect under the second order both the criminal as well as civil liability of Nawal Kishore Sinha and others were given a go-bye, notwithstanding the Audit Reports of the Reserve Bank and the Co-operative Department and Respondent No. 2 merely directed that the normal condition in the Bank be restored and this result was brought about by the second order which was ante-dated with the obvious fraudulent intent of nullifying or rendering nugatory any action that could have been or might have been taken (even if not actually taken) pursuant to the first order after the file had left the Chief Minister's Secretariat on 16.5.1975, that being the most natural consequence flowing from the act, of ante-dating the second order. It is not necessary that the fraudulent intent should materialise it is enough if act of ante-dating is done with the fraudulent intent. This being a case of inter-departmental orders, the first order dated 16th May, 1975 passed by Respondent No. 2 became operative as soon as the concerned file left the Chief Minister's Secretariat and as such the same could be revised or reviewed by Respondent No. 2 by officially and regularly calling back the file and by passing a fresh order subsequent in point of time modifying or cancelling the earlier order but surely not by the crude method of pasting the subsequent order over the first so as to efface the same completely and in no event by ante-dating it. It is true that mere ante-dating a document or an order would not amount to an offence of forgery but if the document or the order is antedated with oblique motive or fraudulent intent indicated above (without the same actually materialising) it will be forgery.

29. The aforesaid undisputed documentary evidence comprising the Audit Reports, the relevant notings in the concerned file and the two orders of Respondent No. 2 clearly makes out a prima facie case of the commission of two common Law offences of criminal misconduct s. 5(1) (d) of Prevention of Corruption Act) and forgery (s. 466 I.P.C. by Respondent No. 2 without needing any further material to establish the same. The ingredients of the former can be said to be prima facie satisfied in that by passing the two orders Respondent No. 2 by corrupt or illegal means or by otherwise abusing his position as the Chief Minister subverted the criminal prosecution and surcharge proceedings against Nawal Kishore Sinha and others and had thereby at any rate obtained for them pecuniary advantage to the deteriment of the Bank, its members, depositors and creditors. This is apart from the aspect as to whether while doing so he obtained pecuniary advantage for himself or not, for which further material by way of confessional statement of the approvers would be required to be considered or appreciated but ignoring such further material the ingredients of s. 5 (1) (d) get satisfied prima facie as indicated above. As regards the latter though Respondent No. 2 had the authority and power to pass the second order in substitution of the first, by ante-dating the second order with fraudulent intent the ingredients of forgery again prima facie satisfied. In other words, the aforesaid material is clearly sufficient to put Respondent No 2 on trial for, if the said material remains unrebutted a conviction would clearly ensue.

This order is another indication that even with all the furore which the Banks affairs had created Respondent No. 2 wanted to and did protect and save Shri Nawal Kishore Sinha from criminal prosecution by excluding him from the array of accused persons. As regards the 23 criminal cases filed against the other office bearers and the loanees of the Bank there is on record in the

Co-operative Department File No. 12/Legal-31/77 a Buff-Sheet order dated 2-2-1977 passed by Respondent No. 2 to the following effect:

"In order to recover the money from some of the loanees of the Patna Urban Co-operative Bank, criminal cases were instituted against them. Action should be taken immediately for the withdrawal of the cases against those loanees who have cleared the loan in full, and proper instalments for payment of loans should be fixed against those who want to repay the loan but due to financial handicaps are unable to make payment at a time, and thereafter necessary further action should be taken."

After examining the entire material carefully and obtaining clarifications on certain points Shri Vinod Kumar Secretary Co-operation put up a lengthy note dated 15-1-1977 to the Minister for Co-operation in which he specifically placed the proposal of S.P. (Co-operative Vigilance Cell) for lodging F.I.R. against Shri Nawal Kishore Sinha for his approval and also suggested that the Hon'ble Minister may also obtain the approval of the Chief Minister. The Minister for Co-operation in his turn endorsed the file on 20-1-1977 to the Chief Minister for the latter's approval. The file was received by the Chief Minister's Secretariat on 30-3-1977 and Respondent No. 2 as the Chief Minister on 9-4-1977 instead of indicating his mind either way merely marked the file to "I.G. of Police." which was meaningless as the prior noting had clearly indicated that a draft F.I.R. had been vetted by both, D.I.G., C.I.D. and I.G. of Police. Counsel for Respondent No. 2 submitted that the endorsement made by the Chief Minister meant that he had approved the action as proposed.

34. It is impossible to accept the submission. Had the Chief Minister merely put his signature or initials without saying anything it might have been possible to suggest that he had approved the proposal, but to mark the file to "I.G. of Police" without saying 'as proposed' or something to that effect cannot mean that the Respondent No. 2 had approved the proposal. In fact, with the knowledge that the I.G. of Police had approved and vetted the draft F.I.R. against N. K. Sinha, merely marking the file to "I.G. of Police" amounted to putting off the matter Meanwhile Respondent No. 2's Government went out of power and under the President's Rule the matter was dealt with by the Governor Shri Jagan Nath Kaushal (the present Union Law Minister) who granted the approval on 16-5-1977 as a result whereof a criminal case (being F.I.R. Case No. 97 (5) 77) ultimately came to be filed at Kadam Kuan Police Station on 30-5-1977 against Nawal Kishore Sinha, for which Respondent No. 2 cannot take any credit whatsoever. On the other hand, the subsequent events show that so long at it lay within his power Respondents No. 2 made every effort to protect and save Nawal Kishore Sinha from criminal prosecution by abusing his official position a criminal prosecution which had been proposed by independent bodies like the Reserve Bank of India and the Co-operative Department, agreed to by the Law Department, recommended by the Estimates Committee and ultimately approved by the Governor Shri Jagan Nath Kaushal.

35. As regards the surcharge proceedings the position is very simple. As discussed earlier, the two directions contained in the first order dated 16-5-1975 for taking stern action to realise loans from the loanees and in default to initiate surcharge proceedings against the Board of Directors were wiped out by the subsequent ante-dated order 14-5-1977, and thereby Respondent No. 2 thwarted surcharge proceedings and attempted to give a go bye to the civil liability of Nawal

Kishore Sinha and other office-bearers of the Bank. This conduct on the part of Respondent No 2 has been explained in the counter affidavit of Shri Vinod Kumar Sinha dated 8-10-1982 filed before us, and counsel for Respondent No. 2 pressed it into service during his arguments and the explanation is that a separate file titled "Surcharge Proceedings" being File No. 3 of 1975 maintained in the office of Deputy Registrar, Co-operative Societies, Patna Division shows:

(a) that by his letter dated 30-4-1975 the Deputy Registrar informed the joint Registrar that discussions had already been held with the Registrar and that surcharge proceedings would be initiated as soon as possible

(b) that on 10-6-1975 the necessary proposal for surcharge was drafted and filed by the District Co-operative Officer before the Registrar under sec. 40 of the Bihar and Orissa Co-operative Society Act and

(c) on 1-7-1975 Surcharged Case No. 3 of 1975 had been started against Nawal Kishore Sinha and others by directing issuance of show-cause-notice to them and that in view of these facts Respondent No. 2 could not be said to have countermanded the Surcharge proceedings, it is further urged that the order dated 16-5-1975 directing surcharge proceedings was, therefore, unnecessary and irrelevant as the proper authority, namely, the Registrar had already decided to start surcharge proceedings which were started by issuance of show-cause notice to Nawal Kishore Sinha and others on 1-7-1975 and, in fact, if the struck-out order dated 16-5-1975 had remained without being replaced by the order dated 14-5-1975 the surcharged proceedings which were filed on 10-6-1975 would have been delayed and the effect of recalling the first order dated 16-5-1975 (incidentally recalling of the first order by the second order is admitted) was to facilitate the surcharge proceedings (which were being processed at that time in the office of Deputy Registrar) without being required to adopt recovery proceedings from the loanees first.

Secondly, the proposal for surcharge proceeding itself was submitted and filed by the District Co-operative Officer against Nawal Kishore Sinha and others on 10-6-1975 and the surcharge proceedings actually could be said to have been initiated on 1-7-1975, when show cause notice was directed to be issued and served on Nawal Kishore Sinha on 15-7-1975, while thwarting of the surcharge proceedings against Nawal Kishore Sinha and others was already complete, having been accomplished by Respondent No. 2 by his ante-dated order 14-5-1975. Thirdly it is obvious that Respondent No. 2 cannot take credit for the action that was taken in the matter of surcharge proceedings against Nawal Kishore Sinha and others by the Office of Registrar, Co-operative Society independently of and in spite of Respondent No. 2's action of subverting the surcharge proceedings.

37. It will appear clear from the above discussion that the documentary evidence mentioned above, the genuineness of which cannot be doubted, clearly makes out a prima facie case against Respondent No. 2 sufficient to put him on trial for the offence of criminal misconduct under s. 5 (1) (d) read with s. 5 (2) of the Prevention of Corruption Act, 1947. Similar is the position with regard to the incidental offence of forgery under s. 466, I.P.C. said to have been committed by him, for, ante-dating of the second order by him is not disputed; and it is on record that in regard to such ante-dating no explanation was offered by him during the investigation when he was questioned about it in the presence of his lawyers and there has been no explanation of any kind in any of the counter-affidavits filed before us.

41. Similarly the learned Special Judge while granting the requisite permission has also referred to the offence under s. 5 (1) (c) and not s. 5 (1) (d) of the Prevention of Corruption Act in his order and obviously the permission granted must be regarded as having been given in respect of an offence with which Respondent No. 2 had not been charged, completely ignoring the offence under s. 5 (1) (d) with which he had mainly been charged. This state of affairs brings out a clear and glaring non-application of mind both on the part of the Public Prosecutor as also the learned Special Judge while dealing with the issue of withdrawal; in the High Court also there is no improvement in the situation. This must lead to the quashing of the impugned withdrawal from the prosecution.

42. Having regard to the aforesaid discussion it is clear that the impugned withdrawal was not justified either on merits or in law and being illegal has to be quashed. I would, therefore, allow the appeal set aside the withdrawal order and direct that Vigilance P. S. Case No. 9 (2) 78 be proceeded with the disposed of in accordance with law.

BAHARUL ISLAM, J.

(i) The order of surcharge by the Chief Minister is unwarranted by law. S. 40 of the Bihar Cooperative Societies Act, 1935 gives power only to the Registrar to initiate surcharge proceedings. An appeal lies from his order to the State Government under sub-s. (3) of s. 40. In fact, admittedly Deputy **Registrar of Cooperative Societies issued notices of surcharge against Respondent No. 3 on 31-12-1975 when Respondent No. 2 himself was the Chief Minister). If the Chief Minister found that his first order was unwarranted by Law, it was but right that he cancelled his first order**

130. By the second order, which is said to have been antedated, only the fourth part of the order has been maintained. There seems to be no earthly reason for antedating the latter order by putting the date as 14th of May, 1975. It was always open to the Minister to have changed his order and pass another order. The same purpose could have been served by Respondent No. 2, if he really wanted to absolve Respondent No. 3 from the liability by passing the order on the 16th of May, 1975 by replacing the earlier order by the subsequent order. Rather that purpose of Respondent No. 2, if at all, could have been served better by keeping the date of the second order as 16th May, or any subsequent date. Secondly, the second antedated order dated 14th May, 1975 could not stand in the way of initiating surcharge proceedings against Respondent No. 3 and other members of the Board of the Bank. Date 14th May, 1975, for all we know, may have been on account of some accidental slip The other reason as suggested by the Solicitor General is that surcharge proceedings could be initiated only by the Co-operative Department under s. 40 of the Bihar and Orissa Co-operative Societies Act, 1935. It reads:

"40, Where as a result of an audit under s. 33 or an enquiry under s. 35, or an inspection under ss. 34, 36 or 37, or the winding up of a Society it appears to the Registrar that any person who has taken part in the organisation or management of the society or any past or present officer of the society has been guilty of the fact or omission mentioned in clauses (a), (b), (c) or (d) the Registrar may enquire into the conduct of such persons or officers and after giving such officer or person an opportunity of being heard, make an order for surcharge."

131. Therefore, in view of the aforesaid provisions of s. 40 of the Cooperative Societies Act taking steps for a surcharge is not within the jurisdiction of the State Executive. This may have been

another reason for dropping the proceedings for surcharge, if at all, against the officers of the bank. There is yet another reason. The second antedated order does not say a word about dropping the surcharge proceedings ordered by Respondent No. 2 in the earlier order and, therefore, it is difficult to say that Respondent No. 2 had actually dropped the surcharge proceedings against Respondent No. 3 and other offers of the Co-operative Bank. Indeed, surcharge proceedings had been initiated. Surcharge files regarding surcharge Case No. 3 of 1975 proves that surcharge proceedings were proposed initially by the Deputy Registrar on 30th of April 1975 and were in fact taken on 1st June, 1975 and the show cause notice was issued on 1st July 1975 and surcharge order was made against Shri Nawal Kishore Sinha and others on 31st December, 1975. This shows clearly that no benefit or advantage was given to Nawal Kishore Sinha or others by the order of 14th May, 1975. From the affidavit of Jiwanand Jha, Respondent No. 4 it appears that an amount of Rs. 33,96,024.90 was given as loans to 180 persons. Out of the total amount given by way of loans an amount of Rs. 25,64,682.23 has already been realised from 106 persons. The unrealised amount is only Rs. 8,31,337.67 for which decrees have been passed against 64 persons and as against the remaining 10 persons proceedings for realisation are going on.

140. The facts that the prosecution, if ordered, will start after a gap of about eight years cannot be lost sight of. In the view taken by me in the earlier part of the judgment that no prima facie case in my opinion has been made out under s. 466 of the Indian Penal Code and s. 5 (1) (d) of the Prevention of Corruption Act and the fact that the High Court in revision agreed with the view of the Special Judge giving consent to the withdrawal from the prosecution on the application of the Public Prosecutor under s. 321 Cr.P.C. this Court cannot make a fresh appraisal of evidence and come to a different conclusion.

    All that this Court has to see is that the Public Prosecutor was not actuated by extraneous or improper considerations while moving the application for withdrawal from the prosecution. Even if it is possible to have another view different from the one taken by the Public Prosecutor while moving the application for withdrawal from prosecution this Court should be reluctant to interfere with the order unless it comes to the conclusion that the Public Prosecutor has not applied his mind to the facts and circumstances of the case, and has simply acted at the behest of the Government or has been actuated by extraneous and improper considerations. On the facts and circumstances of the case it is not possible for me to hold that the Public Prosecutor was actuated by oblique or improper motive.

141. In view of my finding that the criminal case against Respondent No. 2 and others was instituted on account of personal or political vendetta at the instance of some disgrunted political leaders, that no prima facie case of forgery or misconduct is made out on the materials on the record, that the Court's jurisdiction in dealing with the application under s. 311 of the Code is only to see whether the Public Prosecutor had applied for withdrawal in the interest of Public Justice, or he has done so actuated by improper or oblique motive, that a substantial amount of loan has already been realised, that the continuance of the criminal case in the circumstances of this case will be only an exercise in futility at the cost of public money and time, that the trial court as well as the High Court were satisfied with the grounds for withdrawal taken by the Public Prosecutor, the view taken by the trial court as well as the High Court in my opinion does not suffer from any infirmity and is a just and proper one.

O. N. Bhatnagar v Smt. Rukibai Narsindas and Others

Bench	A.P. Sen, S. Murtaza Fazal Ali, E.S. Venkataramiah
Where Reported	1982 Indlaw SC 122; (1982) 2 SCC 244; AIR 1982 SC 1097; 1982 (2) Bom.C.R. 401; 1982 MahLJ 484; 1982 (2) RCJ 123; 1982 (2) RCR(Rent) 54; 1982 (1) RentLR 759; 1982(1) SCALE 377; [1982] 3 S.C.R. 681; 1982 UJ 434
Case Digest	**Subject:** Civil Procedure; Labour & Industrial Law; Practice & Procedure; Trusts & Associations **Keywords:** Cross-Examination, Co-Operative Bank **Summary:** Maharashtra Co-operative Societies Act, 1961, ss. 91(1) and 94 - Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, ss. 5(4A), 15A, 28 and 28(1) - Tenancy - (A) Interpretation - Harmonious construction - Absence relationship of landlord and tenant - Whether proceedings u/s. 91 of 1961 Act are barred - (B) Effect of 1973 Amendment Act on person in occupation of premises under subsisting licence as on 01-02-1973 - In a dispute for possession among licensor and licensee - (C) Legality of Order allowing transposition of Society as codisputant - (D) 'Touching the business of the Society' - Tenant Co-partnership type Housing Society - Initiation of proceedings for removal of trespasser - Held, proceedings u/s. 91 (1) not barred by s. 28 (1) - It falls outside purview of s. 91 (1) - Order, held, was both eminent and just and was necessary for doing complete justice between parties - Held, is part of its business - Appeal Dismissed.

Case No : CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1843 of 981. Appeal by special leave from the judgment and order dated the 21st April, 1981 of the Bombay High Court in Appeal No. 168 of 1981.

The Judgment was delivered by: A. P. Sen, J.

1. This appeal by special leave directed against the judgment of the Bombay High Court dated April 21, 1981 raises a question of some importance. The question is whether a claim for ejectment by a housing cooperative society, of an occupant of a flat who had been let into possession of the premises under an agreement of leave and licence executed **between him and a member of the society, by virtue of his being a nominal member thereof, is a 'dispute touching the business of the society' within the meaning of sub-s. (1) of s. 91 of the Maharashtra Cooperative Societies Act, 1960 (for short 'the Act').**

2. The **material facts giving rise to this appeal are as follows. The respondent No. 2 herein, Shyam Cooperative Housing Society Limited is constituted under the provisions of the Maharashtra Cooperative Societies Act, 1960** as a tenant co-partnership type housing society to which Regulations in Form-A apply viz. Regulations relating to tenancies to be granted by the

society to members in respect of houses held by the society. It owns and manages two housing colonies known as 'Shyam Niwas' and 'Navik Niwas' at Warden Road, Bombay. The society continues to be governed by Regulations in Form-A ever since they were adopted by it after approval by the Registrar of Cooperative Societies in 1950. It appears that in 1954 the Directors passed a resolution for the introduction of Regulations in Form-B but it was never implemented. The respondent No. 1 Rukibai N. Bhavnani is a co-partner tenant member of flat No. 52 in building No. 5-A in the housing colony known as 'Shyam Niwas' situate at Warden Road, Bombay. The respondent No. 1 inducted the appellant in flat No. 52 under an agreement of leave and licence dated November 28, 1961. The byelaws of the society provide that no member can part with his possession of the flat under an agreement of leave and licence to another except with the approval of the society and unless such licensee becomes a nominal member thereof.

27. There has been a long debate as to the true meaning of the words 'touching the business of the society' **occurring in s. 43(1) of the Cooperative Societies Act, 1912 and there was a divergence of opinion expressed by different High Courts but it is not necessary to burden the judgment with many citations**.

28. In **Deccan Merchants Cooperative Bank Ltd. v. M/s. Dalichand Jugraj Jain & Ors. [1969] 1 SCR 8871968 Indlaw SC 309,(1) the Court had occasion to construe** the meaning of the expression 'touching the business of a society' occurring in s. 91(1) of the Act. It was observed that the answer depends on the words used in the Act and that the non-obstante clause clearly ousts the jurisdiction of civil courts if the dispute falls squarely within the ambit of s. 91(1) of the Act. The Court then went on to enumerate five kinds of disputes mentioned in s. 91(1): first, disputes touching the constitution of a society; secondly, disputes touching election of the office-bearers of a society; thirdly, disputes touching the conduct of general meetings of a society; fourthly, disputes touching the management of a society and fifthly, disputes touching the business of a society. In the context, it was said:

"It is clear that the word 'business' in this context does not mean affairs of a society because election of office bearers, conduct of general meetings and management of a society would be treated as affairs of a society. In this sub-section the word 'business' has been used in a narrower sense and it means the Actual trading or commercial or other similar business activity of the society which the society is authorised to enter into under the Act *and the Rules and it byelaws."*

30. Thus, the Court adopted the narrower meaning given to the word 'business' as expressed by the Madras, Bombay and Kerala High Courts in preference to the wider meaning given by the Madhya Pradesh and Nagpur High Courts. According to the view taken in Deccan Merchant Cooperative Bank's case, supra, the word 'business' in the context means "any trading or commercial or other similar business activity of the society". It was held that the word 'business' in s. 91(1) of the Act has been used in a narrower sense and that it means the Actual trading, commercial or other similar business activity of the society which the society is authorised to enter into under the Act and the rules and its bye-laws.

36. In revision, the Bench of the Small Causes Court held that the Registrar's nominee did have jurisdiction and the High Court upheld the order of the Bench. Allowing the appeal, this Court observed:

"With all respect to the High Court, it seems to us that there was a fundamental error in the above approach. No doubt it was the business of the society to let out premises and a member had no unqualified right to let out his flat or tenement to another by virtue of the bye-laws and a breach of the bye-laws could affect the defaulting member's right to membership. But we are not able to see how letting by a member to another member would touch the business of the society which included inter alia the trade of buying, selling, hiring and letting land in accordance with cooperative principles. The letting of flat by respondent No. 1 was a transaction of the same nature as the society itself was empowered to enter into but and letting by itself did not concern the business of the society in the matter of its letting out flats. Nothing was brought to our notice to show that such a letting would affect the business of the society once it had sold the flat to the respondent No. 1. The position might have been different if the latter had himself been a tenant of the flat under the society.

37. "To touch" means "to come in contact with" and it does not appear that there is a point of contact between a letting by the respondent No. and the business of the society when the society was not itself the landlord of the flat."It is we think, important to remember that this authority decided only one point albeit a point of great importance namely, that the society having sold the flat, like any other vendor of immovable property, the letting out of the flat by the flat-owner was no concern of the society. There was nothing to show that such letting would affect the business of the society once it has sold the flat. With respect, we entirely agree with all that was said. But then the Court went on to say:

"The position might have been different if the latter had himself been a tenant of the flat under the society."

38. It logically follows, as a necessary corollary, that if the transaction between the society and the holder of the flat were governed by Regulations in Form-A, as here, that is to say, if the society had let out the flat to her, the decision of the Court would have been otherwise.

39. The decision in Sabharwal Brothers' case, supra, is distinguishable for two reasons. First, there was an outright sale of the flat by the society and not that it had been let out to her under Regulations in Form-A; and secondly, the society having sold the flat, the letting of the flat by the flat-owner did not in any way affect the business of the society in the matter of its letting out the flat. The observation made by this Court that the fact that such letting was forbidden by a regulation of the society was immaterial did not fall for decision in that case and was a mere obiter.

40. In the result, the appeal must fail and is dismissed with costs. Appeal dismissed.

Allahabad District Cooperative Limited v Hanuman Dutt Tewari

Bench	A.P. Sen, Baharul Islam, O. Chinnappa Reddy
Where Reported	1981 Indlaw SC 498; (1981) 4 SCC 431; (1981) SCC (L&S) 649; AIR 1982 SC 120; 1982 (1) LLN 283
Case Digest	**Subject:** Labour & Industrial Law **Summary:** U.P. Co-operative Societies Act, 1966, s. 70 - Civil Court's jurisdiction is barred - Expression 'touching business of Society' u/s . 70 of the Act - Whether suit for declaration that retrenchment is illegal is barred - In the light of the fact that dispute does not relate to business of co-operative society - Held, suit is not barred u/s. 70 of the Act - Appeal Dismissed.

Case No : C.A. No. 2219 of 1970.

The Order of the Court was as follows:

1. The only question raised is this appeal is whether the suit filed by respondent for a declaration that the retrenchment of his service by the appellant Allahabad District Cooperative Limited, Allahabad, a **cooperative society constituted under the Uttar Pradesh Cooperative Societies Act is barred by the provisions of S. 70 of the Act.**

2. According to Mr. Pramod Swarup, learned counsel for the appellant, the dispute relates to the business of the cooperative society and, therefore, the suit is barred by the provisions of S. 70.

3. The expression "business of the society" has been construed by the several decision of this Court. In Deccan Merchants Cooperative Bank Ltd. v. Dalichand Jugraj Jain 1968 Indlaw SC 3091968 Indlaw SC 3091968 Indlaw SC 309 it was pointed out that "the word 'business' has been used in a narrower sense and it seems the actual trading or commercial or other similar business activity of the society which the society is authorised to enter into the under the Act and the Rules and its bye-laws"

   In Cooperative Central Bank Ltd. v. Addl. Industrial Tribunal, A.P. 1969 Indlaw SC 3411969 Indlaw SC 341, it is said "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 alternation 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 and 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 dispute touching the business of the society"

4. In view of the above pronouncements of this Court, we cannot accept the submission of Shri Pramod Swarup. The appeal is, therefore, dismissed with costs.

Appeal dismissed.

U. P. Co-Operative Cane Union Federation Limited and another v Liladhar and Others

Bench	D.A. Desai, P.N. Shingal
Where Reported	1980 Indlaw SC 68; (1980) Supp SCC 437; AIR 1981 SC 152; 1980 ALJ 1073; 1980 (41) FLR 288; 1981 (1) LLJ 156; 1981 (1) LLN 13; [1981] 1 S.C.R. 558; 1981 (1) SLJ 40; 1980 (3) SLR 440
Case Digest	**Summary:** U.P. Co-operative Societies Rules, 1968, rr. 115 and 134 - CPC, 1908, s. 9 - Co-operative Societies Act, 1912, ss. 2(d) and 43 - Service matter - Jurisdiction of Civil Court - Whether civil suit against dismissal of godownkeeper in of society in disciplinary proceedings is barred - Held, not barred by rr. 115 and 134 - Godown-keeper is not an 'officer' - Appeal Dismissed.

Case No : C.A. No. 433 of 1977

1. How technical plea of want of jurisdiction has pushed a petty employee from pillar to post since April 1964 and pilloried him with cost presumably unbearable by him, is shockingly demonstrated in this case.

2. First respondent joined service as a petty employee in Cane Development Department of the U.P. State Government somewhere in 1949. On the formation of the U.P. Co-operative Cane Union Federation Ltd. (hereinafter referred to as 'the first appellant'), services of the first respondent stood transferred and were put at the disposal of the appellant and he was styled as Supervisor. At the relevant time he was rendering service under the second appellant, District Co-operative Sugarcane Development Society Ltd. (now designated as Zila Sahkari Ganna Vikas Samiti Ltd.,) Budayun, a federating unit of the first appellant and was incharge of manure godown. He was suspended from service with effect from October 18, 1958. A prosecution was launched against him for embezzlement of funds of the second appellant in that he failed to account for 293 1/2 bags of ammonium sulphate entrusted to him as keeper of manure godown. The case ultimately resulted in the acquittal of the first respondent by the High Court. Disciplinary proceedings were commenced against him on the same charge and ultimately he was dismissed from service on April 4, 1964. First respondent filed a suit being O.S. No. 30/64 in the Court of Civil Judge, Budayun, inter alia, for a declaration that the order dismissing him from service was invalid and void and for a further declaration that he continued to be in service and for arrears of pay till the date of the suit. In the written statement filed on behalf of defendants (present appellants) number of contentions were raised but only one may be noticed for the present appeal. The contention was that the dispute involved in the suit was between an employee of a Co-operative Cane-Growers' Society and the Society and, therefore, civil court had no jurisdiction to entertain the suit but the plaintiff must approach the Registrar of Co-operative Societies for reference of dispute to arbitration. The trial Court decreed the suit as per judgment dated May 24, 1967, and

granted the declaration prayed for. The appellants preferred an appeal being Civil Appeal No. 9 of 1967 to the Court of District Judge, Budayun, who allowed the appeal holding that the Civil Court had no jurisdiction to entertain the suit inasmuch as the dispute was between an officer of a Co-operative Society and the Society and the dispute was touching the business of the Society and, therefore, rule 115 of the Co-operative Societies Rules enacted by the U.P. Government in exercise of the rule making power conferred by s. 43 of the Co-operative Societies Act, 1912 (hereinafter referred to as 'the 1912 Act') in its application to the U.P. State would be attracted and the dispute will have to be resolved by arbitration by the Registrar. In accordance with this finding the appeal was allowed and the suit was dismissed. First respondent preferred Second Appeal No. 582/71 to the High Court of Judicature at Allahabad. The learned single Judge allowed the appeal holding that as the first appellant is governed by U.P. Sugarcane (Regulation of Supply and Purchases) Act, 1953 ('1953 Act' for short), it being both a Co-operative Society and a Cane Growers' Co-operative Society and in case of an officer or servant of such cane growers' cooperative society any dispute between its officers and servants and such society would be governed by rules 54 and 55 framed under 1953 Act which provide a complete machinery for resolution of disputes and rule 108 does not encompass dispute arising out of a disciplinary proceeding between such society and its officers and servants and, therefore, in the absence of such provision for compulsory arbitration of such dispute the jurisdiction of the Civil Court is not barred. The learned judge accordingly allowed the appeal and remanded the suit to the first appellate court for decision on merits. Hence this appeal by special leave by original defendants.

3. The only contention that falls for consideration in this appeal is whether the civil court has jurisdiction to take cognizance of a suit arising out of a disciplinary proceeding held by a Cane Growers' Cooperative Society, governed both by 1912 Act and 1953 Act against its employee or such dispute falls exclusively within the jurisdiction of the Registrar under the Co-operative Societies Act to be resolved by arbitration alone. A brief survey of the relevant provisions is necessary for the effective disposal of this contention.

15. The first question is, whether a dispute arising out of a disciplinary proceeding resulting in dismissal of an employee of a co-operative society is one touching the business of the society. It is unnecessary to dilate upon this aspect in view of the two decisions of this Court. In Deccan Merchants Co-operative Bank Ltd. v. M/s. Dalichand Jugraj Jain & Ors., (1) s. 91 of the Maharashtra Co-operative Societies Act, 1968, came up for consideration before this Court. After analysing the section and observing that five kinds of disputes are enumerated in sub-s. (1) of s. 91, the fifth being disputes touching the business of a society, the Court held as under:

"It is clear that the word 'business' in this context does not mean affairs of a society because election of office-bearers, conduct of general meetings and management of a society would be treated as affairs of a society. In this sub-section the word 'business' has been used in a narrower sense and it means the actual trading or commercial or other similar business activity of the society which the society is authorised to enter into under the Act and the Rules and its bye-laws".

20. The High Court approached the matter from an entirely different angle. The learned judge held that this case would be governed by the 1953 Act and rules 54 and 55 enacted in exercise of

the powers conferred by s. 28 of the 1953 Act have provided a specific forum, viz., a reference to the Cane Commissioner and appeal to the State Government and as rule 108 is not attracted the dispute is not required to be referred to arbitration and, therefore, the civil court will have jurisdiction to entertain the suit. With respect, it is difficult to subscribe to this view of the High Court. 1953 Act has been enacted to regulate supply and purchase of sugarcane required for use in sugar factories, gur, rab and khandsari manufacturing units. It envisages setting up of a sugarcane board and the board was entrusted with the function pertaining to the regulation, supply and purchase of cane for sugar factories and for the maintenance of healthy relation between occupiers, managers, of factories, cane growers, Co-operative societies, etc. The Act also envisaged setting up of a development council and its functions have been enumerated in s. 6. On a survey of these provisions it appears that the Act was enacted to regulate relations between the cane-growers on one hand and sugar factories on the other. The expression 'cane growers' co-operative society' has been defined in s. 2(f) to mean a society registered under the Co-operative Societies Act, 1912, one of the objects of which is to sell cane grown by its members and includes the federation of such societies registered under s. 8 of the said Act. The appellant is thus a Co-operative society and it being a federation of such Co-operative societies it is also included in the expression "cane growers' co-operative society". S. 28(2)(n) of the Act was relied upon to show that the State Government has power to frame rules amongst others, for the control of the staff and finances. In exercise of this power rules 54 and 55 have been enacted. Rule 54 provides that the power to appoint, grant leave of absence, to punish, dismiss, transfer and control secretaries, assistant secretaries and accountants of Cane Growers' Co-operative Societies whether permanent or temporary shall be exercised by the federation, subject to the general control of the Cane Commissioner who may rescind or modify any order of the Federation. There is a proviso which is not relevant for the present purpose. Rule 55 confers powers similar to those enumerated in rule 54 to be exercised by the society in respect of other staff subject to the regulations made by the federation and the general control of the Cane Commissioner. Shorn of embellishment, rule 55 confers power on the Federation, namely, the first appellant, to make regulations for appointment, granting leave of absence, punishment, dismissal and transfer of the staff other than those enumerated in rule 54 and these regulations have to be made subject to the general control of the Cane Commissioner Rule 108 provides for compulsory arbitration of disputes therein mentioned and it is common ground that a dispute of the present nature under examination will not be covered by rule 108. The High Court observed that rules 54 and 55 being a complete code in itself with regard to regulation making power for disciplinary action with a provision for appeal to the Cane Commissioner and rule 108 not being attracted, the civil court will have jurisdiction to entertain the present dispute. The High Court overlooked the fact that 1953 Act neither repeals nor replaces 1912 Act. A cane-grower other than a Cane-growers' Cooperative Society would be governed by 1953 Act but the cane grower not being a co-operative society it would not be governed by the 1912 Act. A Cane-Growers' Co-operative Society would be governed with regard to the provisions for law of Co-operative Societies by 1912 Act and in respect of its business of growing and selling cane it would be governed by 1953 Act. Both Acts operate in an entirely different field and are enacted with different objects in view. 1953 Act neither trenches upon 1912 Act nor supersedes or supplants any provision of it. Therefore,

some provisions of 1953 Act cannot override or supersede the provisions of 1912 Act and by mere reference to the provisions of 1953 Act the High Court was in error in totally overlooking and ignoring the provisions in 1912 Act and the rules enacted thereunder. However, in view of our finding that the dispute brought before the Civil Court in this case was not a dispute between a society and its officer and, therefore, one of the conditions for attracting rule 115 having not been satisfied, the civil court will have the jurisdiction to entertain the suit. For these reasons the decision of the High Court is confirmed. Accordingly this appeal fails and is dismissed with costs.

Virendra Pal Singh and Others v District Assistant Registrar, Cooperative Societies, Etah and Another

Bench	O. Chinnappa Reddy
Where Reported	1980 Indlaw SC 472; (1980) 4 SCC 109; (1980) SCC (L&S) 516
Case Digest	**Subject:** Trusts & Associations **Summary:** Trusts & Associations - Banks Centralised Service Rules, 1976 - **Cooperative Societies Act**, 1912 - Uttar Pradesh **Cooperative Societies Act**, 1965, ss. 28, 29, 35, 37, 121, 122 and 122A - Uttar Pradesh Cooperative Societies Employees Service Regulations 1975, regn. 24 - Whether the U.P. **Cooperative Societies Act** deals with cooperative societies doing banking? - Held, in pith and substance the Act deals with "cooperative societies" - 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 - By doing 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** - U.P. **Cooperative Societies Act** was within the competence of the State legislature - Petitions dismissed.

Case No : C.A. No. 288 of 1978 (Along with S.L.P. Nos. 7188 of 1979, 4214-4216 of 1980; W.Ps. Nos. 568-572, 579, 662, 765, 908, 1077 of 1979, 298 and 419 of 1980).

The Judgment was delivered by: CHINNAPPA REDDY, J.

1. The civil appeal, the special leave petitions and the writ petitions were heard together. There were some points common to all the cases and some special only to a few of the cases. **It is unnecessary to state the facts of any of the cases in detail. Before the passing of the U.P. Cooperative Societies Act, 1965, the Cooperative Societies Act, 1912, was in force and various cooperative societies including cooperative banks were registered under that Act. In 1965 the U.P. Cooperative Societies Act, 1965**, was passed to consolidate and amend the law relating to cooperative societies, in Uttar Pradesh. The Statement of Objects and Reasons shows that the effort was to reorient the policy of the State towards cooperation and to adopt cooperative techniques in various spheres of developmental activity. Experience had shown that it was also necessary to introduce some provisions to entrust additional function and responsibilities to cooperative societies but at the same time it was necessary to give proper guidance and exercise effective supervision and control.

12. S. 122 empowers the State Government to constitute an authority or authorities, in the prescribed manner, for the recruitment, training and disciplinary control of the employees of 'cooperative

societies', or class of cooperative societies, and to require such authority or authorities to frame regulations regarding recruitment, emoluments, terms and conditions of service including disciplinary control of such employees. The regulations made by the authority or authorities are subject to the approval of the State Government and, after such approval are required to be published in the Gazette. Section 122-A of the Act provides that notwithstanding anything contained in the Act, the State Government may by rules provide for the creation of one or more services of such employees of such cooperative societies or class of cooperative societies as the State Government may think fit, common to such cooperative societies and prescribe the method of recruitment, appointment, removal and other conditions of service of persons appointed to any such service.

22. Examining the **provisions of the U.P. Cooperative 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.

23. 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, Cooperatives Societies 1971 Indlaw MUM 99 and Sant Sadhu Singh v. State of Punjab.

25. The supervisory powers given to the Registrar are with a view to enable him and the officials of his department to keep a vigilant and benevolent eye on the working of the society so that none may take advantage of the innocent rural folk and so that the cooperative movement may be a success and a real boon to the weaker sections of the people. The constitution of a centralised service is perhaps to see that the officials do not acquire any vested interest in the cooperative society of a locality. Though Secretaries are vested with vast powers they are subject to the control and supervision of Chairman and the Committee of Management. **We are, therefore, unable to agree with the submission that the U.P. Cooperative Societies Act is not a law dealing with cooperative societies because wide powers are given to the Registrar of Cooperative Societies and the Secretaries of Societies and because a centralised service has been created.**

28. In some of the cases it was urged that some person who had been appointed before the Cooperative Societies Employees Service Regulations, 975, were made under S. 122 of the Act, had been illegally discharged by the Administrator. On a perusal of the relevant affidavits and counter-affidavits we find that these appointments were made after the constitution of the U.P. Cooperative Institutional Service Board in whom vested the power of recruitment of employees of cooperative societies under S. 122 of the Act. Pending the making of the U.P. Cooperative Societies Employees Service Regulations prescribing the method of recruitment etc. administrative instructions had been issued to all the cooperative societies that appointments to

all posts in cooperative societies would be made by the Board. If despite the constitution of the Board and the issuance of administrative instruction some cooperative societies chose to make appointments, such appointments have necessarily to be held to be invalid.

29. The fact that Regulations had not been made when the appointments were made did not empower the committee of management to make the appointments usurping the power of the U.P. Cooperative Institutional Service Board. It appears that such persons as were appointed by the Committee of Management during the interregnum were given an opportunity to appear before the U.P. Cooperative Institutional Service Board and were screened. Some were selected and some were not.14. Another question which was raised was that though the age of retirement of employees of some of the cooperative societies was originally 60 years under the U.P. Cooperative Societies Employees Service Regulations, the age of retirement has now been made 58 years. We are unable to see any force in this submission. Regulation 24(ii) itself provides that if before the coming into operation of the Regulations the society had entered into any contract with an employee on the date of his employment whereby he was entitled to continue beyond 58 years, the rule of retirement at the age of 58 years shall not apply and the age of retirement shall be governed by the contract.

30. Therefore, if in any case there is a contract between a cooperative society and an employee entered into before the Regulations came into force stipulating the age of retirement as 60 years the Regulation now stipulating the age of retirement as 58 years will not apply to him. We make it clear that this principle does not apply to the members of the centralised services. The above discussion covers all the points which were argued before us.

31. In the result the civil appeal, the special leave petitions and the writ petitions are dismissed with cost.

Petitions dismissed.

Tara Chand v Zamindar Cooperative Marketing-Cum-Processing Society Limited and Others

Bench	V.R. Krishna Iyer, A.D. Koshal, O. Chinnappa Reddy
Where Reported	1980 Indlaw SC 519; (1980) Supp SCC 667; AIR 1980 SC 1663; 1980 UJ 501
Case Digest	**Subject:** Arbitration & ADR **Summary:** Punjab Co-operative Societies Act, 1961, s. 55 - Arbitration - Co-operative Society - Whether u/s.55 of 1961 Act, there is jurisdiction for the Arbitrator to decide a dispute touching business of the Central Society and a member of the Primary Society - When he is not a member of the central society - Held, question left open in view of the compromise - Order Accordingly.

Case No : C.A. No. 411 of 1980.

The Judgment was delivered by: KRISHNA IYER, J.

1. This appeal by special leave raises a question of law as to whether u/s. 55 of Punjab Co-operative Societies Act, 1961, there is jurisdiction for the Arbitrator to decide a dispute touching business of the Central Society (respondent 1) and a member of the Primary Society (respondent 2). The appellant is only a member of respondent 2. These scheme is like this.

2. The membership of an apex society consists of central societies. Each central society has members consisting of primary societies. The present appellant is not a Primary Society but only a member of a Primary Society. It is far from clear as to whether a mere member of a Primary Society will come within the scope of S. 55 of the Act. The reason is that the appellant is not a member of the Central Society but merely a member of a Primary Society, which is a member of the Central Society. Having regard to the fact that the central societies' resources should not be lost in mere litigation, we suggested to the parties to settle the matter and counsel have persuaded both sides to agree, to what we think is a fair resolution of the conflict i.e. that appellant will pay a sum of Rs. 2750 to the first respondent (Central Society) in two instalments. He will pay on or before May 31, 1980 a sum of Rs. 1700 and a sum of Rs. 1050 on or before January 31, 1981. In case of default of the first instalment, the entire sum will be due and recoverable with interest at 12 per cent. and so also in case of default of the second instalment.

3. If these two sums (together totalling Rs. 2750) are paid on time there will be a complete discharge of his liabilities (both civil and criminal), but the Central Society (respondent 1) will be free to pursue its remedies by way of execution of the Award already obtained or otherwise against the Primary Society (respondent 2). With these directions we dispose of the appeal.

Order accordingly.

Registrar of Co-Operative Society v K. Kunhambu and Others

Bench	O. Chinnappa Reddy, R.S. Sarkaria
Where Reported	1979 Indlaw SC 301; (1980) 1 SCC 340; AIR 1980 SC 350; 1980 KLT 112; 1980 (2) MLJ(SC) 17; [1980] 2 S.C.R. 260; 1980 UJ 272
Case Digest	**Summary:** Corporate - Tamil Nadu Co-operative Societies Act, 1932, s. 60 - Essential Supplies (Temporary Powers) Act, 1946 - Constitution Of India, 1950 art. 245 - Power of State Govt. to exempt co-operative societies from application of provisions of 1932 Act, with modification - Whether s. 60 is void on ground of excessive delegation of legislative power - Held, not void - Appeal dismissed.

Case No : Civil Appeal No. 1258 of 1969

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

1. The perennial, nagging problem of delegated legislation and the so-called Henry VIII clause have again come up for decision in this appeal by the State of Kerala. S. 60 of the **Madras Cooperative Societies Act 1932 and a notification issued under that provision were struck down by the High Court of Kerala** on the ground of unconstitutional delegation of legislative power. Certain consequential directions were issued by the High Court. Those directions have long since worked themselves out and so the party who invoked the jurisdiction of the High Court u/art. 226 of the Constitution has no longer any surviving interest. The State of Kerala is, however, interested in sustaining the validity of s. 60 and has filed this appeal.

15. The provision is a near Henry VIII clause. But to give it a name is not to hang it. We must examine the **preamble, the scheme and other available material to see if there are any discernible guidelines. Sure the Cooperative Societies Act is a welfare legislation. Its preamble proclaims:**

    "Whereas it is expedient further to facilitate the formation and working of co-operative societies for the promotion of thrift, self-help and mutual aid among agriculturists and other persons with common economic needs so as to bring about better living, better business and better methods of production and for that purpose to consolidate and amend the law relating to co-operative societies in the State of Madras."

16. The policy of the Act is there and so are the guidelines. Why the legislation ? "To facilitate the formation and working of Cooperative Societies". Cooperative Societies, for what purpose ? "For the promotion of thrift, self-help and mutual aid". Amongst whom ? "Among agriculturists and other persons with common economic needs". To what end ? "To bring about better living, better business and better methods of production". The objectives are clear; the guidelines are there. There are numerous provisions of the Act dealing with registration of societies, rights and liabilities of members, duties of registered societies, privileges of registered societies, property and funds of registered societies, inquiry and inspection, supersession of committees of societies,

dissolution of societies, surcharge and attachment, arbitration etc. We refrain from referring to the details of the provisions except to say that they are generally designed to further the objectives set out in the preamble.

17. But, numerous as the provisions are, they are not capable of meeting the extensive demands of the complex situations which may arise in the course of the working of the Act and the formation and the functioning of the societies. In fact, the too rigorous application of some of the provisions of the Act may itself occasionally result in frustrating the very objects of the Act instead of advancing them. It is to provide for such situations that the Government is invested by s. 60 with a power to relax the occasional rigour of the provisions of the Act and to advance the objects of the Act. Section 60 empowers the State Government to exempt a registered society from any of the provisions of the Act or to direct that such provision shall apply to such society with specified modifications.

18. The power given to the Government under s. 60 of the Act is to be exercised so as to advance the policy and objects of the Act, according to the guidelines as may be gleaned from the preamble and other provisions which we have already pointed out, are clear.

19. We are therefore of the view that s. 60 is not void on the ground of excessive delegation of legislative power. We so declare and otherwise dismiss the appeal.

Management Of Shri Chalthan Vibhag Khan Udyog Sahakarimandal v B.S. Barot Member, Industrial Court, Gujarat, And Anr. Etc.

Bench	P.S. Kailasam, S. Murtaza Fazal Ali, A.P. Sen
Where Reported	1979 Indlaw SC 314; (1979) 4 SCC 622; (1980) SCC (L&S) 76; AIR 1980 SC 31; 1980 (40) FLR 458; 1979 LabIC 1379; 1979 (2) LLJ 383; 1980 (1) LLN 28; [1980] 1 S.C.R. 509; 1980 SLJ 31
Case Digest	**Summary:** Labour & Industrial Laws - Industrial Disputes Act, 1947, sch.3, item 1 and 2 - Appeal by management of five cooperative sugar factories in Gujarat State - Against demand for payment of Uttar Pradesh Govt. revised scales for sugar factories in Uttar Pradesh regarding pay, dearness allowance and other benefits - Financial capacity of industry - (A) Legality of grant of neutralisation of variable dearness allowance at 125% - (B) Depreciation allowance if can be taken into consideration - Held, illegal - Considerable depending on case - Appeals allowed partly.

Case No : Civil Appeal No. 146/78, CIVIL APPEAL NOS. 322-324 OF 1979 AND SPECIAL LEAVE PETITION (CIVIL) NO. 2939/79

The Judgment was delivered by : P. S. Kailasam, J.

1. All these appeals and special leave petition are by the management of five cooperative sugar factories in Gujarat State. The demand of the workmen of the factories in Gujarat was for payment of the U.P. Government revised scales for sugar factories in U.P. regarding pay, dearness allowance and other benefits.

2. The High Court erred in not taking into account depreciation of the sugar factories in arriving at the financial capacity of the industry for the purpose of fixing the wage structure. In any event, it **was submitted that as the administration of the sugar factories is governed by the Gujarat Cooperative Societies Act, 1961, those provisions will have to be followed in arriving at the net profits and for determining the financial capacity of the factories to pay.**

15. Before considering the decisions which bear on the question we will refer to the plea of the appellants that financial capacity of **sugar industry functioning under the Cooperative Societies Act should only be decided according to the provisions of s. 66 of the Gujarat Cooperative Societies Act, 1961, A**ct X of 1962. S. 66(1) runs as follows:-

"A society earning profit, shall calculate its annual net profits by deducting from the gross profits for the year, all accrued interest which is overdue for more than six months, establishment charges, contributions, if any, towards the provident fund and gratuity fund of its employees, interest payable on loan and deposits, audit fees, working expenses including repairs, rents, taxes and depreciation, and after providing for or writing off bad debts and losses not adjusted against any fund created out of profits. A society may, however, add to the net profits for the year,

interest accrued in the preceding years, but actually recovered during the year. The net profits thus arrived at, together with the amount of profits brought forward from the previous year shall be available for appropriation."

32. The High Court after referring to the decisions of this Court in Gramophone Co. and Indian Link Chain Manufacturers and the Shivraj Litho Works 1978 Indlaw SC 31 (supra) came to the conclusion that gross profits before allowance is made for depreciation has to be taken into account for the purpose of considering the paying capacity of the industry. The High Court added the amount of depreciation to the net profits as shown in the balance sheet and found that large profits were available as gross profits. The High Court was of the view that the position of the three factories in South Gujarat, namely Gandevi, Bardoli and Madhi is not at all gloomy so far as their financial prospects are concerned. The High Court found that though the price of sugarcane was fixed for delivery at the factory, it has paid the price to the growers ex-sugarcane field, thus bearing the charges for cutting sugarcane and for carrying it to the factory premises from the field. This payment was unjustified and was intended for the benefit of the members of the cooperative society and resulted in showing of a 'Paper Loss'. We are unable to agree with the conclusion of the High Court that this payment is unjustified and is for the purpose of benefiting its own members. It is submitted on behalf of the factories that the sugar factories pay an extra amount to the growers to induce them to cultivate sugarcane for a profit and thereby preventing them from cultivating other crops and reducing the area under sugarcane cultivation.

33. The finding of the High Court that this extra payment is to benefit the members of the society itself is also not borne out as there are members who are not growers of sugarcane. The benefits by way of giving fertilizers at a discount etc. will not profit members who are not growers. The High Court has not estimated the likely increase in profits due to increase in the price of sugar levy along with the increase in expenditure due to the revision of the wage structure which it has estimated at about Rs. 5 lakhs. Further as pointed out by us earlier the High Court erred in adding back the depreciation and other reserves without determining as to what extent such allowances are permissible on the facts of the case. For the reasons stated we feel that the financial capacity of the industry has not been determined in the manner in which it ought to have been done.

36. The only question therefore which is in dispute is the increase of graded dearness allowance from Rs. 21 to Rs. 40 with effect from the date of the award. We do not think that the increase in burden under this head would be beyond the financial capacity of the factories especially as we are satisfied that the claim for depreciation is highly exaggerated. Taking all the circumstances relating to the financial capacity of the factories we are satisfied that the increase in the burden due to the increase in the graduated dearness allowance will be within the capacity of the industry. We therefore find no reason for remitting the matter back to the Industrial Court. We set aside the award relating to the grant of graduated dearness allowance at more than 100% but direct that it will be confined to 83 paise for increase of one point i.e. limited to cent per cent neutralisation. So far as the increment of the graduated dearness allowance from Rs. 21 to Rs. 40 from the date of the award and the retention allowance at 10% of the basic wage and dearness allowance payable during the crushing season to the unskilled workers is concerned, it is confirmed.

37. The appeals are disposed of accordingly. The Appellant will pay costs of the respondents one set of Rs. 2000/-which will be divided amongst the respondents.

Appeals disposed of.

Dadasaheb Dattatraya Pawar and Others v Pandurang Raoji Jagtap and Others

Bench	Jaswant Singh, Y.V. Chandrachud, V.R. Krishna Iyer
Where Reported	1978 Indlaw SC 333; (1978) 1 SCC 504; AIR 1978 SC 351; [1978] 2 S.C.R. 524; 1978 UJ 102
Case Digest	**Summary:** Election - Maharashtra Co-operative Societies Act, 1961 - Representation of People Act, 1951 - Election Petition - Hiring or procuring of Vehicle or vessel - What is tjhe Standard of proof required for alleged corrupt practice u/s.144 of 1961 Act - Held, to prove the charge beyond reasonable doubt - Appeals allowed .

Case No : C.As. Nos. 41 and 42 of 1977

The Judgment was delivered by : Hon'ble Justice Jaswant Singh

1. These appeals Nos. 41 and 42 of 1977 by special leave are directed against a common judgment and order dated December 16, 1975 made by the Commissioner, Pune, Division Poona, in **Election Petitions Nos. COP/81(43) and COP/81(42) presented under section 144-T of the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as 'the Act) read with Rule, 74 of the Maharashtra Specified Cooperative Societies Elections to Committees Rules, 1971 setting aside the election of the appellants to the, Board of Directors of the Shetkari Sahakari Sangh Ltd**., Kolhapur (hereinafter referred to as 'the Sangh') on the ground that they were guilty of corrupt practice as envisaged by section 144-1(3) of the Act in that Special buses were procured on payment from the Kolbapur Municipal Transport with the appellants' knowledge and consent and used for the whole day on November 20, 1973 i.e. the day of poll for the free transport of the voters from the Sangh's head office in Bhawani Mandap to the polling station in Market Yard and back.

2. The facts and circumstances giving rise to these appeals which lie in a short compass are : The Sangh which is a specified Cooperative Society as defined in section 144-A read with section 73-G of the Act and was registered in or about the year 1939 and as such is now deemed to be a registered society under the Act with the entire Kolhapur District as its area of operation has voting members of two types viz. (1) individual members and (2) cooperative societies. Being a society belonging to one of the categories specified in section 73-G of the Act, election of the members of its Board of Directors was held in the manner laid down in Chapter XI-A of the Act and the rules made thereunder in the second half of the year, 1973. In. the said election two groups headed by Jagtap Guruji as representing the respondents 1 and 2 who were the petitioners in the aforesaid election petitions and the other headed by Baba Nesarikar, who was the Managing Director of the Sangh prior to the Election entered the fray. In the said Election, all the three appellants in Appeal No. 41 and all the six appellants in the sister Appeal No. 42

were declared elected from the constituency of individual members numbering 25000 and the constituency of the cooperative societies affiliated to the Sangh numbering 650 respectively. Baba Nesarikar was himself returned unopposed from the combined constituency of individual members and cooperative societies, Thus the Nesarikar group captured all the seats contested by it. Aggrieved by the result of the election in so far as it related to the aforesaid two constituencies of individual members and the cooperative societies, respondents 1 and 2 filed two separate election petitions Nos. COP/81(43) and COP/81(42) under section 144- of the Act read with Rule 74 of the Maharashtra Specified Cooperative Societies Elections to Committees Rules, 1971 challenging the validity of the aforesaid elections to the, Board of Directors of the Sangh. The said election petitions though challenged on a number of grounds were allowed by the Commissioner by his aforesaid judgment and order on the sole 'ground that the appellants were guilty of corrupt practice as envisaged by section 144-1(3) of the Act in that special vehicles were hired with the knowledge and consent of the appellants for the free conveyance of voters from Bhawani Mandap to the polling station and back and used as such on-the day of the poll. Section 144-1(3) of the, Act under which the election of the appellants has been declared void runs as follows :-

"144-1.....

(3) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or his election agent, or the use of such vehicle or vessel for the free conveyance of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station :

Provided that, the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to and from any polling station shall not be deemed to be a corrupt practice under this clause :

Provided further that, the use of any public transport vehicle or vessel or railway carriage by any elector at his own cost for the purpose of going to or coming from any polling station shall not be deemed to be a corrupt practice.

Explanation.-In this clause and in the next succeeding clause, the expression "vehicle" means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise."

4. It has also been held by this Court in Ch. Razik Ram v. Ch. J. S. Chouhan & Ors. ([1975] 4 S.C.C. 769 : A.I.R. 1975 S.C. 667 1975 Indlaw SC 592) that to establish the corrupt practice under s. 123(5) of the Representation of the People Act, 1951, it is necessary for an election petitioner to prove (i) that any vehicle or vessel was hired or was procured whether on payment or otherwise by the returned candidate or by his election agent or by any other person with the consent of the candidate or of his election agent; (ii) that it was used for the conveyance of the electors to or from any polling station and (iii) that such conveyance was free of cost to the electors. Failure to substantiate any one of these ingredients leads to the collapse of the whole charge. Let us now examine and scrutinize the evidence adduced in the case and find out whether the aforesaid ingredients stand proved in the instant case or not. Before doing so, it would be well to recall the principles regarding the standard of proof required to establish a corrupt practice which have

been consistently laid down in the decisions of this Court in Rahim Khan v. Khurshid Ahmed & Ors. ([1975] 1 S.C.R. 643 : (1974) 2 S.C.C. 660 : A.I.R. 1975 S.C. 290 1974 Indlaw SC 372); Ch. Razik Ram v. Ch. J. S. Chouhan & Ors. 1975 Indlaw SC 592 (supra); Hem Raj v. Ramji Lal & Anr. ([1975] 4 S.C.C. 671 : A.I.R. 1975 S.C. 382 1974 Indlaw SC 511 ; Om Prabha v. Charan Das ([1975] Supp. S.C.R. 107 1975 Indlaw SC 259); Amolak Chand Chhazad v. Bhagwandas Arya (Dead) & Anr. ([1977]3 S.C.C. 566 : A.I.R. 1977 S.C. 813 1976 Indlaw SC 441); Lakshmi Raman Acharya v. Chandan Singh & Ors. ([1977] 1 S.C.C. 423 : A.I.R. 1977 S.C. 587 1976 Indlaw SC 285); Narendra Madivalapa Kheni v. Manikrao Patil & Ors. ([1977] 4 S.C.C. 16 : A.I.R. 1977 S.C. 2171 1977 Indlaw SC 93) and Ramji Prasad Singh v. Rain Bilas Jha & Ors. ([1977] 1 S.C.C. 260 1998 Indlaw SC 1104) which one or the other of us has been a party. In Rahim Khan v. Khurshid Ahmed & Ors. 1974 Indlaw SC 372 (supra), it was observed by this Court as under :-

"We have therefore to insist that corrupt practices, such as are alleged in this case, are examined in the light of the evidence with scrupulous care and merciless severity. However, we have to remember another factor. An election once held is not to be treated in a light-hearted manner and defeated candidates or disgruntled electors should not get away with it by filing election petitions on unsubstantial grounds and irresponsible evidence, there by introducing a serious element of uncertainty in the verdict already rendered by the electorate. An election is a politically sacred public act, not of one person or of one official, but of the collective will of the whole constituency. Courts naturally must respect this public expression secretly written and show extreme reluctance to set aside or declare void an election which has already been held unless clear and cogent testimony compelling the Court to uphold the corrupt practice alleged against the returned candidate is adduced. Indeed election petitions where corrupt practices are imputed must be regarded as proceedings of a quasi-criminal nature wherein strict proof is necessary. The burden is therefore heavy on him who assails an election which has been concluded."

6. Another principle which is also well established is that it is unsafe in an election dispute to accept oral evidence at its face value unless it is backed by unimpeachable and incontrovertible documentary evidence. It would be profitable in this context to refer to the two decisions of this Court in Rahim Khan v. Khurshid Ahmed & Ors. 1974 Indlaw SC 372 (supra) and M. Narayana Rao v. G. Venkata Reddy & Ors. ([1977] 1 S.C.R. 490 1976 Indlaw SC 480) In Rahim Khan v. Khurshid Ahmed & Ors. 1974 Indlaw SC 372 (supra), it was held as follows :

"We must emphasize the danger of believing at its face value oral evidence in an election case without the backing of sure circumstances or indubitable documents. It must be remembered that corrupt practices may perhaps be proved hiring half-a dozen witnesses apparently respectable and disinterested, to speak to short of simple episodes such as that a small village meeting took place where the candidates accused his rival of personal vices. There is no X-ray whereby the dishonesty of the story can be established and, if the Court were gullible enough to gulp such oral versions and invalidate, elections, a new menace to our electoral system would have been invented through the judicial apparatus. We regard it as extremely unsafe, in the present climate of kilkenaycat election competitions and partisan witnesses wearing robes of veracity, to upturn a hard won electroral victory merely because lip service to a corrupt practice has been rendered by some sanctimonious witnesses. The Court must look for serious assurance, unlying circumstances or unimpeachable documents to uphold grave charges of corrupt practices which might not merely cancel the election result, but extinguish many a man's public life."

7. In M. Naroyana Rao v. G. Venkata Reddy & Ors. 1976 Indlaw SC 480 (supra), it was observed as follows :-

"A charge of corrupt practice is easy to level but difficult to prove. If it is sought to be proved only or mainly by oral evidence without there being contemporaneous documents to support it, court should be very careful in scrutinizing the oral evidence and should not lightly accept it unless the evidence is credible, trustworthy, natural and showing beyond doubt the commission of corrupt practice, as alleged."

13. The evidence of the last three witnesses who have attempted to support the election petitioners is clearly contradicted not only by Appasaheb Balwantrao Sawant (P.W. 3) and Ashok Mahadeo Chinde P.W. 4) but also by Shankar Bajirao Giakwad (P.W. 1) and Anantrao Yashwant Suryewanshi (P.W. 2) who have categorically stated hat fare at the rate of 50 paise per trip was charged from every passenger carried by, them from Bhawani Mandap to Market Yard and back on the day of poll and that no, one was carried free.

14. The evidence led by the election petitioners as analysed above falls far short of the requisite proof. It does not at all establish that vehicles were procured by the appellants or their election agents or with the consent of any one of them by any other person or that the same were used for free conveyance of the voters to or from the polling station. The Commissioner manifestly went wrong in law in his approach to and assessment of the evidence adduced in the case and arrived at unwarranted conclusions merely on the basis of probabilities completely disregarding the aforementioned well settled principles that election petitions alleging commission of corrupt practices are proceedings of a quasi criminal nature and the burden lies heavily on those who assail the election of a returned candidate to, prove the charge beyond reasonable doubt. It is also unfortunate that the Commissioner overlooked the glaring infirmity that the, election petitions suffered from inasmuch as they omitted to set out the material facts constituting the corrupt practice alleged to have been committed by the appellants and made no, mention of the essential ingredient that the electors were conveyed free of charge in the buses procured by the, appellants or their election agents or some other person with their consent. It appears, to us that in the roving inquiry that was launched upon, the election petitioners tried to clutch at the afore-said two applications made to the Kolhapur Municipal Transport by Appasaheb Balwantrao Sawant (P.W. 3) and Ashok Mabadeo Chinde (P.W. 4) and induced P.Ws 5 to 7 who appear to be their camp followers and sympathisers to weave a story which in view of the dictum laid down by this Court in Rahim Khan v. Khurshid & Ors. 1974 Indlaw SC 372 (supra) and followed in Kanahaiyalal v. Mannalal & Ors. ([1976] 3 S.C.C. 646 1976 Indlaw SC 123), Amolak Chand Chhazad v. Bhagwandas Arya (Dead) & Anr. 1976 Indlaw SC 441 (supra) and Mohd. Yasin Shah v. Ali Akbar Khan ([1977] 2 S.C.C. 23 1976 Indlaw SC 142) cannot be easily swallowed in absence of incontrovertible evidence and contemporaneous written complaints to the concerned authorities. May be P.Ws. 5 to 7 are not liars but, as already observed, their testimony falls far short of the compelling degree of proof. Thus we find it extremely difficult on the material on the record to bold that the charge of corrupt practice levelled against the appellants is made out. Accordingly we allow the appeals and set aside the impugned judgment and order but leave the parties to bear their own costs.

Appeals allowed.

Chintapalli Agency Taluk Arrack Salesco-Operative Society Lt v Secretary (Food And Agriculture) Govt. Ofandhra Pradesh, Et

Bench	P.K. Goswami, P.N. Shingal, Jaswant Singh
Where Reported	1977 Indlaw SC 107; (1977) 4 SCC 337; AIR 1977 SC 2313; [1978] 1 S.C.R. 563; 1977 UJ 651
Case Digest	**Summary:** Administrative - Andhra Pradesh Co-operative Societies Act, 1964, ss. 2, 3, 76 and 77 - Whether order passed by Govt. in revision u/s. 77 of Act is invalid since no opportunity was given to appellant for making his representation? - Held, minimal requirement u/s. 77(2) is a notice informing opponent about application and affording him an opportunity to make his representation against whatever has been alleged in his petition - It is true that a personal hearing is not obligatory but minimal requirement of principles of natural justice which are ingrained in s. 77(2) is that party whose rights are going to be affected and against whom some allegations are made and some prejudicial orders are claimed should have a written notice of proceedings from authority disclosing grounds of complaint or other objection prefer ably by furnishing a copy of petition on which action is contemplated in order that a proper and effective representation may be made - This minimal requirement can no on account be dispensed with by relying upon principle of absence of prejudice or imputation of certain knowledge to, party against whom action is sought for - Impugned order of Govt. is invalid being in teeth of s. 77(2) of Act and in violation of principles of natural justice and High Court should have quashed same u/art. 226 of Constitution - Hence judgment of HC as well as order of Govt. dated 4-12-1976 are set aside - (B) Whether Registrar was competent to entertain revision petition? - Held, Explanation in sub-s. (2) of s. 76 provides that Registrar includes Addl. Registrar, Joint Registrar, District Collector and Special Cadre Deputy Registrar working as Personal Asst. to Collector, but not Deputy Registrar of Co-operative Societies in charge of Divisions - Thus under scheme of Act, 'any other person' appointed u/s. 3 (1) on whom Govt. confers powers u/s. 3 (2) is not equated with Registrar - It is manifest that Deputy Registrar is an officer subordinate to Registrar for all purposes and has to act under supervision of Registrar - Power u/s. 77 is not conferred on Deputy Registrar whereas power u/s. 16 along with some other powers is conferred on Deputy Registrar - S. 77 provides that Registrar may of his own motion or on an application made to him call for and examine record of any officer subordinate to him in respect of any proceeding, not being a proceeding wherefrom appeal lies to Tribunal u/s. 76(1) to satisfy himself as to regularity of such proceeding, or correctness, legality or propriety of any decision passed

	or order made therein and pass any of appropriate orders specified in s. 77(1) - This power of Registrar is in accord with preeminent position accorded by Act to Registrar under whose supervision 'every other person appointed u/s. 3(1)' may function and act - Further held, it is therefore, not correct that Registrar could not exercise power u/s. 77 in examining correctness, legality or propriety of proceedings initiated by Deputy Registrar u/s. 16(5) of Act - Appeals allowed.

Case No : Civil Appeal No. 503-504 of 1977. Appeals by Special Leave from the Judgment and Order dated 27-1-77 of the Andhra Pradesh High Court in Writ Petitions Nos. 3967 and 3987/76 respectively.

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

1. Chintapalli Agency Taluk Arrack Sales Co- operative Society Ltd. and the Paderu Taluk Tribal Arrack Sales Co-operative Society Ltd. were registered as Co- operative Societies by the Deputy Registrar of Co-operative Societies, Yelamanchili. The question raised in this case by these two Societies has been decided by a common judgment of the High Court of 27th January, 1977. It is sufficient to state the facts appertaining to Chintapalli Agency Taluk Arrack Sales Co-operative Society Ltd. (briefly the appellant) as these are common.

2. The appellant was registered by the Deputy Registrar of Co- operative Societies, Yelamanchili, on 26th September, 1975. The area of operation of the appellant was provided in its bye-laws was for the entire taluk with a view to grant arrack licences to it in respect of all the arrack shops within the said taluk. There was, however, an infection of the cooperative movement and it appears that trials in the various villages in the taluk were also encouraged by the Cooperative Department to form their own village cooperative societies and to ask for grant of licences of their village shops in favour of the respective village societies instead of granting all the licences of the taluk to a single society, such as the appellant. With this purpose of initiating them into the liquor trade, the village societies were registered on 4th October, 1975.

3. Having thus registered the village co-operative societies (briefly the village societies), the Deputy Registrar of Co- operative Societies gave a notice to the appellant u/s. 16(5) of the Andhra Pradesh Co-operative Societies Act, 1964, calling upon it to, amend its bylaws so as to restrict its area of operation only to the taluk head- quarters.

18. In the present case it is true the power u/s. 16 is that of the Registrar but the Deputy Registrar exercises that power as empowered by the Government but always "under the general superintendence of the Registrar". Again, under s. 76(2) any order passed in pursuance of the power so exercised u/s. 16 is appealable to the Registrar as an order passed by "any other officer" appointed u/s. 3(1). The scheme of the Consolidation Act which this Court had to deal with in Roop Chand's case 1962 Indlaw SC 274 (supra) is different from that of the Co-operative Act. The submission of counsel that the Registrar's order in revision is a nullity is devoid of substance.

19. As mentioned earlier in the judgment the Government did not give any notice communicating to the appellant about entertainment of the application in revision preferred by the respondents. Even though the appellant bad filed some representations, in respect of the matter, it would not absolve the Government from loving notice to the appellant to make the representation against the claim of the respondents. The minimal requirement under s. 77(2) is a notice informing the

opponent about the application and affording him an opportunity to make his representation against whatever has been alleged in his petition. It is true that a personal hearing is not obligatory but the minimal requirement of the principles of natural justice which are ingrained in s. 77(2) is that the party whose rights are going to be affected and against whom some allegations are made and some prejudicial orders are claimed should have a written notice of the proceedings from the authority disclosing grounds of complaint or other objection preferably by furnishing a copy of the petition on which action is contemplated in order that a proper and effective representation may be made. This minimal requirement can no on account be dispensed with by relying upon the principle of absence of prejudice or imputation of certain knowledge to, the party against whom action is sought for.

20. It is admitted that no notice whatever had been given by the Government to the appellant. There is, therefore, clear violation of s. 77(2) which is a mandatory provision. We do not agree with the High Court that this provision can by-passed by resort to delving into correspondence between the appellant and the Government. Such non-compliance with a mandatory provision gives rise to unnecessary litigation which must be avoided at all costs.

21. The impugned order of the Government is invalid being in the teeth of s. 77(2) of the Act and in violation of the principles of natural justice and the High Court should have quashed the same u/art. 226 of the Constitution. We, therefore, set aside the judgment of the High Court as well as the order of the Government dated 4th December, 1976. Since we are allowing these appeals by setting aside the order of the Government, we express no opinion as to whether the Government in exercising revision power u/s. 77 of the Act was competent to issue directions to the Excise Department in the matter of settlement of arrack shops. It was submitted, however, that there was no direction in the order which was only by way of 'request" and suggestion. We are, however, unable to accept this submission as correct. Any "request" of the Government to a subordinate authority is tantamount to a positive direction or order and it will be difficult for the subordinate authority to disregard the same.

22. Normally we would have remanded the revision petition to be disposed of by the Government in accordance with law and in the light of this judgment but since the period of the arrack licences will expire on 30th September, 1977, no useful purpose would be served by a remand. It will however, be open to the Government to notify its policy with regard to the settlement of arrack shops in future in such appropriate manner as it may deem fit.

This judgment will govern both the appeals. Both the appeals are allowed, but there will be no. order as to costs,.

Appeals allowed.

Raj Rani & Ors. Etc. v Delhi Administration & Ors.

Bench	A.N. Ray, M. Hameedullah Beg, Jaswant Singh
Where Reported	1976 Indlaw SC 254; (1977) 2 SCC 314; AIR 1977 SC 1900; [1977] 2 S.C.R. 371
Case Digest	**Summary:** Delhi Co-operative Societies Rules, 1973, rr. 24, 25 and 30 - Bombay **Cooperative Societies Act**, 1925 - Society - Membership - Formalities - As to date of an application, time for deposit fee and qualifying share etc. - If mandatory - Held, cannot be disregarded - Order Accordingly.

Case No : ORIGINAL JURISDICTION: Writ petition No. 340 of 1972. (Under article 32 of the Constitution of India).

The Judgment was delivered by: Ray, J.

1. This Court on 29 August, 1974 appointed Shri Debabrata Mookerjee Chairman to convene, fix the date and hold the meeting of New Friends Cooperative House Building Society Ltd. referred to as the Society in accordance with the provisions of the Delhi Co-operative Societies Act, 1972. This meeting was directed to be held for the purpose of electing the members of the New Managing Committee. The Chairman was directed to look into each and every disputed question of membership. The Chairman was further directed to decide whether the persons had been rightly or wrongly declared to be defaulters. The order further directed that if the Chairman came to the conclusion that the person had been wrongly declared to be a defaulter, the Chairman would include him or her in the list of members. The Chairman was also asked to give effect to all orders of this Court already made in regard to persons who were declared defaulters and who according to orders of this Court on payment of moneys are not and cannot be treated defaulters. The Chairman was asked to go into cases where money had been sent and not accepted. If the Chairman came to the conclusion that money had been wrongly not accepted, the Chairman would decide the same in accordance with Rules and Bye-laws of the Society. There are further details in the order dated 29 August, 1974.

3. On 6 July, 1971 the Lt. Governor passed an award directing the Society to pay Rs.22 lakhs to the Delhi Administration. On 9 July, 1971 the Lt Governor by a notification removed the elected Managing Committee and appointed a **nominated' Managing Committee under Rule 56 of the Rules made under the Bombay Cooperative Societies Act, 1925 hereinafter referred to as the Bombay Act which applied to Delhi. The term of the Managing Committee was for one year.**

4. On 23 October, 1971 the nominated Managing Committee passed a resolution to make the award rule of the Court. On 18 December, 1971 the nominated Managing Committee passed a resolution for having direct sub-leases. On 22 January, 1972 the nominated Managing Committee called for more funds. On 5 July, 1972 the Lt. Governor issued second notification extending the term of the nominated Managing Committee by two years.

5. The Society was the subject matter of two writ petitions. 287 members of the Society filed writ petition No. 340 of 1972 hereinafter referred to Raj Rani's petition. The members challenged the vires of Rule 56 of the Society on the ground that the rule was ultra rites s. 71 of the Bombay Act and further that the rule was bad on account of excessive delegation. The petitioners contended that action under Rule 56 could not. be taken without complying with the provisions of section 46A of the Bombay Act which was applicable to. Delhi at the relevant time. The petitioners also challenged some notifications on the ground that the Lt. Governor having exercised his powers once could not extend the term,

6. In short, it was said that the power of the Lt. Governor was exhausted. The other challenges were that the notifications were not speaking order and were made malafide. The broad challenge in the petition was against the extension of term of the Managing Committee. On 29 August, 1972 Rule Nisi was issued.

2. The new Managing Committee shall send to all persons referred to in sub-paragraphs (a) to (e)of paragraph 37 of Mr. Mookerjee's report, through Mr. Mookerjee, a letter stating that membership fee and the amount of qualifying share necessary to become a member of the Society and also copies of this order as well as the appropriate forms of application for membership of the Society and of the affidavits to be sent by the applicants to the new Managing Committee within one month from the date of this order.

3. Each person referred to in sub-paragraphs (a) to (e) of paragraph 37 shall, if he desires to have any plot allotted to him, apply for membership of the Society. All such applications for membership of the Society shall be sent to Mr. Mookerjee within 30 days. from the date of receipt of the documents referred to in the next preceding paragraph hereof. If any application is not received by Mr. Mookerjee within the said period, or if the affidavit referred to in the next preceding paragraph is not enclosed with the application, or if any application or affidavit be found by Mr. Mookerjee to be not in compliance with the form of the application and the affidavit sent to the applicant, Mr. Mookerjee shah reject such application. Such rejection by Mr. Mookerjee shall be final.

4. All applications for membership along with affidavits, found by Mr. Mookerjee to be in order, will be forwarded by Mr. Mookerjee to the new Managing Committee upon the expiry of the said period of 30 days. Mr. Mookerjee will make a list of the persons whose applications are so forwarded by him to the new Managing Committee.

5. The new Managing Committee shall convene a meeting of the Committee within 30 days from the receipt of the applications along with the affidavits sent by Mr. Mookerjee to the new Managing Committee as aforesaid and pass a resolution accepting all such applicants for membership as members of the Society.

11. Thereafter, if any plot or plots remain to be allotted the allotment or allotments shall strictly be in accordance with the order of priority laid down in paragraph 37 of Mr. Mookerjee's report. Such allotments shall be made by Mr. Mookerjee by means of draw of lots first among the persons referred to in sub-paragraph (c) thereafter among those in sub-paragraph (d) and thereafter among those in sub-paragraph (e) of paragraph 37 of his report. Mr. Mookerjee will prepare a list of persons to whom the plots are so allotted and send copies of the list to the new Managing

Committee and the Delhi Development Authority and inform the persons to whom such allotments are made. Any person referred to in sub-paragraphs (c), (d) and (e) of Mr. Mookerjee's report who is allotted any plot shall within 14 days from the receipt of the communication from Mr. Mookerjee to the effect that a particular plot has been allotted to him enquire from the Delhi Development Authority as to the sum payable by him to the Delhi Development Authority as aforesaid and upon receipt of the reply from the Delhi Development Authority pay the sum to the latter by a Bank Draft within 15 days from the date of the receipt of the reply. In default of such payment the allotment to him will stand cancelled. In the event of any such cancellation, allotment may be made to next person, if any, in that subparagraph.

12. Each allotment of plot, referred to in this order, shall be in accordance with the application of each applicant for membership referred to in paragraph 3 hereof, that is to say, will not be entitled to any allotment of any land, the area whereof is different from the area mentioned in his application form.

13. If any person referred to in any of the sub-paragraphs of paragraph 37 of Mr. Mookerjee's report has already paid any money to the Society and proves such payment to Mr. Mookerjee, the money so paid and proved shall be appropriated towards payment of the amounts mentioned in paragraphs No. 7, 8 mad 11 hereof.

14. Upon allotment of land to any person mentioned in this Report each allottee shall pay to the Society a sum of Rs.1,000/- within one month from the date of such allotment as and by way of costs relating to these proceedings. In default of payment of such sum, the allotment to such person shall stand cancelled. In the event of any such default, the procedure laid down in paragraph 10 and 11 hereof shall be followed.

54. To sum up. In the event of any lucia default the allotment may be made to the next person, if any, in the sub-paragraph group of the defaulting persons and thereafter to next sub-paragraph group of persons.

55. No lease shall be granted to any allottee until and unless all directions contained in this order are fully complied with by him.

59. Writ Petition No. 340 of 1972, 1526 of 1973 and 286 of 1974 and all proceedings in these writ petitions are disposed of accordingly. All parties will pay and bear their own costs.

Petitions disposed of.

Narandas Karsondas v S.A. Kamtam and Another

Bench	A.N. Ray, M. Hameedullah Beg, Jaswant Singh
Where Reported	1976 Indlaw SC 345; (1977) 3 SCC 247; AIR 1977 SC 774; [1977] 2 S.C.R. 341
Case Digest	**Summary:** Land & Property - Transfer Of Property Act, 1882, ss. 54, 60 and 69 - Specific Relief Act, 1963 - Contract Act, 1872, s. 182 - Registration Act, 1908, s. 17 - Property - Mortgagee - Conferment of power to sell without intervention of Court - If he acts as agent of mortgagor while selling - Sale not complete by registration - Mortgagor, if has a right to redeem - Held, mortgagor has a right to redeem unless sale of property was complete by registration - Appeal dismissed.

Case No : C.A. No. 1020 of 1975

2. The question for consideration in this appeal is whether a mortgagor can exercise his right of redemption after a mortgagee under an English Mortgage with power to sell mortgaged property without the intervention of the court gives notice to the mortgagor to sell the mortgaged property by public auction and sells it by public auction. The appellant is the auction purchaser. The respondents are Flora Co-operative Housing Society in liquidation the mortgagors (hereinafter referred to as the Society) and the Maharashtra Co-operative Housing Finance Society Ltd., the mortgagee (hereinafter referred to as the mortgagee).

15. On 18 April 1975 the **Maharashtra State Cooperative Appellate Court dismissed the appeal and held that the dispute as initiated by the Society fell within the ambit of s. 97 of the Maharashtra Cooperative Societies Act**. The Appellate Court further held that there was no complete sale within the meaning of s. 69(3) of the Transfer of Property Act and the equity of redemption was therefore not lost. It was further held that the auction price was grossly inadequate. The auction sale was not a sale after a fair competition.

The Mortgage Deed provided inter alia as follows :-

"it is hereby agreed and declared that it shall be lawful for the mortgagees at any time without any further consent on the part of the mortgagors to sell the said mortgaged premises ..... The aforesaid power shall be deemed to be a power to sell or concur in selling the said mortgaged premises in default of payment of the mortgage money without the intervention of the court within the meaning of s. 69 of the Transfer of Property Act*."*

24. The provisions in the Transfer of Property Act relevant to the purpose of present appeal are sections 54, 60 and 69. U/s. 54 of the Transfer of Property Act sale is a transfer of ownership in exchange for a price paid or promised or part paid and part promised. Such transfer in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case

of a reversion or other intangible thing can be made only by a registered instrument. A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

s. 69 of the Transfer of Property Act deals with mortgagees' power of sale. Under the said s. 69(1)(c), a mortgagee has power of sale without the intervention of the Court where power is conferred by the mortgage deed and the mortgaged property or any part thereof was on the date of the execution of the mortgage deed, situate within the towns of Calcutta, Madras, Bombay or in any other town or area which the State Government, may, by notification in the official Gazette, specify.

27. The principal question in this appeal is whether the right to redemption has been extinguished by any act of the parties. The English decisions are based on the provisions of the Law of Property Act, 1925. In England sale is effected by the contract of sale, and in India an agreement for sale is not a sale or transfer of interest. In England, a mortgagee gets an equitable interest in the property. Under the English doctrine a contract of sale transfers an equitable estate to the purchaser. The Court does not assist the mortgagor by granting him a remedy unless there is collusion on the part of the mortgagee.

28. In India there is no equity or right in property created in favour of the purchaser by the contract between the mortgagee and the proposed purchaser. In India, there is no distinction between legal and equitable estates. The law of India knows nothing of that distinction between legal and equitable property in the sense in which it was under stood when equity was administered by the Court of Chancery in England. Under the Indian law, there can be but one owner that is, the legal owner. See Rani Chhatra Kumari v. Mohan Bikram (1931) 58 I.A. 279 1931 Indlaw PC 20.

33. It is erroneous to suggest that the mortgagee is acting as the agent of the mortgagor in selling the property. The mortgagor exercises his right under a different claim. The mortgagee's right is different from, the mortgagor's. The mortgagee exercises his right under a totally superior claim which is not under the mortgagor, but against him. In other words, the sale is against the mortgagor's wishes. Rights and interests of the mortgagor and the mortgagee in regard to sale are conflicting.

34. In view of the fact that only on execution of conveyance, ownership passes from one party to another it cannot be held that the mortgagor lost the right of redemption just because the property was put to auction. The mortgagor has a right to redeem unless the sale of the property was complete by registration in accordance with the provisions of the Registration Act.

35. The decision in Abraham Ezra Issac Mansoor v. Abdul Latiff Usman I.L.R. (1944) Bom. 549 1943 Indlaw MUM 115 is correct law that the right to redeem a mortgage given to a mortgagor u/s. 60 of the Transfer of Property Act is not extinguished by a contract of sale of the mortgaged property entered into by a mortgagee in exercise of the power of sale given to him under the mortgage deed. Until the sale is completed by a registered instrument, the mortgagor can redeem the mortgage on payment of the requisite amount.

36. The Madras decision reported in Meenakshi Velu & Ors. v. Kasturi Sakunthala & Ors. I.L.R. (1967) 3 Madras 161 on which counsel for the appellant relied is contrary to the view expressed in Ellappa Naiker and others v. Sivasubramania Maniagaran, (1936) 71 Madras Iaw Journal 607 1936 Indlaw MAD 327 and the aforesaid Bombay decision.

37. We are entirely in agreement with the Bombay decision. The Madras decision Meenakshi Velu & Ors. v. Kasturi Sakunthala & Ors. I.L.R. (1967) 3 Madras 161 which holds a contrary view on which counsel for the appellant relied is wrong.

38. For the foregoing reasons, the appeal is dismissed with costs to respondent no 1.

Appeal dismissed.

Nayagarh Co-Operative Central Bank Limited and v Narayan Rath and Another

Bench	Y.V. Chandrachud, P.N. Shingal
Where Reported	1976 Indlaw SC 627; (1977) SCC (L&S) 532; (1977) 3 SCC 576; AIR 1977 SC 112; 1977 (34) FLR 37; 1976 LabIC 1789
Case Digest	**Summary:** Constitution Of India, 1950, art. 136 - **Cooperative Societies Act** - Termination of service - Whether termination of service of 1st repondent by Registrar of Co-operative Societies, is valid? - Respondent 1 had been permitted to function for over thirteen years as secy. of bank and that his appointment as secy. was decided upon in a meeting over which Registrar of Co-operative Societies had himself presided - It was not open to Registrar to set aside respondent no. 1's appointment as a secretary after having acquiesced in it and after having, for all practical purposes, accepted appointment as valid - It is undesirable that appointments should be invalidated in this manner after a lapse of several years - Whether a writ petition maintainble against co-operative society? - Respondent no. 1 by his writ petition, was asking for relief not really against a co-operative society but in regard to order which was passed by Registrar, who was acting as a statutory authority in purported exercise of powers conferred on him by co. - Writ petition was in that view maintainable - Not a precedent - Appeal dismissed.

Case No : C.A. No. 126 of 1971

The Bank is the first appellant while its President is the second appellant in this appeal. Respondent No. 1, Narayan Rath, has filed the writ petition in the High Court asking that the aforesaid orders removing him for service should be set aside. Respondent No. 2 is the Registrar of Co-operative Societies, Bhubaneshwar, Orissa.

2. Respondent No. 1 was functioning as a Secretary of the Nayagarh Co-operative Central Bank from May 25, 1955 till May, 13, 1968. On August 21, 1968, the Registrar passed an order disapproving the appointment of respondent No. 1 as secretary of the Bank on the ground that he was functioning as a secretary without his approval and that he was not qualified to hold the post of a secretary. On August 26, 1968, the President of the Bank issued an order terminating the services of respondent No. 1 and that order was ratified by the Board of Management of the Bank on September 4, 1968. On August 28, 1968, the respondent filed a writ petition (O.J.C. No. 863 of 1968) challenging the order whereby his services were terminated. The High Court having allowed that writ petition, the appellants have filed this appeal by special leave of this Court.

4. The writ petition filed by respondent No. 1 could succeed, in our opinion, on the narrow ground that he had been permitted to function for over thirteen years as secretary of the Bank and that his

appointment as secretary was decided upon in a meeting over which the Registrar of Co-operative Societies had himself presided. The writ petition in substance is directed not against any order passed by the Cooperative Bank but against the order passed by the Registrar disapproving the appointment of respondent No. 1. as secretary of the Bank . It was not open to the Registrar, in our opinion, to set aside respondent No. 1's appointment as a secretary after having acquiesced in it and after having, for all practical purposes, accepted the appointment as valid. It is undesirable that appointments should be invalidated in this manner after a lapse of several years.

5. The High Court has dealt with the question whether a writ petition can be maintained against a co-operative society, but we are inclined to the view that the observations made by the high Court and its decision that such a writ petition in maintainable are not strictly in accordance with the decisions of this Court. We would have liked to go into the question for ourselves, but it is unnecessary to do so as respondent No. 1 by his writ petition, was asking for relief not really against a co-operative society but in regard to the order which was passed by the Registrar, who was acting as a statutory authority in the purported exercise of powers conferred on him by the Co-operative Societies Act.

   The writ petition was in that view maintainable.

6. We would like to observe that the judgment of the High court should not be treated as an authority for the proposition that a writ petition is maintainable against a co-operative society. That question shall have to be decided by the High Court as and when it arises in the light of the decisions of this Court.

7. The learned Advocate General made a statement at the Bar that respondent No. 1 has been removed from service after a disciplinary enquiry but that he has challenged that order by filing a writ petition in the High Court of Orissa. If that be so, the question as to whether a writ application can be maintained against a co-operative society can very appropriately be decided in the proceeding which is pending before the High Court. We will only repeat that the High Court will not treat its judgment of February 9, 1970 as a precedent of that question.

8. With these observations, we uphold the ultimate decision of the High court, though for different reasons, and dismiss this appeal. Appellant No. 1 will pay respondent No. 1 the costs of this appeal.

Appeal dismissed.

Ziley Singh, Etc. v Registrar, Cane Cooperative Societies,Lucknow And Ors.

Bench	A.N. Ray, K.S. Hegde, A.N. Grover
Where Reported	1972 Indlaw SC 90; (1972) 1 SCC 719; AIR 1972 SC 758; [1972] 3 S.C.R. 149; 1972 UJ 599
Case Digest	**Summary:** Corporate UP Co-operative Societies Rules, 1968, r.409 -CO-operative Societies Act, 1966, ss. 20, 29 and 32 - (A) Power of Registrar to interpret rule - Scope of r. 409 of 1968 Rules - (B) Election - For post of members of Management Committee of Co-operative Society - Mode of - Registrar held, has no power to interpret r. 409 - Registrar has equally no power to express view with regard to conduct of election and regulate voting rights by giving members more than one vote At an election of members of committee of management on member will have only one vote for constituency to which he belongs - Appeal dismissed.

Case No : Civil Appeal No. 547 of 1967.

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

1. These three appeals are by special leave. Civil Appeal No. 1533(N) of 1971 is by special leave against the judgment dated 18 September 1971 of the Arbitrator setting aside the election of the **Management Committee of the Cooperative Cane Development Union, Shamli in an election petition filed under rule 229(2) of the Co-operative Societies Rules, 1967 framed under the Uttar Pradesh Cooperative Societies Act, 1965. Civil Appeal No. 1797 of 1971 is by special leave against the order of the District Magistrate and Registrar, Co-operative Societies Sharanpur dismissing an appeal filed u/s. 98(i)(h) of the U.P. Cooperative Societies Act, 1965 against an order of the Arbitrator u/s. 70 and 71 of the U.P. Co-operative Societies Act. 1965** setting aside the election of the Sahkari Ganna Vikas Samiti Ltd., Iqbalpur, District Saharanpur. Civil Appeal No. 1798 of 1971 is against the order and judgment dated 16 September 1971 of the District Magistrate, Saharanpur dismissing an appeal u/s. 98(i)(h) of the U.P. Co-operative Societies Act, 1965 against the order of the Arbitrator u/ss. 70 and 71 of the U.P. Co-operative Societies Act, 1965 setting aside the election of ,the Sahkari Ganna Vikas Samiti Ltd., Lhaksar, District Saharanpur. Special Leave Petition (Civil) No. 3254 of 1971 is for leave to appeal against the order of the Registrar, Co-operative Societies in appeal u/s. 98(i)(h) against the order of the Arbitrator u/ss. 70 and 71 of the U.P. Co-operative Societies Act, 1965 setting aside the election of Sahkari Ganna Vikas Samiti, Sarsawa. Special Leave Petition (Civil) No. 3268 of 1971 is for leave to appeal against the order of the District Authority, Bulandsbahr setting aside the election of the Committee of Management of the Co-operative Cane Development Union Ltd. on an application under rule 229 of the U.P. Co-operative Societies Rules, 1968.

2. These matters raise a common question. These Co-operative 'Societies held their annual general meeting under the provisions of s. 32 of the Uttar Pradesh Co-operative Societies Act, 1965 (hereinafter called the Act). At the general meetings the members of the Committee of Management of the Society were elected by members of the Society. The, Registrar of the U.P. Co-operative Societies issued a circular dated 5 November 1969 interpreting rule 409 of the U.P. Co-operative Societies Rules, 1968 (hereinafter called the Rules) and laid down the principle that all the members of the general body "of the Co-operative Society would" exercise their right of vote in filling all the seats of elected Directors." The question in the present appeals is whether the Registrar had power to issue the circular interpreting rule 409 and secondly whether that interpretation is correct in terms of the Act and the Rules. the Act deals with Co-operative Societies and inter alia their members and their Committee of Management. The relevant sections for the purpose of present appeals and special leave petitions are sections 20, 29 and 32 of the Act. S. 20 of the Act speaks of vote of members.

7. The Shamli Cane Development Union Ltd., Shammli, U.P. was registered under the Co-operative Societies Act, 1912. It was deemed to be registered under the Act. The society had its bye-laws with regard to the formation of the committee of management and its election including the election of the Chairman and the Vice-Chairman. The bye-laws provided for a committee of management consisting of 14 members. The committee of management elects a Chairman and a Vice- Chairman. The delegates constituting the general body of the society are divided into 14 constituencies. Each constituency elects one Director. The delegates of the members of the society in a constituency elect a member of each single member constituency. The 14 members of the committee are elected on that basis whereby each delegate of each constituency exercises one vote for electing a member of that constituency.

12. The inherent idea is that such areas or interests will obtain representation. If membership is on territorial basis, the different areas will get representation according to the interest of such territories. Again, if occupational or vocational or professional tests are created for dividing groups such interests will have to be given suitable representation Representation is therefore with reference to areas or interests. Judged by these principles the impeached circular of the Registrar suffers from the vice of giving the members the right of 'casting vote in constituencies to which they do not belong. This strikes at the basic root of right of representation. This also reads as under the principle of one member one vote which is made into a rule of law in the Act. The words 'affairs of the society' cannot be equated with the Constituencies to give each member a right to vote for each constituency. That would defeat the purpose of section 20 and rule 409. The basic idea of a representative for each constituency depends on the mandate of the respective constituency and not of other constituencies. That is why section 20 of the Act speaks of, one member having one vote irrespective of shareholding. It means equality of votes, of members. The constitution of the committee of management is indisputably one of the affairs of the society. If each member exercises franchise with respect to the representation from his constituency he is not in any manner prevented from having a right to partake in the affairs of the society through a member elected from the constituency. Some reliance was placed by counsel for the appellants on rule 105 in support of the contention that every member would have one vote for each member of the committee of management. Rule 105 occurs in Chapter VII relating to meetings and speaks of matters before a committee being decided by a majority of votes of

the members present. That rule obviously has no reference to election but only to passing of resolution by majority at meetings. It is obvious that members of the committee of management will have the right to vote at all matters at the meeting and matters will be decided by a majority of votes. The impeached circular of the Registrar is illegal and unwarranted Registrar has no power to interpret rule 409. The Registrar has equally no power to express view with regard to conduct of the election and regulate the voting rights by giving the members more than one vote. The society is to frame rules for elections. Rules require the sanction of the Registrar. The rules and the bye-laws cannot be in derogation of the statute and statutory rules. At an election of members of the committee of management one member will have only One vote for the constituency to which he belongs.

13. The result is that the elections which were held following the circular of the Registrar are bad.

14. For these reasons the three appeals fail and are dismissed. The two special leave petitions are also dismissed. Parties will pay and bear their own costs.

Hindustan Paper Corporation Limited v Government Of Kerala And Others

Bench	E.S. Venkataramiah, M.P. Thakkar
Where Reported	1986 Indlaw SC 296; (1986) 3 SCC 398; AIR 1986 SC 1541; 1986 (2) CCC 689; 1986 (2) CompLJ 238; 1986(1) SCALE 870; [1986] 2 S.C.R. 581; 1986 (2) UJ 551
Case Digest	**Summary:** Constitution - Constitution of India, 1950 - Kerala Forest Produce (Fixation of Selling Price) Act, 1978, s. 6 - Question as to constitutional validity of s.6 o f the 1978 Act - Exemption to govt. companies and co-operative societies - Held, power not arbitrary and has to be exercised in public interest - Hence preference shown to govt. companies u/s.6 of the Act cannot be considered discriminatory as they stand in a different class altogether and the classification made between govt. companies and others for the purposes of the Act is a valid - Appeal allowed.

Case No : Civil Appeal No. 1871-76 of 1981.

The Judgment was delivered by: Venkataramiah, J.

1. In these appeals by special leave we are concerned with the question of constitutional validity of s. 6 of the Kerala Forest Produce (Fixation of Selling Price) Act, 1978 (Act 29 of 1978) (hereinafter referred to as 'the Act')

2. The appellant Hindustan Paper Corporation Ltd. is a company owned by the Central Government carrying on the business of manufacturing newsprint at its factory in the State of Kerala. Before its factory was established an agreement was entered into between the appellant Hindustan Paper Corporation Ltd. and the Government of Kerala on October 7, 1974 under which the Government of Kerala agreed to grant to the appellant the right of free use of water from the Muvattupuzha river for the purpose of manufacturing newsprint and also to make available annually to the appellant 1,50,000 tonnes of eucalyptus wood.

4. There is no prohibition of sale of forest produce at prices higher than the prices mentioned in the notification. S. 7 of the Act provides that 10 per cent of the amount obtained by the sale of forest produce after the commencement of the Act, subject to such rules as may be made under the Act, should be set apart for being utilised for the development of forests. S. 8 enables the Government to make rules for the purpose of carrying into effect the provisions of the Art. We are concerned in these cases with the validity of s. 6 of the Act which reads thus :

   "6. Exemption - The Government may, in the public interest, by notification in the Gazette, exempt the sale of any forest produce -

   (a) to any company owned by the Central Government or the Government of Kerala;

(b) not exceeding ten cubic meters, to any co- operative society registered or deemed to be registered under the Kerala Co-operative Societies Act, 1969 *(21 of 1969) from the provisions of section 5, subject to such conditions and restrictions as may be specified in the notification."*

10. In almost all the statutes by which the fiscal or economic interests of the State are regulated, provision for granting exemption in appropriate cases would have necessarily to be there and the power to grant exemption is invariably conferred on the Government concerned. The Legislature which is burdened with heavy legislative and other types of work is not able to find time to consider in detail the hardships and difficulties that are likely to result by the enforcement of the statute concerned. It has, therefore, now become a well-recognised and constitutionally accepted legislative practice to incorporate provisions conferring the powers of exemption on the Government in such statutes. Such exemptions cannot ordinarily be granted secretly. A notification would have to be issued and published in the Gazette and in the ordinary course it would be subject to the scrutiny by the Legislature. The power can be exercised only in the public interest as provided by the section itself. The validity of provisions conferring the power of exemption has been consistently upheld by this Court in a number of decisions commencing with the State of Bombay and Anr. v. F.N. Balsara, [1951] S.C.R. 682. 1951 Indlaw SC 63

In the circumstances of this case it cannot be said that the provision is either arbitrary or unreasonable even though the Government industries may be rivals in trade to the industries in the private sector. In Sher Singh v. Union of India & Ors., [1984] 1 S.C.R. 464 1983 Indlaw SC 152 this Court has upheld s. 47 (H) of the Motor Vehicles Act, 1939 under which a statutory preference is shown to a State Transport Undertaking. In Viklad Coal Merchant, Patiala & Ors. v. Union of India & Ors., [1984] 1 S.C.R. 657 1983 Indlaw SC 158, the preference shown to the Government in allotment of railway wagons for transporting coal has been upheld.

We may refer here to the decision of this Court in Fatehchand Himmatlal & Ors. v. State of Maharashtra etc., [1977] 2 S.C.R. 828 1977 Indlaw SC 162 where it is observed at page 849 thus :

"There is no merit in the plea. Liabilities due to government to local authorities are not tained with exploitation of the debtor. Likewise, debts due to banking companies do not ordinarily suffer from the overreaching, unscrupulousness or harsh treatment. Moreover, financial institutions have, until recently, treated the villages and urban worker and petty farmer as untouchables and so do not figure in the picture. To exempt the categories above referred to is reasonable."

In Orient Weaving Mills (P) Ltd. v. Union of India, [1962] Suppl. 3 S.C.R. 481 1962 Indlaw SC 233 this Court upheld the exemption granted in favour of power- loom weavers in a cooperative society from the levy of central excise duties. We do not find any substance in the contention that the provision granting exemption in favour of Government companies and the co-operative societies as stated above is unconstitutional. We must, however, express our disapproval of one of the reasons given by the High Court for striking down s. 6 of the Act, namely, "private sector consumers generally show more concern in the speedy production of goods, in the finished products and in the sale of them which is in public interest as well." The above observation is not warranted and is presumably based on the personal opinion of the learned judges. It is misleading and cannot in the circumstances of the case serve as a prop to support the contention of the respondents.

13. Therefore, the decision of the High Court that s. 6 of the Act was violative of Art. 14 of the Constitution is liable to be set aside. We do not also approve of the finding of the High Court that even assuming that the section was valid, the notification issued there under was invalid. It may be stated here that the writ petitioners on whom the burden lay have not given any valid reason as to why we should hold that the impugned notification was not in the public interest.

As mentioned earlier the appellant, Hindustan Paper Corporation Ltd. established its factory after entering into an agreement with the State Government as regards the regular supply of raw-material from the forests in the State of Kerala for production of newsprint and that the said factory was employing a large labour force. The other two concerns in whose favour the exemption is granted by the impugned notification are the concerns of Kerala Government itself. We have no material in this case to hold that the impugned notification was not in the public interest. We accordingly set aside the finding recorded by the High Court on the validity of the notification also. In the result, we allow the appeals, set aside the judgment of the High Court and dismiss the writ petitions filed in the High Court. There shall, however, be no order as to costs.

Appeals allowed.

Sheonandan Paswan v State of Bihar and Others

Bench	V.D. Tulzapurkar, Baharul Islam, R.B. Misra
Where Reported	1982 Indlaw SC 72; (1983) SCC (Cr) 224; (1983) 1 SCC 438; AIR 1983 SC 194; 1983 CRLJ 348; 1983 CrLR(SC) 58; 1982(2) SCALE 1241; [1983] 2 S.C.R. 61
Case Digest	**Summary:** Criminal Procedure Code, 1973, ss. 24(8) and 321 - Appointment of Special Public Prosecutor without cancelling existing Special Public Prosecutor - Competency of latter Public Prosecutor to withdraw from prosecution - Former Public Prosecutor never appeared before Special Judge at any stage of hearing and was never in charge of Case Nor in actual conduct of case - After allotment of case latter was in charge of case and was actually conducting case - Appeared in case at least on 4 occasions before Special Judge - Held, appointment of latter prosecutor without termination of appointment of former cannot be said to be legally invalid and doctrine of de facto jurisdiction which has been recognised in India will operate in this case - Latter Public Prosecutor is competent officer to apply for withdrawal from prosecution under s. 321 of CrPC.

Case No : CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 241 of 1982. Appeal by Special leave from the judgment and order dated the 14th September, 1981 of the Patna High Court in Criminal Revision No. 874 of 1981.

2. After obtaining the requisite sanction from the Governor on 19th February, 1979 a charge-sheet in Vigilance P. S. Case 9 (2) 78 was filed by the State of Bihar against Respondent No. 2 (Dr. Jagannath Misra), Respondent No. 3 (Nawal Kishore Sinha), Respondent No. 4 (Jiwanand Jha) and three other (K. P. Gupta, since deceased, N. A. Haidari and A. K. Singh, who later became approvers) for offences under ss. 420/466/471/109/120-B I.P.C. and under s. 5(1) (a), 5(1) (b) and 5(1) (d) read with s. 5(2) of the Prevention of Corruption Act, 1947. Inter alia, the gravamen of the charge against the respondent No. 2 was that at all times material he was either a Minister or the Chief Minister of Bihar and in that capacity by corrupt or illegal means or by otherwise abusing his position as a public servant, he in conspiracy with the other accused and with a view to protect Nawal Kishore Sinha in particular, sought to subvert criminal prosecution and surcharge proceedings against Nawal Kishore Sinha and others, and either obtained for himself or conferred on them pecuniary advantage to the detriment of Patna Urban Cooperative Bank, its members, depositors and creditors and thereby committed the offence of criminal misconduct under s. 5(1) (d) read with s.5(2) of the Prevention of Corruption Act, 1947 and in that process committed the other offences specified in the charge-sheet, including the offence of forgery under s. 466 I.P.C.

   Cognizance of the case was taken on 21st November, 1979 by the learned Chief Judicial Magistrate-cum-Special Judge (Vigilance), Patna, who issued process against the accused but

before the trial commenced the State Government, at the instance of Respondent No.2, who in the mean time had come to power and had become the Chief Minister, took a decision in February 1981 to withdraw from the prosecution for reasons of State and Public Policy. Though initially Shri Awadhesh Kumar Dutt, Senior Advocate, Patna High Court, had been appointed as a Special public prosecutor by the previous Government for conducting the said case, the State Government (now headed by Respondent No. (2) without cancelling Shri Dutt's appointment as Special Public prosecutor, on 24th February, 1981 constituted a fresh panel of lawyers for conducting cases pertaining to Vigilance Department and Shri Lalan Prasad Sinha, one of the Advocates so appointed on the fresh panel was allotted the said case and was informed of the Government's said decision and on 26th March 1981 he was further requested to take steps for the withdrawal of the case after he had considered the matter and satisfied himself about it. On 17th June, 1981 Shri Lalan Prasad Sinha made an application under s. 321 Cr.P.C. 1973 to the Special Judge seeking permission to withdraw from the prosecution of Respondent Nos. 2, 3 and 4 in the case on four grounds, namely,

(a) Lack of prospect of successful prosecution in the light of the evidence,

(b) Implication of the persons as a result of political and personal vendetta,

(c) Inexpediency of the prosecution for the reasons of the State and public policy and

(d) Adverse effects that the continuance of the prosecution will bring on public interest in the light of the changed situation; and the learned Special Judge by his order dated 20th June, 1981 granted the permission.

A Criminal Revision (No. 874/1981) preferred by the appellant against the said order was dismissed in limine by the High Court on 14th September, 1981. It is this withdrawal from the prosecution permitted by the learned Special Judge and its confirmation by the High Court that are being challenged in this appeal.

23. The facts giving rise to the launching of the aforesaid prosecution against respondent Nos. 2, 3 and 4 and three others may be stated The Patna Urban Co-operative Bank was registered in May 1970 and commenced its banking business with Nawal Kishore Sinha as its Chairman, K. P. Gupta as its Honorary Secretary, M. A. Haidari as its Manager and A. K. Singh as a Loan Clerk (who also worked as the care-taker and Personal Assistant to N. K. Sinha). A Loan Sub-Committee consisting of N. K. Sinha the Chairman, K. P. Gupta the Secretary and one Shri Purnendu Narain, an Advocate used to look after the sanctioning and granting of loans. Under its bye-laws the Chairman was the ultimate authority in regard to all the functions of the Bank and the Honorary Secretary along with the Chairman had to exercise supervisory control over all the activities of the Bank while the Manager was concerned with its day to day working. Dr. Jagan Nath Mishra, then an M. L. C. and who subsequently became a Minister and the Chief Minister in the Bihar Cabinet helped the Bank and its Chairman (N. K. Sinha being his close associate and confidant) in several ways including mobilisation of resources for the Bank. Separate audits into the working of the Bank were conducted by the Reserve Bank of India as well as by the Co-operative Department of the Bihar Government for the years 1972-73 and 1973-74 during the course of which a large number of irregularities (such as non maintenance of cash books in a proper manner, grant of over draft facility without current account etc illegal practices, acts of

defalcations and malversation of funds of the Bank came to light; in particular the Audit Reports disclosed that huge amounts running into lakhs of rupees had been squandered away by:

(a) giving loans to non-members,

(b) giving loans even without application, agreement or pronote,

(c) giving loans without hypothecations,

(d) giving short term loans instead of realising cash on sale proceeds even for hypothecated goods,

(e) giving loans to the same persons in different names and

(f) giving loans to fictitious persons and non-existing firms or industries etc. and the audit team of the Reserve Bank in its report came to the conclusion that the Chairman Shri Nawal Kishore Sinha and others were responsible and accountable for 'bad loans' to the tune of Rs. 12 lakhs and 'misappropriation and embezzlement' to the tune of Rs. 25 lakhs. On the basis of these audit reports at the instance of the Reserve Bank the management of the Bank through its Board of Directors was superseded on 10th of July, 1974 under the orders of the Registrar, Co-operative Societies, and Nawal Kishore Sinha the Chairman and other Directors on the Board were removed and an officer of the Co-operative Department, Government of Bihar, was appointed as the Special Officer to look after the affairs of the Bank.

24. On the strength of the aforesaid Audit Reports the Registrar, Co-operative Societies, agreeing with the Joint Registrar, put up a note dated 4.11.1974 to the Secretary, Co-operative saying that prima facie charges of defalcations, conspiracy, etc. were made out against the officials of the Bank and legal action be taken against them after taking the opinion of the Public Prosecutor; the Secretary by his note dated 7.11.1974 sought the opinion of the Law Department on 18.11.1974 the Law Department recorded its opinion in the relevant file (being File No. IX/Legal-9/75 of the Department of Co-operation) that a case of conspiracy and criminal breach of trust against the loans and office bearers of the Bank was prima facie made out on 16.12.1974 a draft complaint was prepared by the Assistant Public Prosecutor, Patna for being filed before the Chief Judicial Magistrate, Patna on the same day (16.12.1974) an office noting was made by Shri Bimal on the file suggesting that the Law Department's advice on the draft complaint be obtained, which course of action was approved by the Secretary, Co-operation on 16.12.1974, by the Minister for Co-operative (Shri Umesh Prasad Verma) on 1.1.1975 and by the then Chief Minister (Shri A. Gaffoor) on 2.1.75.

Accordingly, the file was sent to the Law Department which reiterated its earlier advice for launching the prosecution and on the file being received back on 18.1.1975, the Secretary Co-operation endorsed the file on 21.1.1975 to A. P. P. Shri Grish Narain Sinha for necessary action i.e. to file the prosecution (vide the several notings made in File No. IX/Legal-9/75-relied upon by the respondents). In other words by 21.1.1975 the stage was set for launching a criminal prosecution against the loanees and the members of the Board of Directors of the Bank with Nawal Kishore Sinha as the principal accused and a complaint petition in that behalf duly approved by the Law Department and signed by Shri Jagdish Narain Verma, District Co-operative Officer, Patna on 25.1.1975 was also ready with the A. P. P. for being filed in the Court. But before the A.

P. P. could file the complaint, Respondent No.2 (Jagan Nath Mishra, Agriculture and Irrigation Minister) wrote a buff-sheet note dated 24.1.1975 asking the Secretary, Co-operation to send the concerned file along with Audit Reports to him before the institution of the Criminal case.

25. Accordingly, after obtaining the approval of the then Co-operative Minister and the then Chief Minister for sending the file to respondent No. 2, the Secretary recalled the file and other papers from the A. P. P. on 28.1.1975 and on 24.2.1975 he sent the file to the Law Minister en route the then Chief Minister. It may be stated that under the Notification dated 30th April, 1974 issued under Art. 166 (3) of the Constitution read with Rule 5 of the Rules of Executive Business of the State of Bihar, the then Chief Minister Shri Abdul Gaffoor was inter alia holding the portfolio of Law also but according to the affidavit of Shri Neelanand Singh dated 19th October, 1982 filed on behalf of Respondent No.1 before us Shri A. Gaffoor as per his note dated 29-8-1974 addressed to the Chief Secretary and circulated to various departments had, with a view to lessen his heavy burden, requested Respondent No. 2 (Jagan Nath Mishra) to look after the work of the Law Department and as such endorsing the file on 24.2.1975 'to the Law Minister en-route the Chief Minister' would mean that the file must have gone to respondent No. 2 as there was no other person holding the Law portfolio excepting the Chief Minister himself under the Notification dated 30th April, 1974.

It is claimed by the appellant that Respondent No. 2 sat tight over the file for over two and half months till he became the Chief Minister whereas it is suggested on behalf of the Respondents that though the file was called for by Respondent No. 2 on 24-1-1975 it did not actually reach him till middle of May, 1975. However, ignoring the aforesaid controversy, the fact remains that the filing of the complaint got postponed from 24-1-1975 (the date of Buff-sheet order of Respondent No. 2) till middle of May, 1975 and in the meantime on 11.4.1975 Respondent No. 2 replaced Shri A. Gaffoor as the Chief Minister and in the middle of May 1975 as the Chief Minister Respondent No. 2 passed two orders which are very eloquent.

26. On 16-5-1975 in the File No. IX/Legal-9/75 respondent No. 2 wrote out an order in his own hand in Hindi concerning the action to be taken against Nawal Kishore Sinha and others, the English rendering of which, according to the respondents, runs thus:

"Much time has passed. On perusal of the File it appears that there is no allegation of defalcation against the Chairman and the Members of the Board of the Bank. Stern action should be taken for realisation of loans from the loanees and if there are difficulties in realisation from the loanees surcharge proceedings should be initiated against the Board of Directors. The normal condition be restored in the Bank after calling the Annual General Meeting and holding the election.

(Sd) Jagan Nath Mishra

16-5-1975"

27. In the margin opposite the above order the seal containing the despatch entry originally showed 16-5-1975 as the date on which the file was despatched from the Chief Minister's Secretariat to the Co-operative Department after Respondent No. 2 had made the above order. It is clear that the first part of the above order regarding the criminal involvement is in teeth of the Audit Reports of the Reserve Bank and the Co-operative Department and contrary to the opinion of the Law Department it thwarted the criminal prosecution against Shri Nawal Kishore Sinha and others,

while under the latter part it still exposed them to civil liability by way of surcharge proceedings to be adopted against them in default of realisations from the loanees but as even the loans had been advanced mostly in fictitious names and were actually utilised by the office-bearers themselves the prospect of civil liability loomed large before them. Realising this position Respondent No. 2 irregularly-there being no endorsement nor any seal showing inward receipt of the File by Chief Minister's Secretariat-got hold of the File again and passed another order in his hand on a piece of paper in Hindi under his signature but bearing an earlier date 14.5.1975 and had it pasted over the earlier order dated 16.5.1975 in the File so as to efface the same completely, and the date of despatch 16.5.75 in the despatch seal appearing in the margin was altered to 14.5.1975 by over writing; an English rendering of this second order, addressed to the Minister for Co-operation, runs thus:

"Please issue order for restoring the normal condition in the Bank after holding Annual General Meeting.

(Sd) Jagan Nath Mishra

14-5-1975"

It is undisputed that Respondent No. 2 did pass the aforesaid two orders in his own hand in Hindi, the first on 16-5-1975 and the second subsequently in point of time but ante-dated it to 14-5-1975 and had it pasted over the first order completely effacing that order. Such conduct on his part has been explained only on the basis that as the Chief Minister he had the authority and power to revise or review his earlier order and that it is the usual practice prevailing in the Patna Secretariat that whenever any order passed earlier is sought to be revised or reviewed by the same officer or Minister it is done by pasting it over by a piece of paper containing the revised orders (Para 8 of the counter affidavit of Shri Bidhu Shekhar Banerjee dated 17-3-1982 filed on behalf of respondent No. 1). Even with this explanation the admitted position that emerges is that the aforesaid two orders were passed by respondent No. 2, that the second order was ante-dated to 14-5-1975 and that the same was pasted on the file so as to efface completely the earlier order. In other words in substance and reality the entire order passed by Respondent No. 2 in the concerned file on 16-5-1975 which contained 4 directions;

(a) there being no allegation of defalcation against the Chairman, the Members of the Board no criminality was involved,

(b) stern action for realisation of the loans from the loanees be taken,

(c) failing which surcharge proceedings against the Board of Directors be initiated and

(d) restoration of normal condition in the Bank be brought about by calling Annual General Meeting and holding the election, was wiped out and completely substituted by the second order which merely retained the last direction (item (d) above) of the first order.

28. In effect under the second order both the criminal as well as civil liability of Nawal Kishore Sinha and others were given a go-bye, notwithstanding the Audit Reports of the Reserve Bank and the Co-operative Department and Respondent No. 2 merely directed that the normal condition in the Bank be restored and this result was brought about by the second order which was ante-dated with the obvious fraudulent intent of nullifying or rendering nugatory any action

that could have been or might have been taken (even if not actually taken) pursuant to the first order after the file had left the Chief Minister's Secretariat on 16.5.1975, that being the most natural consequence flowing from the act, of ante-dating the second order. It is not necessary that the fraudulent intent should materialise it is enough if act of ante-dating is done with the fraudulent intent. This being a case of inter-departmental orders, the first order dated 16th May, 1975 passed by Respondent No. 2 became operative as soon as the concerned file left the Chief Minister's Secretariat and as such the same could be revised or reviewed by Respondent No. 2 by officially and regularly calling back the file and by passing a fresh order subsequent in point of time modifying or cancelling the earlier order but surely not by the crude method of pasting the subsequent order over the first so as to efface the same completely and in no event by ante-dating it. It is true that mere ante-dating a document or an order would not amount to an offence of forgery but if the document or the order is antedated with oblique motive or fraudulent intent indicated above (without the same actually materialising) it will be forgery.

30. On the question as to whether the effect of either of the aforesaid two orders was to thwart; scuttle or subvert criminal prosecution and surcharge proceedings or not and what was intended by Respondent No. 2 when he passed those orders would be clear from his further conduct evidence by subsequent notings and orders passed by him till he went out of power in 1977 and in this behalf it would be desirable to delineate the course which the subsequent events took in regard to criminal prosecution as well as surcharge proceedings separately. As regards criminal prosecution, it appears that the Co-operative Department wanted to go ahead with it and in that behalf by his next noting dated 28-6-1975 the then Minister for Co-operation sought directions from the Chief Minister as to what should be the next course of action in the matter of filing the complaint and Respondent No. 2 as the Chief Minister passed the following order on the file on 30-6-1975:

31. In the wake of these events Respondent No. 2 as the Chief Minister passed an order on 4-8-1976 for launching criminal prosecutions but even there he directed that prosecutions be launched against some of the office-bearers and loanees of the Bank including Shri K. P. Gupta, the Hony, Secretary, Shri M. A. Haidary, the Manager and Shri K. P. Gupta, the Loan Clerk but not against Nawal Kishore Sinha who was excluded from being arraigned as an accused and accordingly 23 criminal cases were filed against the aforesaid office-bearers and loanees. This order is another indication that even with all the furore which the Banks affairs had created Respondent No. 2 wanted to and did protect and save Shri Nawal Kishore Sinha from criminal prosecution by excluding him from the array of accused persons. As regards the 23 criminal cases filed against the other office bearers and the loanees of the Bank there is on record in the Co-operative Department File No. 12/Legal-31/77 a Buff-Sheet order dated 2-2-1977 passed by Respondent No. 2 to the following effect:

"In order to recover the money from some of the loanees of the Patna Urban Co-operative Bank, criminal cases were instituted against them. Action should be taken immediately for the withdrawal of the cases against those loanees who have cleared the loan in full, and proper instalments for payment of loans should be fixed against those who want to repay the loan but due to financial handicaps are unable to make payment at a time, and thereafter necessary further action should be taken."

33. In the meanwhile in April, 1976 the Banking Licence of the Patna Urban Co-operative Bank was cancelled by the Reserve Bank of India and further at the instance of the Registrar, Co-operative Societies, the Bank was ordered to be liquidated. It appears that Shri T. Nand Kumar, I.A.S., Liquidator of the Bank addressed a communication to the Registrar, Co-operative Societies suggesting that besides the other office-bearers Sri Nawal Kishore Sinha, the ex-Chairman of the Bank also deserve to be prosecuted for offences of embezzlement, forfery, cheating, etc. but the matter was kept pending for report of the Superintendent of Police (Co-operative Vigilance Cell); the S.P. (Co-operative Vigilance Cell) after collecting facts and evidence got it examined by Deputy Secretary (Law) in C.I.D., obtained the opinion that a criminal case was fully made out against Shri Nawal Kishore Sinha and proposed that a fresh criminal case as per draft F.I.R. be filed and that Shri Nawal Kishore Sinha should also be made co-accused in a number of cases already under investigation, the S.P. (Co-operative Vigilance Cell) obtained the approval of D.I.G., C.I.D. on his said proposal and submitted the same to the Secretary, Co-operation, for obtaining Chief Minister's permission. In view of the Chief Minister's earlier order restricting the filing of criminal cases against some of the office-bearers and loanees only the S.P's noting categorically stated that the draft F.I.R. (against N. K. Sinha) had been vetted by D.I.G. C.I.D. as well as by I.G.. of Police.

After examining the entire material carefully and obtaining clarifications on certain points Shri Vinod Kumar Secretary Co-operation put up a lengthy note dated 15-1-1977 to the Minister for Co-operation in which he specifically placed the proposal of S.P. (Co-operative Vigilance Cell) for lodging F.I.R. against Shri Nawal Kishore Sinha for his approval and also suggested that the Hon'ble Minister may also obtain the approval of the Chief Minister. The Minister for Co-operation in his turn endorsed the file on 20-1-1977 to the Chief Minister for the latter's approval. The file was received by the Chief Minister's Secretariat on 30-3-1977 and Respondent No. 2 as the Chief Minister on 9-4-1977 instead of indicating his mind either way merely marked the file to "I.G. of Police." which was meaningless as the prior noting had clearly indicated that a draft F.I.R. had been vetted by both, D.I.G., C.I.D. and I.G. of Police. Counsel for Respondent No. 2 submitted that the endorsement made by the Chief Minister meant that he had approved the action as proposed.

34. It is impossible to accept the submission. Had the Chief Minister merely put his signature or initials without saying anything it might have been possible to suggest that he had approved the proposal, but to mark the file to "I.G. of Police" without saying 'as proposed' or something to that effect cannot mean that the Respondent No. 2 had approved the proposal. In fact, with the knowledge that the I.G. of Police had approved and vetted the draft F.I.R. against N. K. Sinha, merely marking the file to "I.G. of Police" amounted to putting off the matter Meanwhile Respondent No. 2's Government went out of power and under the President's Rule the matter was dealt with by the Governor Shri Jagan Nath Kaushal (the present Union Law Minister) who granted the approval on 16-5-1977 as a result whereof a criminal case (being F.I.R. Case No. 97 (5) 77) ultimately came to be filed at Kadam Kuan Police Station on 30-5-1977 against Nawal Kishore Sinha, for which Respondent No. 2 cannot take any credit whatsoever. On the other hand, the subsequent events show that so long at it lay within his power Respondents No. 2 made every effort to protect and save Nawal Kishore Sinha from criminal prosecution by abusing his official position a criminal prosecution which had been proposed by independent bodies like

the Reserve Bank of India and the Co-operative Department, agreed to by the Law Department, recommended by the Estimates Committee and ultimately approved by the Governor Shri Jagan Nath Kaushal.

35. As regards the surcharge proceedings the position is very simple. As discussed earlier, the two directions contained in the first order dated 16-5-1975 for taking stern action to realise loans from the loanees and in default to initiate surcharge proceedings against the Board of Directors were wiped out by the subsequent ante-dated order 14-5-1977, and thereby Respondent No. 2 thwarted surcharge proceedings and attempted to give a go bye to the civil liability of Nawal Kishore Sinha and other office-bearers of the Bank. This conduct on the part of Respondent No 2 has been explained in the counter affidavit of Shri Vinod Kumar Sinha dated 8-10-1982 filed before us, and counsel for Respondent No. 2 pressed it into service during his arguments and the explanation is that a separate file titled "Surcharge Proceedings" being File No. 3 of 1975 maintained in the office of Deputy Registrar, Co-operative Societies, Patna Division shows:

Secondly, the proposal for surcharge proceeding itself was submitted and filed by the District Co-operative Officer against Nawal Kishore Sinha and others on 10-6-1975 and the surcharge proceedings actually could be said to have been initiated on 1-7-1975, when show cause notice was directed to be issued and served on Nawal Kishore Sinha on 15-7-1975, while thwarting of the surcharge proceedings against Nawal Kishore Sinha and others was already complete, having been accomplished by Respondent No. 2 by his ante-dated order 14-5-1975. Thirdly it is obvious that Respondent No. 2 cannot take credit for the action that was taken in the matter of surcharge proceedings against Nawal Kishore Sinha and others by the Office of Registrar, Co-operative Society independently of and in spite of Respondent No. 2's action of subverting the surcharge proceedings.

84. Be that as it may, let us examine the contention. But this will not be treated as a precedent. The pasted order containing the following:

(i) The Chief Minister's finding that there was no allegation of defalcation against the Chairman and Members of the Board;

(ii) Direction to take stern action for realisation of the loans from the loanees;

(iii) Directions to initiate surcharge proceedings in case of difficulties in realisation;

(iv) Direction to call the annual General Meeting of the Bank and hold election in order to restore the normal condition of the Bank.

85. Only the portions against (i), (ii) and (iii) above have been covered by pasting the fresh order which is but (iv) above. The appellant's submission is that by covering the first three directions, Respondent No. 2 shielded Respondent No. 3 and others from realizing the due from the culprits including Respondent No. 3 or from initiating surcharge proceedings against them. The answer to the contention is three-fold:

(i) The order of surcharge by the Chief Minister is unwarranted by law. S. 40 of the Bihar Cooperative Societies Act, 1935 gives power only to the Registrar to initiate surcharge proceedings. An appeal lies from his order to the State Government under sub-s. (3) of s. 40. In fact, admittedly Deputy Registrar of Cooperative Societies issued notices of surcharge against

Respondent No. 3 on 31-12-1975 when Respondent No. 2 himself was the Chief Minister). If the Chief Minister found that his first order was unwarranted by Law, it was but right that he cancelled his first order

(ii) On a second thought any authority may bona fide change his mind and decide that restoration of the normal condition of the Bank by calling the annual General Meeting and election should be attended to first and realization of the loans and surcharge proceedings later. Bona fide scoring out the order retaining the last part would constitute no offence by Respondent No. 2. Pasting an order by a piece of paper containing another order prima facie appears suspicious, but pasting is the common practice in the Chief Minister's Secretariate as revealed by the file produced before us.

(iii) Antedating simpliciter is no offence. Mr. Venugopal advanced an argument on the possible motive of antedating and submitted that the motive was to obliterate any possible action on the first order The submission is highly speculative and cannot be accepted.

In any view, if two interpretations are possible, one indicating criminal intention and the other innocent, needless to say that the interpretation beneficial to the accused must be accepted.

131. Therefore, in view of the aforesaid **provisions of s. 40 of the Cooperative Societies Act taking steps for a surcharge is not within the jurisdiction of the State Executive. This may have been another reason for dropping the proceedings for surcharge, if at all, against the officers of the bank**. There is yet another reason. The second antedated order does not say a word about dropping the surcharge proceedings ordered by Respondent No. 2 in the earlier order and, therefore, it is difficult to say that Respondent No. 2 had actually dropped the surcharge proceedings against Respondent No. 3 and other offers of the Co-operative Bank. Indeed, surcharge proceedings had been initiated. Surcharge files regarding surcharge Case No. 3 of 1975 proves that surcharge proceedings were proposed initially by the Deputy Registrar on 30th of April 1975 and were in fact taken on 1st June, 1975 and the show cause notice was issued on 1st July 1975 and surcharge order was made against Shri Nawal Kishore Sinha and others on 31st December, 1975. This shows clearly that no benefit or advantage was given to Nawal Kishore Sinha or others by the order of 14th May, 1975. From the affidavit of Jiwanand Jha, Respondent No. 4 it appears that an amount of Rs. 33,96,024.90 was given as loans to 180 persons. Out of the total amount given by way of loans an amount of Rs. 25,64,682.23 has already been realised from 106 persons. The unrealised amount is only Rs. 8,31,337.67 for which decrees have been passed against 64 persons and as against the remaining 10 persons proceedings for realisation are going on.

140. The facts that the prosecution, if ordered, will start after a gap of about eight years cannot be lost sight of. In the view taken by me in the earlier part of the judgment that no prima facie case in my opinion has been made out under s. 466 of the Indian Penal Code and s. 5 (1) (d) of the Prevention of Corruption Act and the fact that the High Court in revision agreed with the view of the Special Judge giving consent to the withdrawal from the prosecution on the application of the Public Prosecutor under s. 321 Cr.P.C. this Court cannot make a fresh appraisal of evidence and come to a different conclusion.

All that this Court has to see is that the Public Prosecutor was not actuated by extraneous or improper considerations while moving the application for withdrawal from the prosecution. Even if it is possible to have another view different from the one taken by the Public Prosecutor while moving the application for withdrawal from prosecution this Court should be reluctant to interfere with the order unless it comes to the conclusion that the Public Prosecutor has not applied his mind to the facts and circumstances of the case, and has simply acted at the behest of the Government or has been actuated by extraneous and improper considerations. On the facts and circumstances of the case it is not possible for me to hold that the Public Prosecutor was actuated by oblique or improper motive.

141. In view of my finding that the criminal case against Respondent No. 2 and others was instituted on account of personal or political vendetta at the instance of some disgrunted political leaders, that no prima facie case of forgery or misconduct is made out on the materials on the record, that the Court's jurisdiction in dealing with the application under s. 311 of the Code is only to see whether the Public Prosecutor had applied for withdrawal in the interest of Public Justice, or he has done so actuated by improper or oblique motive, that a substantial amount of loan has already been realised, that the continuance of the criminal case in the circumstances of this case will be only an exercise in futility at the cost of public money and time, that the trial court as well as the High Court were satisfied with the grounds for withdrawal taken by the Public Prosecutor, the view taken by the trial court as well as the High Court in my opinion does not suffer from any infirmity and is a just and proper one.

Ishwar Nagar Co-Op. Housing Building Society v Parma Nand Sharma And Ors

Bench	Mukundakam Sharma, Anil R. Dave
Where Reported	2010 Indlaw SC 961; JT 2010 (12) SC 335; 2010(12) SCALE 74
Case Digest	**Summary:** Trusts & Associations - Practice & Procedure - Delhi Co-operative Societies Rules 1973, r. 25(1)(c) - Delhi Cooperative Societies Act, 1972, s. 36(1) - Disqualification for Membership - Respondent No. 1 enrolled as a member of the appellant-society, was terminated from the appellant-society on the ground that the Respondent No. 1 owned another property, since as per r. 25(1)(c) of the Rules, upon owning another property, the appellant was not entitled to be member of a Cooperative Housing Society - Subsequently, Respondent No. 1 was also expelled from the society u/s. 36(1) of the Act for being a persistent defaulter, since he had not paid the dues demanded by the society - Action of the society expelling the Respondent No. 1 was approved by the Registrar, Cooperative Societies - On appeal, HC held that said property was being used for running a nursing home, i.e., for a commercial purpose and therefore, that would not constitute a violation of R. 25 of the Rules and set aside the expulsion orders - Hence, present appeal - (A) Whether s. 97 of the Act permits the Lt. Governor to make the provision of r. 25? - It was contended that since the said rule does not come within the ambit of power given u/s. 97(2) of the Act to the Lt. Governor who is empowered to make Rules about the conditions to be complied with by persons applying for admission or admitted as members, the same cannot be applied to the person who have already become a member to disqualify him for the act done prior to coming into force of the Rules - Held, power to frame Rules given u/s. 97(1) of the Act is not controlled by the list mentioned in sub s. (2) and the Lt. Governor can make Rules for any of the purposes of the Act - Further, cooperative societies like the present one which seek to obtain the land at concessional rate from the government and to build houses must necessarily have a limitation in that only members who are in real need of houses should be permitted to become members and to take the benefit of land allotment - Thus r. 25(2) does not in any manner go beyond the ambit of rule making authority given u/s. 97(1) of the Act - (B) Whether r. 25 has retrospective application in debarring a member of a co-operative society who enrolled as a member of the society and acquired separate property before the Rules came into force? - Held, most concrete cases wherein laws are made retrospective are those in which the date of commencement is earlier than enactment, or which validate some invalid law, otherwise, every statute affects rights which would have been in existence but for the statute and a

	statute does not become a retrospective one because a part of the requisition for its action is drawn from a time antecedent to its passing - Applying that to the present case, the conclusion is that r. 25(2) is not retrospective - All that r. 25(2) does is that it operates in future, though the basis for taking action is the factum acquiring a plot in the past - Thus when by virtue of r. 25(2), a member is deemed to have ceased to be a member of the society, the cessation operates from April 2, 1973, when the Rules came into force - (C) Whether bye-laws of the society can debar respondent No. 1 on acquisition of a separate residential/ dwelling house in Delhi? - Held, Bye-law 8(vii) was neither inconsistent with the Bombay Cooperative Societies Act, 1925 under which the appellant society was governed nor was it contrary to Delhi Cooperative Societies Act, 1972 and the Rules framed thereunder - Therefore, a member of the society who acted in violation of the said bye-law was liable to have his or her membership removed from the appellant-society - (D) Meaning of the expression "eligible to be a member" used in the 1962 bye-law No. 5(i)(e) - Held, verb "be" has two meanings, namely, (a) to exist, and (b) to become - Former refers to the existence of state of affairs in present while the latter refers to the coming into existence of a new state of affairs - Therefore, even under the 1962 bye-law No. 5(i)(e) the Respondent No. 1 were disabled from continuing to be members of the society - (D) Whether the property purchased in the name of HUF can debar the Respondent No. 1 to continue as a member of the appellant-society? - Held, sub-r. (1)(c)(i) of the r. 25 provides an exception in case of persons who are only co-sharers in the joint family property, in that disqualification of membership as laid down in sub-r. (1)(c)(i) shall not be applicable in case of co-sharers of property whose share is less than 66.72 sq. m. (80 yds) of land - In the present case, share of the Respondent No. 1 would be more than the prescribed limit and therefore aforesaid exception was not applicable to the Respondent No. 1's case - Further, when the HUF of the respondent consists only of his own family members, namely, his wife, son and the daughter and therefore ownership of the said property by the HUF of the respondent is ownership of property by the family members and consequently the same would clearly fall within the prohibition and bar of allotment as contained in clause No. 5 (a) of the lease deed - Appeal allowed.

Case No : CIVIL APPEAL NO. 9671 OF 2010 [Arising out of SLP (C) No. 26547 of 2008]
The Judgment was delivered by : Dr. Mukundakam Sharma, J.
Leave granted.

1. This Appeal is directed against the judgment and order dated 28/03/2008 in W.P. No. 474/1982 of the High Court of Delhi wherein the High Court allowed the writ petition filed by the respondent-1 and whereby resolution and order dated 14th January, 1978 passed by the appellant and the order of the Registrar, Cooperative Societies dated 17th May, 1978 and the order of the Deputy Registrar dated 5th November, 1981 whereby the name of the respondent-1 had been removed from the list of members of the appellant- society were quashed and set aside.

2. The respondent-1, Dr. Parmanand Sharma was enrolled as members of the appellant society vide membership No. 35 on 11th March 1961. In 1968, he purchased a property bearing No. A-19/A, Kailash Colony, New Delhi in the name of his Hindu Undivided Family consisting of respondent-1, his wife and two minor children in 1968 and a structure was constructed thereon in 1969. According to the appellant-society, this construction is a residence-cum- nursing home, whereas respondent-1 claims it to be only a nursing home, to which question we will refer later. In this chain of events, the membership of the respondent-1 was terminated from the appellant society on the ground that the respondent-1 owned another property, i.e., 19/A, Kailash Colony, in Delhi, since as per rule 25 (1)(c) of the Delhi Cooperative Societies Rules, 1973 (hereinafter referred to as "the Rules"), **upon owning another property, the appellant was not entitled to be member of a Cooperative Housing Society. The respondent-1 was also expelled on 14th January 1978 from the society under section 36(1) of the Delhi Cooperative Societies Act, 1972 (hereinafter referred to as "the Act")** for being a persistent defaulter, since he had not paid the dues demanded by the society. the Action of the society expelling the respondent-1 was approved by the Registrar, Cooperative Societies on 17th May 1978. On 26th February 1980, an application was filed by respondent-1 under Section 60 of the Act for reference of dispute to arbitration. The reference was dismissed on 5th November, 1980. Being aggrieved, the respondent filed a writ petition before the High Court, wherein the High Court by the impugned judgment and order dated 28/03/2008 held that 19/A, Kailash Colony, Delhi was being used for running a nursing home, i.e., for a commercial purpose and therefore, that would not constitute a violation of Rule 25 of the Rules. By the said order, the HC set aside the expulsion orders.

20. Perusal to above bye-law makes it clear that on purchasing a house or a plot of land for construction of a house, either in his own name or in name of any of his dependants, disqualifies a member of the society to continue as one. Bye laws of the society regulate the management of the society and govern the relationship between society and members inter se. They are of the nature of Articles of Association of a company registered under the Companies Act. If they are consistent with the Act and Rules, the members are bound by them. In Zoroastrian Coop. Housing Society Ltd. v. District Registrar, Coop. Societies (Urban), reported at (2005) 5 SCC 632, at page 661 2005 Indlaw SC 331 :

"36. if the relevant bye-law of a society places any restriction on a person getting admitted to a cooperative society, that bye-law would be operative against him and no person, or aspiring member, can be heard to say that he will not be bound by that law which prescribes a qualification for his membership."

21. **Bye-law 8(vii) was neither inconsistent with the Bombay Cooperative Societies Act, 1925 under which the appellant society was governed nor was it contrary to Delhi Cooperative Societies Act, 1972** and the Rules framed thereunder. Therefore, a member of the society who acted in violation of the said bye law was liable to have his or her membership removed from the appellant-society.

27. The respondent for the purpose of being member of the appellant-society cannot claim the said property used purely for commercial purpose when he himself claimed the said property being used for residential purpose also. It should also be indicated that the aforesaid information about the nature and status of his property in Kailash Colony were furnished by the respondent under

his own declaration and by certifying that the said particulars filled in the form are true and correct to the best of his knowledge. The respondent No. 1 has also appended his signature to the said declaration by signing it on 27/06/2006. These informations are relevant and material to come the conclusions that the aforesaid property in Kailash Colony was also used as a residential property and therefore the contention of the counsel for the respondent no. 1 that it is exclusively a commercial property cannot be accepted.

28. We have considered the facts and circumstances of the case, and analysed the arguments put forth by both parties to buttress their stand. For the reasons that we have considered herein and mentioned above, we find that the arguments raised by respondent-1 are without merit, and the appeal therefore, is to be allowed.

Appeal Allowed

Sant Lal Gupta and others v Modern Co-operative Group Housing Society Limited and others

Bench	Balbir Singh Chauhan, P. Sathasivam
Where Reported	2010 Indlaw SC 865; (2010) 13 SCC 336; 2011 (84) ALR 487; 2010 (262) E.L.T. 6; JT 2010 (11) SC 273; 2010 (4) RCR(Civil) 923; 2010(11) SCALE 27
Case Digest	**Summary:** Trusts & Associations - Practice & Procedure - Delhi Co-operative Societies Act, 1972, s. 80 - Delhi Co-operative Societies Rules, 1973, r. 36(3) - Membership of Co-operative Society - Expulsion of - Appellant/Members of the 1st respondent/Society were expelled from the membership of the Society by passing a resolution - 1st respondent, thereafter, sent the proposal of expulsion to the Registrar of Co-operative Societies for approval - Registrar rejected the approval - 1st respondent filed revision before the Financial Commissioner - Financial Commissioner also dismissed the revision - 1st respondent challenged the orders of the Registrar as well as the Financial Commissioner before the HC - HC allowed 1st respondent's writ petition on the ground that there was a delay on part of Registrar in approving the resolution - Hence the present appeal by appellant/Members - Whether resolution of the 1st respondent relating to the expulsion of members should be approved by the Registrar within 6 months - Held, after appreciating the evidence on record the Registrar recorded the findings with sufficient reasons - While considering the revision filed by the Society, the Financial Commissioner concurred with the reasoning given by the Registrar and had given cogent reasons for such agreement- Further, Resolution was forwarded by the 1st respondent/Society to the Registrar for approval after an inordinate delay - HC also took note of such delay which was attributed by the 1st respondent/Society, however, HC dealt with the case without meeting any of the reasons given by the Registrar and unnecessarily laboured in digging the old facts that the Registrar had failed to decide the case for long 8 years - Impugned HC judgment did not contain even single iota of reason - Further, facts of the case did not warrant any interference by the HC in its equity jurisdiction - Therefore, impugned judgment of the HC is set aside and orders of the Registrar as well as the Financial Commissioner are restored - Appeal allowed.

Case No : C.A. No. 9439 of 2003

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

1. This appeal has been filed against the judgment and order dated 4.9.2002 passed by the Delhi High Court in Civil Writ Petition No. 2/98 by which the High Court has set aside the judgment and order of the Financial Commissioner dated 3.11.1997 passed in Case No.234/97-CA, and also the judgment and order of the Registrar of the Co-operative Societies dated 26.8.1997.

2. Facts and circumstances giving rise to this appeal are that the appellants had been the members of the Modern Co-op. Group Housing Society Ltd. (hereinafter called the 'Society') and claimed to have paid all their subscriptions of membership and other dues on the demands made by the Society. The Society had proposed the expulsion of 27 members including the appellants, by its Resolution dated 27.4.1987 and the said proposal was sent to the Registrar of the Co-operative Societies (hereinafter called the Registrar) as required under the provisions of the Delhi Co-operative Societies Act, 1972 (hereinafter called as 'Act 1972'), for approval on 20.2.1988 and meanwhile it enrolled new members, whose approval was also sought. In spite of all efforts made by the Registrar, the Society did not submit the record before him prior to 19.9.1995. The Registrar vide order dated 2.2.1996 issued notice to the Society for consideration of the said resolution and vide order dated 4.6.1996 rejected the approval.

13. Therefore, it is evident from the aforesaid settled legal proposition that the resolution passed by the Society cannot be given effect to unless approval is accorded by the Registrar as mandatorily required by the Act 1972 and the Rules.

14. The Legislature in its wisdom has not enacted any deeming provision providing that in case the resolution is not considered and finally decided by the Registrar within a period of six months, the resolution shall become effective and operative. It is the exclusive prerogative of the Legislature to create a legal fiction meaning thereby to enact a deeming provision for the purpose of assuming the existence of a fact which does not really exist. Even if a legal fiction is created by the Legislature, the court has to ascertain for what purpose the fiction is created, and it must be limited to the purpose indicated by the context and cannot be given a larger effect.

    More so, what can be deemed to exist under a legal fiction are merely facts and no legal consequences which do not flow from the law as it stands. It is a settled legal proposition that in absence of any statutory provision, the provision cannot be construed as to provide for a fiction in such an eventuality. More so, creating a fiction by judicial interpretation may amount to legislation, a field exclusively within the domain of the legislature. (Vide: Ajaib Singh v. Sirhind Coop. Marketing-cumprocessing Service Society Ltd. & Ors. [JT 1999 (3) SC 38 : 1999 (6) SCC 82]). 1999 Indlaw SC 1315

15. In Union of India & Anr. v. Deoki Nandan Aggarwal [JT 1991 (3) SC 608 : AIR 1992 SC 96], 1991 Indlaw SC 185 this Court observed as under:

    "It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the Court."

    26.1. In the instant case, the Resolution dated 27.4.1987 was forwarded by the Society to the Registrar for approval after an inordinate delay on 20.2.1988. The High Court in paragraph 13 of the impugned judgment itself has taken note that *"several opportunities were given to the Society which finally submitted the records on 19.9.1995."*

    Thus, delay was totally attributable to the Society itself.

    Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the

duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of order and exercise of judicial power by a judicial forum is for the forum to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of the justice - delivery system, to make it known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of the principles of natural justice.

"The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before Courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the Court concerned had really applied its mind."

The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/ unsustainable particularly when the order is subject to further challenge before a higher forum. Recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making.

30. In view of the above, we are of the considered opinion that facts of the case did not warrant any interference by the High Court in its equity jurisdiction for raising the writ of certiorari.

31. In view of the facts and circumstances of the case and the manner in which the impugned judgment has been passed, appeal deserves to be allowed.

32. Be that as it may, we have been informed by learned counsel for the parties that the Society has been taken over by the Administrator and a large number of flats remained un-allotted. The appellants have filed the information sought by them under the Right to Information Act, 2005 on 23.4.2008 which makes it clear that 15 flats bearing Nos. 14, 23, 217, 324, 325, 327, 418, 421, 426, 513, 516, 619, 623 and 726 category-'B' and 737 category-'A' remained un- allotted. In order to meet the ends of justice it is required that appellants be adjusted against the said unallotted flats.

However, the Society shall put a demand, if any, and the appellants are directed to make the payment with interest in accordance with law.

33. In view of the above, appeal is allowed. Judgment and order of the High Court dated 4.9.2002 in Civil Writ Petition No. 2/98 is hereby set aside and the judgment and order of the statutory authorities dated 26.8.1997 and 3.11.1997 are restored. There shall be no order as to costs.

Appeal allowed.

Arunbhai Kalyanbhai Sutariya v Nutan Nagrik Sahakari Bank Limited and another

Bench	Anil R. Dave, Kurian Joseph
Where Reported	2015 Indlaw SC 200; 2015(4) SCALE 140B

Case No : C.A. No. 2822 of 2015 (Arising out of S.L.P.(C) No. 21260 of 2011)

1. Leave granted.

2. Upon hearing the learned counsel, we have learnt that the appellant has already filed an appeal before the Debts Recovery Tribunal at Ahmedabad (DRT), being Securitisation Appeal No.38 of 2001, which is pending. Similarly, the Respondent-Bank has also filed an appeal before the Gujarat State Cooperative Tribunal against order dated 4th November, 2003, passed by the learned Board of Nominees at Ahmedabad in Lavad Case No.39 of 2000.

3. As both appeals are pending, we would not like to entertain this appeal on merits. We direct the DRT and the Gujarat State Cooperative Tribunal to decide the appeals pending before them within three months from the date of receipt of a copy of this order.

4. During the pendency of afore-stated appeals before the Appellate Authorities, no coercive steps shall be taken for recovery of the amount under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).

5. **The question of law with regard to applicability of the SARFAESI Act, 2002 and the Multi-State Cooperative Societies Act, 2002, is kept open.**

6. The Registry shall give intimation of this order to the afore-stated authorities.

7. In view of the above order, the appeal stands disposed of with no order as to costs.

Appeal disposed of

St. Mary's Hotel (Private) Limited and another v Kottayam Dist. Co-oprative Bank Limited and others

Bench	Anil R. Dave, Kurian Joseph
Where Reported	2015 Indlaw SC 202; 2015 (2) BC 303; 2015(4) SCALE 141
Case Digest	**Summary:** Banking & Finance - Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - Held, writ petition disposed of with directions to respondent-bank to appropriate amount of Rs. 2 Crore deposited by petitioners and kept in separate account by respondent-bank towards dues of petitioners and petitioners are not required to pay further sum of Rs.65 lakh as directed by Tribunal. Further, during pendency of appeal before Tribunal, no coercive steps should be taken for recovery of amount under provisions of the Act. Petition disposed of.

Case No : W.P. (C) No. 367 of 2011

(Non-Reportable) 1. At the time of hearing of this petition, it has been submitted that Petitioner No.1 has already filed an appeal before the Debt Recovery Appellate Tribunal at Chennai (DRAT) and the said appeal, being AIR (SA) 230/2011, is pending. In the afore-stated appeal an interim order had been passed whereby the petitioner had been directed to pay Rs.65 lakhs (Rupees sixty five lakhs) by way of pre-deposit. At that stage, Writ Petition No.367/2011 had been filed in this Court. In pursuance of an interim order passed by this Court, a sum of Rs.2 crores (Rupees two Crores) has been paid by the petitioners to the respondent-Bank and the said amount has been kept in a separate account by the respondent-Bank.

2. As the petitioners have already paid more than Rs.65 lakhs (Rupees sixty five lakhs), we direct that the amount which has been deposited in a separate account by the respondent-Bank, shall be appropriated towards the dues of the petitioners.

3. It would not be necessary for the petitioners to pay a further sum of Rs.65 lakhs as directed by the Tribunal. The Tribunal shall decide the appeal which is pending before it, preferably within three months from the date of receipt of a copy of this order. During the pendency of afore- stated appeal before the DRAT, no coercive steps shall be taken for recovery of the amount under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).

4. **The question of law with regard to the SARFAESI Act, 2002 and the Multi-State Cooperative Societies Act, 2002, is kept open. 5. The Registry shall give intimation of this order to the Tribunal. 6. The writ petition and I.A.12 (For directions) stand disposed of accordingly. Order accordingly**

Professor Ramesh Chandra v University of Delhi and others

Bench	S.J. Mukhopadhaya, C. Nagappan
Where Reported	2015 Indlaw SC 85; JT 2015 (2) SC 139; 2015 (2) MLJ 219; 2015(2) SCALE 203
Case Digest	**Summary:** Service - Education - Misconduct - Removal from service - Appellant professor was appointed as Director of research institute in question till a regular appointment was made - In the meantime, appellant was appointed as Vice Chancellor of Bundelkhand University by deputation - Appellant was removed from the post of Vice Chancellor - Appellant sought appointment as Director of research institute - Respondent university, on the basis of enquiry report by a retired HC judge, disengaged appellant's service - Appellant challenged his removal before HC - HC dismissed appellant's writ petition - Hence, instant appeal. Held, appellant was suspended by respondent authority on the ground of misconduct. However, respondent first decided to punish the appellant and only thereafter memorandum of charges was framed, show-cause notice was issued and inquiry was conducted, just to give it a colour of legal procedure. There is nothing on the record to suggest that the appellant 'wilfully' suppressed the material fact that he was removed from service before completion of term of his deputation to mislead the respondents. Such action can be termed to be 'dereliction of duty' but cannot be held to be misconduct for the purpose of restraining the appellant permanently from appointment to the post of Director of research institute in question. It is not in dispute that the appellant was the First Director of research institute. The same was also accepted by respondent University in its memorandum dt. 2-11-2005. Therefore, in his letter-head he has shown him as Founder Director of research institute, that cannot be said to be against the Code of Conduct to hold the same as 'misconduct' on the part of the appellant. Hence, the order of punishment cannot be upheld and is declared illegal. Further, influenced by extraneous facts and consideration, which are not the part of the charge-sheet or the evidence cited by respondent and without intimating such facts to the appellant the Inquiry Officer held the appellant guilty. Thus, all the Departmental inquiries conducted against the appellant were in violation of rules of natural justice. Penal memoranda issued against appellant is set aside and appellant stands reinstated to the post of Professor. Appeal allowed. Ratio - If any person who is or was a legal practitioner, including a retired Judge is appointed as Inquiry Officer in an inquiry initiated against an employee, the denial of assistance of legal practitioner to the charged employee would be unfair.

Case No : C.A. No. 8224 of 2012 (From the judgement and order Dt. 01/03/2012 in W.P.C No. 2547/2010 of the DELHI HIGH COURT)

Ratio - If any person who is or was a legal practitioner, including a retired Judge is appointed as Inquiry Officer in an inquiry initiated against an employee, the denial of assistance of legal practitioner to the charged employee would be unfair.

The Judgment was delivered by : S. J. Mukhopadhaya, J.

1. This appeal has been preferred by the appellant against the impugned judgment dated 1st March, 2012 passed by the High Court of Delhi at New Delhi in Writ Petition (C) No.2547 of 2010. By the impugned judgment, the High Court dismissed the writ petition, upheld Para 6 of the Annexure to Ordinance XI of University of Delhi and refused to interfere with the show cause notice issued on the appellant and the memorandum(s) by which the appellant was punished and removed from the service of the Delhi University.

2. The factual matrix of the case is as follows:-

   The appellant was a Professor in the University of Delhi (hereinafter referred to as the, 'University'). According to the appellant while serving in the University he wrote a letter dated 1st December, 1990 addressed to the Union Minister of State for Welfare requesting sanction of Rs.5 crores for starting Dr. B.R. Ambedkar Centre for Biomedical Research (hereinafter referred to as the, 'ACBR'). In response to the said letter, office of Dr. B.R.Ambedkar Centenary Celebration under Ministry of Welfare by letter dated 22nd January, 1991 invited the appellant to submit a detailed project report for the establishment of ACBR commemorating birth centenary of Dr. B.R. Ambedkar.

   On 15th March, 1991, the University forwarded the proposal submitted by the appellant for establishment of ACBR in the University and necessary certificate was given to the Government of India by the University, especially in respect of autonomy of the ACBR. The Central Government accepted the proposal and the Prime Minister laid down the foundation stone of ACBR. The Executive Council of the University vide Resolution dated 13th April, 1991 approved the project proposal for setting up ACBR and appointed a Committee to finalize the academic plan and ordinances. Ordinance XX of the University relates to Colleges and Institutions maintained by the University including ACBR. A Committee under the Chairmanship of Vice-Chancellor of the University in its meeting held on 4th November, 1991 recommended the appellant's name to function as Director till a regular appointment is made. The Academic Council by its decision dated 20th December, 1991 approved the said recommendation and further recommended the Executive Council to appoint the appellant as Director till a regular appointment is made. The Executive Council vide its Resolution No.243 (1) dated 15th February, 1992 accepted and approved the recommendations of the Academic Council. Pursuant to the said Resolution, the Assistant Registrar (E-NT) issued a letter dated 30th May, 1995 informing the appellant about the decision of the Vice Chancellor, appointing him as the Director of ACBR till a regular appointment is made to the said post.

10. Before the High Court and this Court, one of the pleas taken was that the charges as shown in the memoranda do not constitute any misconduct. The High Court observed that misconduct though not defined in the Act or in Ordinance XI or in the Annexure thereto, is a well understood term

and paragraph 6 of Ordinance XI cannot be held to be bad and liable to be struck down merely for the reason of misconduct having not been defined.

11. On behalf of appellant, it was further contended that the departmental proceeding was conducted in violation of rules of natural justice and extraneous matters were taken into consideration to hold the appellant guilty. But such submission was disputed by learned Senior Counsel for the university.

20. The appellant submitted his explanation denying the allegation and requested for supply of documents towards submitting an effective reply. But the same were not supplied. He also sought aid of a lawyer but it was also denied. Nothing is on the record to suggest that any list of witnesses or list of documentary evidence was supplied to the appellant or to the Inquiry Officer. We have gone through the original records supplied by the University. Even therein, we find no list of witnesses or list of evidence available to bring home the charges.

(Retd.)Justice 'X' who was again appointed as the Inquiry Officer with regard to said charges, submitted a report dated 23rd February, 2010, holding that the acts of the appellant giving an affidavit that he had no objection towards the registration of the ACBR as a Society situated at the said premises, and getting the Society registered without the approval of the University of Delhi, are clearly the acts of misconduct.

In the last analysis, a decision has to be reached on a case to case basis on the situational particularities and the special requirements of justice of the case. It is unnecessary, therefore, to go into the larger question "whether as a sequel to an adverse verdict in a domestic enquiry serious civil and pecuniary consequences are likely to ensue, in order to enable the person so likely to suffer such consequences with a view to giving him a reasonable opportunity to defend himself, on his request, should be permitted to appear through a legal practitioner" which was kept open in Board of Trustees of the Port of Bombay v. Dilipkumar8 1990 Indlaw SC 953. However, it was held in that case.

"... In our view we have reached a stage in our onward march to fair play in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated...."

30. In view of the law laid down by this Court, we are of the view that if any person who is or was a legal practitioner, including a retired Hon'ble Judge is appointed as Inquiry Officer in an inquiry initiated against an employee, the denial of assistance of legal practitioner to the charged employee would be unfair.

31. For the reasons aforesaid, we hold that all the Departmental inquiries conducted against the appellant were in violation of rules of natural justice. This apart as the third inquiry report is based on extraneous facts and first part of the charge held to be proved in memorandum dated 26th March, 2010 being not the part of the charges shown in the (third) chargesheet, the order of punishment, including Resolution by memorandum dated 26th March, 2010 cannot be upheld.

32. For the reasons aforesaid, we set aside both penal memoranda dated 22nd February, 2010 and 26th March, 2010. In effect, the appellant stands reinstated to the post of Professor but in the facts and circumstances, we allow only 50% of back wages (salary) to appellant for the intervening period i.e. from the date of his disengagement till the date of this judgment. However, the aforesaid period shall be treated 'on duty' for all purposes including seniority, increment, fixation of pay, retrial benefits, etc. The respondents are directed to pay the appellant arrears within two months, failing which they shall be liable to pay interest @ 6% from the date of this judgment.

Rajkot Distt Cooperative Bank Limited v State of Gujarat and others

Bench	V. Gopala Gowda, Adarsh Kumar Goel
Where Reported	2014 Indlaw SC 790; AIR 2015 SC 489; JT 2014 (13) SC 255
Case Digest	**Summary:** Administrative - Practice & Procedure - Gujarat Specified Co-operative Societies Election to Committee Rules, 1982, r. 3-A(8) & (9) - Gujarat Cooperative Societies Act, 1961 - Bye laws of Society - Conflict with Rules - Effect - Respondent State framed the Rules regulating the election of Specified Co-operative Societies - Constitutional validity of r. 3-A (8) was challenged before HC - HC held that r. 3-A (8) of the Rules was neither in conflict with any of the provisions of the Act nor was it held to be bad in law for want of Authority of the delegated legislation - Legality and validity of r. 3-A (8) of the Rules was again referred to Full Bench - Full Bench answered reference against appellant Societies - Hence, instant appeal - Appellant contented that the r. 3-A (8) of the Rules is contrary to bye-laws of appellant-Societies and statutory provisions of the Act - Appellant further contended that the Act provides for amendments of the bye laws without allowing the societies to get their bye laws amended as per the procedure laid under the provisions of the Act - Appellant contended further that conferment of power upon the Collector for carving out delimitations of a Specified Co-operative Society/Societies is contrary to the provisions of the Act and Rules. Held, r. 3-A(8) & (9) are applicable to the appellant society/Societies as the area of operation is more than one village and therefore the orders passed by the Collector for the delimitation of the constituency/constituencies cannot be said to be illegal. Further, there will be no proper representation of the voters to their respective specified societies for electing representatives of their area which would materially affect the result of the election and the impugned provisions and Rules are legally justifiable. Hence, no relief can be granted in favour of the appellant societies by setting aside the election notification. The respondents are directed to hold the election to the specified societies as per r. 3-A(8) & (9) of the Rules as are applicable to them under the Act after the delimitation of the constituency/constituencies of such societies are made by the Collector as stated u/r. 3- A (9) of the Rules. No reasons was found to interfere with the impugned judgment and orders of HC. Appeals dismissed. Ratio - The bye laws of any specified society under the provisions of the Act cannot be permitted to prevail over the statutory r. 3-A (8) & (9) of the Rules. The power conferred with the Collector for the delimitation of the constituency r. 3-A (9) is independent and separate and only applicable in the case when the election of the members of any Management Committee of specified society is scheduled to be held.

Case No : C.A. No. 10392 of 2014 (Arising out of S.L.P.(C) No. 26017 of 2013) with C.A. Nos. 10393-10394 of 2014 (Arising out of S.L.P. (C)Nos. 13201-13202 of 2012), C.A. Nos. 10395-10398 of 2014 (Arising out of S.L.P. (C)Nos. 12219-12222 of 2012), C.A. No. 10399 of 2014 (Arising out of S.L.P. (C) No. 29726 of 2013), C.A. No. 10400 of 2014 (Arising out of S.L.P. (C) No. 27573 of 2013), C.A. No. 10401 of 2014 (Arising out of S.L.P. (C) No. 29727 of 2013) and C.A. No. 10402 of 2014 (Arising out of S.L.P. (C) No. 29728 Of 2013

2. The appellants before this Court have filed these appeals questioning the correctness of the impugned orders dated 15.11.2011, 30.1.2012 (passed by the Division Bench) and common impugned order dated 04.07.2013 (passed by the full Bench) of the High Court of Gujarat at Ahmedabad.

3. Since all the appeals are identical in nature, we would refer to the facts of the case arising out of Civil Appeal @ SLP(C) NO. 26017 of 2013 for the sake of convenience and brevity and for examining the rival legal contentions urged in these appeals.

4. The State of Gujarat enacted and put on the statute book, Gujarat Cooperative Societies Act of 1961 (in short "the Act") in order to consolidate and amend the laws relating to the cooperative societies in the State of Gujarat. Thereafter, the Act was amended by the Act of 1982. Initially, as per the Act of 1961, the Managing Committee of the Co- operative Society was to be constituted in accordance with the Act, Rules and bye-laws. By the Act of 1982, the proviso was inserted by way of an amendment to the effect that so far as the committee of a society falling in the category of Section 74C(1) of the Act is concerned, the rotation for retirement, if provided by the bye-laws of a particular number of members of the Managing Committee shall cease to remain in force.

12. Further, the Constitutional validity of Rule 3-A (8) of the Rules was again challenged before the High Court of Gujarat, in the case of Banaskantha District Cooperative Milk Producers Union Ltd. v. State of Gujarat, (2012) 2 GLR 1522 2011 Indlaw GUJ 529, wherein the Division Bench of the High Court held that if any of the Rules are lawfully framed under the provisions of the Act and restrictions were imposed in relation to the subject matter of any of the clauses of the registered bye laws of the Society, such restrictions must be adhered to by it and any such clause in the bye-laws which is in violation of the restriction imposed by the Rules should be deleted. It was further held that the State Government while framing the impugned provisions of the Rules has not deviated from the principles mentioned under Section 74C (3) of the Act, but it has only created a position by making provisions of the election of members from the General Body. The Division Bench of the High Court held that Rule 3-A (8) of the Rules is neither in conflict with any of the provisions of the Act nor was it held to be bad in law for want of Authority of the delegated legislation. Therefore, Rule 3-A(8) of the Rules was held to be legal and valid by the High Court by giving its reasons.

16. On a careful examination of Rule 3-A (8) of the Rules by us, it is made clear that the said provision is aimed at geographical i.e. territory or zone wise bifurcation or division. A salient feature of the Rule 3-A is the delimitation of the constituencies which includes all specified cooperative

societies. Once the area of operation of any society is more than one village, Sub rule (8) would come into play and the requirement of the number of constituencies would be equal to the total number of seats, excluding two seats reserved for the categories as provided u/s. 74 B of the Act.

17. Further, the language of sub rule (9) of Rule 3-A, makes it clear that the Rule Making Authority has graced the Collector with the power to delimit the constituency/constituencies prior to the publication of the voters list. The delimitation of the constituency/constituencies should be prior to the preparation of the voters' list and/or in any case simultaneous with the preparation of voters' list but the voters list has to be as per the delimitation of the constituencies. The same is the case when the delimitation of the constituency is required to be made by the Collector prior to the publication of the list of voters.

19. The power conferred with the Collector for the delimitation of the constituency under sub rule (9) is independent and separate and only applicable in the case when the election of the members of any Management Committee of specified society is scheduled to be held. Further, as specified in the sub rule (9) of Rule 3-A, such powers are to be exercised by the Collector, notwithstanding anything contained in the bye laws of such society. The Collector has to exercise the power for delimitation of the constituencies prior to the publication of the list of voters. Further, as rightly stated by the High Court in the impugned judgment that when a specific power is conferred in a specific contingency to a different authority, such power has to be read in addition to the general power for the amendment in the bye-laws. Thus, the bye laws of any society have to be in conformity with the provisions of the Act and the Rules.

In view of the law laid down by this Court in the aforesaid cases, we have to hold that the sub rules (8) & (9) of Rule 3-A are applicable to the appellant society/Societies as the area of operation is more than one village and therefore the orders passed by the Collector for the delimitation of the constituency/constituencies cannot be said to be illegal. Further, we hold that there will be no proper representation of the voters to their respective specified societies for electing representatives of their area which would materially affect the result of the election and the impugned provisions and Rules are legally justifiable.

For the reasons stated supra, no relief can be granted in favour of the appellant-societies by setting aside the election notification and the prayer for setting aside the impugned judgement and orders. Hence, they deserve to be dismissed. The respondents are directed to hold the election to the specified societies as per sub rule (8) and (9) of Rule 3-A of the Rules as are applicable to them under the Gujarat Co-operative Societies Act after the delimitation of the constituency/ constituencies of such societies are made by the Collector as stated under sub-rule (9) of Rule 3- A of the Rules.

23. For the reasons stated supra, we do not find any reasons whatsoever to interfere with the impugned judgment and orders of the High Court. It is needless to make observation that the State government and its officers could not give effect to the provisions of the Co-operative Societies Act and Rules for some time on account of which some of the societies have challenged the impugned provisions and Rules before the High Court, even after litigation was concluded by

the Division Bench at one stage, the State and its officers have not implemented the impugned provisions and Rules without any valid reasons. The members of the specified societies in the State have a right to elect their true representatives to represent them as Managing Committee or Board members of the District Co-operative Societies and other allied societies after de-limitation of the constituency/ constituencies and therefore, we direct them to see that the impugned provisions and Rules must be implemented forthwith without further delay and submit compliance report within 8 weeks from the date of report of the copy of this order.

24. The appeals are dismissed. No Costs. Appeals dismissed

Akalakunnam Village Service Co-operative Bank Limited and another v Binu N. and others

Bench	M.Y. Eqbal, Ranjan Gogoi
Where Reported	2014 Indlaw SC 536; (2014) 9 SCC 294; AIR 2015 SC 1115; JT 2014 (9) SC 326; 2014(9) SCALE 473
Case Digest	**Subject:** Service; Trusts & Associations **Keywords:** Kerala Co-operative Societies Act, 1969, Kerala Co-operative Societies Rules **Summary:** Service - Trusts & Associations - Kerala Co-operative Societies Act, 1969, ss. 69, 80(3)(A) and 80B - Kerala Co-operative Societies Rules, 1969 - Quashing of notification dt. 6-6-2009 - Challenged - Bank by Notification dt. 6-6-2009 invited applications to fill up the vacant posts of 1 Attender and 3 Peons and to reserve one vacancy of Peon for members belonging to SC/ ST - Respondents filed writ petition challenging the said Notification on the ground that said notification does not confirm to the Rules and the circulars issued u/r. 182(5) of Rules - Single Judge held that the Notification and selection process were not issued in accordance with Circulars issued by the Registrar of Co-operative Societies and quashed the aforesaid Notification, selection and appointment of the selected candidates directing the Bank to conduct a fresh selection within 6 months in the manner directed after inviting applications in accordance with the Circular - DB dismissed appeal filed against said order - Hence, instant appeals - Whether order of the Single Judge as affirmed by the DB could be upheld - Held, no reason to interfere with the findings of the HC - R. 182(5) of the Rules stipulates that 'In respect of societies and posts not covered by ss. 80(3)(A) and 80B of the Act, the appointments shall be made by the Committee after conducting the written examination and interview as per the guidelines issued by the Registrar' - Circulars issued by the Government and Registrar of the Co-operative Societies have statutory force and specifically stipulate the procedure for conducting the selection to the post of sub staff - DB rightly dismissed the appeals filed against order of the Single Judge as Bank had failed to conduct written examination and interview as per the then existing guidelines issued by the Registrar of Co- operative Societies - Appeals dismissed.

Case No : C.A. No. 7839 of 2014 (Arising out of S.L.P. (Civil) No. 9794 of 2013) with C.A. No. 7840 of 2014 (Arising out of S.L.P. (Civil) No. 10809 of 2013)

1. Leave granted.

2. These two appeals are directed against the judgment and order dated 12.2.2013 passed by the High Court of Kerala dismissing the two writ appeals preferred by the appellants herein challenging the judgment of the Single Judge whereby the writ petition filed by Respondent Nos.1 to 3 was allowed quashing Notification inviting applications for appointment to the post of Attender/Peon and the appointments made pursuant thereto.

3. The facts of the case lie in a narrow compass.

4. The Akalakunnam Village Service Co-op Bank Ltd. (for the sake of brevity hereinafter referred to as "the Bank") by Notification dated 6.6.2009 invited applications to fill up the vacant posts of 1 Attender and 3 Peons and to reserve one vacancy of Peon for members belonging to SC/ST. The last date stipulated for submission of applications was 22.6.2009. Pursuant to this, among others, respondent nos.1 to 3, who are writ petitioner nos.1 to 3 applied and a written test was held on 15.7.2009 and an interview was also conducted in the afternoon of that day.

5. In the meanwhile, respondents 1 to 3 (hereinafter referred to as "writ petitioners") filed writ petition challenging the aforesaid Notification on the ground that notification does not confirm to the Kerala Co-operative Societies Rules (in short, "the Rules") and the circulars issued under Rule 182(5) thereof. They also alleged in the writ petition that steps are afoot to appoint four persons, namely, Kishore, Jomon K.J., Archana Binoy and Abhilash, who are appellants herein in appeal arising out of SLP(C) No.10809 of 2013 and respondent nos.6 to 9 in appeal arising out of SLP(C) No.9794 of 2013 [for the sake of brevity, they are hereinafter referred to as "selected candidates"]. The Bank and the selected candidates filed counter affidavit and contested the matter.

7. The judgment of the learned Single Judge of the High Court was challenged by the Bank as well as selected candidates by way of two separate writ appeals, challenging maintainability of the writ petition against the appellant Co-operative Society. Appellants contended that the writ petitioners have effective alternative remedy u/s. 69 of the Kerala Co-operative Societies Act (in short, "the Act"). They further contended that since the writ petitioners participated in the selection process, they cannot turn round and take the contention that the selection process itself is bad. It has been further contended on behalf of the appellants that the directions in the circular are not mandatory in nature, but are only guidelines and unless the writ petitioners prove prejudice, the High Court should not interfere with the selection process.

8. It has been contended on behalf of the writ petitioners that a writ would lie against a Co-operative Society when the duty owned by it is of a public nature or when there is infringement of any statutory rules by a co- operative society. Their contention is that under Rule 182(5) of the Kerala Co-operative Societies Rules, in respect of societies and posts not covered by S. 80(3)(A) and Section 80B of the Act, the appointments shall be made by the committee after conducting the written examination and interview as per the guideline issued by the Registrar. The Government and the Registrar have issued Exts. P3 to P6 guidelines under Rule 182(5) regarding the conduct of examination and interview to the post of Attender/Peon. Ext. P1 Notification issued by the Bank is clearly in violation of the guidelines issued as per the circulars relied upon and there being statutory violation, the writ petition would certainly lie against the Bank. It has also been

submitted on behalf of the writ petitioners that the written test must have been conducted by an outside agency, whereas, in the present case, the committee authorized the President to find out a suitable person to conduct the written test. With regard to alternative remedy, it has been contended that the writ petitioners do not have any alternative remedy available insofar as S. 69 is not applicable to them. It has been further contended by them that the writ petition was filed even before the conduct of the written test and immediately after publication of the Notification.

9. Considering the rival contentions in detail and concerned provisions of the Act and Kerala Co-operative Societies Rules, the Division Bench of the High Court did not find any merit in the writ appeals and dismissed both the writ appeals preferred by the appellants herein. Hence, the present appeals by special leave.

13. Considering aforesaid provisions of Section 69, we do not find any force in the contention of the appellants regarding availability of alternate remedy by way of filing an Arbitration case u/s. 69 of the Act since in our opinion dispute between the writ petitioners and the Bank does not come within the provisions of this Section. We are also of the view that the Bank has failed to conduct written examination and interview as per the then existing guidelines issued by the Registrar of Co- operative Societies. Indisputably, the respondent writ petitioners moved the High Court challenging the circulars immediately after the notification and prior to the conduct of examination.

14. In view of the aforesaid, we concur with the decision of the High Court and do not find any merit whatsoever, in both the appeals, which are accordingly dismissed with no order as to costs. Consequently, the interim order of stay granted by this Court stands vacated.

Appeals dismissed

Chandan Kumar Basu v State of Bihar

Bench	Ranjan Gogoi, Sudhansu Jyoti Mukhopadhaya
Where Reported	2014 Indlaw SC 438; 2014(8) SCALE 351
Case Digest	**Subject:** Criminal **Keywords:** Bihar Cooperative Societies Act, 1935 **Summary:** Criminal - Indian Penal Code, 1860, ss. 409, 420, 467, 468, 471, 34, 120-B - Public servant - Discharge of official duties - Sanction for prosecution - Conviction - Sustainability - Code of Criminal Procedure, 1973, s. 197 - FIR's were registered against appellant u/ss. 409, 420, 467, 468, 471, 34, 120-B IPC - Trial Court convicted appellant - Revision applications filed by appellant challenging the orders passed by Trial Court, primarily, on the ground that the said orders were without jurisdiction and incompetent in law inasmuch as sanction for prosecution of the appellant u/s. 197 of CrPC was not obtained or granted prior to the date of taking of cognizance - Appellate Court were dismissed - HC negatived the challenge made by appellant - Hence instant appeals - Whether the acts giving rise to the alleged offences had been committed by accused in the actual or purported discharge of his official duties - Held, it was consistently held in catena of judgment's that it could be no part of the duty of a public servant or acting in the discharge of his official duties to commit any of the offences covered by ss. 406, 409, 420 etc. and the official status of the public servant could, at best, only provide an opportunity for commission of the offences - Therefore, no sanction for prosecution of the public servant for such offences would be required u/s. 197 of CrPC - Notwithstanding the above, HC had granted liberty to appellant to raise the issue of sanction, if so required, depending on the evidence that might come on record in the course of the trial - Despite the view taken by HC in the series of pronouncements, the opportunity that was provided by the HC to the benefit of appellant need not be foreclosed - SC had consistently held that the question of sanction u/s. 197 of CrPC could be raised at any time after cognizance had been taken and may have to be determined at different stages of the proceeding/trial - Impugned orders passed by HC in all the cases before HC were maintained - Appeal dismissed.

Case No : Cr.A. No. 1359 of 2014 (Arising out of S.L.P. (Cr.) No. 3020 of 2013) with Cr.A. No. 1362 of 2014 (Arising out of S.L.P. (Cr.) No. 3022 of 2013), Cr.A. No. 1361 of 2014 (Arising out of S.L.P. (Cr.) No. 3016 of 2013), Cr.A. No.1360 of 2014 (Arising out of S.L.P. (Cr.) No. 3014 of 2013), Cr.A. No. 1363 of 2014 (Arising out of S.L.P. (Cr.) No. 3074 of 2013)

1. Leave granted.

2. The appellant, at the relevant point of time, was a member of the Indian Administrative Service and serving on deputation as the Administrator-cum-Managing Director of the **Bihar State Housing Cooperative Federation Ltd. The aforesaid Federation is a society registered under the Bihar Cooperative Societies Act, 1935. On the basis of the various complaints made against the appellant,** FIR Nos. 837/2002 dated 16.12.2002, 859/2002 and 860/2002 both dated 24.12.2002, 19/2003 dated 07.01.2003 and 41/2003 dated 18.01.2003 under Sections 409/420/467/468/ 471/34/120-B of the Indian Penal Code (hereinafter for short 'IPC') were registered at Police Station Gardani Bagh (Shastri Nagar), Patna. On completion of investigation in all the cases, chargesheets were submitted before the competent court on the basis of which the learned Chief Judicial Magistrate, Patna took cognizance of the offences alleged against the appellant. Aggrieved, the appellant filed revision applications before the learned Sessions Judge, Patna challenging the orders passed by the learned Trial Court, primarily, on the ground that the said orders were without jurisdiction and incompetent in law inasmuch as sanction for prosecution of the appellant u/s. 197 of the Code of Criminal Procedure (hereinafter for short 'the Code') was not obtained or granted prior to the date of taking of cognizance. The revision applications filed by the appellant were dismissed by the learned Additional Sessions Judge, Fast Track Court No.2, Patna by orders of different dates. The said orders of the learned Additional Sessions Judge were challenged before the High Court of Patna in Crl. Misc. No. 3187/2011, 3190/2011, 3191/2011 and 3192/2011. The High Court by the common impugned order dated 27.11.2012 negatived the challenge made by the appellant leading to the present appeals. There is yet another proceeding instituted by the appellant before the High Court i.e. Crl. Misc. No. 41263/2010 in respect of P.S. Case No. 859/2002 which has been dismissed by the High Court by its order dated 18.07.2012 on the ground that the order taking cognizance by the learned Trial Court had not been specifically challenged before it and it is only the order of the learned Sessions Judge that has been assailed by the appellant. The aforesaid order dated 18.7.2012 of the High Court has also been challenged by the appellant in the present group of appeals.

7. Insofar as the first requirement is concerned, the position of officers belonging to the Indian Administrative Service serving on deputation in a cooperative society was decided in S.S. Dhanoa vs. MCD, (1981) 3 SCC 431 1981 Indlaw SC 248. Dealing with cl. 12 of S. 21 of the IPC, this Court had held that the word 'corporation' appearing in cl. 12(b) of S. 21 IPC meant corporations established by a statute and would have no application to a cooperative society. In the present case, the materials on record, i.e., the incorporation of **the Bihar State Housing Cooperative Federation under the provisions of the Bihar Cooperative Societies Act, 1935 would seem to indicate that the said cooperative federation is a cooperative society.**

The above, however, is a prima facie view on the materials available on record at this stage. It has been argued on behalf of the appellant that at the relevant point of time the federation was under supersession and it was being exclusively controlled by the State. The above contention i.e. the extent of State control over the management of the Federation will be required to be established by means of relevant evidence before the legal effect thereof on the status of the appellant as a public servant can be decided. Possibly it is on account of the said fact that the High Court in the impugned order had granted the liberty to the appellant to raise all other points as and when they arise and had also required the Trial Court to decide all such issues, including the requirement of sanction, in the light of such subsequent facts that may come on record.

Therefore, no sanction for prosecution of the public servant for such offences would be required u/s. 197 of the Code. Notwithstanding the above, the High Court had granted liberty to the appellant to raise the issue of sanction, if so required, depending on the evidence that may come on record in the course of the trial. Despite the view taken by this Court in the series of pronouncements referred to above, the opportunity that has been provided by the High Court to the benefit of the appellant need not be foreclosed by us inasmuch as in Matajog Dobey vs. H.C. Bhari, AIR 1956 SC 44 1955 Indlaw SC 44, P.K. Pradhan vs. State of Sikkim, (2001) 6 SCC 704 2001 Indlaw SC 20078 and Prakash Singh Badal 2006 Indlaw SC 941 (supra) this Court had consistently held that the question of sanction u/s. 197 of the Code can be raised at any time after cognizance had been taken and may have to be determined at different stages of the proceeding/ trial. The observations of this Court in this regard may be usefully extracted below.

Matajog Dobey vs. H.C. Bhari 1955 Indlaw SC 44

"The question may arise at any stage of the proceedings. The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty; but facts subsequently coming to light on a police or judicial inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity for sanction. Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case."

P.K. Pradhan vs. State of Sikkim 2001 Indlaw SC 20078

"It is well settled that question of sanction u/s. 197 of the Code can be raised any time after the cognizance; may be immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused, that the act that he did was in course of the performance of his duty was reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial."

Prakash Singh Badal & Anr. vs. State of Punjab & Ors. 2006 Indlaw SC 941

"The question relating to the need of sanction u/s. 197 of the Code is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage. ..."

10. In view of the discussions we will have no occasion to cause any interference with the orders passed by the High Court in the proceedings instituted before it by the appellant which have been impugned in the appeals under consideration.

Consequently, we dismiss all the appeals and maintain the orders passed by the High Court in all the cases before it.

Appeal dismissed

Md. Moinuddin and others v Commissioner for Cooperation and Registrar of Co-operative Societies and others

Bench	Fakkir Mohamed Ibrahim Kalifulla, Fakkir Mohamed Ibrahim Kalifulla, Surinder Singh Nijjar, Surinder Singh Nijjar
Where Reported	2014 Indlaw SC 747; (2014) 8 SCC 661; AIR 2014 SC 2680; 2014 (5) ALD(SC) 192; 2014(13) SCALE 611
Case Digest	**Subject:** Land & Property; Trusts & Associations **Keywords:** Andhra Pradesh Cooperative Society Act, 1964, Land purchased, Providing housing accommodation **Summary:** Land & Property - Trusts & Associations - Andhra Pradesh Cooperative Society Act, 1964, s. 4(2) - Land purchased - Providing housing accommodation - Dispute arose between members of Voltas Employees Cooperative House Building & Construction Society Ltd. society for a piece land which society purchased - Orders were passed by officials of Department of Cooperative Society - Appellants filed appeal before HC and the same was dismissed - Hence instant appeals. Held, Registrar of Cooperative Societies of Andhra Pradesh was directed to depute one of its responsible officer in rank of Sub-Divisional Cooperative Officer to call for a General Body Meeting of Society of all members ascertained by it from records of society and conduct election of members of Managing Committee as per Bye-Laws of society. Society which emerged, has to exist in perpetuity irrespective of anybody's claim as founder member or by way of membership acquired subsequently and thereby, claim any preferential right. As object of society is to provide housing facilities to members of society in accordance with cooperative principles, such a right should be made available to all members in accordance with bye laws of society. Right of 37 members as having been admitted to society by its resolution dtd. 3-10-1996 is a concluded issue having been affirmed by various orders of HC, same has now become final and absolute. Purchase of land belongs to society and it is for society to deal with distribution of said land in manner known to law. SC conclusion and directions were based on various factors such as interpretation of Bye-Laws, concluded orders of HC and other uncontroverted facts culled out based on records placed before SC, as well as report of Registrar of Cooperative Society of Andhra Pradesh pursuant to our order, SC are of considered view that orders impugned in these appeals cannot sustain. Further, SC find that very many factors which have been brought to notice, details of which could be appreciated

	by SC, could not be found in orders impugned in these appeals. No orders need be passed in contempt proceedings. Contempt petitions are therefore, closed. In this context, SC are reminded of legal maxim 'interest reipublicae ut sit finis litium' which means it is for general welfare of State that there be an end to litigation. SC, therefore, pass directions to put an end to this everlasting litigation at instance of cooperative society. Appeals allowed.

Case No : C.A. No. 5448 of 2014 (S.L.P. (C) No. 692 of 2010) C.A. No. 5449 of 2014 (S.L.P. (C) No. 3105 of 2010), C.A. No. 5450 of 2014 (S.L.P. (C) No. 4679 of 2010), Contempt PetitioN (C) No.302 Of 2010 in S.L.P.(C) No. 4679 of 2010, Contempt Petition (C) No. 251 of 2011 in S.L.P.(C) No. 4679 of 2010, C.A. No. 5451 of 2014 (S.L.P.(C) No. 12842 of 2014 @ CC No. 10023 of 2011)

1. Delay condoned. Leave granted.

2. In all the above appeals and the connected contempt petitions, the issue concerns with the members of a cooperative society called 'The Voltas Employees Cooperative House Building & Construction Society Ltd. No.TAB 508'. It is a classic case where the members of the above referred to society got themselves entangled in a series of litigations and to add to this, some orders were passed by the officials of the Department of Cooperative Society of Andhra Pradesh, which has created pandemonium by virtue of the divergent orders passed at different points of time and, therefore, requires the consideration of this Court to pass appropriate orders and put an end to this complicated litigation once and for all. The entire dispute amongst the members of the society pertains to a piece of land, which was purchased by the society in pursuance of its object of getting some benefit for its members for providing housing accommodation. Before delving deep into the controversy, raised in this litigation, it is necessary to set out the different Special Leave Petitions filed before us, wherein orders have been challenged by different Appellants which ultimately, as pointed out by us, pertains to the issue relating to the land purchased by the society for providing housing accommodation.

6. To narrate the facts in brief, the **Voltas Employees Cooperative House Building & Construction Society Ltd. was registered on 29.10.1982 under the Andhra Pradesh Cooperative Societies Act 7 of 1964**. Its address was 4-161, Madhavi Nagar, Firozguda, Hyderabad. Its operations were confined to the municipal limits of Hyderabad. The object of the society is to carry on activities for the benefits of its members in the field of building including buying, selling, hiring, letting and developing land in accordance with the cooperative principles and also to give loans to its members for construction of dwelling houses. Under Bye-Law No.4, the share capital of the society was to be made up of 5000 shares of Rs.100 each. Bye-Law No.5 prescribes the eligibility of a member. Bye-Law No.6 deals with the procedure as to how an eligible employee of Voltas can become a member of the society. Bye-Law No.8 with its sub-cls. (i) to (iv), prescribes the disqualification for membership. Bye-Law No.12 prescribes the procedure for withdrawal of the share capital. Bye-Law No.16 describes as to how a member can be expelled from the society. Bye-Law No.17 lists out the various sources by which the society can ordinarily obtain funds. Bye-Law No.22 states the maximum period up to which the Managing Committee can function and the consequences of the proceedings becoming invalid on account of any vacancy or vacancies in the Committee, which remained unfilled. The powers of the Managing Committee has been set

out in Bye-Law No.28 and sub-cl. (d) of Bye-Law No.28 empowers the Managing Committee to admit members and allot shares. Bye-Law No.36 describes the powers of the General Body and the manner in which the General body is to be convened. Sub-cl. (vi) empowers the General Body to deal with the expulsion of a member. Bye-Law No.37(b) makes it clear that the General Body Meeting should consist of all the members of the society.

7. Keeping the abovesaid prescriptions in the Bye-Laws, when we proceed to analyze the various facts involved, we find that the society in the first instance had a membership of 28 members at the time of formation of the society in the year 1982, which rose to 43 as on 30.06.1982 and gradually the membership went up to 75 as on 31.03.1997, when 37 members stated to have got admitted in the year 1996. In fact, the whole controversy pertains to the admission of those 37 persons as members whose aspirations to get an allotment in the land originally purchased with the funds provided by the 11 founder members gave scope for this controversial and complicated litigation amongst themselves. In the year 1982, the society purchased a land measuring 1 acre 14 guntas in Survey No.233 of Thokatta Village. The entire land cost was paid by 11 of the founder members.

21. Though, the Bye-Laws do not specifically state that such an individual should be an employee of the Voltas Company, since the very society was formed by the employees of Voltas and the name itself makes it clear that the society was formed by the employees of the Voltas for providing housing facility, it is imperative that the individual should be an employee of Voltas. As per Bye-Law No.6 read along with Bye-Law No.4, one who seeks to become a member should be a shareholder and the cost of such share has been fixed at Rs.100, made up of 5000 shares, which would form the capital of the society. When an application for admission as a member for allotment of the share is made to the Secretary of the society in the prescribed form, such an application should be disposed of by the Managing Committee, who has been empowered to grant admission and allot shares or refuse the sane. In the event of refusing to allot a share, reasons will have to be adduced. Bye-Law No.6(b) also states that if no such decision is communicated within the prescribed time, then within 50 days from the date of application for membership, the society shall be deemed to have admitted such applicant as a member on the date of expiration of 60 days from the date of application and the Secretary should give effect to such admission. Once a person is admitted as a member of the society by virtue of Bye-Law No.7, he will be eligible for the services of the society.

22. After the membership of a person into the society is confirmed, his exit from the society can be either by way of disqualification as provided under Bye-Law No.8, or by way of withdrawal of share capital under Bye-Law No.12 or by way of an expulsion under Bye-Law No.16. If the exit of a membership is by way of a disqualification, it should come under any one of the sub-cls. (i) to (iv) of Bye-Law No.8. If it is by way of withdrawal of share capital, as provided under Bye-Law No.12, then again the stipulation contained in the said Bye-Law should be fulfilled. If a member is to be expelled, specific procedure has been prescribed under Bye-Law No.16(1) and in the event of any resolution for expulsion having been passed as prescribed under Bye-Law No.16(1), such expulsion should have the approval of the Registrar of Cooperative Societies under Bye-Law No.16(2).

Therefore, an expulsion of a member cannot be claimed to be made by a mere stand taken by the

society. There must be an order of approval of the Registrar of Cooperative Society confirming the expulsion resorted to as proscribed under Bye-Law No.16(1) or otherwise, such an expulsion of membership claimed by the society cannot be valid.

31. When we come to the expulsion of membership, it is not the case of either the society or any of the rival claimants that any such proceeding for such expulsion, as stipulated under Bye-Law No.16, was carried out and that such proceeding was also approved by the Registrar. In such circumstances, in the absence of any such valid order of approval by the Registrar relating to the expulsion of the newly added members, there is no question of the remaining 27 members having ceased to be the members of the society.

32. Keeping the above factors in mind, relating to the 37 members, now 27, the only other question which remains to be considered is as to the entitlement of the members of the society for a housing accommodation in the land admeasuring 1 acre 14 guntas in Survey No. 233 of Thokatta Village. When we consider the said issue, the claim of the so- called 11 founder members is that the entire value of the land was borne by them and, therefore, they are exclusively entitled to the distribution of the land amongst themselves. Such a claim was distinctly mentioned in the General Body Meeting of the society held on 04.04.1997. In fact, there was a serious deliberation and discussion in the said Meeting relating to the said issue and the minutes of the General Body Meeting states as under:

37. Therefore, to put it in clear and unambiguous terms, all those investments made either by the founder members or by the subsequent members other than those relating to the share capital, can only be taken as their deposits forming part of the funds of the society. The society is, therefore, bound to account for such deposits made by the members from the relevant dates and whatever prevailing interest in the market should accrue to such deposits and depending upon the volition of the member, it is for the society to take a decision either for refund of the sum so deposited after a fixed period or for using the same to meet the cost of the land in the event of its ultimate distribution to its various members.

39. We find that such a conclusion and direction made by the learned Single Judge in the said order in Writ Petition No.701 of 2003, is not only the only course but the appropriate course to be followed by the society. In our considered view, any other attempt to deal with the land already purchased by the society, will not only run counter to the cooperative principles but will only create further complications and result in utter chaos and confusion. Therefore, neither the founder members nor those who were subsequently inducted/admitted as members, can claim any preference or right of allotment in any particular manner, other than the manner in which the learned Judge has directed in the said order.

41. In as much as our conclusion and directions were based on the various factors such as the interpretation of the Bye-Laws, the concluded orders of the High Court and the other uncontroverted facts culled out based on the records placed before us, as well as the report of the Registrar of the Cooperative Society of Andhra Pradesh pursuant to our order dated 04.09.2012, we are of the considered view that the orders impugned in these appeals cannot sustain. Further, we find that very many factors which have been brought to our notice, the details of which could be appreciated by this Court, could not be found in the orders impugned in these appeals.

42. We, therefore, set aside the orders impugned in these appeals, while holding that the directions contained in paragraph 40 shall alone govern this case. In the light of our above orders, we find that no orders need be passed in the contempt proceedings initiated in Contempt Petition(C) Nos.302 of 2010 and 251 of 2011 in SLP(C) No.4679 of 2010. The Contempt Petitions are therefore, closed. In this context, we are reminded of the legal maxim 'interest reipublicae ut sit finis litium' which means it is for the general welfare of the State that there be an end to litigation. We, therefore, pass the above directions to put an end to this everlasting litigation at the instance of the cooperative society.

The appeals are allowed with the above directions. No Costs.

Appeals allowed

Satya Pal Anand v State of Madhya Pradesh and Another

Bench	A.K. Sikri
Where Reported	2014 Indlaw SC 329; (2014) 7 SCC 244; AIR 2014 SC 2361; 2014(4) ALL MR 432; JT 2014 (8) SC 154; 2014 (4) MPLJ 633; 2014 (3) RCR(Civil) 305; 2014(6) SCALE 761; 2014 (6) SLR 325
Case Digest	**Subject:** Administrative; Trusts & Associations **Keywords:** Provisions, Validity **Summary:** Administrative - Trusts & Associations - Madhya Pradesh Co-operative Societies Act, 1960, ss. 10, 11, 12, 18A, 19A, 3, 49D, 53, 53(1), 55, 57, 57(1), 59, 64, 77(3)(b), 77(6), 8, 9 - Appointment - Provisions - Validity - Petitioner filed PIL before HC challenging validity of s. 3 of 1960 Act to extent this provision permits State Govt. to appoint Registrar of Co-operative Society, as well as Additional Registrar, Joint Registrar, Deputy Registrar, Assistant Registrar etc, petitioner also challenged proviso added to ss. 77 (3)(b), 77 (6) of the Act as unconstitutional - HC repelled the challenge of petitioner to vires of provisions of the Act and dismissed the petition - Hence instant petition - Whether it becomes imperative to appoint a Registrar with legal or judicial backdrop keeping in view aforesaid Scheme of the Act - Held, need for appointment of suitable persons not only as Registrar, Joint Registrar etc. but as Chairman and members of Tribunal as well - While discharging quasi-judicial functions Registrar, Joint Registrars etc. had to keep in mind that they had to be independent in their functioning - They were also expected to acquire necessary expertise to effectively deal with disputes coming before them - They were supposed to be conscious of competing rights in order to decide case justly and fairly and to pass orders which were legally sustainable - Reasons for experience about functioning of Information Commissions could be either that persons who do not answer criteria mentioned in ss. 12(5), 15(5) have been appointed as Chief Information Commissioner (CIC) or that persons appointed even when they answer aforesaid criteria, they do not have required mind to balance interests indicated in the Act - It was therefore insisted that experienced suitable persons should be appointed who were able to perform their functions efficiently and effectively - In this behalf certain directions were given and one of the directions was that while making recommendation for appointment of CIC and Information Commissioners Selection Committee must mention against name of each candidate recommended facts to indicate his eminence in public life, his knowledge and experience in particular field and these facts must be accessible to citizens as part of their right to information

	under that Act, after appointment was made - State Govt. was should, keep in mind objective of the Act, functions which Registrar, Joint Registrar etc. were required to perform and commensurate with those, appointment of suitable persons should be made - Regard to fact that Chairman of Tribunal was to be judicial person, Former Judge of HC or District Judge, for appointment of Chairman and Members of Tribunal - For appointment of Chairman and Members of Tribunal, selection to these posts should preferably be made by Public Service Commission in consultation with HC - Petition dismissed.

Case No : S.L.P. (C) No. 33644/2011

The Judgment was delivered by : A. K. Sikri, J.

1. The petitioner herein had filed Writ Petition u/art. 226 of the Constitution in the High Court of Madhya Pradesh, Principal Seat at Jabalpur, in the nature of Public Interest Litigation. In that petition, the petitioner has challenged the validity of S. 3 of the M.P. State Co-operative Societies Act, 1960 (hereinafter referred to as the Act) to the extent this provision permits the State Government to appoint the Registrar of the Co-operative Society, as well as Additional Registrar, Joint Registrar, Deputy Registrar, Assistant Registrar etc. The petitioner also challenged proviso added to S. 77 (3)(b) and S. 77 (6) of the Act as unconstitutional. To put it succinctly, the grievance of the petitioner was that these provisions provide for appointment of persons not having any education in law, though discharging the judicial function, which was impermissible and ex-facie violative of Art. 14 and 21 of the Constitution. The petitioner had even given suggestion to the effect that the appointments of these presiding officers be made in manner presiding officers of the labour courts are appointed.

8. However, limited powers are given to the Registrar to entertain certain kinds of disputes and take decision thereupon as well. One such provision is S. 55 of the Act which, inter-alia, provides that regarding terms of employment, working conditions and disciplinary action taken by a Society, if a dispute arises between a Society and its employees, the Registrar or any officer appointed by him (not below the rank of Assistant Registrar) shall decide the dispute. Likewise, S. 64 of the Act provides that the Registrar shall decide the dispute touching upon the Constitution, management or business, terms and conditions of employment of a Society or the liquidation of the Society.

9. The question that falls for consideration is whether it becomes imperative to appoint a Registrar with legal and/or judicial backdrop keeping in view the aforesaid Scheme of the Act? In an endeavour to justify the appointment of a legal person to man this office, the petitioner submitted that the very nature and significance of the functions discharged by the Registrar or his nominee, would manifest that knowledge of law and practice is dispensable to effectively carry out those functions inasmuch as such presiding officer is supposed to be conversant with the provisions of Civil Procedure Code, Law of Evidence, Indian Penal Code, Code of Criminal Procedure, etc. It was further submitted that the functions are such that authority discharging such function is to be classified as "court" and it is so held by this Court in the case of Thakur Jugal Kishore v. Sitamarhi Central Co-operative Bank Ltd. AIR 1967 SC 1494 1967 Indlaw SC 456. This decision is followed subsequently in Mukri Gopalan v. Cheppilat Puthampurayil Aboobacker AIR 1995

SC 2272 1995 Indlaw SC 1785 and P.Sarathy v. State Bank of India AIR 2000 SC 2023 2000 Indlaw SC 534.

10. The petitioner also submitted that the Bombay High Court in the case of Maharashtra Co-operative Courts Bar Association, Bombay & Ors. v. State of Maharashtra & Ors. 1990 Mah.L.J. 1064 has held that presiding officer of the cooperative court form cadre of subordinate courts as understood by Art.234 of the Constitution of India and State Government will have to take action to make appointment of these presiding officer in accordance with the direction contained in the said Article. In other words, it would mean that they can be selected by the Maharashtra Public Service Commission in consultation with the High Court. On that basis, the petitioner pleads that State Government should not be given right to appoint any person as the Registrar etc. The petitioner also went to the extent of describing these functionaries as the "Cooperative Courts" while discharging these duties through no such nomenclature is provided in the Act. He also submitted that in the State of M.P. functioning of these authorities was dismal, creating unfortunate and painful situation which was because the reason that persons appointed were blissful ignorant about the legal aspects. They were not functioning "independently" as well, though independence of judiciary was the hallmark of the basic structure of the Constitution. He argued that with such appointments impartiality, independence, fairness and reasonableness is threatened and compromised. In support of this argument, the petitioner has referred to the following judgments. (2010) 11 SCC 11 : UOI v. R.Gandhi President Madras Bar Assn.2010 Indlaw SC 405 (2012) 10 SCC 353: State of Gujarat v. Gujarat Revenue Tribunal Bar Assn. (2013) 1 SCC 745: Namit Sharma v. UOI. 2012 Indlaw SC 311

11. We have already taken note of the Scheme of the Act and the role and functioning of the office of the Registrar under the said Scheme. Most of the powers of the Registrar are administrative in nature. While exercising those powers the Registrar is not deciding any lis. He is one of the main administrative functionaries for the purposes of carrying out the objectives of the said Act. At the same time, the Registrar is also give some quasi-judicial powers. He, also for that matter Additional/Joint/Deputy/Assistant Registrar are, therefore, wearing two hats, with predominant role of the administrators. It is not the case of the petitioner that the judicial function should be taken away from the Registrar and assigned to some other authority. The petitioner has pleaded for appointment of a person with legal background as Registrar etc. to enable him to decide the dispute between the parties more effectively, as according to him, any person with no legal/judicial background is incapable of deciding those cases. However, same arguments can be pressed by other side in a reverse situation. If a person with legal background is appointed to any of these posts, then his appointment can be challenged on the ground that such a person though would be fit to discharge the quasi judicial duties, but totally unfit to discharge other administrative duties which are the primary and day to day duties attached to the said office.

13. We emphasize, at the cost of repetition, that most of the functions are in the sphere of administration and governance with few additional duties having quasi judicial character. In such a situation and more particularly when a Tribunal is constituted with all the trappings of a court, we do not find any fault with the provision of S. 3 of the Act empowering the Government to appoint persons as Registrars, Joint Registrars, Deputy Registrars and Assistant Registrars etc. necessarily with legal/judicial background. Challenge to the vires of S. 3 of the Act is, therefore, rejected, upholding the judgment of the High Court on this issue for our own reasons given hereinabove.

16. Having regard to our aforesaid discussion, **various arguments raised by the petitioner based on the judgments cited by him are of no benefit as those judgments have no applicability. No doubt the Registrar exercising powers u/s. 48 of the Bihar and Orissa Cooperative Societies Act is held to be a Court.** It was so stated in the following manner :

"It will be noted from the above that the jurisdiction of the ordinary civil and revenue Courts of the land is ousted under S.57 of the Act *in case of disputes which fell under S.48. A Registrar exercising powers under S.48 must, therefore, be held to discharge the duties which would otherwise have fallen on the ordinary civil and revenue Courts of the land. The Registrar has not merely the trappings of a Court but in many respects he is given the same powers as are given to ordinary civil Courts of the land by the* Code of Civil Procedure *including the power to summon and examine witnesses on oath, the power to order inspection of documents, to hear the parties after framing issues, to review his own order and even exercise the inherent jurisdiction of Courts mentioned in S.151 of the* Code of Civil Procedure*. In such a case there is no difficulty in holding that in adjudicating upon a dispute referred under S.48 of* the Act*, the Registrar is to all intents and purposes, a Court discharging the same functions and duties in the same manner as a Court of law is expected to do."*

However, it does not necessarily follow from that the Registrar exercising such powers has to be necessarily a person with judicial/legal background. That was not even an issue in the aforesaid case.

20. Taking clue from the aforesaid directions, and having gone through the similar dismal state of affairs expressed by the petitioner in the instant petition about the functioning of the cooperative societies, we direct that the State Government shall, keeping in mind the objective of the Act, the functions which the Registrar, Joint Registrar etc. are required to perform and commensurate with those, appointment of suitable persons shall be made. Likewise, having regard to the fact that the Chairman of the Tribunal is to be a judicial person, namely, Former Judge of the High Court or the District Judge, we are of the opinion that for appointment of the Chairman and the Members of the Tribunal, the respondent-State is duty bound to keep in mind and follow the mandate of the Constitution Bench judgment of this Court in R.Gandhi 2010 Indlaw SC 405 (supra). Thus, for appointment of the Chairman and Members of the Tribunal, the selection to these posts should preferably be made by the Public Service Commission in consultation with the High Court.2010 Indlaw SC 405

21. As a result, subject to the aforesaid directions, this Special Leave Petition is dismissed.

Petition dismissed

J. N. Chaudhary and others v State of Haryana and others

Bench	Gyan Sudha Misra, Pinaki Chandra Ghose
Where Reported	2014 Indlaw SC 295; AIR 2014 SC 2018; JT 2014 (6) SC 223; 2014(5) SCALE 666
Case Digest	**Subject:** Land & Property; Practice & Procedure **Keywords:** Co-operative Societies Act, 1912, Haryana Co-Operative Societies Act, 1984 **Summary:** Land & Property - Practice & Procedure - Auction of land - Legality - Appeals were preferred against the judgment and order passed by HC whereby HC held that land being situated in Haryana, the publishing of the later advertisement in 'The Tribune' could not be held to cause any prejudice to the prospective buyers as alleged by the appellant - Whether endeavour of the appellants that the auction sale should be set aside was maintainable - Held, in the instant matter existing 10 members of the society have practically reduced the Co-operative Society to a defunct society as all members except 10 out of 278 had finally withdrawn - Hence, the auction sale at their instance, although the said auction sale had taken place in view of the majority support of the General Body resolution which was conducted under the supervision of the Board of Administrators appointed by the Registrar, Co-operative Society and the Sales Committee was difficult to scrap it as illegal in spite of the overwhelming material relied upon by the HC which had upheld the auction sale - Thus in a matter where the decision has been taken collectively by the General Body reflected in the form of a resolution passed by the General Body, it would be unjust and inappropriate to nurture a lurking doubt and keep suspecting the decision by entertaining the version of a handful who might be disgruntled or might be genuine but would be difficult to be gauged by any court so as to over-rule the General Body resolution and accept the view of the minority based on no evidence except assumption and speculation - If the instant matter was to be viewed meticulously, it was clearly obvious that the appellants have expected the court of writ jurisdiction to enter into the correctness and validity of the auction sale essentially by expecting the Court to draw inference without evidence that the auction sale was not bona fide as it did not fetch the desired value of the land contrary to the materials available on record - Plethora of circumstances were related to establish the same which clearly were in the realm of conjecture and speculation, yet the Single Judge and the DB of HC had both scrutinized and considered the same and had recorded a finding against the appellants which could not be held to suffering from perversity being contrary

	to the existing materials before the Court which were relied upon - Thus, the validity and correctness of the General Body resolution in view of which the land was put to auction sale cannot be allowed to be assailed specially when the price/alleged under valuation of the land in the auction sale no longer survives as HC had allowed the value of the land to be increased by increasing it from Rs. 40 lakhs to Rs.70 lakhs per acre was ordered to be paid along with 6 % interest - Appellants did not furnish any material as noted by HC that the cost of the land in the year of the date of auction which was 2003 was more than Rs.70 lakhs per acre so as to offer a cause to interfere even if it were to be interfered in the interest of equity, justice and fair play specially when the circle rate of the land in the year 2003 when the auction was held was Rs.12 lacs per acre only - Hence, endeavour of the appellants that the auction sale should be set aside and the land be revived to the society could not be entertained in absence of proof of mala fide contrary to the existing materials on record on the basis of speculation, assumption and inference urged by the appellants - Appeals dismissed.

Case No : C.A. Nos. 4854-4855 of 2014 (Arising out of S.L.P. (C) Nos. 1581-1582/2011 with C.A. Nos. 4856-4857 of 2014 (Arising out of S.L.P. (C) Nos. 4758-59/2011) (From the judgement and order Dt. 27/08/2010 in CW.P. No. 6491/2005, CW.P. No. 7742/2005, LPA No. 215/2007, LPA No. 216/2007 of the PUNJAB AND HARYANA HIGH COURT)

3. These appeals by special leave have been preferred against the judgment and order dated 27.08.2010 passed by the High Court of Punjab and Haryana at Chandigarh in Letters Patent Appeal Nos.215 and 216 of 2007 (O & M) whereby the Division Bench of the High Court dismissed both the letters patent appeals by a common judgment and order which is under challenge herein.

4. The letters patent appeals which stood dismissed arose out of two writ petitions filed in the High Court before the learned Single Judge bearing writ petition Nos.6491/2005 and 7742/2005 which were filed challenging the orders dated 13.12.2002, 05.09.2003 and 19.11.2004 in the High Court at Chandigarh which were the Suspension Order, Removal Order of the erstwhile Committee and order of the Dy. Registrar who dismissed the appeal against removal. The facts stated therein disclosed that on 04.03.1994, a co-operative society in the name of Mount Everest Co- operative Group Housing Society was formed and constituted under the Haryana Co-operative Societies Act, 1984 wherein 288 persons became members of the Society upto 1995-96 and contributed a total sum of approximately Rs.7.5 crores towards the funds of the Society which were to be utilised for purchase of the land. In the year 1996, the Society purchased approximately 10 acres 4 kanals 14 marlas of land in Village Wazirabad as well as Hyderpur Viran with the funds contributed by the members of the Society for achieving its objects. At the time of formation of the Society, a Managing Committee had also been constituted with Mr. R.P. Gupta as Secretary but the same was suspended on 23.10.1996 by the then Assistant Registrar Co-operative Societies, Gurgaon on the allegations of financial irregularities and a Board of Administrator was appointed. However, the Deputy Registrar reinstated the Managing Committee of the society on 30.08.1999.

5. It is the case of the petitioner/members of the Society that the new Managing Committee after taking charge and upon inspection of the records of the Society found that the earlier Managing Committee had indulged in large scale malpractices and in order to investigate the same, an internal committee was constituted to go into the land records, finances as well as other aspects of the Society. This internal committee therefore conducted an intensive enquiry and submitted report which highlighted gross irregularities by the previous Managing Committee in the purchase of land, utilisation of members fund, expenditure on account of day to day expenses and expenses incurred on land and site development etc. This audit was conducted for the period 1993 to 2001 when the Managing Committee of the society stood suspended and the Board of Administrators was in-charge of the affairs of the Society. Finally, when the audit report was submitted in March, 2002, the Managing Committee which had been constituted on 28.05.2000 with A.K. Mahindra as Secretary decided to lodge an F.I.R. against the members of the earlier Managing Committee when R.P. Gupta was the Secretary and the F.I.R. finally was lodged with the Police Station DLF, Gurgaon after which investigation was conducted and arrests were made.

14. The learned Judges of the Division Bench who heard the letters patent appeals rejected all the contentions of the appellants and upheld the order passed by the learned single Judge holding therein that the plea regarding suppression of notice in a newspaper lacking wide circulation could not be sustained as the first advertisement regarding auction notice were published in three newspapers of wide circulation and when the first auction notice was cancelled, the second notice was published announcing the new date as the said order against the auction had been vacated and the said notice was published in the daily newspaper 'The Tribune' which is locally the most prominent newspaper in Punjab and Haryana. Hence, the Division Bench was pleased to hold that the land being situated in Haryana, the publishing of the later advertisement in 'The Tribune' cannot be held to cause any prejudice to the prospective buyers as alleged by the appellant.

15. The Division Bench was further pleased to hold that the plea raised by the counsel for the appellant that there was no necessity of selling the land belonging to the Society was also not worth accepting when a conscious and considered decision was taken by the General Body vide its resolution passed on 02.06.2002, whereby a decision was taken to sell the land keeping in mind the plight of the members who were initially made to understand that in case flats were constructed a flat would cost around Rs.4 lakhs but would later stipulated that on completion of the flat, the same would cost Rs.17.50 lakhs approximately, if construction commenced on time and were to be completed within three years, whereas at the relevant point of time, flats in other adjoining societies were readily available for a lower cost at Rs.12 to 13 lakhs. The Division Bench therefore was pleased to hold that the decision in the General Body Meeting was taken after considering the pros and cons of the decision to auction sale the land.

Hence, the Division Bench was pleased to hold that when the appellant No.1 Captain A.K. Mahindra, the erstwhile/ suspended Honorary Secretary had himself as an office bearer sought permission to sell the land at Rs.40 lakhs per acre, he cannot be permitted to question the inadequacy of Rs.70 lakhs per acre which was awarded by the learned single Judge. Thus, the amount which was actually paid for the purchase of the land on 24.11.2003 exceeded by about Rs.70 lakhs, which was previously estimated to be Rs.40 lacs per acre as per the market rate i.e. Rs.4.2 crores vide letter dated 02.07.2002 which was written by the appellant No.1/Captain A.K.

Mahindra on behalf of Mount Everest Society to the Registrar, Co-operative Society, Haryana. The learned Judges of the Division Bench thus were pleased to uphold the judgment and order passed by the single Judge relying upon the figure suggested by the appellant No.1 himself relating to the cost of land recorded hereinbefore.

Consequently, the Division Bench which examined in detail the price fetched for the society land, found it to be reasonable particularly in the light of the adverse factors noticed by the General Body Meeting which prompted the General Body to pass a resolution to put the land to auction sale which have been scrutinised meticulously and extensively by the single Bench of the High Court as also the Division Bench recorded hereinbefore. In view of the aforesaid findings recorded by the Division Bench, the letters patent appeals were dismissed by the High Court and thus it was concurrently held by the single Judge as well as the Division Bench also that the auction sale could not be held to be illegal, arbitrary or suffering from the vice of surreptitious auction sale which could persuade the High Court to set it aside as the High Court examined in detail the price fetched for the society land and found it to be reasonable particularly in the light of the adverse factors noticed by the General Body in the Meeting which prompted the General Body to pass a resolution to put the land to auction sale.

32. From the background, facts and circumstance of the matter, it is further clear that the members of the co-operative society had clearly opted a wrong forum by filing a writ petition in the High Court for if they expected the court to appreciate evidence and record a finding on the aforesaid disputes for setting aside the auction sale, it is obvious that the petitioners should have approached the civil court of competent jurisdiction where it would have had the opportunity to adduce evidence and prove all the allegations of under valuation and the alleged fraud challenging the auction sale. In fact, the writ petition for assailing a factual dispute ought not to have been entertained by the High Court under its writ jurisdiction but in the interest of justice and fairness as also equity and good conscience, the High Court entertained a dispute which purely was of a civil nature since all contentions which have been raised would have required appreciation of evidence. Yet the High Court to a great extent has taken care to scrutinize all aspects of the matter in regard to the writ petition filed by the co-operative society members who sought to assail the auction sale clearly alleging disputed questions of fact alleging fraud in conducting auction sale as also valuation of the land in question which required adducing of evidence and the same could not have been entertained by the High Court u/arts. 226 and 227 of the Constitution except to the extent of considering whether the order passed by the Registrar, Co-operative Societies rejecting the challenge of removal of the managing committee was sustainable or not. Yet the High Court has entered into all aspects and has then reached to a conclusion considering entire conspectus of the matter which in our view cannot be held to be arbitrary, illegal or unjust in any manner.

34. The cumulative effect of the entire analysis based on the facts and circumstance in the light of the reasonings assigned by the Single Bench of the High Court as also the Division Bench, it would not be just and proper to interfere with the judgments and orders passed by the single Judge as also the Division Bench of the High Court holding concurrently that the auction sale which was in pursuance to the resolution passed by the General Body of the Co-operative Society based on the price prevalent on the date of auction sale could be faulted on the ground of allegations leveled on the basis of assumption and speculation of 10 members of the society who had assailed the same by invoking writ jurisdiction.

35. At this juncture, it would be appropriate to observe that in judging the functioning of a co-operative society or any other statutory body where the democratic process of election is adopted in pursuance to the Rule and a collective decision is taken by majority of the members of the entire body expressed in terms of a resolution passed by the General Body, then the plea that the same should be ignored and bye-passed even if the same has been challenged by a handful of members on speculative allegation and assumption contrary to the reasons recorded in the Minutes Books on the plea of mala fide, without any evidence, would be illegal and arbitrary to accept being contrary to the rule unless the alleged malicious action is writ large on the alleged decision and is challenged by majority of the members. If a decision is taken by majority of the members of a Co-operative Society or any other body under a statute in terms of the Rule, it cannot be over-ruled by minority on the ground of mala fide or fraud unless it has passed through a strict proof of evidence. It is a well known dictum that mala fide is always easy to allege but difficult to prove as the same cannot be held as proved relying on assumption, speculation and suspicion.

36. In the instant matter existing 10 members of the society have practically reduced the Co-operative Society to a defunct society as all members except 10 out of 278 have finally withdrawn. Hence, the auction sale at their instance, although the said auction sale had taken place in view of the majority support of the General Body resolution which was conducted under the supervision of the Board of Administrators appointed by the Registrar, Co-operative Society and the Sales Committee is difficult to scrap it as illegal in spite of the overwhelming material relied upon by the High Court which has upheld the auction sale.

    Thus in a matter where the decision has been taken collectively by the General Body reflected in the form of a resolution passed by the General Body, it would be unjust and inappropriate to nurture a lurking doubt and keep suspecting the decision by entertaining the version of a handful who might be disgruntled or might be genuine but would be difficult to be gauged by any court so as to over-rule the General Body resolution and accept the view of the minority based on no evidence except assumption and speculation. If the instant matter is viewed meticulously, it is clearly obvious that the appellants have expected the court of writ jurisdiction to enter into the correctness and validity of the auction sale essentially by expecting the Court to draw inference without evidence that the auction sale was not bona fide as it did not fetch the desired value of the land contrary to the materials available on record. Plethora of circumstances have been related to establish the same which clearly are in the realm of conjecture and speculation, yet the Single Judge and the Division Bench have both scrutinized and considered the same and have recorded a finding against the appellants which cannot be held to suffering from perversity being contrary to the existing materials before the Court which have been relied upon.

39. We, thus find no illegality or infirmity in the impugned judgments and orders passed by the single Bench as also the Division Bench concurrently refusing to set aside the auction sale held 11 years ago in the year 2003 at the instance of a Co-operative Society which has practically been rendered defunct and thus ceased to exist apart from the other weighty reasons discussed hereinbefore. Consequently, both the appeals are dismissed but in the circumstance without any order as to costs.

Appeals dismissed

Pratima Chowdhury v Kalpana Mukherjee and another

Bench	Jagdish Singh Khehar, P. Sathasivam
Where Reported	2014 Indlaw SC 77; (2014) 4 SCC 196; AIR 2014 SC 1304; 2014 (2) AWC 2062; JT 2014 (2) SC 586; 2014 (3) RLW 2244; 2014(2) SCALE 175; [2014] 2 S.C.R. 656
Case Digest	**Subject:** Land & Property; Practice & Procedure; Trusts & Associations **Keywords:** Accommodation, Societies **Summary:** Allotment of flat-Onus of substantiating validity and genuineness of transfer of flat in question by appellant through letter and document rested solely on shoulders of respondent-Kalpana Mukherjee-Respondent-Kalpana Mukherjee miserably failed to discharge burden of proof-No justification whatsoever for appellant, to have transferred flat in question, free of cost, even though she had purchased same for consideration-Specially so, when she had no direct intimate relationship with respondent-Kalpana Mukherjee-Numerous factual aspects clearly negate assertions made by respondent-Kalpana Mukherjee-Stance adopted by respondent-Kalpana Mukherjee in written statement filed by her before Arbitrator-Shown to be false-Invocation of principles of justice and equity, and doctrine of fairness, would in fact result in returning finding in favour of appellant, and not respondent-Kalpana Mukherjee-Co-operative Tribunal and High Court seriously erred in their approach, to determination of controversy-Order passed by Co-operative Tribunal and High Court-Set aside-Determination rendered by Arbitrator in his award-Affirmed-Respondent-Kalpana Mukherjee directed to handover possession of flat in question to appellant-Co-operative House Society directed to retransfer share of Co-operative House Society earlier held by appellant and ownership of flat in question to name of appellant, without any delay.

Case No : C.A. No. 1938 of 2014 (Arising out of S.L.P. (Civil) Nos. 15252 of 2006)

The Judgment was delivered by : Jagdish Singh Khehar, J.

1. Orchestra Co-operative House Society Limited (hereinafter referred to as 'the Society') raised flats at 48/IE, Gariahat Road, Calcutta -700019. Indirani Bhattarcharya became a member of the Society on 12.1.1987. She was issued share certificates bearing nos. 0047 and 0048. Based on the above membership she was allotted flat no. 5D for a consideration of Rs. 4 lakhs. The above flat measuring 900 sq. ft. comprised of three bed rooms, two bath rooms, one drawing-cum-dinning room, a kitchen and verandah on the fourth floor. In addition to the above, she was allotted one covered garage space on the ground floor. The transfer of the flat no. 5D by the Society to Indirani Bhattacharya was approved by the Deputy Registrar, Co-operative Societies.

3. The facts available on the records reveal that Partha Mukherjee (son-in-law of the petitioner's sister, and son of the respondent) occupied the petitioner's flat. Partha Mukherjee was employed as Regional Sales Manager with Colgate Palmolive (India) Limited. On 9.3.1992, Colgate Palmolive (India) Limited, confirmed having taken flat no. 5D on lease and license, for a period of three years (with effect from 1.4.1992), for the residence of Partha Mukherjee. The pleadings also reveal, that with effect from 1.4.1992, Colgate Palmolive (India) Limited, took the aforesaid flat on a monthly rent of Rs. 5,000/-. The above said monthly rent, was deposited in the joint account of the petitioner Pratima Chowdhury and Partha Mukherjee.

4. On 29.6.1992, the petitioner Pratima Chowdhury addressed a letter to the Secretary of the Society, requesting the Society to transfer flat no. 5D to the name of her nominee Kalpana Mukherjee. The letter dated 29.6.1992 of Pratima Chowdhury, made some express factual disclosures. Firstly, that she was not in good health. Secondly, that she was not in a position to move to Calcutta from Bombay in the near future. Thirdly, that Kalpana Mukherjee was already residing in the flat in question along with Partha Mukherjee. Fourthly, that above nominee Kalpana Mukherjee was her close relative. In addition to the request of transfer of flat no. 5D in favour of her nominee Kalpana Mukherjee, Pratima Chowdhury also informed the Society through her letter dated 29.6.1992, that all municipal taxes and service charges in connection with the above flat should be collected from Kalpana Mukherjee.

Having traced the relationship between the parties, as has been recorded hereinabove, the Co-operative Tribunal was of the view, that the entire approach of the Arbitrator was erroneous, as the Arbitrator had treated Pratima Chowdhury as a pardanashin lady. The above inference, drawn by the Co-operative Tribunal, is also being extracted hereunder:-

"The entire approach of the Ld. Arbitrator seemed to have gone into the fashion as if the respondent no. 1 P. Chowdhury was a pardanasin lady, that she was unaware of the documents she was executing that it was Partha who managed to get all the documents executed by Pratima so as to obtain transfer of the flat in the name of his mother Kalpana Mukherjee. Let it be recorded here at the outset that P. Chowdhury, having regard to her status, education and wealth cannot be allowed to take the benefit of what a pardanasin woman is entitled to on two-fold grounds; firstly, she is highly education (illegible) and a literate woman and secondly, the pleading of Pratima Chowdhury as we get from plaint does not make out such a case. "

Just in the manner in which we have recorded the conclusions drawn by the Co-operative Arbitrator, highlighting each individual aspect taken into consideration, we will also endeavour to similarly summarize the conclusions drawn by the Co-operative Tribunal on different aspects of the matter. The above conclusions are being recorded hereunder:-

(i) The Co-operative Tribunal was of the view, that the determination rendered by the Arbitrator was erroneous on account of the fact that the Arbitrator did not take into consideration a letter of vital importance to the controversy. In this behalf, the Co-operative Tribunal examined the letter dated 29.6.1992, which Pratima Chowdhury had written to the Society, wherein she had indicated that due to her indifferent health, she was not in a position to visit Calcutta in the immediate future. She accordingly requested the Society to transfer her flat to "my nominee Kalpana Mukherjee, a close relative of mine". In the above letter Pratima Chowdhury had also

stated, that Kalpana Mukherjee was already occupying the flat, and was staying in it with her son (Partha Mukheree), and her daughter-in-law (Sova Mukherjee). She accordingly requested the Society, that for the maintenance of the flat, charges payable should be recovered from the residents of the flat.

As per the Co-operative Tribunal, the submission of Pratima Chowdhury about having signed a blank paper, on which Partha Mukherjee had executed the document dated 13.11.1992, was not acceptable. The Co-operative Tribunal was of the view, that Pratima Chowdhury having admitted her signatures on the document dated 13.11.1992, it was not open to her to deny the execution thereof. For the same reason, the Co-operative Tribunal rejected the contention advanced on behalf of Pratima Chowdhury, that she had never appeared before the notary at Calcutta because she had never gone to Calcutta during the period when the documents dated 11.11.1992 and 13.11.1992 were executed. The Co-operative Tribunal felt compelled to record the aforesaid conclusion in the following words: "Regardless of whether the document called agreement dated 13.11.1992 is legal or not, the fact remains that the document was executed by the transferor and the transferee, and it could not be denied that long before the agreement was executed, possession of the flat was delivered way back in March, 1992.". Therefore, all the findings recorded by the Arbitrator in respect of the document dated 13.11.1992 were not accepted for the above reasons.

27. The Co-operative Tribunal in its order dated 16.5.2002 had invoked the principle of estoppel, postulated in S. 115 of the Indian Evidence Act. The High Court affirmed the conclusions drawn by the Co-operative Tribunal. In addition to the above principle, the High Court invoked the principles of equity and fairness. Insofar as the latter principles are concerned, we shall delve upon them after examining the contentions of the rival parties, as equity and fairness would depend upon the entirety and totality of the facts. The above aspect can therefore only be determined after dealing with the intricacies of the factual circumstances involved. We shall, however, endeavour to deal with the principle of estoppel, so as to figure whether, the rule contained in S. 115 of the Indian Evidence Act could have been invoked, in the facts and circumstances of the present case. S. 115 of the Indian Evidence Act is being extracted hereinabove:-

"115. Estoppel.-When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Illustration

A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it. The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title."

Therefore, factually the expression of close relationship between Pratima Chwodhury and Kalpana Mukherjee depicted in letters dated 11.11.1992 and 13.11.1992 are on the face of it, false and incorrect. It is, therefore, improper for the adjudicating authorities to have accepted the factum of close relationship of the parties, in so far as, the transfer of flat no. 5D, is concerned.

By the time the flat was transferred, more than a decade had passed by, during which period, the price of above flat, must have escalated manifold. Numerous other factual aspects have been examined by us above, which also clearly negate the assertions made by Kalpana Mukherjee. The same need not be repeated here, for reasons of brevity. Keeping in mind the above noted aspects, we are of the considered view, that invocation of the principle of justice and equity, and the doctrine of fairness, would in fact result in returning a finding in favour of Pratima Chowdhury, and not Kalpana Mukherjee.

32. For the reasons recorded hereinabove, the instant appeal is allowed, the order dated 16.5.2002 passed by the Co-operative Tribunal, and the order dated 14.2.2006 passed by the High Court, are hereby set aside. The determination rendered by the Arbitrator in his award dated 5.2.1999, is hereby affirmed. Kalpana Mukherjee is directed to handover the possession of flat no. 5D to Pratima Chowdhury, within one month from today. The Society is also directed to retransfer the shares of the Society earlier held by Pratima Chowdhury, and the ownership rights of flat no. 5D to the name of Pratima Chowdhury, without any delay.

Appeal 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)

2. We are, in these appeals, concerned with the question whether a co-operative society registered under the Kerala Co-operative Societies Act, 1969 (for short "the Societies Act") will fall within the definition of "public authority" u/s. 2(h) of the Right to Information Act, 2005 (for short "the RTI Act") and be bound by the obligations to provide information sought for by a citizen under the RTI Act.

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.

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".

23. Co-operative society is a state subject under Entry 32 List I Seventh Schedule to the Constitution of India. Most of the States in India enacted their own Co-operative Societies Act with a view to provide for their orderly development of the cooperative sector in the state to achieve the objects of equity, social justice and economic development, as envisaged in the Directive Principles of State Policy, enunciated in the Constitution of India. For co-operative societies working in more than one State, The Multi State Co-operative Societies Act, 1984 was enacted by the Parliament under Entry 44 List I of the Seventh Schedule of the Constitution. Co-operative society is essentially an association or an association of persons who have come together for a common purpose of economic development or for mutual help.

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.

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.**

35. We are, therefore, of the view that the word "controlled" used in S. 2(h)(d)(i) of the Act has to be understood in the context in which it has been used vis-a-vis a body owned or substantially financed by the appropriate government, that is the control of the body is of such a degree which amounts to substantial control over the management and affairs of the body.

51. We have found, on facts, that the Societies, in these appeals, are not public authorities and, hence, not legally obliged to furnish any information sought for by a citizen under the RTI Act. All the same, if there is any dispute on facts as to whether a particular Society is a public authority or not, the State Information Commission can examine the same and find out whether the Society in question satisfies the test laid in this judgment. Now, the next question is whether a citizen can have access to any information of these Societies through the Registrar of Cooperative Societies, who is a public authority within the meaning of S. 2(h) of the Act.

Registrar of Cooperative Societies

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

Soma Suresh Kumar v Government of Andhra Pradesh and others

Bench	K.S. Radhakrishnan, A.K. Sikri
Where Reported	2013 Indlaw SC 589; (2013) 10 SCC 677; AIR 2013 SC (Supp) 816; 2013 (6) ALD(SC) 155; 2014 (1) ALT(SC) 20; 2013 (4) BC 233; [2013] 180 Comp Cas 277; 2014 (1) DRTC 9; JT 2013 (12) SC 486; 2013(11) SCALE 262; [2013] 10 S.C.R. 328
Case Digest	**Subject:** Banking & Finance; Constitution **Keywords:** Andhra Pradesh Cooperative Societies Act, 1964, Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999, Pondicherry Protection of Interests of Depositors in Financial Establishments Act, 2004, Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 **Summary:** Constitution - Banking & Finance - Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 - Maharashtra Protection of Interests of Depositors (in Financial Establishments) Act, 1999 - Pondicherry Protection of Interests of Depositors in Financial Establishments Act, 2004 - Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999, ss. 3, 5, 8 and 9 - Constitution of India, 1950, arts. 14, 21 - Constitutionality of Act - Instant petition filed by petitioners, Directors of Vasavi Cooperative Urban Bank Ltd., seeking a declaration that ss. 3, 5, 8 and 9 of the 1999, Act were unconstitutional and violative of fundamental rights guaranteed to them u/arts. 14 and 21 of the Constitution - Petitioners contended that the State Legislature did not have the competence to enact the 1999, Act since the subject 'banking' was covered under Entry 45 of List I of Seventh Schedule and hence, only the Central Govt. was entitled to enact the law relating to subject 'accepting of deposit from the public and repayment of the same on demand' - Whether only the Parliament alone has the power to frame the law relating to acceptance of deposits or its return or making the same as an offence - Held, relied on SC judgment in K. K. Baskaran v. State ,2011 Indlaw SCO 200, wherein while examining the Constitutional validity of the 1997, Act, SC held that the enactment by the State Legislature was not in pith and substance referable to the legislative heads contained in List I of the Seventh Schedule to the Constitution though there would be some overlapping - In pith and substance, the 1997, Act come under the Entries in List II of the Seventh Schedule - Further, in New Horizon Sugar Mills Ltd.'s case 2012 Indlaw SC 427, SC held that the objects of the 1997, Act, 1999, Act and the 2004, Act were the same and/or of similar nature - Object and purpose as well as the provisions

	of the 1999, Act were pari materia with that of 1997, Act, 1999, Act and the 2004, Act, the Constitutional validity of those legislation had already been upheld - Hence, provisions of the 1999, Act also upheld - Petitions dismissed.

Case No : W.P. (Civil) No. 614 of 2007 with W.P. (Civil) No. 637 of 2007

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

1. The petitioners, who were erstwhile Directors of Vasavi Cooperative Urban Bank Limited, have approached this Court seeking a declaration that Sections 3, 5, 8 and 9 of the Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (in short "the Andhra Act") are unconstitutional and violative of fundamental rights guaranteed to them u/arts. 14 and 21 of the Constitution of India and also other consequential reliefs.

2. The petitioners were Directors of the above-mentioned bank during the period from 1996 to 2002. Large number of complaints were received from the depositors stating that the Board of Directors of the bank had swindled away the money of the depositors by creating false documents, amounting to crores of rupees. On receipt of the complaints, enquiry was conducted and, ultimately, Joint Registrar of Cooperative Societies and Chief Executive Officer of the bank registered Crime No.8 of 2003 on the file of the CID, Police Station u/s. 120(b), 420, 409, 468, 477(A), Indian Penal Code and u/s. 5 of the Andhra Act. Criminal case was later investigated by the Deputy Superintendent of Police, STD-II, CID Hyderabad and charge-sheet was filed against several persons, including the petitioners.

13. Learned counsel for the petitioner raised a further contention that Vasavi Cooperative Bank Ltd. does not come within the definition of "financial establishment" u/s. 2(c) of the Andhra Act. We find it difficult to accept that contention. What has been excluded from that definition is a Company registered under the Companies Act or a Corporation or a Cooperative Society owned and controlled by any State Government or the Central Government. The Society in question does not fall in that category. Consequently, the Co-operative Bank in question is also governed by the provisions of the Andhra Act.

14. In the circumstances, we find no merit in these Writ Petitions and the same are accordingly dismissed.

Petitions dismissed

Hill Properties Limited v Union Bank of India and others

Bench	K.S.Radhakrishnan, A.K. Sikri
Where Reported	2013 Indlaw SC 577; (2014) 1 SCC 635; 2014 (102) ALR 813; 2014 (1) Bom.C.R. 293; 2014 (1) CLT(SC) 121; [2014] 186 Comp Cas 284; 2014 (1) DRTC 155; JT 2013 (12) SC 388; 2014 (1) RCR(Civil) 84; 2014 (122) RD 63; 2013(11) SCALE 255; [2013] 10 S.C.R. 89
Case Digest	**Subject:** Banking & Finance; Land & Property **Keywords:** Warrant, Registration of Cooperative Societies Act, Apartment Ownership Act **Summary:** Banking & Finance - Land & Property - Companies Act, 1956 - Occupation right - Scope - Respondent No. 1 Bank advanced loan to respondent No. 2 - Respondent No. 2 defaulted repayment - Respondent No.1 attached flat, which was guaranteed by respondent No. 5, being associate company of respondent No. 2 - Appellant, being owner of flat, filed Notice of Motion for injunction against attachment - Single Judge rejected Notice of Motion - DB affirmed Single Judge decision on appeal - Hence, instant appeal - Held, Articles of Association of a Company had no force of a Statute and that right of respondent No.5 to mortgage could not have been restricted by Articles of Association - Neither the Act nor any other statute made any provision prohibiting transfer of species of interest to third parties or to avail of loan for flat owners' benefit - A legal bar on saleability or transferability of such a species of interest, would create chaos and confusion - Right or interest to occupy any such flat was a species of property and hence had a stamp of transferability and no error was found with warrant of attachment issued - However, appellant would certainly have right of pre-emption, but not at any value lesser than market value of suit flat at the time of sale - Hence, amount, if any, deposited by appellant be refunded to him - Appeal dismissed.

Case No : C.A. No. 7939 of 2013 (Arising out of S.L.P.(C) No. 14563 of 2012)

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

1. Leave granted.

2. We are in this case concerned with the saleability of Flat No.23, Building No.2, Hill Park Estate, A.G. Bell Road, Malabar Hill, Mumbai - 400 006, which is under attachment in the execution proceedings before the Debt Recovery Tribunal (DRT), Mumbai.

3. Union Bank of India, Respondent No.1 herein, had advanced some financial assistance to the second respondent sometimes in the year 1992. Respondent Nos.3 and 4 stood as personal

guarantors for repayment of the dues of Respondent No.2. Respondent No.5, being an associate company of Respondent No.2, mortgaged the aforementioned flat in favour of the Union Bank of India to secure repayment of the dues of Respondent No.2.

For realization of the payment of the amount, proceedings were initiated under the Securitization Act before the DRT, Mumbai, and the flat in question was attached under the warrant of attachment on 23rd August, 2005.

7. Learned senior counsel referred to the Articles of Association of the Company and submitted that Respondent No.5 being a shareholder, is bound by the provisions of Articles of Association of the Company. Learned senior counsel placed reliance on the judgments of this Court in Bacha F. Guzdar, Bombay Vs. Commissioner of Income Tax, Bombay, (1955) 1 SCR 876 1954 Indlaw SC 8, and Vodafone International Holdings B.V. Vs. Union of India & Anr., (2012) 6 SCC 613 2012 Indlaw SC 20, Learned senior counsel also submitted that the ratio laid down by this Court in Ramesh Himatlal Shah Vs. Harsukh Jadhavji Joshi, (1975) 2 SCC 105 1975 Indlaw SC 178, is not applicable to the case on hand, since in **that case this Court was dealing with the interest of a member in an immovable property of a Cooperative Society governed by the provisions of the Maharashtra Cooperative Societies Act, 1960, which is inapplicable in the case of right of a shareholder in a limited liability company registered under the Indian Companies Act, 1956**.

10. We are of the view that the right, title, interest over a flat conveyed is a species of property, whether that right has been accrued under the provisions of the Articles of Association of a Company or through the bye-laws of a Cooperative Society. The people in this country, especially in urban cities and towns are now accustomed to flat culture, especially due to paucity of land. Multi-storeyed flats are being constructed and sold by **Companies registered under the Companies Act as well as the Cooperative Societies registered under the Registration of Cooperative Societies Act, etc. Flats are being purchased by people by either becoming members of the Cooperative Society or shareholders of the Company and the flat owners have an independent right as well as the collective right over the flat complex.** Flat owners' right to dispose of its flat is also well recognized, and one can sell, donate, leave by will or let out or hypothecate his right.

These rights are even statutorily recognized by many State Legislatures by enacting Apartment Ownership Acts. Such a legislation exists in the State of Maharashtra as well.

The right or interest to occupy any such flat is a species of property and hence has a stamp of transferability and consequently we find no error with the warrant of attachment issued by the DRT on the flat in question.

15. We may reiterate that the appellant will certainly have the right of pre-emption, but not at any value lesser than the market value of the suit flat at the time of the sale. Various directions already given by the High Court, therefore, will stand.

16. The appeal is, therefore, dismissed and the amount, if any, deposited by the Appellant be refunded to him. There will, however, be no order as to costs.

Appeal dismissed

Satya Pal Anand v Punjabi Housing Co-operative Society and others

Bench	J. Chelameswar, P. Sathasivam
Where Reported	2013 Indlaw SC 446; (2013) 7 SCC 559; 2013 (5) AWC 4587; JT 2014 (1) SC 242; 2014 (122) RD 21; 2013(9) SCALE 355; 2013 (3) WLN(SC) 56
Case Digest	**Subject:** Civil Procedure **Summary:** Code of Civil Procedure, 1908-Order XL, Rule 1-Appointment of receiver-At instance of petitioner in respect of property in dispute-Respondent No. 4 in possession of property in dispute-Petitioner by compromise deed agreed to receive sum of R 6,50,000 and put end to all disputes in respect of disputed property-Petitioner does not dispute either execution of compromise deed or receipt of sum of R 6,50,000-No justification for appointment of receiver-No reason to interfere with impugned judgment. The petitioner herein filed an application under Order XL, Rule 1, C.P.C. before the Deputy Registrar for appointment of receiver in respect of the property in dispute. Having regard to the fact that respondent No. 4 was in possession of the property in dispute and also having regard to the fact that the petitioner received an amount of R 6,50,000 no justification for the appointment of the receiver. No reason to interfere with the judgment under appeal. Judgment and order dated 3.8.2011 of High Court of Madhya Pradesh at Jabalpur in Writ Petition No. 14548 of 2008, affirmed.

Case No : 13255 of 2012

1. This petition arises out of the final judgment and order dated 03.08.2011 passed in Writ Petition No.14548 of 2008 by the High Court of Madhya Pradesh at Jabalpur.

2. It is rather difficult to cull out the facts accurately because of the inadequacy of the record. Be that as it may, the broad and undisputed facts are as under:

3. The petitioner's mother was allotted a plot of land (hereinafter referred to as 'the property in dispute') by the first respondent - the Punjabi Housing Co-operative Society Ltd. Pursuant to such an allotment, the sale-deed dated 22.03.1962 came to be executed, which deed was registered on 30.03.1962 before the Sub-Registrar, Bhopal. It appears that the petitioner's mother died on 12.06.1988. The petitioner claims to be the sole successor-in-interest though we find from the record (from the alleged compromise deed dated 06.07.2004 executed by the petitioner herein) that he has a sister.

4. It appears that after lapse of about 40 years, the first respondent purported to have cancelled the sale made in favour of the petitioner's deceased mother. On 09.08.2001, a deed styled as

Extinguishment Deed came to be executed by the first respondent before the Sub-Registrar, Bhopal - the legality of which deed is required to be examined separately. However, we do not propose to say anything at this stage.

5. Subsequently, the first respondent executed another sale deed with respect to the property in dispute in favour of the second respondent on 21.04.2004.

7. It appears from the record that subsequently the petitioner herein raised a dispute **before the Registrar u/s. 64 of the M.P. Cooperative Societies Act questioning the legality of the execution of the abovementioned unilateral Extinguishment Deed and allotment of the property in dispute** in favour of the second respondent. Vide order dated 1.2.2006, the Deputy Registrar passed an order injuncting the defendants from raising any construction or transferring by way of sale etc. of the property in dispute.

10. By order dated 08.11.2008, the Joint Registrar allowed the revisions of the second respondent and remitted the case back to the Deputy Registrar to decide the matter afresh. Aggrieved by the said order, the petitioner herein preferred a second appeal before the Cooperative Tribunal which appeal was treated as revision filed u/s. 77 of the Act but dismissed vide order dated 22.11.2008. (Neither of the two orders is available on record).

13. We must also mention herein that during the pendency of these proceedings, the second respondent sold the property in favour of respondent nos. 4 and 5 by sale deed dated 11.07.2006. It appears that the Sub-Registrar on inspection of the disputed plot found that there were two constructed duplex and two more near completion as on the date of inspection i.e. on 13.03.2007 of which one was occupied by respondent no.4.

14. It must be remembered that the instant proceedings arise out of the interlocutory proceedings seeking appointment of the receiver at the instance of the petitioner herein. Having regard to the fact that respondent no.4 was in possession of the property in dispute at least since 13.03.2007 admittedly and also having regard to the fact that the petitioner received an amount of Rs.6,50,000/- we do not see any justification for the appointment of the receiver. We see no reason to interfere with the judgment under appeal. We accordingly dismiss the special leave petition.

Petition dismissed

Makarand Dattatreya Sugavkar v Municipal Corporation of Greater Mumbai and others

Bench	G.S. Singhvi, Sudhansu Jyoti Mukhopadhaya
Where Reported	2013 Indlaw SC 583; (2013) 9 SCC 136; JT 2013 (9) SC 396; 2013(8) SCALE 236
Case Digest	**Subject:** Constitution; Trusts & Associations **Keywords:** Mumbai Municipal Corporation Act, 1888, Occupiers **Summary:** Trusts & Associations - Constitution - Mumbai Municipal Corporation Act, 1888, ss. 354, 489, 499 - Constitution of India, 1950, art. 226 - Claim for expenses for repair - Exercise of power - Remedy of seeking execution - Appellant was member of respondent No.3-Cooperative Housing Society and allotted flat in building constructed by respondent No.3 - Portion of roof of flat allotted to appellant collapsed and his mother was suffered from injuries - Appellant's brother made complaint to officers of Municipal Corporation - Thereafter, notice was issued to Chairman/Secretary of respondent No.3 and they were directed to carry out repairs in flat - In meanwhile, Architects were directed by Court to visit flat and submit report wherein he submitted that report showing damage to flat but did not give estimate of cost of repairs - Notices were issued by Competent Authority u/s. 354 of the Act - Division Bench rejected prayer to get damaged portion of flat repaired but was given liberty to secure execution of order passed by State Cooperative Appellate Court and disposed of petition - Hence, instant Appeal - Whether Division Bench of HC was justified in rejecting appellant's prayer to get damaged portion of his flat repaired was rejected and relegating appellant to remedy of seeking execution of directions - Held, SC could issued mandamus to respondent No.2 to ensure execution of notices issued u/s. 354(1) of the Act but there were two impediments in adopting that course, Firstly, appellant could have availed of remedy u/s. 499 of the Act by making application to Commissioner for grant of approval to execute work which respondent No.3 was failed to execute in terms of notices issued u/s. 354(1) of the Act - Once appellant succeeded in persuading Cooperative Appellate Court to issue direction for repair of flat, he had no locus to file writ petition u/art. 226 of the Constitution - Instead of filing petition u/art. 226 of the Constitution, appellant should be taken steps for effective execution of order passed by Cooperative Appellate Court - Appellant could also have, by taking advantage of letter sent by Assistant Commissioner, sought approval of Commissioner u/s. 499(2) of the Act, for executing work relating to repairs and deducted cost from rent/maintenance charges - Therefore Division Bench

	of HC did not commit any error by relegating appellant to remedy of seeking execution of directions contained in order passed by Cooperative Appellate Court - Appeal dismissed.

Case No : C.A. No. 4821 of 2013 (Arising out of S.L.P.(C) No. 16977 of 2011)

1. Leave granted.

2. This appeal is directed against order dated 22.3.2011 passed by the Division Bench of the Bombay High Court in Writ Petition No.187/2011 whereby the appellant's prayer for issue of a mandamus to the Commissioner, Mumbai Municipal Corporation (respondent No.2) to get the damaged portion of his flat repaired was rejected but he was given liberty to secure execution of the order passed by the Maharashtra State Cooperative Appellate Court, Mumbai (hereinafter referred to as, 'the Cooperative Appellate Court').

3. The appellant is a member of respondent No.3-Shree Sainiketan Cooperative Housing Society Ltd. He was allotted Flat No.001 in the building constructed by respondent No.3 at Borivali (West), Mumbai. Respondent No.3 claims to have carried out major repairs in 2005-06 and all its members except the appellant contributed towards the expenses. The appellant disputed his liability to pay the expenses incurred by respondent No.3 and **raised a dispute under the Maharashtra Cooperative Societies Act, 1960. It is not clear from the record as to what was the fate of the original dispute filed by the appellant before the Cooperative Court IV**, Mumbai, but this much is evident that the matter was carried to the Cooperative Appellate Court in Revision Application No.73/2007.

21. In view of the above discussion, we may have set aside the impugned order and issued a mandamus to respondent No.2 to ensure execution of the notices issued under S. 354(1) but there are two impediments in adopting that course. Firstly, the appellant could have availed of the remedy u/s. 499 by making an application to the Commissioner for grant of approval to execute the work which respondent No.3 is alleged to have failed to execute in terms of the notices issued u/s. 354.

    At one stage, the Assistant Commissioner had sent letter dated 22.8.2012 to the appellant asking him to seek approval of the Commissioner but for reasons best known to him, the appellant did not respond. **The second impediment is order dated 21.2.2008 passed by the Cooperative Appellant Court. It is not in dispute that the appellant had raised a dispute under the Maharashtra Cooperative Societies Act questioning the demand raised by respondent No.3 in lieu of the repairs carried out in 2005-2006. It is also not in dispute that during the pendency of the revision petition before the Cooperative Appellate Court, the appellant had filed Miscellaneous Application** No.1/2008, which was disposed of by the concerned Court by detailed order dated 21.2.2008.

    There is a lot of controversy between the appellant and respondent No.3 on the issue of implementation of the directions given by the Cooperative Appellate Court. While the appellant has blamed respondent No.3 for not taking steps to repair the flat in terms of direction Nos. 1 and 2, the latter has accused the appellant of non-cooperation by stating that he persistently refused to allow inspection by the Structural Auditor.

However, we are not concerned with this controversy and are of the considered view that once the appellant succeeded in persuading the Cooperative Appellate Court to issue direction for repair of the flat in question, he had no locus to file the writ petition u/art. 226 of the Constitution.

In any case, instead of filing a petition u/art. 226 of the Constitution, the appellant should have taken steps for effective execution of the order passed by the Cooperative Appellate Court. He could also have, by taking advantage of letter dated 22.12.2008 sent by the Assistant Commissioner, sought approval of the Commissioner under S. 499(2) for executing the work relating to repairs and deducted the cost from the rent/maintenance charges.

22. In view of the above discussion, we hold that the Division Bench of the High Court did not commit any error by relegating the appellant to the remedy of seeking execution of the directions contained in order dated 21.2.2008 passed by the Cooperative Appellate Court.

23. The appeal is accordingly dismissed leaving it open for the appellant to secure execution of order dated 21.2.2008 passed by the Cooperative Appellate Court.

Appeal dismissed

State Of M.P. And Others v Sanjay Nagayach And Others

Bench	K.S. Radhakrishnan, Dipak Misra
Where Reported	2013 Indlaw SC 320; (2013) 7 SCC 25; AIR 2013 SC 1921; 2013(4) ALL MR 429; [2013] 178 Comp Cas 502; JT 2013 (8) SC 339; 2013 (2) KLT 733; 2013 (4) MLJ 590; 2013(4) M.P.H.T. 184; 2013 (4) MPLJ 586; 2013(7) SCALE 354; [2013] 3 S.C.R. 738
Case Digest	**Subject:** Trusts & Associations **Keywords:** Supersession **Summary:** Trusts & Associations - Madhya Pradesh Cooperative Societies Act, 1960, s.53(1) - Misconduct by Board of directors - Order of supersession - Sustainability - HC was concerned with the legality of an order passed by the Joint Registrar of the Cooperative Societies superseding the Board of Directors of District Cooperative Central Bank Ltd without previous consultation with the Reserve Bank of India, as provided under the second proviso to s.53(1) of Act - Appellant contended that the charges levelled against the Board of Directors were of serious nature and there was sufficient materials to establish those charges and the Joint Registrar had rightly passed the order of supersession and appointed the Collector as an Administrator of the Bank - Appellant also pointed out that the Joint Registrar had forwarded the show-cause-notice as well as the connected materials to RBI and RBI had failed to respond to the show-cause- notice within 30 days of the receipt of the same and, therefore, it would be presumed that RBI had agreed to the proposed action and the Joint Registrar had rightly passed the order of supersession - Interveners also submitted that HC had committed an error interfering with the order of supersession and, in any view, if any of the parties were aggrieved, they ought to have availed of the alternate remedy available under the Act - Held, Board of Directors, in the instant case, took charge on 16-10-2007, therefore, they could continue in office till 15-10-2012 - Board of Directors was, however, superseded illegally on 30-9-2011 and, by virtue of the judgment of DB of HC dt. 13-2-2012, the Board should have been put back in office on 13-2-2012, but an Administrator was appointed - Going by the proviso, the period during which the Board of Directors remained under supersession be excluded in computing the period of five years - In the facts and circumstances of instant case, SC was of the considered opinion that the duly elected Board of Directors should get the benefit of that proviso, which was statutory in nature - In such circumstances, SC directed the Joint Registrar, Co-operative Societies, to put the Board of Directors back in office so as to complete the period during which

	they were out of office - HC had therefore rightly exercised its jurisdiction u/ art. 226 of the Constitution and the alternative remedy of appeal was not bar in exercising that jurisdiction, since the order passed by the Joint Registrar was arbitrary and in clear violation of the second proviso to s.53(1) of the Act - SC was of the view that the situation was created by the Joint Registrar and there was sufficient evidence to conclude that he was acting under extraneous influence and under dictation - Legally elected Board of Directors could not be put out of the office by an illegal order - If the charges levelled against the Board of Directors, in the instant case, were serious, then the Joint Registrar would not have taken two and half years to pass the order of supersession - State of Madhya Pradesh did not show the grace to accept the judgment of DB of HC and had brought the litigation to SC spending huge public money, a practice SC strongly deprecate - Statutory functionaries like Registrar/Joint Registrar of Co- operative Societies functioning under the respective Act should be above suspicion and function independently without external pressure - When an authority invested with the power purports to act on its own but in substance the power was exercised by external guidance or pressure, it would amount to non-exercise of power, statutorily vested - Large number of cases were coming up before SC and HCs in the country challenging the orders of supersession and many of them were being passed by the statutory functionaries due to external influence ignoring the fact that they were ousting a democratically elected Board, the consequence of which was also grave because the members of the Board of Directors would also stand disqualified in standing for the succeeding election as well - Registrar/Joint Registrar, while exercising powers of supersession had to form an opinion and that opinion should be based on some objective criteria, which had nexus with the final decision - Statutory authority should not act with pre-conceived notion and should not speak his masters' voice, because the formation of opinion should be his own, not somebody else in power, to achieve some ulterior motive - There might be situations where the Registrar/Joint Registrar were expected to act in the best interest of the society and its members, but in such situations, they had to act bona fide and within the four corners of the Statute - Impugned order would not fall in that category - Order accordingly.

Case No : CIVIL APPEAL NO. 4691 OF 2013 [Arising out of SLP (C) No. 6860 of 2012] WITH CIVIL APPEAL NO. 4692 OF 2013, (Arising out of SLP (Civil) No. 13125 of 2012]

1. Leave granted.

   We are, in this case, concerned with the legality of an order passed by the Joint Registrar of the Cooperative Societies, Sagar Division, Sagar, M.P., superseding the Board of **Directors of District Cooperative Central Bank Ltd., Panna without previous consultation with the Reserve Bank of India, as provided under the second proviso to S. 53(1) of the Madhya Pradesh Cooperative Societies Act, 1960 [for short 'the Act'].**

2. The Board of Directors of the Bank challenged the above mentioned order on various grounds, including the ground of violation of the second proviso to S. 53(1) of the Act that is non-

consultation with the Reserve Bank of India [RBI] before taking a decision to supersede the Board of Directors. The order was challenged by the Board of Directors by filing a writ petition before the High Court of Madhya Pradesh, Jabalpur Bench. Learned single Judge of the High Court disposed of the writ petition directing the parties to avail of the alternative remedy provided u/s. 78 of the Act. But on appeal, the Division Bench of the High Court set aside the order of supersession dated 30.9.2011 on the ground of non- compliance of the second proviso to s. 53(1) of the Act. Aggrieved by the same, the State of M.P., through its Principal Secretary, Department of Co-operation, the Commissioner Cum Registrar, Co-operative Societies, Bhopal and the Joint Registrar, Co-operative Societies, Sagar, have come up with Civil Appeal No. ..... of 2013 [arising out of SLP No. 6860 of 2012] and a private party filed Civil Appeal No. ..... of 2013 [arising out of SLP No. 13125 of 2012] challenging the judgment of the High Court dated 13.2.2012, followed by lot of intervening applications.

3. As the question of laws involved in both the above mentioned appeals are common, we are disposing of both the appeals by a common judgment.

Facts and Arguments

4. The Board of Directors of the Bank was elected to Office on 16.10.2007 and while in office they were served with a show-cause-notice dated 2.3.2009 issued by the Joint Registrar, Co-operative Societies under S. 53(2) of the Act containing 19 charges. Detailed replies were sent by the Board of Directors on 6.5.2009 and 16.5.2011 stating that most of the charges levelled against them were related to the period of the previous Committee and the rest were based exclusively on an Audit Report dated 25.9.2008. It was pointed out that the Board of Directors on receipt of the Audit report took necessary action and a communication dated 5.12.2008 was sent to the Branch Managers of Primary Societies to take immediate follow-up action on the basis of the Audit report. After filing the detailed reply, nothing was heard from the Joint Registrar but due to political pressure and extraneous reasons after two and half years of the show cause notice, an order of supersession was served on the Board, followed by the appointment of an Administrator in gross violation of the second proviso to S. 53(1) of the Act.

11. We find, until the year 1965, the Cooperative Banks were not being regulated by the RBI but it was felt necessary to bring the cooperative societies carrying on the business of banking within the purview of the Regulation Act. Since, large number of cooperative societies were carrying on the banking business, and also to ensure the growth of cooperative banking on sound banking principles, the Parliament enacted the Act 23 of 1965, called the Banking Law (Application to Cooperative Societies) Act, 1965 and Part IV was introduced into the Regulation Act w.e.f. 1.3.1966. S. 55 of Part V provides for the application of the Regulation Act to Cooperative Banks. Any existing co- operative bank at the time of the commencement of the Act 23 of 1965 was required to apply grant of license within a period of three months from the date of the commencement of the Act and obtain a license from RBI u/s. 22 of RBI Act. Every co-operative bank is also obliged to comply with the provisions of the Regulation Act and directions/guidelines issued by RBI from time to time.

12. We may, in this connection, refer to certain provisions of the DICGC Act which also confers certain powers to the RBI to supersede the committee of the management of the co-operative Bank

in public interest. the Act has been enacted to provide for the establishment of a Corporation for the purpose of insurance deposits and guaranteed credit facilities for allied purposes. S. 3 of the Act has empowered the Central Government to establish the Deposit Insurance Corporation, a wholly owned subsidiary of RBI. S. 2(gg)(iii) of DICGC Act states that "eligible co-operative bank" means a co-operative bank, the law for the time being governing, which provides that:

"2(gg)(iii) If so required by the Reserve Bank of India in the public interest or for preventing the affairs of the bank being conducted in a manner detrimental to the interest of the depositors or for securing the proper management of the bank, an order shall be made for the supersession of the committee of management or other managing body (by whatever name called) of the bank and the appointment of an administrator therefor for such period or periods not exceeding five years in the aggregate as may from time to time be specified by the Reserve Bank."

RBI never thought it necessary to invoke the above mentioned provision as against the first respondent. NABARD Act has been enacted to provide and regulate credit facilities and for other related and individual matters. S. 3 of the Act has empowered the Central Government to establish such a National Bank, i.e. NABARD. S. 35 of the Regulation Act empowers the RBI to conduct inspection of the affairs of a banking company. RBI has also got the power under Sub-section (b) of S. 35 of the Regulation Act to authorise NABARD to conduct inspection of the District Cooperative Bank.

18. District Cooperative Bank, Panna (for short 'Panna DCB"), a Bank registered under the Act, was issued a license to conduct the banking services in India by RBI on 3.6.2010 u/s. 22 of the Regulation Act. Panna DCB is a Central Co-operative Bank as defined under Sub-s. 2(d) of NABARD Act. NABARD had conducted an inspection of the Panna DCB under S. 35 of the Regulation Act, with reference to the financial position as on 31.3.2007, when the previous Board was in office and thirty six fraud cases at Primary Agricultural Credit Societies (PACS) involving Rs.37.05 lacs had been reported. Certain deficiencies in the bank's functioning, like non-adherence to the provisions of the Income Tax Act, lack of internal checks and control systems and unsatisfactory compliance to their previous inspection report, had also found a place in their inspection report, the copy of which was forwarded to the RBI vide their communication dated 1.2.2008.

19. The Joint Registrar, Co-operative Societies, as already stated, issued a notice to Panna DCB to show cause as to why the Board of Directors be not superseded and an Administrator be appointed. The show-cause- notice was sent to the RBI, which RBI received on 4.3.2009. RBI vide its letter dated 17.4.2009 requested the Joint Registrar to inform the Action being taken on the reply submitted by the Board of Directors of Panna DCB.

21. We find seven charges levelled against the Board of Directors were relating to the period of the previous Committee, for which the first respondent Board of Directors could not be held responsible. Further, even though the Board had taken charge in October 2007, the audit report was submitted before the Board only after nine months and that the Board of Directors took follow up action on the basis of the audit report dated 25.9.2008. The Joint Registrar, it seems, was found to be satisfied with the detailed replies dated 6.5.2009 and 16.5.2011submitted by the Board of Directors of the Bank, possibly, due to that reason, even though the show- cause-notice was issued on 22.3.2009, it took about two and half years to pass the order of supersession.

30. The Registrar/Joint Registrar, while exercising powers of supersession has to form an opinion and that opinion must be based on some objective criteria, which has nexus with the final decision. A statutory authority shall not act with pre-conceived notion and shall not speak his masters' voice, because the formation of opinion must be his own, not somebody else in power, to achieve some ulterior motive. There may be situations where the Registrar/Joint Registrar are expected to act in the best interest of the society and its members, but in such situations, they have to act bona fide and within the four corners of the Statute. In our view, the impugned order will not fall in that category.

Judicial Precedents

31. Registrar/Joint Registrar is bound to follow the Judicial Precedents. Ratio decidendi has the force of law and is binding on all statutory authorities when they deal with similar issues. The Madhya Pradesh High Court in several judgments has explained the scope of the second proviso to S. 53(1) of the Act. Reference may be made to the judgments in Radheshyam Sharma v. Govt. of M.P. through C.K. Jaiswal and Ors. 1972 MPLJ 796 1971 Indlaw MP 74, Board of Directors of Shri Ganesh Sahakari Vipnan (Marketing) Sanstha Maryadit and Another v. Deputy Registrar, Co-operative Societies, Khargone and Others1982 MPLJ 46 and Sitaram v. Registrar of Co-operative Societies and another 1986 MPLJ 567 1986 Indlaw MP 258 : 1986 Indlaw MPLJ 200.

32. We fail to see why the Joint Registrar has overlooked those binding judicial precedents and the ratio decidendi. Judicial rulings and the principles are meant to be followed by the statutory authorities while deciding similar issues based on the legal principles settled by judicial rulings. Joint Registrar, while passing the impugned order, has overlooked those binding judicial precedents.

33 We fail to notice why the State Government, Department of Co- operative Societies has taken so much interest in this litigation. Joint Registrar in his letter dated 19.8.2009 to RBI stated that in the case of District Co-operative Bank, the powers under S. 53(2) of the Act are vested with Regional Joint Registrar and the notice issued by the Joint Registrar is not meant for the opinion of the State Government. Assuming, the State Government has powers under Section 49-C of the Act, no report has been forwarded by the Registrar to the State Government and no direction have been issued by the State Government with regard to the supersession of the Board. Sorry so note that the State Government has spent huge public money by litigating this matter even up to this Court, that too, without following the binding precedents of the Madhya Pradesh High Court on the scope of the second proviso to S. 53(1) of the Act.

34. In such circumstances of the case, we are inclined to dismiss both the appeals with costs directing re-instatement of the first respondent Board of Directors back in office forthwith and be allowed to continue for the period they were put out of office by the impugned order which has been quashed. We also direct the State of Madhya Pradesh to pay an amount of Rs.1,00,000/- to the Madhya Pradesh Legal Services Authority within a period of one month by way of costs and also impose a cost of Rs.10,000/- as against the Joint Registrar, Co-operative Societies, Sagar, the officer who passed the order, which will be deducted from his salary and be deposited in the Panna DCB within a period of two months from today.

Ordered accordingly.

35. Further, we are inclined to give the following general directions in view of the mushrooming of cases in various Courts challenging orders of supersession of elected Committees:

(1) Supersession of an elected managing Committee/Board is an exception and be resorted to only in exceptional circumstances and normally elected body be allowed to complete the term for which it is elected.

(2) Elected Committee in office be not penalised for the short-comings or illegalities committed by the previous Committee, unless there is any deliberate inaction in rectifying the illegalities committed by the previous committees.

(3) Elected Committee in Office be given sufficient time, say at least six months, to rectify the defects, if any, pointed out in the audit report with regard to incidents which originated when the previous committee was in office.

(4) Registrar/Joint Registrar are legally obliged to comply with all the statutory formalities, including consultation with the financing banks/Controlling Banks etc. Only after getting their view, an opinion be formed as to whether an elected Committee be ousted or not.

(5) Registrar/ Joint Registrar should always bear in mind the consequences of an order of supersession which has the effect of not only ousting the Board out of office, but also disqualify them for standing for election in the succeeding elections. Registrar/Joint Registrar therefore is duty bound to exercise his powers bona fide and not on the dictation or direction of those who are in power.

(6) Registrar/Joint Registrar shall not act under political pressure or influence and, if they do, be subjected to disciplinary proceedings and be also held personally liable for the cost of the legal proceedings.

(7) Public money not to be spent by the State Government or the Registrar for unnecessary litigation involving disputes between various factions in a co-operative society. Tax payers money is not expected to be spent for settling those disputes. If found necessary, the same be spent from the funds available with the concerned Bank.

Order accordingly

Margaret Almeida and others v Bombay Catholic Co-Operative Housing Society Ltd. & Ors.

Bench	Jagdish Singh Khehar, P. Sathasivam
Where Reported	2013 Indlaw SC 164; (2013) 6 SCC 538; AIR 2013 SC 1398; JT 2013 (8) SC 119; 2013(5) SCALE 133; [2013] 5 S.C.R. 871
Case Digest	**Subject:** Land & Property; Trusts & Associations **Keywords:** Deputy Registrar, Minority, Maharashtra Co-operative Societies Rule, 1961 **Summary:** Land & Property - Trusts & Associations - Re development of land - Disputed - Sustainability - Central Cooperative Societies Act, 1912 - Bombay Catholic Co-operative Housing Society Limited/respondent was registered under Act - Objects of the Catholic Society, as per its bye-laws, were to carry on buying, selling, hiring, letting and developing land - It was also the object of respondent to carry on the activity of building, besides such like allied activities - First dispute between the rival parties arose when respondent resolved to re-develop the land measuring 5.5 acres - Decision to re-develop the land in question was taken on account of the fact, that the 25 cottages constructed thereon, were scattered all over the land - It was felt that by redevelopment, said land would be effectively utilised for the benefit of larger number of persons - Appellants/Tenant-members disputed decision of respondent in fear that they would be deprived of their house - Instant issue was examined minutely by the HC in the impugned order - While doing so, HC had drawn the following conclusions - Firstly, that only X Home Developers had come forward with proposal of redevelopment of property in question - Due to the pending litigation, no recognized builder was prepared to make unconditional offer on as is where is basis - Most of the builders wanted respondent to settle the pending litigation - Since the litigation was pending for the last more than four decades, respondent was not in position to abide by the pre-condition canvassed at the behest of the recognized builders - Secondly, respondent at the time of the general body meeting had only one proposal, namely, proposal of X Home Developers - Thirdly, X Home Developers had assured respondent of sum of Rs.70 crores - In fact, the aforesaid amount of Rs.70 crores was kept in escrow by X Home Developers - Fourthly, during the general body meeting of respondent, some of appellants- members orally made offer of Rs.75 crores without depositing single paisa as against the concrete proposal of X Home Developers - Fifthly, based on the documents placed on the record, it was clear, that the offer of Rs.75 crores made by appellants, was in fact made by rival

	builder, Y builders - It was therefore, that DB of HC in the impugned order made observations it was for respondent to decide who should be given the re developmental rights, and not the appellants who were small minority of 15 persons - Whether choice of builder for re development of land could be given to tenants/appellants - Held, Based on the factual position noticed by three of the petitioners/appellants, the finding recorded by HC in respect of the offer of Rs.75 crores could be stated to have been made at the behest of rival builder Y - Y builders had even paid for the litigation expenses of appellants - Appellants readily accepted the offer made by Y builders when he proposed before HC that he would act in the same manner as X Home Developers - It was therefore natural to infer, that appellants were agreeable to the redevelopment of 5.5 acres land comprising of property in question in the manner contemplated by the resolution of respondents which was impugned in the suits filed by appellants - It also prima facie showed that the action of appellants prima facie seemed to lack bona fides - HC affirmed the determination rendered by HC in the impugned order, that it was for respondents to decide who should be given the re developmental rights, and not appellants who were small minority of 15 persons (the number having diminished to 5) who had initiated the litigation out of which proceedings had arisen - It was possible to prima facie infer, that appellants' claim before HC did not seem to be bona fide - They also did not prima facie seem to have genuinely initiated the instant litigation - Appeals dismissed.

Case No : CIVIL APPEAL NOS. 2683-2685 OF 2013 (Arising out of SLP (C) Nos. 30847-30849 OF 2012) WITH CIVIL APPEAL NOS. 2688-2688 OF 2013 (Arising out of SLP (C) Nos. 30867-30869 OF 2012) CIVIL APPEAL NOS. 2689-2690 OF 2013 (Arising out of SLP (C) Nos.28256-28257 OF 2012)

2. Through the instant common judgment, we propose to dispose of the following matters which came to be filed in this Court assailing the order passed by a Division Bench of the High Court of Judicature at Bombay (hereinafter referred to as 'the High Court') in Appeal Nos.489 of 2011, 413 of 2011 and 573 of 2011 :

(i) Margaret Almeida & Ors. vs. Bombay Catholic Co-operative Housing Society & Ors., Civil Appeals arising out of SLP (C) Nos. 30847-30849 of 2012),

(ii) Priti Mungrey & Ors. v. The Bombay Catholic Co-operative Housing Society Ltd. & Ors., Civil Appeals arising out of SLP (C) Nos.30867- 30869 of 2012), and

(iii) Anthony D'Sa v. The Bombay Catholic Co-operative Housing Society Ltd. Civil Appeals & Ors. (Arising out of SLP (C) Nos.28256-28257 of 2012).

During the Course of hearing, Civil Appeals (arising out of Special Leave Petition no.30847-30849 of 2012) were treated as the lead case. We will, therefore, mainly rely on the pleadings thereof, for narrating the factual controversy. Reference will be made to pleadings in the other connected matters only for recording submissions based thereon, advanced during the course of hearing.

5. The **Bombay Catholic Co-operative Housing Society Limited (hereinafter referred to as "the Catholic Society") was incorporated and registered in 1914. In 1917 the Catholic Society was registered under the Central Cooperative Societies Act, 1912**. The objects of the Catholic Society, as per its bye-laws, were to carry on buying, selling, hiring, letting and developing land. It was also the object of the Catholic Society to carry on the activity of building, besides such like allied activities.

6. For the aforesaid objectives, in the first instance at its inception, the Catholic Society purchased 6 acres of undeveloped land from private parties. The Catholic Society then purchased another 11 acres of such land in 1918. Eventually, the Catholic Society acquired ownership of approximately 34.24 acres of land to carry out the objectives defined in the bye-laws. The land in question was situated in Santacruz. The estate of Catholic Society was named after Lord Willingdon, the then Governor of Bombay. Since the aforestated land holding of the Catholic Society was comprised of three different blocks of land, the blocks came to be referred to as Willingdon West, Willingdon East and Willingdon South. The area in Willingdon West measuring about 17.12 acres was sold to shareholders on freehold basis. These owners were referred to as owner members. The area in Willingdon South measuring about 11.63 acres was leased to shareholders for 998 years. These members were referred to as lessee members. The subject matter of the present controversy relates to Willingdon East measuring approximately 5.5 acres.

8. **After coming into force of the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as "the Cooperative Societies Act"),** all the tenants in Willingdon East became members of the Catholic Society, for which fresh shares were issued, at the face value of Rs.50/- per share. Therefore, all the tenants in Willingdon East, became tenant-members. The instant controversy relates to a dispute between the Catholic Society on the one hand; and the tenant-members on the other hand. The Catholic Society is the respondent herein, whereas, some of the tenant-members are the contesting appellants.

12. **On the receipt of the aforesaid application filed by the tenant- members u/s. 18 of the Cooperative Societies Act, the District Deputy Registrar, Cooperative Societies consulted the Federal Society,** i.e., the Bombay-Thane District Cooperative Housing Society Limited. Having consulted the Federal Society, the District Deputy Registrar, Cooperative Societies issued a draft order dated 6.9.1979 recording a tentative satisfaction for the bifurcation of the Catholic Society into two societies. Based thereon, a notice was issued to the Catholic Society seeking its objections, if any, to the tentative satisfaction recorded by the District Deputy Registrar, Cooperative Societies. To consider its course of action, the Catholic Society convened an annual general body meeting. The same was actually held on 16.12.1979. In its annual general body meeting, the Catholic Society passed a resolution, disapproving and rejecting the proposed bifurcation of the Willingdon East, in terms of the draft order of the District Deputy Registrar, Cooperative Societies dated 6.9.1979.

18. The Catholic Society preferred an intra court appeal to assail the order passed by the learned Single Judge of the High Court dated 21/22.10.1999 (whereby writ petition no.2328 of 1991 was allowed, in favour of the tenant-members). A Division Bench of the High Court allowed appeal No.20 of 2000 (arising out of writ petition 2328 of 1991) on 4.8.2007. By the aforesaid order, the Division Bench set aside the earlier determinations rendered by the Co-operative authorities,

as also, the judgment rendered by the learned Single Judge. While doing so, the Division Bench remanded the matter to the authorities (under the provisions of the Co-operative Societies Act), for reconsidering the issue of bifurcation raised by the tenant-members. The operative part of the order passed by the Division Bench brining out the effect of the appellate order is being reproduced hereunder :

".... In our opinion, therefore, in order to comply with the mandatory requirement of consultation which is incorporated under sub- s. (1) of S. 18 of the Act, it was necessary for the Deputy Registrar not only to take into consideration the opinion expressed by the federation but in order to show that he has complied with the mandatory requirements of consultation and the order that he made should also have shown that he has applied his mind to the opinion expressed by the federation. The requirement of the order made by the authority indicating on the face of it that the authority has applied its mind to the opinion submitted by the federation, will have to read into the provisions in order to make the requirement of consultation effective and meaningful. In the present case, admittedly, the opinion expressed by the federation has not been considered by the Deputy Registrar while deciding to make the order of bifurcation. It therefore, suffers from violation of mandatory requirement of consultation with the federal society, and therefore, we have no alternative but to set aside that order. But because the proposal had been submitted as far back as in the year 1979 and the final decision in that regard has not yet been taken, we propose to issue directions to the authority so that a decision can be made by the authority as expeditiously as possible.

5. In the result, therefore, the appeal succeeds and is allowed. The order dated 22.2.1983 passed by the Deputy Registrar, Co-operative Societies directing bifurcation of the petitioner-society is set aside. The orders passed by the Authorities under the Maharashtra Co-operative Societies Act *and the learned Single Judge confirming that order are also set aside. The proceedings are remitted back to the Deputy Registrar. The parties shall appear before the Deputy Registrar on 27.8.2007 with a copy of this order. The petitioner shall also serve a notice on the federation with a copy of this order informing the federation that if it is so advised it may appear before the Deputy Registrar on 27.8.2007. the Deputy Registrar shall thereafter permit the parties to file any additional affidavits and documents that they may want to file and then proceed to pass final order in the matter in accordance with law. The Registrar shall proceed as expeditiously as possible, and the final order shall be made by him in any case within a period of Eight weeks from 27.8.2007. It is directed that in case the Registrar decides to make the order of bifurcation, the Registrar shall provide in the order that the order shall not take effect for a period of four week from the date of making of the order."*

A perusal of the operative part of the order extracted hereinabove reveals, that the order passed by the Deputy Registrar, Co-operative Societies, Mumbai u/s. 18(1) of the Co-operative Societies Act (whereby the Catholic Society was bifurcated/ divided into two societies) was quashed and set aside. All the same, yet again, the issue of bifurcation was remanded back for redetermination at the hands of the Deputy Registrar, Co- operative Societies, Mumbai.

21. It would be pertinent to mention, that a challenge to the appellate order passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai, is permissible through a revision petition before the competent authority of the State Government. The tenant-members availed of the aforesaid

remedy and by preferring Revision Application no.713 of 2009 before the State Government, wherein the aforesaid order dated 29.9.2009 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai was assailed. It is however, relevant to notice, that the aforesaid challenge raised by the tenant-members, through the aforesaid revision petition was withdrawn. This is apparent from the operative part of the order passed by the State Government disposing of Revision Application no.713 of 2009 which is being extracted herein :

"ORDER :

1. *Applicant is allowed to withdraw Revision Application No.713/2009.*
2. *Order dt.29.9.2009 of the Defendant No.1 Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai quashing the order of division of Defendant No.2 Society, of the Deputy Registrar, Co-opertive Societies, H/West Ward, Mumbai dt. 28.11.2007 is hereby confirmed.*
3. *Order of the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai dt. 29.01.2009 to the extent of issuing directions to the Deputy Registrar, Co-operative Societies, H/West Ward, Mumbai, for giving re-hearing afresh again, is hereby quashed.*
4. *No Order as to the costs."*

26. As noticed above, the Catholic Society comprises of about 745 members. Out of these members there were originally 54 tenant-members and 15 tenants simplicitor (the tenants simplicitor, were not members of the Catholic Society**). After the coming into force of the Cooperative Societies Act, all the tenants (including the tenant-members, as also, the tenants simplicitor) became members** of the Catholic Society. It is therefore, that the strength of the tenant-members at the present juncture is 69. The relief sought in the two suits (i.e. Suit no.144 of 2010 and Suit no.145 of 2010) is a claim for rights,on account of being tenant- members. It is important to point out, that the aforesaid suits were filed by only 15 tenant-members. It is these 15 tenant-members, who had pursued their prayer for interim relief, before the High Court. It is not a matter of dispute, that the suits referred to above, were not filed in a representative capacity, and as such, it would be incorrect to assume, that the aforesaid suits can be considered to have been filed by all the 69 tenant-members. The correct factual position is, that out of 69 tenant- members only 15 tenant-members had filed the aforesaid suits. The number of tenant-members who were pursuing their remedy through the aforesaid suits, has diminished further before this Court, inasmuch as Special Leave Petition (C) nos.30847-49 of 2012 comprises of 8 petitioners only. It is therefore apparent, that 7 of the plaintiffs in the suits, have now not joined hands with those who have approached this Court, (and are now appellants, before this Court). The instant factual narration however proceeds further, inasmuch as, IA nos.17-19 of 2012 (arising out of SLP (C) nos.30847-49 of 2012) have been filed by three of the petitioners (now appellants) i.e., petitioner/ appellant nos.2, 3 and 4, i.e., Jennifer Pegado, Elwyn D'cruz and Don Donato D'Silva, with a prayer for transposing them as respondents, as they do not want to pursue the matter any further (along with the remaining petitioners). In view of the prayer made in the aforesaid interlocutory application, it is apparent, that the strength of the tenant-members who had initiated the civil suits, referred to above, has successively diminished from 15 in the civil suits, to 8 at the special leave petition stage, and further to 5 at the appellate stage (after three of the petitioners have prayed for transposing them as respondents). Keeping in mind, that the total tenant-members are

69, and the relief sought in the suits, and now through the instant petitions/appeals (which are filed on the strength of being tenant-members), has diminished to 5, it would be inappropriate to consider the grant of any interim relief, in the absence of any clear determination, that the claim pressed by the appellants before us, is at the behest of at least a simple majority of the tenant-members. Out of 69 tenant-members 35 would constitute a simple majority. The instant petitions/appeals are now being pursued by only 5 tenant-members. In the aforesaid view of the matter, the acceptance of the prayer made by the tenant-members for interim directions, would not only be inappropriate but would be unthinkable.

27. Secondly, the principal contention advanced at the hands of the learned counsel for the petitioners/appellants before the High Court was, that after the resolution of the Catholic Society dated 6.12.2009 (and the consequential conveyance deed dated 7.12.2009) is implemented, the petitioners/appellants would lose their primary membership with the Catholic Society. This, according to the learned counsel for the petitioners/appellants, **would be violative of S. 35 of the Cooperative Societies Act, for the simple reason, that the tenant-members cannot be compelled to lose their membership of the Cooperative-Society**, **without the approval of the Registrar, Cooperative Societies. Based on the aforesaid** reasoning, it was submitted, that the resolution dated 6.12.2009 (and the consequential conveyance deed dated 7.12.2009) run **counter to the cooperative principles enshrined in the Cooperative Societies Act**.

Thus viewed, it is not possible for us to conclude that the tenant-members shall lose their cooperative membership upon the implementation of the resolution of the Catholic Society dated 6.12.2009 (and the consequential conveyance deed dated 7.12.2009). We are therefore satisfied, that on the instant aspect of the matter, the petitioners/appellants before us, will not be subjected to any irreparable loss.

29. The third contention advanced at the hands of the learned counsel for the petitioners/appellants, was again on the aspect of irreparable loss. It was sought to be canvassed at the hands of the appellants, that once the resolution of the Catholic Society **dated 6.12.2009 (and the consequential conveyance deed dated 7.12.2009) is given effect to, the claim made by the tenant-members for the bifurcation of the Catholic Society u/s. 18 of the Cooperative Societies Act will stand frustrated. It was submitted, that the position would be irreversible, and as such, it is imperative to injunct the Catholic Society, from giving effect to the resolution dated 6.12.2009 and the conveyance deed dated 7.12.2009.**

Based on the factual position noticed by three of the petitioners/appellants in I.A. nos. 17-19 of 2012, the finding recorded by the High Court in respect of the offer of Rs.75 crores can be stated to have been made at the behest of a rival builder Mr. B.Y. Chavan. Mr. B.Y. Chavan has even paid for the litigation expenses of the tenant-members. The tenant-members readily accepted the offer made by Mr. B.Y. Chavan, when he proposed before the High Court that he would act in the same manner as M/s. Sumer Associates. It is therefore natural to infer, that the tenant-members are agreeable to the redevelopment of 5.5 acres land comprising of Willingdon East in the manner contemplated by the resolution of the Catholic Society dated 6.12.2009 (and the consequential conveyance deed dated 7.12.2009), which is impugned in the suits filed by the tenant- members.

This also prima facie shows that the action of the tenant-members prima facie seems to lack bona fides. We therefore affirm the determination rendered by the High Court in the impugned order, that it was for the Catholic Society to decide who should be given the redevelopmental rights, and not the tenant-members who are a small minority of 15 persons (the number having now diminished to 5) who have initiated the litigation out of which the present proceedings have arisen. As of now, therefore, it is possible to prima facie infer, that the petitioners'/appellants' claim before the High Court does not seem to be bona fide. They also do not prima facie seem to have genuinely initiated the instant litigation. In the above view of the matter, the opinion recorded by the High Court, that all arguments of the plaintiff based on law and equity vanished, upon the offer made by Mr. B.Y. Chavan, cannot be stated to be unjustified.

37. For all the reasons recorded hereinabove, we find no merit in the instant Civil Appeals. The same are accordingly hereby dismissed.

Appeals dismissed

Rajendra Prataprao Mane & Ors. v Sadashivrao Mandalik K.T.S.S.K.

Bench	Altamas Kabir, J. Chelameswar
Where Reported	2012 Indlaw SC 101; (2012) 4 SCC 781; AIR 2012 SC 1714; 2012 (3) Bom.C.R. 553; JT 2012 (3) SC 446; 2012 (5) MahLJ 77; 2012 (2) RCR(Civil) 547; 2012(3) SCALE 572; [2012] 5 S.C.R. 131
Case Digest	**Subject:** Administrative; Trusts & Associations **Summary:** Trust & Association - Administrative - Maharashtra Co-operative Societies Act, 1960, ss. 152, 11/11A - Rules of Business - Election list - Eligibility - Appellants filed application before Commissioner of Sugar, complaining about unlawful manner in which persons had been enrolled by respondent, despite fact that they did not fulfil required criteria and were ineligible from becoming members - Commissioner, or his subordinates, did not take any action - Appellants filed writ petition, HC ordered for inquiry and report - Regional Joint Director found that 6617 persons did not have eligibility to become members and passed orders u/s. 11 of Act - Orders were challenged before State u/s. 152 of Act - Due to allegations of bias Minister for Co-operation transferred cases to Secretary - Respondents challenged transfer of case to Secretary in Writ Petition - HC held that power contained in r. 6-A would have to be exercised by Chief Minister, since, appeals were already pending before State Government - HC directed Chief Minister to either hear appeals himself or to appoint any other Minister to hear and decide same by performing function of Minister for Co-operation - Aggrieved instant appeal - Whether HC was justified in disposing Writ Petition with direction - Held, it was a pragmatic attempt by HC to ensure that elections were duly held and same was within parameters of r. 6-A of Rules of Business, which indicated that if Chief Minister was unable to discharge his functions for some stipulated reasons, he could direct any other Minister to discharge all or any of his functions during his absence - Likewise, if any other Minister was unable to discharge his functions, Chief Minister could direct any other Minister to discharge all or any of functions of Minister during absence of Minister - No reason to interfere with order passed by HC - Appeals dismissed.

Case No : CIVIL APPEAL NOS.2990-2991 OF 2012(Arising out of SLP(C)Nos.8397-8398 of 2012)

1. The facts of these appeals give rise to an interesting question of law regarding the interpretation of the Rules of Business framed by the Governor of Maharashtra in exercise of powers conferred under Article 166(2) and (3)of the Constitution of India. According to the said Rules of Business, statutory appeals filed under Section 152 of the **Maharashtra Cooperative Societies Act, 1960, hereinafter referred to as "the M.C.S. Act, 1960", are to be heard by the Minister-in-charge o**f the concerned Department.

2. A few facts are required to be set out in order to appreciate the question which has been raised in these appeals.

3. On 30th June, 2011, the appellants filed an application before the Commissioner of Sugar, Maharashtra State, Pune, complaining about the unlawful manner in which persons had been enrolled by the respondent Karkhana, despite the fact that they did not fulfill the required criteria and were ineligible from becoming members. As the Commissioner, or his subordinates, did not take any action on the application filed by the appellants they filed a writ petition, being W.P. No.7257 of 2011, before the Bombay High Court, for a writ in the nature of Mandamus upon the authorities under the M.C.S. Act, 1960, to conduct an inquiry into the allegations made by the appellants.

4. On 27th September, 2011, the Division Bench of the Bombay High Court passed an order on the statement made by the Regional Joint Director (Sugar), Kolhapur, to the effect that an inquiry team would look into the allegations made by the appellant. The Division Bench directed that the inquiry be completed within the stipulated time and the report be submitted before it. The order of the Division Bench was challenged by the respondent Karkhana by way of S.L.P. (C) No. 28880 of 2011, which was dismissed by this Court and it was also indicated that the inquiry to be conducted would be one under Section 11 of the M.C.S. Act, 1960.

14. As **indicated hereinbefore, the order passed under Section 11 read with Section 25A of the Maharashtra Cooperative Societies Act,** was challenged by the members of the said factory. The Appellants herein, who appeared before the Secretary, brought to his notice that in view of the decision of the Bombay High Court in the case of Ravindra V. Gaikwad 2001 Indlaw MUM 749 (supra), he possibly did not have jurisdiction to hear the appeals under Section 152 of the said Act. It was, thereafter, that the writ petitions were filed and orders were passed by the learned Single Judge, whereby he directed the Chief Minister to exercise his powers under Rule 6-A of the Rules of Business.

16. In our view, the order passed by the learned Single Judge, was a pragmatic attempt by the High Court to ensure that the elections were duly held and the same was within the parameters of Rule 6-A of the Rules of Business, which has been extracted hereinabove and indicates that if the Chief Minister was unable to discharge his functions for the reasons indicated, he could direct any other Minister to discharge all or any of his functions during his absence. Likewise, if any other Minister was unable to discharge his functions, the Chief Minister could direct any other Minister to discharge all or any of the functions of the Minister during the absence of the said Minister.

17. The order of the learned Single Judge has been made within the framework of the aforesaid Rules and as indicated hereinabove, was a pragmatic attempt to break the impasse so that the elections to the Board of Directors of the Karkhana could be held. Rule 6-A of the Rules of Business does not contemplate the functions of a Minister being discharged by the Secretary of the Department or any other officer for that matter.

18. We, therefore, see no reason to interfere with the order passed by the learned Single Judge, and the appeals are, therefore, dismissed. So as not to delay the elections any further, we request the Chief Minister to take immediate steps to have the appeals filed by the Appellants herein under

Section 152 of the M.C.S. Act, 1960, heard and disposed of as early as possible, but not later than 2 months from the date of communication of this judgment. In the event the Chief Minister is unable to hear the appeals himself and entrusts the hearing to one of the other Ministers, which, in our view, would also include the Minister of State of the concerned Department, he should also impress upon the said

Minister the urgency of the matter since the elections to the Board of the Karkhana have not been held since 2007.

The appeals are accordingly disposed of with the aforesaid directions.

There will be no order as to costs.

Appeal disposed of

Margret Almeida & Ors., Etc. Etc v Bombay Catholic Coop. Housing Society Limited & Ors

Bench	J. Chelameswar, P. Sathasivam
Where Reported	2012 Indlaw SC 61; (2012) 5 SCC 642; AIR 2012 SC 1438; 2012(7) ALL MR 825; 2012 (91) ALR 871; 2012 (5) MahLJ 4; 2012 (3) RCR(Civil) 311; 2012 (116) RD 160; 2012(3) SCALE 25; [2012] 2 S.C.R. 395
Case Digest	**Subject:** Practice & Procedure; Trusts & Associations **Summary:** Practice & Procedure - Trusts & Association - Maharashtra Cooperative Societies Act, 1960, s. 91 - Interim orders - Maintainability - Sustainability - 2 suits were filed on original side of HC - HC granted interim order in favor of plaintiffs-appellants directing parties to maintain status quo during pendency of suits - Question before DB was whether two suits were maintainable in view of s. 91 Act - DB concluded that suits were not maintainable and passed order of dismissal - Aggrieved instant appeal - Appellants contended that it had an interim order of status quo in their favour granted by Trial Judge while holding that suits were maintainable and rejected objection to contra by defendants - Appellant further contended that DB on an erroneous dismissed suit, it was for DB, to consider whether interim order granted by Single Judge to maintain status quo during pendency of suit, was to be sustained or not - Respondents contended that interim order granted during pendency of suits, lapsed with dismissal of suits - Whether interim orders passed by Trial Court are sustainable - Held, erroneous conclusion of DB should not operate to prejudice of plaintiffs, who successfully demonstrated that order of DB could not be sustained - Settled principle of law was that actus curiae neminem gravabit'act of court shall not harm anybody' - Matter should be considered by DB and decide whether interim order granted by Trial Judge was sustainable - Application allowed.

Case No : I.A. Nos. 4 – 6 of 2012 IN CIVIL APPEAL Nos. 1175 - 1177 OF 2012
The Judgment was delivered by : Jasti Chelameswar, J.

1. This is an Application filed with the prayer as follows: 'In the above facts and circumstances, the Applicants / Appellants most respectfully pray that the Hon'ble Court may be pleased to:

   a) Clarify the order dated 30.01.2012 passed by this Hon'ble Court in Civil appeal No.1175-1177 of 2012 titled as "Margret Almeida & Ors. Etc. Etc Versus The Bombay Catholic Co-operative Housing Society Ltd. & Ors. Etc. etc." as sought in Para 6; and / or b) Pass such other further or other reliefs as the Applicants / Appellants may be found to be entitled under the facts and circumstances stated hereinabove."

2. By the Judgment dated 30-01-2012 C.A.Nos.1175 - 1177 of 2012 were disposed of setting aside the Judgment dated 29-08-2011 of a Division Bench of the Bombay High Court. The said Judgment was rendered in a batch of connected matters, arising out of two suits No.144 & 145 of 2010, on the original side of the Bombay High Court. The question before the Division Bench was whether the two suits were maintainable in view **of Section 91 of the Maharashtra Cooperative Societies Act, 1960. It appears from the Division Bench Judgment of the High Court that the learned Trial Judge not only held that the suits are maintainable, but also,** granted interim order in favour of the plaintiffs (appellants/ petitioners herein), directing the parties to the suits to maintain status quo during the pendency of the suits.

7. We agree with the submission made by the learned senior counsel Mr. Mukul Rohtagi. The erroneous conclusion of the Division Bench cannot operate to the prejudice of the plaintiffs, who successfully demonstrated before this Court that the order of the Division Bench cannot be sustained. The settled principle of law is that the actus curiae neminem gravabit - 'act of the court shall not harm anybody'. In South Eastern Coal Fields Limited Vs State of M.P., (2003) 8 SCC 648 2003 Indlaw SC 866, this Court held:

"27. That no one shall suffer for an act of the court is not a rule confined to an erroneous act of the court; the act of the court embraces within its sweep all such acts as to which the court may form an opinion in any legal proceeding that the court would not have so acted had it been correctly appraised of the facts and the law. The factor attracting applicability of the restitution is not the act of the court being wrongful or mistake or error committed by the court; the test is whether on account of an act of the party persuading the court to pass an order held at the end as not sustainable has resulted in one party gaining an advantage which it would not have otherwise earned; or the other party has suffered a impoverishment which it would not have suffered but for the order of the court and the act of such party."

(Emphasis supplied) Therefore, we are of the opinion that the matter should be considered by the Division Bench of the Bombay High Court and decide whether the interim order granted by the learned Trial Judge is sustainable.

8. The application is accordingly allowed and the Judgement of this Court dated 30-01-2012 stands modified, as indicated above.

Application allowed

Margret Almeida & Ors. Etc Etc v The Bombay Catholic Co-Operative Housing Society Ltd. & Ors. Etc. Et

Bench	J. Chelameswar, P. Sathasivam
Where Reported	2012 Indlaw SC 463; 2013(1) ALL MR 914; JT 2012 (2) SC 142; [2012] 2 S.C.R. 366
Case Digest	**Subject:** Trusts & Associations **Keywords:** Dissolution, Past Member **Summary:** Trust & Associations - Maharashtra Co-operative Societies Act, 1960, ss. 162,163,91 - Constitution of India, 1950, art. 14 - Trust Land - Resolution - Sale Deed - Maintainability - Respondent No. 1-housing cooperative society incorporated in year 1914, having different classes of members known as owners, lessees, allottees, tenants etc. - Tenant members of society initiated proceedings for division of Society invoking s. 18 of Act by making application to Registrar - General Body of Society to sell land in favor of respondents No. 22 and 23 passes resolution and a sale deed/conveyance was also executed - Aggrieved by said resolution and sale 2 suit were filed in HC, for Declaration that resolution and Conveyance were invalid, illegal and void abinitio and also to pass order declaring s. 162 of Act violation of art. 14 of Constitution - Defendants had raised preliminary objection regarding maintainability of suit in view of ss. 91,163 of Act, SJ rejected but DB allowed holding that suits were not maintainable - Aggrieved instant appeal - Whether HC, was justified in holding that suit were not maintainable in view of s. 91 of Act - Held, conclusion arrived at by HC that if general body resolution was set aside, same would impair validity of conveyance even without an appropriate declaration by a competent judicial body, if resolution dt. 6-12-2009 alone was challenged before Co-operative Court, respondents 22 and 23 (beneficiaries of resolution) could not be made parties before Co-operative Court - In such a situation, even if Co-operative Court came to conclusion that resolution was illegal, it would have always be open for respondents 22 and 23 to ignore such a determination as they were not parties to proceedings and assert their title on basis of conveyance dt. 7-12-2009 - If any party such as plaintiffs-appellants dispute validity of title conveyed thereunder, necessarily such a dispute would have to be adjudicated by a competent Court u/s. 9 of CPC wherein, necessarily, question whether a valid title was conveyed in favour of respondents 22 and 23 by society would arise for determination - Legality of resolution would still have to be gone into again, therefore, premise in which HC commenced its enquiry itself was wrong conclusion of HC that suits in question were not

	maintainable on ground that dispute was amenable to exclusive jurisdiction u/s. 91 of Act to Co- operative Court could not be sustained and same was required to be set aside - Appeals disposed of.

Case No : CIVIL APPEAL NOS. 1175-1177 OF 2012 [Arising out of SLP (C) NO.28611-28613 OF 2011] WITH CIVIL APPEAL NO. 1178 OF 2012 [Arising out of SLP(C) No.29507 of 2011] CIVIL APPEAL NOS. 1179-1180 OF 2012 [Arising out of SLP(C) Nos. 30143-30144 of 2011]

The Judgment was delivered by : Jasti Chelameswar, J.

1. Leave granted.

2. These appeals arise out of a common order dated 29th August, 2011 of the Division Bench of the Bombay High Court passed in three writ petitions and two suits, 144 and 145 of 2010.

3. By the said common order, it was held, among other things, that the two suits are not maintainable in view of the provisions of Ss. 91 and 163 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter 'the Act', for short). We are not concerned with the remaining part of the Division Bench's judgment as the instant special leave petitions are preferred only against that part of the Division Bench's judgment. The brief factual background of this litigation is as follows.

4. The first respondent is a Society which was originally incorporated in the year 1914. The full particulars of such incorporation are not available at this juncture on record and are also not necessary for the present purpose. It is sufficient to state that it is admitted on all hands that it is a housing cooperative society and the Act governs the affairs of the said Society.

5. It is also an admitted fact on all hands that the said Society has different classes of members known as owners, lessees, allottees, tenants, etc. It is also an admitted fact that the total membership is 762 out of which 69 members fall under the classification of tenant members. However, the exact rights and obligations of these various classes of members, vis-a-vis the first respondent Society or these various classes of members inter se are also not available on record.

38. For coming to the conclusion that the suits in question are not maintainable and the dispute could be examined exclusively by the Co-operative Court, the High Court proceeded on the basis that it is possible to challenge the resolution and the conveyance independently. Starting from such a premise, the High Court opined that challenge alone to the resolution without challenging the conveyance is possible but not vice-versa. The reason given by the High Court for the same is as follows:-

"If Court passes a decree or order setting aside the resolution of the general body, the validity of the conveyance will not be intact, but if a decree or order is made merely setting aside the conveyance, the resolution of the General body will remain intact. By the conveyance land owned by the Society is transferred. The society is a body corporate. The person or persons who have signed the conveyance on behalf of the Society derive the authority to do so from resolution of the General Body. If the resolution is set aside or is declared invalid the Act *of the person of executing the conveyance would become unauthorised. Such an order in relation to the validity of the General Body resolution will impair the validity of the conveyance. Consequently, if the resolution remains intact but the conveyance is set aside for some reason the Society may be in a position to execute another conveyance pursuant to the resolution of the general body."*

We do not propose to examine the correctness of the legal premise that the general body resolution and the conveyance could be segregated in a dispute such as one on the hand. For the sake of argument, we presume that it is possible for the plaintiffs, appellants herein, to challenge only the general body resolution. We also presume that the conclusion arrived at by the High Court that if the general body resolution is set aside, the same will impair the validity of the conveyance even without an appropriate declaration by a competent judicial body. (We emphasise that we only presume so without examining to the said conclusion for the limited purpose) If the resolution dated 6th December, 2009 alone is challenged before the Co-operative Court, in view of our conclusion recorded earlier, the respondents 22 and 23 (the beneficiaries of the resolution) could not be made parties before the Co-operative Court.

In such a situation, even if the Co-operative Court came to the conclusion that the resolution is illegal, it would always be open for the respondents 22 and 23 to ignore such a determination as they are not parties to the proceedings and assert their title on the basis of the conveyance dated 7th December, 2009. If any party such as the plaintiffs (the appellants herein) disputes the validity of the title conveyed thereunder, necessarily such a dispute would have to be adjudicated by a competent Court u/s. 9 of the Code of Civil Procedure wherein, necessarily, the question whether a valid title was conveyed in favour of respondents 22 and 23 by the society would arise for determination. The legality of the resolution would still have to be gone into again. Therefore, in our opinion, the premise in which the High Court commenced its enquiry itself is wrong.

39. For all the above-mentioned reasons, we are of the opinion that the conclusion of the High Court that the suits in question are not maintainable on the ground that the dispute is amenable to the exclusive jurisdiction under S. 91 of the Act to the Co- operative Court cannot be sustained and the same is required to be set aside.

40. That takes us to the next question raised in these appeals - whether the High Court was right in going into the maintainability of the suits in question. Shri Venugopal, learned senior counsel appearing for some of the respondents submitted that in view of the provisions contained in Section 9A of the Code, which was introduced by local amendment of the Maharashtra Legislature to the Code by Maharashtra Act No.65 of 1977, the course of action followed by the High Court is not only justified but also the Court is obliged to follow such a course of action. Section 9A reads as follows:

41. Coming to the question of the interim order in view of our conclusion that the suits in question are maintainable and having regard to the fact that the suits are to be tried by the High Court in exercise of its original jurisdiction, we do not propose to pass any interim order and leave it open to the High Court to consider the applications filed by the plaintiffs for interim orders in accordance with law and pass appropriate orders. The principles governing the grant of interim orders are too well settled and we need not expound the same once again.

However, we would like to indicate that on the question of the existence of a prima facie case in favour of the plaintiffs, the following factors are germane and require to be examined. Having regard to the content of the plaint, we are of the opinion that the nature of the legal right, the plaintiffs claim for seeking the relief such as the one sought in the suits necessarily depends upon the byelaws of the Society, the rights and obligations of the various classes of its members

with respect to the property in dispute. The High Court may examine the above aspects before passing an appropriate interim order.

42. In view of the above, we also deem it proper to direct all the parties to maintain status quo as on today for a period of two weeks to enable the Bombay High Court to examine the applications of the plaintiffs for interim orders and pass appropriate orders in accordance with law.

43. The appeals are, accordingly, disposed of.

Appeals disposed of

M.M. Cooperative Bank Limited v J.P. Bhimani And Another

Bench	S.B. Sinha, Cyriac Joseph
Where Reported	2009 Indlaw SC 2046; (2009) 8 SCC 727; (2009) 3 SCC (Cr) 937; AIR 2009 SC (Supp) 1965; 2010 ALL MR (Cri) 1317; 2009 CRLJ 4421; JT 2009 (13) SC 464; 2009 (3) RCR(Criminal) 965; 2009(10) SCALE 439; [2009] 11 S.C.R. 748
Case Digest	**Subject:** Banking & Finance; Criminal **Keywords:** Maharashtra Co-operative Societies Act **Summary:** Criminal - Banking & Finance - Grant of bail - Administrator was appointed for the appellant-Bank as a part of its reconstruction exercise - Administrator unearthed a large scam by several persons including respondents to the tune of crores of rupees - Criminal case registered against respondents - Respondents filed application for grant of bail - Administrator opposed the application and as a result, Trial Court dismissed the application - Respondents filed application for grant of bail before HC - Single Judge allowed the application by taking into consideration the readiness and willingness on the part of respondents to make a part payment - Whether HC order is proper in the facts and circumstance of the case - Held, HC while enlarging the 1st respondent on bail, taking into consideration the materials on record, had issued stringent conditions - It is not the case of the appellant that such conditions have been contravened by the 1st respondent - 1st respondent has substantively complied with the directions of the HC, therefore, no interference warranted in the impugned judgment - Appeal dismissed.

Case No : CRIMINAL APPEAL NO. 1374 OF 2009 (Arising out of SLP (Crl.) No.4129 of 2004)

1. Appellant-**Madhavpura Mercantile Cooperative Bank Ltd. (the bank) is a banking organization incorporated and registered under the Maharashtra Co-operative Societies Act. It is now under a reconstruction scheme as contemplated by Section 15(b) of the Multi State Cooperative Societies Act, 1984 (for short, the '1984 Act') since repealed and replaced by the Multi State Cooperative Societies Act, 2002**. The said reconstruction scheme was framed as directed by the Ministry of Agriculture, Department of Agriculture and Cooperation of the Government of India.

2. The bank at present is managed by a Board of Management constituted in terms of the said scheme. Indisputably, the Board of Directors of the bank was superseded and an Administrator was appointed by an order dated 15.3.2001 in terms of Sub-section (7) of Section 58 of the 1984 Act. Allegedly, the Administrator, after his appointment unearthed a large scale scam and defalcation of money made by several persons including the respondents herein by committing fraud of an unprecedented scale to the tune of crores of rupees.

3. It was alleged that several other complaints have also been filed against the first respondent. Before the learned Sessions Judge, an offer was made on behalf of the first respondent to make payment of some dues. The learned Sessions Judge, however, rejected the said prayer for grant of bail, inter alia, opining that as the first respondent in association with the other accused cheated the bank and committed misappropriation, they cannot be directed to be released on bail, stating:

"Due to this reason the academic future of several students was endangered, and many marriages were held-back, auspicious functions were held- up, the treatment of several persons was held-up, there were difficulties in several families. The senior citizens and widowed women were dependant on the interest from the Bank and were maintaining their families; their plain bread got snatched from them. Several families came under grave difficulties. Even at very old age several persons were compelled to start work afresh with new energies, they were subjected to such difficult times, or that those persons who could not work they become helpless and dependant. The sole cause behind all this was that the Bank Chairman, Manager, Managing Director, a handful of Officers and a handful of investors of the Madhavpura Bank for satisfying their own financial interests, conspired and misappropriated the bank funds. Due to their financial greed and because of their acts so many people have become paupers. In these circumstances, the cheating of large amount is done and are involved in the conspiracy of misappropriation of the bank funds, if such persons involved in such acts are released on bail then if on release on bail there would definitely be adverse on the Society."

4. The first respondent thereafter filed an application for grant of bail before the High Court. A learned Single Judge of the said Court upon taking into consideration the readiness and willingness on his part to make payment of Rs.2384 lacs allowed the said application stating that at that stage, it was difficult to positively infer any conspiracy with the Management considering the past transactions. It was, however, noticed:

"However, it would be appropriate to note at this stage that learned advocate Mr. Lakhani, after obtaining the instructions from his client, has made a statement at the Bar that the applicant shall within a week from the date of his release deposit an amount of Rs.50 lakhs with MMCB. He also states that an amount of Rs.150 lakhs will be paid in monthly installments of Rs.30 lakhs each. The first installment is to be payable on 15th April, 2004 with a grace period of 5 days. The last such installment would be payable on 15th August, 2004 with a grace period of 5 days, that is by 20th August, 2004. Mr. Lakhani also states that the mortgaged property worth Rs.150 lakhs would be sold out by the applicant with the consent of the bank and the sale proceeds would be deposited with MMCB directly within four months from today. He also states that the applicant shall, within eight weeks from the date of his release, tender a list of freehold properties held by third parties (not being the borrowers of the bank) along with their consent and title clearance report and the bank would be free to deal with such properties in the manner bank likes for the recovery of the dues and the applicant shall extend cooperation in dealing with such properties. Mr. Lakhani stated that so far as rest of the amount nearing Rs.805 lakhs approximately would be repaid by the applicant in minimum monthly installments of Rs.10 lakhs after initial period of six months is over, which would commence from September, 2004. He, however, states that the applicant will also make all his Endeavour to repay the banks dues as early as possible. Mr. Lakhani has stated that he has made this statement on the basis of the instructions which he has

received from his client and the applicant shall file his undertaking on this line within one week from the date of his release."

13. The power of the superior courts to enlarge an accused on bail is not in dispute. The High Court while enlarging the first respondent on bail, taking into consideration the materials on record, had issued stringent conditions. It is not the case of the appellant that such conditions have been contravened by the first respondent. Even if some contraventions have been made, the same could be brought to the notice of the High Court. The fact that the first respondent has substantively complied with the directions of the High Court is also not in dispute.

14. Submissions of Mr. Nariman that the first respondent should be directed to pay at least a sum of Rs.41 crores cannot be accepted. Subject matter of the first information report was only Rs.8 crores. Other complaint petitions as also civil litigation are pending. In absence of any material brought on record before us to show that respondent No.1 has not complied with the conditions imposed on him by the High Court, it is difficult to interfere with the impugned judgment. The Court, while granting bail cannot impose unreasonable conditio'\ns. (See Fida Hussain Bohra vs. the State of Maharashtra [2009 (3) SCALE 419 2009 Indlaw SC 282]; Ramathal and Others. vs. Inspector of Police and Another. [2009 (3) SCALE 550 2009 Indlaw SC 280]; and I. Glaskasden Grace and Others. Vs. Inspector of Police and Another. [2009 (3) SCALE 554 2009 Indlaw SC 281]).

15. Furthermore, the impugned judgment having been passed in the year 2004, in our opinion, it is not a fit case where this Court should exercise its jurisdiction under Article 136 of the Constitution of India.

16. For the reasons aforementioned, there is no merit in the appeal. It is dismissed accordingly. However, in the facts and circumstances of this case, there shall be no order as to costs.

Appeal dismissed

A. Manjula Bhashini & Others v The Managing Director, A.P. Women'S Cooperative Finance Corporation Ltd And Another

Bench	G.S. Singhvi, B.N. Agrawal
Where Reported	2009 Indlaw SC 950; (2009) 8 SCC 431; AIR 2010 SC 3143; 2009 (5) ALD(SC) 58; 2009 (4) ESC 590; JT 2009 (9) SC 229; 2009 (4) LLJ 57; 2009(9) SCALE 99; [2009] 10 S.C.R. 634
Case Digest	**Summary:** Service - Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure) Act, 1994 (As amended twice in 1998), s. 7(amended and unamended) and 7A (Vide amendment) - Constitution of India, 1950, arts. 14, 16 and 309 proviso - Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 - Public Employment - Regularisation - Large scale unconstitutional/illegal appointments throughout the nation in 1970s, 80s and early 90s; rampant favouritism, nepotism and corruption at the hands of authorities and officials - Modus was employing the persons of their choice on daily wages or nominal muster roll or contract or part time basis with the hope that on some future date the Govt. will frame policy for regularisation of such employees - Thus the advent of illegal employment market - In order to check on the menace, State of AP passed Act, 1994 - Beneficiaries of illegal employment market and back door entrants became apprehensive of termination of their services in terms of s. 7 of Act, 1994; political pressure paid heed to; relaxation brought in vide GOMs no. 212; support was taken from judgment in 'State of Haryana v. Piara Singh' - Vide the GO, services of those employed on daily wages etc., were sought to be regularized subject to the condition that such persons had worked continuously for a minimum period of 5 years and were continuing on 25-11-1993(date of enforcement of Act, 1994) - Writ petitions were filed by those, whose services were for less than five years; petitions were successful; SC had dismissed the SLP filed by State and others, in 'District Collector vs. M.L. Singh' - Court noted misinterpretation of judgement of Piara Singh, by the HC and the present Court while disposing of writ petitions, which culminated in ML Singh's case - GO was a one time measure only, and due to such misinterpretation all employees who were employed on daily wages before 25-11-1993 had lodged claim for regularisation, which resulted into redundancy of cut-off date specified in the GO - With a view to incorporate object underlying the GO, amendment was made in the Act, 1994, to make the GO an integral part of the Act - Amendment Act of 1998 was thus passed - Second amendment was made after eight months - Those affected by the amendments preferred writ petitions, which was allowed by the single Judge - Judgment of single Judge was set aside by the DB of

	HC -P />(A) Whether amendments made in the Act, 1994 has the effect of nullifying or overriding the judgment of present Court in ML Singh case? - Held, No -P />(B) Whether s. 7A of Act, 1994 amounts to an encroachment on Court's power of judicial review? - Held, No - True nature of Act, 1994 looked into, mischief sought to be remedied by enactment and the reasons for its amendment further looked into - Statement of objects and reasons in the Bill for Act, 1994, perused; contentions heard - Decisions of the HC and the Court critically examined - (i) Statement of objects and reasons - As tool of interpretation of statutes - Proposition culled out from decided cases on the subject (para 22) - Between 1976 and 1993, the total number of employees of State Govt. and its agencies was increased by 82% and in 1993-1994, the State had to spend more than 80% of total revenue in payment of salaries, allowances etc. of the employees causing severe strain on the revenue of State, which adversely affected implementation of the welfare schemes and development programmes; other effect was growing dissatisfaction among several thousand unemployed persons including those belonging to SCs, STs and OBCs, who were registered with the Employment Exchanges - To solve the crisis, legislative measure was undertaken by the State in the form of Act, 1994 - But provisions of Act, 1994 were not seriously implemented - Thus despite the prohibition contained in s. 7 against regularisation of daily wage employees, State Govt. wilted under the pressure exerted by vested interest which led to GO being issued - GO was meant to be one time measure and not an ongoing process/ scheme - '..a policy of this nature cannot be interpreted as creating a right in favour of all casual labourers to be regularized in service irrespective of the date of completion of the specified period', UOI vs. Mohan Pal, (2002) 4 SCC 573' - Ambiguous expression used by draftsmen of GOMs, 212, further noted by the Court - Expression used was 'such persons who worked continuously for a minimum period of 5 years and are continuing on 25-11-1993', which should have been, Court opined, 'such persons who have completed minimum 5 years of continuous service on or before 25-11-1993 on ..' - Amendment was made to purge away such ambiguities - Conclusion, it cannot thus be said that by incorporating the policy of regularisation in the Act, 1994, the Legislature has taken away an accrued or vested right of the daily wage employees -P />(C) Whether cut off date, i.e., 25-11-1993 specified in first proviso to s. 7 of Act, 1994(amended) for determination of the eligibility of daily wage employees to be considered for regularisation is arbitrary, irrational and violative of arts. 14 and 16 of Constitution? - Held, No - Act, 1994 was passed inter alia to streamline the recruitment in public services by adopting a procedure consistent with the doctrine of equality embodied in arts. 14 and 16 of Constitution - Act was enforced w.e.f. 25-11-1993, i.e., the date on which the Ordinance was published in the Official Gazette; therefore, that date had direct bearing on the policy of regularisation circulated vide the GO; when that policy was engrafted

	in the Act, 1994, Legislature could not have fixed any date other than the 25-11-1993; if other date had been fixed than the object sought to be achieved by enacting the Act, 1994 would have been defeated, inasmuch as the regular recruitment could not have been made for appointment against the sanctioned posts and back door entrants would have occupied all the posts -P />(D) Whether DB of HC was justified in holding that all daily wage employees who completed 5 years service on the date of enforcement of amending Act, 1998, i.e. 19-08-1998 would be entitled to be considered for regularisation of their services? - Held, No - DB had upheld the cut-off date 25-11-1993 and further upheld the validity of amending Acts of 1998, but changed the cut-off date on the premise that latter amending Act of 1998 was enforced w.e.f. 25-11-1993, which was unwarranted - Appeals by employees, dismissed - Appeals by State, allowed - Directions issued - Appeals disposed of.

Case No : CIVIL APPEAL NO.3702 OF 2006 With C.A. Nos.3685 of 2006, 3703 of 2006, 3704 of 2006, 3705 of 2006, 3706 of 2006, 3707 of 2006, 3709 of 2006, 3710 of 2006, 3712 of 2006, 3713 of 2006, 3714 of 2006, 3715 of 2006, 3716 of 2006, 3717 of 2006, 3718 of 2006, 3721 of 2006, 3723 of 2006, 3724 of 2006, 3726 of 2006, 3727 of 2006, 3728 of 2006, 3729 of 2006, 3730 of 2006, 3731 of 2006, 3732 of 2006, 3733 of 2006, 3734 of 2006, 3737 of 2006, 3742 of 2006, 3744 of 2006, 3748 of 2006, 3749 of 2006, 3750 of 2006, 3751 of 2006, 3752 of 2006, 3753 of 2006, 3754 of 2006 and 3755 of 2006.

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

1. Whether the persons employed on daily wage basis or nominal muster roll or consolidated pay or as contingent worker on full time basis in different departments of the Government of Andhra Pradesh and its agencies/instrumentalities are entitled to be regularised in service on completion of 5 years and whether amendments made in the Andhra Pradesh (Regulation of Appointments to Public Services and Rationalization of Staff Pattern and Pay Structure) Act, 1994 (for short 'the 1994 Act') by Amendment Act Nos.3 and 27 of 1998 are ultra vires the provisions of the Constitution are the questions which arise for determination in these appeals, some of which have been filed by the State Government and its agencies/instrumentalities and some have been filed by the employees, who could not convince the Andhra Pradesh Administrative Tribunal (for short "the Tribunal") and/or the High Court to accept their prayer for issue of a mandamus to the concerned authorities to regularise their services.

2. In 1970s, 80s and early 90s, the country witnessed an unusual phenomena in the field of public employment. Lakhs of persons were engaged/employed under the Central and State Governments in violation of the doctrine of equality enshrined in Arts. 14 and 16 of the Constitution, Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 (for short 'the 1959 Act') and the rules framed under proviso to Art. 309 of the Constitution. The officers who were entrusted with the task of making appointments on Class III and Class IV posts misused their power and employed their favourites or all those who enjoyed political power without considering the claims of other similarly situated persons. For avoiding compliance of the mandate of the equality clause enshrined in the Constitution and other statutory provisions, the empowered

authorities resorted to the mechanism of employing the persons of their choice on daily wages or nominal muster roll or contract or part time basis with the hope that on some future date the Government will frame policy for regularisation of such employees. In this manner, nepotism, favoritism and even corruption became hallmark of the appointments and a huge illegal employment market developed in the country, a fact of which cognizance was taken by this Court in Delhi Development Horticulture Employees' Union v. Delhi Administration [(1992) 4 SCC 99 1992 Indlaw SC 957].

3. State of Andhra Pradesh was no exception to the aforementioned malady. Thousands of persons were employed in different departments of the Government and agencies/instrumentalities of the State on daily wages or nominal muster roll or consolidated pay or part time basis. In some cases, employment was given despite the fact that sanctioned posts were not available. Even if the posts existed, the concerned authorities neither issued advertisement nor sent requisition to the employment exchange(s) and made appointments in complete disregard of Arts. 14 and 16 of the Constitution and the relevant statutory provisions including the 1959 Act depriving thousands of unemployed persons of their right to be considered for appointment to public posts/offices.

4. In order to check the menace of irregular appointments, which was creating unwarranted financial burden on the State, and, thereby adversely affecting the welfare schemes and development programmes and also causing dissatisfaction among the members of younger generation who were denied the right of consideration for appointment, the Government of Andhra Pradesh decided to bring a legislation for totally banning appointment on daily wages, regulating appointment on temporary basis and for rationalisation of staff pattern and pay structure. In furtherance of that decision, the Governor of Andhra Pradesh promulgated the Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure) Ordinance, 1993. The same was published in the State Gazette dated 25.11.1993. The Ordinance was replaced by the 1994 Act, which was enforced with effect from 25.11.1993. The State Government's determination to curb irregular appointments and reduce burden on the State exchequer is clearly reflected in the statement of objects and reasons contained in the bill presented before the legislative assembly, the relevant portions of which are extracted below:

"The number of employees has been increasing at an enormous rate. The census of Government employee conducted by the State Government in 1976, 1981 and 1988 and as projected in 1993 shows that the number of employees of the Government, Universities, Institutions receiving Grant-in-Aid and Public Sector Undertakings, Local Bodies has increased from 6.78 lakhs in 1976 to 12.34 lakhs in 1993 which constituted an increase of 82%. Out of this, the employees of the Departments of the State alone increased from 2.85 lakhs to 5.56 lakhs representing an increase of 95%. The Public Sector Undertakings grew at 128% from 1.44 lakhs to 3.28 lakhs. Among the Government employees and Local Body employees, the class IV and other categories constitute about 41%. The expenditure particulars show that the amount spent on the salaries, allowances and pension of Government employees, Panchayat Raj employees, employees paid out of the Grant-in-Aid, amounts to a figure of Rs.4277 crores in 1993- 94 salaries on the due dates. Government considers that it is not fair that people's interest should be neglected and even sacrificed by not taking up schemes just to pay salaries to its employees. In addition to the salary and pension commitment there is a heavy debt servicing burden on the Government. The

debt also has been increasing from year to year. In 1983 the total outstanding debt was Rs.2543 crores. It has now reached Rs.10970 crores during 1993-94. At present, the Government are paying as much as Rs.1012 crores for payment of interest and Rs.330 crores for repayment of principal amount every year. The total amount of non-plan items of expenditure in 1993-94 is amounting to Rs.6222 crores, which cannot be avoided.

23. In Gurudevdatta VKSSS Maryadit v. State of Maharashtra [(2001) 4 SCC 534 2001 Indlaw SC 19874], a three-Judge Bench of this Court **interpreted the provisions of Maharashtra Cooperative Societies Act, 1960, Maharashtra Cooperative Societies (Second Amendment) Ordinance, 2001 and observed:**

"Further, after introduction of the Bill and during the debates thereon before Parliament, if a particular provision is inserted by reason of such a debate, question of indication of any object in the Statement of Objects and Reasons of the Bill does not and cannot arise. The Statement of Objects and Reasons needs to be looked into, though not by itself a necessary aid, as an aid to construction only if necessary. To assess the intent of the legislature in the event of there being any confusion, Statement of Objects and Reasons may be looked into and no exception can be taken therefore this is not an indispensable requirement but when faced with an imperative need to appreciate the proper intent of the legislature, statement may be looked into but not otherwise..... While the Statement of Objects and Reasons in the normal course of events cannot be termed to be the main or principal aid to construction but in the event it is required to discern the reasonableness of the classification as in the case of Shashikant Laxman Kale v. Union of India [1990 (4) SCC 366] 1990 Indlaw SC 894 *Statement of Objects and Reasons can be usefully looked into for appreciating the background of the legislature's classification."*

52. It is, however, made clear that the daily wage employees and others who are covered by S. 7 of the 1994 Act (amended) and whose services have not been regularised so far, shall be entitled to be considered for regularisation and their services shall be regularised subject to fulfillment of the conditions enumerated in G.O. dated 22.4.1994. With a view to obviate further litigation on this issue, we direct the Government of Andhra Pradesh, its officers and agencies/instrumentalities of the State to complete the exercise for regularisation of the services of eligible employees within four months of the receipt/production of copy of this order, without being influenced by the fact that the application, writ petition or appeal filed by any such employee may have been dismissed by the Tribunal or High Court or this Court. Since some of the appeals decided by this order relate to part time employees, we direct that similar exercise be undertaken in their cases and completed within four months keeping in view the conditions enumerated in G.O.(P). No.112 dated 23.7.1997.

Order accordingly.

Pralhad and Others v Deorao & Ors.

Bench	S.B. Sinha, Cyriac Joseph
Where Reported	2009 Indlaw SC 768; JT 2009 (13) SC 286; 2009(8) SCALE 211; [2009] 8 S.C.R. 777
Case Digest	**Subject:** Trusts & Associations **Keywords:** Co-Operative Movement, Registered Society, Cooperative Societies, Maharashtra Cooperative Societies Act, 1960, Registered Societies, By- Laws **Summary:** Trusts & Associations - Maharashtra Cooperative Societies Act, 1960, ss. 157 and 73(1A) - Constitution of India, 1950, arts. 162 and 39(b)(c) - State Govt.'s order u/s. 157 - Whether proper and lawful? - Held, No - Affairs of respondent no. 3 society, in dwindling state - Appointment of first committee to manage the affairs for three years; still no improvement, than term of committee was extended for two years and was further extended till 2002; Assistant Registrar, Cooperative Society was thereafter appointed as an Administrator, still there was no improvement in the condition of society - Admitted fact that no election was held since 1994 - Vide its order u/s. 157, respondent no. 6/ Director of Textiles, Govt. of Maharashtra appointed a nominated Board of Administrators of the Society till 19-06-2009 - Order was not produced before HC - Purpose of Act and constitutional objective behind it, deliberated upon; Act enacted for orderly development of the cooperative movement in the State in accordance with the relevant directive principles of State policy - Provisions of ss. 73(1A) and 157 of Act, perused, contentions heard - Undisputedly, State is empowered under the Act to issue a general or special order directing exemption from application of the provisions of the Act; it must, however, be done in an exceptional situation - An order by the State providing for a power of delegated legislation must be exercised in the manner laid down therein; an order in terms of s. 157 of the Act must be issued in terms of the provisions contained in art. 162 of the Constitution - Nothing brought on record to show as to under what circumstances the said power was exercised; necessity to exercise the said power has not been disclosed; no opportunity of being heard given, as mandated by the proviso to s. 157; no copy of order brought on record; in whose name the Govt. Order was issued not known - Such a power is not to be exercised only for the purpose of continuation of the Administration for a longer period than the one specified under the Act - State Govt. was bound to hold election within the maximum period provided for therein - Thus order of State u/s. 157, not in accordance with law - Impugned judgement upheld - Appeals dismissed.

Case No : Civil Appeal No. 3493 of 2009(Arising Out of Slp (C) No. 13290 of 2008) With Civil

Appeal No. 3494 of 2009(Arising Out of Slp (C) No. 15898 of 2008)

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

1. Leave granted.

2. These appeals are directed against a judgment and order dated 6.5.2008 passed by a Division Bench of the High Court of Judicature at Bombay bench at Aurangabad in Writ Petition No. 1056 of 2006 whereby and whereunder the Writ Petition filed by the first respondent herein was allowed.

3. Respondent No. 3 **is a society registered under the Maharashtra Cooperative Societies Act, 1960 (for short, "the Act").** It was registered on or about 4.12.1991. The State of Maharashtra is said to have been holding share capital of Rs.26 lakhs therein. Its contribution is said to be running into several crores of rupees. No effort, however, was made for running and managing its affairs for a long time. As no action had been taken for the said purpose, no share was collected and no meeting was held.

4. On or about 6.6.1995, the State of Maharashtra appointed a first Committee to manage the affairs of the society consisting of 13 persons for a period of three years. The said Committee is also said to have taken no step for effective functioning of the said cooperative society. No plant and machinery was acquired nor any other step was taken for erection of the mill. The term of the said Committee was extended by an order dated 6.7.1998 upto 3.6.2000. It was continued till 2002.

5. The Assistant Registrar, Cooperative Society, Vasamat was thereafter appointed as an Administrator. It is stated that some plants and machinery had been purchased in the year 2000 but they had been lying idle. Theft of articles belonging to the society had also taken place on several occasions. Indisputably, since 1994 no election was held. It is stated that on or about 23.12.2004, a Special General Meeting was convened wherein a request was made to the State to grant financial assistance. A request was also made to appoint an Administrative Board. It was furthermore resolved that no election be held unless the respondent No. 3 - cooperative society becomes functional. Pursuant thereto, a proposal was forwarded to the Director of Handloom, Nagpur which in turn was sent to the Department of Textile of the State of Maharashtra on or about 18.1.2005.

   The Director of Textiles, Government of Maharashtra, respondent No. 6 herein, thereafter issued an order on or about 29.6.2007, which reads as under:

   "In exercise of powers u/s. 78(1)(a)(ii) of the Maharashtra Coop. Societies Act, 1960 *and in exercise of powers under Maharashtra Government, Agriculture and Cooperation Department, Mumbai, Govt. Resolution No. CSG/1071/C3 dated 22.3.1972 and in exercise of powers under Government Resolution No. CSL-1493/1162/CR-47/15-C dated 7.8.1993 of Government of Maharashtra Cooperation and Textile Department and in accordance with Government order dated 27.6.2007, I, Vijay Kavare, Director Textile and Addl. Registrar Coop. Societies, Maharashtra State, Nagpur, hereby appoint an Administrative Board of five members in supersession of earlier Board of Directors appointed to the Rokadeshwar, Sahakari Soot Girni Maryadit, Vasmatnagar, Hingoli as per Government order dated 4.10.2005 and order dated 5.6.2006 of the Directorate.*

In accordance with the order dated 27.6.2007 of the State Government in exercise of powers u/s. 157 of the Maharashtra Coop. Societies Act, 1960 *the term of the Administrative Board shall be till 19.6.2009."*

Sr. No.	Name	Address
1.	Shri Prahlad Ramrao Rakhude	R/o Aral Tal. Basmat District Hingoli.
2.	Shri Chandrakant @ Rajendra Ramakant Navghere	R/o Vabhulgaon, Tal. Basmat, Dist. Hingoli.
3.	Shri Rajesh @ Raju Niranjan Ingole.	R/o Kurunda, Tal. Basmat Dist. Hingoli.
4.	Shri Kaluram Devji Kurunde	R/o Sirki, Tal. Basmat Dist. Hingoli
5.	Shri Chandramuni Namdev Mhaske	R/o Chikhli, Tal. Basmat Dist. Hingoli

"Administrative Board shall exercise all the powers of the Board of Directors as per the by- laws of the Spinning Mill and they shall discharge their duties under the supervision of Directorate. It is the responsibility of the newly appointed administrative board to persuade the members of the Purna Coop. Sugar Factory to secure redeposit Rs.150.00 lacs amount, which was withdrawn, by the said members of Purna Sakhar Karkhana from the Spinning Mill."

15. Mr. Naphade submitted that while considering a similar provision, a Division Bench of this Court in The Registrar of Co-operative Societies, Trivandrum & Anr. vs. K. Kunjabmu & ors. [(1980) 1 SCC 340 1979 Indlaw SC 301], held as under:

"12. The policy of the Act *is there and so are the guidelines. Why the legislation? "To facilitate the formation and working of Cooperative Societies." Cooperative Societies, for what purpose? "For the promotion of thrift, self-help and mutual aid." Amongst whom? "Amongst agriculturists and other persons with common economic needs." To what end? "To bring about better living, better business and better methods of production." The objectives are clear, the guidelines are there. There are numerous provisions of* the Act *dealing with registration of societies, rights and liabilities of members, duties of registered societies, privileges of registered societies, property and funds of registered societies, inquiry and inspection, supersession of committee of societies, dissolution of societies, surcharge and attachment, arbitration, etc. We refrain from referring to the details of the provisions except to say that they are generally designed to further the objectives set out in the preamble. But, numerous as the provisions are, they are not capable of meeting the extensive demands of the complex situations which may arise in the course of the working of* the Act *and the formation and the functioning of the societies. In fact, the too rigorous applications of some of the provisions of* the Act *may itself occasionally result in frustrating the very objects of* the Act *instead of advancing them. It is to provide for such situations that the Government is invested by S. 60 with a power to relax the occasional rigour of the provisions of* the Act *and to advance the objects of* the Act*. S. 60 empowers the State Government to exempt a registered society from any of the provisions of* the Act *or to direct that such provision shall apply to such society with specified modifications. The power given to the government under S. 60 of* the Act *is to be exercised so as to advance the policy and objects of* the Act*, according to the guidelines as may be gleaned from the preamble and other provisions which we have already pointed out, are clear."*

16. The State of Maharashtra before the High Court as also before us did not bring on record any material to show as to under what circumstances the said power was exercised. The necessity to exercise the said power has not been disclosed. Exercise of such power, however, indisputably is a conditional one. The proviso appended to S. 157 mandates an opportunity of being heard. There is nothing on record to show that such an opportunity was provided. We fail to understand as to why the copy of the Government Order as such is not available. In whose name the Government Order was issued is not known. Such a power is not to be exercised only for the purpose of continuation of the Administrator for a period longer than the one specified under the Act. If the intention and purpose of the State was merely to keep the affairs of the society under its control, it could have done so only for the maximum period specified under the Act. It was bound to hold election within the maximum period provided for therein. It in the name of exercising a special power could not have sought to achieve indirectly what it could not have done directly. We do not see any reason as to why such a drastic power had to be taken recourse to during pendency of the Writ Petition. Had before the High Court the said order been produced, the first respondent herein could have even questioned the validity thereof on any ground other than the one urged before the High court.

17. In view of the fact that we are satisfied that the purported order passed by the State u/s. 157 of the Act was not in accordance with law, in our opinion, no case has been made out for interference with the impugned judgment. These appeals are dismissed accordingly with costs. Counsel fee in each case assessed at Rs.50,000/-.

Appeals dismissed.

Naresh Shankar Srivastava v State of Uttar Pradesh and Others

Bench	Mukundakam Sharma, S.B. Sinha
Where Reported	2009 Indlaw SC 761; (2009) 16 SCC 157; AIR 2009 SC 2450; 2009 (3) ESC 409; JT 2009 (9) SC 319; 2009(7) SCALE 244; [2009] 7 S.C.R. 1188; 2009 (2) UPLBEC 1303
Case Digest	**Subject:** Trusts & Associations **Keywords:** Register, Cooperative Bank, Application For Registration, Cooperative Societies, Operation, U.P. State Cooperative Societies Act, 1965, U.P. State Re-organization Act, 2000, Uttaranchal Cooperative Societies Act, 2003, Uttar Pradesh Imposition of Ceiling of Land Holding Act, 1961 **Summary:** Trusts & Associations - Multi State Cooperative Societies Act, 1984, ss. 7 and 95 - UP State Cooperative Societies Act, 1965 - UP State Re-organisation Act, 2000 - Order of Registrar of Cooperative Societies D/- 14-02-2001 to the effect that UP Cooperative Processing and Cold Storages Federation Limited, Lucknow is deemed to be a Multi State Cooperative Society u/s. 7 of Multi State Act - Whether after the bifurcation/re-organisation of the State of UP and creation of State of Uttaranchal under Act, 2000, which was promulgated on 09-11-2000, the affairs of various cooperative societies carrying out their business in both the State at the time of re-organisation shall be governed by the UP Act or Multi State Act or whether these societies would automatically become Multi State Cooperative Societies(MSCS) w.e.f. from 09-11-2000 - Submissions heard and provisions of both the Acts perused - Held, governed by the Multi State Act - S. 95 of Multi State Act squarely applicable to the issue, which provides that where the object of the cooperative society is confined to one State would become from the date of reorganisation of State, a MSCS by virtue of Part II of Reorganisation Act and then it shall be deemed to be MSCS and the bye-laws of such Society shall continue to be in force until altered - Idea is to obviate the administrative stalements arising out of creation of a new State and new administration; s. 95 is independent of all other sections of the Act - Impugned judgement set aside - Appeals allowed.

Case No : C.A. Nos. 292-294 of 2005 With C.A. No. 1722 of 2005

2. The important legal issues which have arisen for consideration in these appeals are whether after the bifurcation/re-organisation of the State of Uttar Pradesh and creation of the State of Uttaranchal under the U.P. State Re-organization Act, 2000 (hereinafter referred to as the 'Re- organisation Act') which was promulgated on 9.11.2000, the affairs of various cooperative societies carrying out their business in both the States at the time of re-organisation shall be governed by the U.P.

State Cooperative Societies Act, 1965 (hereinafter referred to as the 'UP Act') **or by the<u>Multi State Cooperative Societies Act, 1984</u>(hereinafter referred to as the 'Multi-State Act') and whether these societies would automatically become Multi State Cooperative Societies with effect from 09.11.2000 i.e. the date of re-organisation of the State. This issue has emanated because of an order dated 14.02.2001 passed by the Registrar of Cooperative Societies to the effect that the U.P. Cooperative Processing and Cold** Storages Federation Limited, Lucknow (in short the 'PACSFED') is deemed to be a Multi State Cooperative Society u/s. 7 of the Multi-State Act. The said order was the subject matter of the writ petitions out of which the present appeals arise.

3. Brief facts of the case for the purpose of disposal of present bunch of appeals are required to be stated first. The PACSFED was registered on 25.11.1974 as apex cooperative society under the provisions of the UP Act and the Rules framed thereunder. The area of operation of the PACSFED was the whole state of Uttar Pradesh. In the year 2000, the Re-organisation Act was passed which came into force on 09.11.2000. By the operation of the said Act, the State of Uttar Pradesh was bifurcated and a new State of Uttaranchal (now Uttarakhand) was created by carving out certain territories from the State of Uttar Pradesh.

10. After referring to various provisions of the Re-organisation Act, the learned counsel for the respondents pointed out that the laws which were in force at the time of re-organisation would continued to operate and Part II of the Act shall not be deemed to have affected any change in the territories to which existing laws of Uttar Pradesh were applicable until otherwise provided by a competent legislature. He further pointed out that so far as the U P State Act was concerned, the territorial change in Part II of the Re-organization Act would become effective only on and from 21.5.2003. Before this date, Part II of the Act was not having any impact on the U P State Act and PACSFED could **not become Multi State Cooperative Society. After 21.5.2003, 14 member societies of PACSFED in Uttaranchal would automatically become registered under the Uttaranchal Cooperative Societies Act, 2003** (hereinafter referred to as 'Uttaranchal Act') by virtue of S. 129 of the Uttaranchal Act. Hence, even after 21.5.2003, the PACSFED did not become a **Multi State Cooperative Society. He submitted that neither the validity of the Uttaranchal Act nor the fact of deemed registration of these 14 societies under the Uttaranchal Act has been challenged.**

Section 95of the Multi-State Act contemplates about the future status of the societies functioning immediately before the re-organisation of states:

"95. Cooperative societies functioning immediately before re-organisation of States - (1) Where by virtue of the provisions of Part I of the <u>States Reorganisation Act, 1956</u>***, or any other enactment relating to reorganisation of States, any cooperative society which immediately before the day on which the reorganisation takes place, had its objects confined to one State becomes, as from that day, a multi-State cooperative society, it shall be deemed to be a multi-State cooperative society registered under the corresponding provisions of this Act and the bye-laws of such society shall, in so far as they are not inconsistent with the provisions of this Act, continue to be in force until altered or rescinded.***

(2) If it appears to the Central Registrar or any officer authorised in this behalf by the Central Government (hereafter in this section referred to as the authorised officer) that it is necessary or expedient to reconstitute or reorganize any society referred to in sub-s.(1) the Central Registrar or the authorised officer, as the case may be, may, with the previous approval of the Central Government, place before a meeting of the general body of that society, held in such manner as may be prescribed, a scheme for the reconstitution or reorganisation, including proposals regarding -

(a) the formation of new multi-State cooperative societies and the transfer thereto in whole or in part, of the assets and liabilities of that society, or

(b) the transfer, in whole or in part, of the assets and liabilities of that society to any other multi-State cooperative society in existence immediately before the date of that meeting of the general body (hereafter in this section referred to as the existing multi-State cooperative society).

(3) If the scheme is sanctioned by a resolution passed by a majority of the members present at the said meeting, either without modifications or with modifications to which the Central Registrar or the authorised officer agrees, he shall certify the scheme and upon such certification, the scheme shall, notwithstanding anything to the contrary contained in any law, regulation or bye-laws for the time being in force, be binding on all the societies affected by the scheme, as well as the share-holders and creditors of all such societies.

(4) If the scheme is not sanctioned under sub-section (3), the Central Registrar or the authorised officer may refer the scheme to such Judge of the appropriate High Court, as may be nominated in this behalf by the Chief Justice thereof, and the decision of that Judge in regard to the scheme shall be final and shall be binding on all the societies affected by the scheme as well as the shareholders and creditors of all such societies.

Explanation - In this sub-section, "appropriate High Court" means the High Court within the local limits of whose jurisdiction the principal place of business of the multi-state cooperative society is situated.

(5) Notwithstanding anything contained in this section, where a scheme under sub-s. (2) includes any proposal regarding the transfer of the assets and liabilities of any multi-State cooperative society referred to in cl. (b) thereof, the scheme shall not be binding on such multi-State cooperative society or the shareholders and creditors thereof, unless the proposal regarding such transfer is accepted by that multi-State cooperative society by a resolution passed by a majority of the members present at a meeting of its general body."

(emphasis added)

15. A perusal of the above-mentioned provisions makes it crystal clear that S. 95 of the Multi-State Act will be squarely applicable to the case in hand. This provision addresses a situation like the present one. It provides that where the object of the cooperative society is confined to one State would become from the date of reorganization of State, a Multi State Cooperative Society by virtue of Part II of State Reorganisation Act and then it shall be deemed to be Multi State Cooperative Society and the bye-laws of such Society shall continue to be in force until altered.

24. It has been contended by the respondents that in view of S. 129 of the Uttaranchal Act which came into force in 2003, 14 member societies of PACSFED in Uttaranchal would automatically become registered under the Uttaranchal Act. However, the said contention is legally untenable. Once the State of U. P. was bifurcated by the Re-organisation Act which came into force on 09.11.2000, S. 95 automatically got attracted. By virtue of S. 95 of the Multi-State Act, PACSFED becomes a Multi-State Society. On 14.02.2001, when the Central Registrar of the Multi-State Co-operative Societies issued the Registration Certificate granting registration of the PACSFED under the Multi-State Act, admittedly, the Uttaranchal Act of 2003 was not in existence. Even otherwise, a State legislation viz. Uttaranchal Act which has been enacted subsequently cannot have an overriding effect over a central law viz. the Multi-State Act. The Uttaranchal Act can govern and regulate the cooperative societies whose objects extend to and apply within the State of Uttaranchal. So, the finding of the High Court that with the enforcement of the **Uttaranchal Cooperative Societies Act, 2003,** with effect from 21.5.2003, the Multi-State Act shall not be applicable is erroneous. The byelaws of the PACSFED have not been amended so far. The area of operation of the PACSFED as laid down in its byelaws is still the same as it was on the date of the reorganisation of the State of U.P. Therefore, it would be legally impermissible to say that now the area of operation of the PACSFED is confined to the State of U.P. alone and that it has ceased to be a multi-State cooperative society. As far as withdrawal of member-cooperative societies of the PACSFED operating in the State of Uttaranchal is concerned, the deemed conversion of a cooperative society into a multi-State cooperative society by virtue of S. 95 of the Multi-State Act is an irreversible process and the membership of a multi-State cooperative society in a particular State at a given point of time is only a fortuitous circumstance on the basis of which a multi-State cooperative society cannot automatically revert to assume the character of a State cooperative society. Further, there is no provision in the Multi- State Act which permits such automatic conversion of a multi-State cooperative society into a State cooperative society by operation of law. The only relevant consideration for continuance of a multi-State cooperative society as a multi-State cooperative society is that it should have its objects not confined to one State and since the objects of the PACSFED still remain the same as it was immediately before the reorganization of the State of Uttar Pradesh, it shall be deemed to be a Multi-State co-operative society by virtue of deeming provision of S. 95 of the Multi-State Act.

25. In view of the foregoing discussions the PACSFED is a deemed multi State cooperative society registered under the corresponding provision of the Multi-State Act, 1984 as and from the date of the re-organisation of the State of Uttar Pradesh and, therefore, the impugned Judgment and order dated 10.11.2004 is liable to be set aside, which we hereby do.

Dharmeshbhai Vasudevbhai and Others v State of Gujarat and Others

Bench	S.B. Sinha, Cyriac Joseph
Where Reported	2009 Indlaw SC 603; (2009) 3 SCC (Cr) 76; (2009) 6 SCC 576; AIR 2009 SC (Supp) 1446; 2009 CRLJ 2969; JT 2009 (13) SC 638; 2009 (3) RCR(Criminal) 119; 2009(7) SCALE 214; [2009] 7 S.C.R. 475; 2009 (2) UC 1021
Case Digest	**Subject:** Criminal **Keywords:** Old Code, Notification, Continuous, Duty Of High Court, Gujarat Co-operative Societies Act, 1962 **Summary:** Criminal - Code of Criminal Procedure, 1973, ss. 3(h)(i), 154, 156(3), 200, 482 and 483 - Constitution of India, 1950, arts. 227 and 235 - Order of Magistrate u/s. 156(3) for police investigation, whether can be recalled? - Ordinarily, not - Complaint petition by respondent/cooperative bank u/ss. 406, 420, 423, 465 etc. - Order of Magistrate u/s. 156(3) - Application moved by complainant as to that a compromise had been entered into by the parties so the order of Magistrate be recalled; thereafter by making impugned order, order u/s. 156(3) was recalled - Writ petition before High Court - Specific contention raised as to that once complaint is sent for registration of FIR and investigation on the allegations contain therein, the Magistrate had no jurisdiction to recall the order, but HC ignored the contention and upheld the impugned order - Deliberation entered into, quoting decisions of the Court - Interference in the exercise of the statutory power of investigation by the Police, by the Magistrate far less direction for withdrawal of any investigation which is sought to be carried out, is not envisaged under the CrPC; Magistrate's power in this regard is limited; Even otherwise, he does not have any inherent power; Ordinarily, he has no power to recall his order - Impugned judgments set aside - Appeals allowed.

Case No : Cr.A. No. 914 OF 2009 (Arising out of S.L.P. (Cr.) No.3813 of 2005) With Cr.A. Nos. 915, 916, 917 and 918 OF 2009 (Arising out of S.L.P. (Cr.) Nos.3839, 3565, 3754 and 3771 of 2005)

1. Leave granted.

2. These appeals arising out of a **common judgment were taken up for hearing together. Appellants herein are depositors in City Cooperative Bank Ltd. (the Bank), a bank incorporated and registered under the Gujarat Cooperative Societies Act, 1962.**

3. Some of the borrowers had mortgaged their properties with the bank. Alleging commission of offences under Sections 406, 420, 423, 465, 477, 468, 471, 120(B), 124 and 34 of the Indian penal Code and investigation against the accused persons respondents herein, the bank filed a complaint petition before the Second Court of Judicial Magistrate First Class, Surat praying for

a direction upon the Rander Police Station to register a complaint. By an order dated 11.6.2004, the learned Magistrate upon consideration of the said allegations directed as under:

"The complaint is hereby ordered to be registered as the Inquiry Case and is ordered to be sent to Rander Police Station u/s. 156(3) for the Police Investigation. On being investigating the offence the Investigating Officer has to submit the report of Investigation on or before 12.7.2004 before this Court."

Pranita Powerloom Cooperative Society Limited and Others v State of Maharashtra and Others

Bench	V.S. Sirpurkar, Tarun Chatterjee
Where Reported	2009 Indlaw SC 517; (2009) 12 SCC 652; AIR 2009 SC (Supp) 1666; 2009 (4) Bom.C.R. 152; 2009(6) SCALE 209; [2009] 6 S.C.R. 891
Case Digest	**Subject:** Land & Property; Trusts & Associations **Keywords:** Deputy Registrar, Compulsory Acquisition, Cooperative Societies, Land Acquisition (Company Rules), 1963 **Summary:** Land & Property - Trusts & Associations - Land Acquisition Act, 1894, ss. 3(f), 4, 5A, 6 & 9 - Acquisition proceedings in favour of respondent/ societies - Communication-cum-Order by State of Maharashtra and Collector, Land Acquisition, D/-30-08-05, canceling acquisition, started in favour of one Ichalkaranji Cooperative Society Ltd.(petitioner society) - Challenged - Before High Court in writ petition - Writ petition allowed by HC - HC's judgment thereupon, whether proper and justified? - Petitioner society registered under Maharashtra Cooperative Societies Act and was established for purpose of erecting industrial estates for benefits of its members - HC disposed of petition on the basis of consent entered into by petitioner society and another society who later joined as respondent no. 5 - Later on consent order was passed by HC, which is challenged in present appeal - Consent entered into, consent order by HC, affidavits filed by respondent authorities, looked into - Consent order found to be without reason - Presumption raised by HC as to that there were only two players in the field i.e. the petitioner society and respondent no. 5, who were entitled to the land to be acquired by the State Govt. for establishment of the industrial estate - Court took surprise on such presumption, and noted that no material put forth in support to suggest that there is any exclusivity in favour of the two societies - Indeed, in the field there were so many other societies which were also of the same nature - Grounds raised in the petition against the claims of both the societies found to have been ignored by the HC - Finding, merely because s. 5A enquiry is pending and merely because the objection can be taken by the petitioners, respondents themselves will not be able to cure the illegality committed in the issuance of s. 4 notification - Held, HC's orders improper - Set aside - Matters remanded - Appeals allowed.

Case No : Civil Appeal No. 2566 of 2009(Arising out of SLP (C) 12077 of 2007) 03, Civil Appeal No.2570 of 2009(Arising out of SLP (C) 11250 of 2008), Civil Appeal Nos. 2572-2573 of 2009(Arising out of SLP (C) 11345-11346 of 2008), Civil Appeal No. 2568 of 2009(Arising out of SLP (C) 11357 of 2008), Civil Appeal Nos.2574-2575 of 2009(Arising out of SLP (C) 23332-23333 of 2008), Civil

Appeal No. 2567 of 2009(Arising out of SLP (C) 23335 of 2008), Civil Appeal No.2569 of 2009(Arising out of SLP (C) 20656 of 2008)

Leave granted in all the Special Leave Petitions.

2. One Ichalkaranji Industrial Cooperative Estate filed a Writ Petition No. 8967/05 before Bombay High Court, impleading the State of Maharashtra, Collector for District of Kolhapur, Commissioner for Directorate of Industries and Land Acquisition Officer, Kolhapur initially. One Pride India Cooperative Textile Park Ltd. came to be joined as respondent No. 5 later on. In this petition, validity of the communication-cum-order passed by the **State of Maharashtra and the Collector dated 30.08.05 was challenged. By that order the acquisition started in favour of the Ichalkaranji Cooperative Society Ltd. (hereinafter called 'Society' for short) was cancelled.** It was contended, inter alia, that the Society was **a registered cooperative society under the Maharashtra Cooperative Societies Act** and was established for the purposes of erecting industrial estates for the benefit of its members and that it was active right from 1974 and was also instrumental in setting up Industrial Estate for the areas Kolhapur and Ichalkaranji.

3. It was claimed that in the year 1974 the Kolhapur District Planning Committee had assured the Society that an area of 600 acres would be made available to it for the purpose of erecting such industrial estate. Initially in the year 1980, the area of 100 acres of land was sought to be acquired for the benefit of the said Society and that acquisition was completed in the year 1988 by the Land Acquisition Officer-respondent No.5. The Society had also paid Rs.37.50 lakhs towards the acquisition charges. It was further contended that after the land was handed over to the Society, a layout of the land was prepared and some 457 plots were made therein. The Society made infrastructure for establishment of the industrial estate including roads, water supply, sewerage, electricity connection, petrol pump, recreation grounds, roads for transportation etc.

4. The Society further contended in its petition that several persons, who were in the waiting list of the State Cooperative Society as their members for allotment, made further cry for the allotment of plots to them so that they can set up industrial units in that area. Considering the need for relocation for the industrial estate, a proposal came to be made by the Society to the respondents State authorities that additional land of 134 acres at village Tardal be made available to them so that the infrastructure which was already erected by the Society in the industrial estate at Shahpur could be used and utilised for setting up the industrial estate at Tardal which was barely beyond a road and was in the vicinity of the earlier industrial estate set up by the Society. This proposal was made on 30.08.02. According to the further contentions, this proposal was recommended by respondent No.1 through the Deputy Registrar (Industries) by communication dated 11.09.02.

25. The question is whether it had that exclusive right. There is nothing at least brought either to the notice of the High Court or before this Court to suggest that there is any exclusivity in favour of Ichalkaranji Society. Indeed, in the field there were so many other Societies which were also of the same nature. At least three of them were industrial societies they being Chhatrapati Shivaji Powerloom Cooperative Society, Mahalaxmi Sahakari Audyogik **Vasahat Maryadit . and Jagjivan Ram Magal Vargiya Charmakar Audyogik Sahakari Sanstha. Their status was also identical as they were registered as industrial cooperative societies as contemplated by**

Maharashtra Cooperative Societies Act. It is, therefore, clear that the High Court proceeded on the presumption that the only two relevant players in the field were respondent Nos. 4 and 5 herein i.e. **Ichalkaranji society and Pride India Cooperative Textile Park and went on to presume that they alone had the exclusive rights of getting the lands from the Government by way of land acquisition. This, in our opinion, is** a wrong presumption.

26. In the reply affidavit which has been sworn by Shri S.D. Chavan, Special Land Acquisition Officer, Kolhapur, it was specifically urged that specific queries were put to the Ichalkaranji Society vide letter dated 02.03.04 and letter dated 29.09.04 and the Manger of the Ichalkaranji Society had also attended office of the Special Land Acquisition Officer twice in relation to those queries.

34. The communication thereafter mentions that the Ichalkaranji Society had complied with the issues raised at reference No. 3 and 4 only and since the other deficiencies have not been removed the proposal was being cancelled. Even in the earlier paragraphs the attention of the Society was drawn towards the fact that the acquisition could be done only after the nominal compensation of Rs. 100/-, a share of the Government towards expenses of land acquisition. It is further pointed out in the same paragraph that the Association, namely, the petitioner Society would be required to submit a guarantee in triplicate about the availability of funds in the present land acquisition letter and it is only after this compliance that the land acquisition proceedings could be initiated. It is also pointed that the Association i.e. the petitioner-Society could be accepted only as a company and, therefore, it had to submit a report under Rule 4 (3) of the Land Acquisition Company Rules, 1963.

35. When we have a glance on the order of the High Court it is clear that the High Court has not considered any of these important objections. In this backdrop, it is pointed out by the learned counsel for the appellant-petitioners that they are the owners of the land and each has the capacity for developing the industrial estate as per the regional plan and, therefore, there was no justification in supporting the acquisition proceedings even without any compliance whatsoever by the respondent No.4 Society or treating the respondent Nos. 4 and 5 to be the only players in the field. It was pointed out that like respondent No.5 i.e. Pride India Cooperative Textile Park, the petitioners-appellant also owned the land and they are all industrial units. Therefore, there was nothing special with the respondent No.5, and if the estate was given to respondent No. 5 i.e. Pride India Cooperative Textile Park merely because their proposal was also pending, the similar direction should have been given to the others whose proposal were either pending or who were capable of making any such proposal. All that was not done and the matters were rushed on the basis of the mere compromise formula which too was suggested by the High Court.

36. In these circumstances, we are of the clear opinion that merely because Section 5A enquiry is pending and merely because the objection can be taken by the petitioners, the respondents by themselves will not be able to cure the illegality committed in the issuance of Section 4 Notification.

37. We deliberately do not want to go into the merits of the matter since we propose to remand these matters back to the High Court by setting aside both the orders of the High Court dated 01.12.06 and the subsequent order dated 04.04.08. The High Court will now proceed to consider both

the writ petitions, namely, Civil Writ Petition No. 8967/05 and Civil Writ Petition No. 3296/07 jointly to examine the feasibility of the land acquisition in the light of objections raised by the State Government in its affidavit and to be raised by the parties for which an opportunity shall be granted to them. The appeals, thus, succeed. The matter is remanded to the High court for fresh consideration of the two writ petitions in the light of the observations made by us. The respondents 4 and 5 shall pay the costs in all the appeals.

Order Accordingly

Adarsh Ginning and Pressing Factory v State of Maharashtra and Others

Bench	S.H. Kapadia, Aftab Alam
Where Reported	2009 Indlaw SC 1619; (2009) 17 SCC 762
Case Digest	**Subject:** Banking & Finance **Keywords:** Cooperative Bank, Co-Operative Societies, Maharashtra Co-operative Societies Act, 1960

Case No : Civil Appeal No. 2204 of 2009 (Arising out of Slp(C) No. 101 of 2008) with Civil Appeal No. 2205 of 2009 @ Slp(C) No. 2631 of 2008

The Order of the Court was as follows :

Leave granted.

1. In this case the question which arose before the High Court concerned the validity of the Circulars dated 8th January, 2001 and 3rd October, 2002, issued by the Registrar of the Co-operative Societies stating that Section 101 of the Maharashtra Co-operative Societies Act, 1960 would continue to apply even after commencement of Multi- State Co-operative Societies Act, 2002. The said question has not been answered by the High Court.

3. In the present case a neat question of law arose for decision before the High Court, namely, whether the State Authority could have invoked Maharashtra Co-operative Societies Act, 1960 with respect to the Co-operative Society registered under Multi-State Co-operative Societies Act, 1984 (later replaced by 2002 Act). This question remains unanswered and hence we remit this case to the High Court to consider the same. We may add that auction sale has been set aside and refund has been made.

4. **The attachment levied on the assets of the appellant under Section 101 read with Section 156 of Multi-State Cooperative Societies Act, 1960 will however continue till such time as the Competent Authority under 2002 Act passes Interim Orders which when passed will supersede orders of attachment under Maharashtra Co-operative Societies Act, 1960.**

5. Before concluding, it may be clarified that if the High Court finds that respondent No. 4 herein has obtained substantial reliefs under the 2002 Act as directed above then it may consider disposing of the pending Writ Petition No. 3981 of 2003 in the light of the orders passed by the Authority under 2002 Act without going into the larger question of law framed hereinabove.

Indian Bank v Godhara Nagrik Coop. Credit Society Limited and Another

Bench	S.B. Sinha, Lokeshwar Singh Panta
Where Reported	2009 Indlaw SC 359; (2009) 2 SCC (Cr) 544; (2009) 4 SCC 629; 2009 (2) BC 281; JT 2009 (7) SC 42; 2009(5) SCALE 27; [2009] 4 S.C.R. 1036
Case Digest	**Subject:** Banking & Finance; Practice & Procedure **Keywords:** Fixed Deposit, Applications allowed, Aggrieved, Cooperative Societies, Cooperative Banks, Deposit Receipts **Summary:** Banking & Finance - Application to clarify earlier order - Held, direction that, Banks and CBI shall sit together and identify cooperative societies which are in no way involved in scam, has been issued on the assumption that CBI has investigated matters pertaining to all cooperative societies and thus innocent societies can be identified and the amount may be paid to them - Direction to the extent that 'the bank with the assistance of Officer of the Central Bureau of Investigation should make all attempts to ascertain as to which of the cooperative societies and cooperative banks are in no way involved in the scam', shall not apply to the cases of the Indian Bank - Applications allowed.

Case No : I. A. No. 1 IN CIVIL APPEAL No. 3303 OF 2005 WITH I. A. No. 1 IN CIVIL APPEAL No. 3336 OF 2005, I. A. No. 1 IN CIVIL APPEAL No. 3337 OF 2005 AND I. A. No. 1 IN CIVIL APPEAL No. 3338 OF 2005

The Order of the Court was as follows:

1. Indian Bank has filed these applications praying for clarification of certain directions contained in the final judgment dated 16.05.2008 of this Court in Civil Appeal No. 3303/2005 along with Civil Appeal Nos. 3336, 3337, 3338 and 3304-3335 of 2005.

   2.**1 Respondents herein are cooperative societies registered under the Cooperative Societies Act.** They deposited certain amounts in cash in fixed deposits of Banks wherefor Fixed Deposit Receipts (FDRs) were to be issued. Such deposits were made through some so-called Commission Agents of the Banks on payment of huge commission which is ordinarily not allowed by the Nationalized Banks.

   2.2 Applications for grant of loans by various persons were filed before the prescribed authorities of the banks on the basis of the said FDRs. Allegedly a large number of officers of the banks were involved in a scam whereby unofficial investments of the said amount were being made.

   2.3 As and when the FDRs matured, the investors requested the Banks for their encashment. The banks refused to accede thereto stating that the amount under the FDRs had already been paid by way of loans and, thus, no further amount was payable. It was contended that a fraud on the banks has been practiced to which the depositors and the officers of the banks were parties.

2.4 Writ petitions were filed. A learned Single Judge of the High Court opined that serious disputed questions of fact being involved in the said writ petitions, no relief can be granted to the writ petitioners.

2.5 Despite the same, the learned single judge relying on the provisions contained in Section 35A of the Banking Regulations Act, 1949 directed constitution of a Committee under the Chairmanship of the Deputy Governor of Reserve Bank of India or his nominee to go into the matter in great details. Various powers were delegated in favour of the Committee including the one that the decision of the Committee shall be final and binding upon the parties.

8. In the judgment, the direction that, Banks and CBI shall sit together and identify cooperative societies which are in no way involved in scam, has been issued on the assumption that CBI has investigated matters pertaining to all cooperative societies and thus innocent societies can be identified and the amount may be paid to them. The submissions of the applicant-Indian Bank pleaded in these applications that there was no CBI investigation/case pertaining to the matters of Indian Bank have not been brought to the notice of this Court at the time of hearing and disposal of the appeals filed by the Indian Bank. Had the correct statement of facts been pleaded and contended by the applicant-Indian Bank at the time of hearing of its appeals, undisputedly there was no occasion for this Court to labour hard for issuing such a direction pertaining to the cases of the cooperative societies-depositors which are not in any way involved in the scam. Thus, applicant-Indian Bank has misrepresented the facts before this Court at the time of hearing of its appeals and now, after realizing its glaring mistakes, these applications have been filed for seeking clarification of the directions contained in the original judgment.

9. Now, in the background and on reconsideration of the factual situation, the direction contained in the judgment to the extent that 'the bank with the assistance of Officer of the Central Bureau of Investigation should make all attempts to ascertain as to which of the cooperative societies and cooperative banks are in no way involved in the scam', shall not apply to the cases of the Indian Bank. The Indian Bank, however, in the interest of cooperative societies whose FDRs are lying in deposits and availed the loan facilities, shall on its own identify and ascertain the societies who are not involved in any CBI investigation/case and on such ascertainment and verification, the cooperative societies- depositors shall be informed regarding the maturity of their FDRs. If the maturity amounts of the FDRs are adjusted against the loan amount advanced to the cooperative societies and if there exists any dispute between the depositors societies and the Indian Bank about the recovery or payment of the money, the aggrieved party can get its claim adjudicated through appropriate proceedings before the appropriate forum or court as permissible under law. If there is no dispute in regard to the payment of amount of matured FDRs, the Indian Bank shall not debar or preclude the innocent cooperative societies-depositors from taking loan against FDRs being deposited with the Bank.

10. We make it clear that the judgment dated 16.05.2008 shall stand clarified to the extent indicated above so far, it pertains to the cases of Indian Bank. This clarification will however, not dilute or affect other directions issued in the final judgment.

11. In the facts and circumstances of the case for the above- stated reasons, the applications filed by applicant-Indian Bank are allowed. However, in view of the conduct of the applicant-Indian Bank, it is directed to pay cost of Rs.20,000/- within four weeks from this order, which shall be deposited in the account of the Supreme Court Legal Services Authority.

Applications allowed.

Woods Beach Hotels Limited v Mapusa Urban Co-Operative Bank of Goa Limited and Others

Bench	Tarun Chatterjee, H.S. Bedi
Where Reported	2009 Indlaw SC 378; (2009) 13 SCC 748; 2009 (2) BC 469; JT 2009 (4) SC 412; 2009(5) SCALE 335; [2009] 4 S.C.R. 1085
Case Digest	**Summary:** Banking & Finance - Auction of mortgaged property - Appeal against interim order of stay - Held, third party interest has now been created in the property - In the event, the appellant deposits a sum of Rs. 6.04 crores in the pending writ application before the High Court within three months from this date, the parties shall be directed to maintain status quo as regards the property in question initially for a period of three months unconditionally from this date and in the event the aforesaid amount is deposited within the time specified hereinabove, the interim order shall continue till the disposal of the writ petition - Appeal disposed of.

Case No : CIVIL APPEAL NO. 1730 OF 2009(Arising out of SLP No.7531 of 2008)

The Judgment was delivered by : Tarun Chatterjee, J.

Leave granted.

1. This appeal is filed against an interim order dated 17th of March 2008 in Writ Petition No. 138 of 2008 passed by the High Court of Bombay at Goa whereby the High Court admitted the Writ petition filed by Respondent No.1 and stayed the operation of order dated 16th of August 2007 passed by the Registrar of Co-operative Societies, Goa.

3. The MAPUSA Urban Cooperative Bank of Goa Ltd. (Respondent No.1, hereinafter referred to as "the Bank") had extended credit facility of Rs. 20 lacs to a proprietary firm belonging to one of the Directors of the Woods Beach Hotel Ltd. (hereinafter referred to as "the appellant") and an immovable property of the appellant namely "Soranto" was allegedly mortgaged to cover the aforesaid credit facility. The appellant was not the principal borrower. The name and constitution of the appellant company was changed and notified to the bank in 1994 but the notice did not mention about the change of shareholders. **The Bank initiated the proceedings for recovery of the due amount before the Asst. Registrar (Respondent No.3) of the Multi State Cooperative Societies under section 74 of The Multi State Cooperative Societies Act, 1984** wherein the appellant was impleaded in the capacity of third party mortgagor. The proceeding was initiated in the old name of the appellant company and it was alleged by the appellant that no notice was served on the appellant.

4. After obtaining an award from the Assistant Registrar, the Bank filed execution application on 23rd of September 1999 for a sum of Rs. 52.35 lacs wherein it sought attachment of the immovable property of the appellant. After being aware of the award, the appellant tried to settle the matter

with the Bank and paid Rs. 6.63 lacs to the Bank in the process. However the recovery officer of the bank went ahead with the sale of the mortgaged immovable property and due to non-availability of buyers eventually the Bank itself purchased the property for Rs. 97,04,222/- and the appellant alleged non-service of notice regarding the same.

(a) In the event, the appellant deposits a sum of Rs. 6.04 crores in the pending writ application before the High Court within three months from this date, the parties shall be directed to maintain status quo as regards the property in question initially for a period of three months unconditionally from this date and in the event the aforesaid amount is deposited within the time specified hereinabove, the interim order shall continue till the disposal of the writ petition or until further orders to be passed by the High Court in the writ application.

(b) In default of making the deposit, as mentioned herein above, the interim order, as granted, shall automatically stand vacated.

(c) We make it clear that we have not gone into the question whether the impugned order granting ad interim stay of the order of the Registrar was justified or not, as the parties before us have restricted their arguments in respect of the grant of status quo relating to the properties in question only.

(d) The High Court is requested to decide the pending writ petition within three months from the date of supply of a copy of this order positively, after giving hearing to the parties and after passing a reasoned order in accordance with law.

14. We make it clear that whatever observations that have been made by the High Court in the impugned order and any observations, on the merits of the writ petition, if made by us in this order, shall not stand in the way of the High Court from deciding the writ application on merits without being influenced by such observations, if any.

15. The appeal is thus disposed of. There will be no orders as to costs.

Appeal disposed of

State Of Assam v Barak Upatyaka D.U.Karmachari Sanstha

Bench	R.V. Raveendran, Markandey Katju
Where Reported	2009 Indlaw SC 331; (2009) 5 SCC 694; AIR 2009 SC 2249; 2009 (2) ESC 257; JT 2009 (4) SC 127; 2009(4) SCALE 355; [2009] 4 S.C.R. 467
Case Digest	**Summary:** Trusts & Associations - Assam Co-operative Societies Act, 1949 - Whether the High Court was justified in directing the state government to release grants to CAMUL, so as to enable CAMUL to pay the salary and other emoluments of its employees? - Held, there is no right created to demand the continuance of financial assistance to a co-operative society, on the ground that such assistance has been extended by the government, for several years - Appeal allowed.

Case No : CIVIL APPEAL NO. 6492 of 2002

The Judgment was delivered by : R. V. Raveendran, J.

1. This appeal by special leave is filed by the State of Assam aggrieved by the order dated 14.6.2001 passed by the Division Bench of the Gauhati High Court. By that order the Division Bench upheld the order dated 23.12.1999 of the learned Single Judge in Civil Rule No.2996/1995 allowing respondent's writ petition and directing the state government to sanction financial assistance by way of grant-in-aid to Cachar and Karimganj District Milk Producers' Cooperative Union Limited ('CAMUL' for short) so as to enable CAMUL to make regular payment of monthly salaries, allowances as also the arrears to its employees.

2. CAMUL is a society registered under the Assam Co-operative Societies Act, 1949 ('Act' for short). Respondent, a Trade Union representing the workers of CAMUL, filed the said writ petition (Civil Rule No.2996/1995) contending that the state government formed and registered CAMUL as a co-operative society to run its cattle development project; that its Board of Directors including the Managing Director (always a government servant, on deputation) were appointed by the state government; that the post of the Managing Director of CAMUL was declared to be a post equivalent to a Head of Department under the state government; that initially the entire staff of CAMUL were drawn on deputation from the Veterinary, Agriculture & Co-operative Departments of the state government; that in a phased manner, those employees were reverted back to their Parent Departments and replaced by the staff appointed by CAMUL, through a Selection Board set up by the state government with representatives from the Central Government and National Dairy Development Board; that state government sanctioned the staffing pattern of CAMUL; that from the year 1982-83 onwards the Government was extending financial assistance by way of grants to CAMUL to meet the expenditure (including the expenditure relating to its employees); and that for the years 1994-95 though the state government had sanctioned financial assistance in a sum of Rs. 7 lakhs as grant-in-aid, it was not disbursed and consequently CAMUL did not pay the monthly salaries to its employees from December 1994 onwards.

19. What clearly holds the field at present is the principle laid down and reiterated by the Constitution bench of this Court in Steel Authority of India v. National Union Waterfront Workers 2001 (7) SCC 1 2001 Indlaw SC 20484 wherein this Court categorically held :

"We wish to clear the air that the principle, while discharging public functions and duties the government companies/corporations/societies which are instrumentalities or agencies of the government must be subjected to the same limitations in the field of public law - constitutional or administrative law - as the government itself, does not lead to the inference that they become agents of the Centre/state government for all purposes so as to bind such government for all their acts, liabilities and obligations under various Central and/or State Acts or under private law."

[Emphasis supplied]

20. We, therefore, reject the interpretation put forth by the respondent, on the tentative observations in Kapila Hingorani(I) 2003 Indlaw SC 483 and (II) 2005 Indlaw SC 16, to contend that the government would be liable for payment of salaries and other dues of employees of the public sector undertakings. We are of the considered view that the decision of the High Court cannot therefore be sustained.

21. We, accordingly allow this appeal, set aside the orders of the Division Bench and the learned Single Judge of the High Court and dismiss the writ petition without prejudice to the right of the employees of CAMUL to take such action as is available in law for redressal of their grievances. We may also add that this decision will not come in the way of state government formulating any scheme or extending any relief or benefit to the employees of CAMUL or other similarly situated persons.

Appeal allowed.

Hindustan Coop. Housing Building Society Limited v Registrar, Co-Operative Societies and Another

Bench	Arijit Pasayat, A.K. Ganguly
Where Reported	2009 Indlaw SC 173; (2009) 14 SCC 302; JT 2009 (2) SC 530; 2009(2) SCALE 760; [2009] 2 S.C.R. 331
Case Digest	**Summary:** Trusts & Associations - Delhi Co-operative Societies Act, 1972; Delhi Co-operative Societies Rule, 1973; - Allotment of land - Held, r. 25(2) is of paramount importance - There is a deemed disqualification - The effect of it has not been examined by the High Court - Normally when a statutory remedy is available, the same should be availed - That aspect has also not been examined by the High Court - Writ petition needs to be heard by the High Court - Appeal partly allowed.

Case No : Civil Appeal No. 957 of 2009 (Arising out of SLP (C) No. 9866 of 2007)

18. The High Court by the order in writ petition held that the transfer in favour of Jasjit Kaur has been accepted by the Society and therefore she was entitled to allotment of the plot. It was held that the Registrar, Cooperative Society had no authority in law to sit over the affidavit and not to recommend the case for allotment to Jasjit Kaur. A direction was therefore given to the Registrar, Cooperative Societies to forthwith recommend the case of Jasjit Kaur for allotment of plot in Category 'C' of 125 sq. yards. A Review Petition was filed inter-alia taking the stand that after Mr. Anoop Singh had asked for refund of money, and therefore, raising the question of any transfer in law did not arise. The review petition was rejected on the ground that no case for review was made out.

"25. Disqualification of Membership:

(c) in the case of membership of a housing society:

(i) owns a residential house or a plot of land for the construction of a residential house in any of the approved or un-approved colonies or other localities in the National Capital Territory of Delhi, in his own name or in the name of his spouse or any of his dependent children, on lease hold or free-hold basis or on power of attorney or on agreement for sale;

Provided that disqualification of membership as laid down in sub-rule (l)(c)(i) shall not be applicable in case of co-sharers of property whose share is less than 66.72 sq. metres of land;

Provided further that the said disqualification shall not be applicable in case of a person who has acquired property on power of attorney or through agreement for sale and on conversion of the property from leasehold to freehold on execution of conveyance deed for it, if such person applies for the membership of the housing society concerned; (Amended on 6.8.97)

3. A member who ceases to be a member of a co-operative society under sub-rule (2) shall not be entitled to exercise rights of memberships or incur liability as member with effect from the date referred to in sub-rule (2) but as from the date he becomes a creditor of the co-operative society in respect of the amount due to him on account of paid up share capital, deposit, cost of land deposited or any other amount paid by him to the co operative society as its member. As from the date of his ceasing to be a member or the society under sub-rule (2), the amount standing to his credit shall be paid to him by the co-operative society within 3 months and when the co-operative society is already under liquidation, the amount due to him will be credited as a debt due to a third party from the co-operative society.

4. If any question as to whether a member has incurred any of the disqualification referred to in sub-rule (1) arises, it shall be referred to the Registrar for decision. His decision shall be final and binding on all concerned. The power of the Registrar under this rule shall not be delegated to any other person appointed to assist the Registrar."

24. It is, as noted above, a deeming provision. Such a provision creates a legal fiction. As was stated by James, L.J. in Levy, Re, ex p Walton (1881 (17) Ch.D 746)

"when a statute enacts that something shall be deemed to have been done, which in fact and in truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to. After ascertaining the purpose full effect must be given to the statutory fiction and it should be carried to its logical conclusion and to that end it would be proper and even necessary to assume all those facts on which alone the fiction can operate."

27. We request the High Court to explore the possibility of disposing of the writ petition within a period of four months by fixing a definite date after a period of six weeks from today. Till the disposal of the writ petition by the High Court afresh, no third party rights in respect of the plot which is stated to have been allotted to respondent No.2 shall be created by the appellant.

28. The appeal is allowed to the aforesaid extent with no order as to costs.

Appeal partly allowed.

Indian Bank v
Godhara Nagrik Cooperative Credit Society Limited and Another

Bench	S.B. Sinha, Lokeshwar Singh Panta
Where Reported	2008 Indlaw SC 974; (2008) 12 SCC 541; AIR 2008 SC 2585; 2008 (6) AWC 5665; 2008 (3) BC 387; [2008] 144 Comp Cas 200; 2009 (1) DRTC 159; JT 2008 (5) SC 575; 2008 (4) RCR(Civil) 95; 2008(7) SCALE 363; [2008] 9 S.C.R. 450
Case Digest	**Summary:** Question regarding power of judicial review of a Superior Court - Whether Single Judge, despite holding that the writ petitions were not maintainable, could have issued direction for constitution of the Committee - Held, a writ court exercising the power of judicial review has a limited jurisdiction - A writ petition would lie against a State within the meaning of art. 12 of the Constitution of India - Exercise of jurisdiction by the High Court is permissible in a case where action of the State is found to be unfair, unreasonable or arbitrary - Question which should have been posed by the High Court was as to whether the action of the bank was so arbitrary so as to invoke the public law jurisdiction - In the absence of any categorical finding that it was the officers of the Banks alone who were liable, no direction as has been done in the instant case should have been issued - Directions issued.

Case No : Civil Appeal No. 3303 of 2005 with (C.A. Nos. 3336, 3337, 3338 and 3304-3335 of 2005)

2. **Respondents herein are cooperative societies registered under the Cooperative Societies Act and/or their Members. They deposited certain amounts in cash in fixed deposits of Banks wherefor** Fixed Deposit Receipts (FDRs) were to be issued. Such deposits were made through some so-called Commission Agents of the Banks on payment of huge commission which is ordinarily not allowed by the Nationalized Banks.

3. Applications for grant of loans by various persons were filed before the prescribed authorities of the banks on the basis of the said FDRs. Allegedly a large number of officers of the banks were involved in a scam whereby unofficial investments of the said amount were being made.

4. As and when the FDRs matured, the investors requested the Banks for their encashment. The banks refused to accede thereto stating that the amount under the FDRs had already been paid by way of loans and, thus, no further amount was payable. It was contended that a fraud on the banks has been practiced to which the depositors and the officers of the banks were parties.

5. Writ petitions were filed. A learned Single Judge of the High Court opined that serious disputed questions of fact being involved in the said writ petitions, no relief can be granted to the writ petitioners.

17. The core question which arises for consideration in the writ petitions was as to whether, keeping in view the apprehension in the mind of the Bank that it has been subjected to fraud by its own officers as also the apprehension in their mind that the writ petitioners or their agents might have conspired with the offices of the Banks, was it unfair and unreasonable in its decision to refuse to make payment? The answer to that question prima facie must be rendered in the negative. If, however, it is found as of fact that the writ petitioners-respondents were not parties to the fraud, whether even in a lis involving private law domain, namely, contract qua contract, as a trustee of the investors' money, they may be held to be liable to refund the amount, is the question?.

18. Indisputably, whether as a public sector undertakings or otherwise the banks cannot refuse to accede to the just demand of the investors to pay any amount lawfully due to them inter alia on the premise that their officers are guilty of commission of any fraud. It is one thing to say that fraud has been committed by their officers to cause wrongful loss to the bank but it is another thing to say that the banks are constructively liable for the acts of their officers.

38. The law as regards application of the power of judicial review, inter alia, in the contractual filed stands covered by a large number of decisions. (See LIC of India & anr. vs. Consumer Education & Research Centre & ors., [(1995) 5 SCC 482 1995 Indlaw SC 288], Sanjana M. Wig (Ms) vs. Hindustan Petroleum Corpn. Ltd. [(2005) 8 SCC 242 2005 Indlaw SC 556], ABL International Ltd & Anr.. vs. Export Credit Guarantee Corporation of India Ltd & ors.. [(2004) 3 SCC 553 2003 Indlaw SC 1403], The D.F.O, South Kheri & ors. vs. Ram Sanehi Singh [(1971) 3 SCC 864 1970 Indlaw SC 585]. We, however, do not think that facts involved in each case and the law laid down therein need to be discussed at length as there does not exist any dispute in regard to basic principles laid down therein.

39. In M/s Hyderabad Commercials vs. Indian Bank & ors. [1991 Supp. (2) SCC 340 1990 Indlaw SC 225], this Court held:

"Since the basic facts regarding the unauthorized transfer of the disputed amount from the appellant's account as well as the bank's liability was admitted, there was no justification for the High Court to direct the appellant to file suit on ground of disputed questions of fact. The respondent bank is an instrumentality of the State and it must function honestly to serve its customers.

Would the ratio laid down therein apply in the instant case? We do not think so. The question as to whether fraud has been committed by the officers of the bank is pending consideration before a competent criminal court. There are other various disputed questions which are required to be gone into in the said proceeding. The role played by some of the writ petitioners - respondents is also in issue. Such a seriously disputed questions of fact, in our opinion, could not have been gone into by the writ court.

44. Having however said so, we must pose unto ourselves a further question. Could those cooperative societies which had absolutely no role to play in the entire episode should suffer in any manner whatsoever? The cooperative societies/cooperative banks for the purpose of their day-to-day functioning, require the amount which they have invested in FDRs on their maturity. Should they wait till the criminal cases are over? Should they be pushed to institute civil suits? They can indisputably be compensated by grant of interest. What, however, happens if in the meanwhile

in the absence of the requisite funds being available to them, they find it difficult to run the day-to-day affairs?

45. Answers thereto may be difficult to find but it is not a wholly impossible task. We think that the appellant Bank being a 'State' within the meaning of Article 12 of the Constitution of India with the assistance of officer(s) of the Central Bureau of Investigation should make all attempts to ascertain as to which of the cooperative societies/cooperative banks are in no way involved with the scam, and subject to such precautions as may be found necessary to be taken, release the amount in their favour.

46. In any event, the quantum of the amount which all the depositors would have otherwise received, in the event their investment in FDRs is found to be genuine, should be informed thereabout. Once the liability of the bank is determined, the bank may invest the said amount in its own account and issue fresh FDRs therefor. Whereas the bank may keep the original FDRs with itself, it may issue the duplicate copies thereof to the eligible cooperative bank. Such an exercise should be completed within a period of four weeks from date.

48. We, while saying so, do not intend to lay down any law. These directions should not be treated to be precedent. We are issuing these directions keeping in view that the factual scenario obtaining in the case and that non-release of the amount is likely to enure hardships that may be faced by the cooperative societies. We would also direct the criminal court to dispose of the criminal cases pending before them with utmost expedition. These appeals are allowed with the aforementioned directions. There shall, however, be no order as to costs.

Appeal allowed

U. P. C. U. E. F. Limited v Cane Commissioner And R. C. C. S. And Others

Bench	Tarun Chatterjee, H.S. Bedi
Where Reported	2008 Indlaw SC 2545; (2008) 11 SCC 284; AIR 2009 SC (Supp) 554; 2008 (2) CLR 892; 2008 (118) FLR 1100; JT 2008 (5) SC 439; 2008 (2) LLN 748; 2008(6) SCALE 398; [2008] 6 S.C.R. 253
Case Digest	**Subject:** Constitution; Labour & Industrial Law; Practice & Procedure **Keywords:** Seasonal, U.P. Cooperative Societies Act, 1965, U.P. Industrial Disputes Act, 1956, U.P. Sugarcane (Regulation of Supplies and Purchase) Act, 1953, U.P. Cane Cooperative Service Regulations, 1975, Cane Cooperative Service Rules, 1963 **Summary:** Labour & Industrial Law - Constitution - Practice & Procedure - Industrial Disputes Act, 1947, s. 9A - U.P. Industrial Disputes Act, 1947, s. 4-I r/w. 3rd Schedule - U.P. Cane Cooperative Service Regulations, 1975, regn. 2(n) - U.P. Cooperative Societies Act, 1965, s. 122 - Respondent No.1-Cane Commissioner of Cooperative Cane Societies, Uttar Pradesh passed an order amending the definition of 'crushing season' as provided in regn. 2(n) of U.P. Cane Cooperative Service Regulations, 1975 - Appellant, registered Trade Union of the workmen filed writ petition challenging the said amendment on the ground that thereby the length of employment as well as wages of the seasonal workmen was adversely affected - Appellant also submitted that said amendment not valid as respondent no. 1 has not issue any notice before passing the order altering the conditions of service of appellant on the basis of the order - HC dismissed said petition - Hence, present appeal - Whether it was mandatory to give notice u/s. 4-I of the U.P. Industrial Disputes Act, 1956 or s. 9A of the Industrial Disputes Act, 1956 before passing the order dt. 14-07-1993 altering the conditions of service of the appellant on the basis of the order dt. 17-05-1993? - Held, orders dt. 17-05-1993 and 14-071993 could not have been passed without giving any notice in compliance with s. 4-I r/w. 3rd Schedule of the U.P. Industrial Disputes Act, 1956 - Impugned judgment of HC is set aside - Writ petition allowed.

Case No : CIVIL APPEAL NO. 2727 OF 2008 (Arising out of SLP(C) No.16536 of 2005)

1. This is an appeal by special leave against the judgment and order dated 26th of April, 2005 of the High Court of Judicature at Allahabad in CMWP No. 33014 of 1993 dismissing the writ petition of the appellant filed against the orders dated 17th of May, 1993 and 14th of July, 1993 passed by the Cane Commissioner and Registrar Cooperative Cane Societies U.P., Lucknow (respondent No. 1) and the Special Secretary, Sahkari Ganna Vikas Samiti (respondent No.3) respectively.

2. The relevant facts leading to the filing of this appeal are as under. The appellant is a registered Trade Union of the workmen employed by Sahkari Ganna Vikas Samiti Ltd, Shamli, respondent no. 4 herein. Before the High Court, one Late Shri. Niranjan Singh was the writ petitioner No. 2 along with the appellant and was a permanent seasonal clerk of the respondent **No. 4 but he expired during the pendency of the writ petition. U.P. Cane Cooperative Service Regulations, 1975 (in short "the Service Regulations, 1975") were framed under section 122 of the U.P. Cooperative Societies Act, 1965 which superseded the Cane Cooperative Service Rules, 1963. These regulations provide for the recruitment, emoluments, terms and conditions of service etc**. of the employees, permanent as well as seasonal, of the Cooperative Cane Development Union or Ganna Sahkari Vikas Samitis established in the State of UP for purchase of sugar from its sugar growing members for supply to various sugar factories. Under the Service Regulations, 1975, "Crushing Season" was defined in Regulation 2(n) as follows:

8. While dismissing the writ petition of the appellant, the High Court made the following findings:-

"It has been submitted on behalf of the petitioner that no employer can change the service condition applicable to the workmen as is specified in the Third Schedule. The Court has perused the Third Schedule and after perusal of the Third Schedule it is clear that it deals regarding mode of payment, contribution paid or payable by the employer, compulsory and other allowances, hours of work and rest intervals, leave, starting alteration or discontinuance of shift working, classification by grades, withdrawal or privilege, introduction of new rules of discipline, rationalization or improvement of plant, any increase or reduction in number of persons employed. The Third Schedule does not talk regarding the change of service condition.

Therefore, in my view, the only contention raised on behalf of the petitioner is not applicable. The order of the respondent in any way is not covered under the provisions of 4-I and the Third Schedule. As no further point has been argued and the amendment does not call for any change in the service conditions of the petitioner therefore, I am of the view as submitted by the petitioner that no notice was required."

11. Therefore, from a plain reading of the Third Schedule, it is clear that it enumerates the conditions of service for change of which notice has to be served upon the workmen. In this view of the matter, the finding of the High court that the Third Schedule does not talk about the change of service conditions is unfounded and not acceptable. For this reason, a notice ought to have been served upon the employees before effecting any change in their conditions of service. Let us now examine if the change effected by the Cane Commissioner in the definition of "Crushing Season" would have any impact on the conditions of service of the appellant. Admittedly, as per the earlier definition, as noted herein earlier, "Crushing Season" meant the period beginning on the 1st of October in any year and ending on 15th of July next following. By virtue of the amended definition, "Crushing Season" means the period commencing from the date when the crushing of sugarcane in the concerned sugar factories commences till the date when crushing ends. In our view, this change in the definition of "Crushing Season" would affect the period for which the employees are to be paid the wages and this change is squarely covered by Clause 1 of the Third Schedule as noted herein earlier. Therefore, in our view, it was incumbent upon the Cane Commissioner to serve a notice upon the appellant before effecting any change in the definition of "Crushing Season".

12. In view of our discussions made hereinabove, we, therefore, hold that the orders dated 17th of May, 1993 and 14th of July, 1993 could not have been passed without giving any notice in compliance with Section 4-I read with the Third Schedule of the U.P. Industrial Disputes Act, 1956, as mentioned herein earlier. In view of our finding made **hereinabove, it is, therefore, not necessary to deal with Question No. 2 regarding power of respondent No. 1 to frame and amend regulations under Section 122 of the U.P. Cooperative Societies Act, 1965.**

13. For the reasons aforesaid, the impugned judgment of the High Court is set aside. The writ petition filed by the appellant is allowed to the extent indicated above. The appeal is thus allowed without any order as to costs. However, it would be open to the respondent to amend the definition of "Crushing Season" in accordance with law.

Appeal allowed

Delhi Development Authority v Arjun Lal Satija and Others

Bench	Arijit Pasayat, Lokeshwar Singh Panta, P. Sathasivam
Where Reported	2007 Indlaw SC 1432; (2007) 13 SCC 603; AIR 2007 SC (Supp) 1146; JT 2007 (13) SC 427; 2007(13) SCALE 468; 2007 (8) SCJ 762; [2007] 12 S.C.R. 527

Case No : CIVIL APPEAL NO. 5373 OF 2007 (Arising out of S.L.P. (C) No. 4024 of 2006)

2. The land to which the present dispute relates was allotted to The Mianwali District Cooperative House Building Society Ltd., Flat No. 3-A, New Qutab Road, Delhi. Father of Respondent No.1 was a member of the Society. Members of the Society were entitled to be included in the draw of lots for allotment of land. Before any allotment of land was done, father of respondent No.1 died on 22.11.1974. Respondent No.1 filed an application for issuance of succession certificate which was allowed on 17.02.1986.

3. The Managing Committee of respondent No.3-Society adopted a resolution transferring the membership of Shri K.K. Satija in favour of respondent No.1. Thereafter, respondent No.1 approached the office of the Registrar of Cooperative Societies (in short 'the Registrar') for clearance and for forwarding his name for inclusion in the draw of lots by the appellant. On 16.05.1994, the Registrar issued a show cause notice to respondent No.1 as to why his membership of the Society be not cancelled for the reason that he was already owning a residential house at A-120, Saraswati Vihar, Delhi. On 13.10.1994, an order in this regard was passed by the Registrar.

4. But **the membership was restored by the Government in a revision petition filed u/s. 80 of the Delhi Cooperative Societies Act, 1972 (in short 'the Act'). A writ petition was filed before the Delhi High Court challenging the non-inclusion of the respondent No.1's name for allotment.** The Delhi High Court passed an order directing clearance of the name of respondent No.1, since no order was passed in terms of the High Court's order.

12. The last proviso to S. 87 makes the position clear that it does not apply to a case of inheritance. The undisputed position is that the property devolved on the respondent no.1 by way of inheritance. But it is not necessary to go into the question in the present dispute because there was no material placed before the High Court to justify the stand that Rule-17 had any application.

13. In view of the aforesaid, the High Court's view does not suffer from any infirmity to warrant interference. The appeal is devoid of merit and is dismissed but in the circumstances, without any order as to costs.

Appeal dismissed.

Messrs Anita Enterprises and Another v Belfer Coop. Housing Society Limited and Others

Bench	B.N. Agrawal, P.P. Naolekar
Where Reported	2007 Indlaw SC 1276; (2008) 1 SCC 285; AIR 2008 SC 746; 2008(1) ALL MR 944; 2008 (1) Bom.C.R. 581; JT 2007 (13) SC 1; 2008 (1) RCR(Civil) 173; 2008 (1) RCR(Rent) 60; 2007(13) SCALE 83; [2007] 12 S.C.R. 1
Case Digest	**Subject:** Rent Control **Keywords:** Tenancy Right, Assignee, Maharashtra Cooperative Societies Act, 1960, Maharashtra Co-operative Societies Rules, 1961, Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1973, Presidency-Towns Insolvency Act, 1909, Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Act, 1996, Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1978, Co-operative Credit Societies Act, 1904, Bombay Cooperative Societies Act, 1925 **Summary:** Whether status of a member in a tenant co-partnership housing society is that of a tenant or landlord within the meaning of the Rent Act and consequently there was any relationship of landlord and tenant between the society and its member?; Whether purported status of the appellants, who were inducted by the member in the premises in question was that of a tenant or sub-tenant within the meaning of s. 5(11) and if it is held to be a tenant whether the relationship of landlord and tenant between them was duly created so as to claim protection from eviction?; Whether the question regarding legality or otherwise of creation of tenancy right between the appellants and the member of the Society could be adjudicated by the Small Causes Court in suits filed by the appellants against member of the Society for declaration that there was relationship of landlord and tenant between them and the High Court was justified in restoring decree passed by the trial court to the effect that there was no relationship of landlord and tenant between the appellants and member of the Society?; Whether the matter regarding legality or otherwise of creation of tenancy right between the appellants and the member could be adjudicated by the Cooperative Court in dispute raised under s. 91 of the Societies Act before the Cooperative Court or the Society before raising any such dispute was required to obtain a declaratory decree from competent civil court by filing a properly constituted suit before it? - Held, ownership of the land and building both vests in the society and the member has, for all practical purposes, right of occupation in perpetuity after the full value of the land and building and interest accrued thereon have been paid by him - Appeals dismissed.

Case No : Appeal (civil) 2990-2991 of 2005 C.A. Nos. 2990-2991 of 2005 With C.A. Nos. 2992-2993 of 2005 and C.A. Nos. 2994-2995 of 2005

2. The facts, in brief, are that the Belfer Cooperative Housing Society Limited, Bandra [West], Mumbai, respondent No. 1 in Civil Appeal Nos. 2990-2991 of 2005, [hereinafter referred to as 'the Society'], which was a tenant co-partnership housing society, held both lands and flats constructed thereon and Dr. Gopal Mahadeo Dhadphale, respondent No. 2 in the said appeals [hereinafter referred to as 'the member'] was admitted as member of the Society in the year 1962 and flat No. 4 on the ground floor was allotted to him. On 3.6.1982, the member inducted M/s. Anita Enterprises, appellant No. 1 in the said appeals, in room No. 2 of the said flat on a monthly rental of Rs. 1000/- and on 3.10.1983 the appellant aforementioned was inducted in room No. 3 as well on a monthly rental of Rs. 750/-. The member thereafter inducted M/s. Anita Medical Systems Pvt. Ltd., appellant No. 2 in the said appeals, in room no. 1 of the flat in question on a monthly rental of Rs. 1000/- which was subsequently enhanced to Rs. 1500/- per month and both the appellants were put in possession of the aforesaid premises. The appellants paid rent upto the month of December, 1986 and as the member refused to accept the rental from January, 1987, the rental was sent to him by cheques under registered post, but the same was not accepted.

4. In the meantime, **the Society raised a dispute in the year 1989 before the Cooperative Court u/s. 91 of the Maharashtra Cooperative Societies Act, 1960 [hereinafter referred to as 'the Societies Act'] praying therein that the appellants be evicted from the premises in their occupation and the member be directed to occupy the same as, according to the Society,** the member had parted with possession of the premises in question in favour of the appellants which was not permissible in law. The said case was contested by the appellants in which the member and the appellants entered appearance and all contested the claim of the Society. The Cooperative Court by its award decided the dispute in favour of the Society, passed an order of eviction against the appellants and directed the member to occupy the premises. The said order was upheld in appeal.

5. Thereafter, before the High Court three writ petitions were filed one by the appellants against the aforesaid order passed by the appellate court **upholding order passed by the Cooperative Court and the other two writ petitions by the member against the order passed by the appellate** bench of the Small Causes Court whereby aforesaid declaratory suits filed by the appellants were decreed. A learned Single Judge of the High Court, by a common judgment, dismissed the writ petition filed by the appellants whereby order passed by the Cooperative Court against the member and the appellants, which was upheld in appeal, has been confirmed and allowed the writ petitions filed by the member, set aside judgment and order passed by the appellate bench of Small Causes Court and restored that of the trial court whereby declaratory suits filed by the appellants were dismissed. The said judgment has been upheld by Division Bench of the High Court by dismissing the Letters Patent Appeals on the ground that the same were not maintainable in view of the fact that the writ petitions were filed u/art. 227 of the Constitution. Hence these appeals by special leave.

6. Undisputed facts are stated hereinafter. The Society was a tenant co-partnership housing Society, the land and the structures standing thereon, which include the premises in question, were held by it, respondent no. 2 was admitted as its member, allotted flat No. 4 and put in possession thereof.

The appellants are in occupation of the premises in question since the date of their induction aforementioned and the member remained in possession of the premises for a period of more than one year before induction of the appellants therein. Induction of appellants as tenants by the member amounted to transfer of interest by the member in the premises in question, which was property of the Society, and the appellants were neither members of the Society nor can be said to be persons whose application for membership had been accepted by the Society or persons whose appeal u/s. 23 of the Societies Act had been allowed by the Registrar or persons who were deemed to be members under Section (1A) of S. 23 of the Societies Act. The appellants were inducted without the consent of either the Society or its Managing Committee and never admitted as nominal members of the Society.

The principle of limited liability was also recognized and the concept of profit motive was given a go-by. **The tendency towards concentration of wealth in a few hands was discouraged by providing that no member could hold shares beyond a certain limit. The said Act was replaced by the Cooperative Societies Act, 1912, which was repealed by the Bombay Cooperative Societies Act, 1925. The aforementioned Act was repealed by the Maharashtra Cooperative Societies Act, 1960** to consolidate and amend the law relating to cooperative societies in the State of Maharashtra the objective of which was to provide for the orderly development of the cooperative movement in the State in accordance with the Directive Principles of State Policy enshrined in Part Four of the Constitution of India.

U/s. 2(16) 'housing society' has been defined to mean a society, the object of which is to provide its members with open plots for housing, dwelling houses or flats; or if open plots, the dwelling houses or flats are already acquired, to provide its members common amenities and services. S. 2(19) defines 'member' to be a person joining in an application for the registration of a cooperative society which is subsequently registered, or a person duly admitted to membership of a society after registration and includes an associate, nominal or sympathiser member. U/s. 2(19)(c) 'nominal member' is a person admitted to membership as such after registration in accordance with by-laws. S. 2(21) defines the expression 'prescribed' to mean prescribed by rules. U/s. 2(24) 'Registrar' has been defined to mean a person appointed as Registrar of Co-operative Societies under the Societies Act. 'Rules' u/s. 2(26) means rules made under the Societies Act.

This Court has concluded that on full payment, the member becomes entitled to occupy the tenement or flat free of charge as the rental he has to pay to the society is almost met from the interest received from shares held by him and, consequently, a member has more than a mere right to occupy the same. In this regard, we may usefully refer to paragraph 13 of the case of Sanwarmal 1990 Indlaw SC 847 [supra] which reads thus:-

"13. That takes us to the next question whether or not a member of a copartnership type of a cooperative society has such interest in the premises allotted to him as would entitle him to give the same on leave and licence basis to a non- member. In a tenant copartnership type of society the members are shareholders; but the title to the property vests in the society which in turn rents the tenements or flats to its members. The cost of construction of dwellings is met from deposits and loans besides the share money. The rental is usually determined on long term basis so calculated as to meet the cost of construction and upkeep of the building and to guarantee perpetuity of occupation on repayment of the whole value of the tenement or flat. At the end of

the period the member is credited with additional shares equal to the amount paid by him; the interest on these shares generally matches the rental payable by him to the society. Thus on full payment the member becomes entitled to occupy the tenement of flat free of charge as the rental he has to pay to the society is almost met from the interest received from shares held by him. Thus a member has more than a mere right to occupy the flat."

[Emphasis Added]

In case any of these two conditions is not fulfilled, a member cannot be said to have any right of transfer. Thus, we reiterate the law laid down by this Court in the case of Sanwarmal 1990 Indlaw SC 847 (Supra) that a member has more than a mere right to occupy the flat, meaning thereby higher than tenant, which is not so in the case of a tenant within the meaning of S. 5(11) of the Rent Act. This being the position, we have no difficulty in coming to the conclusion that the status of a member in the case of tenant co-partnership housing society cannot be said to be that of a tenant within the meaning of S. 5(11) of the Rent Act, as such there was no relationship of landlord and tenant between the Society and the member.

41. The trial court decreed the suit and the said decree was confirmed in appeal by the High Court. When the matter was brought to this Court, it was held that the transaction was not void and the infraction alleged was not of mandatory provisions of law which would obviously mean that the transaction was not even voidable, as such the suit was liable to be dismissed. In our view, the case of Nanakram 1986 Indlaw SC 641 [supra] is quite distinguishable and shall have no application to the present case as here there was infraction of mandatory provisions of S. 29(2) of the Societies Act. Thus we hold that the question regarding legality or otherwise of creation of relationship of landlord and tenant between the member and the appellants could have been gone into by the Cooperative Court u/s. 91 of the Societies Act as it touches upon business of the Society and the High Court has not committed any error in not interfering with the order passed by appellate court confirming that rendered by the Cooperative Court.

42. For the foregoing reasons, we do not find any merit in these appeals which are accordingly dismissed, but there shall be no order as to costs.

Appeal dismissed.

State of Punjab and Others v Bhatinda District Co-operative Milk Private Union Limited

Bench	S.B. Sinha, H.S. Bedi
Where Reported	2007 Indlaw SC 1321; (2007) 11 SCC 363; AIR 2007 SC (Supp) 473; 2007 (217) E.L.T. 325; JT 2007 (12) SC 314; 2007(12) SCALE 135; [2007] 11 S.C.R. 14; [2007] 10 VST 180
Case Digest	**Summary:** Sales Tax - Punjab General Sales Tax Act, 1948, s. 21 - Orissa Sales Tax Act, 1947, s. 11 (6) - What should be reasonable period for reopening an order of assessment under Punjab General Sales Tax Act, 1948? - Held, a bare reading of s. 21 of Act would reveal that although no period of limitation has been prescribed therefor, same would not mean that suo motu power can be exercised at any time - It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period - What, however, shall be reasonable period would depend upon nature of statute, rights and liabilities thereunder and other relevant factors - Maximum period of limitation provided for in s. 11(6) of Act is five years - Revisional jurisdiction, should ordinarily be exercised within a period of three years having regard to purport in terms of said Act - In any event, same should not exceed period of five years - View of High Court, cannot be said to be unreasonable - Appeal dismissed.

Case No : Appeal (civil) 4808 of 2007

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

2. Before embarking upon the said question, we may notice the basic fact of the matter.

3. Respondent **herein is a federation of milk union. It is a cooperative society registered under the Punjab Cooperative Societies Act, 1948. It is also registered as a dealer under the Punjab General Sales Tax Act** and the Rules framed thereunder. It has been running milk plants under the control of Punjab State Cooperative Milk Producers Federation Limited, Chandigarh. The Act provides for levy of purchase tax on milk when purchased for use in the manufacture of goods which are specified in Schedule C thereof. Milk when purchased for use in the manufacture of any goods other than tax free goods provides for levy of purchase tax.

4. In respect of the assessment for the year ending 31 March 2000, the assessment proceedings were completed relying on the return filed by the appellant on 20 March 2001. Indisputably, in terms of Section 11 of the 1948 Act, a period of three years has been prescribed as a period of limitation as contained under sub-section (3) of Section 11 for completing assessment from the last date for filing of return. Sub-section (6) of Section 11 reads as under :

5. If upon information which has come into his possession, the Assessing Authority is satisfied that any dealer has been liable to pay tax under this Act in respect of any period but has failed to apply for registration, the Assessing Authority shall, within five years after the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed to assess to the best of his judgment, the amount of tax, if any, due from the dealer in respect of such period and all subsequent periods and in case where such dealer has willfully failed to apply for registration, the Assessing Authority may direct that the dealer shall pay by way of penalty, in addition to the amount so assessed, a sum not exceeding one and a half times that amount.

26. The question as to what would be the reasonable period did not fall for consideration therein. The binding precedent of this Court, some of which had been referred to us heretobefore, had not been considered. The counsel appearing for the parties were remiss in bringing the same to the notice of this Court. Furthermore, from a perusal of the impugned notice dated 4 September 2006, it is apparent that the Revisional Authority did not assign any reason as to why such a notice was being issued after a period of 5= years.

27. Question of limitation being a jurisdictional question, the writ petition was maintainable.

28. We are, however, not oblivious of the fact that ordinarily the writ court would not entertain the writ application questioning validity of a notice only, particularly, when the writ petitioner would have an effective remedy under The Act itself. This case, however, poses a different question. The Revisional Authority, being a creature of the statute, while exercising its revisional jurisdiction, would not be able to determine as to what would be the reasonable period for exercising the revisional jurisdiction in terms of Section 21(1) of The Act. The High Court, furthermore in its judgment, has referred to some binding precedents which have been operating in the field. The High Court, therefore, cannot be said to have committed any jurisdictional error in passing the impugned judgment.

29. There is, thus, no merit in the case. It is dismissed accordingly. No costs.

Appeal dismissed.

Ram Nandan Singh And Others v Ag Office Employees Co-Op House Construction Society Limited,Ranchi And Others

Bench	S.B. Sinha, H.S. Bedi
Where Reported	2007 Indlaw SC 1649; (2007) 14 SCC 102; JT 2007 (12) SC 86; 2007(12) SCALE 354; [2007] 10 S.C.R. 646
Case Digest	**Subject:** Practice & Procedure; Trusts & Associations **Keywords:** Bihar Cooperative Societies Act, 1935 **Summary:** Practice & Procedure - Trusts & Associations - Lands were acquired for the benefit of the members of Respondent No.1-Society - Subsequently, by purported amendments, outsiders were also allowed allotment of lands by the said Society - When the question whether such amendments should be permitted or not was pending consideration before the competent authorities, irregularities by the members of the Managing Committee were pointed out - An inquiry was directed to be made by the Joint Registrar of Cooperative Societies - The said authority submitted its report and on the basis of the said report, the Managing Committee of the Society was placed under suspension - Writ petition filed thereagainst was dismissed - Appeal thereagainst was also dismissed - However, the question in regard to the correctness of the report of the Registrar, Cooperative Societies again having been raised, the DB of the HC directed that a fresh enquiry - Pursuant thereto, an inquiry was made and a report was filed - Managing Committee of the Society questioned the correctness of the said report by filing another application in the Letters Patent Appeal - DB of the HC although noticed that the Letters Patent Appeal was disposed of and, thus, the Court had become functus officio, yet proceeded to make certain observations made in relation to how the said statutory authority should proceed in the matter - Instant appeal - Held, statutory authority was duty bound to proceed in accordance with law and exercise its jurisdiction - Registrar of Cooperative Societies in exercise of his powers conferred upon him in terms was entitled to pass an appropriate order - An order by a statutory authority, therefore, must be passed in terms of the provisions of the Act where for the inquiry report must be looked into - The report of a retired Judge of the HC, indisputably would be useful - It must be given an effective consideration - Hence, no observation was required to be made in relation thereto - It was for the Registrar, Cooperative Societies to take a decision in the matter and for that purpose it was wholly unnecessary for the DB of the HC to make any observation as to how the said statutory authority should proceed in the matter - Registrar, Cooperative Societies should then proceed on the basis of

	the inquiry report placed before him and all other relevant materials, without being influenced by the observations of the HC in its impugned judgment - Appeal allowed.

Case No : Appeal (civil) 4586 of 2007, (arising out of SLP(C) No. 8265/2006)

2. This appeal is directed against the judgment and order dated 6.1.2006 of the Division Bench of the Jharkhand High Court in Letters Patent Appeal No. 101 of 2004 whereby and where under it was directed:

"Having heard the parties, we are of the view that this Court having become functus officio, after disposal of the appeal, is not required to decide any question in the present appeal, but only with a view to enable the competent authority to pass order under Section 41 of the Co-operative Societies Act *and the other related provisions of the said Act and to find out whether nullification of some of the allotments is to be made or any appropriate steps in that behalf will have to be taken, the case is remitted to the competent authority i.e. Registrar, Co-operative Societies, Government of Jharkhand, Ranchi, who will not rely on the earlier report, submitted by the Registrar, Co-operative Societies, Government of Jharkhand, Ranchi, having been superseded by the report, submitted by Mr. Justice (Retd.) Vikramaditya Prasad. The Registrar, Co-operative Societies, Ranchi, will look into the enquiry report and after giving opportunity to the appellants and other necessary parties, will determine the question as to what action, if any, is required to be taken in accordance with law, preferably within four months from the date of receipt/production of a copy of this order. It will be open to the appellants to point out the defect, if any, in the enquiry report, submitted by Mr. Justice (Retd.) Vikramaditya Prasad. The Registrar, Co-operative Societies, will apply its independent mind and will determine as to whether he will differ with the enquiry report or will accept the same or part thereof and what action is required to be taken under the law. No further order is required to be passed in the present case."*

5. By another order dated 18.5.2004(CAV on 20.4.2004), the Division Bench upon consideration of all aspects of the matter directed as under:

"Then, the question is, who would conduct the inquiry. According to learned senior counsel appearing for the appellants, it can only be conducted by the Registrar of Cooperative Societies. Counsel for the intervener went to the extent of submitting that the inquiry should be entrusted to the Central Bureau of Investigation (CBI), since it can be seen that it was sought to be thwarted by influential persons at every stage. Consistent with our finding that the Government has the power to make an enquiry, the same can be entrusted to any agency. The learned Advocate General submitted that the inquiry must be ordered by this Court, so that any possible impediment to the inquiry could be eliminated. From the submissions of the learned Advocate General, the impression we gather is that it is possible that every attempt would be made to scuttle a proper inquiry into the complaint, unless there is backing of the authority of this Court for the conduct of the inquiry. We do not think that at this stage, we should entrust the inquiry to the Central Bureau of Investigation. We think that it will be appropriate to direct the inquiry to be made by the Registrar of Cooperative Societies as authorized by this order of this Court. The Registrar of Cooperative Societies will be directly answerable to this Court for the proper conduct of the inquiry and he will ensure that a thorough inquiry is conducted after adhering to all principles

*of natural justice**. If the finding at the inquiry to be submitted before this Court, justifies action under section 41 of the Act and the other related provisions of the* **Cooperative Societies Act** *and the nullification of some of the allotments made, appropriate steps in that behalf will have to be taken by the Registrar. These aspects can also be taken up and considered by this Court after the inquiry is completed. Suffice it to say that in suppression of the direction of the learned Single Judge, we direct thorough inquiry to be made into the complaints by the Registrar of Cooperative Societies, after giving an opportunity of being heard to the appellants and to the interveners. The report of the inquiry in a sealed cover will be produced before this Court by the Registrar of Cooperative Societies and appropriate follow up orders obtained. The enquiry will be completed in three months. The Registrar of Cooperative Societies will be answerable to this Court for the conduct of the enquiry. On the completion of the inquiry, it will also be open to the appellants to move this Court for an appropriate direction regarding the management of the Society."*

(Emphasis supplied)

With the aforementioned directions, the appeal was dismissed.

6. However, the question in regard to the correctness or otherwise of the report of the Registrar, Cooperative Societies again having been raised, the Division Bench of the High Court by an order dated 2.9.2005 directed as under:

"4 Having heard the learned counsels of the respective parties on the said report and after considering the provisions ***of Section 41 of the*** **Bihar Cooperative Societies Act,** ***and having further regard to the suggestions made by Mr. Y.V. Giri appearing for the appellants that the report of the enquiry by the Registrar*** *of Cooperative Societies was biased and did not present a true picture of the situation, we are of the view that a fresh enquiry may be made by a retired High Court Judge at the expense of the appellants so that the controversy can be set at rest.*

16. The State of Jharkhand in its counter affidavit stated as under:

"Directing the Registrar Cooperative Societies to invite objections and having the liberty of differing with the report of Mr. Justice (Retd.) Vikramaditya Prasad has opened a pandora' s box and at the same time set a bad precedent as the executive wing does not override the report submitted by a committee duly constituted by the Hon'ble Jharkhand High Court and moreover headed by a retired judicial authority."

17. We are, thus, of the opinion that no observation was required to be made in relation thereto. Suffice, it to say that it is for the Registrar, Cooperative Societies to take a decision in the matter and for that purpose it was wholly unnecessary for the Division Bench of the High Court to make any observation as to how the said statutory authority should proceed in the matter. The statutory authority is duty-bound to proceed in accordance with law and exercise its jurisdiction within the four corners of the Statute.

18. We are, therefore, of the opinion that the Registrar, Cooperative Societies shall now proceed to determine the issue pending before him on the basis of the inquiry report placed before him and all other relevant materials, without in any way being influenced by the observations of the High Court in its impugned judgment.

19. The appeal is allowed with the aforementioned observations. No costs.

Appeal allowed

Madhya Pradesh State Cooperative Bank Limited, Bhopal v Nanuram Yadav And Ors

Bench	P. Sathasivam, Tarun Chatterjee
Where Reported	2007 Indlaw SC 954; (2007) 8 SCC 264; (2007) 2 SCC (L&S) 883; AIR 2007 SC (Supp) 932; JT 2007 (11) SC 369; 2007 (4) LLN 117; 2007(11) SCALE 439; [2007] 10 S.C.R. 307
Case Digest	**Summary:** Service - How public appointments to be made, whether Lokayukt constituted under M.P. Lokayukt Evam Up-Lokayukt Adhiniyam, 1981 has jurisdiction to go into the appointment of employees of the M.P. State Cooperative Bank and whether 60 clerks-cum-typists appointed by the said Bank were in accordance with the service rules? - Held, it is not in dispute that elaborate procedures are to be followed before terminating the service of an employee under the provisions of the M.P. Cooperative Societies Act and the service rules made thereunder - In the absence of opportunity to the employees, the termination order which was sent at the instance of Commissioner, Cooperative Societies based on the report of Lokayukt cannot be sustained - Appeals disposed of.

Case No : CIVIL APPEAL NO. 4481 OF 2007 (Arising out of SLP (C) No. 12236 OF 2006) WITH CIVIL APPEAL NO. 4483 OF 2007 (Arising out of SLP (C) NO. 19499 OF 2006) AND CIVIL APPEAL NO. 4482 OF 2007 (Arising out of SLP (C) NO. 3979 OF 2007)

3. The brief facts, in nutshell, are as follows: On 24.06.1994, the Managing Director of the M.P. State Cooperative Bank Ltd., (hereinafter referred to as 'the Bank') requested the Cooperative Commissioner and Registrar of the Cooperative Societies, M.P., Bhopal for appointment of 60 ad- hoc clerks-cum-typists in the Bank. By letter dated 29.06.1994, conditional sanction was granted for appointment of 40 clerks-cum-typists on ad-hoc basis for 6 months mentioning that in the meantime the Bank has to take steps to fill up the vacant posts by issuing advertisement and comply the Rules keeping in view the reservation under the Government Rules. Again, by letter dated 25.10.1994, the Managing Director of the Bank requested for sanctioning the appointment of another 20 clerks-cum-typists on ad-hoc basis. By letter dated 11.11.1994, the Cooperative Commissioner and Registrar sanctioned the appointment of another 20 clerks-cum-typists on ad-hoc basis for 6 months on the condition as mentioned in the earlier letter dated 29.06.1994.

4. Pursuant to the aforesaid sanction letters, on 31.01.1995, the Bank appointed 60 clerks-cum-typists on ad- hoc basis for a period of six months. After appointment, two employees left the services of the Bank.

5. After expiry of six months, as envisaged under Rule 22(a) of the Staff Service Rules, 1976, all the appointed persons (writ petitioners before the High Court) were required to appear in the

written examination so that they could be appointed for a period of one year as probationers. All of them took the written examination and became successful. Those persons were required by the Bank to appear for an interview on 21.07.1995 before the Selection Committee. The Selection Committee, after satisfying itself, recommended their names for appointment on regular basis. All the appointed persons were asked by the Bank to furnish service-cum-security Bond for a period of three years with a deposit of Rs.5,000/- as security in the form of FDRs. All the appointees complied with the said condition. While they are discharging their duties, taking into consideration of their performance etc., the appointing authority, under Rule 14(b), confirmed their services on the post of clerks-cum-typists on 30.10.1996.

6. When the matter stood thus, according to the writ petitioners, all of a sudden, without any notice or assigning any reason, the Managing Director of the Bank issued termination order under Rule 61 of the Rules on 27.10.1997. Aggrieved by those orders, the affected persons approached the High Court. It is also the claim of the affected persons that after getting the order of termination they came to know that the termination order was issued by the Bank on the basis of the direction dated 01.08.1997 issued by the Commissioner Cooperatives- cum-Registrar to the Managing Director of the Bank on the foundation that the Lokayukt had found 58 clerks-cum-typists had been illegally appointed on the post, hence it was imperative to terminate their services taking aid of Rule 61 of the Staff Service Rules.

15. **Under Section 55(1) of the Madhya Pradesh Cooperative Societies Act, 1960 (hereinafter referred to as "the Act"), the Registrar of Cooperative Society has been given power to frame Service Rules of the employees working under different cooperative institutions and in furtherance of the powers given under the aforesaid provision, the Registrar has framed the service conditions for the employees of the appellant-Bank, which are called Madhya Pradesh Rajya Sahakari Bank Employees (Terms of Employment and Working Conditions) Rules, 1976**. It is also brought to our notice that these Staff Service Rules have since been amended from time to time. We have already referred to the Rules which are applicable to the issues raised in these appeals.

36. Though detailed arguments were advanced pointing out that Lokayukt was not competent to go into the appointments that were made, **in view of Section 2(g)(iv), we are of the view that officers of the apex society or central society under M.P. Cooperative Societies Act are amenable and there is no need to elaborate the said aspect in this matter since we are concerned about the validity or otherwise of the appointment of the employees in the Bank.** It is seen from the materials that after the appointments of the aforesaid 58 employees, a complaint was lodged with Lokayukt by one Shri N.K. Saxena and the said complaint was investigated by the Lokayukt.

37. Though it is stated that the Lokayukt afforded an opportunity of hearing to the Chairman of the petitioner Bank as well as officials of the Bank and Cooperative Department, admittedly the employees were not afforded notice or opportunity of being heard in the enquiry by the Lokayukt. **It is not in dispute that on receipt of the report of Lokayukt, the competent authority forwarded the same to the Registrar of Cooperative Societies who, in turn, without taking a decision or an order by following the service rules or any of the provisions of the M.P. Cooperative Societies Act mechanically directed the Managing Director of the Bank to**

terminate all the appointees. We are of the view particularly, as observed earlier, though the officers of the apex society under M.P. Cooperative Societies Act are amenable to the jurisdiction of the Lokayukt, the persons concerned who are lower-grade employees i.e. clerks-cum-typists cannot be terminated without following the service rules applicable to them. **It is not in dispute that elaborate procedures are to be followed before terminating the service of an employee under the provisions of the M.P. Cooperative Societies Act and the service rules made thereunder.**

38. In those circumstances, in the absence of opportunity to the employees, the termination order which was sent at the instance of Commissioner, Cooperative Societies based on the report of Lokayukt cannot be sustained.

ii) The decision of the Bank as well as Registrar of the Cooperative Societies terminating the services of the employees based on the report of the Lokayukt cannot be sustained and the same is liable to be set aside.

iii) In view of our above conclusion, there is no need to remand the issue to the Registrar or any other authority for adjudication with regard to the status earned by these employees, consequently the said direction of the High Court is also set aside.

41. In the result, Civil Appeal No. 4481 of 2007 arising out of SLP (C) No. 12236 of 2006 filed by the Bank is disposed of on the above terms. Civil Appeal No. 4483 of 2007 arising out of SLP (C) No. 19499 of 2006 and Civil Appeal No. 4482 of 2007 arising out of SLP (C) No. 3979 of 2007 filed by the employees are allowed. However, there shall be no order as to costs.

Appeal allowed

Naresh Kumar Madan v State of Madhya Pradesh

Bench	S.B. Sinha, Markandey Katju
Where Reported	2007 Indlaw SC 333; (2007) 2 SCC (Cr) 404; (2007) 4 SCC 766; AIR 2008 SC 385; 2007 (3) ALT 146; JT 2007 (5) SC 544; 2007 (2) KLT 539; 2007 (2) RCR(Criminal) 582; 2007(5) SCALE 510; [2007] 4 S.C.R. 1040
Case Digest	**Subject:** Criminal **Keywords:** Maharashtra Cooperative Societies Act **Summary:** Prevention of Corruption Act, 1988, ss. 7 r/w 13(1)(d), 13(2) - Electricity (Supply) Act, 1948 - Appellant is a Civil Engineer employed in the Madhya Pradesh Electricity Board - Appellant allegedly took illegal gratification from the complainant for the purpose of grant of an electrical connection - Contention that he being not a public servant, his prosecution under the 1988 Act was not maintainable - Held, s. 81 of the 1948 Act provides that members, officers and servants of the Board to be public servant - Appeal dismissed.

Case No : Appeal (Cr.) 519 of 2007 Cr.A. No. 519 of 2007[Arising out of S.L.P. (Cr.) No. 4529 of 2006]

2. He allegedly took illegal gratification from the complainant for the purpose of grant of an electrical connection. A trap was laid and Appellant was allegedly caught red handed with a sum of Rs.1,000/-, which was accepted by him by way of illegal gratification from the complainant. A charge-sheet was filed against him u/s. 7 read with S. 13(1)(d)/13(2) of the Prevention of Corruption Act, 1988 (for short 'the 1988 Act'). An application was filed by him contending that he being not a public servant, his prosecution under the 1988 Act was not maintainable. The learned Trial Judge rejected the said contention. A Revision Application was filed by the appellant thereagainst before the High Court, which was dismissed by the learned Single Judge of the High Court by reason of the impugned judgment dated 02.08.2006.

3. Before the courts below as also before us, the contention of Appellant has been that 'public servant' having been defined in S. 81 of the 1948 Act, the same does not satisfy the requirements of the definition as contained in S. 21 of the Indian Penal Code. Strong reliance, in this behalf, has been placed on Bimal Kumar Gupta v. Special Police Establishment Lokayukt, [2001 (1) MPHT 330 : (2001) 3 JLJ 2] 2000 Indlaw MP 534 wherein it has been held that employees of the Madhya Pradesh State Electricity Board are not public servants.

However, by virtue of S. 81 of the Electricity Supply Act, 1948*, all the members, officers and employees of the Board when acting or purporting to act in pursuance of any of the provisions of the Act are deemed to be public servant under S. 21 of the* IPC*. As such, it can be inferred that by virtue of S. 81 of the* Electricity Supply Act*, the Board employees when acting in pursuance of the provisions of the Act are considered 'deemed public servants' under S. 21 of the* IPC*. But as held by the Apex Court in case of Stale of Maharashtra Vs. Laljit Rajashi Shah* 2000 Indlaw

SC 182 *(supra) on the ground of 'deemed provision' a person covered under the definition of S. 21 of the* IPC *cannot be considered 'public servant' for the purpose of prosecution under the provisions of the* **Prevention of Corruptions Act, 1947.** ***In the aforesaid case, in view of the analogous provision of 'deemed to be public servant' for certain employees of the Cooperative Societies under* Maharashtra Cooperative Societies Act, *were not considered as public servant for the purpose of the Act of 1947"***

17. With respect we do not agree with the aforementioned inference of the learned Judge.

18. The Prevention of Corruptions Act, 1947 was repealed and enacted in the year 1988. The definition of 'public servant', as contained in S. 2(c) thereof, is a broad based one. Reliance was placed by the learned Judge in the case of State of Maharashtra v. Laljit Rajashi Shah and Others [AIR 2000 SC 937] 2000 Indlaw SC 182. Therein the court was dealing with a case of a member of a cooperative society. It was not dealing with the case of an employee of a statutory corporation. The said decision, therefore, has no application to the facts of the present case.

19. Definition of 'public servant' will have to be construed having regard to the provisions of the 1988 Act. By giving effect to the definition of 'public servant' in the 1988 Act, the legal fiction is not being extended beyond the purpose for which it was created or beyond the language of the section in which it was created.

20. For the reasons aforementioned, we find no merits in this appeal, which is accordingly dismissed.

Appeal dismissed.

Bharat Co-Operative Bank (Mumbai) Limited v Co-Operative Bank Employees Union

Bench	D.K. Jain, K.G. Balakrishnan, Lokeshwar Singh Panta
Where Reported	2007 Indlaw SC 1008; (2007) 2 SCC (L&S) 82; (2007) 4 SCC 685; AIR 2007 SC 2320; 2007(4) ALL MR 749; 2007 (5) AWC 5314; 2007 (3) Bom.C.R. 673; 2007 (2) CLR 160; 2007 (114) FLR 155; JT 2007 (4) SC 572; 2007 (2) LLN 160; 2007 (4) MahLJ 506; 2007(5) SCALE 57; 2007 (6) SCJ 513; [2007] 4 S.C.R. 347
Case Digest	**Subject:** Service **Keywords:** Industrial Disputes (Banking And Insurance Companies) Act, 1949, State Bank Of India (Subsidiary Banks) Act, 1959, Small Industries Development Bank Of India Act, 1989, Industrial Disputes Act, 1946, Maharashtra State Cooperative Societies Act, 1960, Banking Regulation Act, 1965, Punjab Alienation of Land Act, 1900, Punjab Preemption Act, 1913, Bihar and Orissa Motor Vehicles Taxation Act, 1930 **Summary:** Service - Banking & Finance - Banking Regulation Act, 1949, ss. 5(b),5(c) & 5(d) - Industrial Dispute Act, 1947, s. 2(b)(b) - Maharashtra Recognition of Trade Unions and Prvention of Unfair Labour Practices Act, 1971, s. 28 - Banking Companies Act, 1949 - Transfer - Appropriate Authority - Jurisdiction - Justifiability - Respondent filed complaint u/s. 28 of the 1971 Act against transfer order passed by appellant/bank claiming interim relief before Industrial Court, which was returned with direction to claim relief before appropriate forum - Respondent filed writ petition before HC - HC set aside order of Industrial Court and remitted matter back - Appellant-bank filed appeal before DB - DB held that appropriate Govt. would be State Govt. - Hence, instant appeal - Appellant-bank contended that s. 2(bb) of the 1946 Act creates its own corporate entity, i.e., multi-state banking company and reference to the 1949 Act was for limited purpose of identifying one kind of banking institution it brings in - Whether DB was justified in passing order holding State Govt. as appropriate Govt. - Held, introduction of the 1949 Act in cl. (bb) of s. 2 of the 1947 Act was case of incorporation by reference, it had become its integral part and therefore, subsequent amendments in the 1949 Act would not had any effect on expression 'banking company' as defined in said section - The 1947 Act was a complete and self contained code in itself and its working was not depended on the 1949 Act - It could not also be said that amendments in the1949 Act either expressly or by necessary intendment applied to the 1947 Act - Further definition of 'banking company' in cl. (bb) of s. 2 of the 1947 Act being exhaustive, it was only with respect to 'banking company' falling

	within ambit of said definition in the 1947 Act, that Central Govt. would be appropriate Govt., which admittedly was not in instant case - Hence, uphold order of DB - Appeal dismissed.

Case No : Appeal (Civil) 1542 of 2007 [Arising out of S.L.P. (Civil) No. 8377 of 2005]

2. The Appellant-Bank (hereinafter referred to as "the Bank") was originally registered under the Maharashtra State Co-operative Societies Act, 1960. As the Bank had a number of branches outside Maharashtra, subsequently, it got registered under the Multi-State Co-operative Societies Act, 1984. It is in the banking business and is governed by the provisions of the Banking Regulation Act, 1949 (for short "the BR Act"). The respondent is a trade union and represents workmen employed in the Bank.

3. Mainly aggrieved by transfer of eleven employees from one place to another, alleging it as an act of victimisation, the respondent filed a complaint against the Bank u/s. 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "the MRTU & PULP Act"), along with an application for interim relief, before the Industrial Court at Mumbai. While resisting the complaint, the Bank raised certain preliminary issues of jurisdiction and maintainability of the complaint under the MRTU & PULP Act. The plea of the Bank was that as it was engaged in the business of banking and is a Banking Company as defined in Cl. (c) of S. 5 of the BR Act, the appropriate government would be the Central Government and therefore, the provisions of the MRTU & PULP Act, a State Act, were not applicable. The Industrial Court upheld the objection and ordered that the complaint may be returned to the respondent for seeking relief before an appropriate forum.

23. We are, therefore, of the opinion that introduction of the Banking Companies Act, 1949 in cl. (bb) of S. 2 of the ID Act is a case of incorporation by reference; it has become its integral part and therefore, subsequent amendments in the BR Act would not have any effect on the expression "Banking Company" as defined in the said Section.

24. At this juncture, we may also consider an alternative submission made on behalf of the Bank that even if it is assumed that the provisions of S. 5 of the BR Act were introduced into S. 2(bb) of the ID Act by way of legislative incorporation, two of the exceptions, namely, exceptions (c) and (d), carved out by this Court in State of Madhya Pradesh vs. M.V. Narasimhan and reiterated in P.C. Agarwala's case (supra), would apply in the instant case.

25. In our view, there is no substance in the contention. The ID Act is a complete and self contained Code in itself and its working is not dependant on the BR Act. It could not also be said that the amendments in the BR Act either expressly or by necessary intendment applied to the ID Act. We, therefore, reject the contention advanced by learned counsel for the appellant on this aspect as well. Further, as noticed above, the definition of the "Banking Company" in cl. (bb) of S. 2 of the ID Act being exhaustive, it is only with respect to the "Banking Company" falling within the ambit of the said definition in the ID Act, that the Central Government would be the appropriate government, which admittedly is not the case here.

26. In the light of the analysis we have made of the provision contained in S. 2(bb) of the ID Act, we deem it unnecessary to dilate on the impact of the IDBIC Act on the ID Act.

27. For all these reasons, we have no hesitation in upholding the view taken by the High Court that for the purpose of deciding as to which is the "appropriate government", within the meaning of S. 2(a) of the ID Act, the definition of the "Banking Company" will have to be read as it existed on the date of insertion of S. 2(bb) and so read, the "appropriate government" in relation to a multi-state co-operative bank, carrying on business in more than one state, would be the State Government.

Secretary Padippu K.S.Sangam Limited v C. Varghese

Bench	AR. Lakshmanan, Altamas Kabir
Where Reported	2007 Indlaw SC 233; (2007) 9 SCC 301; (2007) 2 SCC (L&S) 512; 2007 (5) AWC 5312; 2007 (113) FLR 827; 2007 (2) KLT 335; 2007 (3) LLN 595; 2007(4) SCALE 560; 2007 (7) SCJ 580
Case Digest	**Summary:** Minimum Wages Act - High Court held that even distribution of milk by a Society like the appellant will attract the provisions of the Act - Whether the appellant-society is engaged in 'dairy farming'? - Held, mere activity of buying milk from its members and distributing it will not constitute 'dairy farming' when there is no rearing of milch cows and no agriculture or farming activity is carried on by the Society - High Court, ought to have held that the appellant-society which merely collects milk from its members and distributes is not engaged in any employment scheduled under the Act - Appeal allowed.

Case No : Appeal (Civil) 1497 of 2007 (Arising out of SLP(C) No. 7380 of 2006)

2. The only question arises for our consideration in this appeal is whether the appellant-society is engaged in 'dairy farming'. The appellant is a co-operative Society registered under the Kerala Co-operative Societies Act, 1969 and engaged in the collection of milk from its members and distribution thereof. The respondent herein is a milk user in the appellant-society whose work, according to the appellant, is mainly between 6.30 a.m. and 8.30 a.m. on all days. As per the settlement arrived at before the District Labour Officer Kasergod on September 20, 1990, the respondent was being paid a consolidated pay of Rs.350/- per month from April 1, 1990. The Assistant Labour Officer, Kasergod also informed the appellant on 25.03.1998 that the milk producing in co-operative Societies had not been included under the Minimum Wages Act by any Notification and that there was no orders fixing minimum wages for employees of such society.

5. In our view, the impact of the order passed by the Division Bench on the appellant is very serious. Admittedly, the first respondent was employed only as a milk tester. It is also not in dispute that the appellant-society is engaged in purchasing milk from its members and distributing it. It is also not in dispute that the appellant-society does not own cattle milch and they buy milk for the purpose of production of milk and 'dairy farming'. The contention of Dr.K.P.Kylasanatha Pillai, learned counsel for the respondent, is that the sale of milk does form part of the process of the production of milk which constitute 'dairy farming'. We are unable to countenance the said submission because it is only a part of the process of distribution of milk.

6. In our view, the mere activity of buying milk from its members and distributing it will not constitute 'dairy farming' when there is no rearing of milch cows and no agriculture or farming activity is carried on by the Society. The High Court, in our opinion, ought to have held that the

appellant-society which merely collects milk from its members and distributes is not engaged in any employment scheduled under the Act. This apart, the respondent's claim that it falls within the purview of 'dairy farming' in Schedule II cannot also be accepted and we are unable to accept the submission made by the learned counsel for the respondent and the reasoning given by the Division Bench of the High Court. We are, therefore, set aside the order passed by the High Court and allow the appeal filed by the appellant-society.

7. During the pendency of the proceedings, the respondent was paid some salary including minimum wages. We make it clear that the amount which has already been paid shall not be recovered from the respondent. The appeal stands allowed accordingly. No costs.

Appeal allowed

(1) A.P. Cooperative Oil Seeds Growers Federation v (1) D. Achyuta Rao and Others; (2) M. Sheshagiri

Bench	B.P. Singh, Altamas Kabir
Where Reported	2007 Indlaw SC 209; (2007) 13 SCC 320; (2008) 2 SCC (L&S) 628; JT 2007 (4) SC 454; 2007(4) SCALE 382; 2007 (6) SCJ 341; [2007] 4 S.C.R. 1
Case Digest	**Summary:** Service - Question relate to the Voluntary Retirement Scheme offered by A.P. Cooperative Oil Seeds Growers Federation Ltd to its employees having regard to the reduced cadre strength - Held, High Court was right in holding that the promotions earlier granted in the Unions and the norms later laid down by the Federation could not be applied to determine the inter-se seniority of the employees of the Federation - Only rule which, in the facts of the case, could be safely applied to determine seniority was to reckon seniority by reference to length of service in the Federation - As a necessary corollary, the date of initial appointment in the Federation was decisive in determining seniority - Seniority must be determined by reference to the date of initial appointment and not by reference to dates of promotion granted in the Unions - Appeals dismissed.

Case No : Appeal (civil) 1391 of 2007

1. In this batch of appeals the common judgment and order of the High Court of Judicature of Andhra Pradesh at Hyderabad dated April 27, 2004 has been assailed. The High Court by its aforesaid common judgment and order allowed several writ appeals against which the appellant, A.P. Cooperative Oil Seeds Growers Federation Ltd. (hereinafter referred to as 'the Federation') has preferred appeals. The respondents whose writ appeals were allowed by the High Court are D. Achyuta Rao, Mohd. Anwar Ali, M. Seshagri Rao, K.V.N. Rao, Shekhar Goud and U.S. Rao. They shall hereinafter be referred to as the 'contesting respondents'.

8. The questions that arise for consideration in these appeals relate to the Voluntary Retirement Scheme (hereinafter referred to as 'the VRS') offered by the Federation to its employees having regard to the reduced cadre strength. It is the case of the Federation that only those of the employees were retained who came within the cadre strength determined in accordance with the norms enunciated by the Federation and the remaining employees were offered the benefit of the VRS. The six contesting respondents in these appeals had challenged their inclusion in the list of surplus employees whose services were to be discontinued. Initially a large number of writ petitions were filed but the factual position as it emerges today is that the strength of the cadre is 159 and, therefore, 163 employees out of 322 had to be declared surplus. Out of those declared surplus 137 accepted the VRS while 26 went to court.

9. The contesting respondents before us are amongst those who challenged the order of the Federation declaring them surplus. When these appeals came up before us we were informed that the writ appeals preferred by 20 others were still pending before the High Court and, therefore, we had directed that those appeals may also be disposed of so that all the matters could be heard together, if necessary. Accordingly those writ petitions have been heard and disposed of by the High Court and the aforesaid 20 writ petitioners have also accepted the VRS pursuant to the order of the High Court dated 14th September, 2005. Thus the dispute is confined to the 6 contesting respondents before this Court whose writ appeals were allowed by the High Court.

10. Shorn of unnecessary details the facts of the case are as follows :-

11. The appellant-Federation was registered as a cooperative society under the A.P. Cooperative Societies Act with the object of bringing about increase in production of oil seeds. The appellant-Federation started its operation in the year 1983 with a 2 tier structure, namely the Federation at the State level and cooperative societies at the village level. The vegetable oil project was funded by the National Dairy Development Board (for short 'NDDB') with a view to promote the Primary Cooperative Societies and the establishment of processing units. On its suggestion the appellant-Federation adopted a 3 tier structure with the Federation at the top and two Regional Unions in the second tier. In the third tier, were the cooperative societies at village level. It appears from the record that many of the employees of the appellant-Federation were transferred to the Regional Unions.

12. This was challenged by 21 employees who filed Writ Petition No.24907 of 1996 contending that they were not the employees of the Regional Unions but were employees of the Federation. The Unions were distinct legal entities since they were also independently registered as cooperative societies. They had been transferred to those Unions against their wishes and without their consent. The aforesaid writ petition was allowed by judgment and order of June 6, 2000. It was held that the writ petitioners continued to be the employees of the appellant-Federation. There was no contract of employment between them and the Management of the Regional Unions. The employer-employee relationship had not been severed and, therefore, in law, they continued to be the employees of the appellant-Federation. There was no employer-employee relationship between them and the aforesaid two Regional Unions. Accordingly the appellant-Federation was directed to treat them as their employees and extend to them all service benefits.

13. The appellant-Federation preferred Writ Appeal No. 798 of 2000. The said appeal was later dismissed as having become infructuous in view of the changed circumstances. This fact has been noticed by the High Court in its impugned judgment and order. After the re-organization, the Federation looked after the marketing and oil palm development activity while the Regional Unions were entrusted with the management of the processing facilities of conventional oil seeds. All the assets and liabilities of the facilities were transferred to the Regional Units. It is not disputed that the Regional Unions suffered huge losses. Having regard to the mounting losses, a Joint Committee Meeting of the appellant-Federation and the two Regional Unions was held on April 13, 2001 to consider the restructuring of the appellant-Federation and the two Regional Unions. A decision was taken to close down both the Unions and to take necessary steps in that direction. A time bound programme for closing down of the Unions was prepared and a revised staffing structure of the Federation based on a broad Five Year Business Plan was to be finalized.

20. The learned Judge **also held that the three cooperative societies, namely, the Federation and the two Regional Unions were three separate bodies incorporated as cooperative societies under the A.P. Cooperative Societies Act with separate regulations, bye- laws and separate governing bodies. It was, therefore, not correct to contend that the** two Regional Unions were part and parcel of the Federation. In the facts and circumstances of the case the employees of the appellant-Federation continued to be its employees and their services in the Unions must be treated as on deputation only. They had a lien on their posts in the Federation and their service conditions, seniority, pay- scale etc. were also protected as employees of the appellant-Federation.

57. We fully endorse the view of the High Court. Where promotions are not granted in accordance with the rules or fair and reasonable norms laid down for the purpose, and the promotions are at best fortuitous, such an uncertain event cannot be made the basis for determining seniority which is a valuable right of an employee. This is fully consistent with the principles laid down in S.B. Patwardhan and another 1977 Indlaw SC 64 (supra). Even the learned Single Judge was hesitant in accepting seniority by reference to dates of promotion granted in Unions. The learned Judge, therefore, ingeniously worked out a chart and identified a date which, if taken as the date of promotion, would cause least inconvenience to the employees. Unfortunately such a principle cannot be followed in service matters where seniority confers a very valuable right on an employee and his entire future career is at times dependent upon such seniority. Seniority, therefore, must be determined by rules validly framed or norms enunciated and/or followed which are consistent with the principles enshrined in Articles 14 and 16 of the Constitution of India.

59. We are, therefore, satisfied that the High Court was right in holding that the promotions earlier granted in the Unions and the norms later laid down by the Federation could not be applied to determine the inter-se seniority of the employees of the Federation. The only rule which, in the facts of the case, could be safely applied to determine seniority was to reckon seniority by reference to length of service in the Federation. As a necessary corollary, the date of initial appointment in the Federation was decisive in determining seniority. Thus applied, seniority must be determined by reference to the date of initial appointment and not by reference to dates of promotion granted in the Unions unguided by rules framed or norms declared which could be said to be fair and reasonable applying the test of Articles 14 and 16. The High Court has thereafter considered the individual cases of the appellants applying the test of seniority by reference to length of service in the Federation.

64. We, therefore, find no merit in these appeals and they are accordingly dismissed. Parties to bear their own costs.

Appeal dismissed

Anilbhai M. Patel and Others v Suryapur Bank Agent D.B.H. Samiti and Others

Bench	S.B. Sinha, Markandey Katju
Where Reported	2007 Indlaw SC 318; (2007) 4 SCC 83; AIR 2007 SC (Supp) 1; [2007] 136 Comp Cas 489; 2007 (2) DRTC 275; 2007 (2) G.L.R. 1753; JT 2007 (4) SC 258; 2007(4) SCALE 282; 2007 (7) SCJ 653; [2007] 3 S.C.R. 698; 2007 (2) UPLBEC 1456

Case No : Appeal (Civil) 1210 of 2007 [Arising out of S.L.P. (C) No. 17465 of 2004] with C.A. Nos. 1211/2007 @ S.L.P. (C) Nos. 18362-18363 of 2004, C.A. Nos. 1212/2007 @ S.L.P. (C) Nos. 19602-19603 of 2004

2. Appellants herein are Directors of a Cooperative Bank known as the City Cooperative Bank Ltd. A loan was sanctioned by the said Cooperative Bank to Suryapur Cooperative Bank as also one Pragati Alco-Chem Pvt. Ltd. in the year 2002. The Registrar's Board of Nominees, Surat passed awards for recovery of the amount advanced to the loanees.

3. The Bank, as also its Managing Directors, filed a writ petition wherein rule nisi was issued. An interim relief was also granted. One Suryapur Bank Agent Dainik Bachat Hitvardhak Samiti, respondent No. 1, without approaching the Registrar, for ventilating its grievances in regard to the purported mismanagement of the affairs of the said Bank, filed a writ petition before the High Court of Gujarat at Ahmedabad. Admittedly, no prayer was made therein for appointment of an Administrator. A learned Single Judge of the said Court, however, purported to be keeping in view the fact that the Reserve Bank of India had undertaken a statutory inspection, a report in respect whereof was filed in the Court, directed appointment of an Administrator in place of the elected body stating :-

"9.2) By ad-interim order, it is directed that respondent No. 2 shall appoint Administrator in place of elected body of respondent No. 3 Bank within a period of one week from today and respondent No. 2 shall appoint a person as Administrator, who is well conversant with the banking business and if required, respondent No. 2 may also consult RBI in this regard. 9.3) Until the Administrator is appointed, respondent No. 2 is directed to ensure that the charge from the elected body is taken over by the District Registrar, Surat as In-charge Administrator tomorrow at the opening time of the Bank i.e between 10.30 to 11 O'Clock in the morning. 9.4) It is further directed that respondent No. 2 shall inquire regarding the aforesaid illegal actions and misapplication of the funds which is prima facie considered by the Court, for the purpose of taking Civil as well as Criminal action against the office-bearers of respondent No. 3 Bank. Such inquiry shall be completed within a period of fifteen days from the date of receipt of the order of this Court and if, as an outcome of the said inquiry, it is found by respondent No. 2 that the office-bearers of respondent No. 3 Bank, while in office, have committed offences or have misapplied the funds or have committed illegality, necessary action shall be taken within a period

of fifteen days thereafter and the report shall be submitted to this Court within two weeks after taking action. 9.5) The respondent No. 3 by further order, is restrained from allowing functioning of its office-bearers from tomorrow i.e. 12.8.2004 onwards."

The RBI, however, in its counter affidavit stated:-

"10. With reference to paragraph 5 of the petition, it is submitted that the Reserve Bank does not audit the cooperative banks. The auditing of the cooperative bank falls within the domain of Registrar of Cooperative Societies under* Gujarat Cooperative Societies Act*. However, Reserve Bank conducts inspection of the cooperative banks u/s. 35 of* Banking Regulation Act, 1949 *(AACS)."

5. It is alleged that some directions have been issued by it under Section 35A of the Bank Regulation Act, 1949. It also refers to the inspections conducted by it, in regard to its financial position of the co- operative society on 31.12.2002. It was furthermore averred :-

"16. With reference to paragraphs 11 to 18 of the petition, it is submitted that several petitions have been filed by the borrowers against the City Cooperative Bank and Suryapur Cooperative Bank challenging attachment of their property and alleging fraud by the members of the board which are subjudice before this Hon'ble Court. In compliance with the inspection report of the Reserve Bank, the respondent No. 4 vide its letter dated 31.5.2003 reported that the money was given to banks including Suryapur Coop. Bank against security of bankers' cheque and the bank was not lending any more for such purpose. The explanation of the Respondent No. 4 was considered to be unsatisfactory. The respondent No. 4 was called upon by letter dated 27.6.2003 to explain in detailed to RCS the circumstances leading to grant of such loan. The reply given by the respondent No. 4 vide its letter dated 8.7.2003 was not acceptable and was again asked vide letter 25.7.2003 to explain to the Registrar the position. Reserve Bank vide letter dated 4.4.2003, 1/8.7.2003, 4.9.2003, 17.9.2003, 28.10.2003, 19.11.2003 and 13.12.2004 required the Registrar to take necessary action and inform us the action taken by him. The Reserve Bank has not received any response from the Registrar Cooperative Societies."

6. An intra court appeal preferred thereagainst was also dismissed by reason of the impugned judgment by a Division Bench of the said Court, opining that although no specific prayer was made in the writ petition for appointment of an Administrator but such a relief could be granted as a general relief viz. "passing such and other further relief as may be deemed just and proper by the Court", was prayed for. The Division Bench without going into the merit of the matter held that the remedy of the appellants was to approach the learned Single Judge by way of proper application for recalling or modifying or vacating the interim order and on the said finding the appeal was dismissed. Mr. Soli J. Sorabjee, the learned senior counsel appearing on behalf of the appellants submitted that;

"1) No prayer for appointment of Administrator having been made, no such interim order could have been passed.

2) ***The High Court should not have exercised the statutory functions of the Registrar as in terms of S. 81 of the* Gujarat Cooperative Societies Act, 1961*, he is the only appropriate authority empowered to supersede the Committee****.*

Gujarat Cooperative Societies Act, 1961 (the said Act) was enacted to consolidate and amend the law relating to Cooperative Societies in the State of Gujarat. It is a self contained Code. Registrar under the said Act is a statutory authority. Indisputably, it has power to supersede an elected body to manage the affairs of a Cooperative Society in terms of S. 81 of the said Act, Sub-s. (3) whereof reads as under :-

13. A Cooperative Society should ordinarily be allowed to function through its elected representatives. This although does not mean that the members of the Committee have a right to mismanage the affairs of the Cooperative Society but there cannot be any doubt whatsoever that allegations in relation to the mismanagement and commission/omission of illegalities, or irregularities or other acts of omission and commission, the remedies as contemplated under the statute should ordinarily be resorted to. This Court held so in Union of India & Anr. v. S.B. Vohra & Ors. [(2004) 2 SCC 150 2004 Indlaw SC 37], stating:

17. The learned Single Judge passed the order after hearing counsel for the appellants. It was, therefore, of no use directing them to go back to the learned Single Judge by filing an application for vacating the interim order of injunction impugned before it. In all fairness, the Division Bench should have considered the matter itself particularly when the effect of such an order was grave inasmuch as appellants were displaced from their posts of Directors of the Cooperative Bank to which they were otherwise entitled to.

18. We, however, by saying so, do not intend to mean that the Court can never issue such a direction in a rare and exceptional case which the public authority should have passed vide Comptroller and Auditor General of India, Gian Prakash, New Delhi & Anr. v. K.S. Jagannathan & Anr. [(1986) 2 SCC 679 1986 Indlaw SC 806] and other decisions following the same, but the High Court while passing such orders must consider each case on its own merit.

19. Ordinarily, the statutory functionaries alone can perform their statutory functions and the court cannot arrogate to itself the functions of the statutory authority vide G. Veerappa Pillai v. Raman Ltd. [AIR 1952 SC 192 1952 Indlaw SC 45], State of U.P. v. Raja Ram Jaiswal [(1985) 3 SCC 31 1985 Indlaw SC 211], U.P. State Road Transport Corporation and Another v. Mohd. Ismail and Others [(1991) 3 SCC 239 1991 Indlaw SC 864], S.B. Vohra 2004 Indlaw SC 37 (supra), Arun Nathuram Gaikward 2006 Indlaw SC 682 (supra) etc. Only in case of inaction on their part and in rare and exceptional cases, the Court can exercise its jurisdiction in such cases. This is not a case where the Registrar of the Cooperative Societies refused or neglected to take any action. It could not do so in view of an interim order passed against it. The interest of the Bank could have been safeguarded by passing other orders; even the Registrar should have permitted to look into the matter and pass an appropriate order.

"14. Briefly stated the facts are : A complaint was filed by the respondents herein to the effect that the ***Central cooperative bank is governed by the provisions contained in the Gujarat Cooperative Societies Act, 1961 and the Rules framed thereunder. It is further alleged that Mehsana District Central Cooperative Bank had violated the provisions contained in S. 71 of the Gujarat Cooperative Societies Act*** *by investing large sums in undertakings other than those enumerated in Ss. 71(a) to (f). Consequently, Mehsana District Central Cooperative Bank had lost substantial amount. Though the matter had been brought to the notice of the State Government,*

the Registrar of Cooperative Societies and the District Registrar, no action had been initiated against Mehsana District Central ***Cooperative Bank and the members of the Board of Directors. A prayer was also made for issuance of a writ of mandamus directing the authorities under the*** **Gujarat Cooperative Societies Act** ***to initiate necessary proceedings against the respondents/ appellants herein for having committed breach of the provisions contained in S. 71 of the Act****. It was further alleged that Mehsana District Central Cooperative Bank had invested a sum of Rs 95 crores in four different establishments which do not fall within the ambit of institutions enumerated in Ss. 71(a) to (f) of the Act without the approval of the State Government or the appropriate authority."*

22. In the above facts and circumstances of this case, we are therefore of the opinion that interest of justice would be sub-served if these appeals are disposed of with the following directions:-

"1. The Administrator would continue to hold office as an officer of the Court.

2. The Administrator must, however, get the election of the Committee Members held, as expeditiously as possible, and preferably within a period of three months from the date of communication of this order.

3. The inquiry initiated by the Registrar pursuant to the order of the learned Single Judge shall continue as if the same had been initiated by the Registrar on his own motion and not on the basis of the order passed by the High Court.

4. The RBI would be entitled to take such action (s) as it may deem fit and proper under the provisions of S. 115 A of the Act or under any other Statute and as may be permissible in law if it so desires, including one under the Deposit Insurance Act*."*

Madhya Pradesh Rajya Sahakari Bank Maryadit v State of Madhya Pradesh and Others

Bench	A.K. Mathur, H.S. Bedi
Where Reported	2007 Indlaw SC 138; (2007) 12 SCC 529; AIR 2007 SC (Supp) 540; JT 2007 (4) SC 16; 2007(3) SCALE 451; 2007 (5) SCJ 748; [2007] 2 S.C.R. 1049
Case Digest	**Summary:** Madhya Pradesh Co-operative Societies Act, 1960, s. 55(1); Madhya Pradesh Rajya Sahakari Bank Employees (Terms of Employment and working conditions)Rules, 1976, r. 5; Madhya Pradesh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, 1994 - Conditions of Recruitment was amended by Registrar of Co-operative Societies - High Court set aside that order as ultra vires - Appeal against - Whether the power exercised by the Registrar of Co-operative Societies under s. 55 of the Act of 1960 can be sustained or not in the light of Act of 1994 - Held, Registrar of Co-operative Societies under s. 55 of the Act of 1960 has power to frame rules but at the same time he cannot ignore the impact of the Act of 1994 - Registrar of Co-operative Societies can lay down the reservation in favour of Scheduled Castes, Scheduled Tribes and other Backward classes as general condition of service only in Co-operative societies in which the State has more than 51 percent paid up share capital and not for any other co-operative societies - Appeal dismissed.

Case No : Appeal (civil) 2661 of 2004

The Judgment was delivered by : A. K. Mathur, J.

1. This appeal is directed against the order passed by the Division Bench of Madhya Pradesh High Court at Jabalpur in Writ Petition No. 1415 of 1997 by the order dated 11.3.2003 whereby the Division Bench of the Madhya Pradesh High Court has set aside the order passed by the Registrar of Co-operative Societies in exercise of power under Section 55(1) of the Madhya Pradesh Co-operative Societies Act, 1960 (hereinafter referred to as the 'Act of 1960') dated 6.3.1997 as ultra vires and allowed the writ petition. Aggrieved by that the present appeal was filed by the Madhya Pradesh Rajya Sahakari Bank Maryadit (hereinafter to be referred to as the 'appellant').

8. Now, the question before us in the present case is whether the power exercised by the Registrar of Co-operative Societies under Section 55 of the Act of 1960 can be sustained or not in the light of Act of 1994. Act of 1994 was promulgated by the State Government for the benefit of providing reservation in the vacancies in public services and posts in favour of persons belonging to Scheduled Castes, Scheduled Tribes and other Backward Classes. Therefore, this Act only contemplates reservation in public services. In order to claim reservation in public offices, the

definition of establishment as mentioned in Section 2(b) of the Act of 1994 will have to fulfilled. Section 2(b) of the Act of 1994 reads as under :

" (b) "Establishment" means any office of the State Government or of a local authority or statutory authority constituted under any Act of the State for the time being in force, or a University or a Company, Corporation or a Cooperative Society in which not less than fifty one percent of the paid up share capital is held by the State Government and includes a work charge or contingency paid establishments."

10. Therefore, reading the object and reason along with the definition of establishment it clearly transpires in the context of the Co-operative Society in which the State Government has paid up share capital of 51 percent or more, then the reservation can be made in such Co-operative Society. The object & reason of the Act reads as under:

" An Act to provide for the reservation of vacancies in public services and posts in favour of the persons belonging to the Scheduled Castes, Scheduled Tribes and other Backward Classes of citizens and for matters connected therewith or incidental thereto."

11. Thus, on reading of both these two enactments it is more than clear that the Registrar of Co-operative Societies under Section 55 of the Act of 1960has power to frame rules but at the same time he cannot ignore the impact of the Act of 1994. The Registrar of Co-operative Societies can lay down the reservation in favour of Scheduled Castes, Scheduled Tribes and other Backward classes as general condition of service only in Co-operative societies in which the State has more than 51 percent paid up share capital and not for any other co-operative societies. But the notification dated 6.3.1997 is of general in nature and does not make any distinction with Co- operative societies which do not have 51 per cent paid up share capital of State. Therefore, to this extent the rule framed by the Registrar of Co-operative Societies, Madhya Pradesh by notification dated 6.3.1997 cannot be upheld and the same is struck down. But by this it does not mean that the Registrar of Co-operative Societies, Madhya Pradesh is not denuded of his power to frame rules but he will have to keep in view the impact of the Act of 1994.

12. Learned counsel for the respondents has also submitted that the Co-operative society is not a State within the meaning of Article 12 of the Constitution, therefore, the writ petition is not maintainable. We need not go into this aspect as in view of the recent decision of this Act in Supriyo Basu & Ors. v. W.B.Housing Board & Ors. [(2005) 6 SCC 289 2005 Indlaw SC 453] their Lordships have laid down what are the parameters for challenging the orders passed by the Co- operative Societies. It has been held that writ would be maintainable against a Co-operative society if it is established that a mandatory statutory provision of a statute has been violated. Therefore, nothing turns on this aspect of the matter.

13. As a result of our above discussion, we do not find any merit in this appeal and the same is dismissed with no order as to costs.

Appeal dismissed

Sumangalam Coop. Housing Society Ltd v Suo Motu, High Court Of Gujarat & Ors

Bench	Arijit Pasayat, Lokeshwar Singh Panta
Where Reported	2007 Indlaw SC 6; (2007) 2 SCC 301; AIR 2007 SC 671; 2007 (2) G.L.R. 937; JT 2007 (1) SC 211; 2007(1) SCALE 12; [2007] 1 S.C.R. 1
Case Digest	**Summary:** Trusts & Associations - Gujarat Co-operative Societies Act, 1961, ss. 29, 32, 36, 73 - Undervaluation - Irregularities - Allotment of land - Instant appeals were filed challenging judgment rendered by DB which suo motu registered a petition on basis of copies of documents purported to have been received. Held, a restriction is placed on right of a member to transfer his share by s. 30(2) of the Act and transfer could be only in favor of society or to a member of society or to a person whose application for membership has been accepted by society and committee has approved such transfer. S. 31 of the Act provides for transfer of interest on death of a member. Even an heir or a legal representative, had to seek and obtain a membership in society, before rights could be transferred to him. The section also leaves a right to heir or legal representative to require society to pay him value of share or interest of deceased member, ascertained as prescribed. S. 32 of the Act provides that share or interest of a member in capital of a Cooperative Society is not liable to attachment. U/s. 73 of the Act, final authority of society is to vest in general body of the society, subject to it being delegated in terms of bye-laws of the society. The powers and functions of Committee in which management of every society vested, are dealt with in s. 74 of the Act. S. 17, (Amalgamation, transfer, division or conversion of Societies), 20 (Cancellation of registration), 23 (Removal from membership in certain circumstances), 24 (open membership are relevant. Additionally, no member of respondent no. 2 and 3 societies has made any complaint against respondent no. 4 or its office bearers. That has significant impact on controversy. Valuation done by Dr. 'R' demolishes basis of conclusion by HC regarding undervaluation. Appeals allowed.

Case No : Appeal (civil) 3986 of 2004WITH C.A. 3987/2004, 3988-3989/2004, 3990/2004, 3991/2004 AND 3992-3993/2004

15. *The cooperative 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.* ***No doubt, when it gets registered under the Cooperative Societies Act, it is governed by the provisions of the Cooperative Societies Act and the Rules framed thereunder. In Smt. Damyanti Naranga v. The Union of India and Ors. [1971 (1) SCC 678 1971***

Indlaw SC 865*], this Court, discussing the scope of the right to form an association guaranteed by Art. 19(1) (c) of the* Constitution of India*, stated that the right to form an association necessarily implies that the persons forming the association have also the right to continue to be associated with only those whom they voluntarily admit in the association. Any law, by which members are introduced in the voluntary Association without any option being given to the members to keep them out, or any law which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form an association.*

Based on this decision, it is contended on behalf of the Society that its members have the right to be associated only with those whom they consider eligible to be admitted and the right to deny admission to those with whom they do not want to associate, cannot be interfered with by the Registrar by imposing on them a member who according to them was not eligible to be admitted. The argument on this basis is sought to be met on behalf of the respondents by reference to another decision of this Court in Daman Singh and Ors. v. State of Punjab and Ors. [1985 (2) SCC 670 1985 Indlaw SC 206*]. Therein, their Lordships, after referring to Damyanti's case* 1971 Indlaw SC 865 *(supra), held that that decision had no application to the situation before them. The position was explained in the following words:"*

"That case has no application whatever to the situation before us. It was a case where an unregistered society was by statute converted into a registered society which bore no resemblance whatever to the original society. New members could be admitted in large numbers so as to reduce the original members to an insignificant minority. The composition of the society itself was transformed by the Act *and the voluntary nature of the association of the members who formed the original society was totally destroyed. the Act was, therefore, struck down by the Court as contravening the fundamental right guaranteed by Art. 19(1)(f). In the cases before us we are concerned with co-operative societies which from the inception are governed by statute. They are created by statute, they are controlled by statute and so, there can be no objection to statutory interference with their composition on the ground of contravention of the individual right of freedom of association."*

15. The history and nature of co-operative movement have been projected in very clear terms in the judgment.

16. The appeals are, therefore, allowed. The observations made against various officials are uncalled for and have to be treated to have been deleted.

Bhogpur Co-Op Sugar Mills Limited v Harmesh Kumar

Bench	S.B. Sinha, Markandey Katju
Where Reported	2006 Indlaw SC 842; (2006) 13 SCC 28; AIR 2007 SC 288; 2006 (7) AWC 7608; 2006(11) SCALE 631; 2007 (4) SCJ 124; [2006] Supp8 S.C.R. 1021
Case Digest	**Summary:** Industrial Disputes Act, 1947 - Respondent was appointed as a seasonal workman - Termination - Held, termination of services of a workman as a result of non-renewal of the contract of employment on its expiry or termination of such contract of appointment under a stipulation in that behalf contained therein would, thus, not attract the definition of the term 'retrenchment' - Appeal allowed.

Case No : Appeal (Civil) 4771 of 2006 (Arising out of SLP (C) No. 17885 of 2005)

1. **Appellant is a cooperative society. It is registered under the Punjab Cooperative Societies Act, 1961. It operates a sugar mill. It is said to be a seasonal industry. At the beginning of the season**, workmen are recruited and they are retrenched at the end of it. Respondent was appointed as a seasonal workman. He was appointed on daily wage basis. On or about 14.03.1992, he raised an industrial dispute in terms of Section 2A of the Industrial Disputes Act, 1947 (for short "the Act") pursuant whereto or in furtherance whereof the State of Punjab in exercise of its jurisdiction under Section 10(1) (c) of the Act referred the following dispute to the Labour Court by a notification dated 8.07.1996:

   "Whether termination of services of Sh. Harmesh Kumar workman is justified and in order? If not, to what relief/ exact amount of compensation is he entitled"

2. The Presiding Officer, Labour Court, Gurdaspur opining that the workman has not been able to establish that he had worked for 240 days held that the respondent having not been called by the appellant in the subsequent crushing seasons and also having called his juniors violated the provisions of Section 25-G of the Act. He, therefore, passed the following award:

   "In the result, in view of my findings on the above issue, I pass an award directing the respondent to reemploy the workman from the season in which juniors to him were called and workman was not called. The workman shall also be entitled to back wages, etc. with all allied and monetary benefits which are granted to his juniors from their joining when workman was not called "

8. We are not oblivious of the distinction in regard to the legality of the order of termination in a case where Section 25-F of the Act applies on the one hand, and a situation where Section 25-G thereof applies on the other. Whereas in a case where Section 25-F of the Act applies the workman is bound to prove that he had been in continuous service of 240 days during twelve months preceding the order of termination, in a case where he invokes the provisions of Sections 25-G and 25-H thereof he may not have to establish the said fact. Central Bank of India vs. S. Satyam & Ors.(1996) 5 SCC 419 1996 Indlaw SC 963, Samishta Dube vs. City Board, Etawah

& Anr. (1999) 3 SCC 14 1999 Indlaw SC 982, Regional Manager, SBI vs. Rakesh Kumar Tewari (2006) 1 SCC 530 2006 Indlaw SC 570 and Jaipur Development Authority v. Ram Sahai & Anr 2006 Indlaw SC 882.8Civil Appeal No. 4626 of 2006 decided on 31st October, 2006

9. However, category-wise seniority is required to be maintained when different categories of workmen are appointed so as to apply the principle of 'last-cum-first go'. A seniority list is also required to be maintained so as to enable the employer to offer services to the retrenched employees maintaining the order of seniority. The said provisions, however, would have no application in a case where Section 2(oo)(bb) of the Act is attracted. The said provision reads, thus:

11. The issue is squarely covered by a decision of this Court in Morinda Coop. Sugar Mills Ltd. v. Ram Kishan and Others [(1995) 5 SCC 653 1995 Indlaw SC 1180] wherein it was opined:

"It would thus be clear that the respondents were not working throughout the season. They worked during crushing seasons only. The respondents were taken into work for the season and consequent to closure of the season, they ceased to work. The question is whether such a cessation would amount to retrenchment. Since it is only a seasonal work, the respondents cannot be said to have been retrenched in view of what is stated in clause (bb) of Section 2(oo) of the Act*. Under these circumstances, we are of the opinion that the view taken by the Labour Court and the High Court is illegal. However, the appellant is directed to maintain a register for all workmen engaged during the seasons enumerated hereinbefore and when the new season starts the appellant should make a publication in neighbouring places in which the respondents normally live and if they would report for duty, the appellant would engage them in accordance with seniority and exigency of work."*

12. Yet again, recently in Haryana State Agricultural Marketing Board v. Subhash Chand and Another [(2006) 2 SCC 794 2006 Indlaw SC 329], this Court held:

"It is the contention of the appellant that the respondent was appointed during the wheat season or the paddy season. It is also not in dispute that the appellant is a statutory body constituted under the Punjab and Haryana Agriculture Produce Marketing Board Act. In terms of the provisions of the said Act, indisputably, regulations are framed by the Board laying down the terms and conditions of services of the employees working in the Market Committees. A bare perusal of the offer of appointment clearly goes to show that the appointments were made on contract basis. It was not a case where a workman was continuously appointed with artificial gap of 1 day only. Indisputably, the respondent had been re-employed after termination of his services on contract basis after a consideration period(s)."

13. For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. The appeal is allowed. No costs.

Appeal allowed

Shahabad Cooperative Sugar Mills Limited v Special Secretary to Government of Haryana Corp. and Others

Bench	S.B. Sinha, Dalveer Bhandari
Where Reported	2006 Indlaw SC 1405; (2006) 12 SCC 404; AIR 2007 SC 340; JT 2006 (10) SC 401; 2007 (1) Law Herald (P&H) 380; 2007 (146) PLR 781B; 2007 (1) RCR(Civil) 113; 2006(11) SCALE 674; [2006] Supp8 S.C.R. 979
Case Digest	**Summary:** Civil Procedure - Constitution - Code of Civil Procedure, 1908, s. 115 - Constitution of India, 1950, arts. 136, 142 - Haryana Co-operative Societies Act, 1984, ss. 102, 115 - Punjab Co-operative Societies Act, 1961, ss. 114, 68, 69 - Resignation - Disciplinary proceedings - Non-acceptance - Succeed - Appellant was cooperative society registered under the 1984 Act, respondent was appointed as Chief Accounts Officer in appellant mill - Respondent failed to check and control mill accounts, which resulted into issuance of false receipts of cheques/cash/demand drafts thus putting mill into financial losses - On ground that respondent had committed misconduct, two charge-sheets were issued to respondent - Enquiry Officer was appointed to enquire into correctness or otherwise of said charges - Resignation was tendered by respondent on 13-2-1997, admittedly, same had not been accepted and non-acceptance of resignation was communicated to him by letter dt. 1-3-1997 - Report was submitted by Enquiry Officer on 21-10-1997, he was dismissed from service by order dt. 26-12-1998, Relying on or on basis of s. 114 of the 1961 Act - Appeal was filed before Registrar, Cooperative Societies, which was dismissed by order dt. 9-2-2001 - Revision petition filed there against before State Govt. purported to be in terms of s. 115 of the 1984 was allowed by order dt. 29-10-2003 - Aggrieved by order, appellant filed writ petition before HC, which was dismissed - Hence, instant appeal - Appellant contended that State Govt. could not exercise its revisional jurisdiction in facts and circumstances of present case and thus, order HC was nullity, being wholly illegal and without jurisdiction, and thus HC committed manifest error in dismissing writ petition - Whether order of HC was justified - Held, relied on in Zahira Habibullah, Sheikh & Anr. Vs. State of Gujarat & Ors. 2004 Indlaw SC 408, order of State Govt. having been passed without jurisdiction was coram non judice and the 1984 Act and the 1961 Act were not in pari material, they contain different provisions, purport and object of revisional jurisdiction of State Govt. under Haryana Act was in effect and substance were different from those of Punjab Act - Hence, HC was not correct in holding that State was entitled to exercise its revisional jurisdiction in facts of present case and even if enquiry proceedings were to be quashed, Respondent could not have been directed to be re-instated in service with full

	back wages, respondent had himself stated that he had got much better job with better emoluments, status and salary, however, pointed out that on getting aforesaid job, he had submitted resignation to appellant, same was rejected and inquiry was not properly conducted - Therefore, in exercise of jurisdiction u/ art. 142 of Constitution direct that Registrar of Cooperative Societies should arbitrate in matter and exercise its jurisdiction under s. 102 of Haryana Act, as if respondent has invoked jurisdiction - Appeal allowed.

Case No : Appeal (Civil) 4773 of 2006 (Arising out of S.L.P. (C) No. 24613 of 2005)

2. Appellant is a cooperative society registered under the haryana Co-operative Societies Act. Respondent was appointed as Chief Accounts Officer in the Appellant mill. On the ground that he has committed misconduct, two charge-sheets were issued to him containing the following charges:-

3. An Enquiry Officer was appointed to enquire into the correctness or otherwise of the said charges. Before the said Enquiry Officer, Appellant herein examined two witnesses on 18.11.1996 and 23.12.1996, who were also cross-examined by the respondent No.3 herein. Resignation was tendered by Respondent No. 3 on 13.2.1997. Admittedly, the same had not been accepted on the ground that disciplinary proceedings had already been initiated against him. Non-acceptance of the said resignation was communicated to him by a letter dated 1.3.1997.

6. In his absence the Enquiry Officer proceeded to hold the enquiry ex parte. A report was submitted by the Enquiry Officer on 21.10.1997. The Board of Directors issued a notice requiring the 3rd respondent to show cause as to why he should not be dismissed from service.

7. The contention of the 3rd respondent in this behalf was that despite request, neither a copy of the enquiry report nor the copies of the depositions of witnesses, who were examined as ex parte by the Enquiry Officer, had been supplied. He was dismissed from service by an order dated 26.12.1998. Relying on or on the basis of S. 114 of the Punjab Act, an appeal was filed before the Registrar, Cooperative Societies, which was dismissed by an order dated 9.2.2001. A revision petition filed there against before the State Government purported to be in terms of S. 115 of the said Act was allowed by an order dated 29.10.2003, holding:-

17. We would hereafter notice the provisions of the Punjab Co-operative Societies Act, 1961 (Punjab Act), which are said to be in pari materia to the Haryana Act. S. 68 of the Punjab Act provides for appeals. By reason of Cl. (c) of Sub-S. (2) of Section 68, however, against an order made by the Additional Registrar an appeal lies to the Registrar. S. 69 provides for a revisional jurisdiction both in the State Government as also the Registrar in the following terms:-

"69. The State Government and the Registrar may, suo motu or on the application of a party to a reference, call for and examine the record of any proceedings in which no appeal under S. 68 lies to the Government or the Registrar, as the case may be, for the purpose of satisfying itself or himself as to the legality or propriety of any decision or order passed and if in any case it appears to the Government or the Registrar that any such decision or order should be modified, annulled or revised, the Government or the Registrar, as the case may be, may, after giving persons affected thereby an opportunity of being heard, pass such order thereon as it or he may deem fit."

21. A Full Bench of the Punjab & Haryana High Court in Gurnam Kaur vs. State of Punjab etc. [1992 PLJ 658 : 1992 (102) PLR 746] overruled Hardial Singh (supra), stating:-

"The opening words of S. 69 reproduced above with respect to "suo motu" or "on application of the parties to the reference" are explanatory in nature. They are neither superfluous nor redundant. Even in the absence of phraseology used in the remaining context of the provision referred to above still would clothe the Revisional Authority to exercise the power as would be seen from such like provisions in different statutes, reference to which would be made later.

It is immaterial when revisional power is exercised as to whether, the action was initiated at the instance of interested party or suo motu. The order passed would be within jurisdiction. This exercise of powers is not dependent on the action of the party concerned. This view expressed in Hardial Singh's case (supra) that since action was not initiated by the competent party concerned the same could not be treated valid exercise of jurisdiction under S. 69 of the Act, reproduced above, is not tenable in law. Even if the action was taken by a party who was not aggrieved, in other words not a person competent, the exercise of powers in modifying, annulling or revising the order of the subordinate authority will not be without jurisdiction."

33. The State cannot exercise its revisional jurisdiction if an appeal lies before it. If an appeal lies, a revision would not lie. Admittedly, the 3rd respondent preferred an appeal before the Registrar. Such an appeal was purported to have been filed from an order passed by the Board. The 3rd respondent did not invoke the provision for arbitration. We have noticed hereinbefore that the disputes and differences between the Society and an employee is referable to arbitration in terms of S. 102 of the Haryana Act. An appeal is maintainable against an award of the Arbitrator before the State. On this ground alone the revision petition was not maintainable. Faced with such a situation, Mr. Gupta contended that no appeal was maintainable before the Registrar.

50. The questions as to whether during the interregnum he had been gainfully employed or not; or his resignation was rightly refused to be accepted and despite submission of resignation, he did not, in fact, get a job and never joined anywhere else, should, in our opinion, be determined by an appropriate authority. We, therefore, in exercise of our jurisdiction u/art. 142 of the Constitution of India direct that the Registrar of Cooperative Societies should arbitrate in the matter and exercise its jurisdiction under S. 102 of the Haryana Act, as if the 3rd respondent has invoked the said jurisdiction. The parties hereto shall file their respective documents before the Registrar within four weeks from the date. The Registrar shall fix a date of hearing and intimate the same to the parties, on which date they may produce their witnesses before him. The 3rd respondent will be entitled to examine himself as a witness.

52. The Registrar, Co-operative Societies is requested to make an Award within eight weeks from the date of entering into the reference. We furthermore direct that irrespective of the result of the dispute between the appellant and the 3rd respondent, no recovery shall be effected from the 3rd respondent in respect of any salary or emoluments paid to him during the period from 1.10.2005 to 30.6.2006 when he joined his services pursuant to the order of the High Court and date of his superannuation.

M.D. Bhadra Shahakari S.K. Niyamita v President, Chitradurga Mazdoor Sangh and Others

Bench	AR. Lakshmanan, Tarun Chatterjee
Where Reported	2006 Indlaw SC 876; (2006) 8 SCC 552; 2006 (7) AWC 7619; 2006(10) SCALE 614; [2006] Supp8 S.C.R. 212
Case Digest	**Subject:** Constitution **Summary:** Constitution - Inaction of Management and implementation of settlement - Petition filed by District Mazdoor Sangh calling in question inaction of Management in implementing settlement produced and for a consequent direction to Management to implement said settlement - Petition allowed - Appeal filed by Managing Director, Bhadra Shahakari SK Niyamita against President, Mazdoor Sangh and Ors against judgment of HC - (A) Maintainability of said Writ Petition? - Held, Court have Petition filed by respondent-Union against co-operative sugar factory is not maintainable - Therefore answered issue of maintainability of said Petition in favour of appellant - Management - (B) Whether it would be possible for appellant to pay back wages to respondent-workmen and extent thereof? - Considering critical financial situation of appellant sugar factory, direction issued for payment of 10% back wages which comes to Rs. 9.52 lacs if now ordered would meet ends of justice - Therefore, in interest of justice and in interest of workers, direction issued to appellant-Management to pay a sum of Rs. 9.52 lacs by way of back wages - Further Court held, said amount shall be distributed among 51 workmen as per their dues - Since reinstatement has been ordered by HC, workers will not be disturbed except in accordance with law - Appeal disposed of.

Case No : Appeal (Civil) 4534 of 2004 With C. A. No. 1223/2006 C. A. No. 1844/2006
The Judgment was delivered by : Dr. AR. Lakshmanan, J.

1. This appeal was filed by the Managing Director, Bhadra Shahakari S.K.Niyamita against the President, Chitradurga Mazdoor Sangh & Ors. against the judgment dt.25.02.2003 passed by the High Court in W.P.No.13524/1999. The Writ Petition was preferred by Chitradurga District Mazdoor Sangh calling in question the inaction of the Management in implementing the settlement produced as Annexure-A dt.14.05.1998 and for a consequent direction to the Management to implement the aforementioned settlement. The High Court in para 40 of its judgment observed as follows :-

"In the result and for the foregoing reasons, we allow the writ petition with costs quantified at Rs.3000/ payable by the first Respondent to the Petitioner's counsel within two weeks. A writ of mandamus shall issue to the management of the first Respondent sugar factory to implement the

settlement Annexure-A dated 14.05.1998 and continue 51 workmen already reinstated into service and pay 40% of backwages, if not already paid, within a period of one month from today."

5. He has also further submitted that it will not be able to make a financial commitment at this stage, especially when the accumulated loss of the factory is Rs.4252.85 lacs as on 31.03.2006 and that the payment of back wages to the 51 workmen represented by the respondent-Union at this stage may cause labour unrest, especially since the appellant sugar factory has not been able to pay even monthly wages to its workmen and they have initiated litigations and Contempt Petitions before various courts. As already noticed, the High Court while disposing of the Writ Petition ordered payment of 40% back wages to the workmen by the Management. Considering the critical financial situation of the appellant sugar factory, we feel that a direction for payment of 10% back wages which comes to Rs.9.52 lacs if now ordered would meet the ends of justice.

6. Mr.G.V.Chandrashekhar, learned counsel for the respondents has agreed to receive 10% back wages amounting to Rs.9.52 lacs which represent the back wages for the period 1992 to 1999. We, therefore, in the interest of justice and in the interest of workers, direct the appellant-Management to pay a sum of Rs.9.52 lacs by way of back wages for the period 1992 to 1999. The said amount shall be distributed among 51 workmen as per their dues. The amount shall be distributed within a period of two months by the Management itself.

8. The above appeal was filed by the Chitradurga Mazdoor Sangh against the order passed by the High Court dt.26.05.2005 in C.C.C.No.1437/2004 dismissing the Contempt Petition filed by the appellant. In view of the Judgment now passed by us in C.A.No.4534/2004, this appeal has become infructuous and the same is dismissed.

Appeal dismissed

Ganesh Bank, Kurundwad Limited and Others v Union of India and Others

Bench	Arijit Pasayat, C.K. Thakker
Where Reported	2006 Indlaw SC 1267; (2006) 10 SCC 645; 2007 (5) AWC 5069; 2007 (1) BC 296; 2006 (6) Bom.C.R. 98; JT 2006 (8) SC 132; 2007 (146) PLR 429; 2006(8) SCALE 588; [2006] Supp5 S.C.R. 437; 2006 (3) UPLBEC 2919
Case Digest	**Summary:** Banking & Finance - Banking Regulation Act, 1949, ss. 45(1) and 45(2) - RBI's decision to impose moratorium and proposed scheme of amalgamation challenged - 'Good reason' u/s. 45(1) - Term of wide amplitude, not restricted to actions mentioned u/s. 45(2) - Existence of court proceedings good reason to impose moratorium u/s. 45(2) - RBI to form its own opinion regarding such decision - Depositors cannot question legality of RBI's action - Not proper for courts to substitute their judgment to that of RBI - U/s. 45 adequate opportunity available, no additional opportunity required to be given - Judicial review of administrative action only in case of illegality, irrationality and procedural impropriety - Held, in present facts no infirmity or mala fide in RBI's decision - Appeal dismissed.

Case No : Appeal (civil) 3698 of 2006

1. The present appeal is directed against the judgment and order dated 5.4.2006 passed by a Division Bench of the Bombay High Court in Writ Petition No.337/2006 questioning Notification dated 7th January, 2006 issued by the Government of India, Ministry of Finance imposing a moratorium in respect of the appellant-Ganesh Bank of Kurundwad Ltd. (hereinafter referred to as "Bank") for a period of three months from the date of order upto and inclusive of 6th April, 2006. Amongst others, the said Bank was directed not to grant any loan or advances or incur liability without the permission in writing of the Reserve Bank of India (in short the 'RBI''). Further, withdrawal of sums not exceeding 5,000/- by a Savings Bank or Current Account holder was permitted with a further relaxation of amount not exceeding Rs.10,000/- or the Actual balance whichever is less in the event of certain difficulties such as medical treatment, higher education and obligatory expenses like marriage etc. Challenge was also made to the appointment of two Directors on the Board of Directors of the Bank.

47. Learned counsel for the appellants has highlighted that Sarastwat Bank's offer was an equally good offer if not better and should have been accepted. It has been pointed out by learned counsel for the respondents **that Saraswat Bank is a Multi State Co-operative Bank and its functioning is governed by Multi State Cooperative Societies Act, 2002 (in short '2002 Act'). The legal opinion available to the RBI was that it was not feasible or permissible to amalgamate a commercial bank with a cooperative Bank by reason of the provisions of the Act as well as 2002 Act**. The RBI was of the view that such amalgamation is not possible

under Sections 17 and 18 of the 2002 Act as also Section 56 (zb) of the Act. It was pointed out that Saraswat Bank cannot be considered to be a banking company for the purpose of Section 45(4) to 45(15) of the Act. In order to be a banking company within the meaning of the Act, the entity in question must be a company. Section 56(zb) of the Act excludes the applicability of Section 45(4) to 45(15) so far as cooperative banks are concerned. It was pointed out that even if it is conceded for the sake of argument that legally amalgamation is permissible it could have taken a very long time to get requisite clearance from several other agencies under the 2002 Act and could not have gone through expeditiously. It is also pointed out that an amalgamation of Multi State Cooperative Bank is subject to far less regulatory control of the RBI especially in relation to non banking matters. There is no dispute that the application made by Saraswat Bank was duly considered by the RBI.

48. The scope of Judicial review in administrative matters has been the subject matter of consideration before this Court in several cases.

49. There should be judicial restraint while making judicial review in administrative matters. Where irrelevant aspects have been eschewed from consideration and no relevant aspect has been ignored and the administrative decisions have nexus with the facts on record, there is no scope for interference. The duty of the court is (a) to confine itself to the question of legality; (b) to decide whether the decision making authority exceeded its powers (c) committed an error of law (d) committed breach of the rules of natural justice and (e) reached a decision which no reasonable Tribunal would have reached or (f) abused its powers.

55. Therefore, to arrive at a decision on "reasonableness" the Court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one. The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for the Court to substitute its view.

56. The principles of judicial review of administrative action were further summarized in 1985 by Lord Diplock in CCSU case as illegality, procedural impropriety and irrationality. He said more grounds could in future become available, including the doctrine of proportionality which was a principle followed by certain other members of the European Economic Community. Lord Diplock observed in that case as follows:

".Judicial review has I think, developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognized in the administrative law of several of our fellow members of the European Economic Community."

Lord Diplock explained "irrationality" as follows:

"By 'irrationality' I mean what can by now be succinctly referred to as Wednesbury unreasonableness'. It applies to a decision which is to outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

58. These principles have been noted in aforesaid terms in Union of India and Anr. v. C. Ganayutham (1997 [7] SCC 463). 1997 Indlaw SC 587 In essence, the test is to see whether there is any infirmity in the decision making process and not in the decision itself. (See Indian Railways Construction Co. Ltd. v. Ajay Kumar (2003 (4) SCC 579 2003 Indlaw SC 210).

59. Looked at from the aforesaid angle, the judgment of the High Court does not suffer from any infirmity to warrant interference. The appeal is dismissed.

Appeal dismissed

Morinda Cooperative Sugar Mills Ltd. v Morinda Coop. Sugar Mills Workers Union

Bench	Arijit Pasayat, Lokeshwar Singh Panta
Where Reported	2006 Indlaw SC 319; (2006) 6 SCC 80; 2006 (4) AWC 3248; 2006 (6) Bom.C.R. 69; JT 2006 (6) SC 374; 2006 (144) PLR 385; 2006(7) SCALE 57; [2006] Supp3 S.C.R. 473
Case Digest	**Summary:** [A.] Trusts & Associations - CPC, 1908, s. 100 - Punjab Co-operative Societies Act, 1961, ss. 55(1), 79 - Suit claiming dearness allowance on wages plus fixed allowance decreed - First appellate court held that subject matter of suit cannot be said to be a dispute touching business of society and HC affirmed view - Appeal against - Held, no cooperative society or its officers should be dragged to litigation before Civil Court in respect of any act touching business of such a society unless notice required to be given in writing as has been issued to Registrar of society - No infirmity to warrant interference - Appeal dismissed.

Case No : Appeal (civil) 4488 of 2004

The Judgment was delivered by: Arijit Pasayat, J.

1. Appellant calls in question legality of the judgment rendered by a learned Single Judge of the Punjab and Haryana High Court dismissing the appeal filed by the appellant u/s. 100 of the Code of Civil Procedure, 1908 (in short 'the Code').

2. The defendant Morinda Co-operation Society Workers' Union (hereinafter referred to as the 'Union') as plaintiff filed a suit claiming dearness allowance on the wages plus fixed allowance in accordance with Para 317 (ii) of the Third Wage Board Report. The first appellate court reversed the judgment and decree of the trial court, holding that the subject matter of the suit cannot be said to be a dispute touching the business of the society. Accordingly the appeal was allowed. Second Appeal was filed by the defendant (present appellant) contending that the view of the trial court was justified and that of the first appellate court was not justified.

3. The plaintiff Union filed the suit seeking declaration to the effect that the members of the plaintiff Union was entitled to the benefit of the Variable Dearness Allowance (for short the 'VDA') on the basic wages plus fixed allowance in accordance with Para 317(ii) of the Third Wage Board Report with a consequential relief for permanent injunction restraining the defendant from withdrawing the payment of VDA from the fixed amount of Rs.150 which was being paid to the members of the Union. Defendant took the stand that since small notice u/s. 79 of the Punjab Co-operative Societies Act, 1961 (in short 'the Act') is required, the suit was not maintainable.

10. In Deccan Merchants Co-operative Bank Ltd. v. M/s. Dalichand Jugraj Jain (1969 (1) SCR 887) 1968 Indlaw SC 309 it was held as follows:

"Five kinds of disputes are mentioned in sub- section:

First, disputes touching the constitution of a society: secondly, disputes touching election of the office bearers of a society: thirdly, disputes touching the conduct of general meeting of a society: fourthly, disputes touching the management of a society: and fifthly disputes touching the business of a society. It is clear that the word "business" in this context does not mean affairs of a society because election of office-bearers, conduct of general meetings and management of a society would be treated as affairs of a society. In this sub-section the word "business" has been used in a narrower sense and it means the actual trading or commercial or other similar business activity of the society which the society is authorized to enter into under the Act *and the Rules and its bye-laws."*

11. In Co-operative Central Bank Ltd. and others etc. v. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad and others etc. [1969 (2) SCC 43] 1969 Indlaw SC 341 it was held that alteration of the conditions of the service of the workman would not be covered by the expression "touching the business of the society". It was held inter alia as follows:

"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 to decision to the Registrar u/s. 61 of the the Act*. The dispute related to alterations 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 S. 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 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 sad 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."

(Underlined for emphasis)

12. When the factual background are tested in the background of principles set out in O.N. Bhatnagar's case 1982 Indlaw SC 122 (supra), Deccan Merchant's case 1968 Indlaw SC 309 (supra) and Cooperative Central Bank's case 1969 Indlaw SC 341 (supra), the conclusions of the First Appellate Court as affirmed by the High Court do not suffer from any infirmity to warrant interference.

A. Jitendernath v
Jubilee Hills Cooperative House Building Society and Another

Bench	S.B. Sinha, P.P. Naolekar
Where Reported	2006 Indlaw SC 650; (2006) 10 SCC 96; 2006 (4) ALD(SC) 1; JT 2006 (7) SC 183; 2006(5) SCALE 130; 2006 (6) SCJ 338; [2006] Supp1 S.C.R. 702
Case Digest	**Summary:** Land & Property - Trusts & Associations - Suit - Dismissed - Legality - Suit was filed before Trial Court and same was decreed in favor of respondent no. 2 - Respondent no. 1 filed appeal before Tribunal and the same was dismissed - Revision application was filed before HC against order passed by Tribunal and the same was dismissed - Hence instant appeals - Whether conduct of respondent no. 1, appellant should be monetarily compensated. Held, respondent no. 1 despite knowledge that award was not enforceable appears to have taken some amount from appellant. It compelled appellant to fight litigations before various forums. Appellant also had to initiate an execution proceeding for execution of award passed by Registrar. It succeeded at least before one court. Even before SC, a wrong representation was made by Respondent no. 1 that plot no. 400 was available for allotment to appellant. Said representation was turned to be wrong. As we are not in a position to consider correctness or otherwise of one representation or other by respondent no. 1 as also contentions raised by impleaded parties, conduct of respondent no. 1 is deplorable. It being a Society was obligated to render all assistance to SC so as to enable it in turn to render a decision in accordance with law. It could not have made any mis-representation before us. SC is not bothered as to whether at relevant point of time respondent no. 1 was represented by Administrator or an elected body. Registrar of Cooperative Society is directed to initiate an enquiry against persons concerned who were responsible for making a wrong representation before us and take suitable action against them in accordance with law. SC direct that all amounts deposited by appellant before Respondent no. 1 be refunded to him with penal interest at rate of 24% per annum, subject, of course, to deduction of such amount to which Respondent no. 1 was entitled to for admitting him as a member of Society. Respondent no. 1 shall also pay further sum of Rs. 1,00,000/- to appellant herein by way of compensation. Respondent no. 1 shall also pay a sum of Rs. 1,00,000/- to Respondent no. 2 by way of compensation. Such payments be made to them within time framed. Respondent no. 1 shall be at liberty to recover amount of interest as also amount of compensation directed to be paid to appellant herein from such persons who may be found responsible therefor. Appeals dismissed.

Case No : Appeal (civil) 306-307 of 2005

1. These appeals are directed against judgments and orders dated 13 November 2001 and 22 April 2002 passed by the High Court of Andhra Pradesh in Civil Revision Petition No. 283 of 2000 and Civil Miscellaneous Petition No. 7763 of 2002 respectively.

2. **Jubilee Hills Cooperative House Building Society Limited, Hyderabad is a Society registered under the Andhra Pradesh Cooperative Societies Act, 1964. It had enrolled a large number of members**. The father of the one Shri Anne Srinivas and the mother of the Appellant, Mrs. A. Annapurna Devi, herein were members of the said Society.

   *"**So far as the transfer made in the name of the petitioner is concerned by the said Srinivas, it is not hit by clause 'G' of** **A.P. Cooperative Societies Act, 1964** **(directions of the effective and proper functioning of the cooperative societies in the State) since, the same was passed on 03 December 1997 which is subsequent to the sale deed executed in** the name of the petitioner. The petitioner obtained the sale deed from her son who is the power of attorney holder of the said Srinivas under Ex. A.9. However, this Court has arrived at a conclusion that three is no valid title passed to the said Srinivas prior to the award passed by the Tribunal on 22-4-1991. The society being a party to the said award, it ought to have stopped the registration by virtue of the award and in fact, it did not stop the same, and kept in abeyance, and allowed the document to be registered to deprive the award passed by the Tribunal. Therefore, I am of the opinion, that the learned Asst. Judge has arrived at a wrong conclusion and on the wrong premise that R.2 had no vested right in the said property, allowed the petition. Hence, it suffers from infirmities and the impugned order is liable to be set aside by allowing the appeal."*

30. The principal question which arises for consideration in this appeal is as to whether the award passed in favour of the Appellant herein is capable of enforced in law. The said question may have to be answered in favour of the Appellant only, if the principle of res judicata is found to be applicable in this case.

31. The Appellant became a member of the Cooperative Society in place of his mother. As a member of a Society, nobody had a right to be allotted a plot far less a particular plot. Plot No. 39 was indisputably allotted in favour of his mother. But before the provisional allotment could fructify by making a formal allotment and executing a deed of sale in her favour, she had expired. This fact was not communicated by the Appellant to the First Respondent Society for a long time. He in his letter dated 16 March 1985 accepted that he was out of Hyderabad for more than two and half years. He did not deny or dispute that in the meantime the Society issued several letters in the name of all allottees to deposit the development cost. A notice had also been issued to all the allottees asking them to deposit the development charges failing which the order of allotment would stand cancelled. It stands admitted that the development charges had not been deposited in respect of plot No. 39. It may be that no formal letter of cancellation of the said plot was issued but in view of the admitted position that the requirements as contained in letter dated 30 September 1982 of the First Respondent having not been complied with, the allotment would in law, be deemed to be cancelled.

33. It is beyond any cavil of doubt that the conduct of the First Respondent Society was not fair. When it had made an allotment in favour of Mr. Srinivas, it was obligatory on its part to disclose

all the facts before the Registrar so as to enable him to arrive at an independent opinion. It failed and neglected to do so and, thus, it created all sorts of confusions.

34. If the contention of the Appellant is correct, that after the said award, the Society accepted the deposit of the requisite amount from the Appellant, we fail to see any reason as to why the said fact was not brought to the notice of the said Srinivas. The appeal preferred by the First Respondent against the Appellant herein was also not properly pursued. We do not know whether any application for restoration has been filed.

51. We, therefore, are of the opinion that interest of justice would be sub served if the First Respondent is directed to consider the question of allotment amongst its members upon strict compliance of the extant rules including its bye-laws wherefor cases of all persons eligible therefor must be considered.

53. This brings to the fore another question viz. as to whether, in view of the conduct of the First Respondent, the Appellant should be monetarily compensated. We think so. The First Respondent despite the knowledge that the award dated 22 April 1991 was not enforceable appears to have taken some amount from the Appellant. It compelled the Appellant to fight litigations before various forums. The Appellant also had to initiate an execution proceeding for execution of the award passed by the Registrar. It succeeded at least before one court. Even before this Court, a wrong representation was made by the First Respondent that plot No. 400 was available for allotment to the Appellant. The said representation was turned to be wrong. As we are not in a position to consider the correctness or otherwise of one representation or the other by the First Respondent herein as also the contentions raised by the impleaded parties, we are of the opinion that the conduct of the First Respondent is deplorable. It being a Society was obligated to render all assistance to this Court so as to enable it in turn to render a decision in accordance with law. It could not have made any mis-representation before us. We are not bothered as to whether at the relevant point of time the First Respondent was represented by an Administrator or an elected body. It was admittedly being represented who could do so before us in law.

54. We, therefore, direct the Registrar of the Cooperative Society to initiate an enquiry against the persons concerned who were responsible for making a wrong representation before us and take suitable action against them in accordance with law. We further direct that all amounts deposited by the Appellant before the First Respondent be refunded to him with penal interest at the rate of 24% per annum, subject, of course, to deduction of such amount to which the First Respondent was entitled to for admitting him as a member of the Society. The First Respondent shall also pay a further sum of Rs. 1,00,000/ (Rupees one lakh only) to the Appellant herein by way of compensation. The First Respondent shall also pay a sum of Rs. 1,00,000/ (Rupees one lakh only) to the Second Respondent by way of compensation. Such payments be made to them within a period of four weeks from date. The First Respondent shall be at liberty to recover the amount of interest as also the amount of compensation directed to be paid to the Appellant herein from such persons who may be found responsible therefor.

55. For the foregoing reasons, these appeals are dismissed, subject, however, to the aforementioned observations and directions. The parties shall, however, in the facts and circumstances of the case pay and bear their own costs throughout.

Dudhganga Vikas Sewa Santha Maryadit v District Collector-Kolhapur and Others

Bench	B.P. Singh, Altamas Kabir
Where Reported	2006 Indlaw SC 1400; (2006) 5 SCC 250; AIR 2007 SC 347; 2006 (4) Bom.C.R. 617; JT 2006 (5) SC 447; 2006(5) SCALE 338; [2006] Supp1 S.C.R. 729
Case Digest	**Subject:** Election **Keywords:** Maharashtra Cooperative Societies Act, 1960, Maharashtra Specified Co-operative Societies Election to Committees Rules, 1971 **Summary:** Election - Maharashtra Cooperative Societies Act, 1960, ss. 27, 27(3), 27(3A) - Maharashtra Specified Co-operative Societies Election to Committees Rules, 1971, r. 4 - Society - Name not included in provisional list of voter - Succeed - Appellant/society was primary society, contributed to capital of federal society - Name of appellant society was not included in provisional list of voters and question arose to whether appellant society was eligible to be voter - Dist. Collector rejected contention of appellant and held it was not eligible to vote - Aggrieved by order of Dist. Collector, appellant filed petition before HC, which was dismissed and held dependent upon interpretation of s. 27(3) of the Act and r. 4 of the Rules - Society, which had invested any part of its funds in shares of any federal society, might appoint one of its members to vote on its behalf in affairs of that federal society, and accordingly such member should have right to vote on behalf of society - Hence, Provisional list of voters should be prepared by every society for year in which general election was due to be held and persons who have completed minimum period of two years as members from date of their enrollment immediately preceding year in which such election was due should be included in provisional list - Hence, instant appeals - Whether order of HC was justified - Held, no difficulty in holding that in terms of r. 4 of the 1971 Rules, which relates to preparation of provisional voters list, name of appellant society had to be included in provisional list - Hence, u/ s. 27 of the Act appellant society was eligible to vote in elections and was also eligible to be included in provisional list of voters to be prepared in accordance with r. 4 of Rules,that being legal and factual position, no reason to reject the claim of the appellant society to cast its vote in the election - Therefore, set aside order of HC and appellant society and other similarly situated societies were permitted to vote, but their votes were kept in separate sealed cover and were not to be counted until further orders - Appeals allowed.

Case No : Appeal (civil) 2122 of 2006

The Judgment was delivered by : B. P. Singh, J.

4. The facts not in dispute are that the appellant-society is a primary society. It contributed to the capital of a federsal society known as "Kolhapur District Central Cooperative Bank Ltd."-respondent No.2 herein on 30.12.2002. It is also not disputed before us that it became a member of the federal society with effect from that very date. Election of the office bearers of the federal society was due to be held in April, 2006 and a question arose as to whether the appellant society was eligible to be a voter. The controversy arose because the name of the appellant society was not included in the provisional list of voters. The matter came for decision before the District Collector who rejected the contention of the appellant society and held that it was not eligible to vote. Aggrieved by the order of the District Collector, the appellant society filed the instant writ petition before the High Court which has been dismissed by the impugned judgment and order.

13. The appellant had relied upon a Full Bench decision of the High Court reported in 2005 (2) All Maharashtra Reports, 489. No doubt, the said decision related to a notified society and not a specified society, and therefore, the District Collector held that it did not apply to the facts of this case. Technically speaking, the District Collector may be right, but what was sought to be relied upon by the appellant was the principle laid down in the aforesaid Full Bench decision having regard to the similarity of the language of the provisions. It is, however, not necessary for us to consider the decision of the Full Bench, because on a mere reading of S. 27 of the Act and Rules 4 of the Rules, we are satisfied that the appellant society is eligible to vote under S. 27 (3) of the Act and its name must also be included in the provisional list of voters prepared in accordance with Rules 4 of the Rules.

14. We, therefore, allow these appeals and set aside the impugned judgment and order of the High Court. Pursuant to the interim order of this Court made on 6.2.2006, election was held and the appellant society and other similarly situated societies were permitted to vote, but their votes were kept in a separate sealed cover and were not to be counted until further orders. By subsequent order dated 31.3.2006, we also stayed the counting of votes and declaration of the result, until further orders.

15. In view of the fact that we have allowed the appeals today, we direct that the votes cast by the appellant society other similarly situated societies shall be counted and the result of the election declared.

No order as to the costs.

Appeals allowed.

S.S. Rana v Registrar, Co-Operative Societies and Another

Bench	S.B. Sinha, P.P. Naolekar
Where Reported	2006 Indlaw SC 174; JT 2006 (5) SC 186; 2006(4) SCALE 638; 2006 (4) SCJ 543; [2006] Supp1 S.C.R. 311
Case Digest	**Summary:** [A.] Service - Trusts & Associations - Himachal Pradesh Co-operative Societies Act, 1968, ss. 35-B(4), 61, 65, 66, 67, 72 - Constitution Of India, 1950, art. 12 - Kangra Central Co-operative Bank Employees (Terms of Employment and Working Conditions) Rules, 1980, rr. 39, 56(b) - Whether the society in question can be called 'state' for the purpose of art. 12 of the Constitution? - In no sense can it be said that the State has a deep and pervasive control over the Society - Society has not been created under any statute - In terminating the services of the appellant, the Respondent has not violated any mandatory provisions of the Act or the rules framed thereunder - Appeal dismissed.

Case No : Appeal (civil) 6052 of 2004

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

1. The petitioner was working as a Branch Manager in the Kangra Central Co-operative Bank Ltd (Respondent No.2, "Society"). A disciplinary proceeding was initiated against him purporting to be in terms of Rule 56(b) of the Kangra Central Co-operative Bank Employees (Terms of Employment and Working Conditions) Rules, 1980 (for short the "Rules") read with Section 35-B(4) of the Himachal Pradesh Co-operative Societies Act, 1968 (for short the "Act"). He was found guilty therein. The Managing Director of the Society, by an order dated 18.11.1993, terminated his services purported to be in exercise of his power under Rule 2(p) of Appendix 1(a) of the Rules. In the meantime, an Administrator was appointed by the State to manage its affairs. The appellant herein preferred an appeal against the said order terminating his services before the Administrator on or about 2.12.1993. However, the Administrator had no occasion to deal with the said appeal. By an order dated 18.11.1995, the Board of Directors of the Respondent No.2 dismissed the said appeal. He reached the age of superannuation on 30th September, 1996.

2. The appellant filed a writ petition before the High Court of Himachal Pradesh at Shimla, inter alia, praying for quashing of the order of termination dated 18.11.1995, as also the order of the appellate authority dated 16.1.1996. He further prayed for grant of all consequential benefits pursuant to or in furtherance of the quashing of the said order of punishment.

3. The writ petition filed by the appellant was based on the premise that the 1st respondent is a 'State' within the meaning of Article 12 of the Constitution of India. A Division Bench of the Himachal Pradesh High Court, by reason of the impugned judgment and order dated 6.6.2003, dismissed the said writ petition holding that the writ petition was not maintainable. The appellant is, thus, before us.

12. It is well settled that general regulations under an Act, like Companies Act or the Co-operative 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.

13. The decision of the Seven Judge Bench of this Court in Pradeep Kumar Biswas 2002 Indlaw SC 322 (supra), whereupon strong reliance has been placed, has no application in the instant case. In that case, the Bench was deciding a question as to whether in view of the subsequent decisions of this Court, the law was correctly laid down in Sabajit Tewary vs. Union of India & Ors. [(1975) 1 SCC 485 1975 Indlaw SC 106], and it not whether the same deserved to be overruled. The majority opined that the Council of Scientific and Industrial Research (CSIR) was a 'State' within the meaning of Article 12 of the Constitution of India. This Court noticed the history of the formation thereof, its objects and functions, its management and control as also the extent of financial aid received by it. Apart from the said fact it was noticed by reason of an appropriate notification issued by the Central Government that CSIR was amenable to the jurisdiction of the Central Administrative Tribunal in terms of Section 14(2) of the Administrative Tribunals Act, 1985. It was on the aforementioned premises this Court opined that Sabhajit Tewary 1975 Indlaw SC 106 (supra) did not lay down the correct law. This Court reiterated the following six tests laid down in Ajay Hasia vs. Khalid Mujib Sehravardi [(1981) 1 SCC 722 1980 Indlaw SC 244]:

"(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with Governmental character.

(3) It may also be relevant factor whether the corporation enjoys monopoly status which is State conferred or State protected.

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.

(5) If the functions of the corporation are of public importance and closely related to Governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.

(6) 'Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference' of the corporation being an instrumentality or agency of Government."

17. It is, therefore, evident that in Ram Sahan Rai 2001 Indlaw SC 20275 (supra) also the cooperative society was held to be established under a statute. We may notice that in Nayagarh Cooperative Central Bank Ltd. & Anr. vs. Narayan Rath & Anr. [(1977) 3 SCC 576 1976 Indlaw SC 627], this Court was of the opinion that:

"The High Court has dealt with the question whether a writ petition can be maintained against a cooperative society, but we are inclined to the view that the observations made by the High Court and its decision that such a writ petition is maintainable are not strictly in accordance with the decisions of this Court. We would have liked to go into the question for ourselves, but it is unnecessary to do so as Respondent 1 by his writ petition, was asking for ***relief not really against a cooperative society but in regard to the order which was passed by the Registrar, who was acting as a statutory authority in the purported exercise of powers conferred on him by the*** **Cooperative Societies Act.** ***The writ petition was in that view maintainable."***

18. We may notice in some decisions, some High Courts have held wherein that a writ petition would be maintainable against a society if it is demonstrated that any mandatory provision of the Act or the Rules framed thereunder, have been violated by it. [See Bholanath Roy & Ors. vs. State of West Bengal & Ors. reported in (1996) Vol.1 Calcutta Law Journal 5021995 Indlaw CAL 105.]

19. The Society has not been created under any statute. It has not been shown before that in terminating the services of the appellant, the Respondent has violated any mandatory provisions of the Act or the Rules framed thereunder. In fact, in the writ petition no such case was made out.

20. For the foregoing reasons, the appeal being devoid of any merit is dismissed. However in the facts and circumstances of the case, there shall be no order as to costs.

Appeal dismissed

N.K. Sharma v Abhimanyu

Bench	S.B. Sinha, R.V. Raveendran
Where Reported	2005 Indlaw SC 604; (2005) 13 SCC 213; (2006) 2 SCC (Cr) 135; AIR 2005 SC 4303; 2005 CRLJ 4529; JT 2005 (12) SC 491; 2005 (4) RCR(Civil) 424; 2005(8) SCALE 313; [2005] Supp4 S.C.R. 207
Case Digest	**Summary:** [A.] Criminal - CpPC, 1973, ss. 197, 203, 482 - IPC, 1860, ss. 21, 499, 500 - Haryana Cooperative Societies Act, 1984, ss. 118, 123 - Constitution Of India, 1950, art. 309 - Haryana Civil Services (Punishment or Appeal) Rules, 1987 - Whether a Class I Officer of State Govt. (Haryana) deputed to work as Managing Director of a Co-operative Society is entitled to protection u/s. 197 of CrPC? - Held, there must be a reasonable connection between act and discharge of official duty by accused - Definition of 'Govt employee' cannot be extended for purposes other than sought to be achieved thereby - Provisions of rules, therefore, cannot be invoked for affording protection u/s. 197 of CrPC - Appeal dismissed.

Case No : Appeal (Cr.) 514 of 2001

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

1. Whether a Class I Officer of the State Government (Haryana) deputed to work as Managing Director of a Co operative Society is entitled to protection u/s. 197 of the Code of Criminal Procedure is in question in this appeal which arises out of a judgment and order dated 14.7.2000 passed by the High Court Punjab and Haryana at Chandigarh.

9. Sanction for prosecution of a public servant, the learned counsel would contend, is a valuable right. It was submitted that the High Court committed a manifest error in dismissing the Appellant's application u/s. 482 Cr.PC. relying on or on the basis of a decision of this Court in Mohd. Hadi Raja vs. State of Bihar and Another [(1998) 5 SCC 91 1998 Indlaw SC 169] without taking into consideration paragraph 25 thereof wherein it is laid down that such protection can be afforded by any statute or statutory rules framed by the State.

12. **As regards the availability of protection u/s. 123 of the Haryana Cooperative Societies Act, 1984,** the learned counsel for the Respondent would contend that only those employees who come within the purview of S. 123 thereof would be 'public servant' and not others and the Appellant herein does not answer the description of the employees specified therein.

24. We have noticed hereinbefore that the petition does not come within the purview of S. 123 of the Act.

25. At this juncture, we may notice that in B.S. Sambhu vs. T.S. Krishnaswamy [(1983) 1 SCC 11 1982 Indlaw SC 47], this Court emphasized there must be a reasonable connection between the act and the discharge of official duty by the accused.

26. The learned counsel for the Appellant submitted that the allegations made by the Respondent herein even if given face value and taken to be correct in its entirety would not attract the mischief of S. 499 of IPC in view of several exceptions carved out therein. From the judgment of the High Court it does not appear that such a question was raised therein.

27. We have noticed hereinbefore that the Appellant filed an application purported to be u/s. 203 of the Cr. PC before the Chief Judicial Magistrate. Such an application was not maintainable in view of the decision of this Court in Adalat Prasad vs. Rooplal Jindal and Others [(2004) 7 SCC 338 2004 Indlaw SC 666], wherein it has been held:

"15. It is true that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provisions of Ss. 200 and 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking S. 203 of the Code because the Criminal Procedure Code *does not contemplate a review of an order. Hence in the absence of any review power or inherent power with the subordinate criminal courts, the remedy lies in invoking S. 482 of the Code."*

28. [See also Poonam Chand Jain vs. Fazru (2005) SCC (Cri) 190 2004 Indlaw SC 870] For the reasons aforementioned, we do not find any merit in this appeal, which is dismissed accordingly.

However, the Appellant shall be at liberty to raise other contentions in an appropriate proceeding. Appeal dismisssed.

Oswal Agro Mills Limited v Minister of State For Cooperation and others

Bench	D.M. Dharmadhikari, Tarun Chatterjee
Where Reported	2005 Indlaw SC 1485; (2005) 12 SCC 359

Case No : C.A. No. 2961 of 2000

The Order of the Court was as follows:

1. This appeal with grant of leave has been filed by a company named M/s Oswal Agro Mills Ltd. which has purchased flats in the housing complex named Urmi Cooperative Housing Society Ltd. in Worli Sea Face, Mumbai. After purchase of the flats and becoming a member of the Housing Society, a dispute arose between the Society and the appellant regarding contribution towards repairs and maintenance fund and sinking fund due against it.

2. **The authorities under the Maharashtra Cooperative Societies Act, 1960 decided the dispute against the appellant and upheld the demand of contribution towards the two aforesaid funds at the agreed rates** on the basis of the total value of flats shown in the sale deed as Rs. 2,34,50,000 (Rs two crores, thirty four lakhs and fifty thousand). The dispute on rate and quantum of contribution was decided by the authorities under the Maharashtra Cooperative Societies Act against the appellant.

3. The writ petition filed in the High Court has been dismissed summarily. Learned counsel appearing for the appellant Company has taken us through the relevant bye laws of the Society and the resolution that was passed by the Society in the matter of contribution towards repairs and maintenance fund and sinking fund.

5. We have also heard learned counsel appearing for the Society who supported the demand. Our attention has been drawn to a letter dated 1-4-1991 of the appellant Company, after purchase of flats, addressed to the Secretary of the Housing Society in which the only deduction sought was value of the air conditioners, furniture and fixtures in the flats. The value stated by the appellant for the purpose of working out contribution towards repairs and maintenance funds and sinking funds is in the sum of Rs 2,34,50,000 (Rs two crores, thirty four lakhs and fifty thousand).

6. It is also explained to us that in the value of the flats, proportionate price of the land has not been added. In these circumstances, we find no ground to interfere with the action of the Society and the orders of the cooperative authorities.

7. As an interim arrangement, under order of this Court passed on 24-4-2000, the appellant agreed to pay a sum of Rs 10,92,709.25 on the basis of the book value of the flat. The aforesaid payment was inclusive of the interest which was charged at the rate of 21%. We find that interest charged by the Society is too high. The rate of interest therefore deserves to be reduced to 9%.

8. Let the Society now recalculate the total arrears towards the aforesaid two contributions from the appellant and present the demand for withdrawal of the amount before the Registrar of this Court. The total amount in deposit with this Court on withdrawal by the Society shall be duly adjusted towards the recalculated arrears against the appellant.

9. The appeal is disposed of accordingly. We make no order as to costs.

Appeal disposed of.

Deputy Registrar Coop. Societies and others v Bunnilal Chaurasia

Bench	H.K. Sema, Tarun Chatterjee
Where Reported	2005 Indlaw SC 1334; (2005) 11 SCC 570

Case No : C.A. No. 997 of 2002

The Order of the Court was as follows:

2. The respondent was appointed as a Cooperative Supervisor in the Uttar Pradesh **Cooperative Federal Authority. He was placed under suspension in contemplation of departmental proceedings initiated against him under Section 68 of the Uttar Pradesh Cooperative Societies Act (**hereinafter referred to as "the Act"). After the inquiry officer submitted his report, a resolution was passed on 21-12-1993, to dispense with the services of the respondent and to recover the amount from him under Section 68 of the Act. Thereafter, by the impugned order dated 20-1-1994, his services were terminated, preceded by a notice on the proposed punishment. Aggrieved thereby, the respondent filed a writ petition in the High Court of Judicature at Allahabad.

3. The learned Single Judge, after threadbare consideration of the submissions made by the respondent, dismissed the writ petition. We may mention here that the only contention raised in the writ petition was the violation of principles of natural justice inasmuch as no notice was purported to have been given to him affording an opportunity to explain his case. This contention was repelled by the learned Single Judge that sufficient notices were sent to him by registered post by the appellant but he failed to appear before the disciplinary authority. The learned Single Judge also noticed that on 10-7-1993 the respondent did not appear. Notices were also published in Dainik Jagran newspaper on 2-10-1993, 9-10-1993 and 28-11-1993. The respondent also moved as many as three applications on 13-7-1993, 2-10-1993 and 28-11-1993. From the finding recorded by the learned Single Judge, it appears that sufficient opportunity has been afforded to the respondent. Having failed to avail the opportunity, the respondent now is not permitted to turn back to say that no opportunity has been afforded to him.

4. The Division Bench of the High Court upset the order passed by the learned Single Judge mainly on two grounds. Firstly, no notice of proposed punishment has been given to the respondent. This finding is demolished by notice dated 13-7-1993. From the aforesaid notice, it is clear that the respondent was put to notice as to why he should not be dismissed from service. It appears that the respondent did not give a reply to the aforesaid notice. Therefore, the first ground on which the Division Bench upset the order of the learned Single Judge is erroneous. The second ground on which the Division Bench upset the order of the learned Single Judge is that, under Section 68 of the Act, there is no provision to order dismissal or removal of the respondent. While it is true that under Section 68 of the Act, there is no such provision but the learned counsel appearing

for the appellant contended that, in fact, the order of dismissal was passed under Regulation 68 and not under Section 68 of the Act.

6. Regarding affording an opportunity to the respondent, the finding recorded by the learned Single Judge has been affirmed by the Division Bench in the impugned order.

7. In the facts and circumstances of the case, we are of the view that the Division Bench was clearly in error in upsetting the well-merited order passed by the learned Single Judge. The order impugned passed by the Division Bench is, accordingly, quashed and the order passed by the learned Single Judge is restored.

Ishwar Singh v State of Rajasthan and Others

Bench	Arijit Pasayat, S.H. Kapadia
Where Reported	2005 Indlaw SC 6; (2005) SCC (L&S) 260; (2005) 2 SCC 334; AIR 2005 SC 773; 2005 (104) FLR 715; JT 2005 (1) SC 140; 2005 (1) LLN 1027; 2005(1) SCALE 68; [2005] 1 S.C.R. 96; 2005 (1) SLR 645; 2005 (2) UPLBEC 1242
Case Digest	**Subject:** Constitution; Practice & Procedure; Service **Summary:** [A.] Service - Socities - Rajasthan Cooperative Societies Act, 1965, ss. 123, 124, 125, 128 - Rajasthan Service Rules, 1951, r. 244(2)(i) - Rajasthan Cooperative Societies Rules, 1966, r. 41 - Rajasthan Service Rules, 1951 - Order of pre-mature retirement - Whether service Rules were clearly applicable to appellant? - Whether State Govt. could have exercised revisional power? - The employer society had decided to adopt the service rules long before the order directing pre-mature retirement was passed - State Government was competent to entertain the revision application as the Registrar was one of the two authorities indicated in s.128 to exercise revisional power - Impugned orders of the Single Judge and Division Bench of the High Court did not suffer from any infirmity to warrant any interference - Held, power of Govt. and Registrar in terms of s.128 excludes matters which are covered by s 125 i e revision by Tribunal - No infirmity in HC's judgment - Appeal dismissed.

Case No : Appeal (Civil) 31 of 2005(Arising out of S.L.P. (Civil) No. 22556 of 2003)

4. **Sadul Shahar Kray Vikray Sahakari Samiti (hereinafter referred to as the 'employer') is a society registered under the Rajasthan Cooperative Societies Act, 1965 (in short the 'Act'). The appellant was serving as its manager**. On consideration of service records of the appellant the employer concluded that there was continuous fall in his work performance and as such it was in the public interest to pre maturely retire him. He had attained the age of 56 years and served for more than 27 years. The Chief Executive officer issued an office order dated 1.4.1988 compulsorily retiring him from service under the provisions of Rule 244(2)(i) of the Rajasthan service Rules, 1951 (in short 'Service Rules'). The appellant challenged the said order by way of a revision petition before the Additional Registrar II, Cooperative Societies, Rajasthan Jaipur (in short 'Additional Registrar'). By order dated 9.5.1996, the revision was allowed on the ground that Rule 244(2) of the Service Rules was not applicable to the employer society and on the other hand his service conditions were governed by Rule 41 of the Rajasthan Cooperative Societies Rules, 1966 (in short the 'Rules').

   Under the said Rule approval of the Registrar is a condition precedent for pre mature retirement. Employees society challenged the decision of the Additional Registrar by way of revision before the State Government u/s. 128 of the Act. The Secretary, Cooperative Department, Government of Rajasthan, Jaipur (in short 'Secretary') found that the revision before the Additional Registrar was

not competent as the order was passed by the Administrator who was not an officer subordinate to the Registrar. He was, therefore, of the view that the Additional Registrar had no jurisdiction to hear the revision in terms of S. 128 of the Act. Accordingly, he set aside the order of the Additional Registrar. The order was challenged by the appellant u/art. 226 of the Constitution of India, 1950 (in short the 'Constitution') before the High Court.

The decision of the Privy Council in Maharajah Moheshur Sing v. Bengal Govt. 3 WR 45 (PC 1859 Indlaw PC 15)) to which reference was made by learned Senior Counsel, Shri T. L. Vishwanath Iyer, is very apt in this connection. Adverting to the basic concept of review, it was observed by the Privy Council:

"It must be borne in mind that a review is perfectly distinct from an appeal; that is quite clear from all these Regulations that the primary intention of granting a review was a reconsideration of the same subject by the same Judge, as contradistinguished to an appeal which is a hearing before another Tribunal."

Their Lordships added:

"We do not say that there might not be cases in which a review might take place before another and a different Judge; because death or some other unexpected and unavoidable cause might prevent the Judge who made the decision from reviewing it; but we do say that such exceptions are allowable only ex necessitate. We do say that in all prActicable cases the same Judge ought to review; ....."

14. It is, therefore, clear that the same Judge who disposes of a matter, if available, must "review" the earlier order passed by him inasmuch as he is best suited to remove any mistake or error apparent on the face of his own order. Again, he alone will be able to remember what was earlier argued before him or what was not argued. In our opinion, the above principle is equally applicable in respect of orders of review passed by quasi judicial authorities.

15. However, these principles about which there is no dispute have no application to the fActs of the present case. It was in reality not revision by a delegator. The State Government had nowhere delegated revisional power to the Additional Registrar. Rule 244 of the service Rules which is noted above, is applicable to the appellant clearly provides that an employee may be compulsorily retired after completion of 25 years of service.

20. Sub s. (2) of S. 124 provides that if the decision or order is made by the Registrar, appeal lies to the Government and if the decision or order is made by any other person, or a co operative society, the appeal lies to the Registrar. Therefore, under Chapter XIII a clear distinction is made between the State Government and the Registrar. The test is whether the two authorities with concurrent revisional jurisdiction are equal in rank.

It is, therefore, not correct as contended by learned counsel for the appellant that the two authorities i.e. the State Government and the Registrar are interchangeable. The power of the Government and the Registrar in terms of S. 128 excludes matters which are covered by S. 125 i.e. revision by the Tribunal.

21. In view of the aforesaid position, we find no merit in this appeal which is accordingly dismissed without any order as to costs.

Appeal dismissed.

N. Balaji v Virendra Singh and Others

Bench	P.P. Naolekar, P.K. Balasubramanyan
Where Reported	2004 Indlaw SC 858; (2004) 8 SCC 312; 2005 (3) Bom.C.R. 370; 2004 (114) DLT 304; JT 2004 (8) SC 449; 2004(8) SCALE 528; [2004] Supp5 S.C.R. 96; 2005 (1) UPLBEC 268
Case Digest	**Summary:** Civil Procedure - Election - Practice and Procedure - Trusts and Associations - Multi State Cooperative Societies Act, 2002 - Election petition - Central Registrar accepted petition - HC set aside order of registrar on ground that it is barred by limitation - Whether petition is barred by limitation? - Held, petition has to be read in continuation of several representations and objection petitions filed earlier, from time to time and cannot be considered to be a separate and independent petition - Central Registrar shall now proceed with hearing of petition of appellant - Appeal allowed.

Case No : Appeal (Civil) 6522 of 2004 (arising out of SLP) No. 8717 of 2004)

1. This appeal is directed against the judgment of the High Court of Delhi in CWP No. 3706 of 2003. **National Cooperative Consumers Federation of India Ltd.(NCCF for short) is a duly registered Society under the provisions of Multi State Cooperative Societies Act, 2002 (hereinafter to be referred to as the 'Act') and before the Act came into** force by the provisions of Multi State Cooperative Societies Act, 1984.

2. A notice for the election of the Directors of respondents Society was published on 12.6.2002 under the provisions of Multi State Cooperative Society Act 1984 (hereinafter to be called as the 'Old Act') and the rules framed thereunder. On 23.7.2002 appellant made a representation/objection to the concerned authorities contending therein that the defaulting members should not be given voting rights in the election of the Directors. A list of eligible voters for the ensuing election of the Directors was published. The appellant feeling aggrieved by the voters list published, which according to the appellant, contains the names of the persons who were defaulters, sent a representation dated 7.8.2002 to the Minister requesting him to de-list the names of any ineligible voters from the voters list. On 12.8.2002, the appellant again sent a representation to the Central Registrar to de-list the names of the non-eligible persons from the voters list. It is the case of the appellant that in spite of the representation having been made for delisting the names of the non-eligible persons from the voters list, the election was held on the basis of the electoral roll published on 17.8.2002 and respondents 1, 2 and 3 were declared elected as Directors of the Society. On 21st August, 2002 the appellant again sent a representation to Agriculture and Cooperation Minister, Govt. of India, New Delhi and raised therein an election dispute. The representation inter alia stated that the voters list has been irregularly prepared; non-eligible members have been included in the voters list. The nominations filed by the candidates were proposed and seconded by the members who do not belong to the same zone. The proposers

and seconders are not the valid voters as they have not paid the minimum share capital before 15.7.2002 to NCCF.

3. The delegate having a valid vote, has only one vote in the same zone and not in the other zone, according to **Section 22 of Multi State Cooperative Societies Act 1984 and Bye Law 19) of NCCF Act.** Instead of one vote, according to the Bye Laws, each delegate has cast five votes which is illegal and untenable and therefore directions would be necessary for each delegate to cast only one vote, according to the Bye Laws etc.

6. The Division Bench of the Delhi High Court, took note of the submission of the appellant's counsel, has also recorded the submission made by Mr. V.P. Singh, learned counsel for the respondents that **the respondents have no objection if the matter is referred to the Central Registrar under the Act of 1984 for deciding the disputes in terms of Sections 74(2)) and 74(3) of Multi State Cooperative Societies Act, 1984. The order further records that Mr. V.P. Singh** says that if the dispute is barred by limitation, it will be open for the respondents to raise the said objection. The question of limitation will be decided by the Central Registrar. On these submissions the Court has issued the following directions:

"The representation of the petitioners raising disputes or any other petition containing the disputes regarding setting aside of the election of the Board of Directors held on 7th August 2002 be referred to the Central Registrar for adjudication under the Act *of 1984. The Central Registrar is directed to decide the said reference within a period of four months in accordance with law. The petition stands disposed of ".*

14. The matter can be looked from the other angle as well. Sub-s.(3) of Sec.75 of the 1984 Act authorizes the Central Registrar to condone the delay in referring the dispute if the Central Registrar is satisfied that there was a sufficient cause for not referring the dispute within the period of limitation. The requirement of sub-s.(3) is the satisfaction of the Central Registrar for the sufficient cause, and is not dependent on moving of an application for condonation of delay by the petitioner. Even without there being any application for condonation of delay, if the facts which emerge in the case are sufficient to satisfy the Central Registrar of the reasonable cause for not referring the dispute within the period of limitation, the Central Registrar can condone the delay in exercise of the powers conferred on him under sub-s.(3) of Sec.75 of the Act.

15. On the facts emerging in the case, we find that the discretion which has been exercised in the facts and circumstances of the case in condoning the delay by the Central Registrar is in accordance with the established principles of law and justice and it was not a fanciful or arbitrary exercise of discretion. The exercise of the discretionary power can be interfered by the High Court only if the order passed is violative of some fundamental or basic principle of justice and fair play or suffers from any patent or flagrant error. We do not find any such element present vitiating the exercise of power vesting in the Central Registrar to condone the delay and entertain an election dispute.

16. For the aforesaid reasons the decision of the Division Bench of the High Court of Delhi is set aside. The Central Registrar shall now proceed with the hearing of the petition of the appellant and expeditiously determine the same on merits. The appeal is allowed but in the circumstances of the case there shall be no order as to costs.

Appeal allowed

Bhagwandas Laxmidas Thakkar v MD, Dakshini Brahman Coop. Bank Limited

Bench	R.C. Lahoti, P.K. Balasubramanyan, P.P. Naolekar
Where Reported	2004 Indlaw SC 1933; (2004) 13 SCC 406

Case No : C.A. No. 6304 of 2004 (Arising out of S.L.P. (C) No. 9010 of 2004)

The Order of the Court was as follows:

Leave granted.

1. The **Monopolies and Restrictive Trade Practices Commission (for short "the Commission") has directed that the proceedings initiated by the appellant before the Commission are not maintainable in view of Section 91 of the Maharashtra Cooperative Societies Act, 1960.**

2. We do not find any fault with the view taken by the Commission.

3. The appellant has the liberty of raising a dispute before the Registrar of Cooperative Societies at Mumbai or the Cooperative Court at Mumbai, as the case may be. Let the appellant raise the dispute by filing the same before the Registrar of Cooperative Societies or the Cooperative Court, as the case may be, within a period of six weeks from today. On that being done, the Registrar of Cooperative Societies or the Cooperative Court, as the case may be, shall hear and decide the same on merits within a period of six months.

   The learned counsel for the respondent Bank has stated that the respondent shall not raise the plea of limitation or delay as a bar to adjudication on merits of the dispute raised by the appellant.

The appeal stands disposed of in the abovesaid terms.

Appeal disposed of.

New Friends Co-Operative House Building Society v Rajesh Chawla And Ors.

Bench	Arijit Pasayat, Doraiswamy Raju
Where Reported	2004 Indlaw SC 272; (2004) 5 SCC 795; AIR 2004 SC 2521; 2004 (3) ALD(SC) 113; 2004 (3) AWC 2221; 2004 (111) DLT 381; JT 2004 (Supp1) SC 359; 2004 (3) RCR(Civil) 213; 2004(4) SCALE 799; [2004] Supp1 S.C.R. 489; 2004 (2) UPLBEC 2009
Case Digest	**Summary:** [A.] Trusts & Associations - Co-operative Societies Act, 1912 - Whether a member was a defaulter - Right of society or member for having their rights and liabilities finally and effectively get adjudicated by arbitration proceedings statutorily provided for under statute in lieu of proceedings before civil court, and conclusions arrived at or recorded in course of election proceedings shall be only without prejudice to and ultimately subject to all or any such proceedings and decisions by such statutory forums - Decision, should be made subject to any adjudication in Statutory Arbitration proceedings and not to decide finally civil liabilities inter se of parties - Matter remitted back for fresh adjudication.

Case No : Appeal (civil) 538 of 2004

The Judgment was delivered by : Arijit Pasayat, J.

1. The appellant-society calls in question legality of the judgment rendered by Division Bench of the Delhi High Court whereby it was held that respondents 1 to 3 were not defaulters and, therefore, demands raised against them for the period prior to 4th August, 1984 were unsustainable. Respondents Nos. 1 to 3 were the writ petitioners nos. 1 to 3 in the writ petition filed by them before the High Court. There was further direction given by the High Court that there may have been many members to whom similar demands have been sent. They were also entitled to refund of any payment taken by the society from them.

4. The question whether a member was a defaulter had to be adjudicated in appropriate proceedings and writ application prima facie was not a proper course. Assuming without accepting that the stand taken for the alleged defaulters can be entertained and gone into in the course of conduct of election, it could, if at all be only for the limited purpose of election and the right of the society or the member for having their rights and liabilities finally and effectively get adjudicated by arbitration proceedings statutorily provided for under the statute in lieu of proceedings before civil court, and the conclusions arrived at or recorded in the course of election proceedings shall be only without prejudice to and ultimately subject to all or any such proceedings and decisions by such statutory forums. In any event without proper hearing and consideration of relevant materials, High Court seems to have arrived at abrupt conclusions. High Court's order

is consequently unsustainable for more than one reason. To add further to the vulnerability of the High Court's judgment is the direction given for refund and in favour of those who have not approached the Court also, as though it is deciding statutory Arbitration proceedings, envisaged under the Co-operative Societies Act concerned. It was no body's case that any other person has been illegally asked to pay, or that any such collection has been illegally made. Direction for refund to other members is without application of mind and totally uncalled for. The records and correspondences were apparently called for. If the High Court wanted to decide the matter it should have been done after looking into them which has not been done. Even such decision, as noticed above, should be made subject to any adjudication in the Statutory Arbitration proceedings and not to decide finally the civil liabilities inter se of parties. Therefore, we set aside the judgment of the High Court and remit the matter back for fresh adjudication. We make it clear that except quashing the directions given for refund to other members and restraining the High Court from giving any such directions, rest of the matter shall be adjudicated on its own merit in accordance with law and such exercise could only be for the limited purpose of treating the person(s) concerned "defaulters or not" for participating in the election process and not for foreclosing the right of the society to recover any amount as such, through the forums prescribed under the concerned Co-operative Societies Act and in accordance with law.

5. It appears that respondents 1 to 3 have filed application before the Registrar of the Society on 27.8.2003 for referring the dispute to arbitration, which alone is the proper procedure to get their civil liability finally and effectively adjudicated. The High Court shall consider the desirability of adjudicating the issues raised in the writ petition in view of the recourse taken by respondents 1 to 3 (writ petitioners before the High Court) themselves before the Competent Authorities, availing already of their effective remedies. The appeal is accordingly disposed of. There shall be no order as to costs.

Appeals disposed of

Gayatri De v Mousumi Co-operative Housing Society Limited and

Bench	AR. Lakshmanan, S. Rajendra Babu, G.P. Mathur
Where Reported	2004 Indlaw SC 344; (2004) 5 SCC 90; AIR 2004 SC 2271; 2004 (4) CHN 23; JT 2004 (5) SC 554; 2004 (3) RCR(Civil) 204; 2004(4) SCALE 741; [2004] Supp1 S.C.R. 356
Case Digest	**Summary:** [A.] Trusts & Associations - Constitution Of India, 1950, arts. 12, 226 - Companies Act, 1956 - West Bengal Co-operative Societies Act, 1983, ss. 2(18), 2(28), 2(32), 2(38), 69, 72, 79, 80, 80(1)(a), 80(1)(b), 80(1)(c), 80(c), 82, 82(b), 85, 85(3), 87, 87(2) - West Bengal Co-operative Societies Rules, rr. 127, 128, 135, 153, 185(2) - Maintainability - Whether right of ownership of flat in multi-storied building under Act is inheritable and transferable - Whether in event of deceased member dies leaving no more nominee any person to inherit interest of deceased member for such apartment should be inherited by all legal heirs or by one of legal heirs in event other legal heirs give their rights in favour of such single legal heir may also arise - Special Officer was appointed by HC to discharge functions of Society, therefore, he should be regarded as a public authority and hence, WP maintainable - Appellant being one of heirs of deceased member was and still is entitled to succeed to estate of deceased member as per mandatory provisions of statutes and that being so right, title and interest of deceased member in apartment of Society devolves upon his heirs and in that background, Section 85(3) and Rule 135(5) neither have nor can have any application in instant case because there cannot be any manner of doubt that on death of a member of a Society his share or interest in Society shall, in absence of a nominee, be transferred to a person who appears to Board to be entitled to in accordance with Rules, possession of such interest as part of estate of deceased member and herein in instant case son who himself is admittedly not a member of Society in question or any other Housing Society became entitled to be considered for such allotment immediately he gave notice to appropriate authority which too long before alleged re-allotment was said to have been made - Appeal allowed.

Case No : Appeal (civil) 3523 of 1998

2. The appellant herein filed a writ petition before the High Court of Calcutta praying, inter alia, for cancellation of the letter dated 1.11.1988, issued by the Special Officer of the Society, for declaration that the possession of the Flat being No. A- 2 on 5th Floor should be given to the legal heirs of late Sati Prasanna Bhowmick, the deceased member, upon receipt of all dues in respect of the said apartment by the said Society and for an interim order of injunction restraining the

society and the Special Officer from alienating transfer of the said apartment No.2 to anybody other than the legal heirs of the deceased member and for other reliefs.

29. The appellant being one of the heirs of the deceased member was and still is entitled to succeed to the estate of the deceased member as per the mandatory provisions of the statutes and that being so the right, title and interest of the deceased member in the apartment of the Society devolves upon his heirs and in that background , S. 85(3) and Rule 135(5) neither have nor can have any application in the instant case because there cannot be any manner of doubt that on the death of a member of a Society his share or interest in the Society shall, in the absence of a nominee, be transferred to a person who appear to the Board to be entitled to in accordance with Rules, possession of such interest as part of the estate of the deceased member and herein in the instant case the son who himself is admittedly not a member of the Society in question or any other Housing Society became entitled to be considered for such allotment immediately he gave notice to the appropriate authority which too long before the alleged re-allotment was said to have been made, In our opinion, the order passed by the Special Officer re-allot the flat to a stranger even after he had received letter regarding transfer of ownership in favour of legal heirs in December, 1986, long before such alleged re-allotment, claimed to have been made in April, 1988, that is, more than 16 months from the receipt thereof when giving any opportunity of being heard and without deciding the question as to who was entitled to the said flat in accordance with law. The said action of the Special Officer who is a statutory functionary was not only improper but also illegal, arbitrary and motivated.

30. In fact, the respondent-Society has informed that the allotment in favour of the deceased allottee stood cancelled because of no appropriate person could be named as legal heir of the allottee in whose in whose favour respondent-Society was to make the allotment and as such the Society has been threatening of re-alloting the earmarked flat for the deceased allottee to a stranger ignoring the rights of the legal heirs.

31. It is now brought to our notice that the flat has not been allotted to a third party and remains vacant. The allotment letter of membership of the flat to the father of the appellant (Annexure P-4) dated 29.11.1982 clearly stipulates that the right and the interest in the Society of the member will be governed by the provisions of the Act, the Rules made thereunder and the bye-laws of the Society and that the members will also be liable to be discharged his obligations as the member of the Society in accordance with the abovementioned Act, Rules and the bye- laws.

32. It was then argued by Shri S.B. Sanyal that the appellant being allottee of Flat No. 4-A/2 in the same building is not entitled to a second flat being No. 5-A/2 u/s. 85(3) of the Act, and Rule 135 of the Rules. This argument cannot be countered with reference to the letter dated 6.12.1986, the letter written by Dr. Subrata Bhowmick to the Special Officer of the Society. The said letter reads thus:

39. The appellant herein filed a writ petition in question in the nature of mandamus commanding the respondent therein not to give effect to the letter dated 1.11.1988 issued by the Special Officer of the Society and to forbear from acting on the basis thereof and pursuant thereto. Thus it is seen that the subject matter of the writ petition is the order passed by the Special Officer in discharging of

his statutory functions, the writ petition is maintainable in law. The Special Officer is appointed under the provisions of the Act, and as such he is a statutory Officer and, therefore, he should be regarded as a public authority. Apart from that Art. 226 of the Constitution is not confined to issue of writ only to a public authority, the bar extends also to issue directions to any person. In our opinion, in a case where the Cooperative Society is under the control of a Special Officer, a writ would lie.

Petition allowed.

Mehsana District Central Co-Operative Bank and Others v State of Gujarat and Others

Bench	H.K. Sema, S.N. Variava
Where Reported	2004 Indlaw SC 961; (2004) 2 SCC 463; AIR 2004 SC 1576; 2004 (4) Bom.C.R. 948; [2004] 118 Comp Cas 507; 2004 DRTC 36; JT 2004 (1) SC 628; 2004 (2) RCR(Civil) 102; 2004(2) SCALE 155; [2004] 1 S.C.R. 1125; 2004 (2) UPLBEC 1561
Case Digest	**Summary:** Constitution - Trusts & Associations - Banking Regulation Act, 1949, ss. 5(b),6(1)(a) and 6(Z) - Constitution of India, 1950, art. 254, sch.7, List II(Entry 32) - Gujarat Co-operative Societies Act, 1961, ss. 2(7), 2(19) and 71 - (A) Whether there is inconsistency between the State Act and the Central Act? - Before any repugnancy can arise the conditions which must be satisfied are, (i) that there is a clear and direct inconsistency between the Central Act and the State Act, (ii) that such an inconsistency is absolutely irreconcilable and (iii) that the inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other - Held, there is no repugnancy or inconsistency between the State Act and the Central Act which satisfies the test set out by this court in M. Karunanidhi's case, appeal devoid of merits - (B)Whether High Court justified in issuing a writ of mandamus directing the authorities under the Gujarat Co-operative Societies Act to initiate necessary proceedings against the respondents/ appellants herein for having committed breach of s. 71 of the Act? - Held, the High Court was clearly justified in issuing a writ of mandamus, which cannot be faulted - Appeals dismissed.

Case No : Appeal (civil) 3040 of 1998 With C.A.No. 3041 of 1998

2. The appellant-society was registered under the Gujarat Co-operative Societies Act, 1961 (hereinafter referred to as the Act). It was carrying on the banking activities. Section 71(1)(a) to (f) of the Act enumerates various institutions in which a co-operative bank is to make investments. Clause (g) of Section 71(1) empowers the State Government to permit any society to invest the funds in any institution other than those mentioned in clauses (a) to (f) of the Section. Section 71 of the Act is relevant for the purpose of disposal of the present appeal. We shall be dealing with this Section in detail at an appropriate time. The appellant-bank sought permission of the State government to invest funds in an institution outside those falling under clauses (a) to (f) of Section 71(1) of the Act. However, the Government declined the request. Inspite of the refusal, the appellant-bank invested the funds in Mutual Fund, which was outside the purview of clauses (a) to (f) of Section 71 of the Act. It is stated that for non-compliance of Section 71 of the Act,

notices were issued to the appellants calling for an explanation as to why action should not be initiated against them as contemplated under the Act. It is also stated that the appellants have not filed their replies to those notices and the matter is still pending with which we are not concerned in this appeal.

14. A complaint was filed by the respondents herein to **the effect that the Central Cooperative Bank is governed by the provisions contained in the Gujarat Cooperative Societies Act, 1961 and the Rules framed thereunder**. It is further alleged that the **Mehsana District Central Cooperative Bank had violated the provisions contained in Section 71 of the Gujarat Cooperative** Societies Act by investing large sums in undertakings other than those enumerated in Section 71(a) to (f). Consequently, the Mehsana District Central Cooperative Bank had lost substantial amount. Though the matter had been brought to the notice of the State Government, Registrar of Cooperative Societies and the District Registrar, no action had been initiated against the Mehsana District Central Cooperative Bank and the Members of the Board of Directors. **A prayer was also made for issuance of a writ of mandamus directing the authorities under the Gujarat Cooperative Societies Act to initiate necessary proceedings against the respondents/appellants herein for having committed breach of the provisions contained in Section 71 of the Act.** It was further alleged that the Mehsana District Central Cooperative Bank had invested a sum of Rs. 95 crores in four different establishments which do not fall within the ambit of institutions enumerated in Section 71(a) to (f) of the Act without the approval of the State Government or the appropriate authority.

16. In the facts and circumstances stated above, the High Court by the impugned order issued a writ of mandamus, **directing respondent Nos. 4 and 5 to take appropriate action against the appellants in accordance with the provisions contained in the Gujarat Cooperative Societies Act** and the rules framed thereunder. We do not see any infirmity in the impugned order. the Acts and Rules are made to be followed and not to be violated. When the Statute prescribes the norms to be followed, it has to be in that fashion. Converse would be contrary to law. If there is any allegation of violation of statutory rules which have been brought to the notice of the authorities and if the concerned authorities do not perform their statutory obligation, as in the present case, any aggrieved citizen can always bring to the notice of the High Court about the inaction of the statutory authorities and in such event it would always be open to the High Court to pass an appropriate order as deemed fit and proper in the facts and circumstances of the case. In the present case, the facts as alluded above, would clearly reveal that the High Court was clearly justified in issuing a writ of mandamus, which cannot be faulted.

17. These two appeals are dismissed being devoid of merits. Parties are asked to bear their own costs.

Appeals dismissed.

Haryana State Co-Operative Land Development Bank Limited v Haryana State Co-Operative Land Development Banks Employees' Union and Another

Bench	Arijit Pasayat, Doraiswamy Raju
Where Reported	2003 Indlaw SC 1402; (2004) SCC (L&S) 257; (2004) 1 SCC 574; 2004 (1) CLR 317; 2004 (100) FLR 428; JT 2003 (10) SC 383; 2004 (1) LLJ 583; 2004 (1) LLN 527; 2003(10) SCALE 1112; [2003] Supp6 S.C.R. 1039
Case Digest	**Summary:** Service - Haryana Cooperative Societies Act, 1984 - Payment Of Bonus Act 1965, ss. 2A, 3, 10, 34, 34A and 37(2) - Whether the employees working with Primary Agricultural Co-operative Banks (in short 'Primary Banks') are entitled to bonus at the same rate at which it was paid to employees working in the Apex Bank i.e. the Haryana State Co-operative Land Development Bank Limited? - A proviso does not travel beyond the provision to which it is a proviso - It carves out an exception to the main provision to which it has been enacted as a proviso and to no other - Held, the Primary Banks have independent corporate existence and were undisputedly maintaining separate Balance Sheet and Profit and Loss account therefore, proviso to s. 3 of the Act has full application - High Court did not take into account the effect of the proviso to s. 3, and third proviso to s. 34 - Impugned judgment of HC is indefensible and is set aside - Appeal allowed.

Case No : Appeal (Civil) 10091 of 2003, Special Leave Petition (Civil) 3729 of 2003

1. The pivotal issue involved in this appeal relates to the question as to whether the employees working with Primary Agricultural Cooperative Banks (in short 'Primary Banks') are entitled to bonus at the same rate at which it was paid to employees working in the Apex Bank (also described as 'State Bank') i.e. The Haryana State Cooperative Land Development Bank Limited. The Apex Bank is governed by the Haryana Cooperative Society Act, 1984 (in short "the Act"). The appellant transacts its business mainly through Primary Banks which are its members. The members of the Apex Bank belonging to the area of operation of the particular Primary Bank automatically become members of the concerned Primary Bank from the date of registration. Staff of the Primary Banks except class IV employees are drawn from the Apex Bank out of the cadre maintained by it in terms of clause 70 of the model by- laws applicable to the Primary Banks. The respondent no.1-union raised a demand stating that it is entitled to bonus at the rate applicable to employees of the Apex Bank. The claim was resisted by the Primary Banks on the ground that they are separate entities with separate Balance Sheet and Profit and Loss accounts and have a distinct cooperative and corporate identity under the Act and, therefore, is not required to pay bonus at the same rate as the employees of the Apex Bank in terms of Payment of Bonus Act, 1965 (in short 'the Act'). Accepting the writ petition filed by respondent no.1-union, learned

Single Judge of the Punjab and Haryana High Court directed payment of bonus at the rate payable to the staff working with the Apex Bank, which is also described as the State Bank in the rules framed by the Registrar of Cooperative Societies under Section 37(2) of the Act. The view was confirmed by a Division Bench in Letters Patent Appeal by the impugned judgment.

12. The allocable surplus is an amount calculated out of the available surplus. How the available surplus is to be computed is provided under Section 5 of the Act. It is determined after deducting from the gross profit such amounts as are detailed in Section 6 of the Act. The inevitable result is that the gross profit has to be worked out and therefrom the prior charges mentioned in clauses (a) to (d) of Section 6 are to be deducted. Gross profit is determined in terms of Section 4 of the Act. In case of non-banking companies, it is calculated in the manner prescribed in the Second Schedule while in case of banking company it is calculated in the manner specified in the First Schedule.

13. The payment of minimum bonus is provided in Section 10 of the Act and is fixed at 8.33 percentage of the salary or wages earned by the employee. The entitlement of higher bonus comes in case the allocable surplus permits payment of higher bonus in terms of the applicable formula. A reading of the impugned judgment shows that the High Court was of the view that Rule 21 had overriding effect vis-vis Section 34, by referring to Section 34-A of the Act. The view is clearly untenable. Rule 21 was interpreted to mean as if all other provisions of the Act had to give way to Rule 21. It is really not so. Sections 34 and 34-A make the position clear. The Primary Banks have independent corporate existence and were undisputedly maintaining separate Balance Sheet and Profit and Loss account. Therefore, proviso to Section 3 of the Act has full application. Unfortunately, the High Court did not take into account the effect of the proviso to Section 3, and third proviso to Section 34.

14. As noted above, separate books of accounts were maintained and separate Balance Sheet and Profit and Loss account were prepared. The primary co-operative banks are distinct cooperate entities with their own respective registration or Incorporation. As observed by this Court in M/s. Alloy Steel Project v. The workmen (1971 (1) SCC 536 1971 Indlaw SC 128) and The K.C.P. Employees' Association, Madras v. The Management of K.C.P. Ltd., Madras and Ors. (1978 (2) SCC 42 1978 Indlaw SC 459), where in a company having number of undertakings separate accounts are kept for each separate undertaking though it is not a requirement of the Companies Act, 1956 (in short 'the Company Act'), they shall be treated as different undertakings for the purpose of the Act. These aspects do not appear to have been considered by the High Court which erroneously proceeded to hold about Rule 21 having overriding effect over Section 34. Rules are framed under Section 32 of the Act. Therefore, question of Rules have overriding effect does not arise.

16. The impugned judgment is indefensible and is set aside and the writ petition filed before the High Court shall stand dismissed. The appeal succeeds, but in the circumstances without any order as to costs.

Appeal allowed.

The Apex Co-operative Bank of Urban Bank of v The Maharashtra State Co-operative Bank Limited

Bench	S.N. Variava, H.K. Sema
Where Reported	2003 Indlaw SC 917; (2003) 11 SCC 66; AIR 2004 SC 141; 2004 (4) Bom.C.R. 337; [2003] 117 Comp Cas 618; JT 2003 (8) SC 170; 2003(9) SCALE 84; 2003 (1) SCW 5742; 2003 (6) SLT 632; [2003] Supp4 S.C.R. 1071; 2003 (8) Supreme 400; 2004 (1) UPLBEC 341
Case Digest	**Subject:** Banking & Finance; Trusts & Associations **Keywords:** Deposit Insurance And Credit Guarantee Corporation Act, 1961, Goa, Operation, Multi-State Co-Operative Societies Act, 1984, Banking Laws (Application To Co-Operative Societies) Act, 1965, Companies Act, 1948, National Bank For Agriculture and Rural Development Act, 1981, Nabard, Maharashtra Co-operative Society Act, 1960, Multi Unit Co-operative Societies Act, 1942 **Summary:** [A.] Banking & Finance - Multi-State Co-Operative Societies Act, 1984 - Multi Unit Co-operative Societies Act, 1942, s. 2 - Co-Operative Societies Act, 1912 - Companies Act, 1948, s. 332 - Banking Regulation Act, 1949 - National Bank for Agriculture and Rural Development Act, 1981,s. 2(u) - Maharashtra Co-operative Societies Act, 1960, s. 70 - Appellants made an application to Reserve Bank of India for a licence to start a bank for Maharashtra and Goa - Whether a co-operative society registered under Multi State Act can be granted a license by RBI to commerce and carry on banking business - whether a co-operative society registered under Multi state Act can be recognised and notified by state Govt. as a state Co-operative Bank - whether a co-operative society registered under Multi state Act, which has been recognised and notified by one state Govt. as a state co-operative bank for that state, can be granted a License by RBI to commence and carry on banking activities in other states in which it has not been recognised as a state co-operative bank - Held, RBI by virtue of its power u/s. 22 cannot grant a license to any co-operative bank unless it is a state co-operative bank or a central co-operative bank or a primary co-operative bank - It would be necessary that a declaration under NABARD Act be first obtained - appellants could not have been declared as a state co-operative bank under NABARD Act and it will have to be held that RBI cannot issue it a license to carry on banking business - RBI can only give a license to a state co-operative bank which has been so declared by a particular state - As definition of co-operative societies in NABARD Act is restricted to co-operative societies registered under state Acts, and as provision is for a state to declare a

	cooperative society as a 'state co-operative bank', license, which can be issued by RBI, can only be in respect of that state - Merely because one state declares a co-operative bank' would not enable to RBI to issue that society a license to carry on banking business in other states or in rest of country.

Case No : Appeal (Civil) 439 of 1997, Appeal (Civil) 8478 of 2003

2. On 28th of August, 1993, the Appellants appear to have made an application to the Reserve Bank of India (hereinafter referred to as RBI) for a license to start an Apex Bank for Maharashtra and Goa. The RBI by its letter dated 25th April, 1994 inter alia stated as follows:

"2. As you are aware, the proposed bank requires to be got registered under the Multi State Co-operative Societies Act, 1984 *since its area of operation extends beyond the boundaries of a State and as such it would not be a co-operative Bank as defined in the* Banking Regulation Act, 1949 *(as applicable to Co-operative Societies), at present. Hence an amendment to the* Banking Regulation Act, 1949 *is considered necessary. The Government of India has already been apprised of the amendments needed in the context of establishment of National Co-operative Bank of India (NCBI) registered under the* Multi State Co-operative Societies Act, 1984 *and other similar banks.*

3. In view of the foregoing, you may please approach the Reserve Bank only after the needed legislative amendments are carried out by government of India to bring the NCBI as also other Banks similar to those proposed by you within the definition of Co-operative bank's under the Banking Regulation Act, 1949 *(as applicable to Co-operative Societies)."*

3. The Appellants then got themselves registered as a Multi State Co-operative Society under the Multi State Co-operative Societies Act, 1984 (hereinafter referred to as the Multi State Act) on 10th October, 1994. After the Appellants got themselves registered they accepted some entrance fees and some shares subscription from members. This was the only activity carried on by the Appellants. By a Notification dated 30th December, 1995, issued by the State of Maharashtra the Appellants were declared as a State Co-operative Bank within the meaning of S. 2(u) of the National Bank for Agriculture and Rural Development Act, 1981 (hereinafter referred to as the NABARD Act). Thereafter, two directions/orders dated 25th January, 1996 and 14th May, 1996 were issued by the Commissioner for Co-operation and Registrar of Co-operative Societies, Maharashtra State advising/directing deploying of funds by all Urban Co-operative Banks to the Appellants. These directions were issued u/s. 70 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as the MCS Act). On 22nd March, 1996 the RBI gave a banking license to the Appellants u/s. 22(1) read with 56(o) of the Banking Regulation Act, 1949. This was for the States of Maharashtra and Goa.

25. Thus now Co-operative Societies whose objects were not confined to one province were deemed to be registered also in the other province. However, for purposes of registration, control and dissolution, they continued to be subject to the "law relating to cooperative societies in force for the time being in the province in which it was actually registered. Thus the term "under any Act relating to co-operative societies in force in any province" clearly applied to the local laws relating to co-operative societies in force in a province i.e. local law prevailing in that province.

26. Another aspect which must be noticed is that in the Constitution of India, the subject pertaining to Co-operative Societies is in the State list i.e. Entry 32 of List II of Schedule VII. The Union list has Entry 44 of List I of Schedule VII which deals with Corporations. In this case we are not concerned with the validity of a Central Legislation and thus do not deal with that aspect. For purpose of the Judgment we will take it that a co-operative society with objects not confined to one State would fall within the term Corporation, and thus a Central Legislation may be saved. However, from the Constitutional provisions it is clear that matters pertaining to co-operative societies are in the State list. Thus many States have enacted laws relating to co-operative societies. We have not seen other Acts. However, as this case concerns a society in Maharashtra, the Maharashtra Co-operative Societies Act was shown to us. Significantly this law does not define a co-operative society. It did not need to, as a Society registered under it would be automatically covered. The need to define a co-operative society arises only in a Central Legislation which does not cover all cooperative societies and thus needs to indicate to which Society it applies.

31. A society which is registered under an Act, like the Multi State Act, would not be under the regulation of the Registrar of the State. It was submitted that if the Legislature intended to restrict the application of NABARD Act to cooperative societies registered under local laws it would have used the words "of any State". It was submitted that the fact that the Legislature has not used the words "of any State" indicates that the co-operative society could be registered under any law in force in any State. We are unable to accept this submission. The Legislature could not have used the words "of any State". That would have meant that a co-operative society registered under a law in force in State 'A' could be considered as a co-operative society in States 'B', 'C' or 'D' also. That was not what the Legislature intended. The words "in any State" indicate that the co-operative society must be registered under the law in force in any State in which it wants to operate.

32. It must be mentioned that it was submitted by Mr. Andhyarujina that a co-operative society registered under the Co-operative Societies Act, 1912 can operate in more than one State. It was submitted that this showed that laws dealing with co-operative societies, which operate in more than one State, were meant to be covered. We are unable to accept this submission. As seen above under the provisions of the Co-operative Societies Act, 1912 the registration could only be in one State. The Co-operative Societies Act, 1912 dealt with local societies. As it was found, that even though the registration could only be in one State, the societies also operated in other States, the Legislature enacted the Multi-Unit Co-operative Societies Act, 1942 (hereinafter referred to as the Multi-Unit Act).

33. Under the Multi-Unit Act if a society had objects not confined to one State then such a society was deemed to be registered even in other States, but for purposes of registration, control and dissolution it was the State law where it was first registered which continued to operate. Thus, after the enactment of the Multi-Unit Act it became clear that even though a society may be deemed registered under the Multi-Unit Act, but for purposes of registration, control and dissolution it continued to be bound by the law relating to co-operative societies for the time being in force in the State in which it was first registered. More importantly after the enactment of the Multi-Unit Act, the Co-operative Societies Act, 1912 only dealt with co-operative societies confined to one province. Societies with objects not confined to one province were deemed registered

under the Multi-Unit Act. Thus the use of the words "Co-operative Societies Act, 1912" in the NABARD Act, also indicates that the definition is restricted to Societies registered under the law relating to co-operative societies in the State in which they want to operate. This is clear because significantly the Legislature has not provided that Societies registered under the Multi-Unit Act would be included.

41. In our view the High Court does not appear to be right in concluding that the words "carrying on business" must mean carrying on banking business. If the Legislature had so intended they would have so specifically provided as they have done in S. 3(e) of the Multi State Act and Sections 80P(2)(a)(i) of the Income Tax Act, 1961. However, a reading of the provisions make it clear that what is necessary is that co-operative society must be carrying on the business of financing other co-operative societies. The proviso has to be read in the light of the main provision. If read in the light of the main provision it is clear that even though banking business, as understood in the strict sense, may not be carried on, yet the business of financing other co-operative societies in the State must be carried on.

53. As seen above, in answer to Question No. (a) it has been held that RBI could not have granted the license unless the Appellants were first declared a state co-operative bank under the NABARD Act. As it is now being held that the Appellants could not have been declared as a state co-operative bank under the NABARD Act and it is held that as such declaration was correctly struck down it will have to be held that the RBI cannot issue it a license to carry on banking business. In view of the contrary stand taken by RBI, it cannot now be left to discretion of RBI to cancel the license granted by it. It is held that the High Court was in error in not striking down the issuance of the license by RBI to the Appellants. In view of what we have held we direct the RBI to forthwith revoke the banking license granted to the Appellants.

54. Question (c): whether a Co-operative Society registered under the Multi State Act, which has been recognized and notified by one State Government as a State Co-operative Bank for that State can be granted a License by the RBI to commence and carry on banking activities in other States in which it has not been recognized as a State Co-operative Bank.

55. It is to be seen that the RBI can only give a license to a state cooperative bank which has been so declared by a particular State. As the definition of co-operative societies in the NABARD Act is restricted to co-operative societies registered under State Acts and as the provision is for a State to declare a co-operative society as a "state cooperative bank" the license, which can be issued by the RBI, can only be in respect of that State. Merely because one State declares a cooperative society as a "state co-operative bank" would not enable the RBI to issue that society a license to carry on banking business in other States or in the rest of the country. In this case, the RBI was wrong in issuing a license to the Appellants for the States of Maharashtra and Goa when, admittedly, the Appellants had not been declared a state co-operative bank in the State of Goa. Thus, it is held that the banking license could not have been issued for the State of Goa.

56. In view of the above, Civil Appeal No. 439 of 1997 stands dismissed, whereas Civil Appeal No. ..... of 2003 (arising out of S.L.P. (C) No. 4877 of 1997) stands allowed.

57. It was submitted by Mr. Andhyarujina that the Appellants have in the meantime collected large deposits and carried on extensive business in the State of Maharashtra. It was submitted that

the Appellant was willing to restrict its business to the State of Maharashtra. It was submitted that at this stage this Court should not strike down the Notification or the grant of license. We are unable to accept this submission. The 1st Respondent had challenged the Notification and the grant of license immediately. The Appellants have all along been aware that their status was under challenge in a Court of law. Thereafter, the High Court struck down the Notification. Now the Appellants knew full well that that was the law. Merely because on obtaining a stay from this Court they continued to operate would not be a circumstance which can be taken into consideration by this Court. The Appellants cannot be allowed to continue to operate as a state cooperative bank when in law they are not entitled to be one. We, therefore, do not accept this submission.

58. The Appeals stands disposed of accordingly. There will be no order as to costs.

Appeals disposed of

Gwalior Dugdha Sangh Sahakari Ltd v G.M. Govt. Milk Scheme, Nagpur And Ors.

Bench	S.B. Sinha, V.N. Khare
Where Reported	2003 Indlaw SC 693; (2003) 7 SCC 529; AIR 2003 SC 3283; JT 2003 (8) SC 333; 2004 (1) LLJ 456; 2004 (136) PLR 653; 2003 (3) RAJ 413; 2003 (4) RCR(Civil) 320; 2003(6) SCALE 735; 2003 (6) SLT 365; [2003] Supp2 S.C.R. 839; 2003 (6) Supreme 469; 2004 (1) UPLBEC 18
Case Digest	**Summary:** Arbitration Act, 1940 - s. 33 - Madhya Pradesh Co-operative Societies Act, 1960 - s. 64 - Applicability of s. 64 - Agreements entered into and executed at Nagpur, which is outside the territorial jurisdiction of the State of Madhya Pradesh - Held, since the operation of the Act is intra-State and cannot be applied beyond the territory of the State of Madhya Pradesh, it must be held that s. 64 is not applicable.

Case No : Appeal (civil) 2732 of 1997

The Order of the Court was as follows :

2. These agreements were executed at Nagpur. Condition No. 19 of the said agreements provided that the disputes between the parties shall be referred to an arbitrator, i.e. the Dairy Development Commissioner, Bombay, Maharashtra. Subsequently, the appellant-Society moved an application under Section 33 of the Arbitration Act, 1940 for quashing condition No. 19 whereby the arbitration was to be done by the Dairy Development Commissioner, Bombay, Maharashtra. The learned District Judge was of the opinion that in view of Section 64 of the Act, condition No. 19 of the agreement was erroneous and, therefore, the same was set aside and the application was allowed. Aggrieved, the respondents filed an appeal before the High Court.

5. It is not disputed that the agreements were entered into and executed at Nagpur which is outside the territorial jurisdiction of the State of Madhya Pradesh Section 1 of the Act provides that the provisions of the Act would be applicable to the whole of Madhya Pradesh Since the operation of the Act is intra-State and cannot be applied beyond the territory of the State of Madhya Pradesh, it must be held that Section 64 of the Act is not applicable.

6. In T.K. Sundaram v. The Co-operative, Sugars Ltd., Chittoor, AIR (1988) Madras 167 1987 Indlaw MAD 106, it was held thus:

   "8. The next question raised on behalf of the appellant is **that the suit is barred under the provisions of the Kerala Cooperative Societies Act, and as such the suit ought to have been dismissed. This argument is based upon the arbitration provision contained in the Kerala Co-operative Societies Act**. But the contract has been entered into in Tamil Nadu and the same is enforceable in Tamil Nadu.

As such with reference to **the contract entered into the Tamil Nadu, and enforceable in Tamil Nadu provisions of the Kerala Co-operative Societies Act cannot be applied.**

Under the circumstances, both the courts below are rights in negativing the contention, relating to jurisdiction.

3. Applying the principle laid down above, we find that since the agreements in the present case were entered into and executed in the State of Maharashtra, Section 64 of the Act is not applicable and, therefore, the view taken by the High Court was correct.

We find no merit in the appeal. It is, accordingly, dismissed. No costs.

4. Learned counsel appearing for the arbitrator (respondent No. 3 herein) furnished before us a copy of the award in a sealed cover.

Since we have already disposed of the matter, it will be open to the arbitrator to file the same before the appropriate court.

Appeal dismissed

Ludhiana Central Co-operative Bank Limited v Amrik Singh and Others

Bench	S. Rajendra Babu, Doraiswamy Raju
Where Reported	2003 Indlaw SC 647; (2003) 10 SCC 136; AIR 2003 SC 3103; 2003 (5) AWC 3664; 2003 (3) CLR 606; JT 2003 (7) SC 228; 2004 (1) LLJ 178; 2003 (4) LLN 11; 2003(6) SCALE 582; 2003 (1) SCW 4041; [2003] Supp2 S.C.R. 766; 2003 (3) UPLBEC 2393
Case Digest	**Summary:** Employment - Selection-Appointment-Recruitment of junior clerks/ junior clerk-cum-typists by appellant bank-Selection Committee constituted by board of directors of bank-Registrar of Co-operative Societies writing to bank to freeze all appointments-Also issuing further direction for fresh selection-Writ petition in High Court for directing bank to declare results of selections and for appointments to be made as per results-Writ petition allowed-Managing director of bank without submitting records of selection before board of directors (competent authority) unauthorisedly and arbitrarily issuing list of 55 candidates as selected and also wait list of 14 candidates-Also issuing appointment letters on same date-Registrar of Co-operative Societies directing enquiry into complaint of irregularities in selection-Board of directors of bank rejecting selection list issued by managing director-Petition filed in High Court for review of its earlier order on writ petition-Rejected summarily-Whether High Court justified?-Held, "no"-Orders of High Court set aside-Writ petition dismissed-Detailed directions issued for fresh selection.

Case No : Appeal (Civil) 3729-3730 of 1999\

The appellant-Bank invited applications for the posts of Junior Clerks/Junior Clerk-cum-Typist by means of an advertisement in "Indian Express" newspaper dated 24,5.96, in the then pay scales of Rs. 1450-2950, plus usual allowances. Similar advertisements were issued in two other daily newspapers also on 25.5.96. The last date was fixed for receipt of applications as 8.6.96. All these were done pursuant to the decision taken by the Board of Directors of the appellant-Bank. As many as 1565 applications were said to have been received and the private respondents who were writ petitioners before the High Court seem to be few among those applicants. The Board of Directors appears to have constituted a Committee to conduct the selections, consisting of (a) President of the appellantBank; (b) Managing Director of the appellant-Bank; (c) A Director of the appellant-Bank (Shri Harmohinder Singh); (d) nominee of the Registrar of Co-operative Societies Punjab and (e) General Manager of the Punjab State Co-operative Bank Ltd. (Shri Sohan Singh-nominated member from the State Government). During the period from 19.12.96 to 28.12.96 typing tests and interviews were said to have been conducted by the said Selection Committee, and a merit list was also stated to have been prepared, though signed by only three out of five members of the Committee and that the two who did not sign it were said to be (d) and (e) mentioned above.

While so, in the teeth of the announcement made on 30.12.96. for conduct of General Elections in the State for the Legislative Assembly, on 9.1.97 the Registrar of Co-operative Societies seem to have written to the appellantBank to freeze all appointments, followed by another letter dated 21.1.97 to all the Co-operative Banks in the State that recruitment process could be resumed only with the specific prior permission of the Registrar. After the general elections it is stated that on 9.2.97 a new Government took over the reigns of administration in the State and in the place of erstwhile Congress Party Akail Deal appears to have become the ruling party. On 10.2.97 the Chief Secretary to the Government is stated to have communicated to the Registrar of Co-operative Societies and all other State Corporations that the Government had banned all recruitments/appointments/transfers, at all levels, until the election process is completed by the new Government taking over the charge. While so, the Manager of the appellant Bank by a letter written on 21.2.97 to the Registrar of Co-operative Societies sought for permission to declare the results and make appointments.

1. The Registrar, by his communication dated 3.4.97, wrote to all the Joint Registrars and Deputy Registrars of Cooperative Societies and Managers of all Co-operative Banks, in continuation of his earlier letter dated 21.1.97 that in some Co-operative Banks, the vacancies were not notified to the Employment Exchange and sufficient time was also found not given in calling for interviews resulting in number of deserving candidates being denied an opportunity to participate in the election process and also could not appear for interview and consequently directed all Co-operative Banks to (a) notify to the concerned Employment Exchange in accordance with the instructions of the Government the vacancy position before making any recruitment; (b) give public notice/ advertisement in newspaper for vacant posts for information of general public; (c) that even those banks which have already given advertisements in newspapers also give again advertisement in newspapers setting out the latest position of vacant, posts, indicating at the same time that those who had already submitted their applications pursuant to the earlier advertisement need not apply again and (d) in order to maintain parity in the standard of test/interview for recruitment, a combine test/interview of old and fresh candidates be held again.

   While matters stood thus, the private respondents herein (writ petitioners before the High Court) filed on 30.4.97 CWP No. 6056 of 97 a writ petition for directing the appellant-Bank to declare the results of the selections made for the recruitment of junior clerks/junior clerks-cum-typists and further direct appointments to be made in terms of such results. The appellant-Bank filed their counter affidavit contending that there was no obligation on the part of the Appointing Authority to give appointments on the basis of the selection process undertaken, even if there had been any recommendations made out of such selection process, and therefore, the relief as prayed for could not be granted. Objection regarding the maintainability of the writ petition itself against the Bank which is a Cooperative Societies only also seems to have been raised. The attention of the High Court was also drawn to the intervening of General Elections, the directions of the Registrar, the ban orders of the Government and the subsequent directions of the Registrar, to which reference has been made supra. It was urged that, in the light of all such above stated developments, the process has to be redone by resorting to fresh advertisements of posts, conduct of interviews and tests and results could not be declared as prayed for and that those who applied earlier can compete along with the new candidates, if any, afresh. The plea that the appellant-Bank was bound by the directions noticed above and cannot disobey them also appears to have been urged.

We have carefully considered the submissions on behalf of the parties on either side, in the light of the materials placed on record. The conclusion that the functioning of the then Managing Director of the appellant-Bank is neither appreciable nor the so called selections can be given any credence of real/proper selections or can be said to have been made in accordance with law, becomes irresistible. The whole process appear to have been not only perfunctory but really a farce of selection vitiated by award of indiscriminate marks to boost up candidates of choice and unreasonably put down others in utter disregard and derogation of the binding guidelines. Indisputably, the power to appoint is vested in the Board of Directors of the appellant-Bank under the bylaws and the Constitution of a Committee for the selection of candidates by conducting tests and interviews cannot clothe the said committee with also powers to finalise the same without the approval of the Board and/ or either declare the results of selection on their own or appoint persons pursuant to such selections without reference to the Board.

There is a serious claim by the appellant-Bank, that the assessment of candidates appear to be in gross violation of the binding circular orders of the Registrar of Co-operative Societies dated 31.12.91. The High Court while passing the order on 22.10.97 allowing the writ petition, could not have ignored the directions of the Registrar on 9.1.97 and 31.1.97, the ban orders of the Government issued on 10.2.97 and the final directions issued on 3.4.97 by the Registrar as to what should be done in all pending as well as fresh matters to ensure transparency as well as to mete out real and effective justice to all aspirants for the jobs in question, by finding a solution of its own without even looking into the records relating to the selection to satisfy itself as to the legality, propriety regularity and reasonableness of the so called selections and the process adopted by the Committee before directing action to be taken in implementation thereof. Even otherwise it is well settled by now that a person whose name is said to find place in a select panel has no vested right to get appointed to the post in spite of vacancies existing. The appointing authority cannot afford to ignore individual claims at its whim or fancy, in operating such panel or making appointments on the basis of the panel, by merely 'pick and choose' of candidates. The High Court could not have directed the publication of results or to accord appointments as per such results, all the more in this case, in the teeth of and in derogation of the circular orders of the Registrar of Co-operative Societies dated 3.4.97 which decision seem to have been taken as a matter of policy and for uniform application to all cases pending finalisation as well as for any new proposals for recruitment of staff relating to all Cooperative Banks in the State. The High Court, ought to have, at any rate, gone into all these relevant and vital aspects at least when serious irregularities have been brought to notice by filing a review petition, by calling for production of the relevant records. The cavalier fashion in which it seems to have been rejected cannot meet with our approval, at any rate on the peculiar facts and circumstances, highlighted in this case.

For the reasons stated above, we set aside the orders of the High Court dated 22.10.97 allowing CWP No. 6056 of 1997 as well as the one made on 30.10.98 on the review petition and further order that the said writ petition to be dismissed. To meet the peculiar situation created by the decision of the High Court and the need to do real and effective justice to all parties concerned the following directions are issued.

"1. Since we have set aside the order of the High Court dated 22.10.97 and 30.10.98 and dismissed CWP No. 6056 of 1967 on its file, the results published and appointment orders issued pursuant thereto shall have no legal effect or consequence and cannot confer any rights there under, to anyone concerned. The posts to which such appointments were made is declared to be vacant and available for being filled up under this order.

2. Further action shall be taken by the appellant-Bank:

(a) issue fresh public notice/advertisement in newspapers disclosing the vacancy position and invite applications;

(b) conduct a common/combined test and interview for all candidates who already applied without insisting upon any fresh application from them and as if they also applied along with those who respond now pursuant to the fresh advertisements by making applications, and prepare a select list for appointment following the guidelines or orders in force and binding in respect of such selections;

(c) relax the requirement of age, if need be, to those who already applied pursuant to the earlier advertisement-whether found selected in the earlier selection or not; and

(d) if anyone appointed pursuant to the orders of the High Court dated 22.10.97 which orders have been now set aside is holding office-they will be considered to be ad hoc appointees to hold position with no right for any priority or preference or for any claim of permanence, subject to the results of the fresh selections to be made and till such time as the new selections and appointments are made, yielding place to such newly selected/appointed persons."

The appeals, therefore, shall stand allowed subject to the above directions. No costs.

Appeal allowed

Charminar Cooperative Urban Bank Limited v Mohan Reddy and others

Bench	Ruma Pal, P. Venkatarama Reddi
Where Reported	2003 Indlaw SC 1527; (2008) 17 SCC 743
Case Digest	**Subject:** Banking & Finance; Practice & Procedure **Keywords:** Andhra Pradesh Cooperative Societies Act, 1964, Legality, Money recovery, Failure of repayment **Summary:** Banking & Finance - Practice & Procedure - Constitution of India, 1950, art. 226 - Failure of repayment - Money recovery - Legality - Respondent No. 2 and 3 were members of appellant bank - Appellant filed claim petition against respondent no. 1 firm as respondent no. 1 had failed to repay amount - Applications were filed for impleading before Registrar and the same was allowed - Appeal was filed before Single Judge challenging decision of Registrar and the same was dismissed - Respondents filed appeals before DB and the same was allowed - Hence instant appeals. Held, plea of limitation is a mixed question of law and fact and when factual basis was yet to be determined; HC should not have exercised its power u/ art. 226 of the Constitution and embarked upon an exercise of judicial review. Indeed HC order does not disclose the factual basis for its conclusion. It will be open to the added respondents to raise contention in proceedings before Registrar that claim of appellant against respondents is barred by limitation. SC emphasise that order of Registrar adding respondents as parties to proceedings will not be reopened. Appeals allowed.

Case No : C.As. Nos. 6540-44 of 2003 (Arising out of S.L.Ps. (C) Nos. 15524-28 of 2001)

The Order of the Court was as follows:

Leave granted.

1. The subject-matter of these appeals is a common judgment passed by the Division Bench of the **High Court of Andhra Pradesh disposing of the five writ appeals. By the impugned order the High Court has in effect set aside the order passed by the Registrar under Section 62 of the Andhra Pradesh Cooperative Societies Act, 1964 adding the present respondents as parties to the claim cases of the appellant.**

2. The appellant carries on the banking business. Claiming that Respondents 2 and 3 were members of the appellant, the claim was filed by it against Respondent 1, a firm and Respondents 2 and 3 on the ground that the firm had borrowed a sum of Rs. 1 crore from the appellant Bank and had failed to repay the same despite demands. These facts are relevant for the purposes of ARC

No. 68 of 1999 filed by the appellant before the Registrar. Substantially, similar facts formed the basis of the other four claims made by the appellant Bank against the respondent named therein.

8. The plea of limitation is a mixed question of law and fact and when the factual basis was yet to be determined, the High Court should not have exercised its power under Article 226 and embarked upon an exercise of judicial review. Indeed the High Court's order does not disclose the factual basis for its conclusion. We, therefore allow these appeals on this short ground alone without deciding the other questions raised by the parties.

9. The appeals are accordingly allowed. We may, however, make it clear that it will be open to the added respondents to raise the contention in the proceedings before the Registrar that the claim of the appellant against the respondents is barred by limitation. We emphasise that the order of the Registrar adding the respondents as parties to the proceedings will not be reopened. We also make it clear that we have not decided any issue on the merits of the cases.

Sh. O.P. Choudhry v Rehabilitation Ministry Employees Co-operative House Building Society and others

Bench	G.P. Mathur, S. Rajendra Babu
Where Reported	2003 Indlaw SC 314; (2003) 10 SCC 170; AIR 2003 SC 3996; JT 2003 (3) SC 490; 2003(3) SCALE 600; [2003] 3 S.C.R. 309; 2003 (1) SCW 2906; 2003 (3) SLT 643; 2003 (3) Supreme 160
Case Digest	**Summary:** Delhi Cooperative Societies Rules, 1973 - A cooperative society incorporated with the object of providing plots and houses to the employees and ex-employees of the Ministry of Rehabilitation and its subordinate offices - disputes regarding disqualification, eligibility, seniority, etc. of the members - Held, the eligibility of a member to get a plot from the society or his disqualification has to be examined having regard to the provisions of the Delhi Cooperative Societies Rules, bye-laws of the society and an earlier agreement entered into between the parties and the order passed by the Supreme Court. The conditions imposed in the agreement are absolutely binding upon the society as the allotment of 45 acres of land to the society was made in pursuance to the said agreement. It is not open to the society to act contrary to the terms of the agreement. - The individual cases examined in the light of the provisions of Rules, bye-laws of the society and the terms of the settlement.

Case No : Appeal (civil) 2634-2635 of 2003

The Judgment was delivered by : G. P. Mathur, J.

Special leave granted.

1. These appeals are directed against a common judgment and order dated 28.2.2001 of a Division Bench of the High Court of Delhi by which large number of writ petitions were decided and, therefore, they are being decided by a common order.

2. A cooperative society known as Rehabilitation Ministry Employees Cooperative House Building Society Ltd. (hereinafter referred to as 'the Society') was formed in the year 1959. The Society was incorporated with the object of providing plots and houses to the employees and ex-employees of the Ministry of Rehabilitation and its subordinate offices. Out of compensation pool, comprising mainly of evacuee properties as well as properties acquired by Government for rehabilitating displaced persons from Pakistan, some land was allotted to the society by the Department of Rehabilitation by the letter dated 26.5.1970 under the Displaced Persons (Rehabilitation & Compensation) Act, 1954. The society took steps for allotment of plots to its members and in that connection various kinds of disputes regarding disqualification, eligibility, seniority, etc. of the members were raised. These disputes were decided by the Registrar, against whose decision revisions were filed, which were decided by the Financial Commissioner. The decision of the

Financial Commissioner was challenged by filing writ petitions by the members of the society and in some cases by the society itself. All these writ petitions have been decided by the common judgment and order dated 28.2.2001 of the High Court, which is the subject matter of challenge in the present appeals.

8. The condition imposed in the agreement provided that no member of the society, who himself or herself or through his parents, husband/wife, children, etc. had obtained any house or plot from the Department of Rehabilitation earlier, shall again be allotted a plot in the developed land.

9. The other condition imposed was that no member of the society, who already owns a plot or a house in his own name or in the name of his wife or dependents anywhere in the Union Territory of Delhi, shall be eligible for allotment of a plot in the developed land. In view of the agreement which had been entered into between the parties and the order passed by this Court on 6.5.1982 in Special Leave Petition (Civil) No.3762 of 1981, the conditions mentioned therein are aboslutely binding upon the society as the allotment of 45 acres of land to the society was made in pursuance to the said agreement. The orders passed by this Court on 6.5.1982 had the effect of modifying the order passed by the Delhi High Court by which the order of cancellation of allotment of land had been quashed and consequently it is not open to the society to act contrary to the terms of the agreement.

18. The Registrar in his award dated 12.7.1995 held that the appellant had incurred disqualification as property No.B-4/22, Safdarjung Enclave, New Delhi was owned by her husband Shri Balraj Malhotra. The Financial Commissioner has held that the husband of the appellant was holding the property as Karta of Hindu Undivided Family and his share was only to the extent of 40 sq. yds. The case of the appellant is that the property No.B- 4/22, Safdarjung Enclave, New Delhi, belongs to Hindu Undivided Family and the same was allotted in lieu of a plot at Humayunpur village, which was acquired by the Government and thus she had not incurred any disqualification. The case of the society is that the appellant filed an affidavit on 23.1.1973 stating that neither she nor her husband owned any urban plot in the Union Territory of Delhi. She filed another affidavit on 12.9.1989 to the effect that neither she nor her husband nor any of her dependent relation including married children, during the period of her membership of the society, owned either in full or in part on leasehold or freehold basis any plot of land or a house in Delhi/New Delhi. It is not in dispute that a perpetual lease of plot No.B-4/22, Safdarjung Enclave, New Delhi, was granted in favour of the husband of the appellant on 9.3.1966.

19. It is, therefore, clear that the appellant filed false affidavits. In view of bye- law No.5(1)(e) of the society, a person cannot be a member of the society if he or his wife or her husband (in case of a woman) or any of his/her dependent owns a plot or a dwelling house in Delhi. The appellant was thus not qualified to be a member of the society and was not eligible for allotment of a plot. The High Court, therefore, rightly allowed the writ petition filed by the society and quashed the order of the Financial Commissioner. The appeal preferred by the appellant is accordingly dismissed.

23. The High Court has also taken notice of an additional feature of the case which showed that the appellant was not himself pursuing the matter, but it was a proxy litigation. The appellant did not file his own affidavit in reply to the writ petition filed by the society. On the contrary, the

affidavit has been filed by one Shri Rajan Aggarwal son of Shri Om Prakash Aggarwal in whose favour the appellant wanted adjustment of his amount which was deposited by him. The affidavit has been filed on the basis of a power of attorney. It was on these findings that the High Court allowed the writ petition filed by the society and set aside the order passed by the Tribunal.21. The society immediately refunded Rs.1600/- through cheque dated 28.6.1983 and a letter was sent to the appellant informing him that it will not be possible for the society to adjust the said amount of Rs.1,600/- in the account of Shri Om Prakash Aggarwal. The writing of the letter by the appellant is not disputed by him. The Registrar has recorded a clear finding that the appellant did not submit any application form and the affidavit as alleged by him and because he did not submit a formal application for enrolment as a member of the society and the necessary affidavit, the question of his having been admitted as a member of the society did not arise. He has further held that the mere deposit of Rs.1,605/- with the society did not confer upon the appellant the right of membership. The Cooperative Tribunal did not at all advert to the aforesaid finding of the Registrar but proceeded on the basis that the only controversy was about the authenticity or otherwise of the signature of Lachman Dass on the receipt dated 7.6.1966. The High Court has held that the basic issue was whether the appellant had moved a formal application for enrolment as a member of the society and had submitted the necessary affidavit and as the Tribunal had not at all considered the said aspect of the case and had not reversed the finding of the Registrar on this point, the order passed by it was liable to be set aside.

35. Once the expulsion order was set aside it has no existence in the eyes of law and cannot be taken notice of for depriving him of his original seniority. The Managing Committee of the society had also passed a resolution on 3.6.1991 to the affect that the four members including the appellant may be asked to submit requisite documents and make payments of their dues as paid by other members on account of cost of land, development charges and interest etc. In this resolution nothing was said about disturbing the seniority of the appellant or assigning him seniority from a later date. The appellant having deposited the entire amount demanded by the society, is entitled to restoration of his original seniority.

36. All the aforesaid appeals are accordingly allowed and the judgment of the High Court is modified to the extent that the appellants' original seniority shall be restored.

Appeals allowed

Prakash Narain Sharm v Burmah Shell Co-Operative Housing Society Limited

Bench	R.C. Lahoti, Brijesh Kumar
Where Reported	2002 Indlaw SC 1589; (2002) 7 SCC 46; AIR 2002 SC 3062; 2002 (3) ARBLR 1; 2002 (99) DLT 445; JT 2002 (6) SC 209; 2002 (3) RCR(Civil) 739; 2002(6) SCALE 55; 2002 (5) SLT 1; [2002] Supp1 S.C.R. 643; 2002 (5) Supreme 461
Case Digest	**Summary:** Trusts & Associations - Co-operative Societies Act, 1912 - Delhi Co-operative Societies Act, 1972, ss. 60 and 93 - Appellant, member of the society illegally and unjustifiably deprived of allotment - Ex-parte award by arbitrator - Restraint order passed by the Civil Court - Whether a Civil Court competent to entertain any civil suit touching a matter which any authority under the Act was competent to adjudicate upon? - Even where exclusion of jurisdiction of the Civil Court is statutorily provided still on availability of requisite grounds the Civil Court can entertain a civil suit - Held, the newly appointed arbitrator to resume proceedings from the date with which the predecessor arbitrator had proceeded ex-parte against Respondent no. 1 after 4-10-1989 subject to the order which may be passed by Civil Court on injunction application filed by the society - Appeal disposed of.

Case No : Appeal (Civil) 5180 of 2002

The Judgment was delivered by : R. C. Lahoti, J.

Leave granted.

1. **The respondent No. 1 is a cooperative Society governed by Delhi Cooperative Societies Act, 1972 (hereinafter 'the Act' for short). There was a dispute between one S.N. Sharma and the respondent No. 1**. The former claimed to be a member of the Society entitled to allotment of a plot by the Society and complained of having been illegally and unjustifiably deprived of the allotment. The Joint Registrar (Arbitration), vide his order dated 29 July 1988, directed the dispute to be referred for adjudication by one Shri S.C. Gupta S.N. Sharma expired on 28 December 1988 survived by legal representatives whose rights are claimed by the appellant to have come to vest in him.

2. The appointment of arbitrator was challenged by the Society by filing a civil suit in the Court of Additional District Judge, Delhi who, by an interim order dated 4 October 1989, restrained the arbitrator from proceeding ahead with the arbitration proceeding. There is some controversy whether the restraint order was communicated or brought to the knowledge of the arbitrator or not; the fact remains that on the next date of hearing appointed after 4 October 1989 the Society failed to make appearance before the arbitrator. The arbitrator proceeded ex-parte and on 26 October 1989 made an award upholding the claim of the appellant. The Society preferred an

appeal against the award while the appellant sought for its execution. The executing authority directed a plot of land of the Society to be attached. A civil writ petition came to be filed by the Society in the High Court of Delhi which was heard by a learned single judge, who vide order dated 18 August 2000, set aside the ex-parte award dated 26 October 1989 forming an opinion that in view of the restraint order passed by the civil Court the ex-parte proceedings and the ex-parte award were vitiated. The learned single Judge directed bi-parte hearing being restored and an award being made afresh.

4. The Division Bench noticed the factum of Shri S.C. Gupta, the then arbitrator having expired in between, and therefore directed the Registrar, Cooperative Society to appoint another arbitrator in place of late Shri S.C. Gupta to adjudicate upon the dispute between the parties. It was ordered accordingly and the writ appeal was disposed of.

7. In spite of such lapse on the part of the Society, it is not so much a question of legality of availability of jurisdiction with the civil Court in passing the restraint order as it is the question of finding out the availability of sufficient cause for non- appearance of the Society before the arbitrator on the appointed date of hearing. We do not agree with the reasoning of the Division Bench of the High Court that a civil Court cannot under any circumstances entertain a civil suit in respect of proceedings pending before the Registrar, Cooperative Society. Even where exclusion of jurisdiction of the civil Court is statutorily provided still on availability of requisite grounds the civil Court can entertain a civil suit on well defined parameters settled by Constitution Bench of this Court in Dhulabhai v. State of Madhya Pradesh, AIR (1969) SC 78 1968 Indlaw SC 137. In any case we are not prepared to subscribe to the view of the Division Bench that the Registrar of Cooperative Society could have ignored the order of the civil Court as not binding on him in view of the provisions contained in Sections 93 (3), 93 (1) (c) and 60 of the Act. It will be a dangerous proposition to be laid down as one of law that any individual or authority can ignore the order of the civil Court by assuming authority upon itself to decide that the order of civil Court is one by coram non-judice. The appropriate course in such case is for the person aggrieved first to approach the civil Court inviting its attention to the relevant provisions of law and call it upon to adjudicate upon the question of its own jurisdiction and to vacate or recall its order if it be one which it did not have jurisdiction in law to make. So long as this is not done, the order of competent court must be obeyed and respected by all concerned. A judicial order, not invalid on its face, must be given effect entailing all consequences, till it is declared void in a duly constituted judicial proceedings.

8. Subject to the above we agree with the High Court that the ex-parte proceedings before the arbitrator deserve to be set aside and the parties heard bi-parte. In view of Shri S.C. Gupta, the then arbitrator having unfortunately expired, a fresh appointment in his place needs to be made. However, we clarify that the newly appointed arbitrator shall resume the proceedings from the date with which the predecessor arbitrator had proceeded ex-parte against the respondent No. 1 after 4 October 1989 subject to the order which may be passed by Civil Court on injunction application filed by the Society.

9. For the foregoing reasons but subject to clarification as above the operative part of the order made by the Division Bench of the High Court is maintained.

The appeal be treated as disposed of accordingly.

Appeal disposed of.

Mor Modern Cooperative Transport Society Limited v Financial Commissioner and Secretary To Government of Haryana and Another

Bench	B.P. Singh, H.K. Sema, M.B. Shah
Where Reported	2002 Indlaw SC 1729; (2002) 6 SCC 269; 2002 (2) ACC 501; AIR 2002 SC 2513; 2002 (48) ALR 472; JT 2002 (5) SC 125; 2002 (3) RCR(Civil) 553; 2002(5) SCALE 145; 2002 (3) SCJ 290; 2002 (4) SLT 340; [2002] Supp1 S.C.R. 87; 2002 (5) Supreme 55

Case No : Appeal (civil) 6974 of 2001

2. **The appellant herein is a cooperative society duly registered under the Haryana Cooperative Societies Act**. It deals in the business of passenger transport and for that purpose obtains stage carriage permits issued through the Regional Transport Authority, Hissar. Presently, it holds one permit to operate four return trips on Hansi - Bad Chhappar route which falls within the District of Hissar. The case of the appellant pleaded in the writ petition was that the Haryana Roadways is a department of the State of Haryana. It also carries on business of providing passenger transport facility. It competes with private stage carriage operators and owns and operates a fleet of motor vehicles. The Haryana Roadways is also subject to the provisions of the Motor Vehicles Act (hereinafter referred to as "the Act") and the rules framed there under. Stage carriage permits are issued by the concerned Regional Transport Authority constituted under S. 68 of the Act.

3. It was contended that for about two decades the entire passenger transport service in the State of Haryana remained nationalized and stage carriage service was operated only by the State Transport Undertaking known as the Haryana Roadways. However, in the year 1993 by Notification issued u/s. 100 of the Act, a provision was made for grant of stage carriage permits to private operators but confined to cooperative societies. Under the Notification, the routes falling within the districts with not more than 10 kilometers falling on the National or State Highways, were available for operation by cooperative societies. Accordingly, stage carriage permits are being granted to cooperative societies under Chapter V of the Act by the concerned Regional Transport Authorities of which the Transport Commissioner, Haryana was, and again is, the Chairman. By Notification dated 27 March 1998 the Government of Haryana in exercise of the powers conferred by S. 68 of the Act, in supersession of its earlier Notification dated 30 December 1996 constituted Regional Transport Authorities for each of the regions of Ambala, Hisar, Faridabad, Rohtak, Karnal and Rewari consisting of Transport Commissioner as Chairman and Secretary, Regional Transport Authority of the concerned region as member to exercise and discharge the powers and functions conferred by or under Chapter V of the Act on such authorities in the areas specified in the Notification. The aforesaid Notification of 27 March 1998 was challenged by the appellant cooperative society on the ground that the Notification was illegal in as much as S. 68(2) of the Act was a complete bar to the appointment of the Transport Commissioner as Chairman of the Regional Transport Authority, he being an employee of the State Government

having financial interest in the Government undertaking namely, Haryana Roadways, within the meaning of S. 68(2) of the Act. In the writ petition the High Court issued a show cause notice to the respondents by order dated 5 December 1998. However, on 31 December 1998 another Notification was issued in supersession of the Notification dated 27 March 1998 where under the Secretary, Regional Transport Authority of concerned region was appointed as Chairman of the Regional Transport Authority and the Traffic Manager concerned of the office of General Manager, Haryana Roadways at District Headquarters as member of the authority. Another member was appointed who was a representative of the District Administration to be nominated by the Deputy Commissioner concerned.

4. The High Court by the impugned judgment and order of 21 February 2000 dismissed the writ petition challenging the validity of the Notification dated 31 December 1998 on the ground that the appellant had failed to show that the appointment of Traffic Manager as a member of the Regional Transport Authority had adversely affected the business of the appellant. It was not averred that the Regional Transport Authority consisting of Traffic Manager as a member had passed any order adversely affecting the interest of the appellant or had acted in any manner prejudicial to their interest. In such circumstances the High Court was of the opinion that the challenge to the Notification was purely academic and did not warrant exercise of writ jurisdiction by the High Court. On these findings the High Court did not consider it necessary to examine the question as to whether the appointment of Traffic Manager, working in the office of General Manager, Haryana Roadways as a member of the authority was illegal, being in breach of the provisions of Section 68, particularly S. 68 (2) of the Act.

10. Unfortunately, the High Court did not consider the question which directly arose before it, namely, whether the appointment of the Transport Commissioner/Traffic Manager as Chairman/ member of the Regional Transport Authority was not in breach of statutory provisions. The High Court did not exercise its writ jurisdiction in the absence of any averment to the effect that the aforesaid officers had misused their authority and acted in a manner prejudical to the interest of the appellants. In our view the High Court should have considered the challenge to the appointment of the officials concerned as members of the Regional Transport Authority on the ground of breach of statutory provisions. The mere fact that they had not acted in a manner prejudicial to the interest of the appellant could not lend validity to their appointment, if otherwise, the appointment was in breach of statutory provisions of a mandatory nature. It has, therefore, become necessary for us to consider the validity of the impugned Notification said to have been issued in breach of statutory provision.

13. The next question which falls for consideration is what is the nature of the "financial interest" contemplated by the said sub-section. The expression financial interest is capable of a narrower as well as a wider meaning. In the narrower sense it implies direct personal benefit of an economic nature. In the wider sense it may include any interest direct or indirect which a person has in relation to the finances of the undertaking. Such an interest may be the interest of an official who manages the finances of the undertaking or on whom rests the burden of financial accountability. It is trite to say that the intention of the Legislature must be found by reading the statutes as a whole. The Court must ascertain the intention of the Legislature by directing its attention not merely to the Clauses to be construed but to the entire statute; it must compare the Clause with

the other parts of the law, and the setting in which the Clause to be interpreted occurs. The rule is of general application as even plainest terms may be controlled by the context. Expression used in a statute should ordinarily be understood in a sense in which they best harmonize with the object of the statute, and which effectuate the object of the Legislature. Therefore, when two interpretations are feasible the Court will prefer that which advances the remedy and suppress the mischief as the Legislature envisioned. Keeping these principles in mind we shall now consider what meaning has to be given to the expression "financial interest" in sub-s. (2) of S. 68 of the Act.

20. The appellants had originally challenged the Notification dated 27 March 1998, whereunder the Transport Commissioner was appointed as Chairman of the Regional Transport Authorities. However, during the pendency of the writ petition, since that Notification was superseded by another Notification dated 31 December 1998 appointing the Secretary, Regional Transport Authority of the concerned region as Chairman of the Regional Transport Authority, and the Traffic Manager concerned of the office of the General Manager, Haryana Roadways concerned located at District Headquarters as member, the appellant amended the writ petitions and challenged the later Notification. During the pendency of this appeal the position as it existed when the writ petition was filed, has been restored so far as the appointment of Chairman of the Regional Transport Authority is concerned, in as much as the Transport Commissioner has again been appointed as Chairman of the Regional Transport Authority by the Notification dated 20 February 2001. Since we have found that the Transport Commissioner is an official of the Haryana Roadways and has a financial interest in that undertaking within the meaning of that expression in S. 68(2) of the Act, the Notification in so far it relates to the appointment of Transport Commissioner as Chairman, Regional Transport Authority must be quashed. We may however record that counsel for the appellant did not challenge before us the appointment of the District Transport Officer to act as Member Secretary of the Regional Transport Authority.

21. In the result, this appeal is allowed, the impugned judgment and order of the High Court set aside and the Notification dated 20 February 2001 quashed in so far as it relates to the appointment of the Transport Commissioner as Chairman of the Regional Transport Authorities. There will be no order as to costs. Appeal allowed.

Vol. II

S. Krishna Murthy v Government of A.P. and Others

Bench	S. Rajendra Babu, Doraiswamy Raju
Where Reported	2001 Indlaw SC 2584
Case Digest	**Subject:** Service **Keywords:** Andhra Pradesh Co-Operative Societies Act **Summary:** Labour & Industrial - Andhra Pradesh Co-Operative Societies Act, ss. 51 and 60 - Misappropriation - Stoppage of pensionary benefits - Initiation of disciplinary proceedings - Power of the respondents to stop the pension payable - Whether the Division Bench is correct in setting aside the order of Single Judge? - Held, clear that in a proceedings initiated u/s. 51, action is sought to be taken to withhold pension without even hearing appellant in the matter - No power traced to any of the provisions either u/ss. 51 or 60 of the Act to sustain such action - Order made by the Division Bench set aside and judgment of Single Judge restored - Appeal allowed.

Case No : Petition(s) for Special Leave to Appeal (Civil) No.13396/2000

The Order of the Court was as follows:

Leave granted.

1. The appellant before us was employed on the establishment of Respondent No. 3.

2. He retired from service on 31.5.1997. On 17.7.1997, certain proceedings under Section 51 of the Andhra Pradesh Co-Operative Societies Act were initiated stating that there is misappropriation to a tune of Rs.19,23,381.63 in the Society and, therefore, surcharge proceedings will have to be initiated and while endorsing this order to the General Manager, Krishna District Cooperative Central Bank Ltd., request was made to stop all pensionary benefits in respect of appellant who had retired from service. This action of the respondents was challenged in a writ petition before the High Court.

3. Learned Single Judge who examined the matter found that this is not a case of initiation of disciplinary proceedings and it was not possible to trace any power with the respondents to stop the pension payable to him even before **initiating proceedings under Section 51 or Section 60 of the A.P. Cooperative Societies Act. The matter was carried in appeal by the respondents and the Division Bench set aside that order subject to certain** directions issued. It is against this order the appellant has come up before this Court.

4. It is not clear whether any disciplinary proceedings had been initiated against the appellant by the Society or not. What is clear is that in a proceedings initiated under Section 51 against certain

other persons, action is sought to be taken to withhold his pension without even hearing him in the matter. Moreover, no power is traced to any of the provisions either under Section 51 or under Section 60 of the Act to sustain such action.

5. In the circumstances, we have no option but to set aside the order made by the Division Bench of the High Court and restore that of the learned Single Judge. Appeal is allowed accordingly. Appeal allowed.

Shri Sant Sadguru Janardan Swami (Moingiri v State Of Maharashtra And Others

Bench	V.N. Khare, B.N. Agrawal
Where Reported	2001 Indlaw SC 225; (2001) 8 SCC 509; AIR 2001 SC 3982; 2002 AllCJ 341; 2002 (2) Bom.C.R. 149; JT 2001 (8) SC 287; 2001(6) SCALE 585; 2001 (3) SCJ 682; 2001 (7) SLT 1; [2001] Supp3 S.C.R. 333; 2001 (7) Supreme 362
Case Digest	**Subject:** Constitution; Election **Keywords:** Election Petition, Electoral Roll, General Election, Grounds For Declaring Election To Be Void **Summary:** The preparation of the electoral roll being an intermediate stage in the process of election of the managing committee of a specified society and the election process having been set in motion, the High Court cannot stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll.

Case No : C.A. No. 596 of 2000

The Judgment was delivered by: V. N. Khare, J.

1. There is a **specified Society in the district of Ahmednagar known as Godavari Khore Dudh Utpadak Sangh (hereinafter referred to as the Society). The Society is registered under the Maharashtra Cooperative Societies Act, 1960 (hereinafter** referred to as the Act). The society is a central society and number of other primary cooperative societies are its members and is governed by the Act and rules framed thereunder. The management of the society is run by the managing committee, the members of which are elected by the delegates of the members societies. The Chairman is elected from amongst the members of the committee of management. The term of the elected managing committee of the society was due to expire in the year 1999. The Collector, therefore, took steps for preparation of the electoral roll of the society. For that purpose, the Collector announced the programme for finalisation of the electoral roll of the society. On 4th of June, 1999, the provisional electoral roll was published. The objections against the provisional voter list were invited till 14th of June, 1999, which were required to be decided by 23rd of June, 1999 and the electoral roll was to be finalised and published on 2nd of July, 1999. The State Government on 8.6.1999 passed an order u/s. 73 (1) (B) of the Act staying the elections in the cooperative societies in the State on account of rainy season.

2. It was indicated in the said order that where nomination papers have not yet been filed the elections shall stand postponed till 30th September, 1999. In pursuance thereof, wireless message was sent to all the co-operative societies about the decision taken by the State Government. It appears that certain objections against the publication of the provisional electoral roll of the society was filed which allegedly was considered by the authority on 23rd June, 1999. On 29th June, 1999, the

Collector, Ahmednagar informed that as per the Government order dated 8.6.1999, the election scheduled to be held stands postponed till 30th September, 1999. It appears in between time some representations were made to the State Government to exempt the society from the order dated 8th June, 1999. In pursuance of the said representations the Government of Maharashtra issued a Notification dated 30th June, 1999 making out a special case in favour of the present society and deleted its name from the Notification dated 8th June, 1999, with the result that the election for the Society which was postponed earlier was now required to take place. In view of the said Notification issued by the State Government, the authority on 2.7.1999 published final electoral roll of the members of the society. The Collector on 21st October, 1999 drew election schedule for holding election of the society. It is at this stage, the petitioners filed a petition u/ art. 226 of the Constitution before the High Court. It was prayed therein that the order dated 21st October, 1999 be set aside. The said writ petition was subsequently dismissed by the High Court. The petitioners thereafter preferred this appeal by means of Special Leave Petition.

3. While the appeal was pending, the election for constituting the managing committee was held but the declaration of the result was stayed by the order of this Court dated 26.11.1999.

9. In view of the scheme of the Act and Rules, the preparation of voters list must be held to be part of the election process for constituting managing committee of a specified society. In Someshwar Sahakari Sakhar Karkhana Ltd. Someshwarnagar vs. Shriniwas Patil, Collector, Pune & Ors. 1992 Maharashtra Law Journal, 883 1992 Indlaw MUM 6434 , it was held that in the scheme of the provisions of the Act and the Rules, the preparation of the list of voters for election to the managing committee of a specified society is an intermediate stage in the process of the election. Similar view was taken in Shivnarayan Amarchand Paliwal vs. Vasantrao Vithalrao Gurjar and Ors. 1992 (2) (vol 30) Maharashtra Law Journal, 1052. However, in Karbhari Maruti Agawan and Ors. vs. State of Maharashtra and Ors. 1994 (vol 2) Maharashtra Law Journal, 1527 1994 Indlaw MUM 7453, although it was held that the preparation of the list of voters is an intermediate stage in the process of election, but that does not debar the High Court to entertain a petition u/ art. 226 of the Constitution challenging the validity of the electoral roll.

10. It appears that the consistent view of the Bombay High Court on the interpretation of Chapter XIA of the Act and the Rules framed thereunder is that the preparation of electoral roll is an intermediate stage of the election process of the specified societies. This being the consistent view of the High Court on the interpretation of provisions of a State Act, the same is not required to be disturbed unless it is shown that such a view of the High Court is palpably wrong or ceased to be good law in view of amendment in the Act or any subsequent declaration of law. We are, therefore, of the view that the preparation of the electoral roll for election of the specified society under Chapter XIA and the Rules framed thereunder, is an intermediate stage in the process of election for constituting managing committee of a specified society.

16. In view of our finding that preparation of the electoral roll is being an intermediate stage in the process of election of the managing committee of a specified society and the election process having been set in motion, it is well settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. It is not disputed that the election in question has already been held and the result thereof has been stayed by an order of this Court, and once the result of the election

is declared, it would be open to the appellant to challenge the election of returned candidate, if aggrieved, by means of an election petition before the election tribunal.

17. In that view of the matter, we are in agreement with the view taken by the High Court that the appellant having an alternative remedy, the writ petition deserved dismissal.

18. For the aforesaid reasons, we do not find any merit in the appeal. The appeal is, accordingly, dismissed. There shall be no order as to costs. Appeal dismissed

Ghanshyam Das Mundhra v Sajjan Sharma and Others

Bench	G.B. Pattanaik, Mrs. Justice Ruma Pal
Where Reported	2001 Indlaw SC 10382
Case Digest	**Subject:** Constitution **Keywords:** Co-operative Societies Act
Legislation Cited	Co-operative Societies Act, 1912 Constitution of India, 1950 Constitution of India, 1950 art. 226

Case No : Petition(s) for Special Leave to Appeal (Civil) No.14428/2001

The Order of the Court was as follows:

1. This Special Leave Petition is against an interim order of the High Court. According to Mr. Jain, such interim order by the High Court, while the Writ Petition under Article 226 is pending, is against the scheme of the Co-operative Societies Act. Having examined the relevant provisions of the Co-operative Societies Act, we are of the opinion that the contention is wholly mis-conceived, and there is no fetter on the power of the Court in exercise of its jurisdiction under Article 226 to put the Assistant Registrar In-charge of the Society, and prevent either an elected committee or the pre-existing committee to function the management of the Society.
2. In our view, this is the only course available for the Court where either an election process is assailed or an election to a committee of management is assailed. We therefore dismiss the Special Leave Petition.

Petition dismissed.

Maneklal Mansukhbhai Cooperative Housing Society Limited v Rajendra Kumar Maneklal Shah and Another

Bench	V.N. Khare, B.N. Agrawal
Where Reported	2001 Indlaw SC 21282; 2002 (1) ALD(SC) 65; 2002 (47) ALR 243; JT 2001 (10) SC 83; 2001(6) SCALE 226
Case Digest	**Summary:** Trusts & Associations - Bombay Public Trust Act, 1950 - Gujarat Cooperative Societies Act, 1961, ss. 37 and 170 - Specific Relief Act 1963 - Gujarat Cooperative Societies Rules, 1965, r. 3 - Whether Society is competent to file a suit for specific performance? - The Society becomes competent to acquire, hold and dispose of the property only when it is registered and not otherwise - Held, there was no assignment of the rights of promoter flowing from the agreement in favour of the Society - In absence of such assignment, the Society was not competent to file a suit for specific performance of agreement to sell under the Act - Appeal dismissed.

Case No : C.A. No. 4398 of 1997; C.A. No. 1362/1980

The Order of the Court was as follows:

In C.A. No. 1362/1980

1. It is the plaintiff's appeal. Shri Ramji Mandir Narsinhji Tekri Trust (hereinafter referred to as the 'trust') is registered under the Bombay Public Trust Act, 1950.On 30.7.1969, the trust entered into an agreement with **one Nanubhai Jogibhai Desai for granting lease for a period of 50 years in respect of survey no. 262 having an area of 149150 square feet. Subsequently, on 19.11.1969, the plaintiff was registered under the Gujarat Cooperative Societies Act, 196**1 (hereinafter referred to as the 'Act'). It appears that after the plaintiff was registered, the respondent-trust prepared a draft lease in favour of the plaintiff but the same was not executed. It appears that Nanubhai Jogibhai Desai is one of the promoters of the plaintiff. In that view of the matter, Society wrote to the trust for execution of the lease deed in pursuance of the agreement dated 30.7.1969 in their favour. It further appears that the trust avoided to execute the lease deed. Under such circumstances, the plaintiff-Society filed a suit for specific performance of agreement dated 30.7.1969. The suit was contested by the trust.

2. However, the trial court decreed the suit. The trust filed the first appeal before the High Court of Gujarat. The High Court was of the view that since on the date of agreement, the plaintiff-Society was not registered, therefore, the suit filed by the plaintiff was not maintainable. In that view of the matter, the defendants' appeal was allowed and the suit was dismissed. It is against the said judgment, the plaintiff is in appeal before us.

4. Under these circumstances, the Society was not competent to file the suit for specific performance of the agreement dated 30.7.1969 and the suit ought to have dismissed on this very ground alone.

5. Coming to the legal position, as urged by the learned counsel for the appellant, section 37 of the Act provides that a Society on its registration shall be a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to acquire, hold and dispose of property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all such things as are necessary for purpose for which it is constituted. Section 170 of the Act excludes the provisions of the Companies Act. Rule 3 of the Gujarat Co-operative Societies Rules, 1965 framed under the Act provides that every application for registration of Society shall be in Form A and shall be accompanied by:

   (a) .....

   (b) .....

   the scheme showing the details explaining how the working of the Society will be economically sound and, where the scheme envisages the holding of immovable property by the Society, the description of immovable property proposed to be purchased, acquired or transferred to the Society.

6. The aforesaid provision shows that the Society becomes competent to acquire, hold and dispose of the property only when it is registered and not otherwise. We have noticed earlier that there was no assignment of the rights of Nanubhai Jogibhai Desai flowing from the agreement in favour of the Society. In absence of such assignment, the Society was not competent to file a suit for specific performance of agreement to sell under the Act.

7. For the aforesaid reasons, the appeal fails and is, accordingly, dismissed. There shall be no order as to costs.

In C.A.No. 4398/1997

8. In view of the decision in C.A. No. 1362/1980, this appeal fails and is, accordingly, dismissed. There shall be no order as to costs.

Appeal dismissed.

K. Selvamony v State of Tamil Nadu and Others

Bench	G.B. Pattanaik, B.N. Agrawal
Where Reported	2000 Indlaw SC 863
Case Digest	**Subject:** Service **Summary:** Service - (A) C.A. No. 493/1999 - Legality of transfer - High Court held that Tamil Nadu Milk Co-operative Milk Producers' Federation, employer of appellant is not a State and as such not amenable to writ jurisdiction of Court - In meantime appellant superannuated and is no longer in service - Held, in this view of matter, it will not be appropriate for Supreme Court to examine question as to whether Milk Federation is a State or not and also legality of order of transfer which appellant had assailed - (B) C.A. No. 494/1999 - Legality of an order of suspension - High Court held that no Writ would lie against Management Director of Tamil Nadu Milk Producers Federation, which is a society under Co-operative Societies Act - A regular departmental proceeding has also been initiated in meantime and no final decision has been taken therein - Court not inclined to examine contentions raised - Appeals disposed of.

Case No : CIVIL APPEAL No. 493/1999

The Order of the Court was as follows:

C.A. No. 493/1999:

1. This appeal is directed against an order of the Madras High Court where the appellant had assailed the legality of his order of transfer. The High Court did not examine the merits of the same on a finding that Tamil Nadu Milk Co-operative Milk Producers' Federation, the employer of the appellant is not a State and as such not amenable the writ jurisdiction of the Court. It is reported to us that in the meantime the appellant has already superannuated and is no longer in service.

2. In this view of the matter, it will not be appropriate for this Court to examine the question as to whether the Milk Federation is a State or not and also the legality of the order of transfer which the appellant had assailed in the Writ Petition filed before the Madras High Court. The issue raised does not survive for our consideration.

3. It is stated that in disciplinary proceedings the employer had inflicted some punishment. We need not express out opinion on the legality of the same and it would be open for the appellant to take such remedial measure available as is advised him under the law.

The appeal is disposed of accordingly.

C.A. No. 494/1999:

4. This appeal is directed against the judgment of the Madras High Court where the appellant had assailed the legality of an order of suspension passed by the respondent. The High Court did not entertain to examine the merits of the contentions being of the view that no Writ would lie against the Management Director of Tamil Nadu Milk Producers Federation, which is a society under the Co-operative Societies Act. In the meantime, it is stated that a regular departmental proceeding has been initiated and no final decision has been taken therein.

5. In that view of the matter, we are not inclined to examine the contentions raised in this appeal and we leave the same open to be urged and agitated at an appropriate stage, in the event the appellant chooses to challenge an adverse order, if any, to be passed in the departmental proceedings.The appeal is disposed of accordingly.

Appeals disposed of.

Messrs Sharaddha Associates v St.Patrick's Town Coop.Hsng.Soc.Ltd. and Others

Bench	R.C. Lahoti, Brijesh Kumar, R.C. Lahoti
Where Reported	2000 Indlaw SC 901
Case Digest	**Subject:** Trusts & Associations
Cases Citing this Case	State of Maharashtra v Vithal Dudharam Pogale and others 2008 Indlaw MUM 1912, 2008 (5) MahLJ 760

Case No : I.A. No.3 In C.A..No.1911/1999

The Order of the Court was as follows:

1. The High Court took the view that **the Cooperative Court had no jurisdiction to adjudicate the issue in view of Section 91 of the Maharashtra Cooperative Societies Act.**

2. This view was taken both by the learned Single Judge and the Division Bench. It is that finding which has been put in issue in this appeal. We consider it appropriate to direct that the appeal itself be placed for hearing on a "non-miscellaneous day" after three weeks before the appropriate Bench rather than to take up these applications at this stage. These applications shall also come up for hearing alongwith the appeal on that date.

Order accordingly.

Managing Director, A. P. Women's Coop. Finance Corporation Limited v Leela Naidu and Others

Bench	M.B. Shah, G.B. Pattanaik
Where Reported	2000 Indlaw SC 3744; (2001) 9 SCC 517
Case Digest	**Subject:** Trusts & Associations **Keywords:** Appeals disposed of., Cooperative Societies, A.P. Cooperative Societies Act **Summary:** Trusts & Associations - Andhra Pradesh Cooperative Societies Act - Whether the respondents being the employee of registered cooperative society is eligible for the regularization and regular pay scale as available to an employee against a civil post of the Govt. - Held, in granting the regular scale of pay the appropriate authority shall take into account their qualification, the services rendered, experience, etc. - Appeals disposed of.

Case No : C.As. Nos. 1959-61 of 1998

The Order of the Court was as follows:

1. These civil appeals are directed against the judgment of the Division Bench of the Andhra Pradesh High Court upholding the judgment and order **of the learned Single Judge. The appellant is a registered cooperative society under the A.P. Cooperative Societies Act.** The appellant organisation has been conducting training courses through Telugu Bala Mahila Pragati Pranganams, the object being to train the deserted, destitute, economically backward, educated, uneducated and unemployed women. To man the said project, the organisation gets funds from different sources and appointed the respondents on a consolidated sum of Rs. 1200 per month way back in the year 1988, which sum was subsequently enhanced to Rs. 2250 per month.

2. But, having served for a fairly long period, the respondents approached the High Court claiming regularisation and regular scale of pay, as available to an employee against a civil post of the Government. The learned Single Judge, on consideration of several factors including the factor that there is possibility of continuing this project for a fairly long period, issued certain directions. The Division Bench while dismissing the appeal of the appellant, has modified the aforesaid direction. It is this direction, which is under challenge in this appeal.

4. On going through the said Scheme, we are of the considered opinion that the Scheme would be beneficial to the respondents.

5. But so far as the question of emoluments is concerned, contained in clause (1) of the Scheme, in modification of the same, we would call upon the appropriate authority to grant a regular scale of pay as it thinks fit for these respondents taking into account their qualification, the service

rendered, experience, etc., within a period of three months from the date of communication of this order and the respondents be communicated accordingly. The respondents would be governed by the aforesaid set of schemes in respect of all other conditions enumerated in the Scheme referred to above.

These appeals are disposed of accordingly.

Appeals disposed of.

State of Maharashtra and Others v Karvanagar Sahakari Griha Rachana Sanstha

Bench	B.N. Kirpal, S.S.M. Quadri
Where Reported	2000 Indlaw SC 3919; (2000) 9 SCC 295; JT 2000 (8) SC 68; 2000 (Supp) Bom.C.R. 864
Case Digest	**Summary:** Trusts & Associations - Constitution of India, 1950, art. 19(1)(c) - Maharashtra Cooperative Societies Act, 1960, ss. 4, 14 and 79-A - Maharashtra Cooperative Societies Rules 1961, r. 10 - Whether the High Court was justified in quashing the impugned directions/circulars? - What is in the interest of the society is primarily for the society alone to decide and it is not for an outside agency to say - Held, having regard to the nature of the society and its objectives, it cannot be said that the amendment directed by Govt. is in the interest of society - High Court rightly quashed the impugned directions/circulars - Appeals dismissed.

Case No : C.A. No. 1149 of 1990 With No. 1148 of 1990

The Order of the Court was as follows:

1. The State of Maharashtra is the appellant in these appeals by special leave. Civil Appeal No. 1149 of 1990 is filed against the judgment of the High Court of Bombay in Writ Petition No. 4415 of 1987 dated 27-2-1989 which was filed by Respondents 1 and 2 challenging the validity of the directions issued by the first appellant on 19-1-1985 and the consequential circular issued by the third appellant of 5-12-1985.

2. By the impugned judgment, the High Court quashed the impugned circulars. Following the said judgment the High Court allowed Writ Petition No. 5298 of 1987 by its judgment dated 27-2-1989 in which identical relief was sought by Respondents 1 and 2 in Civil Appeal No. 1148 of 1990, filed by the State against the said judgment of the High Court.

4. When it was brought to the notice of the third appellant that the plot-owners were facing difficulties as the housing societies had not carried out amendment of the bye-law pursuant to the said directions of the first appellant, he issued the circular on 5-12-1985 threatening to take action under **Section 14 of the Maharashtra Cooperative Societies Act, 1960.**

5. These directions/circulars were questioned by the housing societies, inter alia, on the grounds that they completely destroy the basis of such societies and will encourage commercialisation of housing schemes which is meant for individuals on the basis of the tenant-ownership and that they are without authority of law and violative of Article 19(1)(c). The appellants did not file their return in the High Court. However, the third respondent contested the writ petitions. The contention of the Society found favour from the High Court and the said directions/circulars were quashed.

6. Mr. Naik, learned Senior Counsel appearing for the appellants contends that the directions/ circulars are issued having regard to the necessity of making accommodation available in view of the dearth of accommodation in Pune and Bombay and this is in public interest**. To justify the exercise of power by the State Government in issuing the impugned directions/circulars, he relied on Sections 4, 14 and 79-A of the Maharashtra Cooperative Societies Act, 1960.**

7. We have perused the said provisions. Section 4 deals with the types of societies and specifies which types of societies can be registered and which cannot be registered. Section 14 enables the Registrar to call upon any society to amend its bye-laws if it appears to him that the amendment is necessary or desirable in the interest of such society. Section 79-A enables the State Government to issue directions for various reasons mentioned therein. The reasons relevant to the issue is the public interest.

12. From the above discussion, it is clear that though the power is conferred on the Registrar to direct amendment of the bye-laws of the society, yet the paramount consideration is the interest of the society. So also the power of the State Government to issue directions in public interest cannot be exercised so as to be prejudicial to the interest of the society.

13. In our view, what is in the interest of the society is primarily for the society alone to decide and it is not for an outside agency to say. Where, however, the Government or the Registrar exercises statutory power of issuing directions to amend the bye-laws, such directions should satisfy the requirement of the interest of the society. In the instant case, having regard to the nature of the Society and its objectives, referred to above, and having also regard to the fact that the Society in the case of the 5th respondent has turned down his request for the grant of permission by an overwhelming majority, we are unable to say that the amendment directed by the Government is in the interest of the Society. The High Court is, therefore, right in quashing the impugned directions/circulars.

14. In this view of the matter, we do not consider it necessary to deal with the other aspects. We find no illegality in the impugned orders of the High Court warranting our interference. The appeals are accordingly dismissed with costs. Appeals dismissed.

State of Punjab and Others v Guno Majra Co-Operative Agriculture Service

Bench	Doraiswamy Raju, V.N. Khare
Where Reported	2000 Indlaw SC 3967; (2000) 9 SCC 210; JT 2000 (10) SC 47
Case Digest	**Summary:** Trusts & Associations - Constitution of India, 1950, art. 226 - Punjab Cooperative Societies Act, 1961 - Whether the Agriculture Service Society is a "dealer" within the meaning of cls. 2(f) and 7 of the Fertiliser (Control) Order, 1985? - Held, the Society has been formed to help its members in the matter of cultivation - Fertilisers purchased by the Society are for supply and distribution to its members and not for any commercial or business activity - In the absence of any business activity, the respondent Society cannot be a "dealer" within the meaning of cl. 2(f) of the Order and, not required to take licence u/cl. 7 of the Order - Views taken by High Court correct - Appeal dismissed.

Case No : C.A. No. 13713 of 1996

The Order of the Court was as follows :

1. The only question that arises in this appeal is whether the Agriculture Service Society is a "dealer" within the meaning of clause 2(f) of the Fertiliser (Control) Order, 1985 (hereinafter referred to as "the Order") for the purposes of clause 7 of the said Order. Clause 2(f) and clause 7 of the Order read as under :

   "2. (f) 'dealer' means a person carrying on the business of selling fertilisers, whether wholesale or retail (or industrial use), and includes a manufacturer and a pool-handling agency carrying on such business and the agents of such person, manufacturer or pool-handling agency;

   * * *

3. The appellants herein required the respondent Society to obtain a certificate of registration under clause 7 of the Order. This was disputed by the respondents. Under such circumstances, the respondents filed a petition under Article 226 of the Constitution before the Punjab and Haryana High Court and the same was allowed, and it was held that since the respondent Society is not carrying on any business in fertilisers, therefore, the Society is not required to obtain a certificate of registration. Under such circumstances, the appellants are in appeal before us.

4. It is not disputed that the respondent Society is the Agriculture Service Society and it has got its own bye-law. The members of the Society are agriculturists, who require manure, fertilisers and implements for cultivation. The object for which the respondent Society was formed is to render service to its members for carrying out agricultural activities. One of the objects of the Society, as indicated in the bye-law, is to make arrangement for supply of agricultural requirements for its members as well as to supply manure, fertilisers, improved seeds, insecticides and other production requisites with a view to promote increased agricultural production. Another object

of the Society is to give loans and also to give manure, fertilisers and improved seeds to its members on credit on "no-profit-no-loss" basis.

5. Under the bye-law, it is not permissible for the respondent Society to sell fertilisers in open market or to anybody else other than its members. From the aforesaid functions of the Society it is apparent that there is no commercial or business activity involved when the Society distributes and supplies fertilisers to its members. The purpose for which the Society has been formed is to help its members in the matter of cultivation. In fact, fertilisers purchased by the Society are for supply and distribution to its members and not for any commercial or business activity. In the absence of any business activity, the respondent Society could not be said to be a "dealer" within the meaning of clause 2(f) of the Order and, therefore, they were not required to take licence under clause 7 of the Order. We are in agreement with the views taken by the High Court.

6. For the aforesaid reasons, we do not find any merit in this appeal. It is accordingly dismissed. There shall be no order as to costs.

Appeal dismissed.

A. M. S. Sushanth and others v M. Sujatha and others

Bench	B.N. Kirpal, S. Rajendra Babu
Where Reported	1999 Indlaw SC 2118; (2000) 10 SCC 197

Case No : C.As. Nos. 5734-43 of 1999 (Arising out of S.L.Ps. (C) Nos. 7475-84 of 1999) with Nos. 5744-53 of 1999 (Arising out of S.L.Ps. (C) Nos. 11702-11 of 1999)

The Order of the Court was as follows:

Special leave granted.

1. The respondents had filed writ petitions in the High Court challenging the selection and various appointments made in the Kerala State Sericulture Cooperative Federation Limited. During the pendency of these writ petitions, **the Registrar of Cooperative Societies ordered an inquiry under Section 65 of the Kerala Cooperative Societies Act, 1969.**

2. Joint Secretary to the Government, Industries Department, Government of Kerala, who was appointed as the inquiry officer submitted a report. In the report it was, inter alia, stated that selection and appointments had been made in the said Federation in violation of statutory provisions and the rules. The High Court on the basis of the said report allowed the writ petitions, inter alia, setting aside not only the resolution of the Board and the notification but it also declared all appointments made as illegal.

3. We find that none of the persons who were selected and whose appointments were set aside by the High Court had been impleaded as a party-respondent.

4. It appears that a public notice was given in a representative capacity only with regard to the appointment to the post of Assistant Sericulture Officer. The direction of the High Court, however, is not confined to that post alone and it is the appointments to the other posts also which have been set aside. This could not be done. The principles of natural justice demanded that any person who was going to be adversely affected by the order should have had an opportunity of being heard. That apart, one would have expected the High Court to have considered the report submitted under Section 65 on its merits and then decided whether the said report should be accepted or not.

5. In view of the fact that opportunity to all the affected parties was not given, we allow these appeals, set aside the judgment of the High Court and direct the High Court to hear the cases once again after giving full opportunity to the persons who are likely to be affected if the writ petitions are allowed and the report under Section 65 is accepted.

There will be no order as to costs.

Appeal allowed.

Workmen of Nilgiri Coop. Mkt. Society Limited v State of Tamil Nadu and Others

Bench	S.B. Sinha, Y.K. Sabharwal
Where Reported	2004 Indlaw SC 480; (2004) SCC (L&S) 476; (2004) 3 SCC 514; AIR 2004 SC 1639; 2004 (1) CLR 802; 2004 (101) FLR 137; JT 2004 (2) SC 51; 2004 (2) LLJ 253; 2004 (2) LLN 68; 2004(2) SCALE 311; [2004] 2 S.C.R. 159; 2004 (2) UPLBEC 1336
Case Digest	**Summary:** Service - Industrial Disputes Act, 1947, ss. 2(k) and 10(1)(d) - Whether the concerned workmen have proved that they are workmen of the Society? - Supervision and control test is the prima facie test for determining the relationship of employment - The burden of proof is on the workmen to establish the employer-employee relationship - Held, the concerned workmen have not proved that they are workmen of the society - Tribunal as also High Court rightly held that the concerned workmen were not able to discharge their burden of proof that they were employed by the Society - HC has rightly affirmed the award of the Industrial Tribunal - Respondent will continue to see that the concerned employees are provided with employment - Appeals dismissed.

Case No : Appeal (Civil) 1351-53 Of 2002

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

BACKGROUND FACTS:

1. 'Nilgiris' is a hill district in the State of Tamil Nadu. Mettupalayam is a small town situate in Nilgiris. The villagers of the surrounding villages for their livelihood depend on growing of vegetables and tea. With a view to see that the small vegetable growers are not exploited by the vegetable merchants, a society known as 'Nilgiris Cooperative Marketing Society Limited' (Society for short) was formed as far back as in 1935 with only 116 members.

2. The Society, however, grew in course of time and at present it has about 22000 members. The memberships of the Society are of two categories. In the first category only the vegetable or food growers, agricultural cooperative credit societies and agricultural improvement societies are A-class members having voting rights; whereas traders, commission agents and merchants dealing in the commodities grown by the agriculturists are classified as B-class members.

   They have no right to vote or participate in the management of the Society. The B-class members only, however, are entitled to take part in auctions held in the marketing yards of the Society. Any dispute **between the seller member and the purchaser member is resolved through arbitration in terms of the provisions of the Tamil Nadu Cooperative Societies Act, 1961.**

DISPUTE BETWEEN THE PARTIES:

11. The appellant-Union, however, on or about 19.4. 1982 served a charter of demands upon the Society claiming, inter alia, permanency in service and other benefits. A strike notice was also given wherefor a conciliation proceeding was initiated. The Society thereafter filed a suit being O.S. No.2293 of 1982. A writ petition was filed before this Court being W.P. No.23 of 1983 praying for minimum facilities like drinking water, toilet, rest-room, maternity benefits etc. The Society is said to have declared a lock out and a conciliation proceeding thereupon started again. The writ petition was thereafter withdrawn. The conciliation proceeding ended in a failure.

REFERENCE:

12. On or about 19.5.1984, the State of Tamil Nadu issued a notification in exercise of its power u/s. 10(1)(d) of the Industrial Disputes Act, 1947 referring the following disputes for adjudication of the Industrial Tribunal :

"i) Whether the non-employment of the workmen referred in the reference is justified ?

ii) To what relief ?"

PROCEEDINGS BEFORE THE TRIBUNAL:

13. In the aforementioned industrial reference before the Tribunal, witnesses were examined on behalf of the parties. Documents were also produced. By reason of an award dated 5.9.1989, the Tribunal opined that there did not exist any relationship of employer and employee between the Society and the concerned persons, observing :

"36. In view of the above finding, if we approach this case, there is no convincing evidence placed by the petitioner to establish the master and servant relationship to hold that the persons referred in this dispute are only workmen of the Respondent-Society.

37. Viewed from any angle, either on facts or on law, the petitioner-Union has not substantiated that the persons mentioned in the Annexure are workmen and therefore their non-employment is not justified.

Hence this point is found against the Petitioner Union."

14. On the said findings the reference was rejected.

PROCEEDINGS BEFORE THE HIGH COURT:

15. Aggrieved thereby the appellant preferred a writ petition before the High Court marked as Writ Petition No.14659 of 1989.

16. During the pendency of the said proceeding, other disputes also ensued resulting in closure of the yards; whereafter, again conciliation proceedings were initiated on or about 3.8.1985. The respondent-Society issued an advertisement in a Tamil newspaper inviting tenders for operations. Questioning the said action on the part of the Society, a writ petition was filed in the Madras High Court which was marked as W.P. No.9333 of 1985 praying therein for issuance of writ of mandamus directing the State to prohibit introduction of contract labour system in the Society. Another writ petition being W.P. No.9334 of 1985 was also filed wherein the petitioners prayed

for issuance of a writ of or in the nature of mandamus directing the Society not to engage contract labour purported to be on the ground that the same is contrary to Sections 25-O and 25-T of the Industrial Disputes Act and Ss. 7 and 12 of the Contract Labour (Regulation and Abolition) Act, 1970. Certain interim orders were passed by the High Court and some appeals were also filed and the matter came up before this Court also, being Civil Appeal No.5381 of 1985 on or about 26.9.1986 wherein this Court passed the following order :

"On behalf of the Marketing Society, Dr. Y.S. Chitale, learned Counsel assures us that hereafter workmen will not be permitted to be employed by contractors to work within the yard of the Society. He also assures us that the 407 workers previously employed may come back and work in the yard without any objection. It is open to any worker to go and seek employment, but contractors will be excluded. The case now pending before Industrial Tribunal may be disposed of expeditiously. Civil Misc. Petition is disposed of accordingly."

17. By another interim order passed in Writ Petition No.19310 and 19311 of 1986, a learned Single Judge of the Madras High Court directed :

"The third respondent shall give employment directly to all the 407 workers. If, after providing employment to these 407 workers, any more lands are required, then the management is free to give employment to such of these persons. The Collector of Coimbatore will see to it that the order of the Supreme Court extracted above is implemented in its true spirit."

18. In an appeal carried out by the Society being W.A. No. 1372 of 1986, the High Court of Madras issued the following directions:

"Apparently it appears to us that the order made by the learned single Judge runs counter to the order of the Supreme Court dated 4.12.1985.

Therefore, the order of the learned Single Judge is stayed. Since the order which is in controversy is that of the Supreme Court, this is eminently a fit case where the parties are at liberty to get necessary clarification from the Supreme Court. Till the order is clarified by the Supreme Court, if the parties approach the Supreme Court for this, the appellant will implement the order dated 4.12.1985 by way of an interim arrangement."

48. It is not in dispute that the Society is not a trading society. It cannot buy or sell the agricultural produce or the fruits except in a case where the proviso appended to bye-law 34 is attracted which is in the following terms :

"When the society enters into a contract with the Government of Military Department of cooperative institutes or with any firm which has entered into a contract with the Government or military department for supply of produce, the Board may purchase the produce outright whenever necessary and sell it as owner on behalf of the society."

52. The question whether the relationship between the parties is one of the employer and employee is a pure question of fact and ordinarily the High Court while exercising its power of judicial review shall not interfere therewith unless the finding is manifestly or obviously erroneous or perverse.

APPLICATION OF LAW IN THE PRESENT CASE:

53. Having regard to the materials on records, we may at the outset notice the findings of the Industrial Tribunal which are:

(1) having regard to the object of the Society, there is no need to employ labourers far less giving continuous employment to them. Exs.W-7, W-8 and W-12 do not show that superintendence control in respect of grading, weighing etc. is absolute. The memo. dated 27.8.1982 appears to have been issued having regard to a complaint made by traders who participate in the auction to the effect that the staff are not showing proper care in grading, weighing and stacking the goods in the Society and they have to purchase the under-quality and under-weight vegetables resulting in continuous loss to them. It is in that situation a direction was issued. A further complain was made that the Society employs small boys in grading, weighing and stacking of goods. In that situation the Godown Assistants were directed to see that no person who is less than 18 years is engaged for unloading, grading and stacking of cabbage and the workmen should be classified into two groups, one for unloading and another for grading, weighing and stacking.

ANALYSIS:

100. Having regard to the aforementioned findings, we are of the opinion, the High Court has rightly affirmed the award of the Industrial Tribunal. The Tribunal as also the High Court further rightly arrived at a finding to the effect that the concerned workmen were not able to discharge their burden of proof that they were employed by the Society.

101. The decisions referred to hereinbefore are indicative of the fact that the different tests have been applied in different cases having regard to the nature of the problem arising in the fact situation obtaining therein. Emphasis on application of control test and organization test have been laid keeping in view the question as to whether the matter involves a contract of service vis-'-vis contract for service; or whether the employer had set up a contractor for the purpose of employment of workmen by way of a smoke screen with a view to avoid its statutory liability.

102. In the present case we are faced with a peculiar situation. The society is a service society which has been formed with the object of protecting the growers from being exploited at the hands of the traders. It has been found that the employment of the workmen for doing a particular piece of work is at the instance of the producer or the merchants on an ad hoc basis or job to job basis and, thus, the same may not lead to the conclusion that relationship of employer and employee has come into being.

Furthermore, when an employee has a right to work or not when an offer is made to him in this behalf by the producer or by the merchants will also assume significance.

106. In a situation of this nature and particularly having regard to the fact that the respondent is a cooperative society which only renders services to its own members and despite the fact that in relation thereto it receives commission at the rate of one per cent both from the farmers as also the traders; it does not involve in any trading activity. Although rendition of such service may amount to carrying out an industrial activity within the meaning of the provisions of the Industrial Disputes Act, 1947 but we are in this case not concerned with the said question. What we are

concerned with is as to whether the concerned workmen have been able to prove that they are workmen of the Society. They have not.

CONCLUSION:

107. In view of what has been found hereinbefore, we are of the opinion that the decision of the Tribunal as affirmed by the High Court cannot be said to be perverse warranting our interference.

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

109. However, before parting with the matter, we may observe that we have no doubt in our mind keeping in view the assurances given to the High Court by the Society, as recorded in its order dated 12.12.2000, the Respondent will continue to see that the concerned employees are provided with employment.

Appeal dismissed.

Indian Farmers Fertilizers Co-Operative Limited, Etc v Union of India and Others

Bench	N. Santosh Hegde, R.C. Lahoti, S.P. Bharucha
Where Reported	1999 Indlaw SC 196; (2000) 2 SCC 107; AIR 2000 SC 584; 2000 (88) ECR 1; 2000 (115) E.L.T. 11; JT 1999 (10) SC 1; 2000 (36) RLT 121; 1999(7) SCALE 478; 1999 (10) SLT 455; 1999 (10) Supreme 255
Case Digest	**Summary:** Customs Act, 1962, ss. 12 and 25(1) - Indian Tariff Act, 1934, s. 2 - Notification No. 14 D/ -1-03-1974 - Finance Bill, 1974 - How should duty be levied on phosphoric acid imported by appellant for manufacture of fertilizer when different rates slab of auxiliary duty have been given under Exemption Notification? - Held, when different rates slab of auxiliary duty under an Exemption Notification are provided based on effective rate of Basic customs duty and explanation thereto provides in case of two or more rates of Basic duty in relation to an Article because of reasons of country of origin, rate of auxiliary duty is to be fixed as per highest rate of basic duty - Appeals dismissed.

Case No : C.A. No. 4149 of 1991

The Judgment was delivered by : Santosh Hegde, J.

1. The **appellant, who is a registered multi-unit cooperative society under the Bombay Cooperative Societies Act, filed writ petitions under Special Civil Application Nos.94 and 472 of 1977 before the High Court of Gujarat at Ahmedabad seeking issuance of a writ of certiorari to quash and set aside the order made by the Appellate Collector of Customs, Bombay, dated 25.2.1976** confirming the order made by the Collector of Customs at Kandla dated 26.2.1975.

2. It was contended before the High Court that the appellant manufactures chemical fertilizer and other allied products in its factory at Kalol and new Kandla Port in the State of Gujarat. It is also stated that for the purpose of manufacture of chemical fertilizers, the appellant imports phosphoric acid for use in the manufacture of Nitrogen phosphorous potash, and by the impugned order the respondents had levied auxiliary duty of customs at the rate of 15 per cent purporting to levy the same u/cl. 1 of Notification No.14 dated 1.3.1974 issued by the Central Government in exercise of its power u/s. 25(1) of the Customs Act, 1962 read with Cl. 19(4) of the Finance Bill, 1974. The appellant contended before the High Court that, as a matter of fact, the phosphoric acid imported by the appellant was subjected to a levy of 5% of auxiliary duty of customs under the above Notification because the goods imported by the appellant would fall u/cl. 2 of the said Notification. Since the appellant was wrongly levied higher auxiliary duty at 15 per cent, it had prayed for refund of the excess amount collected from it.

3. It is not in dispute that at the relevant time the rates at which the customs duty was to be recovered was specified in the First and the Second Schedule of the Indian Tariff Act, 1934 which had provided for levy of duty at standard rate, preferential rate and protective rate as specified in the First Schedule. The import made by the appellant was referable to Item No.28(16) which prescribed a standard rate and preferential rate of duty for phosphoric acid.

   Hence, in the instant case, the highest rate for import of phosphoric acid would have been 60 per cent but for the Notification referred to above, since the import in question was from Burma, the duty payable is 30 per cent ad valorem. Hence, from a perusal of the First Schedule read with Notification dated 28.4.1969 it is clear that so far as the import of phosphoric acid by the appellant is concerned, it falls at serial No.1 of the aforesaid Table and 15 per cent auxiliary duty is required to be paid. We also find support to the above reasoning of ours from the judgment of this Court in the case of Collector of Customs v. Western India Plywood Manufacturing Co. Ltd. (1989 (44) ELT 595 1989 Indlaw SC 895) wherein while considering the levy of auxiliary duty on the import of timber from Burma, this Court held thus :-

7. When different rates slab of the auxiliary duty under an Exemption Notification are provided based on the effective rate of Basic customs duty and the Explanation thereto provides in case of two or more rates of Basic duty in relation to an Article because of the reasons of the country of origin, the rate of auxiliary duty is to be fixed as per the highest rate of Basic duty, the reference to the two or more rates of Basic duty does not confine to two effective rates under two Exemption Notifications but would also include one effective rate under Exemption Notification and the other rate under the Schedule.

   Accordingly the timber which was subject to 60% rate of duty under the Tariff Schedule and totally exempted from Basic duty by an Exemption Notification would amount to two rates of duty for the purposes of Notification No.126/84-Cus. and accordingly the Auxiliary duty at the rate of 40% is applicable.

8. The Notification which was considered by this Court in the said case and the Notification applicable in this case are similar, hence, the said pronouncement of this Court would apply on all fours to the present case. We find no reason to differ from the view taken by this Court in the said case. For the reasons stated above, these appeals fail and are dismissed. No costs.

Appeal dismissed

Ahmednagar Zilla S.D.V. and P. Sangh Limited and v State of Maharashtra and Others

Bench	S.B. Sinha, AR. Lakshmanan, V. N. Khare
Where Reported	2003 Indlaw SC 1003; (2004) 1 SCC 133; AIR 2004 SC 1329; 2003 (53) ALR 813; 2003(9) SCALE 594; 2003 (7) SLT 145; [2003] Supp5 S.C.R. 265; 2003 (8) Supreme 191
Case Digest	**Summary:** Maharashtra Specified Cooperative Societies Elections to Committee Rules, 1971 - r. 81 - Amendment of bye-laws - Legality - Held, a perusal of r. 81 shows that the validity of the bye-law cannot be gone into by the Tribunal. In view of the fact that the respondents had no other remedy except to file an appeal before the appellate authority and once it is held that the amendment of the bye-laws are not in conformity with the law, the electoral roll prepared on the basis would fell down - Further held, both the appellate authority as also the revisional authority have pointed out that conditions precedent for amending the by-laws were not been complied with. Such a finding on jurisdictional fact has been held by the High Court as not 'per verse' warranting interference under art. 227, Constitution of India, 1950 - Directions issued.

Case No : C.A. No. 2553-2554 of 2002

The Order of the Court is as follows

1. The appellant herein is a specified society. On August 31, 1997, the general body meeting was held wherein it was proposed to amend the bye-laws. It was resolved in the said general body meeting that the milk supply societies to the extent of 200 litres per day in 300 days for last three years will be categorized as Class 'A' societies. It was also resolved that the milk supplying societies more than 50 litres of milk daily in 300 days will be categorized as Class 'B' societies for last three years and the societies supplying less than 50 litres of milk daily for 300 days for last three years will be categorized as Class 'C' grade societies and which would be called as nominal members. On October 24, 1997, the Divisional Deputy Registrar Cooperative Societies, Nashik Division, Nashik accorded his approval to the amendment of the aforesaid bye-laws. It is not disputed that consequent upon the amendment in the bye-laws the voters' list was prepared for holding election for constituting the Managing Committee of the society. In the meanwhile the respondents herein filed an appeal against the amendment of bye-laws to the Joint Registrar Cooperative Societies (Dairy), Worli, Mumbai who allowed the appeal, holding the amendment of bye-laws to be illegal and inasmuch as the same was issued without giving notice to the members. A revision petition was filed against the appellate order which was also dismissed. Subsequently the appellant took the matter to the Aurangabad Bench of the Bombay High Court by way of a writ petition u/art. 226 of the Constitution of India. The Writ Petition has also been dismissed.

2. It is relevant to mention here that respondents also filed a petition u/art. 226 for direction to the Returning Officer for inclusion of their names in electoral roll in view of the fact that the amendment in the bye-laws was struck down by the appellate authority. Both the writ petitions filed by the appellant and respondents were heard together. The appeal filed by the appellant was dismissed whereas the appeal preferred by the respondents herein was allowed and a direction was issued to the authority for inclusion of their names in the electoral roll. It is against the said judgment of the High Court the appellant is before us.

5. In the present case, what we find is that illegal amendment of the bye-laws was challenged on the basis of which the electoral roll prepared. U/s. 165 of the Act, the State Government has framed Rules under the provisions of Maharashtra Cooperative Societies Act and the Maharashtra Specified Cooperative Societies Elections to Committee Rules, 1971. Rule 81 provides for ground for declaring the elections to be void. **A perusal of Rule 81 shows that the validity of the bye-law cannot be gone into by the Tribunal. In view of the fact that the respondents had no other remedy except to file an appeal before the appellate authority and once it is held that the amendment of the bye-laws are not in conformity with the law and the electoral roll prepared on the basis would fell down.**

6. The question as to whether the High Court ought to have entertained the writ petition filed by the Respondent or not takes a back seat in the instant case as it was for the appellants herein to show that the amendments in the bye-laws have been carried out in accordance with law. **Both the appellate authority as also the revisional authority have pointed out that conditions precedent for amending the by-laws were not been complied with. Such a finding on jurisdictional fact has been held by the High Court as not 'per verse' warranting interference u/art. 227 of the Constitution of India.** Before us also the learned counsel appearing on behalf of the appellant has failed to show as to why this Court should take a different view. We, therefore, do not find any merit in these appeals. The appeals are dismissed accordingly.

7. We, however, direct the Collector, Ahmednagar, forthwith to conduct fresh election of the Board of Directors to the appellant Society and complete the same as expeditiously as possible but not later than by four months from today on the basis of unamended bye-laws.No costs.

Appeals dismissed.

Sant Prasad v Goverdhan Prasad and another

Bench	S.S.M. Quadri, S.N. Variava
Where Reported	2002 Indlaw SC 2323; (2009) 16 SCC 247

Case No : C.A. No. 1973 of 2002 (Arising out of S.L.P. (C) No. 9714 of 2000)

The Order of the Court was as follows:

Leave is granted.

1. The short question that arises for consideration in this appeal is, whether recovery of loss caused to the **society by an employee of the society can be the subject-matter of dispute under Section 70 of the U.P. Cooperative Societies Act,1965.**

2. The appellant was the Secretary of the Society. The dispute with regard to loss occasioned to the Society while the **appellant was functioning as Secretary thereof, was referred to the Registrar under Section 70 of the U.P.Cooperative Societies Act,1965 (for** short "the Act"). The Registrar passed an award on 24-1-1995 directing recovery of loss of Rs.87,934.75/-. from the appellant.

3. Aggrieved by the award of the Registrar the appellant filed an appeal before the Competent Cooperative Tribunal, U.P. (for short "the Tribunal"). The appeal was dismissed by the Tribunal on 24-9- 1997. That order was challenged by the appellant before the High Court in CMWP No.37093 of 1997. Declining to interfere with the said order of the Tribunal, the High Court dismissed the writ petition on 16-3-2000. It is the correctness of that order of the High Court that is assailed in this appeal, by special leave.

Heard learned counsel for the parties.

4. To appreciate the contention that the dispute of the nature causing loss to the society does not fall under Section 70 of the Act, it will be useful to refer to the provision of clause (c) of sub-section (2) of Section 70 which is relevant. It reads as follows:

*"70. Disputes which may be referred to arbitration.-(1) * * * (2) For the purpose of sub-section (1), the following shall be deemed to be included in dispute relating to the constitution, management or the business of a cooperative society, namely-*

*(a)-(b) * * **

(c) a claim by a society for any loss caused to it by a member, officer, agent or employee including past or deceased member, officer, agent or employee, whether individually or collectively and whether such loss be admitted or not; and

*(d) * * *"*

5. From a perusal of this provision it is clear that the claim by a society for any loss caused to it by an employee, whether such loss is admitted or not falls within the disputes contemplated under Section 70 of the Act.

6. In view of this position, there is no illegality in the impugned order of the High Court. No interference is, therefore, warranted with the order of the High Court. The appeal is dismissed. No costs.

Appeal dismissed.

Bhiwani Central Co-operative Bank Limited Haryana v Registrar Co-operative Societies Haryana and Another

Bench	G.B. Pattanaik, B.N. Agrawal
Where Reported	2001 Indlaw SC 21336; (2010) 15 SCC 517; 2002 (4) AWC 2943; JT 2001 (Supp1) SC 30
Case Digest	**Summary:** Practice & Procedure - Co-operative Societies Act, 1912 - Constitution of India, 1950, art. 226 - Registrar, Appellate Authority, arrived at its conclusion that the charge of embezzlement has not been proved - Whether no interference by High Court in exercise of its certiorari jurisdiction u/art. 226 of Constitution was legaly correct? - Yes, Court held, HC would be justified in interfering only if it comes to the conclusion that the order of Tribunal is contrary to some provisions of law - Appeal dismissed
Cases Citing this Case	Gunanidhi Mishra v Chairman, M. P. State Co-operative Tribunal 2013 Indlaw CTH 30, 2013 (1) CGLJ 460
Legislation Cited	Co-operative Societies Act, 1912 Constitution of India, 1950 Constitution of India, 1950 art. 226

Case No : Civil Appeal No. 2757 of 1998

The Order of the Court was as follows :

1. The employer-bank is in appeal against the judgment of the Division Bench of the High Court of Punjab and Haryana dated 15th May, 1997. The respondent was an employee of the bank and was serving as Secretary of the Bank. He was transferred on 28.8.1993. On the basis of certain findings in the audit report, the employer initiated a disciplinary proceeding making a charge that the respondent has embezzled the money from the bank.

   In course of inquiry, the inquiry officer held the respondent guilty of the charge and ultimately on the basis of the report of the inquiry officer, the Bank as the employer, issued notice to the respondent and the Board of Directors of the bank in its resolution No. 16 dated 20th of March, 1995, resolved that the respondent be dismissed from service. The order of termination pursuant to the aforesaid resolution was passed on 25th March, 1995. The respondent, however, preferred an appeal as provided under the provisions of Co-operative Societies Act to the Registrar on 4.4.1995. Before the appellate authority, the bank also filed its reply. By order dated 13th August, 1996, the appellate authority came to the conclusion as under :

   ".....A perusal of the records revealed that this amount, somehow, was not entered in the cash book and on account of missing entry, the appellant was charge-sheeted. But it is evident from the audit report of this period that this amount was not embezzled. In fact, there was no embezzlement during this period. The respondent could not prove his claim that the appellant

deposited this amount on 31.8.1993 as there is no such record with the respondent-bank to show that this amount was deposited on 31.8.1993."

2. Appellate authority, therefore, having recorded a finding that there has been no embezzlement the charges could not have been said to have been established and as such set aside the order of termination and directed reinstatement of the respondent. The bank assailed the said order of the appellate authority by filing a writ petition. The Division Bench of the High Court, on consideration of the order of the appellate authority, came to hold that there does not appear to be any error in the order of the appellate authority, much less an error of law apparent on the face of the order which could be corrected by the High Court in exercise of its certiorari jurisdiction. The writ petition having thus been dismissed, the present appeal has been preferred on grant of special leave.

5. Having examined the rival contentions and having scrutinised the judgment and the order of the Registrar who is the appellate authority under the Act and in view of his conclusion as quoted above, we find sufficient force in the contention of the learned counsel appearing for the respondent.

It is too well-settled that in exercise of its power under Article 226 of the Constitution against the finding of an inferior Tribunal, the High Court would be justified in interfering with only if it comes to the conclusion that either the order of the Tribunal is contrary to some provisions of law ; or the order of the Tribunal is based upon certain inadmissible evidence ; or the Tribunal does not allow certain admissible evidence to be led in ; or the conclusion of the Tribunal is such which no reasonable man would arrive at. Judged from the aforesaid standpoint and having examined the order of the appellate authority, we do not see any infirmity in the same which could be labelled as a patent error of law on the face of the record requiring interference by the High Court.

In our considered opinion, the High Court did not commit any error in not exercising its certiorari jurisdiction under Article 226 when the Bank moved the High Court against the appellate order.

6. In the aforesaid premises, we see no merits in this appeal which accordingly stands dismissed.

Appeal dismissed

Indian Labour Coop. Society Limited and Another v Union of India and Others

Bench	B.N. Kirpal, S. Rajendra Babu
Where Reported	1999 Indlaw SC 589; (1999) 6 SCC 141; AIR 1999 SC 2402; 1999 (4) Bom.C.R. 502; JT 1999 (5) SC 37; [1999] 3 S.C.R. 971
Case Digest	**Summary:** Trusts & Associatons - Election - Multi-State Co-Operative Societies Act, 1984, ss.31, 36, 37, 99(2) - Re-elected as chairman - Holding of office - Exemption - Violation of provisions - Respondent No.4 was first elected as President of Respondent No.3/Multi State Cooperative Society - Respondent No.4 was re-elected for further period of three years - Cooperative Bank of India/COBI was promoted - Respondent No.4 was also elected as Chairman of COBI - S.36 of Act restricted individual from holding office of Chairman/Vice-Chairman, President/Vice-President in more than one Multi State Cooperative Society - Central Govt. accorded exemption u/s.99(2) of Act in respect of s.36 to NCUI and COBI - Appellant filed writ petition in HC challenged exemptions permitted respondent no.4 to continue as Chairman of NCUI and COBI simultaneously and for more than two terms - Writ petition dismissed by HC - Hence instant appeal - Whether exemption granted u/s.99(2) of Act in respect of ss.36 and 37 of Act was valid - Held, ss.36 and 37 of Act create bar or impediment on a person holding office of more than one society as president at same time or for continued to hold such office for more than two consecutive terms - S.34 of Act could not be dispensed with or relaxed - Provisions of ss.36 and 37 could not be done away with by granted exemption to society u/s.99(2) of Act - Granted exemption to multi-State cooperative society u/ss.36 and 37 of Act did not arose and not covered by s.99(2) of Act - Exemption granted u/s.99(2) of Act in respect of ss.36 and 37 of Act quashed - Judgment of HC set aside - Appeal allowed.

Case No : Appeal (Civil) 223 of 1999

The Order of the Court was as follows :

1. The challenge in this appeal is to the exercise of powers by the Central Government under Section 99 of the Multi State Co-operative Societies Act, 1984 (hereinafter referred to as 'the Act') whereby it has purported to grant an exemption to respondent No. 3, namely. The National Cooperative Union of India (for short NCUI) from the provisions of Section 36; and Section 3-7 of die said Act.

2. Briefly stated the facts for the purposes of this case are that respondent No.3 is a Multi State Cooperative Society, Shri B.S. Vishwanathan. respondent No. 4 was first elected as its President in 1990. Upon the three years term contemplated by Section 35 coming to an end he was re-

elected for a further period of three' years. In the meanwhile National Cooperative Bank of India (later re-named Cooperative Bank of India) [hereinafter referred to as 'COBI'] was promoted. Respondent No. 4 was also elected as the Chairman of OB in February 1994 for a period of three years, Since Section 36 of the Act restricted an individual from holding the office of Chairman/ Vice-'Chairman, President/ Vice-President in more than one Multi State Cooperative Society the Central Government was approached and by orders dated 23rd August, 1994 and 1st February, 1995 exemption was accorded under Section 99(2) in respect of Section 36 to NCUI and COBI. On 16th January, 1997 3rd exemption for two years from 3rd February, 1996 to 2nd February, 1998 was granted under Section 99(2) front the bar of Section 36 of the Act. The fourth exemption from the bar of Section 36 for a period of two years was granted on 13-1-98 from 3rd February, 1998 to 2nd February, 2000. Bar of Section 37 was sought to be removed firstly by an exemption granted for two years by order dated 16th January, 1997 which was followed by a subsequent order dated 13th January, 1998.

3. The appellant then filed a writ petition in the High Court of Delhi seeking to challenge me two exemptions dated 13th January, 1998 one relating to sections 36 and the other relating to Section 37 which exemption had permitted respondent No. 4 to continue as the Chairman of NCUI and COBI simultaneously and for more than two terms.

5. According to Section 36 no person is entitled to hold, at the same time, office of a president or a chairman or vice-president or vice-chairman of the board of more than one multi State Co-operative society. Section 37 places an embargo on a person from holding of an office, of president/chairman, vice-president or vice chairman of the board of a multi-State co-operative society from holding an office for more than two consecutive terms.

6. In the instant case the bar contained in Section 36 as well as in Section 37 was applicable to respondent No. 4, This necessitated the NCUI in applying to the Central Government for exemption. This exemption was granted under Section 99 which reads as under.:

"99, Power to exempt multi-State co-operative societies from conditions as to registration ; (1) Notwithstanding anything contained in this Act, the Central Government may, by general or special order, for reasons to be recorded therein, and subject to such conditions, if any, as may be specified therein exempt any multi-State co-operative society or class of such societies from any of the requirement of this Act relating to registration.

(2)(a) The Central Government, by general or special order and for reasons to be recorded therein,-

(i) Exempt any multi-State co-operative society or any class of such societies from any of the provisions of this Act or of the rules; or

(ji) Direct that such provisions shall apply to such society or class of societies with such modifications not affecting the substance thereof as may be specified in the order ;

Provided that no offer shall be made under sub-clause (ii) so as to prejudice the interests of such society or class of such societies without a reasonable opportunity being given to make representation in the matter.

(b) Every order made under clause (a) shall be published in the Official Gazette."

9. As we have already indicated, Section 34 provides that no member of multi- State cooperative society shall be eligible to be chosen as a member or shall continue to be a member if he incurs the disqualification contained in the said section. Section 34. to our mind, is pan materia with Section 36 and Section 37. Just as Section 36 and Section 37 provide that under certain circumstances the elected office holder is not to continue m office, similarly, Section 34 provides that a person who has a disability attached to him not to stand for election or a person who is elected as a member of the board shall stand disqualified from continuing as a member in the event of his incurring any disqualifications mentioned in the said section. If the contention of the respondent is correct and the Central Government could grant exemption under Section 99 (2) from the applicability of Sections 36 and 37 of the Act, then on the same principle one would have to hold that the Central Government could also grant exemption to a multi State co-operative society of the applicability of the provisions of Section 34. Surely, that will be opposed to the very object and purpose of the Act. Just as applicability of Section 34 of the Act cannot be dispensed -with or relaxed, similarly, the provisions of Sections 36 and 37 cannot be done away with .by granting an exemption to the society under Section 99(2).

10. Sections 36 and 31, as we have already noticed is directed at a person holding or aspiring to hold office and is not directed at any multi-State cooperative society. The question of granting exemption to a multi-State cooperative society under Sections 36 and 37 does not arise and is not covered by Section 99(2). For the aforesaid reasons the appeal is allowed, judgment of the High Court is set aside. The result of this would be that the orders dated 13th January, 1998 granting exemption under Section 99(2) in respect of Sections 36 and 37 are quashed. There will be no order as to costs.

11. Mr. Ramajois, learned senior counsel appearing for respondent No. 6 in special leave petition, states that the petitioner in the High Court Shri B.S. Vishwanathan undertakes to withdraw the writ petition which has been filed in the High Court, In this view of the matter the Special Leave Petition No; 20314 of 1998 has become infructuous. It is accordingly dismissed.

Petition dismissed

Baghopuri M. M. Sambai Samiti v State of Assam and Others

Bench	S. Rajendra Babu, S.N. Phukan
Where Reported	1999 Indlaw SC 1039; (1999) 3 SCC 626; AIR 1999 SC 1758; JT 1999 (2) SC 508; [1999] 2 S.C.R. 275
Case Digest	**Summary:** Socio-Economic - Constitution - Assam Co-operative Societies Act, 1949 - Constitution of India, 1950, art.341 - Fishery Rules, rr. 8,12, 13 - Fishery Rights - Settlement - Preferential Treatment - Interim Order - Appellant/fisherman community was recognized and notified as backward by their residing District - Respondent/State hold that appellants could not be equated with Scheduled Castes community for purpose of getting settlement of fishery rights u/r. 12 of Fishery Rules - Respondent/State made an order that appellants were entitled to certain fishery rights - Lower Court, set aside order of respondent and remanded matter to Govt. for settlement - On appeal to HC, hold that while there could be no inhibition for a member of SC/ST migrating, but a member of Scheduled Caste or Tribe when migrated could not carry any right or privileges attributed to him and dismissed appeal filed by appellant - Appellant was not eligible to claim fishery rights - Whether appellants/members of society belonged to Scheduled Caste or Community of District and society fulfilled terms and conditions necessary for giving settlement of fishing rights and Whether appellant/Community, who settled outside District was entitled to any preferential treatment or protection - Held, that Lower Court appeared to be more reasonable and appropriate than view of Division Bench of HC - On a careful perusal of proviso to R. 12 of Rules, Court found that exercise of power under Rules was not arbitrary - There were prerequisites which should be satisfied before power of direct settlement could be exercised by respondent - When area of operation of a notification was not confined to any particular geographical region, areas referring to persons belonging to a community of a particular district only - During pendency of matter before competent authority, benefit of interim order granted by this Court should continue until disposal of matter - Court allowed appeals filed by appellant and set aside order made of Division Bench and restored order of Single Judge - Appeals disposed of.

Case No : Civil Appeal Nos. 4672-74 of 1998

The Judgment was delivered by : S. Rajendra Babu, J.

1. These appeals are filed against an order made by the Government of Assam by which certain fishery rights were settled In favour of the appellant by an order dated April 20, 1994. The said order was challenged in writ petitions. The learned Single Judge, who heard the matter, set aside the order of the Government and remanded the matter to the Government for settlement

applying the correct principles of law. Again on April 5, 1995, the appellant society applied for settlement of fishery. The Deputy Commissioner, Darrang cancelled the settlement of fishery made with the appellant society and thereafter a writ petition was presented in the High Court of Gauhati challenging the settlement of fishery in favour of the appellant. The contention put forth before the High Court was that the appellant did not fulfil the requirements of direct settlement under the proviso to Rule 12 of the Fishery Rules inasmuch as the said society was formed with the members belonging to Maimal Community who are not entitled to direct settlement. This community had been recognised and notified for Cachar District only and cannot be equated with the Scheduled Castes community for the purpose of getting settlement of the fishery under the proviso to Rule 12 in other parts of the State of Assam.

2. The learned Single judge disposed of the writ petitions and as regards the applicability of the proviso to Rule 12 to the Maimal Community observed that the appellant society was situated in Darrang district and was formed with persons belonging to Maimal Community and the members of Maimal Community in the Cacher District are backward and, therefore, they need protection and economic help. The aim of proviso to Rule 12 is to give the benefit of a fishery to a cooperative society formed with 100% actual fishermen of the fishing population belonging to Scheduled Caste or Maimal Community. Backwardness and economic deprivation were the main criteria for giving the benefit and not the place of residence and though the members of the appellant belonged to the Maimal Community of Cachar District new they were permanently residing in Darrang District and they could not be deprived of getting tine benefit of proviso to Rule 12.

13 (a) "With prior approval of the State Government not more than 60 per cent of the fisheries In a sub-division available for settlement in a year shall be selected for sale under tender system only with the Cooperative Fishery Societies formed with 100 per cent share holders from members of actual fishermen belonging to the Scheduled Caste of **the State and/or Maimal Community of the District of Cachar and registered under the Assam Cooperative Societies Act, 1949. Settlement of all such fisheries tenders of which have been accepted under R.5 shall be with the highest tender.**

(b) The remaining fisheries in the sub-division available in that year under tender system of sale, shall remain open for settlement to ail communities including Co-operative Societies as referred to in Sub-R.(a) above.

(c) Cooperative Fishery Society by members of actual fishermen belonging to the Scheduled Castes/ Maimal Community/Scheduled Tribes/other Backward Classes and ***registered under the Assam Cooperative Societies Act, 1949, shall be given option to accept settlement of fisheries of the category as mentioned in sub-R.(b) above at the highest tender; provided that their tender is within 71/2 per cent of the highest tender.***

7. The validity of the said rules had been challenged in the Gauhati High Court in Arabinda Das & etc, vs. State of Assam & Ors., AIR 1981 Gauhati 18. In that case, the background in which the said Rules were framed was considered and it was noticed that the Rules can be framed in terms of the Assam Land & Revenue Regulations and the successive amendments of the Rules made from time to time indicated the anxiety of the Government to give a better deal to deserving

persons, namely, the cooperative societies formed by actual fishermen by settling mole and more fisheries with them, the emphasis being that the Government was more concerned with providing work to the actual fishermen to improve their lot than deriving revenue to the exchequer. After analysing the various rules it was noticed as follows:

9. The learned Single Judge did not indulge in any exercise in semantics as to the expression "Maimal Community of the Cachar District" and as to whether the operation of the said rule is confined only to Cachar District or outside but on the basis that the Maimal Community of the Cachar District were members of the society and the object of the rule being to help the backward classes they were entitled to the same even though such persons may be residing outside the district. The Division Bench of the High Court: laid emphasis on the expression "of the Cachar District" and, therefore, took the view that they must belong to the Maimal Community and must reside within the district to become entitled to the benefit of the rule. Now we may advert to the policy adopted by the Government of Assam in the matter of backward classes in the communication No. TAD/DC/268/75/37 dated November 27, 1975. We may notice that there are certain communities which are recognised only in a particular area geographically. In respect of others, all that is stated is "Kumar; Rudra Paul of Cachar" while in case of Rajbonshi or Koch (Koch of Goalpara and Garo Hills only). Specific mention is made as confined to a particular area. When area of operation of a notification Is not confined to any particular geographical region the areas referring to persons belonging to a community of a particular district would only be the words of description and in such cases we will have to take the term "of" as denoting origin or descent of the persons belonging to a particular community of an area. Ultimately it means that they hail from a particular area and recognises them belonging to that particular district and no more.

10. Therefore, the view taken by the teamed Single Judge of the High Court appears to us to be more reasonable and appropriate than the view taken by the Division Bench of the High Court. During pendency of the matter before the competent authority the benefit of interim order granted by this Court shall continue until disposal of the matter.

11. On this reasoning, we allow the appeals filed by the appellant and set aside the order made by the Division Bench and restore that of the learned Single Judge. The appeals are allowed accordingly. Considering the nature and circumstances of the case, there shall be no order as to costs.

Appeals allowed

Balwant Singh v State of Haryana and Others

Bench	N. Santosh Hegde, D.P. Wadhwa
Where Reported	1999 Indlaw SC 1022; (1999) 3 SCC 296; AIR 1999 SC 1214; 1999 (3) CLT 5; JT 1999 (2) SC 334; 1999 (3) LLN 12; 1999(2) SCALE 214; 2000 (3) SLR 455; 1999 (3) SLT 116; 1999 (3) Supreme 137
Case Digest	**Summary:** Arbitration & ADR - Trusts & Associations - Punjab Co-Operative Societies Act, 1961, s. 55(1)(b) - Appellant challenged an order made by second respondent appointing third respondent as an arbitrator under provisions of Act - Appellant contended that provisions of s. 55(1)(b) of Act are not applicable with regard to any dispute arising between employee of cooperative society and another cooperative society - Whether such dispute could not have been referred to an arbitrator under provisions of Act? - Held, appellant though was employed by Nalvi Society as a salesman was, in fact, a member of Shahbad Society - Dispute in question was with reference to an amount collected by appellant which was payable to Shahbad Society - Therefore claim of Shahbad Society is certainly one pertaining to management and business of Shahbad Society - Therefore dispute squarely falls within s. 55 of Act - In view of fact that appellant is a member of Shahbad Society, as a member any amount due from him to Society would come within purview of dispute touching upon management and business of Society - Appeals dismissed.

Case No : C.A. Nos. 354-55 of 1984 (From the Judgment and order Dt. 19 April 1983 of the Punjab and Haryana High Court in C.W.Ps. Nos. 2621-22 of 1976)

The Judgment was delivered by : Santosh Hegde, J.

1. These appeals are against the judgment and order dated 19.4.1983 passed by the High Court of Punjab & Haryana in Civil Writ Petition Nos.2621 and 2622 of 1976. The appellant who was the petitioner before the High Court, filed the aforesaid writ petitions challenging an order made by the second respondent herein appointing the 3rd respondent as an **arbitrator under the provisions of the Punjab Cooperative Societies Act, 1961 (for short the Act) which petitions came to be dismissed by the Full Bench of the High Court, following an earlier Full Bench judgment of the same High Court which is since reported** as Mam Raj v. State of Haryana & Ors. (AIR 1982 P & H 211).

2. In these appeals, it is contended by the appellant that the provisions of Section 55(1)(b) of the Act are not applicable with regard to any dispute arising between an employee of a Cooperative Society and another Cooperative Society and the dispute in the instant case being between Shahbad Farm Cooperative Marketing cum Processing Society Ltd. (for short the Shahbad Society) and an employee of Nalvi Cooperative Agricultural Service Society (for short the Nalvi Society), such dispute could not have been referred to an arbitrator under the provisions of the Act.

3. In support of his contention, the appellant has sought to place reliance on a judgment of this Court in Deccan Merchants Co-operative Bank Ltd. v. M/s. Dalichand Jugraj Jain & Ors. (1969 1 SCR 887 1968 Indlaw SC 309). In our opinion, the ratio laid down in the said judgment is not applicable to the facts of this case. The dispute in that case was in relation to a property leased by a member of the Society to the Society and the question was whether such a dispute comes under the purview of the arbitration clause provided for in the Act. There, it was held by this Court that though the person who leased the property to the Society, was a member of the Society; the nature of the dispute was such that it did not pertain to the management and business of the Cooperative Society. In the instant case, the appellant though was employed by the Nalvi Society as a salesman was, in fact, a member of the Shahabad Society. The dispute in question was with reference to an amount collected by the appellant which was payable to the Shahbad Society. Therefore, the claim of the Shahbad Society is certainly the one pertaining to the management and business of the Shahbad Society. Therefore, in our opinion, the dispute squarely falls within Section 55 of the Act. It is unfortunate that the appellant in his special leave petition did not disclose this fact that he was a member of the Shahbad Society. On the contrary, he had only highlighted the fact that he was an employee of the Nalvi Society and, as such, the dispute between him and the Shahbad Society could not come under Section 55 of the Act.

4. It is only after a counter was filed on behalf of the Shahbad Society that it has come on record that the appellant is also a member of the Shahbad Society. To this extent it should be said that the appellant was not fair to this Court in presenting his case. It has also come on record that the arbitrator has already passed an award against the appellant and it is only by virtue of the interim order passed by this Court that that award is not yet executed.

5. At any rate, we having come to the conclusion that in view of the fact that the appellant is a member of the Shahbad Society and as a member any amount due from him to the Society would come within the purview of the dispute touching upon the management and business of the Society. We find no merit in these appeals and the same are dismissed with costs.

Appeal dismissed

A. P. Coop. Central Agricultural Development Bank Limited v V. Venkateswar Rao and Another

Bench	B.N. Kirpal, V.N. Khare
Where Reported	1999 Indlaw SC 914; (1999) 3 SCC 158; JT 1999 (8) SC 375
Case Digest	**Summary:** Trusts & Associations - A.P. Cooperative Societies Act 1964, ss. 85, 92, 93, 100, 101 and 103 - A.P. Cooperative Societies Rules, r. 52(5)(o)- Civil Procedure Code, 1908, s. 60 - Transfer of Property Act, 1882 - Whether a tractor can be regarded as an implement of husbandry? - Held, s. 85 enables the bank to give loan for specified purposes, it does not contemplate granting of loan to an agriculturist for buying any implement of husbandry - It is not possible to construe the proviso to s. 103 and the proviso to s. 60, CPC, 1908 to be in conflict with other provisions of the Act - The proviso to s. 103 was clearly not meant to refer to at least those items, movable or immovable, in respect of which the loans were advanced u/s. 85 and mortgaged in favour of the bank - High Court did not not correctly construe s. 103 and it erred in coming to the conclusion that the tractors which stood mortgaged with the appellant would not be seized or sold - The judgment of HC is set aside - Appeals allowed.

Case No : C.As. Nos. 4010 and 4010A-4010T of 1989

The Order of the Court was as follows:

1. **The sole question which arises for consideration in these appeals is whether on a correct interpretation of Section 103 of the A.P. Cooperative Societies Act, 1964, the appellant-Bank can seize and sell the tractor of the respondents for realisation of the amount of loan payable by them to the appellant.**

2. Briefly stated, the facts in civil appeal arising from Writ Appeal No. 136 of 1982 are that two loans of about Rs.40,000 and Rs 35,000 were taken by the writ petitioners from the appellant-Bank. These loans were disbursed for the purpose of purchasing a tractor. Repayment of loan was to take place by payment in yearly instalments. There was default in the payment of the same and demands were raised. When demands having been raised and the amount due to the appellant-Bank was not paid, the tractor in question was seized and distrained.

3. Thereupon a writ petition was filed before the High Court of Andhra Pradesh in which the writ petitioners had contended that the tractor was an agricultural implement and as such was exempt from attachment. The other writ petitions which were disposed of by the common judgment of the High Court also raised the same question.

4. The High Court by its impugned judgment came to the conclusion that on a correct interpretation of Section 103 read with Rule 52(5)(o) of the A.P. Cooperative Societies Rules, tractors were agricultural implements of husbandry and, therefore, they could not be seized or sold by the appellant for the purpose of realisation of the amount due to it.

14. The proviso to Section 103 was clearly not meant to refer to at least those items, movable or immovable, in respect of which the loans were advanced under Section 85 and mortgaged in favour of the bank. When entering into the question as to what is the meaning of the words "implements of husbandry", we are clearly of the view that the tractors in respect of which loans have been granted by the appellant would not fall within that description and the appellant would be entitled to take steps for distraint and sale of the same.

15. In our opinion, the High Court did not not correctly construe the provision of Section 103 and it erred in coming to the conclusion that the tractors which stood mortgaged with the appellant would not be seized or sold.

16. For the reasons stated hereinabove, we allow these appeals, set aside the judgment of the High Court and dismiss the writ petitions filed by the respondents. As the respondents are not represented, there will be no order as to costs.

Appeals allowed.

Myurdhwaj Cooperative Group Housing Society Limited v Presiding Officer, Delhi Cooperative Tribunal and Others

Bench	A.P. Misra, G.B. Pattanaik
Where Reported	1998 Indlaw SC 1031; (1998) 6 SCC 39; AIR 1998 SC 2410; JT 1998 (4) SC 555; 1998(4) SCALE 53; [1998] 3 S.C.R. 574; 1998 (6) SLT 164; 1998 (5) Supreme 411
Case Digest	**Summary:** Trusts & Associations Delhi Co-Operative Societies Act, 1972, s. 97 - Operative, Rules, 1973, r. 36 - (A) Allotment of flat in Co - operative Housing Society - Defaulting member - Rule 36 providing for expulsion of defaulting member - Whether power of society to expel defaulting member can be concretised within this Rule? - Whether Society can lay down its own principle for making allotments? - (B) Allotment of flats to members of Society - Criteria - Senior member defaults in payment of dues on cut-off date as resolved by Society - Whether member can claim right for allotment on principle of seniority alone? - Whether resolution of society allotting flat to said senior member in second phase, not arbitrary? - Held, (A) power of society cannot be concretised within this Rule - Society can lay down its own principle - (B) Cannot claim allotment on seniority alone - Resolution of society not arbitrary - Appeal allowed.

Case No : Civil Appeal No. 16790 of 1996

The Judgment was delivered by : A. P. Misra, J.

1. The short question raised in this appeal is, "whether in the allotment of flats to its members by the Cooperative Housing Society (hereinafter referred to as 'the society') the criteria is seniority irrespective of default in the payment of dues or whether it is payment cum seniority?" The appellant is a registered Housing Cooperative Society, registered in the Office of Registrar, Cooperative Societies, Delhi, under the Delhi Cooperative Societies Act, 1972 (hereinafter referred to as "the Act") and the Delhi Cooperative Societies Rules 1973 (hereinafter referred to as "the Rules"). It was constituted for the purpose of allotment of flats to its members. At the relevant time 460 members were in roll. This society applied for allotment of land to the Delhi Development Authority (hereinafter referred to as "DDA") for the purpose of construction of flats for its members. This Society was allotted only 5 acres of land in Patparganj which was not sufficient for the construction of flats for the aforesaid members.

2. However, later on, in view of relaxation to the ceiling limit DDA decided to make additional allotment as per actual requirement, that is to say, to the extent of 7.666 acres of land instead of 5 acres. The society was also directed to deposit a sum of Rs. 11, 87, 190.80p towards the cost of additional land. In 1988, the Society raised demand for the construction of first phase

of flats on the said 5 acres and also sent remainder notice to all its members through registered post including the main contesting Respondent No.3 Mrs. Veena Kumar vide notice dated 26th April, 1989(the receipt of the notice was denied by Respondent No.3) As per the said notice the cost of construction of flat of each of its member was said to be Rs. 2,75,213/ approximately. The mode of payment as per the first notice was, to pay initially Rs. 2,21,705/ by each of such allottee but since only Rs. 85,100/ was paid hence through the aforesaid notice it was directed to pay the balance amount of Rs. 1,36,705/ within thirty days.

17. Reverting back to the facts of the present case, it cannot be said when respondent No. 3 or such other member, who defaulted by not even paying the minimum as resolved could claim as a right for allotment on the principle of seniority alone or that the resolution of the general body dated 6.1.90 could in anyway be said to be unfair, unjust, arbitrary, mala fide or irrational liable to be struck down. It may be where a very senior defaulting member paid the balance amount only one week after very junior member paid the full amount, it is open for a Society to resolve as it deem fit and proper by giving weightage to the seniority. It is within the permissible discretionary field of such Society.

18. So far giving notice to respondent No. 3 we find there is specific averment by the appellant that a registered notice dated 26th April, 1986 was sent to her, a copy of which has been filed in this appeal. The respondent's case is, she has not received any notice from the Society either of the default or laying down cutoff date for the payment, including notice dated 26th April, 1986, further the decision of the general body dated 6.1.90 of relegating her or other such person to phase II was not on agenda. To this last argument we do not find any merit. A general body can always with the approval of the house in the meeting of its members take up any other matter not covered by the agenda and on that account no illegality could be held.

19. So far question of notice to respondent No. 3 whether given or not, is a question not adverted to or decided by Respondent No. 1 viz., Delhi Cooperative Tribunal or the High Court. Before treating any person to have defaulted, it is necessary to record that a notice proceeding such impugned decision is actually served on such member or there is deemed service under some applicable Rule depending on the facts. We feel this question of notice to Respondent No. 3 has not been adverted to by any of the said authority or Court which requires consideration. For this we send back this case to the Tribunal for deciding this sole question whether there was notice to the respondent No. 3 or not as aforesaid. In case the Tribunal find she had notice she would not be entitled for any relief but in case she had no notice her claim for phase I flats cannot be defeated.

20. Accordingly, we hold that a principle of seniority alone cannot be said to be the correct criteria and the criteria resolved by the General Body being just, proper and fair does not call for any inference by this court. Accordingly, we quash the impugned judgment of the High Court dated 10.11.1995 and the ex-parte order dated 29.9.95 passed by the Delhi Cooperative Tribunal. The case is remanded back to Respondent No. 1, the Tribunal to decide on the limited question as aforesaid. This appeal is allowed in terms as aforesaid. Cost on the parties.

Appeal Allowed

Goa Central Cooperative Consumers v Bhagwant Narayan Tendulkar and Others

Bench	G.B. Pattanaik, G.N. Ray
Where Reported	1998 Indlaw SC 1539; (1998) 4 SCC 527; AIR 1999 SC 846; 1998 (4) Bom.C.R. 637; JT 1998 (5) SC 343; 1998(5) SCALE 27; 1998 (9) SLT 53; 1998 (9) Supreme 107
Case Digest	**Summary:** Maharashtra Co-operative Society Act, 1961, ss. 91(c) and 45 - Transactions with non-members of society - Restriction on - Claim of money flowing from hire purchase agreement entered between co-operative society and non-member - Held, said agreement not made in Course of usual business of society - Dispute cannot be raised under s. 91(c) before Registrar, co-operative society.

Case No : C.A. No. 3848 of 1983

The Order of the Court was as follows:

1. This appeal is directed against the judgment dated 7-7-1980 passed by the Bombay High Court, Goa Bench at Panaji in Special Civil Application (Writ Petition) No. 107 of 1974. The appellant, the Goa Central Cooperative Consumers Wholesale and Retail Stores Ltd., Panaji made an application under Section 91 of the Maharashtra Cooperative Societies Act, 1960 against the respondents for claim of money flowing from a hire-purchase agreement entered between the said cooperative society and the respondents. Under such agreement the Society had transferred three trucks to the respondents on a hire-purchase basis.

2. The respondents raised the dispute that the proceeding under Section 91 of the Cooperative Societies Act before the Registrar of the Cooperative Societies was not maintainable. Such contention, however, was overruled by the Registrar. Thereafter, the aforesaid writ petition was moved before the Goa Bench of the Bombay High Court by the respondents. By the impugned judgment the High Court has held that such dispute was not maintainable under the provisions of Section 91 of the Maharashtra Cooperative Societies Act, 1960. The High Court has indicated that the hire-purchase agreement entered between the society and the respondents was not made in the course of the usual business of the Society. In any event, the said agreement of hire-purchase did not come under clause (c) of Section 91(1) of the said Act.

3. In our view, the High Court has rightly held in the facts of the case that the hire-purchase agreement between the respondents and the cooperative society was not made in the course of the usual business of the Society. That apart, even if it is assumed that such business transaction by way of hire-purchase had taken place between the Society and a non-member of the Society, in order to bring the dispute under Section 91 of the said Act, the transaction in question must come within the purview of Sections 43, 44 or Section 45 of the said Act. Section 43 deals with restrictions on borrowings of the Society.

4. Section 44 deals with regulation of loan-making policy and the said sections are not at all attracted in the facts of the case. Section 45 deals with restriction on the transaction with non-members. It will be appropriate at this stage to refer to Section 45 “45. Restrictions on other transactions with non-members. - Save as is provided in this Act, the transactions of a society with persons other than members, shall be subject to such restrictions, if any, as may be prescribed.”

5. It appears that the transaction to come under Section 45 must be subject to such restriction as may be prescribed. Admittedly, no rule has been prescribed by which any restriction in respect of such transaction has been imposed. Therefore, Section 45 is also not attracted. Hence, the dispute cannot be brought under clause (c) of Section 91(1). We do not, therefore, find any reason for interference against the impugned judgment. The appeal is, therefore, dismissed without any order as to costs.

Appeal Dismissed.

Surat Textile Market, Cooperative Shops and v Municipal Corporation Of The City Of Surat

Bench	S. Rajendra Babu, A.S. Anand
Where Reported	1997 Indlaw SC 2713; (1998) 1 SCC 497; AIR 1998 SC 482; JT 1997 (9) SC 638; 1997(7) SCALE 373; 1998 (1) SLT 214; [1997] Supp5 S.C.R. 459; 1998 (1) Supreme 54
Case Digest	**Summary:** Bombay Provincial Municipal Corporation Act, 1949, s.2(1A) - Property tax - 'Annual Letting value' - Determination of - Lift exclusively for restaurant on 14th floor - Charges collected from persons using it - Held, is integral part of building - Such charge can be added to rental value of restaurant.

Case No : Civil Appeal No. 1597 of 1991

The Order of the Court was as follows :

2. The appellant is a cooperative society registered under the Gujarat Cooperative Societies Act, 1961. The Respondent a Corporation Constituted under the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as the Act) served the appellant with a show cause notice of assessment in respect of the building constructed by the appellant on Survey Nos. 95 and 96, Paiki of Ward No. 14, Umarwada on the land taken on lease by it from Surat Municipal Corporation. The appellant has constructed a textile market at the said site. The appellant filed objections to the said notice of assessment. After hearing objections, the assessment proceedings were finalised and the appellant was informed. The respondent while finalising the assessment proceedings added an amount of Rs. 5,508/-, being 50% of the income derived by the appellant, in the rental value of revolving restaurant, holding that the appellant derived income from the lift which is provided for taking visitors from the ground floor to the 14th floor, where the revolving restaurant is situated. The assessment order was challenged through a Municipal Assessment Appeal in the court of the learned civil judge (senior Division), Surat, By an order dated 26th August, 1977, the appellate authority dismissed the appeal holding that the appellant had let out the revolving restaurant with the convenience of t he lift and the charges collected by it from the customers at the rate of Rs. 1/- per person visiting the revolving restaurant by using that lift were to be included in the rental value. A Regular Civil Appeal was thereafter filed under Section 411 of the Act by the appellant against the judgment and order dated 26th August, 1977.

3. The second appeal was dismissed and the judgment and order of the first appellate court was confirmed on 18th October, 1979. The appellant thereafter filed a writ petition under Articles 226/227 of the Constitution of India in the High Court of Gujarat, Challenging the Judgment and order dated 18th October, 1979 passed by the learned Extra Assistant judge, Surat in the Regular Civil Appeal. The writ petition also came to be dismissed on 8th November, 1990. Hence this appeal by special leave.

4. The basic question which requires our consideration in this appeal is whether the charges which the appellant collects at the rate of Rs. 1/-per person for use of the lift could be added to the rental value of the revolving restaurant located on the 14th floor of the building of purposes of computation of property taxes by the respondent- municipal Corporation?

7. The High Court after referring to various judgments cited before it rightly concluded that the lift provided for the restaurant was an integral part of the building and on the basis of that finding held that the respondent - Corporations was entitled to impose tax in respect of that passage through the use of the lift since it constituted an integral part of the building for access to the 14th floor.

8. The lift which has been provided for use of the customers intending to go to the revolving restaurant on the 14th floor is meant exclusively for use of the customers visiting the revolving restaurant. This position has been admitted by Mr. D.P. Dalal, the Manager of the appellant-Society who was examined as a witness. He categorically admitted that t he revolving restaurant was given on lease with the under standing that it would be given a separate facility of the lift and that "the lift is provided only for the restaurant". This evidence makes it abundantly clear that the facility of the lift was required to be treated as an integral part of the building and that being so, the respondent was justified in including 50% of the 50% of the income received by the appellant in the annual letting value. It is not possible to agree with learned counsel for the appellant that the provision of lift was in the nature of an amenity or service. Whereas an amenity or service may also be considered to be for the beneficial use of the residents of the building, provision of an exclusive passage to a portion of the building, is an essential and an integral part in so far as that building is concerned.

9. Learned counsel for the appellant. however, submitted that the lift is not meant. Only for the customers visiting the revolving restaurant but is also meant for those visitors who intend to go to the observation gallery. The argument does not have any substance cause of the evidence of Mr. Dalal to which we have already made a reference. That evidence categorically shows that the lift was meant exclusively for the use of the restaurant and, therefore, it does not lie in the mouth of the appellant now to urge that the lift was also for the use of the persons visiting the observation gallery. Property tax in respect of such an integral part of the building was, therefore, required to be levied by the corporation. Learned counsel does not question the quantum of tax.

10. In this view of the matter we find that the High Court committed no error in dismissing the writ petition, upholding the order of assessment as also the orders of the appellate authorities. We do not find any merit in this appeal which consequently fails and is dismissed but without any order as to costs.

Petitions dismissed

Laxmi Cooperative Housing Society Limited v Kantilal Champaklal Kothari and Others

Bench	G.T. Nanavati, S.C. Agrawal
Where Reported	1997 Indlaw SC 1628; (1998) 9 SCC 629; 1998 (5) Bom.C.R. 720; JT 1998 (9) SC 46
Case Digest	**Summary:** Civil Procedure - Abatement of appeal on death - Trusts and Associations - Maharashtra Co - operative Society Act, 1960, s. 350 - Resolution by petitioner/society to expel one of its members - Approval sought from Asst. Registrar - Refused - Appeal before Joint Registrar - Pending appeal, member to be expelled, died - Dismissal of appeal on ground that nothing survives on death of member - Dismissal whether justified? - Held, no - Death of member could not have any effect on maintainability of said appeal because, in event of appeal being allowed and order of Asst. Registrar being set aside and resolution for expulsion being approved by Joint Registrar, action of cooperative society in expelling such member would take effect from date of resolution and LRs. of member would have no claim to membership of cooperative society - On other hand, in event of appeal being dismissed, member would be deemed to have continued as a member of Cooperative Society at time of his death and his LRs. would be entitled to benefit of such membership - Impugned judgement set aside - Matter remitted to Authority.

Case No : C.A. No. 7455 of 1997 (Arising out of S.L.P. (C) No. 9559 of 1996)

The Order of the Court was as follows:

Special leave granted.

1. The Laxmi Cooperative Housing Society Ltd. (hereinafter referred to as "the Cooperative Society") is a cooperative society registered under the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as "the Act"). Champaklal Harakchand Kothari was a member of the Cooperative Society. By resolution dated 14-1-1979 the Cooperative Society expelled him from the membership.

   An application was moved by the Cooperative Society before the Assistant Registrar, Cooperative Societies (hereinafter referred to as "the Assistant Registrar") under Section 35 of theseeking approval to the said resolution. The Assistant Registrar, by his order dated 3-10-1983, refused to grant the approval.

2. The Cooperative Society filed an appeal against the said order of the Assistant Registrar before the Joint Registrar, Cooperative Societies (hereinafter referred to as "the Joint Registrar"). During the pendency of the said appeal, Champaklal Harakchand Kothari died on 14-7-1989. Respondents 1 to 3 are legal representatives of deceased Champaklal Harakchand Kothari.

The Joint Registrar, by his order dated 30-4-1994, dismissed the appeal of the Cooperative Society on the view that since Champaklal Harakchand Kothari has expired nothing survives in the appeal. The writ petition filed by the Cooperative Society assailing the said order of the Joint Registrar has been dismissed by the Bombay High Court by the impugned judgment.

We have heard the learned counsel for the parties.

3. We are unable to agree with the view of the Joint Registrar as well as the High Court that as a result of the death of Champaklal Harakchand Kothari during the pendency of the appeal nothing survived in the said appeal filed by the Cooperative Society against the order of the Assistant Registrar. Since the death of Champaklal Harakchand Kothari had taken place after the passing of the resolution expelling him from the membership of the Cooperative Society, the validity of the action of the Cooperative Society in expelling Champaklal Harakchand Kothari from membership required to be considered in the appeal filed by the Cooperative Society against the order of the Assistant Registrar which was pending before the Joint Registrar at the time of his death.

   The death of Champaklal Harakchand Kothari could not have any effect on the maintainability of the said appeal because, in the event of the appeal being allowed and the order of the Assistant Registrar being set aside and the resolution for expulsion being approved by the Joint Registrar, the action of the Cooperative Society in expelling Champaklal Harakchand Kothari would take effect from the date of the resolution and the legal representatives of Champaklal Harakchand Kothari would have no claim to the membership of the Cooperative Society.

4. On the other hand, in the event of the appeal being dismissed, Champaklal Harakchand Kothari would be deemed to have continued as a member of the Cooperative Society at the time of his death and his legal representatives would be entitled to the benefit of such membership.

5. The appeal is, therefore, allowed, the impugned judgment of the High Court as well as the order of the Joint Registrar dated 30-4-1994 are set aside and the matter is remitted to the Joint Registrar for considering the appeal filed by the Cooperative Society on merits. No order as to costs.

Appeal allowed.

Hukmi Chand v
Jhabua Cooperative Central Bank Limited, Jhabu(M.P.) and Another

Bench	D.P. Wadhwa, Ms. Justice Sujata V. Manohar
Where Reported	1997 Indlaw SC 1270; (1998) 2 SCC 291; (1998) SCC (L&S) 509; 1998 (2) CLR 230; 1998 (79) FLR 743; JT 1998 (4) SC 233; 1998 (2) LLJ 258
Case Digest	**Summary:** Labour & Industrial Law - Essential Commodities Act, ss. 3 and 7 - Cooperative Central Bank Employees Rules, 1977, r. 49 (i) - Whether appellant is entited to unpaid wages due to termination of services? - Held, u/r. 49(ii), employer empowered to order back wages - In absence of an order specifying grant of back wages, reinstatement will not automatically entitle an employee to back wages - If employer decides not to grant back wages after review of circumstance, than such discretionary act not unreasonable - Noted that appellant in compliance with r. 49(ii) reinstated immediately after order of acquittal - Appeal dismissed.

Case No : C.A. No. 3087 of 1981

The Order of the Court was as follows:

1. The appellant was employed as a Supervisor with the first respondent, Jhabua Cooperative Central Bank Ltd., Jhabua Pradesh. With effect from 1-4-1976, he was also put in charge of supervising the affairs of Adimjati Sewa Sahakari Sanstha Maryadit, Kalyanpura, as he was posted as a Supervisor in Kalyanpura Branch of Respondent 1-Bank from the year 1974. From September 1976, he was relieved of the additional duties of supervising affairs of Adimjati Sewa Sahakari Sanstha Maryadit, Kalyanpura.

2. He however, continued as Supervisor of Kalyanpura Branch of Respondent 1-Bank. In 1976, certain irregularities in distribution of sugar were detected while examining the working of Adimjati Sewa Sahakari Sanstha Maryadit, Kalyanpura. The appellant along with one Meghraj was charge-sheeted in Criminal Case No. 1197 of 1977. The appellant was convicted and sentenced to rigorous imprisonment for one year and a fine of Rs. 1000 for offence under Section 3 read with Section 7 of the Essential Commodities Act. The order of conviction is dated 12-1-1978. The appellant preferred an appeal being Criminal Appeal No. 8 of 1989.

3. The appeal was, however, dismissed. The appellant preferred a revision before the High Court which was allowed by the High Court by its order dated 5-9-1979 on the ground that the prosecution had failed to prove the charge against the appellant

9. However, he was not granted any back wages. Learned counsel for the appellant contends that Rule 49 is arbitrary because it provides for termination of services without a departmental enquiry and hence is in violation of principles of natural justice. Rule 49(i) is, however, confined only to those cases where the employee is convicted and sentenced for an offence by a sentence of imprisonment.

10. It presumes a proper trial and a judicial conviction of the employee where the employee has a full right to defend himself in accordance with law, In view of such trial and conviction, a separate departmental enquiry has been considered unnecessary. We fail to see how this can be considered in violation of the principles of natural justice.

14. It is also contended by the appellant that in his case, not awarding of back wages is unjustified and the order of reinstatement ought to have granted him back wages. The grant of back wages under sub-rule (ii) is at the discretion of the employer.

15. In the present case looking to the fact that both the trial court as well as the appellate court have convicted the appellant and it was only in revision that he was acquitted on the ground that the prosecution had failed to prove the charges, if the employer, after taking into account all relevant circumstances, decides not to grant back wages to the appellant, such exercise of discretion cannot be considered as totally unreasonable requiring our intervention at this stage. It is to be noted that the appellant was reinstated immediately after the order of acquittal.

16. We, therefore, do not see any reason to set aside the impugned judgment and order of the High Court. The appeal is, therefore, dismissed. However, there will be no order as to costs.

Appeal dismissed.

The Punjab State Co-Operative Bank Limited v Milkhan Singh (Deceased) By Lrs. And Anr.

Bench	G.N. Ray, G.B. Pattanaik
Where Reported	1997 Indlaw SC 2919; (1997) 7 SCC 758; AIR 1998 SC 271; [1998] 92 Comp Cas 652; JT 1997 (8) SC 216; 1997(6) SCALE 228; 1999 (1) SLJ 56; 1997 (5) SLR 613; 1997 (8) Supreme 383
Case Digest	**Summary:** Corporate - Punjab Co-operative Societies Act, 1961, s. 10 - Whether the Managing Director on its own had the authority to prefer appeal against a decision of the Court in the absence of any resolution by the Board of Directors or by the Bank on the general body of the society deciding to prefer such appeal - Held, maintainable in view of Bye-law 46 framed under the Act - Appeal allowed.

Case No :

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

Leave granted. Heard learned counsel for the parties.

1. The predecessor-in-interest of the respondents Sri Milkha Singh since deceased was a senior accountant in the Gurdaspur Central Co-operative Bank Ltd. For alleged misconduct of the said employee in misappropriating the finds of the appellant Bank, Sri Milkha Singh was placed on suspension on 6.5.1974. A Criminal Case under sections 409, 467, 468, 477A and 120B and 120B IPC was registered against the said employee but he was discharged in the said case by the Chief Judicial Magistrate Gurdaspur on 26.11.1977. Sri Milkha Singh was allowed to join duties on 19.4.1978. Subsequently, a departmental proceeding was initiated against Sri Milkha Singh and a penalty for stopping promotion for two years was imposed on the said employee vide order dated 13.7.1984. The period from 6.5.1974 to 19.4.1978 was also regularised against leave vide dated 6.2.1985.

2. Sri Milkha Singh challenged the order of punishment and order regarding regularisation of the period under suspension in a Civil Suit initiated on 23.4.1986. Such suit was decreed with cost on 15.10.1990. The Managing Director of the appellant Bank thereafter preferred an appeal against the said decree before the learned District Judge. such appeal was dismissed as time barred on 9.9.1991. The Judgment of the lower appellate court was challenged by the appellant in revision petition filed before the High Court. The High Court allowed the revision petition and the delay in preferring appeal was condoned and the was remanded for disposal on merits. The appeal was, however, dismissed with cost of affirming the decree of the trial court on merits. The Managing Director of the appellant Bank thereafter preferred a second appeal before the High Court. By the impugned order such second appeal has been dismissed on a finding that the Managing Director was not competent to prefer the said appeal without the approval by the Board of Directors of the Bank Such decision of the High Court is impugned in this appeal.

3. The short question that arises for decision in this appeal is whether the Managing Director on its own had the authority to prefer appeal against a decision of the Court in the absence of any resolution by the Board of Directors or by the Bank on the general body of the society deciding to prefer such appeal. It may be stated here that the learned counsel for the respondent has also contended that in any event, the decision for file a special leave petition before this Court cannot be taken by the Managing Director of the appellant Bank even if it is assumed for argument's sake that such Managing Director was competent to prefer first or second appeal.

9. After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned counsel for the parties, it appears to us that the Managing Director of the appellant bank is the Principal Executive Officer of the Bank. The Board of Directors have not been authorised to take decisions regarding institution of suits and legal proceedings and to defend and compound the same. The Co-operative Society has given such powers to its Managing Director in the bye laws. Bye law 46 is quite wide in its amplitude and it encompasses all powers relating to institution of legal proceedings and consequential actions required to be taken in connection with such act legal proceedings by or against the Society. it is not necessary to specifically mention filing of appeal by the Managing Director. In our view, bye law 46 is wide enough to include powers to prefer appeal and to take steps in such appeal as a consequential measure in connection with a suit or legal proceeding.

10. If the Managing Director has been clothed with the authority to institute a suit and abandon or compound a suit or legal proceedings, there is no reason to hold that decision to prefer appeal is something so solemn and important that the Managing Director should not and cannot take such decision on its own. It is not a practical feasibility that the general body may meet frequently to take various executive decision. As a matter of fact, the general body of a Co-operative Society usually take broad policy decisions on one or two occasions. As it is not practicable to take various executive decisions, some of which require urgent decisions an implementations, the bye law has given wide powers to the Managing Director. The Managing Director, in our view, has authority to take decision in the matter of preferring appeal within the scope and ambit of bye law 46. The said Managing Director has also the authority to take a decision to prefer an appeal before this Court by praying for leave to appeal by filing special leave petition We, therefore, allow this appeal and set aside the impugned judgment and direct the High Court to dispose of the appeal preferred by the appellant Bank on merits as early as practicable preferably within a period of six months from the date of communication of this order. As the High Court is directed to decide the appeal on merits, we do not think that any observation on the merits of the case should be made by this Court even though the respondents invited the court's attention on the merits of the case. There will be no order as to cost.

Appeal allowed

Devi Singh v State Of Haryana & Ors.

Bench	K. Ramaswamy, K.T. Thomas
Where Reported	1997 Indlaw SC 1003; (1997) 10 SCC 752; AIR 1997 SC 2778; 1997 (3) CLT 69; JT 1997 (5) SC 683; 1997(4) SCALE 382; [1997] Supp1 S.C.R. 50; 1997 (6) Supreme 207
Case Digest	**Summary:** Corporate - Haryana Co-operative Societies Act, 1972, s. 23 - Constitution, art. 14 - Collectively responsible President along with Secretary and Treasurer of co-operative Societies - Bye-laws exclude him - For proper accounting of funds - Failure - President held liable for misappropriation - Plea of non-supply of document raised before Supreme Court - Held, not entertained as being belated and involving determination of question of fact - Appeal dismissed.

Case No :

The Order of the Court was as follows:

1. We have heard Shri Maheshwari, learned counsel for the appellant.

2. The only question is; whether the appellant as President of the Sardarajanti Kalan Cooperative Agricultural Service Society along with Other two persons, namely, the Secretary and Treasurer, is liable to account for a sum of Rs. 65, 726, 59. It is an admitted position that Tara Chand is Ex-Secretary, the appellant, the Ex-President and Sardar Singh is the Ex-Cashier. The dispute arose from award proceedings under the Haryana Cooperative Societies Act. On a reference made to the Registrar, the matter was referred to the concerned officer for enquiry and necessary action. On the basis there of, after notice to the parties and conduct of the due enquiry, the award come to be passed wherein it was held that the three officers, namely, the appellant a s President, Tara Chand as Secretary and Sardar Singh as Cashier were jointly and individually responsible for the unaccounted sum of Rs.65.726.59. The Secretary and the Cashier had allowed the award to become final. The appellant carried the m atter in appeal, which was confirmed; the writ petition, filed consequently, stood dismissed. Thus, this appeal by special leave granted by this court.

   The finding is that they have not accounted for. It is true that under the bye-laws of the Society, as placed before us, the responsibility is of the Treasurer and the Secretary. But the appellant being the president bears the overall responsibility. Being the President of the Society, he owes the collective responsibility with the Treasurer and the Secretary for its accounting. In the absence of accounting of the funds, necessary inference is that the re was improper management of the institution and the reby they are liable for making good the loss caused to the Society and the members. The crime registered against the m is in respect of an offence; but the surcharge proceedings are for unaccounted money by the officers or the persons responsible there for. Being the President of the Society, the appellant bears the collective responsibility to have the accounting

properly done of the funds of the Society. The omission there of constitutes misappropriation.It is the n contended that certain documents had not been supplied to the appellant and, therefore , it is violative of the principles of natural justice. We do not find any force in the contention at this distance of time for the reason that it involves investigation into the questions of facts.

4. The appeal is accordingly dismissed. No costs.

Appeal dismissed

Sri Ganganagar Urban Cooperative Bank Limited v Prescribed Authority and Others

Bench	K. Ramaswamy, D.P. Wadhwa
Where Reported	1997 Indlaw SC 436; (1997) 6 SCC 29; (1997) SCC (L&S) 1647; AIR 1997 SC 2687; 1997 (76) FLR 902; JT 1997 (5) SC 595; 1997 (2) LLJ 659; 1998 (1) LLN 348; 1997(4) SCALE 302; 1998 (1) SLJ 151; 1997 (4) SLR 583; [1997] Supp1 S.C.R. 43; 1997 (6) Supreme 14; 1997 (2) UJ 169
Case Digest	**Summary:** Trusts & Associations - Service - Rajasthan Shops and Commercial Establishments Act, 1958, s. 28 A Rajasthan Co-operative Societies Act, 1965, ss. 148 -operative, Rules, 1966, r. 20(d) - Termination of service - Employee of Co-operative Bank - Rule providing for automatic termination of service on efflux of specified period vis-a-vis provisions of Shops and Commercial Establishments Act - Bank employee terminated without notice or pay in lieu of notice period - Termination - Whether legal? - Held, Rule stands curtailed by provisions of Shops and Commercial Establishments Act - Termination is illegal - Appeal allowed.

Case No : Civil Appeal No. 3616 of 1997

The Order of the Court was as follows :

Leave granted.

1. This appeal by special leave arise from the judgment of the Division Bench of the High Court of Rajasthan at Jodhpur, made on November 27, 1995 in D.B. Civil Special Appeal No.863/95.

2. The admitted position is that the workmen, ten in number, were appointed in 1992. As a sample case, services of Mr. Ashok Kumar, respondent 7, 1990, were dispensed with on June 5, 1992. They filed an application under Section 33(c-2) of the Industrial Disputes Act (for short, the 'ID Act') before the Industrial Tribunal for direction of reinstatement with full back wages. No such power under Section 33(c-2) is available but the Tribunal has the power under Section 11-A of the ID Act to give such a direction as a consequence of the findings. Section 28-A of the Rajasthan Shops and Commercial Establishment Act, 1958 (for short, he 'Act') under Chapter VI-A deals with dismissal, discharge and termination of the service which reads as under:

3. The finding given by the Industrial Tribunal is that it is a commercial establishment. Rule 20(d) of the Rajasthan Cooperative Societies Rules, (for short, the 'Rules') made under the Rajasthan Cooperative Societies Act, 1965 provides thus :

   " *Rule 20(d) : Service of an employee whose appointment has been made or extended upto a specified period or date only shall automatically terminate on the expiry of that period or date and no notice for termination of services of such employee will be necessary."*

6. Thus, two courses are open to the employer to put an end to the services of an employee workman. One is to dispense with the service by issuance of one month's prior notice or on paying one month's wages in lieu of such notice. What is more, the services can be dispensed with for a reasonable cause. The other option is that the service of an employee can be dispensed with on proof of misconduct after due enquiry envisages adduction of evidence and recording of a finding based thereon, enquiry in the prescribed manner is conducted and the decision is taken in that behalf. In this case, no such course was adopted.

7. Though Rule 20 of the Rules postulates automatic termination service of an employee after expiry of the specified period, the Act interposes and curtails that power of the employer to terminate the service of the employee except in the manner indicated in Section 28-A. Admittedly, no such action has been taken by the appellant. Consequently, the Action of the appellant dispensing with the service without notice or without paying one month's wages in lieu thereof is clearly illegal. The direction of reinstatement is correct however, no back wages need to be paid.

   The appeal is accordingly disposed of. No costs.

Appeal disposed of

Ganpatbhai N. Solanki v District Collector, Vadodara & Anr.

Bench	K. Ramaswamy, G.B. Pattanaik
Where Reported	1997 Indlaw SC 1120; (1997) 9 SCC 612; AIR 1997 SC 2273; JT 1997 (4) SC 558; 1997(3) SCALE 507; [1997] 3 S.C.R. 391; 1997 (4) Supreme 23
Case Digest	**Subject:** Election **Summary:** Election - Gujarat Co-operative Societies Act, 1962, ss.145, 74C - Determination of term of office of President/Vice-President in the light of fact that terms of Board of Committee is three years - Held, term shall be only for one year until new President or Vice-President is elected - Petition dismissed.

Case No : Special Leave Petition (C) No. 6456 of 1997

The Order of the Court was as follows :

1. The controversy involved in this case relates to the terms of the offices of the President and the Vice- President of the Board of the Committee. It is not in dispute that the election to the Baroda District Cooperative Milk Producers' Union Ltd. was held on June 25, 1982 and thereafter proviso to Section 74 of the Gujarat Cooperative Societies Act was amended on July 17, 1984 providing for the rules of rotation in the matter of retirement of the members. Subsequently, the election to the Committee was held on May 16, 1994. A meeting was convened by the Collector for election of the President and the Vice- President. Calling that action of the Collector, the petitioner had filed a writ petition which was dismissed. On appeal, viz., L.P.A. No.473/97, by judgment dated February 25, 1997, the Division Bench has confirmed the same.
2. It is contended for the petitioner for the petitioner that under Section 74-C read with sub-section (2) of Section 145 of the Gujarat Cooperative Societies Act, the term of the Committee is three years and, therefore, the term of the President and the Vice-President is co-terminus with the term of the Committee. As a consequence, the notice issued by the Collector to conduct the meeting for electing the President and the Vice-President is without authority of law. We find no force in the contention.
4. A reading of its clearly indicates that the first meeting of the Board of Directors, after the Annual General Meeting shall be called by the Collector within one month of the Annual General Meeting. Thereon all the members of the Board as would be present at its meeting shall elect its President and Vice-President for the year and the President and Vice-President shall hold the office until a new President or Vice-President as the case may be is/are elected.
5. Thus it is clear that though the terms of the Committee is three years, the term of the President or Vice-President, as the case may be, elected at meeting of the Board of Directors, shall be only for one year until the new President or Vice-President, as the case may be, is elected again. The collector has been conferred with the power to call the meeting to elect the President/Vice President in accordance with the bye-laws. His action, therefore, is in accordance with law. The special leave petition is accordingly dismissed.

Petition dismissed

Usha Ranjan Bhattacharjee and Others v Abinash Chandra Chakraborty and Others

Bench	G.N. Ray, G.T. Nanavati
Where Reported	1997 Indlaw SC 2213; (1997) 10 SCC 344; JT 1997 (10) SC 356; 1998 (5) Supreme 321
Case Digest	**Subject:** Trusts & Associations **Summary:** Miscellaneous - West Bengal Cooperative Societies Act, 1983, ss. 69 and 70 - Validity of nomination in comparison with title to property - Within limited scope of inquiry to be made for determining question of valid nomination u/s. 69, title to property cannot be determined - In terms of determination of valid nomination consequential direction for delivery of possession can be given in favour of person having valid nomination under Cooperative Societies Act - Held, dispute as to question of title is not to be decided within limited scope and ambit of ss. 69 and 70 of Cooperative Societies Act - Appeal disposed of.

Case No : C.A. No. 1983 of 1997 (Arising Out of S.L.P. No. 5918 of 1996)

The Order of the Court was as follows:

Leave granted.

1. Heard learned counsel for the parties. This appeal is directed against the judgment dated 14-2-1996 passed by a Division Bench of the Calcutta High Court in FMAT No. 3326 of 1991. One Ranendra Kumar Acharya, since deceased, was a member of Manicktala Cooperative Housing Society Ltd. situated at 108/B, Manicktala Main Road, Calcutta-54. He was allotted Flat No. K/82 and after payment of the agreed value, the possession of the flat was delivered to Shri Ranendra Kumar Acharya. There is no dispute that Shri Acharya died as a bachelor. It also appears that he made a nomination in favour of the respondent, Abinash Chandra Chakraborty in respect of the said flat.

2. The dispute arose when the Cooperative Society wanted to hand over the possession of the said flat to Shri Chakraborty because the appellants were found in physical possession of the said flat. The case of the appellants was that since Shri Ranendra Kumar Acharya died intestate, they had inherited the said property of Ranendra Kumar Acharya according to the rules of intestate succession under the Hindu Succession Act. The respondent, however, contended that as nomination was made in his favour, the Cooperative Society was under a duty to hand over the possession of the said flat in favour of the respondent. Such dispute ultimately was raised before the Cooperative Tribunal. The Cooperative Tribunal held that there had been a valid nomination in favour of the respondent by the deceased Shri Ranendra Kumar Acharya but the Tribunal held that the question of title to the property was to be adjudicated by an appropriate forum if the parties would approach such forum. Since no direction for handing over the possession of the flat

in favour of Shri Abinash Chandra Chakraborty was given, a writ petition was filed before the High Court against the decision of the Cooperative Tribunal. The learned Single Judge disposed of such Writ Petition being CO No. 766 of 1987.

3. The learned Single Judge directed the Cooperative Society to hand over the possession of the said flat in favour of the said Abinash Chandra Chakraborty under Section 70 of the Cooperative Societies Act, 1973. The learned Judge also made observation about the effect of such nomination under the said Act by indicating that in view of such nomination, the party in whose favour valid nomination had been made under Section 69 of the said Act must be held to have acquired title to the property. Such decision of the learned Single Judge was challenged before the Division Bench of the High Court in appeal. By the impugned judgment, the Division Bench has dismissed the appeal and has upheld the decision of the learned Single Judge.

6. We are, however, not inclined to accept such contention of Dr. Ghosh. In our view, within the limited scope of inquiry to be made for determining the question of valid nomination under Section 69, title to the property cannot be determined. In terms of determination of valid nomination the consequential direction for delivery of possession can be given in favour of the person having valid nomination under the provisions of Section 70 of the Cooperative Societies Act. The dispute as to the question of title is not to be decided within the limited scope and ambit of Sections 69 and 70 of the Cooperative Societies Act.

7. We, therefore, dispose of this appeal by directing that in view of the finding by the Tribunal that the respondent had obtained a valid nomination from the deceased Ranendra Kumar Acharya, the respondent is entitled to get the possession of the said flat in accordance with the provisions of Section 70 of the Cooperative Societies Act. But the dispute as to the title of the said flat should not be held to have been decided either by the Cooperative Tribunal or by the High Court by the impugned judgment. Such question is kept open to be decided by an appropriate forum if such challenge is made before the appropriate forum. This appeal is accordingly disposed of without any order as to costs.

Appeal disposed of.

U. P. Co-operative Cane Union Federation Limited v Commissioner of Income Tax

Bench	S.C. Agrawal, G.B. Pattanaik
Where Reported	1997 Indlaw SC 2791; (1997) 11 SCC 287; AIR 1999 SC 1597; 1999 (157) CTR 569; [1999] 237 ITR 574; JT 1998 (9) SC 376; [1999] 103 TAXMAN 376; 1999 (2) TLR 165
Case Digest	**Summary:** Income Tax Act, 1961, s. 80 P(2)(a)(i) - Co-Operative Societies Act, 1912 [2] - 'Members' - Co-operative Society - Held, not includes members of a primary co-Operative society which is a member of federated co-operative society seeking exemption - Principle of lifting corporate veil - Not applies.

Case No : C.A. No. 1883 and 1890 of 1979

The Judgment was delivered by: S. C. AGRAWAL, J.

1. These appeals, by special leave, are directed against the judgment of the Allahabad High Court whereby the following question which was referred to it for opinion by the Income-tax Appellate Tribunal (hereinafter referred to as "the Tribunal") has been answered against the assessee and in favour of the Revenue "Whether, on the facts and in the circumstances of the case, the assessee was entitled to exemption under section 80P(2)(a)(i) of the Income-tax Act, 1961, for income from press and income from supply of pumping sets ?"

2. These appeals relate to the assessment years 1971-72 and 1972-73. The U. P. Co-operative Cane Union Federation Ltd. (hereinafter referred to as "the Federation"), is a co-operative society registered under the U. P. Cooperative Societies Act, 1965 (hereinafter referred to as "the Co-operative Societies Act"). The members of the Federation are cane unions which are also co-operative societies and the members of these cane unions are individual cane growers.

3. No individual cane grower is a member of the Federation. The Federation had sponsored an irrigation scheme for small farmers whereunder loan applications of the cane growers were forwarded to the State Bank and the Central Bank of India for purchase of pumping sets. In that connection, the Federation had entered into an agreement on March 5, 1970, with Southern Engineering Works for supply of pumping sets to the cane growers and had agreed to undertake to provide the loan either on its own or through any financial institution for the members of the cane unions for the purchase of pumping sets. The loan was to be provided to the extent of 75 per cent. of the purchase price and the balance 25 per cent. and other expenses were to be met by the cane grower and was repayable in instalments and the Federation agreed to undertake the entire responsibility of making prompt payment within seven days from the date of invoice of the distributors or dealers for the sale of pumping sets.

12. The question was whether the words "agricultural produce of its members" would cover the agricultural produce of the growers who were not the members of the apex society but were the

members of the co-operative societies which were members of the apex society. It was held that the said expression would not cover the agricultural produce of the growers. It has been observed

"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. If 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."

13. What has been said about the intention behind section 81(i)(c) [now section 80P(2)(a)(iii)] is also applicable to section 80P(2)(a)(i) and the intention behind the said provision is also to encourage basic level societies providing credit facilities to its members.

14. The High Court has rightly held that on the facts and in the circumstances of the case, the Federation was not entitled to exemption under section 80P(2)(a)(i) of the Act. We, therefore, find no merit in these appeals and the same are accordingly dismissed. But in the circumstances, there shall be no order as to costs.

Appeals dismissed.

State of Uttar Pradesh v C. O. D. Chheoki Employees' Cooperative Society Limited and Others

Bench	K. Ramaswamy, S. Saghir Ahmad
Where Reported	1997 Indlaw SC 2275; (1997) 3 SCC 681; AIR 1997 SC 1413; 1997 ALJ 576; 1997 (29) ALR 520; JT 1997 (2) SC 265; 1997(1) SCALE 697; [1997] 1 S.C.R. 380; 1997 (2) UPLBEC 793
Case Digest	**Subject:** Trusts & Associations **Keywords:** Bombay Cooperative Societies Act, 1925, Uttar Pradesh Cooperative Societies Act, 1965, Bombay Prohibition Act 1949 **Summary:** Trusts & Associations - Constitution of India, 1950 arts. 46, 14 and 19(1) - Uttar Pradesh Cooperative Societies Act, 1965 - U.P Cooperative Societies Rules, 1968 - U.P. Public Services Reservation for Scheduled Castes and Scheduled tribes and Other Backward Classes Act, 1994, ss. 4 and 29(1) - Constitution - (A) Whether the U.P. Legislature has power to make the law to so amend the act and the rules as to provide for reservation to the weaker sections? - Held, no - In the absence of elected members belonging to the weaker sections and elected women members, their nomination by the Govt. is the alternative dispensation envisaged as one of the policies of the act - Therefore, the court cannot interfere with the policy and declare it unconstitutional violating art. 19(1)(c) of the Constitution - (b) Whether nomination of members belonging to the weaker sections is arbitrary and uncanalised and is it violative of art. 14 of the Constitution? - Held, if anyone is nominated in derogation of the guidelines provided under the act and rules, that would be an individual case to be considered separately but on that count alone, the act and the rules cannot be declared to be ultra vires - The provisions of the act and rules are consistent with the policy and object of the Constitution and, therefore, the High Court was wholly incorrect in declaring the aforesaid provision to be ultra vires the Constitution - Appeal allowed accordingly - Writ Petition dismissed.

Case No : C.As. Nos. 603-05 of 1997 (From the Judgment and Order Dt. 10 March 1995 of the Allahabad High Court in C.M.W.Ps. Nos. 40006 and 40121 of 1994)

The Order of the Court was as follows:

Impleadment and intervention allowed.

Leave granted.

We have heard learned counsel for the parties.

1. These appeals raise an interesting question of law relating to the validity of the Act the rules providing reservation for or nomination of weaker sections into the cooperative societies registered

under the U.P. Cooperative Societies Act, 1965 (for short "the Act") and the U.P. Cooperative Societies Rules, 1968 (for short "the Rules"), as amended from time to time.

2. The question is whether the U.P. Legislature has power to make the law to so amend the Act and the Rules as to provide for reservation to the weaker sections ? The High Court declared S. 130(2) (xii) and (xii-A) and the provisions and the explanation to sub-rules (1) and (2) of Rule 393, Rule 393-A, Rule 393-B, cl. (d) of sub-rule (4) and part of sub-rules (6) to (8) of Rule 440, so far as relating to reservation of seats for weaker sections, sub-rule (3) of Rule 444-A and cl. (i) of sub-rule (5) of Rule 453 as ultra vires the Constitution and accordingly quashed them. Calling in question this judgment of the High Court of Allahabad dated 10-3-1995 in CMWPs. Nos. 40006 and 40121 of 1994, these appeals have come to be filed.

3. Due to absence of representation of democratic character in the management of the cooperative societies on the basis of election by the general body of the society, the members of the weaker sections, namely, Scheduled Castes and Scheduled Tribes, women and Other Backward Classes do not find place. Consequently, the Government introduced amendment to the Act. By adoption of the definition of "Other Backward Classes" contained in the U.P. Public Services Reservation for Scheduled Castes and Scheduled tribes and Other Backward Classes Act, 1994, brought Other Backward Classes within the ambit of weaker sections and made all of them members of the Committee of the Management of the Cooperative Society registered under the Act so as to enable them to be elected or nominated as members. S. 4 of the Act prescribes the guidelines in the matter of formation of the Cooperative Societies and reads as under:

(2) Where a cooperative society referred to in sub-rule (1) for any reasons whatsoever, fails to elect on the Committee of Management such number of persons for whom seats are reserved or the vacancy occurs the deficiency shall be made good or filled, as the case may be, by the State Government by nominating persons belonging to such class on the Committee of Management of such societyExpression 'weaker section' referred to in these rules shall mean a person belonging to Schedule Castes, Scheduled Tribes, women and Backward Classes of citizens referred to in the explanation of sub-rule (1)."

Therefore, any provision making for reservation must receive such construction as would advance the purpose and intendment underlying the provision making reservation and not thwart it. In the part a method of construction was used to extend a remedial statute called proceeding upon 'the equity of the statute'. In Hay v. Lord Provost of Perth [(1863) 4 Macq HL (SC) 535] [Macq HL (SC) 544] Lord Westbury observed that the mode of construction known as 'the equity of the statute' was 'very common with regard to our earlier statutes, and very consistent with the principle and manner according to which Acts of Parliament were at that time framed'. Undoubtedly, nowadays this mode of construction has fallen into disuse. Even though the expression 'the equity of the statute' has fallen into disuse, it is still in vogue in somewhat similar form in that if it is manifest that the principles of justice require something to be done which is not expressly provided for in an Act of Parliament, a court of justice will take into consideration the spirit and meaning of the Act apart from the words. In this context, one can recall the words of Jessel M. R. in Bethlem Hospital, Re [(1875) LR 19 Eq 457 : 23 WR 644 : 44 LJ(Ch) 406], that 'the equity of the statute' may as well mean 'such a thing as construing an Act according to its intent, though not according to its words'. Alternatively, one can bring in Heydon's test more often noticed by

this Court that in order to arrive at true intendment of a statute, the court should pose to itself the questions :

(1) what was the situation prior to the provisions under construction,

(2) what mischief or defect was noticed before introducing the provision,

(3) whether it was remedial and

(4) the reason for the remedy.

Applying this test, the same result would follow inasmuch as looking to the position and the plight of Scheduled Castes and Scheduled Tribes and the weaker section of the members of the society, though they would be subject to the dictate of the society they had had no voice in the managerial councils and that to raise the stature and status of such persons so as to bring them on the footing or equality with other segments of the society, reservation was provided in the absence of which those in whose favour reservation was made could not get elected to the decision-making bodies. While ascertaining the true canon of construction applicable to Section 73-B, these aspects must stare into our faceWhen statute requires a certain thing to be done in a certain manner, it can be done in that manner alone unless a contrary indication is to be found in the statute. If the Legislature uses the expression 'if no such persons are elected' it indubitably suggests that primarily the reserved seats are to be filled in by election. Failing the election, one can resort to appointment or co-option. The chronology of the methodology by which seats are to be filled in as set out in Section 73-B clearly manifests the legislative intention. The first and the foremost pride of place is accorded to election. It ought to be so because a representative institution ordinarily must be democratically elected. The section, therefore, speaks 'if no such persons are elected' which would mean that the authorities charged with a duty to hold election must proceed to arrange for holding the election. If election is held giving out information that there are reserved seats and no candidate is forthcoming to contest for the reserved seats, the Legislature in its wisdom provided that the seats shall not remain vacant but can be filled in by two subsidiary methods such as appointment or co-option which cannot be put on par or equated with election which is a universally recognised method by which representative institutions are set up. Therefore, the language and the chronology of the methodology of filling in reserved seats employed in Section 73-B provide a clue to its correct construction and there should be no doubt that opportunity must be provided for filling in seats by election. It is the failure of the election machinery to fill in the seats which would enable the concerned authority to fill in the seats by appointment or co-option. The condition precedent to filling in reserved seats by appointment or co-option is holding of the election and failure to elect such persons would permit resort to other methods of filling in the reserved seats."

19. Thus considered, we are of the view that the provisions of the Act and rules are consistent with the policy and object of the Constitution and, therefore, the High Court was wholly incorrect in declaring the aforesaid provision to be ultra vires the Constitution.

20. The appeals are accordingly allowed. The writ petition stands dismissed. No costs.

Appeals allowed.

A. Nadamuni and Others v Prohibition and Excise Commissioner, Nampally, Hyderabad and Others

Bench	G.T. Nanavati, K. Ramaswamy
Where Reported	1997 Indlaw SC 2243; (1997) 2 SCC 695; AIR 1997 SC 1021; JT 1997 (1) SC 698; 1997(1) SCALE 417; [1997] 1 S.C.R. 226; 1997 (2) Supreme 114
Case Digest	**Summary:** Service - Andhra Pradesh Cooperative Societies Act, 1964, ss. 19 and 21, r. 20 - Disqualify - Power of - Whether Superintendent of Excise who is also registrar for certain purposes of Andhra Pradesh Cooperative Societies Act, 1964 has power to disqualify an existing member of Srikalahasthi Toddy Tappers' Cooperative Society? - Held, admission of members is governed by provisions of s. 19 - S. 21 prescribes disqualification for being a member of society - Person not eligible for membership of society u/s. 19 is disqualified for being admitted as a member of society - Once power of non-admission of a member of society has been engrafted and delegated for removal from membership, Superintendent of Excise has power u/r. 20 to consider ineligibility for being removed from membership u/s. 19 - View taken by High Court not vitiated by any error of law warranting interference - Special Leave Petition dismissed.

Case No : Special Leave Petition (C) No. 25281 of 1996.

The Order of the Court was as follows :

1. This special leave petition has been filed against the Order of the Division Bench of the Andhra Pradesh, made on December 13, 1996 in Writ Appeal No. 1437/96 confirming the judgment of the learned single Judge, dated December 4, 1996 in Writ Petition No. 11385/96.

2. The only question for our consideration is: whether the Superintendent of Excise who is also Registrar for certain purposes of Andhra Pradesh Co-operative Societies Act, 1964 (for short, the 'Act') has the power to disqualify an existing member of the Srikalahsthi Toddy Tappers Co-operative Society? The object of the Society is to ameliorate the economic conditions of tappers by providing them means of livelihood by tapping the Toddy tress allotted by the Excise authorities. The provisions of the Act, the rules made there under and the by-laws of the Society regulate the admission of the members. The toddy tappers Co-operative Society should consist of members who are really and actually in the avocation of tappers and are allotted Palmera trees for tapping toddy as their sources of livelihood. On a complaint that non-tappers were admitted and are members of the Society at the behest of a member, a writ petition came to be filed in the High Court. Pursuant to an interim direction given by the High Court to conduct tapping test, the competent officers conducted the same in that behalf. The authorities came to conclude that the petitioners were not the tappers as they did not fulfil the condition of the tapping experience

etc, and accordingly were removed from the membership which decision was confirmed by the High Court in the writ petition as also in appeal.

3. It was contended that the Registrar (Superintendent of Excise) has no power to remove them from membership of Society. The primary contention raised in the High Court as reiterated by Shri L.N. Rao, learned counsel for the petitioners, is that while power under Section 19, in the matter of admission of the members of the Society, was delegated to the Superintendent of Excise, power under Section 21, namely, disqualification for being a member of the Society etc. was not delegated to him. Therefore, the Superintendent of Excise was without jurisdiction to remove the petitioners from the membership of the Society. We find no force in the contention. It is seen that admission of the members is governed by the provisions of Section 19 of the Act. Section 21 prescribes disqualification for being a member of the Society. Sub-section (1) postulates that a person shall be disqualified for being admitted as, and for being a member, in the circumstances enumerated in cause (a) to (e). Clause (aa) was also introduced in 1988 and thereby another ground for disqualification came to be added to the existing grounds.

4. Under the said clause (aa), a person who is not eligible for membership of the Society under Section 19 is disqualified for being admitted as, and for being, a member of the Society. Under these circumstances, once the power of non-admission of a member of the Society under Section 19 has been engrafted in Section 21 and delegated for removal from membership as envisaged in Rule 20 of the Rules, Superintendent of Excise has power under Rule 20 which empowers him to consider the ineligibility of being removed from membership under Section 19, Section 19 power was delegated to the superintendent of Excise. The inescapable consequence is that the subsequent disqualification for being a member of the Society also becomes available under Rule 20 s a disqualification if the member ceases to be a tapper. It would be one of the factors to be considered under Rule 20. As a consequence, it is not necessary that there should be an express separate conferment of power of the Registrar under Section 21 on the Superintendent of Excise. We, therefore, hold that the view taken by the High Court is not vitiated by any error of law warranting interference.,

The special leave petition is dismissed

Petition dismissed

Administrator, Konch Sahakari Kraya Vikraya Samiti Limited v Sarnam Singh and Others

Bench	S.P. Kurdukar, S.C. Sen, J.S. Verma
Where Reported	1997 Indlaw SC 2593; (1997) 11 SCC 144; 2000 (38) ALR 794; 2000 (1) AWC 367; JT 1998 (9) SC 281; 2000 (91) RD 162
Case Digest	**Summary:** Trusts & Associations - Constitution of India, 1950, art. 226 - Uttar Pradesh Cooperative Societies Act, 1965, ss. 2(o), 31, 38 and 98 - Whether writ petition filed by the respondent challenging his removal from service maintainable? - Held, the scheme of enactment clearly shows that order of removal from service of Secretary of a cooperative society made u/s. 38(1) by the Society or that u/s. 38(2) by the Registrar is statutory in nature - The view taken by High Court that writ petition was maintainable does not call for any interference - Appeal dismissed.

Case No : Civil Appeal No. 867 of 1993

The Order of the court was as follows:

1. Respondent No. 1 Sarnam Singh was appointed Secretary of the Konch Sahakari Kraya Vikraya Samiti Ltd., District Jalaun. Disciplinary proceedings were initiated against him by the District Assistant Registrar, Cooperative Societies, U. P., District Jalaun and the Additional District Cooperative Officer was appointed the Inquiry Officer. Pursuant to the charge-sheet and the report of the Inquiry Officer, as required by the provisions of the U. P. Cooperative Societies Act, 1965 (11 of 1966) (for short the Act) the Society, at the behest of the District Assistant Registrar, Cooperative Societies, passed an order of removal from service. A writ petition was filed in the Allahabad High Court by the respondent challenging his removal from service. An objection was taken by the appellant to the maintainability of the writ petition on the ground that it did not lie against the Cooperative Society.

5. It is clear from Section 38 that the Society is required by subsection (1) to take action for removal of an officer of a cooperative society in accordance with the opinion of the Registrar, after affording an opportunity of being heard to the officer concerned. Sub-section (2) further provides that in the event of failure of the Society to take action under sub-section (1), the Registrar himself is empowered to take the Action, inter alia of removal from service of the officer concerned. In the present case, the Action of removal from service of respondent No. 1 was taken by the Society in accordance with the opinion of the Registrar, in terms of Section 38 (1) of the Act.

6. We may also refer to Section 98 of the Act which enumerates the orders against which appeals are provided. Clause (d) of sub-section (1) of Section 98 provides for an appeal to the Tribunal against an order made under sub-section (2) of Section 38 removing or disqualifying any officer of a cooperative society. By an amendment made subsequently in Section 98, an order passed

under sub-section (1) of Section 38 for removal of an officer from the office held by him or to disqualify him from holding any office has also been made appealable. The scheme of the enactment clearly shows that the order of removal from service of Secretary of a cooperative society made under sub-section (1) of Section 38 by the society or that under sub-section (2) of Section 38 by the Registrar is, therefore, statutory in nature. For this reason alone, it must be held that such an order is amenable to the writ jurisdiction of the High Court under Article 226 of theConstitution. The view taken by the High Court that the writ petition was maintainable in the present case does not, therefore, call for any interference.

7. For the aforesaid reason, the appeal fails and is dismissed.

Appeal dismissed

Sakthi Coop. Industrial Estate v Kursheed Begum and Others

Bench	G.T. Nanavati, K. Ramaswamy
Where Reported	1996 Indlaw SC 2022; (1998) 8 SCC 528
Case Digest	**Summary:** Municipalities & Local Governments - Trusts & Associations - Tamil Nadu Panchayats Act, 1958, s. 175 - Co- operative Societies Act, 1912 - Appellant has formed a co-operative society of an industrial estate - Obtained layout sanction from Gram Panchayat - Could appellant claim ownership status of roads since they have established Society under provisions of Cooperative Societies Act, 1912? - Held, that all roads etc stand vested in Gram Panchayat amenable to public purpose - Roads formed by appellant - Society stand vested in Gram Panchayat and belong to Gram Panchayat for public purpose - Appeal dismissed.

Case No : C.A. No. 16944 of 1996 (Arising out of S.L.P. (C) No. 23687 of 1996)

The Order of the Court was as follows:

1. Leave granted.

2. This appeal by special leave arises from the judgment of the High Court of Madras dated 10-9-1996, made in SA No. 479 of 1996. The admitted position is that the appellant has formed a cooperative society of an industrial estate, obtained the layout sanction from the Gram Panchayat in respect of Surveys Nos. 74/1, 2, 3, 78/1, 3, 79/1A1 etc.

3. After formation of the industrial structures, roads have been laid in terms of the layout. The appellant has claimed the status of those roads to be their exclusive private property since they have established the Society under the provisions of the Cooperative Societies Act, 1912 and that, therefore, they do not stand vested in the Gram Panchayat. We hold that the stand taken by the appellant is not correct in law. Section 175 of the T.N. Panchayats Act, 1958 reads thus:

   "175. All roads, markets, wells, tanks, reservoirs and waterways vested in or maintained by a Panchayat or a Panchayat Union Council shall be open to the use and enjoyment of all persons, irrespective of their caste or creed."

4. It would thus be seen that all roads etc. stand vested in the Gram Panchayat amenable to public purpose. Thereby the roads formed by the appellant-Society stand vested in the Gram Panchayat and belong to the Gram Panchayat for public purpose.

5. The appeal is accordingly dismissed. No costs.

Appeal dismissed.

Recovery Officer, Lakhimpur and Others v Ravindra Kaur Smt. and Others

Bench	N.P. Singh, S.B. Majmudar
Where Reported	1996 Indlaw SC 1624; (1997) 2 SCC 682; 1998 (32) ALR 377; 1998 (1) AWC 626; JT 1997 (10) SC 711; JT 1996 (Supp) SC 561; 1996(9) SCALE 37; [1996] Supp9 S.C.R. 529; 1997 (1) Supreme 560; 1997 (1) UPLBEC 382
Case Digest	**Subject:** Land & Property **Keywords:** Code of Civil Procedure, Provincial Insolvency Act, 1920, Crops, Uttar Pradesh Cooperative Societies Act, 1965 **Summary:** Land & Property - Uttar Pradesh Cooperative Societies Act, 1965, ss. 39 (a) and 91 - Attachment and sale of land - Held, cls. (b), (c), (e) and (g) of s. 39 which create charge on land of debtor member under circumstances contemplated by these clauses - It is not case of appellants that any such charge on writ petitioners' lands was created under these clauses - Learned counsel for appellants fairly stated that cl. (a) of s. 39 cannot be effectively pressed in service because charge was not created on land on account of fact that loan was taken by member concerned for purchasing seeds or manure - Proviso does not contemplate creation of any charge on these properties - It contemplates execution of decree for a given sum of money and such a decree could be executed by attachment and sale of any of properties of judgment-debtor, even though not subjected to any charge u/s. 39 - Proviso has nothing to do with creation of charge - All other properties mentioned in proviso mean those which are not subject matter of charge - It cannot therefore be said that proviso enlarges scope of s. 39(a) to (g) and creates a further statutory charge - As lands of writ petitioners were not subject - matter of any charge u/s. 39, there was no occasion for Recovery Officer to proceed u/s. 91 for enforcement of such non-existing charge on lands - High Court was justified in taking view that under proviso no further charge is created on other property of loanee - Once that conclusion is reached, s. 91 dealing with enforcement of charge goes out of picture - HC was justified in quashing steps taken by appellants for sale of lands belonging to respondents - Appeal dismissed.
Legislation Cited	Code Of Civil Procedure Code of Civil Procedure, 1908 Provincial Insolvency Act, 1920 Uttar Pradesh Cooperative Societies Act, 1965

Case No : C.As. Nos. 3238-40 of 1979 (From the Judgment and Order Dt. 15 February 1979 of the Allahabad High Court in W.P. No. 1108 of 1976)

The Order of the Court was as follows :

1. In these appeals Recovery Officer functioning under the U.P. Co-operative Societies Act, 1965 and others have brought in challenge the judgment and order of the High Court of Judicature at Allahabad, Lucknow Bench in different writ petitions moved by the contesting respondents. The High Court allowed the writ petitions of the contesting respondents concerned and quashed the recovery proceedings initiated against them in so far as they related to the execution order under Section 91 of the Uttar Pradesh Co-Pradesh Co-operative Societies Act, 1965 (hereinafter referred to as 'the Act') by attachment and sale of the lands of the contesting respondents. It is not in dispute between the parties that the original writ petitioners being members of the co-operative societies concerned had taken loans for seeds and manure etc. From these societies functioning under the Act. When the contesting respondents did not repay the loans, the co-operative societies which advanced the loans sought to enforce the statutory charge on the properties of the writ petitioners as created by Section 39(a) of the Act. Recovery proceedings for enforcing the said charge were initiated under Section 91 read with Section 39(a) by the appellant Recovery Officer. The contesting respondent writ petitioners moved the High Court challenging these recoveries. It was contended before the High Court by the contesting writ petitioner-lonees that as the loans were taken for procuring seeds and manure etc. charge under Section 39(a) attached to the crops produced in the lands of the contesting respondents by utilising seeds and manure procured out of the loan amounts but the said charge did not fasten on the other properties and lands of the writ petitioners and, therefore, proceedings under Section 91 against the lands of the writ petitioners were illegal and liable to be queshed.

2. The High Court accepted the said contention and allowed the writ petitions by holding, on construction of Section 39 read with Section 91 of the Act that for realisation of loans advanced for the objects mentioned in Section 39 (a) of the Act, sale of the lands belonging to the writ petitioners could not be effected unless the concerned societies obtained decrees of court of competent jurisdiction as required by the provision to Section 39. Writ Petitions were accordingly allowed.

7. The proviso does not contemplate creation of any charge on these properties, it contemplates execution of the decree for a given sum of money and such a decree could be executed by attachment and sale of any of the properties of the judgment-debtor even though not subjected to any charge under Section 39. Proviso has nothing to do with creation of charge. Statutory charge is contemplated by clauses (a) to (g) of Section 39 only. The very opening words of the proviso show that along with the charge created under this section meaning thereby under Section 39 clauses (a) to (g) respectively any other property i.e. not subjected to charge also can be proceeded against if the society has an executable decree against the debtor. All other properties mentioned in the proviso mean those which are not the subject-matter of the charge. It cannot, therefore, be said that proviso enlarges the scope of Section 39 (a) to (g) and creates a further statutory charge. It must, therefore, be held that the High Court was justified in taking the view that under the proviso no further charge is created on other property of the lonee. Once that conclusion is reached. Section 91 dealing with enforcement of the charge goes out of picture. As the lands of the writ-petitioners were not the subject-matter of any charge under Section 39, there was no occasion for Recovery Officer to proceed under Section 91 for enforcement of such non-existing charge on the lands. Till the society obtained executable decrees on the basis of the loan amounts there would arise no occasion for the society to get attachment and sale of

other uncharged property of the judgment-debtor by resort to the proviso to Section 39. It is also pertinent to note that execution of decree is contemplated by Section 92 and not by Section 91. Section 92 reads as under :-

8. For all these reasons, therefore, it must be held that the High Court was justified in quashing the steps taken by the appellants for sale of the lands belonging to the respondents. We make it clear that our aforesaid conclusion is reached in the context of the loans advanced under Section 39(a) of the Act. It would be open to the appellants to pursue other remedies available for realisation of the loan amounts advanced to the respondents writ-petitioners in accordance with law. These appeals fail and are dismissed with no order as to costs.

Goa State Cooperative Bank Limited v Pedne Taluka Prathmik Shikshakpat Saunstha Limited and Others

Bench	K. Ramaswamy, G.B. Pattanaik
Where Reported	1996 Indlaw SC 1520; AIR 1996 SC 1801; JT 1996 (Supp) SC 308; [1996] Supp8 S.C.R. 352
Case Digest	**Summary:** Trusts & Associations - Election - Multi-State Co-Operative Societies Act, 1984, s. 35 - Bye-Laws of appellant/Co-operative bank - Amendment in bye-laws - Requirement of getting amendment approved by Registrar - Whether amended bye-law was approved? - Affidavit filed by Central Registrar of Co-operative Societies - Showing approval - Election how to be conducted - Election requires to be conducted by 7th respondent in accordance with the relevant rules and bye-laws of Societies applicable on date of election - Appeal accordingly allowed - Judgment and order of the High Court stands set aside - Registrar is directed to conduct the elections in accordance with the relevant rules applicable to the Society, Bank and bye-laws of the Society, the Act as also the Rules applicable as on the date of conducting of the elections - Petition disposed of.

Case No : Civil Appeal No. 14783 of 1996.

The Order of the Court was as follows :

Leave granted.

We have heard the counsel on both sides.

1. This appeal by special leave arises from the judgment and order of the Bombay High Court, Panaji Bench dated April 26, 1996 made in W.P.No.145 of 1996. It is not necessary to dilate upon the entire controversy that has arisen between the parties. Suffice it to state that on September 20, 1996, this Court, after hearing all the counsel, passed the following as:

   "It is now an admitted position that the appellant Bank is neither National Co-operative Society, nor Statewide notified Co-op. Society falling under Section 35 of Multi- State Co-op. Societies Act, 1984. In that perspective the only procedure for conducting the election to other Societies is as per Paragraph 8 of the Schedule which envisages conducting of elections in accordance with the procedure prescribed therein. It is not in dispute that the General Body of the Society resolved to adopt paragraphs 2 to 7 of the Schedule for conducting elections to the society and resolution to that effect was passed and also the Bye-laws were amended. The area of controversy is whether the amended Bye-law have been approved by the Registrar. The High Court has proceeded on the premise that the Registrar, must have approved the Bye-laws and on that premise directed the respondent to conduct the election. Unless the Bye-law are approved by the Registrar, they do not become effective. Resultantly any election conducted in transgression of the statutory rules

would admittedly become invalid. Shri Mukul Mudgal, the learned counsel for the Registrar, is directed to file an affidavit whether the Bye-laws have been approved by the Registrar, or not."

2. Pursuant thereto, the Registrar, Cooperative Societies, Sambhaji Dattajirao Desai has filed his affidavit in which he stated that an amendment to bye-law No.36 was approved by the Central Registrar of the Cooperative Societies on September 6, 1994. The amended bye-law was appended as Annexure R-1 which would show that:

"The Board of Directors shall consist of 13 Directors of which 3 Directors or 1/3 of the number of Directors whichever is less shall be nominated by the Government or any authority specified by it, in this behalf, if the Government has purchased share of the Bank. The Managing Director shall be the Ex- Offices member of the Board of Directors. The other members of the Board of Directors shall be elected as per the Multi State Cooperative Societies Act 1984 and Rules as prescribed under para 2 of the Schedule to the Multi State Cooperative Societies Rules 1985. *The Constituency and the Units of the affiliated Societies to the Bank shall be as under. The voters in respective constituencies and units shall elect their own Directors. The representative of service and other Societies affiliated to contest election through the respective units and constituency."*

3. It is not in dispute that it was further amended and the bye-law, as amended for the second time, was certified by the Registrar on February 8, 1996 which reads as under:-

"In pursuance of the provisions of the Multi-State Cooperative Societies Act, 1984*, the amendments to bye-law No. 1(a) of the Goa State Cooperative Bank Ltd., Panaji, Goa is hereby registered under Section 9 of the* Multi-State Cooperative Societies Act, 1984 *(51 of 1984). Given under my hand and seal this the 8th day of February, 1996."*

4. Shri Anil B. Divan, the learned senior counsel appearing for the appellant, has brought to our notice the procedure applicable to the conduct of elections to the Societies as envisaged in Rule 104 and Schedule II, of the Multi-State Cooperative Societies (Registration, Membership, Direction and Amendment, Settlement of disputes, Appeal and Revision), 1985 (for short, "the Rule"). He contended that election to the society should be conducted as per rules. Shri Khanwilkar, learned counsel appearing for the respondent, contended that after the amendment of the bye- laws a controversy has arisen as to what is the relevant rule with reference to which election is to be conducted. We desist to he into the controversy for the reason that the election to the Society has yet to be conducted. It is axiomatic that the election requires to be conducted by the 7th respondent in accordance with the relevant rules and the bye-laws of the Societies applicable as on the date of the election. Therefore, it is for the 7th respondent to conduct the elections in accordance with the relevant rules as applicable to the Society in tune with the bye-laws of the appellant-Society as applicable to the society.

5. The appeal is accordingly allowed. The judgment and order of the High Court stands set aside. The operative portion of the judgment also stands set aside. The Registrar is directed to conduct the elections in accordance with the relevant rules applicable to the Society, Bank and bye-laws of the Society, the Act as also the Rules applicable as on the date of conducting of the elections. No costs.

Appeal allowed.

Sagarmal v Distt. Sahkari Kendriya Bank Limited, Mandsaur and Another

Bench	B.N. Kirpal, J.S. Verma
Where Reported	1996 Indlaw SC 2085; (1997) 9 SCC 354; (1997) SCC (L&S) 1203; 1998 (3) LLJ 157
Case Digest	**Summary:** Labour & Industrial Law - Practice & Procedure - Industrial Disputes Act, 1947, s. 10 - Removal - Disciplinary inquiry - Whether High Court correctly quashed award on ground that it is a nullity being made in an incompetent reference? - Yes - Appeal dismissed.

Case No : C.A. No. 3629 of 1996

The Order of the Court was as follows:

1. The appellant was an employee of a cooperative bank. He was removed from service after a disciplinary inquiry in which charges of grave misconduct were found proved. The appellant assailed his removal by seeking a reference under Section 10 of the Industrial Disputes Act, 1947 to the Labour Court.

2. In that reference, the Labour Court granted him relief of reinstatement with back wages. The respondent bank challenged the award as a nullity in a writ petition filed in the High Court. The High Court has quashed the award on the ground that it is a nullity being made in an incompetent reference. Hence this appeal by special leave.

3. The learned counsel for the appellant strenuously urged that by virtue of Section 93 of the Madhya Pradesh Cooperative Societies Act, the reference made to the Labour Court under Section 10(1)(d) of the Industrial Disputes Act, 1947 was competent and, therefore, the award was valid. The learned counsel also placed strong reliance on the decision of the Madhya Pradesh High Court in Rashtriya Khadan Mazdoor Sahakari Samiti Ltd. v. Presiding Officer, Central Govt. Industrial Tribunal-cum-Labour Court. We are unable to accept this contention.

4. The decision relied on by the learned counsel has no application to the present case. There can be no doubt that the provisions of the Central Act, namely, the Industrial Disputes Act, 1947.

5. Consequently, the appeal is dismissed.

Appeal dismissed.

Patiala Central Cooperative Bank Limited v Patiala Central Co-Operative Bank Employees' Union and Another, Etc

Bench	S.C. Sen, B.P. Jeevan Reddy, S.B. Majmudar
Where Reported	1996 Indlaw SC 3860; 1997 (2) LLJ 631
Case Digest	**Subject:** Labour & Industrial Law **Summary:** Labour & Industrial Law - Uttar Pradesh Industrial Disputes Act, 1947, s. 84-B of the Punjab Cooperative Societies Act - The agreement will continue to be binding even after the expiry of the period mentioned in the agreement expired by virtue of the provisions of sub-s. (2) of s. 19 of the Industrial Disputes Act, 1947 - Question of validity and scope of s. 84-B of the Punjab Cooperative Societies Act, 1961, s. 84-B places a bar on payment of dearness allowance at a rate higher than the rate admissible to the employees of the Govt. drawing the same pay and this provision will apply to all the employees of all the cooperative societies in the State of Punjab, this provision has been specifically made applicable notwithstanding, inter alia, any other law for the time being in force or any agreement, settlement or award- Sub-s. (2) of s. 19 merely extends the period during which the agreement will be enforced, but it does not provide that the agreement will be valid and binding notwithstanding any law to the contrary - Held, if after the agreement has been entered into, any law is passed and the agreement cannot be enforced without violating that law, then clearly the agreement cannot be enforced and the law will prevail - Appeal allowed

Case No : With C.A. No. 4074 of 1988 and C.A. Nos. 4075-4076 of 1988

The Judgment was delivered by: S. C. Sen, J.

1. The Patiala Central Cooperative Bank Ltd., the appellant herein, is a cooperative Bank registered under the provisions of Punjab Cooperative Societies Act, 1961. The Patiala Central Cooperative Bank Employees Union, the respondent No.1 herein, is a Union of the employees of the appellant-Bank working at various places in different branches of the Bank. On 13.11.1972, the Union submitted a charter of demands culminating in an agreement between the Bank and the Union on 28.5.1973. This agreement was to be in force upto 31st March, 1977.

2. The agreement reached on 28.5.1973 provided for a number of things like fixation of pay-scales after classifying the various categories of staff. It also provided for Fixation Formula providing for pay rise in the revised pay scales. There was also a provision for payment of dearness allowance, house rent allowance, city compensatory allowance and various other allowances, if any.

   Provisions have been made for uniforms, provident fund, gratuity, over time allowance and also fixation of strength and rules providing quota for promotion to various posts in the future. The

agreement also provided for loans to be given for purchase of scooter/motor cycle/cycle upto a ceiling of Rs.15,000/for Central Cooperative Banks and Rs.30,000/Apex Cooperative Bank per annum. The agreement concluded with general Conditions which were as under:

10. This was a comprehensive agreement reached between the Employees' Union and the management. It is not an agreement relating to payment of Dearness Allowance only. The agreement was valid for a period of four years and case to an end on 31st March, 1977. After the agreement case to an end, disputes and differences cropped up between the employees and the management inter alia about the payment of Dearness Allowance in tears of the aforesaid agreement. The case of the employees is that the agreement cannot be repudiated unilaterally even though the period of four years mentioned in the agreement expired on 31st March, 1977.

It has been contended that the agreement will continue to be binding even after the expiry of the period mentioned in the agreement expired on 31st March, 1977, by virtue of the provisions of sub-s. (2) of S. 19 of the Industrial Disputes Act, 1947. S. 19 lays down that a settlement shall come in to operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date which the memorandum of the settlement is signed by the parties to the dispute. Subsection has been reached between the workers and the management, that shall be binding not only for the agreed period, but also shall continue to be binding on the parties after the expiry of the period mentioned in the agreement "until the expiry of two months form the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.".

In the background of these facts, the employees cannot claim dearness allowance in terms of the agreement dated 28.5.1973. That agreement has been given up for much better terms and conditions and also subsequent revision of pay. The employees cannot be heard to say that they will enjoy all the subsequent benefits given by the revision of pay scales. but dearness allowance must be given in accordance with the formula contained in the agreement dated 28.5.1973. It is not the case of the employees that the agreement dated 28.5.1973 will have to be enforced in full.

26. A written agreement between the employer and workmen may constitute a settlement in the circumstances mentioned in S. 2(p). But S. 19 lays down that such agreement shall come into operation on the agreed date between the parties to the settlement or if the date is not agreed upon, on the date on which the settlement is signed by the parties. That is the starting point. Sub-s. (2) provides for the period during which the settlement will be in force.

It shall be binding during the period agreed upon the parties. If no such period is agreed upon, then the settlement will be valid for a period of six months from the date on which the settlement was signed by the parties and shall continue to be binding after the expiry of the aforesaid period. The settlement can be brought to an end by serving a notice in writing by one of the parties to the other party of its intention to terminate the settlement. If such a notice is given, the settlement will remain in force for two months from the date on which the notice of termination is given.

27. The provisions of S. 19(2) make an agreement between the employers and the employees binding. It also lays down the period during which it shall be binding. It also provides the manner in which the agreement can be terminated inter partes. It does not follow from this provision that

a competent legislature cannot legislate on any matter which forms part of the agreement. Not does S. 19 have the effect of validating any infirmity in the agreement.

If the agreement is contrary to any law or if the agreement cannot be implemented without violating any provision of law, then the agreement cannot be enforced at all. There is nothing in sub-s. (2) of S. 19 to suggest that even such an agreement will continue to be binding upon the employers and the employees and enforceable against express provision of law. If after the agreement has been entered into, any law is passed and the agreement cannot be enforced without violating that law, then clearly the agreement cannot be enforced. The law will prevail.

28. Sub-s. (2) of S. 19 merely extends the period during which the agreement will be enforced, but it does not provide that the agreement will be valid and binding notwithstanding any law to the contrary. For all these reasons, this appeal is allowed. The order under appeal is set aside. There will be no order as to costs.

29. CIVIL APPEAL NO. 4074 OF 1988 AND CIVIL APPEAL NOS. 4076 OF 1988

30. In view of the judgment in Civil Appeal No.4390 of 1988, the above appeals are also allowed. There will be no order as to costs.

Appeals allowed.

Patiala Central Cooperativebank Limited v Patiala Central Cooperativebank Employees Union and Another

Bench	S.C. Sen, B.P. Jeevan Reddy, S.B. Majmudar
Where Reported	1996 Indlaw SC 1281; (1996) 11 SCC 202; 1996 (7) AD(SC) 293; AIR 1996 SC 3944; JT 1996 (9) SC 59; 1996 LabIC 2728; 1996(6) SCALE 773; 1997 (1) SLJ 20; 1996 (3) SLR 741; [1996] Supp6 S.C.R. 347; 1996 (7) Supreme 548
Case Digest	**Summary:** Labour & Industrial Law - Parliament & Legislature - Constitution of India, 1950, arts. 251 and 254 - Industrial Disputes Act, 1947, ss. 9 A and 19(2) - Punjab Co-operative Societies Act, 1961, s. 84B - Whether s. 84-B of Act inserted by Punjab Legislature by Amending Act was repugnant to provisions of ss. 9 A and 19(2) of ID Act which was a Central Legislation? - Held, u/s. 19(2) of Act the Agreement in dispute had ceased to operate from 25-02-1978 and consequently there remained no question of any repugnancy of s. 84-B vis-a-vis ss. 9 A and 19(2) - No occasion arises for Supreme Court nor did it arise for High Court to go into legislative competence of State Legislature in enacting s. 84 - Appeal allowed.

Case No : Civil Appeal No. 4390 of 1988

The Judgment was delivered by : S. C. Sen, J.

1. The Patiala Central Cooperative Bank Ltd., the appellant herein, is a cooperative Bank registered under the provisions of Punjab Cooperative Societies Act, 1961. The Patiala Central Cooperative Bank Employees Union, the respondent No.1 herein, is a Union of the employees of the appellant-Bank working at various places in different branches of the Bank. On 13.11.1972, the Union submitted a charter of demands culminating in an agreement between the Bank and the Union on 28.5.1973. This agreement was to be in force upto 31st March, 1977.

2. The agreement reached on 28.5.1973 provided for a number of things like fixation of pay-scales after classifying the various categories of staff. It also provided for Fixation Formula providing for pay rise in the revised pay scales. There was also a provision for payment of dearness allowance, house rent allowance, city compensatory allowance and various other allowances, if any. Provisions have been made for uniforms, provident fund, gratuity, over time allowance and also fixation of strength and rules providing quota for promotion to various posts in the future. The agreement also provided for loans to be given for purchase of scooter/motor cycle/cycle upto a ceiling of Rs.15,000/- for Central Cooperative Banks and Rs.30,000/- Apex Cooperative Bank per annum. The agreement concluded with general Conditions which were as under:-

10. This was a comprehensive agreement reached between the Employees' Union and the management. It is not an agreement relating to payment of Dearness Allowance only. The agreement was valid for a period of four years and case to an end on 31st March, 1977. After the agreement case to

an end, disputes and differences cropped up between the employees and the management inter alia about the payment of Dearness Allowance in tears of the aforesaid agreement. The case of the employees is that the agreement cannot be repudiated unilaterally even though the period of four years mentioned in the agreement expired on 31st March, 1977. It has been contended that the agreement will continue to be binding even after the expiry of the period mentioned in the agreement expired on 31st March, 1977, by virtue of the provisions of sub-section (2) of Section 19 of the Industrial Disputes Act, 1947.

13. On behalf of the employees, a writ petition was filed in the High Court under Article 226 challenging the validity of Section 84-B. The case of the employees is that by virtue of Section 19 of the Industrial Disputes Act, the agreement between management and the employees cannot be altered except in the manner laid down in the Act. Such agreement have ban given statutory force and they cannot be altered by the management on its own without following the procedure of law.

Similarly, the State Government cannot give any direction as to the manner of working out of the agreement or abridge or modify the contents of the agreement to any manner whatever. Industrial Disputes Act being a special Act relating to industrial disputes and, in particular, about the relationship between the management and the employees, the agreement reached under that Act cannot be varied or abrogated by the management unilaterally. It was further contended that the Punjab Cooperative Societies Act, 1961 is a general Act relating to Cooperative Societies and it cannot curtail or control the specific provisions of Industrial Disputes Act which is a special Act, in any manner whatever.

14. It was held the Division Bench of the Punjab High Court that Section 84-B of the Punjab Cooperative Societies Act, 1961, which was introduced by the Amending Act of 1981, could not take away the effect of the settlement dated 28th May, 1973 which was subsisting and binding on the date the Amending Act came in to force. Section 84-B of the Punjab Cooperative Societies Act was violative of the provisions of Section 19 of the Industrial Disputes Act, 1947. It was further held by the High Court that change in condition of service of the employees could not be made in respect of any of the matters mentioned in the Fourth Schedule, without giving a prior notice in the manner prescribed by Section 19(2) of the Act. It was held that unilateral withdrawal of the city compensatory allowance by the employer of the workmen affected their conditions of services and attracted mandatory provisions of Section 9-A. ON the same analogy, unilateral withdrawal of dearness pay from the workmen affected the conditions of service of Class III and Class IV employees of the CO-operative Banks.

In the background of these facts, the employees cannot claim dearness allowance in terms of the agreement dated 28.5.1973. That agreement has been given up for much better terms and conditions and also subsequent revision of pay. The employees cannot be heard to say that they will enjoy all the subsequent benefits given by the revision of pay scales. but dearness allowance must be given in accordance with the formula contained in the agreement dated 28.5.1973. It is not the case of the employees that the agreement dated 28.5.1973 will have to be enforced in full.

21. There is some dispute as to the exact amount of the benefit considered by the various revisions in pay scales but there is no dispute that the pay scales and other benefits now given are much

better and higher than what was given by the agreement dated 28.5.1973. No one wants to go back to that agreement so far as the pay scales are concerned. I fail to see how in the context of these facts, the employees can urge that Dearness Allowance formula of that agreement must remain in tact at the same time the drastic changes in every other part of the agreement dated 28.5.1973 will continue in force for the benefit of the employees.

27. A written agreement between the employer and workmen may constitute a settlement in the circumstances mentioned in Section 2(p). But Section 19 lays down that such agreement shall come into operation on the agreed date between the parties to the settlement or if the date is not agreed upon, on the date on which the settlement is signed by the parties. That is the starting point. Sub-section (2) provides for the period during which the settlement will be in force. It shall be binding during the period agreed upon the parties. If no such period is agreed upon, then the settlement will be valid for a period of six months from the date on which the settlement was signed by the parties and shall continue to be binding after the expiry of the aforesaid period.

    The settlement can be brought to an end by serving a notice in writing by one of the parties to the other party of its intention to terminate the settlement. If such a notice is given, the settlement will remain in force for two months from the date on which the notice of termination is given.

28. The provisions of Section 19(2) make an agreement between the employers and the employees binding. It also lays down the period during which it shall be binding. It also provides the manner in which the agreement can be terminated inter partes. It does not follow from this provision that a competent legislature cannot legislate on any matter which forms part of the agreement. Not does Section 19 have the effect of validating any infirmity in the agreement. If the agreement is contrary to any law or if the agreement cannot be implemented without violating any provision of law, then the agreement cannot be enforced at all.

    There is nothing in sub-section (2) of Section 19 to suggest that even such an agreement will continue to be binding upon the employers and the employees and enforceable against express provision of law. If after the agreement has been entered into, any law is passed and the agreement cannot be enforced without violating that law, then clearly the agreement cannot be enforced. The law will prevail.

29. Sub-section (2) of Section 19 merely extends the period during which the agreement will be enforced, but it does not provide that the agreement will be valid and binding notwithstanding any law to the contrary.

30. For all these reasons, this appeal is allowed. The order under appeal is set aside. There will be no order as to costs.

Appeal allowed

J.P. Ravidas & Ors v Navyuvak Harijan Uthapan Multi Unit Industrial

Bench	K. Ramaswamy, G.B. Pattanaik
Where Reported	1996 Indlaw SC 3633; (1996) 9 SCC 300; AIR 1996 SC 2151; JT 1996 (5) SC 445; [1996] Supp1 S.C.R. 301; 1996 (3) UPLBEC 1988
Case Digest	**Summary:** Land and Property - Constitution, arts.19(1)(e) and 39(b) - Prime land granted to Co-operative society for providing residence of dalits - Registrar of Co-operative societies directing to accept all applications for enrolment as members of society - Enrolment of non dalits in excess of percentage prescribed in bye-laws - Legality - Held, it defeats the very purpose - Further held that action is opposed to constitutional animation and public purpose and hence void - Appeal allowed.
Legislation Cited	Constitution of India, 1950 Multi-State Cooperative Societies Act, 1984

Case No : Civil Appeal No. 7748 of 1996

The Order of the Court was as follows :

Leave granted

We have heard learned counsel on both sides.

1. This appeal by special leave arises from the order dated November 8, 1993 made in Appeal No. 790/93 by the Bombay High Court. The admitted facts are that a society by name Navyuvak Harijan Utthapan Multi Unit Industrial Coop. Society Ltd. was formed on June 7, 1979. It was registered under the Cooperative Societies Act for industrial purpose. The Government have allotted to the said Society two acres of land at Bhandup (East), Survey No.246 (pt.) of Kanjur village for construction of housing colony for accommodating the members of the Society at concessional rates keeping in view the welfare of the Harijan community. This order came to be passed by the Government of India on January 18, 1995. It would appear that originally the membership of the Society consisted of 28 members belonging to Scheduled Castes [for short, 'Dalits'] and 5 O.B.C. members. It is not in dispute that as per the bye-laws the membership should consist of 80% dalits and 20% others. Originally, the membership was intended to be 112. Consequently, 90 members should be dalits and 22 members should be non- dalits. It is now an admitted position that the respondent- Society does not have 90 dalits members as per the bye-laws. It would appear that one Bal Krishna, who was then the President of the Society, had invited applications for enrolment. Consequently, 78 persons are said to have made applications for enrolment. It would appear that the Registrar of Cooperative Societies had directed the Society to enrol all of them as members of the Society. When the appellant, a member, had objected to the same, the objection was over-ruled, which was ultimately negative by the High Court directing that all the 78 persons are directed to be enrolled as members of the Society. Thus this appeal by special leave.

6. It was, therefore, obligated on the State to provide adequate means of livelihood to all citizens distributing the material resources of the community for common welfare. The ultimate object of the Directive Principles is to liberate the Indian masses, free them from century's old coercion, Ignorance, abject conditions and to prevent exploitation. The Union of India in implementation of the above Directive Principles in Article 39 [b] and in discharge of its obligation under Articles 38 and 46 to provide facilities and opportunities to the Dalits has allotted two acres of land in Bombay City for construction of houses to make their right to settlement and life meaningful, to enable them to live with dignity of person; and provided economic empowerment of settled residence to enjoy the right to meaningful life. The benefit of economic empowerment having been given to these members and they having secured the property, neither the President of the Society nor the builder has any right to induct any member other than the prescribed percentage as per the bye-laws. It is necessary to follow that the Society should consist of 90 Dalit members and 22 outsiders. Any contract or action which is opposed to constitutional animation and public policy is void. The action of the President of the Society and enrolment of non-dalits defeats the purpose of the Government of India behind giving the land for construction of houses by dalits. Therefore, the direction of the Registrar of Cooperative Societies would defeat the public policy. Any action taken in violation thereof is void.

7. Accordingly, the orders of the High Court and the Registrar are unconstitutional and are set aside.

8. The Registrar is directed to conduct an enquiry and identify as to how many among 78 members are dalits and direct their enrolment as members of the Society. All others in excess of 22 of non-dalits consisting of 5 OBCs, initially enrolled as members and 17 among the rest of the non-dalits be enrolled as members of the society. The Society should invite applications from the dalits to make up the shortfall of 90 dalit members of the Society and to pay the cost of the flats constructed on the land alloted by the Government. If non-members have contributed any money for the construction, it is obvious that the amount should be returned to them with interest, Non-dalit members should be accommodated only against the 20% quota available to them on the basis of any mode like draw of lots or seniority in the matter of enrolment or on the basis of promptness in paying the construction cost etc. as may be devised by the Registrar.

9. The Management of the Society is directed to place the entire material before the Registrar. The Registrar after giving notice to all the persons and hearing them will decide as to who are dalits among 78 persons and who are non-dalits and decide the matter accordingly within three months and submit the report to the Registry of this Court.

The appeal is accordingly allowed, but in the circumstances without costs.

Appeal allowed

Sahkari Samitiyan Vyavasthapak Union and Others v State of Rajasthan and Others

Bench	K. Ramaswamy, G.B. Pattanaik
Where Reported	1996 Indlaw SC 2569; (1996) 8 SCC 391; 1996 (3) AD(SC) 277; 1996 (1) BC 517; JT 1996 (3) SC 292; 1996(2) SCALE 795; [1996] 3 S.C.R. 104; 1996 (2) SLR 310
Case Digest	**Summary:** Civil - Trusts & Associations - Rajasthan Cooperative Societies Act, 1965, s. 4(1) - Issues Arise - (1) Whether Cadre Authority Society could be a cooperative society registered u/s. 4(1) of the Act? - Held, no - Cadre Authority Society is not covered - Cooperative society for promotion of the economic interests of members or society established for facilitating the operations of such societies, may be registered under the Act - Cadre society does not come as a society to facilitate the principal society assisting in funding or disbursement of loan to the members - (2) Whether the principal society bound to take the services of the paid Secretaries? - Held, no - Society shall not appoint paid officer or employee in its service unless the concerned officer/employee is possesses the prescribed qualifications - Security specified by the Registrar is to be furnished to the Society - Paid Secretaries appointed by the District Cooperative Societies, recruited and controlled by the Cadre Authority Society are not the officers or employees of the Society - Appeal dismissed.

Case No : C.A. No. 4235 of 1996

The Judgment was delivered by: K. Ramaswamy, J.

Leave granted in all the special leave petitions.

1. These appeals arise from the judgment and order dated May 9, 1991 passed in Writ Petition No.1018-20 of 1979 by a Division Bench of the Rajasthan High Court. The facts are fairly not in dispute.

2. Paid Secretaries were recruited by the Rajasthan Credit Co-operative Institutions Cadre Authority Limited [for short, the 'Cadre Authority Society'] constituted u/s. 4 [1] of the Rajasthan Co-operative Societies Act, 1965 [for short, the 'Act']. They were appointed in the respective District Co-operative Banks initially under Recruitment and Service Conditions of the Managers of Agriculture Credit Cooperative Societies Rules, 1977 [1977 Rules] and thereafter under Agriculture Cooperative Credit Societies Service Rules, 1969 [for short, the '1969 Rules'] by the Managers of the District Cooperative Banks and were sought to be posted to the Primary Agriculture Credit Cooperative Societies [for short, the 'PACS'] fastening liability of their salary on the PACS who have challenged the validity of the constitution of Cadre Authority Society and also the power of the Registrar of the Cooperative Societies [for short, the 'Registrar] to

make the rules calling upon PACS to contribute to the Manager's Salary Fund under Central Cooperative Bank Rules, 1969 [for short, the "Bank Rules"].

15. In other words, the Registrar, as a delegate of the Government is empowered to prescribe qualifications of the officers or employees of the Society, viz., PACS, District Cooperative Societies or the Central Cooperative Bank, as the case may be, and the respective Societies require them to appoint the officers or employees, i.e., Manager, Secretary, Accountant or any other officer or employee over whom they have disciplinary and controlling power. Under its own bye-laws, the respective Societies have the power to make appointment under the rules made by the Registrar in that behalf.

16. The question, therefore, emerges: whether the paid Secretaries appointed by the District Cooperative Societies, recruited and controlled by the Cadre Authority Society are the officers or employees of the Society, i.e., PACS? It is seen that there is a dichotomy in the operational structure. The Society is a unit by itself with its members managed by the committee elected under the provisions of the Act, the Rules and the bye-laws for specified period.

17. It is empowered to have control and to maintain discipline over its officers and employees. The paid Secretaries are admittedly not the officers appointed to the Society and by the Society. They are officers appointed by the District Cooperative Society by its Manager, 'Manager' is defined under the 1969 Rules to mean:

"the manager appointed under these rules and who shall be Chief Executive and paid employee of the society. Manager shall have no relation with the services of the Bank employees. Due to getting salary from the Managerial fund at Bank level he shall not be entitled for any benefits which are being given to Bank employees. And Society shall not appoint any person as Manager".

18. A paid Secretary is not, therefore, a Manager appointed by the PACS. It is seen that the structure of the employees is indicated in S. 148 [2] (xxx) as Manager, Secretary, Accountant or any other officer or employee of the society. Therefore, in addition to the said establishment, there cannot be any paid Secretary to the Society i.e., PAC. Obviously, therefore, the Societies have objected that they cannot be fastened with the liability to contribute fund under Bank Rules for payment of the salary of Surveillance Officer appointed by the District Cooperative Society and to be controlled by the Cadre Authority society. lt would, therefore, be clear that they are outside the scope of the Cadre of PACS.

19. The question, then is: whether the Registrar as a delegate of the Government, can make rules in that behalf or create a fund under the Bank Rules? It is seen that the power under Rule 41 is limited only to prescribing the qualifications and conditions of service of the officers and employees enumerated in cl. (xxx) of sub-s. [2] of S. 148.

20. He, therefore, has no power to make rules governing appointment of paid Secretaries and to create a fund under Bank Rules for payment of salaries to them and to fasten the liability on the PACS. The Registrar travelled beyond the power delegated to him under the Act. We have come across Section 69A of the Maharashtra Cooperative Societies Act which, as amended by the statute, gives such a power for creation of a Society as recruitment agency to make appointment of such recruited candidates to the Primary Cooperative Societies and posting them to the primary societies. Statute also fastened the liability on the primary societies to contribute certain percentage

towards salary and allowances of such paid Secretaries. Making the Bank Rules or the creation of a fund would, therefore, be beyond the powers of the Registrar under Rule 41 read with S. 148 [2] (xxx) of the Act. The High Court,therefore, was clearly right in its findings that Cadre Authority Society is not a society registrable u/s. 4 [1] of the Act and that the Registrar has no power under Rule 41 to make Bank Rules.

21. The contention of Shri Jitendra Sharma that they are members of PACS under 1977 Rules cannot be given countenance for the reason that 1977 Rules stood superseded by 1969 Rules. Admittedly, they are not members nor are they appointed as officers or employees of the PACS. When we called upon the counsel to produce any order of appointment given to the paid Secretaries by any of the PACS, he conceded that he did not have any such letters. Therefore, they cannot be declared to be members or officers or employees of the PACS. Thus considered, we are of the firm opinion that the view taken by the High Court is not vitiated by any error of law.

22. The appeals are accordingly dismissed but in the circumstances, without costs.

Appeals dismissed.

Ajmer Central Co-Operative Bank Limited, Ajmer, Through The Managing Director v Prescribed Authority, Under The Rajasthan Shops and Commercial Establishments Act, Ajmer and Others

Bench	M.M. Punchhi, A.M. Ahmadi
Where Reported	1996 Indlaw SC 3995; (1996) 2 SCC 1; (1996) SCC (L&S) 384; AIR 1996 SC 2911; 1996 (1) CLR 193; JT 1996 (1) SC 52; [1996] 1 S.C.R. 160
Case Digest	**Summary:** Service - Rajasthan Shops and Commercial Establishments Act, 1958, s. 28 A - Code of Civil Procedure, 1908, s. 11 - Constitution of India, 1950, art. 136 and 226 - Civil Suit for permanent injunction of dismissal of employee for embezzlement - Dismissal of application for temporary injunction while pendency of original suit - Complaint u/s. 28 - A against dismissal of service - (A) Order by authority under Act setting aside termination of services, if hit by res judicata - (B) Constitution of India, 1950, art. 136 - Application by employer u/s. 10 of CPC for stay for complaint - Ground that civil suit was filed earlier - New plea of res judicata raised only before Supreme Court - (C) If complaint u/s. 28 A is barred on ground of filing of Civil Suit - Held, not hit by res judicata, Order in Civil Suit was never final - Cannot be interfered by High Court and dispute is a factual dispute - Not barred - Appeal dismissed.
Legislation Cited	Code of Civil Procedure, 1908

Case No : Appeal (Civil) 3032 of 1990

The Judgment was delivered by : M. M. Punchhi, J.

1. This appeal by special leave against the judgment and order of a Division Bench of the Rajaslhan High Court (Jaipur Bench) dated September 21, 1987 in Civil Writ Petition No. 2333 of 1987 is a coiled cause, swollen in mass, requiring enough of load-shedding so as to get to the core of the controversy.

2. The appellant-bank is an apex body. It is a central Cooperative Society registered under the Rajasthan Cooperative Societies Act, 1965, operating in the District of Ajmer. There are village level cooperative societies (in short called the "Samilis") and those too are registered under the aforesaid Act. The village level Samitis is members of the appellant bank. They obtain loans from the appellant-bank and lend them over to their agriculturist members. The Samitis are headed by Managers who are appointed under the relevant rules framed under the aforesaid Act. Those rules provide the method in which disciplinary action can be taken against the employees of the Samities, including the Managers,

13. It was then on merits contended that the second respondent had agreed to make good the loss of the appellant in a certain manner which means that he had admitted his guilt and on the basis of which

the Authority could and should have maintained the order of dismissal. In the first place, if that were so, the dismissal at the instance of the appellant should have proceeded straightaway, without resort to an enquiry into other embezzlements, as was done by the appellant. In complicating and coiling the matter the appellant wove for itself the web. The appellant could not have expected the Authority to extricate this part of the case to maintain the order of dismissal. In any event, this matter was neither projected in a proper manner before the Authority and none at all before the High Court. This aspect of the case is not fit for our deep consideration at this stage.

14. Lastly it was contended that this Court in Union of India v. Parma Nanda, AIR (1989) SC 1185 1989 Indlaw SC 20 had spelled out the scope of the jurisdiction of Administrative Tribunal in interfering with a punishment on the ground that it was not commensurate with the delinquency of the employee. Here the second respondent has not been found guilty by the Authority; so the question of its imposing a proper punishment did not arise. The supposition of the occasion is misconceived.

15. No point survives on the basis of which the appellant can seek upsetting of the impugned orders of the High Court and that of the Authority. The appeal, therefore, fails and is hereby dismissed with costs.

Appeal Dismissed

Union Of India [Railway Board] And Ors v J.V. Subhaiah And Ors. Etc. Etc.

Bench	K. Ramaswamy, Faizan Uddin, B.N. Kirpal
Where Reported	1995 Indlaw SC 1919; (1996) 2 SCC 258; (1996) SCC (L&S) 558; 1996 (1) AD(SC) 510; AIR 1996 SC 2890; AIR 1996 SCW 705; 1996 (33) ATC 194; JT 1995 (9) SC 488; 1996 LabIC 960; 1996(1) SCALE 193; 1996 (2) SLR 185; [1995] Supp6 S.C.R. 812
Case Digest	**Subject:** Labour & Industrial Law **Keywords:** Controlled, Indian Railway Establishment Manual **Summary:** Labour and Industrial Law - Railway Establishment Code, Para 108 - Bombay Industrial Disputes Act, 1938 - Service conditions are regulated by by bye-laws of societies - Applicability of Railway Establishment code in matter of appointment - Held, not applicable - As officers, employees and servants appointed by the Railway Co-operative Stores/Societies cannot be treated on par with Railway servants under paragraph 10B of the Railway Establishment Code nor they can be given parity of status, promotions, scales of pay, increments etc. as ordered by the CAT, Hyderabad Bench - Appeal allowed.

Case No : Civil Appeal No. 12148 to 12150 of 1995

The Judgment was delivered by K. RAMASWAMY, J.

1. Leave granted in all the special leave petitions. The respondents were admittedly appointed in Railway Employees' Consumer Co-operative Stores at Rajahmundry, Visakhapatnam, Vijianagaram and Dharmavaram in South-Central Railway. They filed different O.As. before the Central Administrative Tribunal [CAT], Hyderabad Bench seeking declaration that they are "regular Railway employees in Class III posts" and entitled to be paid regular salary for continuous service from the date of the respective appointments in the Societies and also consequential promotion, increments and payment of arrears of salary. The CAT, Hyderabad Bench following the decision of the Madras Bench delivered on June 29, 1990 in O.A.No.305/88 allowed the O.As. and gave the directions for grant of the reliefs referred to earlier but payment of salary was directed to be made from the date on which respective applications were filed. By the time the present Special Leave Petitions came to be filed, a two-Judge Bench of this Court by order dated September 7, 1994 made in C.A. No.2932/91 confirmed the order of the CAT, Madras Bench but the review petition was pending. When these appeals had come up for hearing on October 16, 1995 it was pointed out to another Bench by the Additional Solicitor General that despite the dismissal the matter required examination and for that reason notice was already issued in another case, viz., C.A. @ SLP 24287/95.

2. All the matters were accordingly tagged together. After the dismissal of the review petition a

two-Judge Bench by order dated November 13, 1995 referred the matter to this Bench. Thus these appeals by special leave.

3. The admitted facts are that the respondents were appointed by the respective Railway Co-operative Stores registered under the Andhra Pradesh Co-operative Societies Act, 1964 as amended from time to time. The Co-operative Stores were organised by the Railway Administration as social welfare measure to inculcate thrift and cooperative spirit in the management of the societies, distribution of essential commodities and lending of credit facilities etc. to the members of the societies. Under the bye-laws, respective societies consist of serving members of the Railway Administration at the respective places. Normally these societies are formed at railway junctions. They are organised under the instructions issued by the Railway Administration in the Railway Establishment Manual [non- statutory orders]. Working of the societies are supervised by the welfare officers appointed by the Railway Administration. It is in dispute as to whether salaries to welfare officers are paid by the societies concerned or by the Railway Administration but that is not material for disposal of these appeals. It is also not in dispute that one third of the members of the societies are nominated by the Railway Administration.Shri Tulsi, learned Additional Solicitor General contended, on the facts, that Co-operative Stores registered under the Co-operative Societies Act, a State Act and the articles of association or the bye-laws of the societies are sanctioned by the Registrar of Co-operative Societies [for short, "the Registrar"] of the concerned State appointed by the State Government under the respective State Acts. The constitution of the societies is regulated and registered under the State Act. Appropriate law, rules and bye-laws provide that the General Body of the society periodically elects the members of the committee which in turn elects the President or general body itself elects the President, for a specified term. The President and the committee, as the case may be, is empowered to appoint the officers, employees and servants of the Stores according to its bye-laws. The Registrar under the respective Acts, has supervision and control over the working of the societies and its employees.

6. In view of the respective contentions a question giving rise to far-reaching consequences emerges for decision in these appeals. The question is whether the officers, employees and servants appointed by a Co-operative Society/Stores registered under the Co-operative Societies Act of a State or Societies Registration Act and organised as a welfare measure to inculcate co-operative movement, self-help and thrift among the officers and servants of Railway Administration, can be declared to be regularly appointed Railway employees? Whether they are Railway employees defined under the Railway Establishment Manual and entitled to all the consequential benefits? Before adverting to the instructions in the Railway Establishment Manual, it would be profitable to consider the legal setting of the appointments of the em loyees and servants of the Society.

7. In this case since admittedly the A.P. Co-operative Societies Act [7 of 1964] (for short `the Act') is applicable, its provisions and of the predecessor Acts repealed thereunder and of the Rules made thereunder as amended from time to time and bye laws of the society are required to be examined. The Act was enacted with a view to encourage co-operative movement, inculcate thrift and self-help and to organise the societies on democratic lines. The righ t to form a society is a statutory right and is not a fundamental right, a Society registered under Section 7, on compliance with and conforming to the requirements laid down therein and the rules made thereunder, is a body corporate under Section 9. The Registrar is empowered u/s. 15 to divide the area of operation

of the Society or amalgamate Societies for their day to day better working. The amendment to the bye-laws shall be approved by the Registrar and registered under Section 16. The rights and liabilities of the members are regulated in Chapter III subject to Section 21. S. 19 regulates the eligibility of a member and other qualifications. S. 21 prescribes disqualification for membership of the Society. Section 21-A prescribes disqualification for membership of the committee of the society. Section 21-AA envisages cessation of membership of a committee and the reinstatement under Section 21-B. Election and the right to vote is regulated by Section 25. Management of the society is regulated by Section 30.

8. The ultimate authority of the Society vests in its general body vide S. 30 (1) (a). It would be subject to the other provisions of the Ac t and the Rules and bye-laws made thereunder. S. 31 prescribes the procedure for constitution of a committee and their duties and responsibilities etc. S. 32 prescribes procedure for holding general body meeting of the Society and the committee and sub-s. (4) thereof empowers the Registrar to appoint a Special Officer with remuneration for the management of the committee. Section 37, with an non- obstante clause and subject to the execution of an agreement, empowers the Society to deduct the share capital or any amount from monthly salary or wages payable to a member of the Society. The duration of elected body is five years. Chapter VII consists of Ss. 50 to 60 for audit, enquiry , inspection and surcharge for the mismanagement and recovery of the amounts found mismanaged or defalcated from the members of the committee or the officers or servants of the Society. Chapter VIII deals with settlement of disputes. It consists of S. 61 to 63. Sub-s. (1) of S. 61 with a non-obstante clause provides that any dispute touching upon the constitution, management or the business of the Society other than a dispute regarding disciplinary action taken by the Society or its committee against a paid employee of the Society, shall be resolved by arbitration on a reference u/s. 62 and recovery of the monies due to it. Chapter IX deals with winding up of and cancellation of the registered Societies. Liquidator gets appointed to wind up the Society. Chapter X deals with execution of the decisions, decrees or orders. Chapter XI provides for constitution of a Co-operative Tribunal, appointment of the members of the Tribunal, appeal thereto, revision to the Registrar and review of the orders had been provided in Sections 76, 77 and 78. Chapter XII deals with offences and penalties.S. 79 (1) (a) provides that "it shall be an offence under the Act, if a committee, an officer, employee or any member of the society willfully makes a false return or furnishes false information, on a lawful order or direction issued"under the Act. Cl. (aa) provides that" if the committee, an officer, employee or any member of the society furnishes false information to gain admission or to continue as member of a society etc., it/he shall be liable for prosecution as envisaged under the Act. Special Courts are empowered to take congnizance and try an offence against the officers etc. constituted under Section 83-A.

It is seen that service conditions of the employees, officers and servants of the Stores/Societies are not regulated by the Railway Administration. They are governed by the bye-laws of the Societies subject to control and sanction by the Registrar under the State Act or the relevant provisions. There is no obligation on the part of the Railway Administration to provide security for those employees. The disciplinary control by the Society concerned is subject to other laws and is exclusively domestic in character. The Railway Establishment Code is not applicable to them. Their appointment is subject to bond prescribed by the Registrar. The arrears of funds or misappropriated amounts etc. are recoverable under the provisions of the State Act and the Rules

made thereunder. The services of the staff are liable to termination in terms of the State Act, Rules and bye-laws.In other words, there is a dual control over the staff by the Society and the Registrar. In that behalf, the Railway Administration has no role to play. If the subsidy is considered to be a controlling factor and the Societies/Stores as an intervening agency or veil between the Railway Administration and the employees, the same principle would equally be extendible to the staff, teachers, professors appointed in private educational institutions receiving aid from the appropriate State/Central Government to claim the status of Government employees. Equally, other employees appointed in other Co-operative Stores/Societies organised by appropriate Government would also be entitled to the same status as Government servants. Appointment to a post or an office under the State is regulated under the statutory rules either by direct recruitment or appointment by promotion from lower ladder to higher service or appointment by transfer in accordance with the procedure prescribed and the qualifications specified. Any appointment otherwise would be vertical transplantation into services de hors the rules.

Appointment through those institutions becomes gate-way for back door entry into Government service and would be contrary to the prescribed qualifications and other conditions and recruitment by Public Service Commission or appropriate agencies. As contended, if the employees of the societies like co-operative canteens are declared to be railway servants, there would arise dual control over them by the Registrar and Railway Administration but the same was not brought to the attention of the court when M.M. Khan's case was decided.

It is true that the order of the two-Judge Bench of this Court had upheld the order of the CAT, Madras Bench which had become final. With due and great respect to our learned brethren constituting the Bench, these features noted b y us do not appear to have been put up for their consideration and so they did not have occasion to consider the impact as envisaged hereinbefore. The Bench merely stated thus:"

... The Tribunal has examined in detail Chapter XXIX of the Indian Railway Establishment Manual and has preferred to paras 2901 to 2909. Based on the provisions of the Railway Manual and taking into consideration the actual working of the Stores, the Tribunal has come to the conclusion that the employees working in the Co-operative Stores are in fact and in law, the employees of the Railway Establishment. We have been taken through the judgment of the Tribunal and other relevant material on record. We so no ground to interfere with the reasoning and the conclusion reached by the Tribunal..".

9. In view of the above discussion and in view of the legal setting referred to hereinbefore, we are of the considered view that the Bench had not laid down any law except approving the reasoning and conclusion reached by the Madras Bench of the CAT. The Madras Bench had merely referred to the provisions in the Manual and proceeded on the premise that they gave rise to a legal base to treat the employees of the Stores as the Railway employees. The reasoning is wholly illegal and unsustainable for the reasons stated above.

10. The principle of equality enshrined u/art. 14 of the Constitution, as contended for the respondents, does not apply since we have already held that the order of the CAT, Madras Bench is clearly unsustainable in law and illegal which can never form basis to hold that the other employees are invidiously discriminated offending Article 14. The employees covered by the order of the

Madras Bench may be dealt with by the Railway Administration appropriately but that could not form foundation to plead discrimination viola ting Art. 14 of the Constitution.

11. We, therefore, have no hesitation to hold that the officers, employees and servants appointed by the Railway Co-operative Stores/Societies cannot be treated on par with Railway servants under paragraph 10B of the Railway Establishment Code nor they can be given parity of status, promotions, scales of pay, increments etc. as ordered by the CAT, Hyderabad Bench.The appeals are accordingly allowed and the OAs stand dismissed but, in the circumstances, without costs.

Harkishan Dass And Others v State Of Haryana And Others

Bench	M.M. Punchhi, Ms. Justice Sujata V. Manohar
Where Reported	1995 Indlaw SC 784; (1996) 7 SCC 32; 1995 (4) CCC 90; JT 1995 (8) SC 335; 1995(6) SCALE 349; 1996 (1) SCJ 484; [1995] Supp4 S.C.R. 840
Case Digest	**Summary:** Trusts & Associations - Punjab Co-operative Societies Act, 1961, ss. 55 and 56 - Appellants are heirs and LRs. of deceased, cashier-cum-member of Cooperative Society - Dispute arose between Society and its deceased member, about recovery of certain sum, and hence heirs and LRs. of deceased, were made to face proceedings - Whether liability on petitioners can exceed interest devolved upon petitioners from deceased? - Held, petitioners cannot be held liable personally for liability of deceased except to extent of interest devolved upon them from deceased - If such plea is raised as defence in an appropriate forum, that plea shall not be shut out merely on account of dismissal of writ petition - No bar of res judicata would be valid to thwart such defence as and when raised as such matter was not and could not be directly and substantially in issue - Appeal disposed of.

Case No : Civil Appeal No. 64 of 1979

The Order of the Court was as follows :

The Punjab and Haryana High Court at Chandigarh dismissed the writ petition of the appellants in limine, which has given rise to this appeal.

On the bare outlines of the matter, it is clear that there is not much scope for interference a tour end. The appellants are heirs and legal representatives of Mathura Parshad, deceased, cashier-cum-member of the Cooperative Society, respondent no.3. On his demise, it was discovered that he had defalcated large sums of money of the Society. Since a dispute arose between the Society and its deceased member, about the recovery thereof, the heirs and legal representatives of the deceased, Mathura Parshad were made to face proceedings. An arbitrator was appointed to go into the matter in accordance with the provisions of Sections 55 and 56of The Punjab Co-operative Societies Act, 1961. An award was made by the Arbitrator against the appellants, being heirs and legal representatives of Mathura Parshad, deceased, not only for the principal amount found due, but also for the liability to pay interest at the rate of 16 per cent per annum and costs at the rate of 2 per cent on the sum awarded.

1. On appeal before the Deputy Secretary of the Department, at the instance of the appellants, the liability to pay the principal sum was sustained but rest of the award i.e. pertaining to interest and costs was struck off. The appellants' writ petition, as said before, was dismissed in limine by the High Court, repelling the plea raised that the dispute did not squarely fall within the purview of Section 55 and 56 of the Punjab Co-operative Societies Act, 1961.

2. Though the order of the High Court in sum and substance is in approval of the orders of the departmental officers, one claim however, laid in the writ petition, needs to be highlighted. That was contained in ground (j) in paragraph 11 of the writ petition. It is reproduced hereafter:

"(J) That in any case, the liability on the petitioners cannot exceed the interest devolved upon the petitioners from late Mathura Parshad. Late mathura Parshad had no bank balance and no property of his. All that he had was a share in the ancestral house in which some of the petitioners established, then cannot exceed the share of mathura Parshad in that house."

This was a valid plea. All the same the dismissal of the writ petition cannot have the effect of wiping out such plea which would remain alive when the question of recovery would arise. This plea was personal to the appellants. They cannot be held liable personally for the liability of late mathura Parshad except to the extent of interest devolved upon them from mathura Prasad. If such plea is raised as defence in an appropriate forum, that plea shall not be shut out merely on account of the dismissal of the writ petition. No bar of resjudicata would be valid to the thwart such defence as and when raised as such matter was not, and could not be, directly and substantially in issue. With this clarification, the appeal stands disposed of. No costs.

Appeal disposed of

Maharashtra Rajya Sahkari Sakkar Karkhana Sangh Limited and Others v State of Maharashtra and Others

Bench	Mr.Justice R.M. Sahai, B.P. Jeevan Reddy, S.C. Sen
Where Reported	1995 Indlaw SC 1023; (1995) Supp3 SCC 475; AIR 1995 SCW 2338; JT 1995 (3) SC 581; 1995(2) SCALE 772; 1995 (3) SCJ 169; [1995] 3 S.C.R. 377
Case Digest	**Subject:** Constitution **Keywords:** Profits, Sugarcane (Control) Order, 1966, Maharashtra Cooperative Societies Act, 1960, Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953, Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953, Companies Act, 1955, Andhra Pradesh Sugarcane (Regulation Of Supply And Purchase) Act, 1961, Maharashtra Co-operative Society Act, 1960 **Summary:** Constitution - Constitution of India, 1950, arts. 14 and 19(1) (c) - Essential Commodities Act, 1955 - Maharashtra Co-operative Society Act, 1960 - Minimum price - Non-members - A full bench of the Bombay HC had passed an order stating that the cane growers who were not members of any Co-operative Society but who were required to supply their cane under reservation order or Control Orders to sugar factories with which they were attached were entitled to market price instead of price fixed by the Govt., and other directed against fixation of market price for 1993-94 by the HC at Rs. 740/- as against Rs. 340/- to Rs. 400/- fixed by the Govt. - There were two sets of appeals filed by various Sahakari Sakkar Karkhanas, that is, Co-operative Societies of Sugarcane Growers, Private Undertakings, Joint Stock Companies producing sugar in the State of Maharashtra and the State itself one, directed against order of the Full Bench of the Bombay HC alleging that this had created an unfavorable advantage for the cane growers who were not apart of co-operative societies - Appeals filed by the co-operative societies also alleged the Order was beyond the scope of the 1960 Act and was violative of the rights guaranteed u/arts. 14 and 19 of the Constitution - Cane growers also alleged that the condition prevented the cane growers from selling their sugar cane at the best price available and imposed an unreasonable restriction - It was claimed that in process of reservation they had been deprived of the highest price in the area, and therefore, it was liable to be struck down arbitrarily - Whether the decision of the full Bench of the Bombay HC was arbitrary and biased in favor of non members and whether it was violative of arts. 14 and 19 of the Constitution - Held, that price fixation had not been found to suffer from any infirmity or caused any prejudice to the cane growers - These cooperatives societies covered all the sugar-cane-growing areas - They enhanced the sugar

	production and thus every effort was to be made to encourage and promote them - Any and every person who had sought to be a member of the society was enrolled as such - Every grower was allowed to join the cooperative society of his area - Nobody who applied was refused, but if non-members had failed to join they were ineligible to complaint that they were paid the same price as the members of the society - While the members were under an obligation to raise sugarcane in the specified area year after year, the non-members were under no such obligation - Non-member were free to raise such crops as they chose - Also, the determination of price was fair and just and based on relevant material it could not be held not applicable to one class of growers, namely, non-members in the zone because they were not members of the cooperative societies - If the exercise of power was not bad for members of the society it could not be held to be bad for non-members, unless it was found to be arbitrary - Further the production of sugar was of primary concern - Govt. had ensured that the growers were not denied the minimum price - Additional Cane Price or final State Advised Price were paid as a matter of incentive and what was incentive for one year became the minimum price for next year - There was no reason why such fixation should not be held to be binding on non-members as in the scheme of price fixation no distinction was to be made between members and non- members and the price fixed by the Govt. was not arbitary and thus was not violative of arts. 14 and 19 of the Constitution - Order of Full Bench was set aside to this regard and the market price received by non-members was not to be revalued as considerable time had passed since the decision - Bank guarantee furnished by the appellants or sugar factories stood discharged - Appeal disposed of.

Case No : C.A. No. 522 of 1989

The Judgment was delivered by: R. M. Sahai, J.

1. These are two sets of appeals filed by various Sahakari Sakkar Karkhanas, that is, Co-operative Societies of Sugarcane Growers, Private Undertakings, Joint Stock Companies producing sugar in the State of Maharashtra and the State itself one, directed against direction by a Full Bench of the Bombay High Court in Satara Sahakari Sakhar Karkhana Ltd.& Anr. v. Stale of Maharashtra & Ors., AIR 1989 Bombay 53 1988 Indlaw MUM 314 that the cane growers who were not members of any Co-operative Society but who were required to supply their cane under reservation order or Control Orders to sugar factories with which they were attached were entitled to market price instead of price fixed by the Government, and other directed against fixation of market price for 1993-94 by the High Court at Rs. 740/- as against Rs.340/- to Rs.400/- fixed by the Government.

2. The directions issued by the Full Bench are as under:

   "We are therefore of the view, that unless provisions for the following arc made in it, the State Order will not be valid

   (i) The sugarcane &rowers who are not members of the factory or factories to which they are required to supply their sugarcane shall be paid for the sugarcane supplied by them the price calculated at the market rate prevailing in the locality at the date of the sale;

(ii) The market rate may be as agreed between the parties, namely, the sugarcane grower and the factory or factories concerned. If there is any dispute over it, the same should be resolved by an independent authority which may be created under the Order such as the one under clause'12 of the present Order. The authority concerned should decide the dispute expeditiously after hearing the parties and by a speaking order,

(iii) No unauthorised deductions on any account should be made by the factory from the price to be paid to the sugarcane grower without his consent. The State Order should provide for a machinery similar to the above to hear and grant to the sugarcane grower, expeditious relief if he has any complaint in that behalf."

3. The reasons for these directions were twofold, one, the non members were not bound by the price fixed under bye-laws framed under the Cooperative Sugar Act and other that there was no machinery in the Zoning Order issued by the State Government to hear the non-members before the price was fixed. Before examining whether these reasons are well founded in law leading to the impugned directions it is necessary to narrate in brief the necessity which impelled the Central Government to grant protection to sugar industry and consequently to control, supply and distribution of the sugarcane without sacrificing the interest of cane grower.

Therefore, he says, the non-members cannot be deprived of their liberty to sell their product freely just because they have entered into loan agreements. It is another matter that they may be liable for damages for breach of contract with the sugar factories but that is a matter between the factory and that person. So far as the Government is concerned, it cannot take note of that agreement and compel such person to sell his cane at the SAP since that would mean enforcing a private contract between the parties otherwise than through court of law. Dr. Dhawan says that in other States (other than Maharashtra and Gujarat) the Governments have not only issued statutory orders creating zones for each of the sugar factories but have also notified the price at which the sugarcane is to be sold by the growers to the factories and this price is common to the entire State though it may vary corresponding to the sugar content in the case.

17. Since entire thrust on the price structure operating unfavourably to non-members of cooperative society proceeded on assumption that price fixation by the Government for cooperative society was influenced with creditor and debtor relationship between the two it is necessary to understand the mechanism of pricing for cane prevalent in the State and whether it works harshly and unreasonably against non- members. The entire process of price fixation can be divided in three stages. The first is the fixation of what is known as the minimum ex-factory price by the Central Government under 1966 Order for entire sugar factories in the country linking it with basic recovery of 8.5% with a proportionate increase for every 0.1% extra recovery.

18. Therefore, normally the minimum price of cane paid by two factories cannot be same. For instance, the normal recovery in the State of Maharashtra is stated to bell.05%. In the year 1987-88 the minimum price fixed was Rs. 19.50 per quintal. The highest and lowest price paid for the sugarcane in the Ahmednagar District during 1987-88 was Rs.366/- and Rs.240/ by Sangamner Sahkari Sakkar Karkhana and Jagdamba Sahkari Sakkar Karkhana respectively. There covery of Sangamner SSKLtd. was 11.64% whereas there covery of Jagdamba SSK Ltd. was 10.36%. It was explained that difference of1.28% between recovery of sugar by the two factories resulted

in difference of sugar production per tonne to extent of 12.8 kg. and the realisation too was Rs.64/- per tonne more. This difference got reflected in the price fixation.

45. Consequently the first two directions issued by the Full Bench on price fixation cannot be upheld. As regards third direction it has been explained in the affidavit filed in pursuance to order dated 24th February1995 which substantially remains uncontroverted that the deductions under bye-law 65 are made for the Chief Minister's Relief Fund, Small Saving Schemes, Cane Development Fund, Vasantdada Sugar Research Institute, Area Development Fund etc.. The details as to how the deductions are madehave also been mentioned. It is true that they are made in exercise of power under bye- law 65 which does not apply to non-members. But these deductions being for the general welfare of the society it cannot be said that they are either bad or they suffer from any infirmity. The deposits deducted unlike members arc refundable and they carry same interest as is paid to members. A non-member who is sharing in profits of the sugar production cannot be heard to say that he has no obligations towards the society because he is not a member of any co-operative society. With the conclusion thus arrived the other issues are rendered academic. Suffice it to say that the Court's responsibility is to construe the provision which may advance the co-operative movement in the State.

50. The State Government would be further well advised to get the matter thrashed out, before the next crushing season commences, by an Expert Committee comprising of economists and financial experts well versed in price fixation, particularly in agricultural sector. This exercise has become imperative after the enforcement of Zoning Order. In fact when Zoning Order was introduced the State at that time should have got these aspects examined. However, the price equation since 1984 has undergone tremendous upsurge. The escalation is manifold. Benefit of higher price of sugar must percolate to growers as well. Therefore, the Committee may examine,

(a) If the fixation of State Advised Price uniformly for the entire State as it is being done in other States, or at least separately for different zones, as the normal recovery in the zones varies, would be more feasible;

(b) If the additional price worked out in the manner indicated in Schedule 11 of Control Order of 1966is more advantageous and beneficial to the growers. If it be so it may opt for the same as it would avoid tedious exercise by the Ministerial Committee and have the benefit of uniformity;

(c) The Committee may further examine whether Rs. 600/- which has been paid by the factories to the non-growers under interim order passed by this Court would not be a reasonable minimum price for 1995-96 and may furnish the basis for fixation of price for future years;

(d) It may also suggest ways and means for improving yield by the sugar factories and reducing over head expenses and eliminating, possible, paper loss;

(e) It would further be in interest of the Government to ask the Committee to examine if the shortcomings pointed out by the Full Bench in other regard can be rectified and rationalised; and

(f) The Committee may examine whether bye law 65 should be applied to non-members or not.

51. Although the price fixation has not been found to suffer from any infirmity yet due to passage of time, nearly eight or nine years, since this price fixation was challenged and with rise of price all around it appears expedient to dispose of these appeals with following directions to ensure smooth functioning both for the past and future:

(i) The directions of the Full Bench in paragraph 25 of the Judgment shall stand set aside.

(ii) The State Government may take appropriate steps to amend Cl. (5) of the Zoning Order so as to protect the cane growers.

(iii) The Government may appoint a Committee of Experts to study and examine the price structure in the light of what has been stated earlier.

(iv) Even though the order issued by the State Government determining price for each factory is upheld but since inconsequence of the order passed by the High Court an interim order was granted by this Court and the factories were directed to pay Rs.600/- to the cane growers and they were directed to furnish bank guarantee for Rs.145/- it is directed that the amount paid by the factories shall not be liable to recovery from the cane growers. But the bank guarantee furnished by the appellants or sugar factories shall stand discharged.

(v) It is made clear that the direction not to recover Rs. 600/- from non-growers would not entitle any member of the cooperative society or the cooperative society itself to claim that it was entitled to be paid Rs.600/- for its cane during the years in dispute.

52. For the reasons stated in the order these appeals are disposed of with above directions. Parties shall bear their own costs. Appeals disposed.

I. D. L. Chemicals Limited v T. Gattaiah and Others

Bench	Kuldip Singh, N. Venkatachala
Where Reported	1995 Indlaw SC 2220; (1995) Supp3 SCC 573; (1995) SCC (L&S) 1417; 1995 (31) ATC 507; 1996 (3) LLJ 346
Case Digest	**Subject:** Labour & Industrial Law **Keywords:** Charge - Sheet **Summary:** Labour & Industrial Law - Constitution - Punjab Cooperative Societies Act, 1961 - Constitution of India, 1950, art. 14 - Whether penalty levied against appellant for stoppage of two increments was justified? - Appellant was given a charge-sheet and his explanation was called and taken into consideration - Nothing more need to be done so far as procedure for imposing minor penalty is concerned - No fault can be found with penalty of stoppage of two increments imposed by Bank upon appellant - Appeal dismissed.

Case No : C.A. No. 3351/1981 with Nos. 3472/1987 and 6197/1983,

The Order of the Court was as follows:

Civil Appeal No. 3351 of 1981

1. Mr. A. Subba Rao, learned counsel appearing for the appellant, states that the appellant has implemented the impugned order of the High Court. He further states that after a lapse of about 15 years it is not necessary to decide the precise question of law involved in this case. The appeal is disposed of.

2. We make it clear that we are not deciding the question of law involved in this case.

Civil Appeal No. 3472 of 1987

3. The appellant was working as a Manner in the Primary Land Mortgage Bank, Samana (the Bank) in the year 1982. The Bank is a cooperative society under the Punjab Co-operative Societies Act, 1961. The appellant was served with a charge-sheet and was asked to give his explanation. The explanation of the appellant was considered by the Management and thereafter, another show-cause notice regarding the proposed penalty was issued to him After considering his reply to the show-cause notice, the penalty of stoppage of two increments with cumulative effect was imposed.

4. The appellant represented before the Management that since no enquiry was held against him, major penalty of stoppage of two increments with cumulative effect could not be imposed. The matter was again considered by the Management and a minor penalty of stoppage of two increments simpliciter was imposed. The appellant challenged the order of punishment by way of a civil suit. The trial court dismissed the suit primarily on the ground that the Bank being a

cooperative society, no suit was competent. The lower appellate court reversed the findings of the trial court and remanded the case back for trial on merits. Second appeal filed by the Bank was allowed by the High Court and it was held that no suit was competent against the Bank. This appeal by way of special leave is against the judgment of the High Court.

10. It is the Society which has to frame the bye-laws and Section 23 further provides that the Society is controlled by the general body. When the general body itself has laid down by way of Bye-law 42, the procedure for framing the common cadre rules, no fault can be found with the same. We, therefore, find no force in the contention of the learned counsel.

11. So far as the second contention of the learned counsel is concerned, it is mentioned to be rejected. The contention of the learned counsel is that there was a common cadre of Personal Assistants, Junior Accountants and Assistant Inspecting Officers. According to him, there being a common seniority among these three categories and the appellants being senior to the AIOs, the promotion of the AIOs in supersession of the appellants was arbitrary and was liable to be set aside. There is no basis for the contention. The Bank in its counter-affidavit has categorically denied that there was a common cadre of the three categories. According to the Bank, the cadre of the Assistant Inspecting Officers was separate and there was a separate seniority list for the cadre of AIOs. That being the position, there is no basis whatsoever for the arguments.

12. Having dealt with the merits of the controversy and rejected the same, it is not necessary for us to go into the question as to whether the respondent-Bank is a State or an Authority under Article 12 of the Constitution of India. We leave the question open to be decided in an appropriate proceeding. The appeal is dismissed. No costs.

Appeal dismissed.

South Central Railway Employees Co-Operative Credit Society Employees' Union, Secunderabad v Registrar of Co-Operative Societies and Others

Bench	G.B. Pattanaik, S. Saghir Ahmad
Where Reported	1998 Indlaw SC 1363; (1998) 2 SCC 580; AIR 1998 SC 703; JT 1998 (1) SC 60; 1998 LabIC 491; 1998(1) SCALE 81; [1998] 1 S.C.R. 85; 1998 (2) SLJ 266; 1998 (1) SLR 458; 1998 (2) SLT 273; 1998 (1) Supreme 221
Case Digest	**Subject:** Labour & Industrial Law **Summary:** Andhra Pradesh Co - operative Societies Act, 1964, ss. 16 and 116B - Service under society - Reservation in appointment and promotion - Held, Govt. can direct society to apply rules of reservation - Principle of construction - Govt. Notification, in question, did not however apply reservation rule to promotional posts.

Case No : Appeal (civil) 4343 of 1988

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

1. The appellant is a society registered under the Andhra Pradesh Co-operative Societies Act and the members of the society are the employees of South Central Railway. The society in turn maintains certain staff members for running the affairs of the society. The service conditions of such employees of the society governed by the b\e-laws of the society. Bye law 33 of the society is empowered the committee of management to frame service regulation pertaining to the service conditions of the officers and the employees of the society. Pursuant to the aforesaid power the society has framed a set of rules with the approval of the Registrar of Co-operative Societies determining the service conditions of the employees of the society. The said rules of society categorically provided that there should be no reservation in promotions of the employees of the society. The private respondents filed a write petition No. 8051 of 1982 challenging the order of cancellation of their appointment dated 10.8.1982 and that writ petition was allowed by the learned single Judge of the Andhra Pradesh High Court. On an appeal being filed by the present appellant the Division Bench of the High Court dismissed the appeal and affirmed the judgment of the learned single Judge.

2. It may be stated that the private respondents were given promotions on 9.8.1982 to various promotional posts by applying the principle of reservation for Scheduled Castes and Scheduled Tribes but that order was cancelled by order dated 10.8.1982 on the ground that under the rules of the society dealing with the service conditions of its employees the principle of reservation has no application in the matter of promotion. The learned single Judge came to the conclusion that the rule of reservation applies to the promotional posts also. On appeal, the Division Bench of the High Court interpreted the notification issued by the Governor of Andhra Pradesh in exercise of powers conferred by Section 16 of the Andhra Pradesh Cooperative Societies Act, 1964 and

held that the notification in question is wide enough to include all posts in all co- operative including the promotional post to which the principle of reservation should be made applicable and the word appointment in the notification is not necessarily referable only to the stage of initial recruitment. With this conclusion the Division Bench dismissed the appeal filed by the present appellant and confirmed the decision of the learned single Judge. Hence the present appeal.

"Notification; in Exercise of the powers conferred by Section 16 of the Andhra Pradesh Co-operative Societies Act, 1964*). (Act 7 of 1964), the Governor (of Andhra Pradesh hereby directs to Societies and the appointment committee constituted under Section 116-A of the Appendix hereto shall be followed with regard to reservation of appointment to all posts in all posts in all cooperative institutions, to be filled by direct recruitment on temporary or regular basis.")*

6. On a plain reading of the aforesaid notification it is costal clear that the direction of the Governor was to follow the principle of reservation in appointment to all posts in all co-operative institutions to be filled by direct recruitment either on temporary or on regular basis. It is an undisputed before that the promotional posts in the societies cannot be filled up by direct recruitment, and therefore, the only conclusion mat can be arrived at is that the aforesaid direction of the Governor to apply the principle of reservation is only in respect of appointments in the initial cadre and not to any appointments in the promotional cadre. The Division Bench of the High Court while giving wide interpretation to the expression 'appointment' in the notification has completely overlooked the latter part of the said notification to the effect ' 'to be filled by direct recruitment on temporary or regular basis". The interpretation given by the High Court to the notification by giving a wide interpretation to the word 'appointment' makes the latter part of the notification wholly redundant or surplus age. It is a cardinal principle of construction not to brush aside words used in a statute or in a notification issued under a statute and full effect must be given to the entire words of an instrument.

7. Applying the said principle to the notification, which is for consideration before us, we had no hesitation to come to the conclusion is that under the said notification no direction has been given by the Governor to apply the policy of reservation in appointments to the promotional posts. The High Court, therefore, committed serious error of law in interpreting the aforesaid notification and by holding that the policy of reservation has been made applicable to the promotional posts also. We accordingly set aside the impugned judgment of the High Court as well as the judgment of the learned single Judge and hold that though it was open to the Govt, to apply the principle of reservation but by the impugned Notification it has not been made applicable to the promotional posts available in the society.

8. This appeal accordingly is allowed and the writ petition filed by the private respondents stand dismissed. There will be no order as to costs.

Appeal allowed

Devi Singh v State Of Haryana & Ors.

Bench	K. Ramaswamy, K.T. Thomas
Where Reported	1997 Indlaw SC 1003; (1997) 10 SCC 752; AIR 1997 SC 2778; 1997 (3) CLT 69; JT 1997 (5) SC 683; 1997(4) SCALE 382; [1997] Supp1 S.C.R. 50; 1997 (6) Supreme 207
Case Digest	**Subject:** Trusts & Associations **Summary:** Corporate - Haryana Co-operative Societies Act, 1972, s. 23 - Constitution, art. 14 - Collectively responsible President along with Secretary and Treasurer of co-operative Societies - Bye-laws exclude him - For proper accounting of funds - Failure - President held liable for misappropriation - Plea of non-supply of document raised before Supreme Court - Held, not entertained as being belated and involving determination of question of fact - Appeal dismissed.

Case No :

The Order of the Court was as follows:

1. We have heard Shri Maheshwari, learned counsel for the appellant.

2. The only question is; whether the appellant as President of the Sardarajanti Kalan Cooperative Agricultural Service Society along with Other two persons, namely, the Secretary and Treasurer, is liable to account for a sum of Rs. 65, 726, 59. It is an admitted position that Tara Chand is Ex-Secretary, the appellant, the Ex-President and Sardar Singh is the Ex-Cashier. The dispute arose from award proceedings under the Haryana Cooperative Societies Act. On a reference made to the Registrar, the matter was referred to the concerned officer for enquiry and necessary action. On the basis there of, after notice to the parties and conduct of the due enquiry, the award come to be passed wherein it was held that the three officers, namely, the appellant a s President, Tara Chand as Secretary and Sardar Singh as Cashier were jointly and individually responsible for the unaccounted sum of Rs.65.726.59. The Secretary and the Cashier had allowed the award to become final. The appellant carried the m atter in appeal, which was confirmed; the writ petition, filed consequently, stood dismissed. Thus, this appeal by special leave granted by this court.

3. Shri Maheshwari, learned counsel for the appellant, contends that the appellate authority proceeded on the premise that the appellant had admitted the misappropriation and accordingly it confirmed the award. This Court called for the record on perusal there of, found that the re was no such admission. Therefore , leave was granted. The appellant having not admitted the misappropriation, it must be proved that the appellant was a party there to. It is argued that in the absence of such a proof, he cannot be saddled with any liability for the unaccounted money to the members of the S ociety. We find no force in the contention. It is true that the Registrar, who conducted the enquiry, had noted the admission. The admission was only in relation to the

joint purchase of a tempo by the three persons for use as a public carrier and the income derived the refrom was required to be distributed to the members of the Society. That does not amount to admission by the appellant and Others that they misappropriated the amount. It is seen from the evidence that certain amount, at the rate of Rs.1500/- to each of the members was credited towards purchase of lempo and the re is an admission by the appellant and Others that the tempo was purchased. Once it is proved that the tempo was actually purchased, the burden is on the said office bearers of the society to account for the profits derived by its use as public carriage.

The finding is that they have not accounted for. It is true that under the bye-laws of the Society, as placed before us, the responsibility is of the Treasurer and the Secretary. But the appellant being the president bears the overall responsibility. Being the President of the Society, he owes the collective responsibility with the Treasurer and the Secretary for its accounting. In the absence of accounting of the funds, necessary inference is that the re was improper management of the institution and the reby they are liable for making good the loss caused to the Society and the members. The crime registered against the m is in respect of an offence; but the surcharge proceedings are for unaccounted money by the officers or the persons responsible there for. Being the President of the Society, the appellant bears the collective responsibility to have the accounting properly done of the funds of the Society. The omission there of constitutes misappropriation.It is the n contended that certain documents had not been supplied to the appellant and, therefore , it is violative of the principles of natural justice. We do not find any force in the contention at this distance of time for the reason that it involves investigation into the questions of facts.

4. The appeal is accordingly dismissed. No costs.

Appeal dismissed

Supreme Co-Operative Group Housing Society v Messrs H. S. Nag and Associates Private Limited

Bench	Faizan Uddin, G.B. Pattanaik, K. Ramaswamy
Where Reported	1996 Indlaw SC 2965; (1996) 9 SCC 492; AIR 1996 SC 2443; 1996 (2) ARBLR 273; 1996 (63) DLT 553; JT 1996 (6) SC 592; 1996(5) SCALE 343; [1996] Supp2 S.C.R. 658; 1996 (2) UJ 519
Case Digest	**Subject:** Arbitration & ADR; Practice & Procedure; Trusts & Associations **Keywords:** Bar Of Suit, Co-Operative Society, Cooperative Society **Summary:** Civil Procedure - Code of Civil Procedure, 1908, s. 9 - Delhi Co-operative Societies Act, 1972, ss. 60, 90 and 93 - Arbitration Act, 1940, ss. 2(a) and 20 - Dispute with contractor as to original contract - Further agreement awarding additional work - Dispute - Arbitration clause under original contract applicable - Application u/s. 20 of Arbitration Act by Contractor for reference of dispute to arbitrator - (A) Civil Court's jurisdiction to entertain Application - (B) Applicability of s. 90 mandating prior notice to Society - Contended that notice as required u/s.90, is a precondition to lay suit - (C) Application u/s. 20 would be maintainable - Maintainability - Held, application is not barred u/ss. 60 and 93 of 1972 Act - Not applicable - Maintainable - Petition dismissed.

Case No : Special Leave Petition (C) No. 11037 of 1996

The Order of the Court was as follows :

1. This special leave petition arises from the order of the Division Bench of the High Court of Delhi made on 8.3.1996 in F.A.O. (OS)44/96. The petitioner had entered into a contract on September 4, 1996 with the respondent with covenant contained therein as under:

   "And whereas the contractor has also agreed to execute work of seven towers with 100% external works with the said contract amount in the first instance and further work of the balance towers that would be entrusted the him within 4 months of the date of award of work at the same per sq.m. rates arrived at the above lump sm rice for each tower and for the alternate specifications.

   And whereas the employer has accepted the officer of the contractor the said contract amount subject to the terms and conditions set forth herein and mutually agreed to by both the parties"

   2. Therein clause 32 relates to settlement of dispute by arbitration which reads as under:

   "32-Settlement of Disputes by Arbitration;

   If any dispute, question of controversy, the settlement of which is not herein specifically approved for, shall at any time arise between the owner and the contractor relating tot his contract or any clause or thing contained or the construction thereof or any portion of the same or the rights of

duties or liabilities of either party, then in every such cases the matter in dispute shall be referred to the Arbitration of the Hony. Director, owner or him nominee and his decision shall be final and binding on both the parties .....”

The learned single Judge and the Division Bench negatived the contention and in our view rightly, on the ground the Section 60 of the Co-operative Societies Act would apply to a dispute among members, past-members or persons claiming through them or between them and the society or the members of the committee or officers or agents etc. as envisaged in clauses (a) to (d) of Section 60(1) of the Co-operative Societies Act. By operation of the non obstante clause, the bar of suit attracts only if the dispute falls within the parameters of clauses (a) to (d) thereof and the bar of jurisdiction of the Court under Section 93 gets attracted in respect of the specified subjects in sub-section (1) of Section 93 thereof. Therefore, the plea of the bar of sections 60 and 93 is devoid of substance.

4. It is then contended in this Court that notice as required under Section 90, is a pre-condition to lay the suit. Since the proceedings under Section 20 of the Act was a suit, absence of notice meets with dismissal of the suit. we find no force in the contention. As per ratio in Kalyan Peoples' Co-operative Bank ltd. vs. Dullhanbibi Aqual Aminsaheb Patil & Ors. [AIR 1966 SC 1066 1962 Indlaw SC 178] prior to CPC 1976 Amendment Act, insistence upon a notice under Section 80 CPC in a suit under Order 21 Rule 63 renders no assistance to the petitioner. Even analogy of Section 80 CPC sought for in support of reference is of no avail, since rigour of notice under Section 80 CPC was softened by CPC 1976 Amendment Act in directing, in an appropriate case, post-suit notice. Though application under Section 20 of the Act is treated as suit, in proceedings under the Act, it is a procedural part. The mandatory requirement of section 90 does not get attracted to proceeding laid under Section 20 of the Act.

5. A serious contention raised by Shri K. Madhava Reddy, learned senior counsel for the petitioner, is that contract for arbitration is a precondition to avail arbitration.

Since the agreement for the 7 towers does not contain such arbitration clause, the application under Section 20 is not maintainable and, therefore, the suit deserves to be dismissed. We find no force in the contention. Undoubtedly, jurisdiction to arbitrate the dispute is founded upon an agreement entered with consensus ad idem under which the parties excluded established courts and submitted to the jurisdiction of the arbitrator for settlement of differences and disputes having arisen thereunder. Otherwise, court is devoid of jurisdiction to refer such disputes under Section 20 for arbitration. It is seen that the above quoted terms of the agreement and clause 32 of the contract read together clearly indicate that the award of the work during the course of execution is a part of the agreement originally entered into.

Therefore, clause 32 of the agreement containing settlement of disputes by arbitration is an arbitration agreement within the meaning of Section 2 (a) of the Act. Therefore, application under Section 20 would be maintainable. We do not find any substance in the special leave petition.

6. The special leave petition is accordingly dismissed.

Petition Dismissed

State of Madhya Pradesh and Others v Hukum Chand Mills Karamchari

Bench	S.B. Majmudar, S. Mohan
Where Reported	1995 Indlaw SC 1496; (1996) 7 SCC 81
Case Digest	**Summary:** Trusts & Associations - Madhya Pradesh Cooperative Societies Rules, 1962, r. 50 A - Madhya Pradesh **Cooperative Societies Act**, 1960, s. 95(3) - Amendment of r. 50 A vide notification D/- 23-01-1984 - Amended r. 50 A, whether valid? - Increasing of audit fees under amended rule - Such increasing held to be bad on ground rule was not laid on table of Legislative Assembly, that procedure being essential a rule will not come into force - Present appeal - S. 95(3) of Act perused - Laying of R. 50-A before Legislative Assembly was only for purpose of information, thus when State by virtue of delegated powers u/s. 95 makes rules they would come into force only after they are laid before Assembly and after its approval - High Court thought that there was no necessity to go into, in view of invalidating r. 50 - These points, therefore, require to be gone into on merits and adjudicated upon - Though schedule relating to audit fees had been amended for relevant period in dispute, question still requires determination - Direction under impugned judgment to refund audit fee on finding that rule is invalid, has to be necessarily set aside and it is, accordingly, set aside - Appeals allowed.

Case No : C.As. Nos. ... of 1995 in S.L.Ps. (C) Nos. 2878, 2957, 2870 and 2817 and 2841 of 1988

The Order of the Court was as follows:

Leave granted

1. The question that arises for our consideration in these cases is, whether amended Rule 50-A of M.P. Cooperative Societies Rules, 1962 which was brought into force by notification dated 23-1-1984 is valid. The question was answered against the State in the impugned judgment because the procedure u/s. 95 of the M.P. Cooperative Societies Act, 1960 had not been followed. On the short ground the increase of audit fees of the cooperative society was held to be bad since the rule was not laid on the table of the Legislative Assembly, that procedure being essential the rule will not come into force. Attacking this finding, the State has come up in appeal.

3. The learned counsel for the respondent in fairness, states that there can be no demur to the submission on law on behalf of the State. However, there are other points which require to be gone into in the writ petition. They were not decided by the High Court. Since the High Court chose to allow the writ petition on the short ground of the invalidity of the Rule, as it conceived. Besides the Schedule relating to levy of audit fee having been changed the matter is academic

4. In order to determine the above controversy, we think it is worthwhile to quote S. 95(3) of the M.P. Cooperative Societies Act, 1960. The said section runs as under "95(3). All rules made under this Act shall be laid on the table of the Legislative Assembly."

5. In view of this it is clear the laying of the Rule 50-A before the Legislative Assembly was only for the purpose of information. When the State by virtue of the delegated powers u/s. 95 makes Rules they would come into force only after they are laid before the Assembly and after its approval. That is not the case here. The purpose of such a procedure is that for the State to exercise control over delegated powers. The rule, is a subordinate legislation. The legislature which has plenary power of legislation retains the control over subordinate legislation. The distinction between the two kinds, has been clearly brought out by the decision of this Court cited on behalf of the State, namely Atlas Cycle Industries Ltd. 1978 Indlaw SC 2791978 Indlaw SC 279. We do not find any necessity to multiply the case-law

6. The reliance on Section 24-A of the General Clauses Act by the High Court seems to be out of place. That section merely emphasises the ultimate control of the legislature over the subordinate legislation. The said section itself postulates the rule coming into force at once and as modified by the Legislature. Therefore, the civil appeals will have to be allowed

7. As rightly pointed out by the learned counsel for the respondent herein the writ petition raises several grounds which the High Court thought that there was no necessity to go into, in view of invalidating Rule 50-A as stated above.

   These points, therefore, require to be gone into on merits and adjudicated upon. Though the Schedule relating to audit fees had been amended for the relevant period in dispute, the question still requires determination. We make it clear the parties are at liberty to urge all points available to them under law in relating to the other points

8. The direction under the impugned judgment to refund the audit fee on the finding that the rule is invalid, has to be necessarily set aside and it is accordingly set aside. The question whether to refund or not and any other relied, if any, to which the respondents herein (the writ petitioners before the High Court) would be entitled will depend upon the ultimate result. The civil appeals are allowed. No costs. Appeals allowed.

Dinesh Prasad Yadav v State of Bihar and Others

Bench	Kuldip Singh, B.L. Hansaria
Where Reported	1995 Indlaw SC 559; (1995) Supp1 SCC 340; AIR 1995 SCW 836; [1995] 82 Comp Cas 653; JT 1995 (2) SC 45; 1995(1) SCALE 153B; [1995] 1 S.C.R. 220
Case Digest	**Summary:** Corporate - Bihar Co-operative Societies Act, 1935, ss. 2(bb), 2(e), 14(2), 14(4), 14(9) and 14(10) - Bihar Co-operative Societies Rules, 1959, r. 21A - Whether the three-year term of the Managing Committee is to be counted from the beginning of the cooperative year' in which the elections by ballot are held or from the 'co-operative year' when the nominations are made by the State Govt.? - Held, in view of the interpretation of the relevant provisions of the Act and the Rules, it is directed that the Managing Committee of the Bank whose election was completed in March, 1993 be put back in office and given a three year term from 01-04-1992 - After the impugned order of the High Court, fresh elections to the Managing Committee of the bank have taken place on 05-07-1994 - The General Body of the bank having elected fresh members to the Managing Committee of the bank, it would not be in the interest of justice to set aside the same - Appeal allowed.

Case No : C.A. No. 7423 of 1994

The Judgment was delivered by: Kuldip Singh, J.

1. The term of office of the members ,of the Managing Committee of a society registered under the Bihar **Cooperative Societies Act**, 1935 (the 'Act') and the Bihar Cooperative Societies Rules, 1959 (the Rules) is three "cooperative years".

2. The State Government, under the Act, has a right to nominate depending upon its share in the share capital of the society certain number of members to the Managing Committee of a society. The question for consideration is whether the three-year term of the Managing Committee is to be counted from the beginning of the cooperative year' in which the elections by ballot are held or from the 'co-operative year' when the nominations are made by the State Government?

7. ii) Where the share of the State Government in the share capital of such registered society exceeds fifty per cent, but does not exceed sixty per cent of the total share capital of the registered society, the State Government shall have the right to nominate such number of members of the Managing Committee including the Chairman, as is nearest up to one-half of the total, and such right once accrued shall continue until the share of the State Government in the share capital of the registered society goes down to less than forty five per cent;

8. iii) Where the share of the State Government in the share capital of such registered society exceeds sixty per cent, the State Government shall have the right. to nominate up to two thirds of total number of members of the Managing Committee including the Chairman, and such right

once accrued shall continue until the share of the State Government in the share capital of the registered society goes down to less than fifty five per cent;

9. Provided that notwithstanding anything contained in provison (i), (ii) and (iii) of sub-section (4), the State Government shall not nominate Chairman and other members of the Managing Committee if the share capital subscribed to by the State Government in a registered society is less than fifteen lakhs of rupees;

10. Provided further that where the bye-laws of a registered society so provide the State Government or the Registrar, as the case may be, may nominate more than two third members including office bearers of the Managing Committee on such terms and conditions as may be prescribed in the bye-laws;

9. The provisions of the Act and the Rules, quoted above, clearly indicate that the scheme of the Act gives wide powers to the State Government to control those societies in which it has considerably contributed towards the share capital.

The State Government can nominate even up to two third of the total members of the Managing Committee including the Chairman. It would, therefore, be in tune with the scheme of the Act to hold that the Managing Committee cannot assume office till the time the nominations are made by the State Government. Proviso to Rule 22(2) of the Rules rightly provides that the Managing Committee shall not be treated as complete unless the members thereof have been duly elected and/or nominated by the authority empowered to do so under the Act, Rules and bye-laws of the Society.

We, therefore, hold that in the first proviso to S. 14(10) the expression 'the co-operative year in which elections are held' means not only the elections by way of ballot, but also the nominations under the Act. The net result is that the term of the Managing Committee under the Act and the Rules is to commence from the beginning of the co-operative year in which the nominations by the State Government are completed and the Managing Committee is constituted in terms of Rules 22(2) of the Rules.

13. Although the expression 'election' has been defined under the Rules, but the said definition has been specifically confined to the election in accordance with the Rules. The election under Rules 21B21X is only by way of ballot.

There is no provision for nominations under the Rules. therefore, the definition of 'election' under Rule 2(xvi) read with Rules 21B to 21X only means the election as provided under the Rules by way of ballot. The expression 'election' as defined under the Rules has to be interpreted in the context of the Rules and would not, therefore, go contrary to the interpretation given by us to the said expression in the context of the provisions of the Act.

14. Ordinarily, in view of the interpretation given by us to the relevant provisions of the Act and the Rules, we should have directed that the Managing Committee of the Bank whose election was completed in March, 1993 be put back in office and given a three year term from April 1, 1992, but on the facts and circumstances of this case, we are not inclined to do so. After the impugned order of the High Court, fresh elections to the Managing Committee of the Bank have taken place on July 5, 1994.

The General Body of the Bank having elected fresh members to the Managing Committee of the Bank, it would not be in the interest of justice to set aside the same. Even if we give relief to the appellant, the old Committee gets tenure only up to March 31, 1995. We do not wish to reverse the process to give benefit to the appellant only for a short period.

15. We allow the appeal in the above terms and set aside the impugned order of the High Court. We further hold that the judgment of the Patna High Court in CWJC No. 2297 of 1993 (R) does not lay down the correct law.

The appellant shall be entitled to costs which we quantify as Rs. 15,000/to be paid by the State Government.

Appeal allowed.

Sahakari Khand Udyog Mandali Limited v State of Gujarat

Bench	S.C. Sen, B.P. Jeevan Reddy
Where Reported	1994 Indlaw SC 1761; (1995) Supp1 SCC 8; AIR 1995 SC 572; JT 1994 (6) SC 295; 1994(4) SCALE 286; 1994 (95) STC 572; [1994] Supp3 S.C.R. 776
Case Digest	**Summary:** Sales Tax - Bombay **Cooperative Societies Act**, 1925 - Bombay Sales Tax Act, 1959, s. 14-B - Gujarat Sales Tax Act, 1969, s. 2(10) - Whether the transactions between appellants and its members regarding supply of sugarcane amounted to purchase of sugarcane by Society from its members? - Held, Appellant-Cooperative Society clearly comes within purview of 'any society, club or other association of persons which buys goods from or sells goods to its members - Although Act has specifically exempted an agriculturist, who sells agricultural produce grown on land cultivated by him personally, no exemption has been granted to a person or a Society who buys agricultural produce from such an agriculturist - It is clear from provisions of Bombay Sales Tax Act as well as Gujarat Sales Tax Act that a Society, which purchases goods from its members, is a 'dealer' - Bye-laws contemplate that Society will purchase sugarcane at a fixed price - Sugarcane may be purchased from members of Society as well as from outsiders - Having regard to facts of this case and also bye-laws, High Court has correctly answered questions referred to it - Appeal dismissed.

Case No : Civil Appeal No. 1490 of 1980

The Judgment was delivered by : S. C. Sen, J.

2. The appellant, is a Cooperative Society registered under the Bombay Cooperative Societies Act, 1925. Its main object is to encourage development of agricultural industries amongst its members by introducing modern methods of agriculture and by promotion of principles of cooperation and joint farming methods, so that members can take maximum advantage of their modern large-scale agricultural production. The appellant-Society supplies to its members seeds, manure, agricultural implements and expert advice and assistance, for production of sugarcane. Sugarcane supplied by the members are utilised by the Society at its factory for manufacturing sugar. The Society grants loans to the producer-members against sugarcane entrusted by them to the Society. The Society crushes the sugarcane and manufactures sugar and sells the same in the market, subject to such restrictions as has been laid down by the Central or the State Government. At the end of the season, the Society passes a resolution fixing the rate per ton ex-field delivery for the payment to be made to its members for the supply of sugar by them. This payment is worked out in accordance with a formula on the basis of the price realised by sale of sugar by the appellant-Society. The Society makes an effort to see that the proceeds out of the sale are distributed to the maximum possible extent amongst the members.

6. Therefore, it will appear that the bye-laws which were taken into account in the case of Khedut Sahakari Ginning and Pressing Society Ltd 1971 Indlaw SC 837were quite different from the byelaws of the Society in the case before us. This society cannot be treated as an agent of the producers of sugarcane for selling their product. The Society manufactures sugar out of sugarcane grown and supplied by its members and others. The sugarcane required by the Society is purchased from members as well as non-members. It is true that the Society has been formed for the benefit of the members and the sale proceeds from the sugar manufactured and sold, are to be distributed as far as possible amongst its members, but the Society cannot be described as an agent of the members to sell sugarcane grown by them.

15. In this appeal, it has been contended that the Full Bench of the High Court had failed to recognise the overriding effect and scope of cooperative principles in interpreting the bye-laws of the Society. The Cooperative Society was primarily formed with the object of encouraging better production of sugarcane crop of its members and to fetch the best available return for the said produce by converting sugarcane into sugar and marketing the same in the country. The real object of the Society was to provide help to the members of the Society, so that the members could be self-sufficient and not dependent on outside help for cultivation and sale of sugarcane. Another primary object was to provide mutual aid amongst its members, so that the best possible return could be made available to the members by joint cooperative ventures. The members had given large powers to the Society as their collective agent, so that produce could fetch the best possible return in the ultimate analysis. By and large, the farmers are illiterate and do not know the ways of business. To prevent exploitation by the middlemen, the producer-societies were formed, so that the farmers could sell their produce in the same form or in different form through the instrumentality of the Society. It was further argued that the farmers gave sugarcane to the Society and received advances at one source from the Society on the security of sugarcane or sugar made out of their sugarcane. This clearly shows that the sugarcane remained the property of the members throughout. These transactions were not transactions of purchase or sale. This was really a case of entrustment of sugarcane by the farmers to the Society for the benefit of the farmers.

16. We are unable to uphold the contentions made on behalf of the appellant for a number of reasons, although we have no doubt in our mind that the Cooperative Society was formed for the best interest of the farmers and to enable the farmers to get a good and proper return for the sugarcane produced by them. The liability of the Society to pay tax will depend upon the terms of the bye-laws and also the provisions of the statutes. The Bombay Sales Tax Act, 1959 defines 'dealer' in the following manner :

"2. (11) 'dealer' means any person who whether for commission, remuneration or otherwise carries on the business of buying or selling goods in the State and includes the Central Government, or any State Government which carries on such business, and also any society, club or other association of persons which buys goods from or sells goods to its members;

Exception. An agriculturist who sells exclusively agricultural produce grown on land cultivated by him personally, shall not be deemed to be a dealer within the meaning of this clause;"

20. In the case before us, the bye-laws which have been set out earlier in the judgment are altogether

different. The Society is not a selling agent on behalf of its members. It runs a factory to manufacture sugar. The factory has to pay for the sugarcane supplied by the members and non-members. The purchased price is fixed by the Board of Directors. The bye-laws also cast a duty upon every member of the Society to sell sugarcane grown by him to the factory run by the Cooperative Society. The Board of Directors will fix the price to be paid for the sugarcane supplied by the members. The object of the Society, inter alia, is "to purchase from members and non-members jaggery, raw material and other requirements for this factory". The Society is authorised to purchase sugarcane not only from members, but also from the non-members.

21. All these provisions make it clear that the bye-laws contemplate that the Society will purchase sugarcane at a fixed price. The sugarcane may be purchased from the members of the Society as well as from the outsiders.

22. The argument that the Society was a mere agent of its members and was effecting sales of the products of the members, cannot be upheld. Having regard to the facts of this case and also the bye-laws, we are of the view that the High Court has correctly answered the questions referred to it. The appeal, therefore, is dismissed. There will be no order as to costs.

Civil Appeal Nos. 1491, 1492 and 1493 of 1980

All these appeals are dismissed.

Special Leave Petition (C) No. 7744 of 1980

This special leave petition is also dismissed.

Bihar State Cooperative Mkt. Union Limited v Dindyalsingh

Bench	M.K. Mukherjee, S. Mohan
Where Reported	1994 Indlaw SC 1106; (1995) Supp4 SCC 647
Case Digest	**Summary:** Trusts & Associations - Bihar and Orissa Co-operative Societies Act, 1935, s. 48 - Whether it is open to Registrar to exercise revisional powers u/s. 56? - Held, revisional power that is contemplated is appellate power exercisable u/s. 48(6) - Registrar as an appellate authority having decided matter exercising revisional powers u/s. 56 will be incongruous - Subject to observations - Appeal dismissed.

Case No : C.A. No. 1446 of 1976

The Order of the Court was as follows:

1. On a careful perusal of Section 48(6) of Bihar and Orissa **Cooperative Societies Act**, 1935 , we find that under Section 48 the Registrar may decide a dispute himself or may refer the dispute for adjudication to any other officer in relation to any matter "touching the business of the society". When such other officer to whom the matter is referred decides, an appeal lies under Section 48(6). That sub-section reads as under:

   "Any person aggrieved by any decision given in dispute, transferred or referred under clause (b) or (c) of sub-section (2) may, within three months from the date of such decision, appeal to the Registrar."

2. Therefore, this sub-section clearly postulates the Registrar exercising appellate power. The question before us is, whether it is open to the Registrar to exercise revisional powers under Section 56. That section may be extracted now:

   "56. The Registrar may on application or of his own motion revise any order passed by a person exercising the powers of a Registrar or by a liquidator under Section 44."

3. The revisional power that is contemplated here is obviously one other than the appellate power exercisable under Section 48(6) otherwise it will lead to anomaly. The Registrar as an appellate authority having decided the matter exercising revisional powers under Section 56 will be incongruous. Subject to the above observations, the appeal is dismissed. No costs.

Appeal dismissed.

Shri Sant Eknath Sahakari Sakhar Karkhana Limited v Aurangabad Paper Mills Limited and Others

Bench	A.M. Ahmadi, B.L. Hansaria
Where Reported	1994 Indlaw SC 768; (1998) 8 SCC 678
Case Digest	**Subject:** Labour & Industrial Law; Trusts & Associations **Summary:** Trusts & Associations - Maharashtra **Cooperative Societies Act**, 1960, ss. 72, 91 and 164 - Maharashtra Cooperative Societies Rules, 1961, r. 47 - Bye Law, 43 (xix) - Specific Relief Act, s. 20 - Suit for specific performance of agreement to sell property belonged to appellant/Society - Suit dismissed by Trial Court - Dismissal reversed in appeal - Present appeal thereagainst by original defendants - (A)Whether Chairman was duly authorised to execute document in question ? - Held, yes - Board of Directors decided to sell land in question to respondent-Company for Rs. 10, 665 and authorised Chairman to execute all relevant documents in that behalf - Pursuant to said authority, Chairman executed agreement to sell on 25-7-1974 - Receipt evidencing delivery of possession of even date was also executed by Chairman - It will thus be seen that Chairman was duly authorised by members to enter into transaction in question -The contention that Chairman was not duly authorised is, therefore, without merit and same cannot be questioned on language of s. 72 of Act - (B) Whether under r. 47 prior permission of Director of Sugar for execution of document was a sine qua non and in absence of such a permission transaction was void? - Further held, no - No such directions were issued by Registrar of Society prohibiting or restricting execution of such transactions, namely, sale of society property, at least none has been pointed out - Rule by itself unless supported by such a restrictive direction of Registrar does not prohibit or preclude Board of Directors from entering into such transactions which are permitted by Bye-law 43 (xix) of bye-laws framed under relevant provisions of Act and Rules - Appeal dismissed.

Case No : C.As. Nos. 4613 and 4928 of 1992

The Order of the Court was as follows:

1. The respondents filed a suit for specific performance of an agreement dated 25-7-1974 to sell the land in question. That suit was contested by the appellant mainly on five grounds, namely, (i) lack of power to enter to the agreement, (ii) the actual possession had not been given, (iii) the price was ridiculously low, (iv) the Director of sugar had refused permission; and (v) failure to serve statutory notice. The learned trial Judge upheld some of the contentions and dismissed the suit. Against the order of dismissal of the suit the original plaintiff preferred a first appeal which

was allowed by the District Judge reversing the decree of the trial Court. A second appeal was carried to the High Court, but the same to be dismissed on 16-8-1991. A review application was filed but that too was rejected on 28-8-1992.

2. Being aggrieved by the High Court's order dismissing the second appeal and later the review application the original defendants have filed the present two appeals, the first against the main judgment in second appeal and the second against the order in review application

10. No such directions were issued by the Registrar of the Society prohibiting or restricting the execution of such transactions, namely, sale of society property, at least none has been pointed out to us. The rule by itself unless supported by such a restrictive direction of the Registrar does not prohibit or preclude the Board of Directors from entering into such transactions which are permitted by Bye-law 43 (xix) of the bye-laws framed under the relevant provisions of the Act and the Rules. We, therefore, do not see any substance in this contention also.

11. For the above reasons, we see no merit in both these appeals and dismiss the same with no order as to costs.

Appeals dismissed.

Srinivasa Cooperative House Building Society Limited v Madam G.Sastry

Bench	K. Ramaswamy, N. Venkatachala
Where Reported	1994 Indlaw SC 1392; (1994) 4 SCC 675; 1994 (2) CCC 1; JT 1994 (4) SC 197; 1994 (1) RentLR 584; 1994(2) SCALE 785; [1994] 3 S.C.R. 848
Case Digest	**Summary:** Land & Property - Constitution of India, 1950, arts. 14 and 31-A - Land Acquisition Act, 1984, ss. 3(e), (f), 4(1), 5-A, 6, 40, 41, 42, 44A and 44-B - Companies Act, 1956 - Societies Registration Act, 1860 - Co-operative Societies Act, 1912 - Notification u/s. 4(1) and declarations u/s. 6 of Act quashed by Division Bench of High Court holding that acquiring lands of poor small farmers for benefit of society is arbitrary and contribution of Rs. 100 each by Govt. is a colourable exercise of power to avoid mandatory requirements in Chapter VII of Act - Order of HC challenged - Held, appellant is a private society and it is not for any of purposes u/s. (1)(a) or u/s. 3(e) of Act and it is for transfer of acquired land to members of society who are alleged to be possessed of more than one house therefore Govt. does not bestowed its thought to these aspects while considering report u/s. 5-A in this perspective before accepting report and contributing a sum of Rs. 100 each from public exchequer within tech of ss. 40, 41 and 44-B of Act - Thus acquisition and declaration published u/s. 6 is a colourable exercise of power - Appeals dismissed.

Case No : C.A. Nos. 2339 to 2346 of 1989 (From the Judgment and Order Dt. 6 December 1986 of the Andhra Pradesh High Court in W.A. Nos. 316, 561-64, 575, 576 and 577 of 1986)

The Judgment was delivered by : K. Ramaswamy, J.

1. Admittedly the appellant was registered under the Andhra Pradesh Cooperative Societies Act. Its object appears to be to develop the land and allot plots thereof to its members for construction of houses. Notification under Section 4(1) of the Land Acquisition Act, 1894 for short 'the Act' was published in the State Gazette on 8-2-1979, acquiring an extent of 71 acres 56 cents of land situated in Moolasagaram near Nandyal in Kurnool District for the aforesaid purpose. A report under Section 5-A, of the inquiry, was submitted to the Government. The appellant entered into an agreement under Section 41 of the Act dated 12-12-1981 with the Government treating the appellant as a company and it was published in the Gazette dated 4-2-1982. But it was given up. The State thereafter contributed Rs 100 for each acquisition and got declarations under Section 6, published In the State Gazette on 4-2-1982 to an extent of 54 acres 66 cents and on 19-2- 1984 for another extent of 16 acres 19 cents. It is not necessary to mention the previous history of the litigation but suffice to state that a Single Judge dismissed one writ petition and allowed other writ petitions on 9-12-1985 on the ground that the procedure prescribed in Part VII of the Act had not been followed holding when the acquisition was for public purpose. On appeals the Division Bench in Writ Appeal No. 316 of 1986 etc. by judgment dated 6-12-1986,

quashed the notification under Section 4(1) and the declarations under Section 6, primarily on two grounds, namely, (1) that the respondents are small farmers; (2) the appellant-society consists of members who could afford to construct houses by themselves, (3) acquiring the lands of the poor small farmers for the benefit of the rich is arbitrary and the contribution of Rs 100 each by the Government is a colourable exercise of the power to avoid the mandatory requirements in Chapter VII of the Act. In these appeals we are concerned with 40 acres of land, since other owners have not challenged the acquisition.

4. Public purpose broadly speaking would include the purpose in which the general interest of the society as opposed to the particular interest of the individual is directly and vitally concerned. Generally the executive would be the best judge to determine whether or not the impugned purpose is a public purpose. Yet it is not beyond the purview of judicial scrutiny. The interest of a section of the society may be public purpose when it is benefited by the acquisition. The acquisition in question must indicate that it was towards the welfare of the people and not to benefit a private individual or group of individuals joined collectively. Therefore, acquisition for anything which is not for a public purpose cannot be done compulsorily. Admittedly, there is no group housing scheme approved by the State Government. On the other hand, housing schemes are being executed by the A.P. Housing Board under the Act. We are not concerned with the public purpose as amended under the 1984 Act.

21. This Court in Virupaxappa Veerappa Kadampur v. State of Mysore, AIR 1963 SC 849 : 1963 Supp 2 SCR 6 : (1963) 1 Cri LJ 814 1962 Indlaw SC 263 construing Section 161(1) of the Police Act and the words (under the colour of duty) interpreted to include acts done under the cloak of duty, even though not by virtue of the duty, when the police officer prepares a false panchnama or a false report, he is clearly using the existence of his legal duty as a cloak for his corrupt action or as a veil of his falsehood. the Acts thus done in dereliction of his duty must be held to have been done under colour of the duty. In Stroud's Judicial Dictionary, "Colour of office" was defined as is always taken in the worst part, and signifies an act evil done by the countenance of an office, and it bears a dissembling face of the right of the office, whereas the office is but a veil to the falsehood, and the thing is grounded upon vice, and the office is as a shadow to it. In Blacks Law Dictionary, "under color of any law" of a State include not only acts done by State officials within the bounds on limits of their lawful authority, but also acts done without and beyond the bounds of their lawful authority; provided that, in order for unlawful acts of an official to be done under colour of any law, the unlawful acts must be done while such official is purporting or pretending to act in the performance of his official duties; that is to say, the unlawful acts must consist in an abuse or misuse of power which is possessed by the official only because he is an official; and the unlawful acts must be of such a nature or character, and be committed under such circumstances, that they would not have occurred but for the fact that the person committing them was an official then and there exercising his official powers outside the bounds of lawful authority. It would thus be clear that when an act is done by the State under colour of authority of law it must be for the lawful purpose envisaged under the Act. If the purpose, namely, public purpose envisaged under the Act is not served then the exercise of the power of the declaration under Section 6 must be held to be colourable exercise of the power, though not with evil motive. It is seen that the appellant is a private society and it is not for any of the purposes under Section 40(1)(a) or under Section 3(e) of the Act. It is for

the transfer of the acquired land to the members of the society who are now as per the record placed in this Court appear to be Advocates, Chartered Accountants, Businessmen and alleged to be possessed of more than one house. The Government does not appear to have bestowed its thought to these aspects while considering the report under Section 5-A in this perspective before accepting the report and contributing a sum of Rs 100 each from the public exchequer within the teeth of Sections 40; 41; 44-A and 44-B of the Act. Thus it must be held that the acquisition and declaration published under Section 6 is a colourable exercise of the power.

22. The appeals are accordingly dismissed with cost quantified at Rs 10,000.

Shatish Chandra v Registrar of Coop. Societies

Bench	K. Ramaswamy, N. Venkatachala
Where Reported	1994 Indlaw SC 451; (1994) 4 SCC 332; [1994] 81 Comp Cas 482; 1994 (4) CompLJ 1; JT 1994 (3) SC 620; 1994(2) SCALE 829; [1994] 3 S.C.R. 618; 1994 (2) UJ 280
Case Digest	**Summary:** Trusts & Associations - Delhi Co-Operative Societies Act, 1972, ss. 32 and 34 - Petitioners are practising advocates - They were members of Supreme Cooperative Group Housing Society Ltd. - General body of Housing Society on a resolution expelled petitioners from membership of that society and approved by Registrar - Whether present writ petition is maintainable? - Held, when remedy u/art. 226 of Constitution was invoked, legality thereof should be decided u/art. 226 and that a writ petition u/art. 32 cannot be entertained and order passed by HC u/art. 226 operates as a res judicata for maintainability of writ petition u/art. 32 - Writ petition is not maintainable - Petition dismissed.

Case No : Special Leave petition (C) No. 630 of 1994. WITH Writ Petition (c) No. 20 of 1994

The order of the court was delivered by:

In Writ Petition No. 20 of 1994

1. The petitioners are the practising advocates. They were the members of the Supreme Cooperative Group Housing Society Ltd., 1 10, Lawyers Chamber, Supreme Court Compound, New Delhi, for short 'the Housing Society'. By a resolution dated 22-2-1990 passed by the general body of the Housing Society, the petitioners are expelled from the membership of that society, that resolution is approved by the Registrar on 12-8-1991. This writ petition under Article 32 of the Constitution is, therefore, filed by the petitioners seeking the following reliefs

   (a) to quash the said resolution;

   (b) to declare the appointment of Architect as bad, arbitrary and illegal;

   (c) to declare the dispensation of residential qualification for membership of society as arbitrary and illegal;

   (d) to declare the draw of lots dated 14-4-1990 and 18-7-1992 concerning Phase 1 and Phase 11 respectively as arbitrary and illegal;

   (e) to appoint an Administrator forthwith and other consequential reliefs.

3. We are afraid that we cannot accede to any of the contentions raised by the petitioners. The petitioners filed Writ Petition No. 454 of 1989 in the High Court against the order of the Registrar under the Act made in respect of the arbitration proceedings initiated against the appointment of the Architect by the General Body of the Society, which came to be dismissed on 7-4-1989.

Without filing any special leave petition under Article 136, and suppressing the fact of dismissal of the above writ petition the petitioners filed WP No. 58 of 1989 in this Court under Article 32 which this Court by order dated January-25, 1990 permitted the petitioners to withdraw the writ petition with liberty to pursue the remedy by way of writ petition in the High Court. Then they filed Writ Petition No. 527 of 1990 challenging the constitutional validity of Section 34 of the Act and also sought for mandamus to appoint Administrator under Section 32 and also challenging the appointment of Architect as illegal, the said writ petition was dismissed on 16-7-1993. While filing the special leave petition against the said order, the petitioners filed the present writ petition. It may also be relevant to note that when other members of the Society filed Writ Petition No. 561 of 1990 etc. this Court comprised of a Bench of three Judges ultimately dismissed the above writ petition by order dated April 25, 1990.

7. Therefore, it is not necessary for the High Court to go into the question of expulsion. What the High Court had stated was that before considering the case of the petitioners on the ground of default in paying the instalments, the High Court seems to have given an opportunity to the petitioners to deposit the arrears with interest up to that date so that it could give suitable directions to the Society. Since the petitioners were not prepared to deposit the amount, the court was not inclined to give the relief in that behalf. However. the High Court has upheld the validity of Section 34. In view of the fact that Po arguments have been addressed before us on the question of the validity of Section 34 or the refusal to pass an order under Section 32 of the Act for appointment of an Administrator, it is not necessary for us to go into those questions. Since the expulsion of the petitioners was not the subject-matter of the writ petition, we are not permitting the petitioners to argue in that behalf. The special leave petition is dismissed.

8. It is prayed that the Society may be directed to refund the amount which each of the petitioners had deposited and is stated to be Rs 40,400. We cannot give any such direction in the absence of the Society. However, it is open to the petitioners to make the representation to the Society and the Society would dispose of the representation in accordance with law for the refund of the amounts.

Maharashtra State Cooperative Cotton Growers' Marketing Federation Limited and Another v Maharashtra State Cooperative Cotton Growers' Marketing Federation Employees' Union of Another

Bench	P.B. Sawant, Mr.Justice R.M. Sahai
Where Reported	1994 Indlaw SC 1275; (1994) Supp3 SCC 385; (1995) SCC (L&S) 36; AIR 1994 SC 1046; 1994 (1) CLR 677; 1994 (68) FLR 579; JT 1994 (1) SC 163; 1994 LabIC 959; 1995 (1) LLJ 53; 1994(1) SCALE 225; [1994] 1 S.C.R. 289; 1994 (1) SLR 496
Case Digest	**Subject:** Labour & Industrial Law **Keywords:** Seasonal, Maharashtra Raw Cotton (Procurement, Processing and Marketing) Act, 1971, Industrial Employment (Standing Order) Act, 1946, Maharashtra Co-operative Society Act, 1960 **Summary:** Labour & Industrial Law - Industrial Disputes Act, 1947, sch. 2, item 6 - Industrial Employment (Standing Orders) Act, 1946, s. 3 - (A) Regularisation - Co-operative Marketing Federation dealing in cotton trade having temporary perennial and seasonal employees - Dispute relating to permanency - Tribunal directed to treat employees putting 240 days of service as permanent employees - (B) Industrial Employment (Standing Orders) Act - Model Standing Orders of Co-operative Marketing Federation, Order No. 4-B - Applicability of Order requiring employees who have put in 240 or more days of service should be made permanent - Held, not applicable to seasonal employees and directions liable to be set aside - Applicable - Appeal allowed.

Case No : Appeal (Civil) 5118 of 1992, C.A. No. 5117 of 1992

The Judgment was delivered by: P. B. Sawant, J.

1. The crucial question that falls for consideration in the present case is whether the award dated 31.8.1984 of the Industrial Tribunal (hereinafter referred to as 'Patankar Award') is applicable to the seasonal employees involved in the present proceedings. To appreciate the controversy between the parties, the facts and events which preceded and succeeded the said award have also to he looked into.

2. The State Government u/s. 42 of the Maharashtra Raw Cotton (Procurement, Processing and Marketing) Act, 1971, appointed the Maharashtra Cooperative Marketing Federation (hereinafter referred to as 'Marketing Federation'), a cooperative society, as the chief agent to implement the Cotton Monopoly Procurement Scheme [the 'Cotton Scheme']. The Marketing Federation was before that date engaged in the marketing of several commodities. From that date onwards till 31.8.1984, it continued to act as the chief agent of the State Government for procurement, processing and marketing of cotton as well. For this purpose it recruited and maintained a separate

section with a separate staff. The staff consisted of those who were needed throughout the year and those who were needed only during the season. The cotton trade (which expression will include procurement, processing and manufacturing of cotton) in Maharashtra is mostly in Vidarbha, Marathwada and Khandesh region, and commences roughly in the first week of November and extends upto April of the next year. In Western Maharashtra, there is hardly any crop of cotton and the season there commences in August and ends in November of the same year.

The Cotton Scheme introduced by the Government has three aspects, (i) procurement, (ii) processing and (iii) marketing. The first two activities extend over four to six months in a year depending upon the extent of the availability of the crop. The third stage viz., marketing and also the function of maintenance of accounts are spread over throughout the year. The seasonal employees are needed only for the first two stages viz., procurement and processing which last for a limited period as stated above. The seasonal employees engaged in the said two activities consist of Weighment Clerks, Seed Clerks, Heap Clerks, Ginning Supervisors, Press Supervisors etc. who work at the collection centers and the processing centers. On an average, the seasonal employees are about twice the number of the perennial employees.

16. Before we advert to the respective contentions of the parties, it would be advantageous to clear some conceptions regarding the nature of the operations involved in the Cotton Scheme, the category of the staff employed and the character of the seasonal employment under it. Although some attempt was made before as on behalf of the respondent-Union to show that the operation of procuring and processing of cotton is carried on throughout the year, there is nothing on record to support the said contention. On the other hand, the record shows that out of the three operations under the Scheme, the procurement and processing of cotton lasts on an average only for six months from November to April in the principal cotton regions, viz., Vidharbha, Marathwada and West Khandesh and rarely extends beyond that period depending upon the cotton crop, In fact, if the crop is less, they said period even ends earlier. In Western Maharashtra, where there is scant crop of cotton, the procurement and processing season lasts only for about four months from August to November. Hence the staff needed for procurement and processing is only for about six months on an average but never beyond 7 to 8 months in any year. It is only the operation of marketing, which goes on throughout the year and for the marketing as well as for the maintenance of accounts the staff is needed throughout the year. The seasonal staff is further classified into permanent, temporary, casual and part-time. The permanent seasonal employees have scales of wages different from those of the perennial staff. So also the part-time employees have scales of pay different from those of the full-time seasonal employees. The permanent seasonal employees are paid their full wages during the season, i.e., when they are in employment, according to the scale of pay. They are also paid their annual increments in that scale. During the off-season, they are paid monthly retention allowance equivalent to 25 per cent of their monthly salary. In respect of the said employees, further a seniority list is maintained and this seniority list is scrupulously adhered 1o while employing them. If there is any vacancy in the perennial posts, the recruitment is first made from the seasonal employees according to the said seniority fist.

21. In any case, it is difficult to sustain the argument that the Federation was there referring to the permanency of the permanent seasonal employees. What is further, the Patankar Award does

not even refer to the seasonal employees. It also does not make any distinction between the two and give reasons either to accept or reject the contentions of the parties. It merely summarises the arguments of the parties and gives a direction, which is quoted above. The operative portion reads "considering, therefore, the arguments advanced on both sides, it appears that it would be proper to direct that those employees who have put in 240 days of continuous service be treated as permanent employees." The direction can be read either as a direction to make the temporary perennial employees and temporary seasonal employees as permanent perennial employees and permanent seasonal employees respectively or as a direction relating only to the temporary perennial employees. But in no case, it can be read as a direction to make seasonal employees as permanent employees as in the nature of things such a direction could not have been given.

22. There are other reasons why the Tribunal could not have given such a direction and if such a direction was given, it would have been highly iniquitous and discriminatory to the perennial employees - whether temporary or permanent, On the undisputed fact, that the procurement and processing operations under the Cotton Scheme do not last for more than 4 to 6 months and in any case not more than 8 months, to make the seasonal employees permanent and give them all the benefits of the perennial employees would mean that they would get the salary and all other benefits throughout the year as the perennial employees do, without putting in work throughout the year as the latter have to do. On the admitted fact that there is a need of seasonal employees and there is no work available to be given to them for a part of the year, the Cotton Scheme has always to maintain a distinction between the perennial employees and seasonal employees and has to provide them with different service conditions though some of the service conditions may be common. It is the failure to understand the nature of the operations and the nature of the employment required under the Cotton Scheme, which is responsible for the impugned decisions of the Industrial Court and the High Court.

28. The reliance placed by the respondent-Union, therefore, on the fact that the seasonal employees belonging to the Phaltan Zone were made permanent although they were jun; to the other seasonal employees to contend that all the seasonal employees who had put in 240 days of service should be made permanent is misconceived. The cases of the said employees having been decided on incorrect facts will have, therefore, to be treated as isolated instances and cannot be made the basis of the contention that the seasonal employees who have put in 240 days' work should be made permanent perennial employees.

29. Coming now to the next contention, viz., that in the appointment letter of the seasonal employees it has been specifically mentioned that their conditions will be governed by the Model Standing Orders and Model Standing Order No. 4-B which is quoted above, requires that the employees who have put in 240 or more days of service should be made permanent, we are of the view that the contention has no substance. It must in the first instance be remembered that the Model Standing Orders do not apply to seasonal employees. Secondly, the seasonal employees in the present case are governed by their own service conditions, which as pointed out above, have in material respects no relation to the service conditions of the perennial employees who are governed by the said Model Standing Orders. It is, therefore, incorrect to say that all the Model Standing Orders are applicable to the seasonal employees. By the appointment letters, the Model Standing Orders have only been incorporated in the other service conditions of the seasonal

employees only to the extent that the specific service conditions of the seasonal employees are silent on the aspects covered by the Model Standing Orders and which orders would necessarily apply to the seasonal employees. The Model Standing Orders, therefore, are applicable to the seasonal employees mutatis mutandis. The Model Standing Order No. 4-B in particular will be inapplicable to the seasonal employees because of the very nature of their employment and hence it cannot be read into the service conditions of the seasonal employees.

Lastly, a reading of the said Model Standing Order No. 4-B would itself make it clear that it is applicable to the perennial employees only. It speaks of temporary workmen in any establishment of a seasonal nature or in other establishment during a period of preceding twelve months. Admittedly, the appellant-Federation's establishment is not of a seasonal nature. It is only some employees employed therein who are seasonal. Secondly, as far as the employees in the other establishments spoken of there, are concerned, they can only be such employees who are employed for perennial work but for some reason or the other, arc not allowed completing 240 days in such perennial work. It is, therefore, clear that the said Model Standing Order does not apply to seasonal employees. Hence this contention has also to be rejected.

30. In the result, as allow the appeals and set aside the decisions of the Industrial Court and of the High Court. In the facts and circumstances of the case, there will be no order as to costs.

Appeals allowed.

Pollachi Cooperative Marketing Society v K. N. Valuswami and Others

Bench	G.N. Ray, S.P. Bharucha
Where Reported	1993 Indlaw SC 518; (1994) Supp3 SCC 134
Case Digest	**Subject:** Constitution **Summary:** Trust & Association - Tamil Nadu Co-operative Societies Act, 1961, ss. 65 and 71 - Loss in business in respect of purchase and sale of cholam and ragi - Enquiry u/s. 65 of the Act - Surcharge proceedings against respondents 1-14 - Registrar found respondents 1-14 liable to pay the sum of loss with interest - Appeal by respondents 1-14 to Special Tribunal for cooperative cases, also dismissed - High Court noted that the decree of negligence which was contemplated u/s. 71 of the said Act was willful negligence - Whether act of respondents liable u/s. 71 of the Act which makes members of management of a Cooperative Society liable in event of willful negligence? - Held, word 'willfulness' imported premeditation or knowledge and consciousness that an injury or loss was likely to result from act done or from omission to act - Constructive intention as to consequence - Evidence did not disclose legal inference that Respondents had been guilty of willful negligence - Appeal dismissed.

Case No : C.A. No. 3120 of 1983

The Order of the Court was as follows:

2. The appellant is a cooperative society registered under the provisions of the Tamil Nadu **Cooperative Societies Act**, 1961. Respondents 1-14 were for the year 1974-75, members of its Board of Management. An enquiry under Section 65 of the said Act into the affairs of the appellant-society was ordered by the Deputy Registrar of Cooperative Societies on 26-9-1976, in relation to sales and purchases of Cholam and Ragi. The inquiry report revealed that there had been a loss in the business of Cholam and Ragi during the said year in the sum of Rs.1,31,990.33; that the amount of Rs.6661 had been paid in excess of the prevailing market rate of Ragi; and that a loss in the sum of Rs.8638.35 had occurred due to reduction in retail prices.

3. Accordingly, surcharge proceedings were initiated by the Registrar of Cooperative Societies against Respondents 1-14 under the provisions of Article 71 of the said Act, which makes members in management of a Cooperative Society liable in the event of wilful negligence. In these proceedings the Registrar found Respondents 1-14 liable to pay the sum of Rs.1, 23,350.98, with interest thereon at the rate of twelve-and-a-half percent per annum from the date of his order till the date of realisation, to the appellant society. Respondents 1-14 preferred appeals to the Special Tribunal for Cooperative Cases, which dismissed the appeals.

4. Respondents 1-14 thereupon preferred writ petitions under Article 227 to the High Court. The High Court noted that the decree of negligence which was contemplated under Section 71 of the said Act was wilful negligence. The word 'wilfulness', it held, imported premeditation or knowledge and consciousness that an injury or loss was likely to result from the act done or from the omission to act. It imported a constructive intention as to the consequence. Quoting an earlier judgment, delivered by Pandian, J. in Sathyamangalam Cooperative Urban Bank Ltd. v. Dy.Registrar of Cooperative Society, it held that to constitute wilful negligence, the act done or omitted to be done must involve such reckless disregard of duty as to imply bad faith.

5. The High Court observed that the very approach of the Special Tribunal for Cooperative Cases was wrong as it had posed for answer the following question:

   "The main point for consideration would be whether the purchases were effected as per the regulation and whether the subsequent series were done in good faith and in the interest of the society."

6. The High Court came to the conclusion that the evidence before the Tribunal and the findings arrived at by it on the basis of such evidence did not justify the legal inference that Respondents 1-14 had been guilty of wilful negligence.

7. The High Court was, in our view, right in emphasising that the degree of negligence that had to be established under Section 71 was not mere negligence but wilful negligence and that this imported a consciousness that injury or loss was likely to arise from an act of commission or omission. The basis upon which the Tribunal considered the matter was, therefore, erroneous.

8. Once we come to the conclusion that the test applied by the High Court was the right test, we must concur with the High Court in its finding that the evidence did not disclose the legal inference that Respondents 1-14 had been guilty of wilful negligence.

9. In the result, the appeal is dismissed. There shall be no order as to costs.

Appeal dismissed.

Suresh T. Kilachand v Sampat Shripat Lambate And Another

Bench	K. Jayachandra Reddy, G.N. Ray
Where Reported	1993 Indlaw SC 1498; (1994) SCC (Cr) 407; (1994) Supp1 SCC 543; AIR 1994 SC 583; 1993 (3) CCR 329; 1993 (3) Crimes 531; 1994 CRLJ 611; 1993 CrLR(SC) 623; JT 1993 (Supp) SC 332; 1993(3) SCALE 876; 1993 (2) UJ 688
Case Digest	**Subject:** Criminal; Labour & Industrial Law; Practice & Procedure; Trusts & Associations **Keywords:** Cross-Examination, Co-Operative Bank, Co-Operative Credit Society **Summary:** Indian Limitation Act, 1908 ; Criminal Procedure Code 1974, s.386 - Appeal against acquittal in case of misappropriation of money belonging to Society by managing directors of mill - Mill failing to handover to creditor/ society loan instalments deducted from salary of its employees - Non-payment was due to financial difficulties of Mill - Complainant argued that case was for recovery and not because of misappropriation -Held, acquittal in view that dispute is of civil nature is correct.

Case No :

The Judgment was delivered by : K. Jayachandra Reddy, J.

All these appeals and the connected SLPs arise out of a common judgment of the High Court of Judicature at Bombay. They can be disposed of by a common judgment here.

The complainant Sampat Shripat Lambate, the Secretary of the Dig vijay Mills Employees Cooperative Credit Society Limited filed a private complaint in the court of the Metropolitan Magistrate, 6th Court, Mazagaon, Bombay alleging that the eight accused shown in that complaint misappropriated amounts belonging to the Society and thus committed an offence punishable under Section 147(b) of the Maharashtra **Cooperative Societies Act**, 1960 and Section 409 read with Section 114 of the Indian Penal Code. It was alleged in the complaint that the members of the complainant Society are the employees of the Digvijay Mill Ltd. Accused 1 was the Chairman and accused 2 to 7 were the Directors of the Mill and accused 8 was the Secretary of the Board of Directors. The Society used to advance loans to its members and under an agreement with the Management of the Mill, the Mill used to recover loans advanced to the members from the salaries payable to such members and the amount so collected was to be paid by the Management to the Society. According to the complainant in the month of June 1964 the Management collected certain amounts by deducting instalments from the salaries and out of that some amounts were paid as loan to the Society and the balance was misappropriated by the accused. The similar allegations are made in respect of the collections made up to the year 1968. In respect of these collections, 12 cases were filed before the trial court.

The facts remains that the appellant was not duly represented before the High Court. That apart, though the charge was under Section 406 IPC only, the High Court recorded the conviction under Section 409 an aggravated offence. Under these circumstances, the only option left is to again remand the matter to 1 the High Court. The offence itself is said to have taken place from 1964 to 1968. The Mill also appears to have been taken over as a sick unit. Further on behalf of the appellant it is submitted that the amount deposited by him in this Court will not be claimed by him and the same may be given to the Society by passing an appropriate order for disbursement of the said amount. Mr Mukul Mudgal, learned counsel appearing for the respondent- Society also submits that the 7 Society is interested in realising the amount that was due from the Mill and if the same is realised that would meet the ends of justice.

We think that after 24 years it is not a fit case to be remanded. Further the view taken by the trial court that it is of civil nature, is not an unreasonable one as to warrant interference in an appeal against acquittal. For all these reasons, we set aside the impugned orders of the High Court in each of these appeals and we restore the orders of the trial court acquitting the appellant-accused.

Now coming to the disbursement of the amount of Rs 5,50,000, an additional affidavit has been filed by the Secretary of the Digvijay Mills Employees Cooperative Credit Society Limited-respondent 1 herein, stating that the Society is very much in existence and is functioning. Along with the affidavit, the certificate of registration and also the certificate issued by Digvijay Textile Mills dated July 23, 1993, another certificate issued by the Assistant Registrar of Cooperative Societies, Bombay and yet another certificate dated July 22, 1993 issued by the Maharashtra State Cooperative Bank Limited, Lalbaug Branch, Bombay are filed. The averments in the affidavit as well as in the above certificates establish that respondent 1-Society is functioning regularly. Since the amount belonging to the Society is alleged to have been misappropriated, the amount of Rs 5,50,000 deposited in this Court as directed, shall be paid to respondent 1 -Society.

Accordingly Criminal Appeal Nos. 48-58 of 1992 and 589 of 1993 are allowed subject to the above direction. Consequently no orders are necessary in SLP (Criminal) Nos. 4258-59 and 4349-58 of 1991 and they are accordingly disposed of.

Appeal disposed of

Ramchandra Ganpat Shinde and Another v State of Maharashtra and Others

Bench	K. Ramaswamy, Mr.Justice R.M. Sahai
Where Reported	1993 Indlaw SC 565; (1993) 4 SCC 216; AIR 1994 SC 1673; 1994 (1) Bom.C.R. 460; [1995] 82 Comp Cas 276; JT 1993 (4) SC 573; 1993(3) SCALE 471; [1993] Supp1 S.C.R. 589; 1993 (2) UJ 692
Case Digest	**Summary:** Corporate - Constitution of India, 1950, arts. 136, 142 and 226 - Maharashtra Co-operative Societies Act, 1961, ss. 73 G and 144 T - Co-operative, Rules, 1961, r. 4 - Tamil Nadu Panchayats Act, 1958 - Code Of Civil Procedure, 1908, s. 35 - (A) Election of co-operative Society - Writ petition by two members - Chairman as respondent colluding with them - Securing consent order fraudulently from High Court for avoiding mandatory provisions of r. 4 - Fresh writ petition by other members seeking modification of consent order - Maintainability - (B) Exemplary costs - Appeal before Supreme Court - Respondents, Chairman and members of Co-operative Society remaining ex parte - Fraudulently obtaining consent order from HC - Held, maintainable - Costs imposed - Appeal allowed.

Case No : C.A. No. 3947 of 1993 (From the Judgment and Order Dt. 19 October 1992 of the Bombay High Court in W.P. No. 4400 of 1992)

The Judgement was delivered by: K. RAMASWAMY, J

Leave granted.

1. Important twin questions of law, namely, whether the court while exercising its power under Article 226, could give direction contrary to the statutory mandate, if so whether such an order is liable to judicial review by an independent proceeding u/art. 226 and if so under what circumstances and to what extent, arise for decision in this appeal. Shri Vithal Sakhar Sahkari Karkhana Ltd., Venu Nagar, Gurusale in Solapur District, the fourth respondent, for short "the Society" is a specified Cooperative Society under the Maharashtra **Cooperative Societies Act**, 1960 (Act 21 of 1961) for short 'the Act'. Its term of office is 5 years. It was due to expire by December 3, 1991. The District Collector, second respondent is the competent authority under the Act to initiate election process in accordance with the Act and the Maharashtra Specified Cooperative Societies Elections to Committee Rules, 1971 for short "the Rules". The District Collector accordingly initiated the process pursuant to which the society submitted to the Collector on October 18, 1991 the list of voters as on June 30, 1991.

2. Thereon the Collector issued the following programme to finalise the list of voters. November 12, 1991 was fixed as the date to display on the notice board the provisional voters list inviting claims

or objections or suggestions for the inclusion or omission from the provisional list. November 20, 1991 was the last date to present such claims or objections to the Collector in terms of Rule 6(2) of the Rules. The Collector had to take a decision therein under Rule 6(4) on December 7, 1991 and the final list of the voters was to be published under Rule 7 on December 17, 1991. In terms of the programme the provisional list was published on November 12, 1991 and after consideration of the objection or claims the final list was published on December 17, 1991.

3. The Government in exercise of its power under Section 77-IB of the Act postponed the conduct of election to the committees of all Cooperative Societies except those covered by orders of the courts till September 30, 1992. Two members by name Narayan Ganpat More and Mahadeo Bhanudas Mule, filed Writ Petition No. 2970 of 1992 in Bombay High Court on July 13, 1992 for a mandamus to the District Collector and election officer to conduct election to the Committee of the Society forthwith that is to say after the expiry of September 30, 1992 in accordance with Section 73-G and Chapter XI-A of the Act and the Rules and to complete the same within the minimum period as provided under the Act. By consent of the Society, through its Chairman A.K. Patil, the fifth respondent herein, the Division Bench passed minutes order that since the Government postponed the election up to September 30, 1992, the process of election to the Society shall commence from October 1, 1992 and the Collector shall accordingly take suitable steps for holding the election. Following its heels More and Mule again filed another writ petition W.P. No. 4107 of 1992 on September 15, 1992, for a direction to hold election on the basis of final voters list published on December 17, 1991. Again A.K. Patil, Chairman took notice, put forth consent minutes and the Division Bench accepted it and directed by order dated September 28, 1992 that:

"respondent 4 (Society) shall submit provisional list of voters as on June 30, 1992 as per Rule 4 of the Rules on or before October 10, 1992. The Collector thereupon shall complete the finalisation of the said list under Rule 6 and then shall pronounce election programme under Rule 16 for holding the elections of the Committee of the Society and to complete the same within the prescribed time under the Rules."

11. In this case the proviso has no application for the reason that the provisional list had already been approved and published by the Collector as per the law on December 17, 1991. It was not challenged. Therefore, the year in which the general election to the society is due is the date as per the operation of law i.e. 1991 but not due after the expiry of the period as postponed by the State Government. Obviously, for that reason the Government also had issued instructions on September 28, 1992 that in case the provisional list was approved and the final list was published prior to the postponement of the election, the election should be conducted in accordance with the final list published under Rule 7 of the Rules.

15. In these two cases this Court set aside the collusive decree obtained by the parties. Collusion, thus, is the foundation to put forward a format of judicial process and a pretext of contest which in effect is unreal and a farce and the decree or order obtained on its basis is a mere mask having similitude of judicial determination with the object of confounding third parties. The offending order is vitiated by collusion and formed foundation for election to the committee of the Society.

16. The question emerges whether the said order is liable to be interfered with and if so in what proceeding and to what extent? The order in the second writ petition cannot be reviewed because the appellants are not parties to the proceedings. Undoubtedly, the order passed by the High Court u/art. 226 is by the exercise of plenary constituent power and jurisdiction. It is neither a void nor voidable order. As seen no fault could be found in the format of legal process in the pleadings and the reliefs sought for. But when it came up for admission, by consent, orders of minutes were drawn up which have become foundation for avoidance of mandate of Rule 4(1) of the Rules. It is not a case of irregularity in the exercise of the jurisdiction so as to set it right by a review.

28. Moreover, that cannot be impugned in an election petition nor the tribunal has the power or jurisdiction to determine the correctness or otherwise of the orders passed by the High Court or this Court. The only appropriate forum would, therefore, be the High Court itself or on appeal this Court, to correct it if need be and no other forum. The appellants had approached the High Court, apprised it of the facts and sought modification of the order so that it be in conformity with Rule 4(1) of the Rules. The High Court should have corrected the order but it failed to exercise that power.

30. In our view, acceding to it would amount to putting a premium on fraud, collusion or abuse of the process of the court creating disbelief and disillusionment of the efficacy of judicial process and rule of law and a feeling would be generated that persons capable to manoeuvre and abuse the judicial process would reap the benefit thereof and get away with the orders. Every endeavour would be made to inculcate respect for fair judicial process and faith of the people in the efficacy of law.

31. Though normally when a respondent is not contesting its case, costs would not be awarded. But an exception would be carved out and in a suitable case cost should be awarded on persons that set the law in motion; had benefit thereof and remained obviously ex parte. This Court u/art. 142 has plenary power

    "to pass such orders as in necessary for doing complete justice in any cause or matter coming before it"

32. The facts of this case already established that respondents 5 to 7, in particular A.K. Patil, must be lurking and loitering in the corridors of this Court for the outcome, though they obviously remained ex parte. It is a fit case for exercising our power u/art. 142 to impose cost on the non-contesting respondents, A.K. Patil, More and Mule, jointly or severally. Costs are quantified at Rs 20,000 and the appellants are entitled to recover the costs of this appeal against any one of them or all of them.

33. It is hereby declared that election process conducted by the third respondent, District Deputy Registrar, Cooperative Society, Solapur to the Society is illegal. The final list of voters published by the District Collector, Solapur, as on June 30, 1992 is declared illegal. The final voters list declared on December 17, 1991 relating to the Society is the valid list. Accordingly the order of the High Court in Writ Petition No. 4107 of 1992 dated September 15, 1992 is modified. The

direction to the District Collector and the third respondent, District Deputy Registrar, Coop. Society, Solapur to proceed as per Rules 4 to 7 and 16 to conduct election to the committee of the Society in accordance with the Rules is upheld with the above modification. The election held to the Managing Committee of the Society on April 27, 1993 is declared illegal and invalid. Respondents 2 and 3 are directed to conduct the election as per rules consistent with the above order. The appeal is allowed accordingly with costs as fixed above.

Appeal allowed.

Shyam Nandan Prasad and Others v State of Bihar and Others

Bench	M.M. Punchhi, A.M. Ahmadi
Where Reported	1993 Indlaw SC 555; (1993) 4 SCC 255; AIR 1993 SCW 3013; 1993 (3) CCC 55; JT 1993 (4) SC 590; 1993 (2) RentLR 758; 1993(3) SCALE 435; [1993] Supp1 S.C.R. 533; 1993 (2) UJ 573

Case No : C.A. Nos. 292-93 of 1992 (Arising out of S.L.P. (Civil) Nos. 15189-90 of 1991)

The Order of the Court was as follows:

1. Appellants seek special leave to appeal to this Court from the common order dated August 15, 1991 of the High Court at Bombay made in Writ Petition Nos. 1120 and 1121 of 1990. We have heard Mr Masodkar, learned counsel for the petitioner; Mr Bhasme, learned counsel for the respondent-State and its authorities, and Mr Birla, learned counsel for Respondent 6. Special leave granted.

2. The appellants in these two appeals along with Respondent 6 were elected to the Board of Directors of a Cooperative Society: "The Ahmednagar Zilla Sahakari Dudh Vyavsaik Sangh Ltd." for a term of five years. The Joint Registrar of Cooperative Societies in Maharashtra initiated proceedings under Section 78 of the Maharashtra **Cooperative Societies Act**, 1960 for supersession of the Board of Directors by the issue of a show-cause notice dated May 6, 1989. The explanation furnished by the appellants and Respondent 6 who was also one of the Directors, against the proposed action was not found satisfactory and acceptable by the Joint Registrar of Cooperative Societies, who, on August 31, 1989, made an order under Section 78 superseding the Board.

3. A statutory appeal was taken before the Government. That appeal was heard on March 20, 1990 by the Secretary to Government in the department concerned. On the same day, the appellate order dismissing the appeal and confirming the Joint Registrar's action was made. One of the grievances against the appellate order is that the hearing before the Secretary was a mere formality as the Secretary concluded the matter in a few minutes in the evening and passed the order the same day.

4. Six amongst the newly elected Directors of the Board challenged the appellate order before the High Court in Writ Petition No. 1120 of 1990. The seven remaining members including Respondent 6 who were on the previous Board and were re-elected filed an independent Writ Petition No. 1121 of 1990 assailing the appellate order. The matter came before a Division Bench of the High Court and on August 13, 1991, the Division Bench made an order in the following terms:

   "Heard Mr Dhorde, Counsel for the petitioner and Mr Kakade G.P. for the State. Mr Kakade G.R. on instructions of R. Nos. 3 and 4 states that they are willing to hold election of the specified society, R. No. 7. We, therefore, direct the Collector, Ahmednagar to hold election of the Society

and complete the election process as far as possible within FOUR MONTHS from receipt of the writ. Mr Kakade submits that till the election process is completed, the Managing Committee should not take major policy decision in the interest of R. No. 7 and its members. It will be better if no major policy decisions are taken by the Managing Committee till the election process is completed. Interim relief in terms of prayer clause (c) to continue till the election process is completed."

6. Respondents, however, seek to maintain that order was made on consent of all the parties, though, perhaps on account of some inadvertence, the High Court had not recorded that fact in the course of the order. But this is seriously disputed by the appellants. Appellants further say that in the proceedings before the High Court where appellants had made serious allegations of male fide and complained that the orders were made at the instance of and under pressure from politicians, the authorities had not even filed their counter-affidavits.

7. On a consideration of the matter, we are of the view that in the absence of consent of the appellants, any order of the kind made by the High Court would not be sustainable. If there was such consent it was appropriate for the High Court to have recorded that. In the absence of any indication in the order in their behalf or in any other record it is difficult to accept the contention of the respondent that appellants were consenting parties. The result is that the writ petitions would have to be heard on their merits and disposed of afresh by the High Court.

8. Accordingly we allow these appeals, set aside the order dated August 13, 1991 of the High Court and remit the writ petitions to the High Court for a fresh disposal in accordance with the law. We request the High Court, having regard to the nature of the controversy and the need for an expeditious decision, to dispose of the writ petitions as early as possible. Now that the writ petitions are restored, the interim orders made during their subsistence would continue to operate unless otherwise directed by the High Court.

Appeals allowed.

Central Cooperative Consumers' Store Limited (Thro v Labour Court, H.P. And Anr.

Bench	N. Venkatachala, Mr.Justice R.M. Sahai
Where Reported	1993 Indlaw SC 1121; (1993) 3 SCC 214; (1993) SCC (L&S) 748; AIR 1994 SC 23; 1993 (24) ATC 773; 1993 (2) CLR 9; 1993 (67) FLR 572; JT 1993 (3) SC 532; 1993 LabIC 1943; 1993 (2) LLJ 563; 1993(2) SCALE 842; [1993] 3 S.C.R. 477; 1993 (4) SLR 94; 1993 (2) UJ 123; 1993 (2) UPLBEC 1156
Case Digest	**Summary:** Labour & Industrial Law - Cooperative Socities Act - OP was appointed as Sales Girl by the petitioner -Termination of the services by manager illegally without being authorised to do so and without obtaining permission of the Administration and without giving any notice or hearing - Assistant Registrar decided the case after seven years - Directed the petitioner to reinstate but did not grant back wages - Whether the opposite party is entitiled to back wages? - Public money been wasted due to adamant behaviour not only of the officer who terminated the services but also due to cantankerous attitude adopted by those responsible for pursuing the litigation before one or the other authority - Working life of OP has been lost in tortuous and painful litigation of more than twenty years - Held, Petition dismissed.

Case No : CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 4460 of 1993. From the Judgment and Order dated 15.1.1993 of the Himachal Pradesh High Court in Civil Writ Petition No. 566 of 1990.

The Order of the Court was as follows :

How statutory bodies waste public money in fruitless litigation to satisfy misplaced ego is demonstrated by this petition.

The opposite party was appointed as Sales Girl by the petitioner, a cooperative society registered under Cooperative Societies Act, running a Super Bazar in Shimla. When one of the managers came there on transfer, her trouble started. Apart from insult, humiliation and harassment thrust on her, that manager terminated her services illegally without being authorised to do so and without obtaining permission of the Administrator and without giving any notice or hearing her. The opposite party who had been apprising her superiors of that manager's misbehaviour and of her apprehensions that he was out to getrid of her although was assured not only of his good behaviour and security of her services, immediately took recourse to legal action.

1. To her misfortune the Assistant Registrar decided her case after seven years. It was held by him that the order of termination was illegal, arbitrary and was passed without obtaining approval of the Administrator. He directed the petitioner to reinstate her but did not grant any back wages. Even with this order which was prejudicial to her the opposite party was satisfied but the ego of petitioner was

hurt.For eight months the order was not implemented by the petitioner as it was contemplating to file the appeal. And when the petitioner succeeded in obtaining the order it informed the opposite party that her Joining Report could not be entertained. Since then the opposite party has been knocking at the door of the petitioner but she was made to approach the appellate authority, the revising authority, the High Court, the Labour Court and finally the High Court again as the petitioner did not succeed anywhere but went on filing appeal and revision forcing the opposite party to file cross appeal or revision or even writ for her back wages and other benefits. Not one authority, even in the cooperative department found in favour of petitioner. Yet the petitioner had the obstinacy not only to approach this Court but to place the blame of inordinate delay on adjudicatory process. Such obstinacy without the least regard of the financial implications could only be indulged by a public body like the petitioner as those entrusted to look after public bodies affairs do not have any personal involvement and the money that they squander in such litigation is not their own.

Public money has been wasted due to adamant behaviour not only of the officer who terminated the services but also due to cantankerous attitude adoped by those responsible for pursuing the litigation before the one or the other authority. They have literally persecuted her. Despite unequal strength the opposite party has managed to survive. We are informed that the opposite party has been reinstated. This was put forward as bonafide conduct of petitioner to persuade us to modify the order in respect of back wages. Facts speak otherwise. Working life of opposite party has been lost in this tortuous and painful litigation of more than twenty years. For such thoughtless acts of its officers the petitioner-society has to suffer and pay an amount exceeding three lakhs is indeed pitiable. But considering the agony and suffering of the opposite party that amount cannot be a proper recompense. We, therefore, dismiss this petition as devoid of any merit and direct the petitioner to comply with the directions of the High Court within the time granted by it.We however leave it open to the society to replenish itself and recover the amount of back wages paid by it to the opposite party from the personal salary of the officers of the society who have been responsible for this endless litigation including the officer who was responsible for terminating the services of the opposite patty.

2. We may clarify that the permission given, shall have nothing to do with the direction to pay the respondent her back wages. Step if any to recover the amount shall be taken only after payment is made to the opposite party as directed by the High Court.

Petition dismissed

Kuver Nath Lal v
Postal Co-Operative House Construction Society Led. and Others

Bench	K.N. Singh, P.B. Sawant
Where Reported	1991 Indlaw SC 719; (1993) Supp1 SCC 71
Case Digest	**Subject:** Trusts & Associations **Summary:** Trusts & Associations - Constitution - Bihar **Cooperative Societies Act**, 1935, s. 26 - Constitution Of India, 1950, art. 226 - Question on validity of Registrar's award - Held, Registrar's order making amendments in bye-laws was made in exercise of his statutory powers u/s. 26 of Act - Registrar had not acted mala fide on any extraneous consideration instead he exercised his power in a just and reasonable manner to meet exigency of situation and to remove injustice that was being caused to Govt. servants who had been enrolled as members of society and deposited money with society - No question of any colourable exercise of power - High Court misdirected itself in interfering with order of Registrar - Orders of HC set aside - Appeal allowed.

Case No : C.A. No. 1104 of 1978

The Order of the Court was as follows:

1. This appeal is directed against the judgment and order of the High Court of Patna dated June 30, 1978 quashing the order of the Registrar, Co-operative Societies as confirmed by the Minister, amending the bye-laws of the Postal Co-operative House Construction Society Limited, Kidwaipuri, Patna.

2. This litigation has a long history. We consider it necessary to have a brief resume of relevant facts giving rise to this appeal. The Postal Co-operative House Construction Society Limited, Kidwaipuri, Patna was registered on December 14, 1955 under the Bihar Co-operative Societies Act, 1935 (hereinafter referred to as the 'Act'). The object of the Society was to acquire land and construct houses and allot the same to its members. Initially, membership of the Society was limited to the post office employees posted in the District of Patna who may have put in at least 3 years continuous service in the department. Soon the society realised that with the limited resources of the postal employees employed in Patna the Society could not collect sufficient funds to acquire the land for construction of the houses. Faced with this difficulty, the Board of Directors of the Society passed a resolution on November 28, 1987 amending the bye-laws of the Society permitting the Central and State Government employees also to be the members of the Society. Pursuant to the resolution, the appellant, Kuver Nath Lal, and several other State Government employees were registered as members of the Society. The Society collected money from them to the tune of Rs 62, 000 and acquired land worth Rs 75, 000. It appears that subsequently when the houses were constructed the Society did not allot any house to the appellant. He raised a

dispute which was referred to the arbitrator and in the arbitration proceedings it was ultimately held that the appellant was entitled to continue to be a member.

3. On April 11, 1969 the Registrar, Co-operative Societies, passed a supplementary award holding that the house no. 29 should be allotted to the appellant. The Society thereupon filed a writ petition under Article 226 of the Constitution of India before the High Court of Patna questioning the validity of the Registrar's award. The writ petition was allowed and the award of the Registrar, Co-operative Societies, was quashed on the finding that the appellant could not be a member of the Society as the Board of Directors had no power to amend the bye-laws inducting Central Government and State Government servants as members of the Society. The Court further held that the bye-laws could be amended only by the General Body or the Registrar. A special leave petition was filed in this Court by the appellant but subsequently he withdrew the same.

5. After hearing the learned counsel for the parties and having regard to the history of the litigation and the facts and circumstances of the case, it is apparent that the Society had itself invited other government servants to be its members; it had collected money from them, and utilised the same for purchasing the land over which houses were constructed. The Society later on backed out and challenged the continuance of the membership of the other government servants on a technical ground that the bye-laws had not been amended by the General Body. The Registrar of the Co-operative Societies considered the entire matter and he held that having regard to the facts and the history of the Society, the public interest as well as the Society's interest required that the bye-laws be amended, to safeguard the interest of government servants whose money had been appropriated by the Society for acquiring land. The Registrar's order dated March 7, 1972 making amendments in the bye-laws was made in exercise of his statutory powers under Section 26 of the Act. The Registrar had not acted mala fide on any extraneous consideration instead he exercised his power in a just and reasonable manner to meet the exigency of the situation and to remove the injustice that was being caused to government servants who had been enrolled as members of the Society and deposited money with the Society. There was no question of any colourable exercise of power by the Registrar in amending the bye-laws of the Society. The High Court, in our opinion misdirected itself in interfering with the order of the Registrar.

6. We accordingly allow the appeal, set aside the orders of the High Court and dismiss the writ petition filed by the respondent-Society.

7. During the pendency of this litigation the appellant had been occupation of the house No. 29 which was initially allotted to him in 1967. The appellant has stated that he has been depositing money from time to time towards the cost of the house. The Society is free to appropriate that amount towards the cost of the house. However, if any amount is further due from the appellant towards the cost of the house it will be open to the Society to recover the same from him. We make it clear that the order of the Registrar dated March 7, 1972 as confirmed by the Minister on January 22, 1974 will enure to the benefit of the appellant and he will be entitled to the allotment of the house and to continue in possession of the same.

There will be no order as to costs.

Appeal allowed.

Yogendra Prasad v Additional Registrar, Co-Operative Societies

Bench	K. Ramaswamy, M.M. Punchhi
Where Reported	1991 Indlaw SC 353; (1992) Supp1 SCC 720; AIR 1991 SC 2137; 1992 (1) BC 53; 1992 (1) BLJR 153; [1992] 74 Comp Cas 57; [1991] Supp1 S.C.R. 143; 1991 (2) UJ 635
Case Digest	**Summary:** Civil Procedure - Trusts & Associations - Bihar and Orissa Co-operative Societies Act, 1935 - ss. 40, 48 and 56 - Simultaneous proceedings instituted under ss. 40 and 48 - Whether the proceedings would amount to double jeopardy - Held, No - Simultaneous proceedings under ss. 40 and 48 are not in substitution but independent and in addition to normal civil remedy under s. 48 - Facts to be established are culpable negligence, misconduct, misappropriation and fraudulent conduct - Passing of order under s. 40 did not divest jurisdiction of Registrar - No double jeopardy - Appeal dismissed.

Case No : Civil Appeal No.2168 of 1980

The Judgment was delivered by : K. Ramaswamy, J.

1. The appellant, the Ex-Treasurer of the Gopalganj Co-op. Development & Cane Marketing Union, Gopalganj, was said to have defalcated a sum of Rs. 95,790.54 and for recovery thereof, proceedings were initiated under s. 48 of the Bihar and Orissa Co-operative Societies Act, VI of 1935, for short 'the Act' with interest accrued thereon of Rs. 25,555 as on December 30, 1976. The Registrar referred the matter to the Asstt. Registrar, Gopalganj, who on enquiry and having given the opportunity to the appellant passed an award in Case No. 400 of 1975 on December 30, 1976 for the aforesaid sums. On appeal, the Deputy Registrar set aside the award on the ground that the appellant was surcharged in Surcharge Case No. 18 of 1976. On further revision, the first respondent set aside the appellate order and confirmed the award with a further direction to pay interest till date of recovery. The appellant filed C.W.J.C. No. 1819 of 1979 which was dismissed in limine by the Patna High Court on August 2, 1979. Thus this appeal by Special Leave.

5. A bare reading of these relevant provisions clearly manifests the legislative intention that the Registrar on reference, himself may decide the dispute or transfer it for disposal to a person exercising powers of the Registrar in this behalf. If the Registrar himself decides the dispute under s. 48(3) the question of either appeal or revision to him does not arise except a review. This dichotomy is to be maintained when a revisional power is to be exercised by the Registrar. The power of the revision is conferred expressly only, either on application or suo moto, against any order passed by "a person exercising the powers of the Registrar". Obviously it refers to the person appointed to assist him under s. 6(2)(a) of the Act.

9. That apart, it is clear that the Registrar is the final supervisory authority over the subordinate officers exercising the powers or performing the duties under the Act. The language in s. 56 was couched very widely without being hedged with any limitation like the revisional powers under s. 115 C.P.C. or the similar language used in sister Acts in some other States like A.P. The reason appears to be obvious. The order of the Dy. Registrar by language of sub-section (6) of s. 48, undoubtedly shall be final. We are aware that when the legislature gives "finality" to an order, it is normally not open to revision. But still in must be construed in the light of the scheme of the Act, its operation and resultant effect. The language in s.56 is not hedged with any limitation of the finality in sub-section (6) of s. 48. Thus we hold that the revisional power under s. 56 is independent of the appellate power under section 48(6). The letter is amenable to revision by the Registrar. The ratio of the Division Bench in Din Dayal's case 1975 Indlaw PAT 62 (supra) is, therefore, not good law.

11. The culpable negligence, misconduct, misappropriation, fraudulent conduct etc. are relevant facts to be established in the proceedings under s. 40. But that is not so under s. 48. Therefore, mere initiation or an order passed under s. 40 does not divest the jurisdiction or power of the Registrar under s. 48 when it was referred to for a decision of the dispute. Exercise of the jurisdiction to pass an award under s. ,18(3) or revision under s.-56 does not amount to double jeopardy. We are informed that an appeal before the Government is pending against surcharge order under s. 40. We express no opinion thereon. We hold that exercise of the power to pass an award under s. 48 does not amount to double jeopardy. The appellate order of the Dy. Registrar is obviously and palpably illegal and rightly corrected. The appeal is accordingly dismissed, but since none appeared for the respondents we order no costs.

Appeal dismissed

H. C. Suman and Another v Rehabilitation Ministry Employees' Cooperative House Building Society Limited, New Delhi and Others

Bench	N. D. Ojha, S. Ranganathan, M. Fathima Beevi
Where Reported	1991 Indlaw SC 784; (1991) 4 SCC 485; AIR 1991 SC 2160; 1991 (45) DLT 251; JT 1991 (3) SC 556; 1991(2) SCALE 448; [1991] 3 S.C.R. 839; 1991 (2) UJ 716
Case Digest	**Subject:** Labour & Industrial Law; Practice & Procedure; Trusts & Associations **Keywords:** Co-Operative Society **Summary:** Trusts & Associations - General Clauses Act, 1897, s. 21 - Delhi Co-Operative Societies Act, 1972, ss. 12, 76(1)(b) and 88 - Society Bye-laws - Delhi Co-operative Societies Rules, 1973, r. 24 - (A) Whether the 15 members whose membership was kept in abeyance but were treated as regular members on filling of affidavits, filed after appellants had been enrolled, could be given senority over the appellants? - Held, the view taken by the High Court does not suffer from any error which held that since the membership of 26 persons including the appellants was for the first time approved by the Managing Committee in its meeting held on 17.11.1979 and the 15 persons had been admitted as members prior to 17.11.1979 and in meeting held on 17.11.1979 their membership was only regularised, the 26 persons including the appellants would obviously be junior to the 15 members - (B) Whether the order of the Lt. Governor indicated in the Notification D/-27.10.1989 giving the amended bye-law 5(1)(a)(iii) retrospective effect from 10.01.1968 valid? - January 10, 1968 mentioned in the notification D/-27.10.1987 is the date on which the first member falling in category 'B' had applied for enrolment; this was really the purpose of the quasi-judicial order D/-19.08.1985 passed by the Lt. Governor in the appeal filed by the Society and the notification has obviously been issued to subserve that purpose - Held, (i) the power exercised by the Lt. Governor was within the ambit of and permissible u/s. 88 of the Act and keeping in view the facts of the instant case and the purpose of amending bye-law 5(1)(a)(iii); the notification is neither unreasonable nor can any mala fide be attributed in issuing the same and deserves to be upheld as it does not fall within any of the exceptions referred to in the case of Kruse v. Johnson [1898 2 QB 91]; (ii) if the amended bye-law was not made retrospective its very purpose was to stand defeated; the Notification D/-27.10.1987 really subserves the purpose of the amended bye-law made under the Act and does not defeat it; (iii) if the Notification D/-27.10.1987 is valid it had by legal fiction the effect of making persons mentioned in List 'B' eligible for membership of the Society with

	effect from 10.01.1968 and the approval of the membership of these persons on various dates could not be held to be invalid simply because those dates happened to be prior to the date on which bye-law 5(1)(a)(iii) was actually incorporated in the bye-laws of the Society - (C) Whether the subsequent Notification D/-29.10.1990 whereby the earlier Notification D/-27.10.1987 was rescinded, valid ? - A quasi-judicial order once passed and having become final cannot be reviewed by the authority passing that order unless power of review has been specifically conferred; the quasi-judicial order D/-19.08.1985 had been passed by the Lt. Governor u/s. 76 and no power to review such an order has been conferred by the Act; Notification D/-29.08.1990 purports to rescind the earlier Notification D/-27.10.1987 only and does not speak in clear terms that the quasi-judicial order D/-19.08.1985 was also being rescinded - Held, even though the quasi-judicial order D/-19.08.1985 has not been expressly nullified, it has certainly for all practical purposes been nullified by necessary implication which could not be done, hence the Notification D/-29.08.1990 is ultra vires on this ground alone; also as a consequence of the quasi-judicial order D/-19.08.1985 and the Notification D/-27.10.1987, a substantive right was created in favour of the 26 persons whose names had been mentioned in list 'B and as held by the HC in the case of State of Kerala v. K.G. Madhavan Pillai that if in pursuance of an earlier order passed by the govt. some person acquires a right enforceable in law, the said right cannot be taken away by a subsequent order under general power of rescindment available to the govt. under the General Clauses Act, 1897 - Appeal dismissed.

Case No : Civil Appeal No. 3382 of 1991

The Judgment was delivered by : OJHA J.

Special leave granted

1. This civil appeal by special leave is directed against the order of the Delhi High Court dated May 19, 1989 as clarified by order dated May 24, 1989 in Writ Petition No. 2915 of 1988

2. The facts in brief necessary for the decision of this appeal are that some land was proposed by the Central Government to be allotted for the resettlement of displaced persons. In October 1959 the Rehabilitation Ministry Employees' Cooperative House Building Society Ltd., New Delhi responded 1 (hereinafter referred to as the Society) was formed and incorporated. After completing necessary formalities an allotment of 60 acres of land was made by the Central Government in favour of the Society which, however, was subsequently cancelled on May 7, 1979. The Society challenged the aforesaid order of cancellation before the Delhi High Court in Writ Petition No. 654 of 1979 which was allowed by a Single Judge of that Court on September 1, 1980. This judgment was challenged by the Delhi Development Authority before the High Court in Letters Patent Appeal No. 254 of 1980 which was dismissed by a Division Bench of the High Court on January 5, 1981. Aggrieved by these orders the Delhi Development Authority filed Special Leave Petition (Civil) No. 3762 of 1981 before this Court in which the parties entered into a compromise inter alia providing that an area of 45 acres of land in place of 60 was

to be allotted to the Society and that membership of the Society was to be restricted to persons who were members as on September 1, 1980 in accordance with the bye-laws of the Society as then prevailing. September 1, 1980 was the date on which Writ Petition No. 654 of 1979 giving rise to Special Leave Petition (Civil) No. 3762 of 1981 had been allowed by the High Court. In pursuance of the compromise learned counsel for the Delhi Development Authority prayed for and was granted leave on May 6, 1982 to withdraw the said special leave petition. In consequence, the order of the High Court stood modified in the light of the compromise entered into between the parties

10. In the appeal the real question which arise for consideration is about the seniority of the members of the Society which constitutes the basis for allotment of plots at the time of drawing of lots. As regards the seniority of the 15 members who have been referred to above as members filling in third category namely those who had been accepted as members of the Society but subsequently whose membership was kept in abeyance on some defects being noticed in their affidavits and who on an opportunity being given in this behalf filed fresh affidavits giving full particulars and were on the basis of such affidavits treated as regular members, the appellants' grievance has been, as noticed earlier, that they having filed affidavits after the appellants had been enrolled as members could not be given seniority over the appellants. The High Court in the orders appealed against has pointed out that the cases of these 15 persons were scrutinised by the screening committee who recommended that they should be treated as regular members of the Society and share certificates be issued to them. It has, further, been found by the High Court that these 15 persons were admitted as members of the Society either by the Managing Committee or the General Body of the Administrator prior to November 17, 1979 and that the record indicated that their membership was kept in abeyance because of full information not being furnished in their affidavits. It has held that since the membership of 26 persons falling in category 'C' including the appellants was for the first time approved by the Managing Committee in its meeting held on November 17, 1979 and the 15 persons referred to above had been admitted as members prior to November 17, 1979 and in meeting held on November 17, 1979 their membership was only regularised, the 26 persons of category 'C' including the appellants would obviously be junior to the 15 members referred to above. In our opinion, the view taken by the High Court in this behalf does not suffer from any such error which may justify interference u/art. 136 of the Constitution. Indeed no serious argument was addressed on this point on behalf of the appellants

34. We are aware that the Notification dated August 29, 1990 purports to rescind the earlier Notification dated October 27, 1987 only and does not speak in clear terms that the quasi-judicial order dated August 19, 1985 was also being rescinded. On the facts and circumstances of this case, as emphasised above, we are of the opinion that this circumstance hardly makes any difference inasmuch as even though the quasi-judicial order dated August 19, 1985 has not been expressly nullified, it has certainly for all practical purposes been nullified by necessary implication. This, in our opinion, could not be done and the Notification dated August 29, 1990 is ultra vires on this ground alone

35. The matter can be looked at from another angle also. It cannot be disputed that as a consequence of the quasi-judicial order of the Lt. Governor dated August 19, 1985 and the Notification dated October 27, 1987, a substantive right was created in favour of the 26 persons whose names

had been mentioned in list 'B' of the affidavit by Shri S.C. Saxena filed in the High Court. The challenge to that notification had already failed before the High Court and the matter was sub judice before this Court in special leave petition giving rise to this civil appeal when the Notification dated August 29, 1990 was issued. The Notification dated October 27, 1987 had specifically been issued u/s. 88 of the Act. Even though the subsequent Notification dated August 29, 1990 does not disclose the source of the power under which it had been issued, learned counsel for the appellants traced its source to S. 88 itself read with the powers to add to, amend, vary or rescind notifications, orders, rules or bye-laws contained in S. 21 of the General Clauses Act 1897. In State of Kerala v. K.G. Madhavan Pillai it was held by the High Court that if in pursuance of an earlier order passed by the government some person acquires a right enforceable in law, the said right cannot be taken away by a subsequent order under general power of rescindment available to the government under the General Clauses Act and that the said power of rescindment had to be determined in the light of the subject matter, context and the effect of the relevant provisions of the statute. The view taken by the High Court was upheld by this Court in paragraph 27 of the report. The notification dated August 29, 1990, would, therefore, be invalid on this ground also. In view of the foregoing discussion, the civil appeal deserves to be dismissed

36. At this place we consider it proper to make a note that learned counsel for the applicants in I.A. No. 13 of 1991 had attacked the Notification dated August 29, 1990 on two other grounds also. One was that the said notification was vitiated for breach of principles of natural justice, it having taken away vested rights of the applicants created by the quasi-judicial order of the Lt. Governor dated August 19, 1985 and the Notification dated October 27, 1987, and the other that the effect of dismissal of an earlier special leave petition by this Court on March 19, 1990 could not be nullified by the Notification dated August 29, 1990. In the view we have taken was have not found it necessary to go into these questions

37. We now take up interlocutory applications made in the appeal. Some of these applications have already been disposed of by various orders passed from time to time. The only applications which are surviving are I.A. No. 1 of 1989, I.A. Nos. 4 and 5 of 1989, I.A. Nos. 6 and 8 of 1989 and I.A. No. 13 of 1991. The nature and purpose of I.A. No. 13 of 1991 has already been indicated above. Since the Notification dated August 29, 1990 has been found by us to be ultra vires and the civil appeal is being dismissed, this application deserves to be allowed. So does I.A. No. 1 of 1989 also which has been made by the same category of members who have made I.A. No. 13 of 1991. The applicants in I.A. Nos. 6 and 8 of 1989 have taken the same stand as the appellants and their learned counsel has before us also adopted the arguments made by learned counsel for the appellants. Since the appeal is being dismissed, no further order on I.A. Nos. 6 and 8 of 1989 is necessary. The applicant in I.A. Nos. 4 and 5 of 1989 was really aggrieved by the interim order passed by this Court in the special leave petition on July 19, 1989 and since with the dismissal of the appeal the said interim order will automatically stand vacated, no further order in these applications also is necessary

38. In the result, the appeal fails and is dismissed. Orders on the interim applications aforementioned shall be as already indicated hereinabove. They are disposed of accordingly. In the circumstances of the case, however, the parties shall bear their own costs.

Assam Cooperative Apex Marketing Society Limited, Assam v Additional Commissioner of Income Tax, Assam

Bench	B.P. Jeevan Reddy, N. Venkatachala
Where Reported	1993 Indlaw SC 928; (1994) Supp2 SCC 96; AIR 1993 SC 2575; 1993 (1) BankCLR 584; 1993 (110) CTR 56; 1993 (113) CTR 58; [1993] 201 ITR 338; JT 1993 (Supp) SC 486; [1993] 67 TAXMAN 257; 1993 (2) TLR 1115
Case Digest	**Subject:** Income Tax & Direct Taxes **Keywords:** Assam Co-Operative Societies Act, 1949 **Summary:** Income Tax & Direct Taxes - Banking & Finance - Assam Co-operative Societies Act, 1949 - Income Tax Act, 1961, s. 81(i)(c) - Whether assessee entitled to exemption u/s. 81(i)(c) of Act - Held, since agricultural produce marketed by assessee was not agricultural produce produced by its members, Primary Co-operative Society, assessee could not claim benefit of said exemption - Appeal dismissed.

Case No : C.A. No. 2711 (NT) of 1977

The Order of the Court is as follows

1. This appeal is preferred against the Judgment of the Gauhati High Court answering the question referred to it against the assessee. The question referred is

   "Whether on the facts and in the circumstances of the case, the assessee i.e., Assam Cooperative Apex Marketing Society Ltd., is entitled to exemption u/s. 81(1)(c) in respect of their income arising out of procurement of paddy and other agriculture produce ?

   The assessment year concerned herein is 1962-63, the first assessment year under the Income Tax Act, 1961. During the accounting year relevant to the said assessment year, the appellant - The Assam Cooperative Apex Marketing Society Ltd., Assam was appointed as the procuring agent for paddy by the Government under a scheme evolved by the Government of Assam and contained in its proceeding dated November 23, 1962. The assessee is a Society registered under the Assam Cooperative Societies Act, 1949. The objects of the society are"

3. Learned counsel submits that the High Court was not right in holding that for obtaining the benefit of the said sub-clause, the agricultural produce by such members . Such an interpretation, according to the learned counsel, amounts to adding words to the said clause which are not there. We find it difficult to agree with the learned counsel. A reading of cl. (i) of S. 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. If it is not so understood, even a cooperative society comprised of 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 by 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.

4. Accordingly, it must be held in this case that since the agricultural produce marketed by the assessee was not the agricultural produced by its members namely, the Primary Cooperative Society, the assessee cannot claim the benefit of the said exemption. The High Court was right in holding that the benefit of the said sub-clause is not available to the assessee herein

5. Mr. Parekh then contended that wherever the Act wanted to provided that it should be the produce raised by the members of such society, it has provided so expressly, as in sub-clause (f), which speaks of "milk raised by its members". Counsel says that no such words are found in sub-clause (c), which is an indication of the intention of Parliament. It is not possible to agree. Sub-cl. (f) speaks of Primary Cooperative Society engaged in supplying milk to a Federal Milk Cooperative Society. Evidently, Parliament did not want to use the words "milk of its members". which would have been inappropriate and awkward, and that is why it used the words "milk raised by its members". The idea again was to provide an exemption only in favour of the base-level society

6. For the reasons stated above, the appeal fails and is dismissed. No order as to costs

Toguru Sudhakar Reddy and Another v Government of A. P. and Others

Bench	Kuldip Singh, N.M. Kasliwal
Where Reported	1992 Indlaw SC 596; (1993) Supp4 SCC 439; AIR 1994 SC 544
Case Digest	**Subject:** Constitution; Indirect Tax; Service **Summary:** Andhra Pradesh Co-operative Societies Act, 1964, s. 31(1)(a), Proviso - Andhra Pradesh Co-operative Societies Rules, 1964, rr. 22(C) and 22 A(3)(a) - Constitution of India, 1950 art. 14 - Nomination by Registrar of two women members of certain class of societies - Arbitrary - Total reservation would go beyond 50 per cent - Held, not violative of art. 14.

Case No : C.A. Nos. 4820-21 of 1991

The Order of the Court was as follows:

1. The Andhra Pradesh Cooperative Societies Act, 1964 was amended in the year 1991 and a proviso was added to Section 31(1)(a) of the said Act. The proviso is as under.

   "Provided also that two women members shall be nominated by the Registrar to the Committee of such class of societies and in such manner as may be prescribed from among the women members of the general body of such societies. Such nominated women members shall, notwithstanding any thing contained in this Act, have the right to vote and otherwise to take part in the proceedings of the meetings of the Committee."

2. The above quoted proviso was challenged by the appellants-petitioners before the Andhra Pradesh High Court on the ground that it was arbitrary and as such violative of Article 14 of the Constitution of India. Rules 22(c) and 22-A(3)(a) which were added by the Notification dated March 20, 1991 were also challenged on similar grounds. It was also contended before the High Court that by nominating two women members to the Committee of Societies under the newly added proviso, the total reservation would go beyond 50 per cent. which is not permitted in view of the law laid down by this Court in M. R. Balaji v. State of Mysore 1962 Indlaw SC 2721962 Indlaw SC 272. The High Court dismissed the writ petitions. These appeals by way of special leave are against the judgment of the High Court.

3. The State Government in the counter-affidavit filed before the High Court justified the enactment of the impugned provisions on the following grounds:-

   "This amendment was introduced to give representation to the women in the managing committee of the societies. It is submitted that the National Convention on involvement of women in cooperative movement had suggested that 1/3rd of the seats be reserved to the women in the management committee of the societies. Even though there are women members in the societies, they are not coming forward to contest elections to the societies, which invariably involve serious campaigning on the basis of factional and political consideration. In order to encourage women

to take active part in the management of the affairs of the society, the Act has been amended to provide for representation of women by nomination in the first instance... The total number of membership in the society is stated to be 826. Out of these 826 members there are only 29 women members as affirmed by the petitioners. The managing committee of the society consists of 11 members. Barring a few exclusive societies managed by women like the Mahila Cooperative Super Bazars, the participation of women in the affairs of the cooperative societies in Andhra Pradesh has been minimal. There are very few women members who have contested elections at the village level to gain entry into the managing committee of the societies and influence the decision-making process of the committee.

Appointment of the women to the managing committee was therefore, considered necessary to give proper representation to women to ensure that the benefits which accrue to the members of the cooperative societies are not cornered by the male members to the exclusion of the women members."

4. The High Court rejected the main contention of the appellants-petitioners on the reasoning that Article 15(3) of the Constitution of India permits the making of special provisions for women. The High Court went into the scheme of the Andhra Pradesh Co-operative Societies Act, 1964 in detail and came to the conclusion that impugned provisions were not arbitrary. The High Court further rejected the contention that reservation beyond 50 per cent. was not permissible. The High Court rightly held that the ratio in Balaji's case 1962 Indlaw SC 2721962 Indlaw SC 272was only confined to the reservations under Articles 15(4) and 16(4) of the Constitution of India.

5. We have heard learned counsel for the parties. We have been taken through the judgment of the High Court. We find no infirmity in the reasoning and the conclusions reached by the High Court.

Prem Jeet Kumar v Surender Gandotra And Ors.

Bench	L.M. Sharma, J.S. Verma
Where Reported	1991 Indlaw SC 779; (1991) Supp2 SCC 215; AIR 1991 SC 2254; 1991 (3) CCC 183; 1991 (45) DLT 210; 1991 (45) DLT 633; JT 1991 (3) SC 570; 1991(2) SCALE 459; [1991] 3 S.C.R. 782; 1991 (2) UJ 612
Case Digest	**Summary:** Arbitration & ADR - Delhi Co-Operative Societies Act, 1972, ss. 59 and 60 - Co-operative Societies - Discrepancy regarding purchase of some building material for construction of flats - Disputes arises - Whether can be referred for arbitration? - Held, s. 60 is illustrative and not exhaustive - Matter can be referred to arbitration - Appeal dismissed.

Case No : Civil Appeal No. 3237 of 1991

The Judgment was delivered by : Jagdish Saran Verma, J.

Leave is granted.

Respondent No. 6, Jupiter Cooperative Group Housing Society Limited, was formed in 1979 for providing houses to its 130 members including the appellant Prem Jeer Kumar. The appellant was earlier the Secretary and then the President of the Society till 1985, by which time substantial construction had been completed. The members were allotted three-room flat for a sum of Rs. 1, 10,000. In August, 1985, Respondent No. 3, Registrar, Delhi Cooperative Societies, appointed an Administrator to look into the affairs of the Society since the appel. lant and other office bearers had held the office for more than two terms.

1. The controversy giving rise to this proceeding relates to the alleged discrepancy regarding purchase of some building material in January, 1984, for the construction of flats for members of the Society in Vikas Puri at New Delhi. The New Managing Committee of the Society formed in September, 1986, complained to the Registrar, COoperative Societies alleging irregularities by the previous Managing Committee of which the appellant was the President. This matter was referred to arbitration by order dated 12.10.1989 passed by the Joint Registrar (Arbitration) Cooperative Societies, Delhi Administration. Respondent No, 1, Surender Gandotra was appointed the Arbitrator, who gave his AWard on 1.5. 1990. The relevant portion of the Award is as under:

   Ex parte award is announced with the following details;

2. Principal amount to be paid by the respon dents to the Jupiter Cooperative Societies Limited, Vikas Puri, New Delhi. Rs-1,46,2 10.20 Interest at the rate of 18% from 17.4.1985 till all the dues are cleared by the respond ents. Cost allowed Rs.5,000.00 With the above observations, ex parte award is given against the respondents S/Shri Poonam Dhand, P.3, Kumar who are jointly and severally responsible to pay the Jupiter Cooperative Group Housing Society Limited, Vikas Puri, New Delhi, principal amount of Rs. 1,46,210.00 NPS plus 18% interest from 17.4.1985 till all the dues are cleared and costs of Rs.5,000.

The appellant then filed an appeal under section 76 of the Delhi Cooperative Societies Act, 1972 (hereinafter referred to as 'the Delhi Act') in the Delhi Cooperative Tribunal (Respondent No. 2) challenging the Award dated 1.5.1990. The Tribunal held that the Arbitrator's act of proceeding ex parte against the appellant is justified and taking the view that the appeal had no merit, dismissed the same. The appellant then filed a writ petition in the High Court challenging the Award and dismissal of his appeal by the Tribunal on 3.7.1990. The said writ petition has been dismissed by the High Court on 10.10.1990. It is in these circumstances that the appellant assails the Award, dismissal of the appeal and then the .writ petition. The argument of Shri Sorabjee, learned counsel for the appellant, is that it is section 59 and not section 60 of the Delhi Act which applies to the present case. In reply, Dr. Chitale on behalf of the contesting respondents contended that section 60 relating to arbitration and not section 59 pertaining to surcharge applies to the present case. Sections59 and 60 of the Delhi Act,

In the Madras Act, section 49 was the provision corresponding to section 59 of the Delhi Act. It was, therefore, on the basis of similar corresponding provisions that the question arose for decision of this Court in Srirakulu. In Srirakulu also the facts disclosed in the inquiry that certain loss was caused to the society by the acts of past Managing Committee and, therefore, a special officer appointed to look into the affairs of the society made a claim under section 51 of the Madras Act before the Registrar against the past President of the Society: It was held that the Registrar's order under section 51 of the Madras Act could not be challenged. We do not find any significant difference between the provisions of the Madras Act which form the basis .of this Court's decision in Srirakulu and sections 59 and 60 of the Delhi Act with which we are concerned to justify taking a different view as suggested by learned. counsel for the appellant. Following the view taken in Srirakulu, this appeal must fail. Consequently, the appeal is dismissed with costs quantified at Rs.5,000.

Appeal dismissed

Bihar State Co-Operative Marketing Union Limited v Uma Shankar Sharan And Anr.

Bench	L.M. Sharma, A.S. Anand
Where Reported	1992 Indlaw SC 565; (1992) 4 SCC 196; AIR 1993 SC 1222; JT 1992 (4) SC 590; 1992(2) SCALE 209; [1992] 3 S.C.R. 892; 1992 (2) UJ 625
Case Digest	**Subject:** Trusts & Associations **Summary:** Trusts & Associations - Bihar and Orissa Co-operative Societies Act, 1935, ss. 40 and 48 - Whether a matter, if it comes within the scope of section 40 of the Act has to be excluded from the purview of s. 48 of the Act. Held, that a matter which may attract s. 40 of the Act will continue to be governed by s. 48 of Act also if the necessary conditions are fulfilled, is consistent with the decision of SC in Prem Jeet Kumar v. Surender Gandotra and others, 1991 Indlaw SC 779, arising under the Delhi Co-operative Societies Act, 1972. The two Acts are similar and ss. 40 and 48 of the Act and Sections 59 and 60 of the Delhi Act are in pari materia. HC was in error in assuming that the application of provisions of s. 48 of the Bihar Act could not be applied to the present case for the reason that s. 40 of Act was attracted. Appeal allowed.

Case No : CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3047 of 1992. From the Judgement and Order dated 30.7.1984 of the Patna High Court in Civil Writ Jurisdiction Case No. 373 of 1977.

The facts relevant for the decision of this appeal are in a short compass. The respondent No.1 was Depot Manager under the appellant Marketing Union Limited and during his tenure as such, a shortage of coal was detected. A claim was accordingly made for the said loss by the appellant and a reference was made to the Assistant Registrar, Co-operative Societies respondent No.3, under Section 48 of the Act. The Assistant Registrar absolved the respondent No.1 from the alleged liability and an appeal was filed by the appellant under Section 48(6) of the Act before the Joint Registrar, Co-operative Societies, respondent No.2, who are accepted the appellant's case, rejected the defence and made an award accordingly.

Our view that a matter which may attract Section 40 of the Act will continue to be governed by Section 48 also if the necessary conditions are fulfilled, is consistent with the decision of this Court in Prem Jeet Kumar V. Surender Gandotra and others, [1991] Supp. 2 S.C.C. 215 1991 Indlaw SC 779, arising under the Delhi Co-operative Societies Act, 1972. The two Acts are similar and Sections 40 and 48 of the Bihar Act and Sections 59 and 60 of the Delhi Act are in pari materia. The reported judgement followed an earlier decision of this Court in Pentakota Srirakulu v. Co- operative Marketing Society Ltd., [1965] 1 S.C.R. 186 1964 Indlaw SC 383. We accordingly hold that the High Court was in error in assuming that the application of provisions of Section 48 of the Bihar Act could not be applied to the present case for the reason that Section 40 was attracted.

So far the question of limitation is concerned it is true that as in the Delhi Act, a period of six years was fixed under the Bihar Act also by second Proviso under Section 40 (1), which reads thus:-

"Provided further that no order shall be passed under this sub-section in respect of any act or omission mentioned in clauses (a), (b), (c) or (d) except within six years of the date on which such act or omission occurred."

4. It will be observed that the six years rule of limitation, however, is limited for the purpose of section 40, and cannot govern the reference under section 48. The relevant provision of section 48 is to be found in the Proviso to section 48(1) which has been quoted above. For determining its impact on the present case it is necessary to examine the Proviso closely. Firstly, both the Proviso and section 63 of the Act are concerned only where the claim is against a member. Even if the Proviso be assumed to govern a dispute between the society and its past or present officer or servant it cannot come to the aid of the present respondent No.1 because he was dismissed from service on 15.10.1966 and he was directed to deposit the disputed amount within 30 days therefrom. The dispute was referred for adjudication under section 48 on 12.12.1966 and the reference was registered as Award Case No. 25 of 1968 on 03.08.1968.

5. Thus all these steps were taken within a period of two years. No reliance, therefore, can be placed on either section 32 or 63. The case of Putnea Ministerial government Officers' Co-operative Society Ltd. (Supra) is clearly distinguishable. The respondent there was a member of the Society in question and had taken a loan which was the subject matter of the dispute. As was pointed out by the High Court the claim had stood barred by limitation and, therefore, it was held that the reference was incompetent in view of the Proviso to section 48(1). The High Court in the present case was, in the circumstances, not entitled to rely on this decision and its conclusions must be set aside as being erroneous in law.

   However, since in the judgement it is stated that several other questions were also raised on behalf of the respondent No.1 (who was the writ petitioner) which remained undecided, the case requires reconsideration by the High Court on the remaining points. Accordingly the impugned judgement is set aside and the writ petition is remitted to the High Court for fresh decision in accordance with the observations in the present judgement. The appeal is allowed but in the circumstances without costs.

Appeal allowed

Navjyoti Coop. Group Housing Society and Others v Union of India and Others

Bench	G.N. Ray, S. Mohan
Where Reported	1992 Indlaw SC 609; (1992) 4 SCC 477; AIR 1993 SC 155; AIR 1992 SCW 3075; 1992 (2) BankCLR 650; JT 1992 (5) SC 621; 1992(2) SCALE 548; [1992] Supp1 S.C.R. 709; 1993 (1) UJ 94
Case Digest	**Subject:** Banking & Finance; Land & Property; Trade; Trusts & Associations **Keywords:** Co-Operative Society, Society **Summary:** Land & Property - Delhi Development Act, 1957, s. 57 - Delhi Co-Operative Societies Act, 1972 - Constitution of India, 1950, art. 136 and 226 - DDA (Disposal of Developed Nazul Land) Rules, 1981 - Central Govt. memorandum D/-20-01-1990 - Allotment of land - Group housing societies - (A) Expression 'first come first served' in r. 6(vi) - Seniority of society according to date of registration, as applied in previous allotments - Doctrine of legitimate expectation - Applicability - (B) New plea raised for first time u/art. 136 of Constitution - (C) Petition u/art. 226 of Constitution - Challenge to Memorandum - Provisional allotment pendelite writ, subject to cancellation and refund of deposits - Who should be parties to petition - Held, doctrine of legitimate expectation is attracted - Not permitted at stage of appeal to challenge irregularities in registration and unsettle existing state of affairs - Not necessary to find out which societies were to get allotment and implead them as parties - Appeal dismissed.

Case No : S.L.P. (Civil) No. 10857 of 1991 (From the Judgment and Order Dt. 10 May 1991 of the Delhi High Court in W.P. No. 2885 of 1990) with W.P. Nos. 665 and 667 of 1991 (Under Article 32 of the Constitution of India)

The Judgment was delivered by: RAY, J.

1. Legality and validity of the policy decision of Government of India dated January 20, 1990, containing the guidelines regarding the procedure for allotment of land by the Delhi Development Authority (hereinafter referred to as DDA) to different Cooperative Group Housing Societies are in dispute in this Special Leave Petition No. 10857 of 1991 arising out of the judgment dated May 10, 1991 of the Division Bench of the Delhi High Court in CWP No. 2885 of 1990 (Kaveri Cooperative Group Housing Society Ltd. v. Union of India) and several applications for intervention and for adding and impleading of parties to the special leave petition. The backdrop of relevant events in connection with the issuance of the aforesaid guidelines by the Central Government have been succinctly indicated in the impugned judgment of the Delhi High Court and may be stated hereunder.

2. Prior to July 16, 1983, for some period of time the Registrar Cooperative Societies, Delhi Administration, (hereinafter referred to as Registrar) was not registering any Group Housing Society under the provisions of Delhi Co-Operative Societies Act, 1972, presumably because there was very little chance of such Societies being able to get land for construction. As a result of large scale acquisition of land in Delhi either at the instance of the Central Government of the DDA, most of the land in Delhi had been frozen. It appears that under the instructions of the Union of India, the DDA itself had been constructing for resident units on 60 per cent land made available to it and 40 per cent of such land was being allotted by it to different cooperative Group Housing Societies. One of the norms which was laid down by the DDA for making allotment to Cooperative Housing Societies is that the Society should not have less than 60 and more than 300 members. On July 16, 1983 public notice was issued by the Delhi Administration to the effect that the administration has decided to re-open the registration of Group Housing Societies. Those Societies which have membership between 60 and 300 who did not own any residential property and the members are residents of Delhi can be registered.

11. By the impugned judgment, the High Court has quashed the said memorandum of January 20, 1990 and has set aside the allotments made or proposed to be made pursuant to the criterion contained in the said memo. The High Court has upheld the contention of the writ petitioners including Kaveri Cooperative Group Housing Society Ltd., being respondent 4 in the Special Leave Petition No. 10857 of 1991, that the criterion of making allotment on the basis of finalisation of the list of members by the Registrar, irrespective of the date of registration of such Societies, is wholly arbitrary and unreasonable and contrary to Rule 6 of the Nazul Rules. Referring to Rule 6 of the Nazul Rules it has been held by the High Court that although the expression "first come first served" appearing in Rule 6 has not been specifically explained in the said rule, Rule 21 of Nazul Rules indicates that those Societies which are registered with the Delhi Cooperative Societies Act, will be entitled to get allotment of land. Referring to the public notices, mentioned hereinbefore the High Court has indicated that there was no application for allotment of land directly to the DDA by the Cooperative Group Housing Societies. The only communication from the Societies was to the Registrar who was acting as an agent or a conduit to the DDA.

12. The registration of Cooperative Societies was not being allowed because the DDA had no land available for allotment and it was only when the land became available for allotment, the Registrar and not the DDA issued notice inviting applications for registration of the Cooperative Group Housing Societies. It was indicated by the High Court, and in our view very rightly, that the act of registration by the Group Housing Societies pursuant to the public notice dated July 16, 1983 was in effect applications by the Cooperative Societies for allotment of land from the DDA. The Delhi High Court has indicated in this connection that whereas under the Cooperative Societies Act, the minimum members required for forming the Cooperative Societies should be 10, in the public notice of July 16, 1983, the minimum members required for being eligible for allotment of land are 60 and the maximum numbers are 300. The High Court has held that the term first come first served" is referable to the date and serial No. of registration of Group Housing Societies pursuant to the public notice dated including the DDA had all along, until the formulation of new criteria in the impugned memorandum dated January 20, 1990, followed the principle of giving priority in the matter of allotment of land to the Group Housing Societies with reference to date of registration of the concerned Societies and in the brochure of 1982 of DDA such principle was

clearly mentioned. The High Court has held that when DDA itself has understood Rule 6 in the aforesaid manner and has followed the criterion of priority with reference to date of registration, ambiguity, if any, in Rule 6(vi) for not explaining the expression "first come first served" stands resolved.

15. It has been noted by the High Court that there are about 11 such Societies where the verification was completed within 17 days of their submission of the list of members. It has also been noticed by the High Court that there are about 25 other Group Housing Societies where the list was verified within a month. On the other hand, there are at least 12 other Societies where the lists were verified after a number of years from the date of submission even through no defects were indicated in the list originally filed. It has been held inter alia by the High Court that the only exercise which had to be undertaken by the Registrar after March 13, 1984 was to verify whether the lists which had been submitted were in order or not. The Societies already stood registered with the Registrar. It has been indicated by the High Court that it is quite possible that there may be delay in completing the verification because of non-submission or defective submission of papers in respect of one or two members in a society consisting of large number of members. In the view of the High Court it will not be proper and reasonable that because of some defects of the list of the members, which defect is subsequently removed, the seniority of the Society should be radically altered to its disadvantage Until the new guideline contained in the impugned memorandum was made.

16. The seniority was always fixed on the basis of the date of registration. The date of verification of the list of members was never considered to be a relevant criterion for fixing the seniority for the purpose of allotment. The High Court has also noted that such position had also existed even prior to the promulgation of Nazul Rules. According to the High Court the Nazul Rules and Rule 6 in particular merely give statutory recognition to the practice which was being followed by the DDA namely allotment being made with reference to date of registration. The High Court has indicated that in view of long standing practice the office memorandum dated January 20, 1990 laying down a completely different criterion, should have been made public. The High Court has held inter alia that the impugned memorandum dated January 20, 1990 issued by the Central Government is arbitrary and unreasonable and also contrary to Rule 6 of the Nazul Rules and as such the same must be struck down. The list of seniority which was prepared in accordance with the said impugned memorandum was quashed by the High Court and the allotment made or proposed to be made pursuant to such list following the guideline made in the impugned memorandum was also set aside by the High Court. The High Court directed that it will be open to the respondents to refund the money paid by all the Societies to whom allotment had been made or proposed to be made pursuant to the guideline contained in the impugned memorandum since quashed by the High Court.

30. After giving our anxious consideration to the respective contentions of the parties and considering the facts and circumstances of the case we have no hesitation in upholding the impugned judgment of the High Court. In our view, the High Court has taken a very reasonable view in holding that the expression "first come first served" appearing in Rule 6(vi) of Nazul Rules relate to the seniority with reference to the date of Registration of Group Housing Societies with the Registrar. Since we are inclined to endorse the reasoning of the High Court in the impugned judgment we have

referred to such reasoning and the finding made by the High Court in some details. It has been noted by the High Court that in a number of cases although application for registration and the list of member of the concerned Group Housing Society was furnished, despite registration of the Society the list was not approved for years together. In our view, the High Court rightly held that there has to be certainly in the seniority with reference to which priority in the matter of allotment is to be given and fixation of such seniority cannot be left to the whims and fancies of any official. It has been submitted before us by Mr. Reddy and other learned counsels in support of the special leave petition that there has been irregularities in the matter of registration and in all cases registration has not been made strictly on the basis of earlier receipt of the application for registration.

32. In our view, in the facts of the case, the High Court is justified in holding that after registration, the only thing which was required to be done by the Registrar was to approve the list of members on proper verification and to forward the case of registered Societies to DDA for allotment by approving the list of members. It is unfortunate that such lists were not approved promptly and thereafter forwarded to DDA. If such lists had been approved without inordinate delay, the question of allotment on the basis of the new criterion as contained in the impugned memo dated January 20, 1990 would not have arisen because admittedly prior to the new guideline, allotment was referable to the seniority in registration. WE may also indicate here that there is force in the submission of Mr. S. S. Ray that contemporaneous document namely the brochure of DDA in 1982 clearly indicates how Rule 6(vi) of Nazul Rules was understood and applied by the respondents.

34. In our view, in such facts it was not at all necessary to find out which of the Societies were likely to get allotments from DDA and to implead them as parties in the writ petitions. That apart, no real prejudice was caused to the Societies which were likely to be benefited by the new criterion. Since the allotment in their favour were made with express condition that such allotments would abide by the decision to be rendered in the writ petitions and such allotments were liable to be cancelled on account of the decision to be made in the pending writ petitions, the Group Housing Societies likely to be affected by the judgment in the writ petitions could take steps for being impleaded in the proceedings and contest the same if they had so desired.

36. In the aforesaid facts, the Group Housing Society were entitled to 'legitimate expectation' of following consistent past practice in the matter of allotment, even though they may not have any legal right in private law to receive such treatment. The existence of 'legitimate expectation may have a number of different consequences and one of such consequences is that the authority ought not to act to defeat the 'legitimate expectation' without some overriding reason of public policy to justify its doing so. In a case of 'legitimate expectation' if the authority proposes to defeat a persons 'legitimate expectation' it should afford him an opportunity to make representations in the matter. In this connection reference may be made to the discussions on 'legitimate expectation' at Pg. 151 of Vol. (1) of Halsbury's Laws of England Fourth Edn. (re-issue). We may also refer to a decision of the House of Lords in Council of Civil Service Unions v. Minister for the Civil Service . It has been held in the said decision that an aggrieved person was entitled to judicial review if he could show that decision of the public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected

to be permitted to enjoy either until he was given reasons for with drawal and the opportunity to comment on such reasons.

38. We therefore feel that in the facts of the case it was only desirable that before introducing or implementing any change in the guideline for allotment, an opportunity to make representations against the proposed change in the guideline should have been given to the registered Group Housing Societies, if necessary, by way of a public notice.

39. In the aforesaid facts and circumstances we do not find any reason to interfere with the impugned judgment and this special leave petition is therefore dismissed without any order as to cost. The applications for intervention and/or impleadment are also disposed of. Since the time schedule as indicated in the impugned judgment of High Court could not be adhered to in view of the pendency of this special leave petition, it is directed that the directions contained in the judgment of the High Court be implemented within six months from today. We may note here that the matter was adjourned on few occasions so as to enable the Group Housing Societies aspiring to get allotments from DDA to amicably settle their disputes and to evolve a formula as may be acceptable to DDA so that on the basis of such formula allotments are to be made. Unfortunately no such amicable settlement or accepted formula could be forged.

40. In view of the aforesaid decision in this special leave petition, no further order need be passed in Writ Petition Nos. 665 of 1991 and 667 of 1991 and they stand disposed of.

Petitions disposed of.

Indra Kumar Chopra and another v Pradeshik Co. Operative Dairy Federation Ltd. Andors.

Bench	Yogeshwar Dayal, L.M. Sharma, M.M. Punchhi
Where Reported	1992 Indlaw SC 1096; (1992) 4 SCC 17; (1992) SCC (L&S) 756; AIR 1992 SC 2093; 1992 (21) ATC 368; 1992 (65) FLR 603; JT 1992 (4) SC 459; 1992 LabIC 2162; 1993 (1) LLJ 226; 1992 (2) LLN 428; 1992(2) SCALE 125; [1992] 3 S.C.R. 755; 1993 (1) SLJ 143; 1992 (5) SLR 24; 1992 (2) UJ 424; 1992 (2) UPLBEC 1171
Case Digest	**Summary:** Uttar Pradesh Co-operative Societies Act, 1966, s. 122 - Uttar Pradesh Co-operative Societies Employees Service Regulations, 1975, regn. 17(1), Explanation and regn. 19(a) - Termination of service - Validity - Provisionally absorbed employee - Centralised Service newly created by 1984 Rules - Regularisation - Held, employee had to become regular employee once again - Termination of services by giving one month's salary in lieu of notice - Valid, as 1975 Regulations applies to service.

Case No : Civil Appeal Nos. 3321 and 3320 of 1990.

The Judgment was delivered by: Yogeshwar Dayal, J.

2. As the common questions of facts and law arise in both the appeals, the same are being disposed of by a common judgment. For facility of reference we may deal with the facts of the appeal of Indra Kumar Chopra. The appellant, claiming himself to be a permanent employee-Manager Grade-III (Quality Control) posted at Dugadh Utpadak Sahkari Sangh Limited Agra, had challenged the orders dated 30th May, 1985 and 25th May, 1987, passed by the General Manager, Dugadh Utpadak Sahkari Sangh, Agra and Chairman Administrative Committee of the said Sangh.

3. By the first order the appellant was relieved by the said Sangh in the afternoon of 30th May, 1985 and to report at Pradeshik Cooperative Dairy Federation Ltd., Head Office, at the earliest and by the second order his services were terminated under Paras 17(1) and 19(A) of the Uttar Pradesh Cooperative Societies Employees Service Regulations, 1975 (hereinafter called 'the 1975 Regulations') by giving one month's salary in lieu of notice period.

4. The orders were impugned mainly on the ground that the appellant was a permanent employee having been finally absorbed in service holding a regular post since 1981, in a clear vacancy after due selection, hence his services could not be terminated without following the due process of law. It was submitted before the High Court that the Regulations under which the services of the appellant were terminated would not apply in the case of the appellant as the same apply to the employee on probation. On July 24, 1981, the appellant was appointed as Assistant Manager (Quality Control) in the Cattle Feed Plant, Varanasi and was placed on probation for a period of

one year after his joining. It was pleaded that it was mentioned in the order that on the expiry of the probation he will be confirmed provided the period of probation is not extended by the Federation, at its discretion without assigning any reason thereof: It was alleged that he was appointed on one year's probation which was not extended and was satisfactorily concluded.

11. The service conditions of the appellant, who was initially appointed by letter dated 24th July, 1981 as Assistant Manager (Quality Control) With Pradeshik Cooperative Dairy Federation Limited, 29 Park Road, Lucknow, were governed by the 1975 Regulations. the 1975 Regulations have been framed u/s. 122 of the Uttar Pradesh Cooperative Societies Act, 1965. The appellant was placed on probation for a period of one year from the date of his joining and would be confirmed provided the period of probation had not been extended by the Federation at its discretion as per the averments in the writ petition. The 1984 Rules were promulgated by the Governor of Uttar Pradesh through the Notification dated 29the August, 1984. These Rules were again framed in exercise of powers conferred by s. 122 A of the Uttar Pradesh Cooperative Societies Act, 1965, as amended (hereinafter referred to as 'the 1965 Act'). S. 122 A of the 1965 Act provides as under:-

17. It is clear to us that whatever may be the status of an employee before he became a provisionally absorbed employee of the service, namely - the Centralised Service created by the 1984 Rules, his terms and conditions were to be governed by the 1975 Regulations and he had to become a regular employee once again and if he was not willing, he could stay on with the Federation and S. 122 A of the 1965 Act provided the consequences for terminating the services of both regular as well as temporary employees.

18. Having become the employee of the new service and since the post was not in existence continuously for the last five years of its creation, it could not be treated as a regular post. Consequently the services of the appellant is that of a temporary employee. In this view of the matter we do not find it necessary to go into the question of the status of the appellant while he was working with the Federation and, therefore, we have not gone into the applicability of the decision of this Court in the case of Om Prakash Maurya v. U.P. Cooperative Sugar Factories Federation, Lucknow and others, [1986] Supp SCC 95 1986 Indlaw SC 191 which directly deals with the interpretation of Regulation 17 of the 1975 Regulations. In fact in view of S. 122 A of the 1965 Act and the creation of the new Service under different Authority by the 1984 Rules and the provisions of Regulation 17 of the 1975 Regulations, the appellant had no option but to take his chance with the new Authority.

20. National Textile Workers Union and others v.P.R. Ramakrishnan and other, [1983] 1 SCC 228 1982 Indlaw SC 185; The Govt. Branch Press and another v. D.B. Belliappa, [1979] 2 SCR 458 = AIR 1979 SC 429 1978 Indlaw SC 458; Ajit Singh and others v. State of Punjab and another, [1983] 2 SCR 517 1983 Indlaw SC 282 and Anoop Jaiswal v. Government of India and another, [1984] 2 SCC 369 1984 Indlaw SC 99.

21. None of these cases are applicable to the facts of the present case. The first case relates to the right of the workman in the winding up petition. The second case was found to be the case of discrimination in the method of termination. The third case was peculiar to its own facts

inasmuch as the permanent posts in Improvement Trusts were abolished and the termination of the employees were on the basis of the abolition of these posts but same posts were created thereafter. The decision of the last case was on facts found by this Court as punitive in nature against a member of an Indian Police Service.

22. We are in complete agreement with the reasoning and conclusion of the Division Bench of the High Court. The appeals consequently fail and are dismissed without any order as to costs. Appeal dismissed.

State of Rajasthan v Praful Ranwah

Bench	A.M. Ahmadi, K. Ramaswamy, M.M. Punchhi
Where Reported	1992 Indlaw SC 462; (1993) Supp1 SCC 556; AIR 1992 SC 1975; 1992 CRLJ 2761
Case Digest	**Summary:** Trusts & Associations - Rajasthan Co-Operative Societies Act, 1965, s. 36(1 B) - Constitution of India, 1950, art. 14 - Appointment of Administrator - Only in case of banks where election process for constitution of new committee was postponed - Not where election process had been set in motion - Constitutionality - Held, no discrimination causing violation of art. 14 of Constitution - Appeal allowed.

Case No : C.A. No. 2861 of 1992 (Arising out of S.L.P. (C) No. 6796 of 1992)

The Order of the Court was as follows:

2. Gram Sewa Samitis constituted under the Rajasthan **Cooperative Societies Act**, 1965 (hereinafter called 'the Act'), are managed by a Board comprising 9 elected members. The elections have to be held every three years. The Chairmen of the Gram Sewa Sahakari Samitis in turn elect nine members to the Board of the Central Cooperative Banks and the Chairmen of these banks in turn elect the Board of the State Cooperative Banks. Section 36(I-B) added to the Act reads as under:

   "36(I-B) If before the expiry of the term of the Committee as specified in the bye-laws, a new Committee is not constituted, the Registrar may appoint a Government servant as Administrator to manage the affairs of the Society for a period not exceeding one year or till a new Committee is constituted, whichever is earlier."

6. It is, therefore, obvious that in the case of the banks where the election process had been set in motion the State of Rajasthan did not consider it necessary or expedient to appoint an Administrator whereas in the case of the Bank in question since the election process had to been set in motion and had in fact been postponed no such concession could be granted. The High Court, therefore, was wrong in treating the case to be identical to attract Article 14 of the Constitution. We, therefore, find it difficult to sustain the impugned order of the High Court.

7. In the result, we set aside the impugned order of the High Court and restore the order dated September 25, 1991 appointing the Administrator in exercise of power conferred by Section 36(I-B) of the 1965 Act. The appeal is allowed accordingly with no order as to costs.

Appeal allowed.

Shashikant Sonaji Deshmukh and Others v State of Maharashtra and Others

Bench	B.P. Jeevan Reddy, M.N. Venkatachaliah
Where Reported	1992 Indlaw SC 852; (1992) Supp3 SCC 10
Case Digest	**Summary:** Trusts & Associations - Supersession of Board of Directors - Legality - Appellants along with respondent no. 6 were elected as Board of Directors for a term of five years - Joint Registrar of Cooperative Societies initiated proceedings for supersession of Board of Directors - A statutory appeal was taken before Govt. and the same was dismissed - Newly elected Directors of the Board challenged appellate order before Single Judge matter came before a DB - DB passed impugned order - Hence instant appeal. Held, respondents seek to maintain that order was made on consent of all parties, perhaps on account of some in advertence, HC had not recorded that fact in course of order. But this is seriously disputed by appellants. Appellants further say that in proceedings before HC where appellants had made serious allegations of male fide and complained that the orders were made at the instance of and under pressure from politicians, authorities had not even filed their counter affidavits. In absence of consent of appellants, any order of kind made by HC would not be sustainable. If there was such consent it was appropriate for HC to have recorded that. In absence of any indication in order in their behalf or in any other record it is difficult to accept contention of respondent that appellants were consenting parties. The result is that petitions would have to be heard on their merits and disposed of afresh by HC. Order passed by HC is set aside and remit petitions to HC for a fresh disposal in accordance with the law. Appeals allowed.

Case No : C.A. Nos. 292-93 of 1992 (Arising out of S.L.P. (Civil) Nos. 15189-90 of 1991)

The Order of the Court was as follows:

2. The appellants in these two appeals along with Respondent 6 were elected to the Board of Directors of a Cooperative Society: "The Ahmednagar Zilla Sahakari Dudh Vyavsaik Sangh Ltd." for a term of five years. The Joint Registrar of Cooperative Societies in Maharashtra initiated proceedings under Section 78 of the Maharashtra **Cooperative Societies Act**, 1960 for supersession of the Board of Directors by the issue of a show-cause notice dated May 6, 1989. The explanation furnished by the appellants and Respondent 6 who was also one of the Directors, against the proposed action was not found satisfactory and acceptable by the Joint Registrar of Cooperative Societies, who, on August 31, 1989, made an order under Section 78 superseding the Board.

7. On a consideration of the matter, we are of the view that in the absence of consent of the appellants, any order of the kind made by the High Court would not be sustainable. If there was such consent it was appropriate for the High Court to have recorded that. In the absence of any indication in the order in their behalf or in any other record it is difficult to accept the contention of the respondent that appellants were consenting parties. The result is that the writ petitions would have to be heard on their merits and disposed of afresh by the High Court.

8. Accordingly we allow these appeals, set aside the order dated August 13, 1991 of the High Court and remit the writ petitions to the High Court for a fresh disposal in accordance with the law. We request the High Court, having regard to the nature of the controversy and the need for an expeditious decision, to dispose of the writ petitions as early as possible. Now that the writ petitions are restored, the interim orders made during their subsistence would continue to operate unless otherwise directed by the High Court.

Appeals allowed.

P. Vijaya Rajan v State of Tamil Nadu and Others

Bench	P.B. Sawant, Ranganath Misra
Where Reported	1991 Indlaw SC 324; (1992) Supp2 SCC 104; 1993(3) SCALE 251

Case No : S.L.P. (Civil) No. 6449 of 1990 (From the Judgment and Order Dt. 27 October 1989 of the High Court of Madras in W.A. No. 1410 of 1987)

The Order of the Court was as follows:

1. Counsel for the petitioner pointed out that the question is as to whether a sponsored and taken over society by government is State within Article 12 of the Constitution of India, 1950.

2. In the case before us it is not the petitioner's allegation that the society in question was sponsored by government though admittedly its administration had been taken over within the framework of the Cooperative Societies Act. According to us the ambit of reference made on May 8, 1989 to a Constitution Bench by the Vacation Judge does not apply to the facts of this case.

3. We would accordingly decline to refer it to a Constitution Bench or even link it up with that case and direct that the petition be dismissed. It is open to the petitioner to seek such relief as is open to him under law and to plead for condonation of delay.

Petition dismissed.

Puran Singh Sahni v Sundari Bhagwandas Kripalani Smt. and Others

Bench	K.N. Saikia, M.M. Punchhi
Where Reported	1991 Indlaw SC 532; (1991) 2 SCC 180; AIR 1991 SCW 779; 1991 (2) CCC 26; JT 1992 (2) SC 24; 1991 (1) RCJ 476; 1991 (1) RCR(Rent) 575; 1991(1) SCALE 303; [1991] 1 S.C.R. 592; 1991 (1) UJ 566
Case Digest	**Subject:** Rent Control **Keywords:** Indian Easements Act, 1882, Bombay Rent, Hotel and lodging House Rates Control Act, 1947, Maharashtra Co-operative Society Act, 1960 **Summary:** Rent Control - Constitution of India, 1950, art. 14 - Transfer of Property Act, 1882, s. 105 - Bombay Rent, Hotel and Lodging House Rates Control Act, 1947, ss. 5(11), 15 and 15-A - Indian Easements Act, 1882, s. 52 - Maharashtra Co-operative Society Act, 1960, s. 91 - A tenant co-partner member of a registered co-partnership type cooperative housing society inducted another person into her flat for a term of eleven months subject to renewal of term from time to time after obtaining society's permission and after person so inducted becoming a nominal member of society - (A) Whether agreement between parties embodied in usual standard form was one lease or of leave and licence? - Held, 'dispute touching business of a society' within meaning of s. 91 of Maharashtra **Cooperative Societies Act**, 1960 - Tenant co-partner member only created a licence and not a lease and that Maharashtra **Cooperative Societies Act**, 1960 was applicable - Relied on(Krishna Rajpal Bhatia v. Leela H Advani (1989) 1 SCC 521989 (1) SCC 521988 Indlaw SC 626) - (B) Whether s. 91 of Maharashtra **Cooperative Societies Act**, 1960 is ultra vires art. 14 of Constitution? - Held, s. 91 is ultra vires art. 14 of the Constitution to the extent it tries to reach persons who are not members is not tenable, inasmuch as the appellant is involved in a dispute touching the business of the society and he was a nominal member of the society by dint of his agreement of leave and licence and he was made so on his application - Appeal dismissed.

Case No : CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2846 of 1989. From the Judgment and Order dated 24.4.1989 of the Bombay High Court in W.P.No. 4118 of 1986.

The Judgment was delivered by: K. N. Saikia, J.

2. The second respondent Shyam Cooperative Housing Society Ltd. was a tenant co-partnership cooperative society (for short, 'the Society') and Panjumal H. Advani late father of the first respondent (for short, 'Advani') was its tenant co-partner member. By an application dated 10.6.1969, Advani obtained permission of the Society to induct the appellant temporarily into his flat and accordingly, the appellant took on rent from Advani flat No. 24, Block No. 1,second

floor, Nanik Niwas, situate at Bhulabhai Desai Road, Bombay (for short, 'the flat') on a monthly rent of Rs. 1,000 (Rupees one thousand) on 10.6.1969. On the same date the appellant, under the Society's rules, applied for its nominal membership stating, inter alia, that he intended to take the flat for temporary use and occupation; that he would not claim any right of permanent nature; and that he would vacate the flat on receipt of notice thereof. By an agreement of leave and licence dated 11.6.1969 entered into between the appellant and Advani, the appellant took exclusive possession of the flat. The agreement was for a period of 11 months and was renewable for 2 further periods of 11 months each. Vide Resolution No. 208 dated 13.6.1969, the Managing Committee of the Society granted the permission.

4. Advani and Society appealed therefrom to the Maharashtra State Cooperative Appellate Court, Bombay in Appeal No. 397 of 1985 which was allowed and the impugned Judgment of the IInd Cooperative Court was set aside on 31.7.1986.

5. The appellant impugned the appellate order in Writ petition No. 4118 of 1986 in the High Court of Judicature at Bombay, contending, inter alia, that the agreement between the appellant and Advani, though styled as a leave and licence, was a lease; that s. 91 of the Maharashtra Cooperative Societies Act, 1960 was not attracted and could not have been invoked by Advani and the Society; and that s. 91 itself was ultra vires the Art. 14 of the Constitution of India to the extent it tried to reach persons who were not members of cooperative societies.

6. The High Court, while dismissing the writ petition, inter alia, held that the agreement was of temporary nature and no interest in the flat having been created in favour of the appellant, even though he had exclusive possession, it could not have been a lease; that the alleged collusion between Advani and the Society to evict the appellant was based on conjectures and could not take the matter out of the purview of s. 91 of the Cooperative Societies Act which was not ultra vires.

18. It was, however, held that s. 91 of the Maharashtra Cooperative Societies Act did not affect the provisions of s. 26 of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947. Although both these provisions start by excluding "anything contained in any other law", two Acts could be harmonized best by holding that in matters covered by the Rent Act, its provisions rather than the provisions of the Maharashtra Cooperative Societies Act, should apply. The latter Act was passed in the main, to shorten litigation, lessen its cost and to provide a summary procedure for the determination of the disputes relating to internal management of the society. But under the Rent Act a different social objective was intended to be achieved and for achieving that social objective it was necessary that the dispute between the landlord and the tenant should be dealt with by the courts set up under the Rent Act and in accordance with the special provisions of that Act and this social objective did not impinge on the objective underlying the Maharashtra Cooperative Societies Act.

19. In O.N.Bhatnagar v. Smt. Rukibai Narsindas & Ors., [1982] 3 SCR 681 1982 Indlaw SC 122, which was also case of Shyam Cooperative Housing Society Limited, it was held that the claim of the society together with such member for ejectment of a person who was permitted to occupy having become a nominal member thereof, upon revocation of licence was a dispute

falling within the purview of s. 1 of the Maharashtra Cooperative Societies Act, 1960 and that the proceeding u/s. 91(1) of the Maharashtra Cooperative Societies Act, 1960 were not barred by the provisions of s. 28 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The two Acts, could be best harmonized by holding that the matters covered by the Rent Acts, its provisions, rather than the provisions of the Cooperative Societies Act should apply. But where the parties admittedly did not stand in the jural relationship of landlord and tenant, as their dispute would be governed by s. 91(1) of the Societies Act and that the appellant by virtue of his being a nominal member, acquired a right to occupy the flat as a licensee, but his rights were inchoate,. In the facts of the instant case upon the terms of ss. 5(4A) and 15A of the Rent Act, it is clear that the appellant was not entitled to the protection of section 15A. The sine qua non for the applicability of s. 15A of the Rent Act was that a licensee must be in occupation as on February 1, 1973 under a subsisting licence. It is not disputed that the appellant did not answer that description since the agreement of leave and licence in his favour admittedly stood terminated by the notice of the respondent No. 1 on 10.3.1972. That being so, the appellant was nothing but a rank trespasser and was not entitled to the protection of section 15A of the Rent Act and could not, therefore, plead the bar of s. 28(1) thereof.

20. In Hindustan Petroleum Corporation Ltd. & Anr. v. Shyam Cooperative Housing Society & Ors., [1988] 4 SCC 747 1988 Indlaw SC 628,14 it was held under the facts of that case that the petitioner Hindustan Petroleum Corporation Ltd. was clearly protected under section 15A of the Rent Act and in that view of the matter the jurisdiction of the Registrar under S. 91(1) of the Cooperative Societies Act would be as laid down in O.N. Bhatnagar's case 1982 Indlaw SC 122 (supra). The proceedings initiated u/s. 91 were accordingly quashed. This case is, therefore, distinguishable on facts.

21. Following Bhatnagar's case 1982 Indlaw SC 122 in Smt. Krishna Rajpal Bhatia and Ors. v. Miss Leela H. Advani & Ors., [1989] 1 SCC 52 1988 Indlaw SC 626, where a tenant co-partner member of a registered co- partnership type cooperative housing society inducting another person into her flat for a term of eleven months subject to renewal of the term from time to time after obtaining society's permission and after the person so inducted becoming a nominal member of the society and the agreement between the parties embodied in usual standard form of leave and licence, it was held that the tenant co- partner member only created a licence and not a lease and that the Maharashtra Cooperative Societies Act, 1960 was applicable. There also the nominal membership of the society was obtained in terms of the society's bye-laws and the licence was terminated by notice after expiry of the term, but the occupant was not vacating. Claim made by the co-partner u/s. 91 of the Maharashtra Cooperative Societies Act, 1960 for ejectment of the occupant was held to constitute a 'dispute touching the business of a society' within the meaning of s. 91 and hence the Registrar's jurisdiction to entertain the claim was held not to have been barred under s. 28 of the Rent Act.

22. Applying the law laid down in the above decisions we are of the view that the instant dispute is one envisaged in s. 91 of the Maharashtra Cooperative Societies Act and the Cooperative Courts rightly exercised jurisdiction.

23. The next question, namely, s. 91 is ultra vires the Art. 14 of the Constitution of India to the extent it tries to reach persons who are not members is not tenable, inasmuch as the appellant is involved in a dispute touching the business of the Society and he was a nominal member of the Society by dint of his agreement of leave and licence and he was made so on his application.

24. Result is that this appeal fails and it is dismissed, but under the facts and circumstances of the case without any order as to costs. Interim orders stand vacated.

Appeal dismissed

Marine Times Publications Pvt. Ltd. v Shiriram Transport And Finance Co. Ltd. And Anr.

Bench	M.H. Kania, Mr.Justice R.M. Sahai
Where Reported	1990 Indlaw SC 513; (1991) 1 SCC 469; AIR 1991 SC 626; 1991 (2) BankCLR 18; JT 1990 (4) SC 332; 1991 MahLJ 347; 1990(2) SCALE 854; [1990] 2 S.C.R. 466; [1990] Supp2 S.C.R. 466; 1990 (2) UJ 732
Case Digest	**Subject:** Banking & Finance; Trade **Keywords:** Maharashtra Co-operative Society Act, 1960 **Summary:** Corporate - Maharashtra Co-operative Societies Act, 1961, s. 91(1) (b) - Jurisdiction of Co-operative Court regarding agreement for transfer of property among owner a member of society and a non-member - Main relief sought in suit is for decree of specific performance and relief for directing society to give approval to agreement being ancillary - Held, suit not maintainable in co-operative court - Appeal allowed.
Legislation Cited	Constitution of India, 1950 Maharashtra Co-operative Society Act, 1960 Maharashtra Co-operative Society Act, 1960 s 91(1) b

Case No : Civil Appeal No. 4979 of 1990.

The Judgment was delivered by : M. H. Kania, J.

Leave granted. Counsel heard.

1. This is an appeal from the judgment of a learned Single judge of the Bombay High Court dismissing Writ Petition No. 6058 of 1986 filed by the appellant on the Appellate Side of that Court. The appellant and respondent No. 1 are companies incorporated under the Indian Companies Act. ReSpOndent No. 2 is a Cooperative Society registered under the Maharashtra **Cooperative Societies Act**, 1961 (hereinafter referred to as "the said Act"). Appellant is a member of respondent No. 2Cooperative Society and has its office premises in the building owned by respondent No. 2. Some time prior to September 10, 1985 the appellant entered into an agreement to sell the said office premises to respondent No. 1 subject to the approval of respondent No. 2. The terms of the said agreement were incorporated in a letter dated September 10, 1985 addressed by the appellant to the Vice-Chairman and the president of respondent No. 1: It was set out in the said letter that the price for the said premises was to be calculated at the rate of Rs. 2,000 per square feet. The letter further stated:

16. We find that the appellant before us is a member of respondent 2, a cooperative society. Respondent 1 is not a member. The main question before us is whether the claim of respondent 1 in the dispute can be said to be one made against the cooperative society, being respondent 2, through the appellant, a member. On analysing the plaint it appears clear to us that the main claim of

respondent 1 is for a decree or order for specifies performance of the agreement, whereby the appellant agreed to sell the said premises to respondent 1. The prayer for an order that respondent 2 Society should be directed to give their approval to the said transaction was merely a ancillary prayer made with a view to complete the relief of specific performance. As far as the claim to have the agreement specifically performed is concerned, we fail to see how it can be said to be a claim made by a person (non-member) against the society. The claim of respondent 1 against the society, as made in the plaint, cannot be said to be made through a member, the appellant herein, because it is only when a decree for performance of the said agreement is passed against the appellant, that it could be contended that the other relief, namely, for an order directing respondent 2 to approve the said transaction is claimed against the society through a member. Moreover, as we have pointed out that relief is only in the nature of ancillary relief, subsidiary to the main relief to specific performance.

17. In our opinion, the dispute set out in the plaint cannot be said to fall within the scope of S. 91(1)(b) of the said Act and, in view of this, the learned Judge of the High Court was, with respect, in error in coming to the conclusion that both the parties to the dispute belonged to the categories covered under S. 91(1)(b) of the said Act. In our opinion, it is not necessary for us to decide whether the dispute in question was one "touching the business of the society" because even if that were so, it could not be referred to the Cooperative Court in the view which we have taken as set out earlier Learned counsel for respondent 1 drew our attention to the decision of this Court in O.N. Bhatnagar v. Rukibai Narsindas 1982 Indlaw SC 122 and submitted that in that judgment the scope of the expression "touching the business" was given a larger connotation than that given to it in the case of Deccan Merchants' Cooperative Bank Ltd. v. Dalichand Jugraj Jain (1968 Indlaw SC 309 : 1968 Indlaw SC 309 : 1968 Indlaw SC 309 1968 Indlaw SC 309) discussed earlier. In our opinion, it is not necessary to consider the interpretation of the said expression here because, even assuming that the expression "touching the business of the society" has been given a wider connotation in O.N. Bhatnagar case , as contended by learned counsel, it would make no difference to the result of the appeal in the view we have taken as we have based our conclusion on the construction of the provisions of S. 91(1)(b) of the said Act. The other decisions cited, namely, the decision of a Full Bench of the Bombay High Court in Leong v. Jinabai G. Gulrajami 1981 Indlaw MUM 310 : 83 Bom LR 299 1981 Indlaw MUM 310) and the decision of this Court in Sanwarmal Kejriwal v. Vishwa Cooperative Housing Society Ltd. (1990 Indlaw SC 847) 1990 Indlaw SC 847 are of no direct relevance to the question before us and hence, we do not fell called upon to discuss the same.

18. In the result, the appeal is allowed and the impugned judgment is set aside. The plaint or the document setting out the dispute shall be returned to respondent 1 for presentation to a competent court

19. We may clarify that in the event of competent court granting a decree for specific performance against the appellant herein, it would be then open to respondent 1 to file a dispute before the Registrar against respondent 2 for getting an order against respondent 2 for approving the transaction of agreement of sale

20. Looking to the facts and circumstances of the case, there will be no order as to costs throughout up to this stage

Appeal Allowed

Sanwarmal Kejriwal v Vishwa Cooperative Housing Society Ltd. And Ors.

Bench	A.M. Ahmadi, K. Jagannatha Shetty
Where Reported	1990 Indlaw SC 847; (1990) 2 SCC 288; AIR 1990 SC 1563; 1990 (1) Bom.C.R. 796; JT 1990 (2) SC 200; 1990 MahLJ 380; 1990 (2) RCR(Rent) 1; 1990 (1) RentLR 411; 1990(1) SCALE 398; [1990] 1 S.C.R. 862
Case Digest	**Summary:** Rent Control - Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, ss.15 A, 28, 5(4A)and 5(11)(bb) - Maharashtra Co-operative Societies Act, 1961, s. 91(1) - Eviction - Licensee occupying a flat in tenant-co-operative society since 1957 - Deemed tenant u/s. 15-A, r/w ss. 5(4- Can be evicted under Rent Act - Whether society can proceed to evict him u/s. 91(1) of Maharashtra Co-operative Societies Act - Held, cannot proceed - Appeal allowed.

Case No : Civil Appeal No. 1369 of 1990

The Judgment was delivered by: A. M. Ahmadi, J.

Special leave granted.

1. Can a licensee occupying a flat in a tenant-co-partnership society be evicted therefrom under Sub-S. (1) of S. 91 of the Maharashtra Co-operative Societies Act, 1960 (Act No. XXIV of 1961), hereinafter called 'the Societies Act', notwithstanding the protection extended by Section 15A of the Bombay Rents, Hotels & Lodging House Rates Control Act, 1947 ('Act No. LVII of 1947), hereinafter called 'the Rent Act', as amended by Act XVII of 1973 or whether such proceedings would be governed by S. 28 of the Rent Act? That is the question which arises for our determination in he context of the fact that the appellant licensee claimed to be in actual possession of the flat on 1st February, 1973, under a subsisting licence, albeit without the express permission of the society. The actual matrix in which this question needs to be answered may be briefly stated as under:

2. The Vishwa Co-operative Housing Society Ltd., respondent No. 1, hereinafter called 'the Society', was registered sometime in 1948 ruder the provisions of the Bombay **Cooperative Societies Act**, 1925 and is deemed to be registered by virtue of S. 166(2) under the present Societies Act. On 2nd March, 1949 one Laxmi Devi Kejriwal was admitted to the membership of the society and was allotted Flat No. 25 of the multi-storeyed building known as 'Vishwa Mahal' situate on "C" Road, Churchgate, Bombay-20. The said Laxmi Devi gifted her interest as the allottee-member of the society to her brother Ambica Prasad Sharma of Udaipur. One D.P. Kejriwal who was looking after this flat inducted the appellant therein w.e.f. 1st June, 1957 under a leave and licence agreement on a licence fee of Rs.400 per month. While the appellant was in actual occupation of the flat, the allottee-member Ambica Prasad Sharma transferred his interest therein to his brother Hari Kumar Sharma, respondent No. 2, sometime in July 1967. The said respondent was admitted to the membership of the society on 15th July, 1967.

Therefore, every other provision of the Rent Act, every provision of any other law and every covenant of a contract which runs counter to the legislative policy engrafted in Section 15A, meaning thereby which provides to the contrary, must yield to Section 15A read with S. 14(2) of the Rent Act. That is why this Court while overruling the decision of the Full Bench of the Bombay High Court in Ratanlal Chandiprasad v. Raniram Darkhand 1985 Indlaw MUM 229, writ petition No. 76 of 1980 decided on 18th October, 1985 observed in paragraph 69 of its judgment in Chandavarkar Sita Ratna Rao v. Ashalata S. Gurnatn, [1986] 4 SCC 447 1986 Indlaw SC 516 at 478 as under:

". .... it must be held that all licensees created by landlords or by the tenant before February 1, 1973 and who were in actual occupation of a premises which was not less than a room as licensee on February 1, 1973 would be the licensees of the landlord or tenant and whether there by any term in the original agreement for tenancy permitting creation of such tenancy or licences or not they would become tenant and enjoy the fights granted under the Act specially those mentioned in S. 14(2) of the Act".

20. Therefore, this Court held that a licensee under a licence created by a tenant, be he a statutory tenant or a contractual tenant, whether or not his tenancy agreement permitted the creation of such licence, was entitled to the protection of Section 15A of the Rent Act. In other words no statutory bar or contractual bar operated against the conferment of the statutory tenancy on the licensee in occupation of any premises on 1st February, 1973 under Section 15A of the Rent Act.

21. That takes us to the next question whether or not a member of a co-partnership type of a co-operative society has such interest in the premises allotted to him as would entitle him to give the same on leave and licencee basis to a non-member. In a tenant co-partnership type of society the members are shareholders; but the title to the property vests in the society which in turn rents the tenements or flats to its members. The cost of construction of dwellings is met from deposits and loans besides the share money. The rental is usually determined on long term basis so calculated as to meet the cost of construction and upkeep of the building and to guarantee perpetuity of occupation on repayment of the whole value of the tenement or flat. At the end of the period the member is credited with additional shares equal to the amount paid by him; the interest on these shares generally matches the rental payable by him to the society. Thus on full payment the member becomes entitled to occupy the tenement or flat free of charge as the rental he has to pay to the society is almost met from the interest received from shares held by him. Thus a member has more than a mere fight to occupy the flat.

22. A similar question came up for consideration before this Court in Ramesh Himmatlal Shah v. Harsukh. Jadhavji Joshi, [1975] 2 SCC 105 1975 Indlaw SC 178 in the context of whether or not the member's right in the flat was liable to attachment and sale u/s. 60 of the Code of Civil Procedure. This Court after analysing the various provisions of the Societies Act, the bye-laws and the regulations framed thereunder, came to the conclusion that the member's right or interest to occupy is a species of property. Proceeding further this Court made the following observations in paragraph 18 to 20 of the Judgment:

"There is no absolute prohibition in the Act or in the Rules or in the bye-laws against transfer of interest of a member in the property belonging to the Society. The only transfer which is void

under the Act is one made in contravention off sub-s. (2) of S. 47 [See S. 47(3)]. We have not been able to find any other provision anywhere to the same effect. In the Scheme of the provisions a dichotomy is seen between share or interest in the capital and interest in property of the Society. While S. 29(2) refers to transfer of a member's share or his interest in the capital or property of any Society, S. 31 in contrast speaks of 'the share or interest of a member in the capital of a Society'. The Act, therefore, makes a clear distinction between the share or interest in the capital and share or interest in property of the Society. We have also noticed that the Act does not recognise interest in the immovable property of the society as well [See s. 41(1)(b)]. We have seen the qualifications for membership. There is no reason to suppose that if the qualification under the byelaws are fulfilled an application for membership may be rejected".

23. After pointing out that the right or interest to occupy is a species of property this Court went on to add as under:

"We, therefore, unhesitatingly come to the conclusion that this species of property, namely, the right to occupy a flat of this type, assumes significant importance and acquires under the law a stamp of transferability in furtherance of the interest of commerce. We have seen no fetter under any of the legal provisions against such a conclusion. The attachment and sale of the property in this case in execution of the decree are valid under the law.

XXXXXXXXXXXXXXXXXXXXXXXXX

In absence of clear and unambiguous legal provisions to the contrary, it will not be in public interest or in the interest of commerce to impose a bar on saleability of these flats by a tortuous process of reasoning. The prohibition, if intended by the Legislature must be in express terms. We have failed to find one".

40. If the occupant-licensee who is a protected tenant under Section 15A'can be evicted by the society on the plea of absence of privity between the society and the protected tenant, it would render the protection of Section 15A redundant. The situation is more or less similar to the case of an owner-landlord whose tenant had contrary to the terms of the contract introduced a licensee who is now protected by Section 15A of the Rent Act. In such a case notwithstanding the absence of privity of contract between the owner landlord and the licensee-protected tenant, the latter cannot be evicted except in accordance with the provisions of the Rent Act. We, therefore, do not see any merit in the contention that notwithstanding the protection given by Section 15A, the society can proceed to evict him u/s. 91(1) of the Societies Act on the plea that such protection is not available against the society. Such a view would defeat the legislative object of Section 15A of the Rent Act.

41. But the jurisdiction of the Court in which the action is originated must be determined on the averments in the plaint or claim application and not on the defence taken by the adversary party. For example, if the plaintiff goes to court alleging that the defendant is a trespasser, the ordinary court will have jurisdiction and its jurisdiction will not be taken away merely because the defendant pleads tenancy. If, however, the defendant succeeds in proving that he is a tenant in respect of premises, possession whereof is sought, the court trying the case would dismiss the suit on the ground that the plaintiff had failed to prove the jurisdictional fact that the defendant was a trespasser. Here also the claim was lodged by the society in the Cooperative Court on

the ground that the appellant was in wrongful occupation of the flat in question and was a mere trespasser.

42. On facts it is now found that the appellant was and is a protected tenant under Section 15A of the Rent Act. The proceedings initiated u/s. 91(1) of the Societies Act cannot, in the circumstances, succeed for the simple reason that the society has failed to prove the fact which constitutes the foundation for jurisdiction. If the society fails to prove that the appellant has no right to the occupation of the flat since he is a mere trespasser, the suit must obviously fail. That is why even in the case of Hindustan Petroleum Corporation Limited 1988 Indlaw SC 628 this Court did not consider it necessary to deal with the contention based on S. 91(1) of the Societies Act in detail and felt content by observing that the point stood covered by the decision in Bhatnagar's case.

43. For the reasons afore-stated, we are of the view that the impugned Judgment of the Bombay High Court cannot be allowed to stand. We allow this appeal, set aside the Judgments of all the Courts below and direct that the claim application filed u/s. 91(1) of the Societies Act shall stand dismissed. However, in the facts and circumstances of the case we make no order as to costs. Appeal allowed.

Yogendra Prasad v Additional Registrar, Co-Operative Societies

Bench	K. Ramaswamy, M.M. Punchhi
Where Reported	1991 Indlaw SC 353; (1992) Supp1 SCC 720; AIR 1991 SC 2137; 1992 (1) BC 53; 1992 (1) BLJR 153; [1992] 74 Comp Cas 57; [1991] Supp1 S.C.R. 143; 1991 (2) UJ 635
Case Digest	**Summary:** Civil Procedure - Trusts & Associations - Bihar and Orissa Co-operative Societies Act, 1935 - ss. 40, 48 and 56 - Simultaneous proceedings instituted under ss. 40 and 48 - Whether the proceedings would amount to double jeopardy - Held, No - Simultaneous proceedings under ss. 40 and 48 are not in substitution but independent and in addition to normal civil remedy under s. 48 - Facts to be established are culpable negligence, misconduct, misappropriation and fraudulent conduct - Passing of order under s. 40 did not divest jurisdiction of Registrar - No double jeopardy - Appeal dismissed.

Case No : Civil Appeal No.2168 of 1980

The Judgment was delivered by : K. Ramaswamy, J.

1. The appellant, the Ex-Treasurer of the Gopalganj Co-op. Development & Cane Marketing Union, Gopalganj, was said to have defalcated a sum of Rs. 95,790.54 and for recovery thereof, proceedings were initiated under s. 48 of the Bihar and Orissa Co-operative Societies Act, VI of 1935, for short 'the Act' with interest accrued thereon of Rs. 25,555 as on December 30, 1976. The Registrar referred the matter to the Asstt. Registrar, Gopalganj, who on enquiry and having given the opportunity to the appellant passed an award in Case No. 400 of 1975 on December 30, 1976 for the aforesaid sums. On appeal, the Deputy Registrar set aside the award on the ground that the appellant was surcharged in Surcharge Case No. 18 of 1976. On further revision, the first respondent set aside the appellate order and confirmed the award with a further direction to pay interest till date of recovery. The appellant filed C.W.J.C. No. 1819 of 1979 which was dismissed in limine by the Patna High Court on August 2, 1979. Thus this appeal by Special Leave.

8. The language couched in s. 56 advisedly was wide of the mark to reach injustice whenever found in the orders or actions of his subordinate officers. Merely because the Asstt. Registrar on reference exercised the power under sub-s. (3) of s.48, the Registrar is not denuded of his supervisory or revisional powers under s. 56 of the Act. Therefore, the Addl. Registrar as delegate of the Registrar is clearly within his power to exercise his revisional power over the appellate order under s. 48 (6) of the Act. It is accordingly legal and valid. The ratio in Roop Chand v. State of Punjab, [1963] Suppl. 1 SCR 539 1962 Indlaw SC 274 is clearly distinguishable. Therein the State Govt. have expressly delegated their power to the Asstt. Director. Thereby the Subordinate Officer exercised the powers of the State Govt. as their delegate. The Govt. was

thereafter devoid of powers to exercise the revisional powers over the subordinate officers. This court in Chintapalli Agency's case 1977 Indlaw SC 107 (supra) distinguished Roop Chand's ratio. Din Dayal Singh's case 1975 Indlaw PAT 62 (supra) no doubt supports the contention of the appellant. Relying upon the language in sub-section (9) of s. 48 "save as expressly provided in this section ", the Division Bench construed that the appellate order of the Deputy Registrar passed under s. 48 (6) was otherwise provided and so was not amena- ble to revision under s. 56. The learned Judges construed that since the appellate order shall be final. The effect of language under sub-sec. (9) of s. 48 was to exclude the revisional jurisdiction of the Registrar under s. 36. In addition, the Division Bench also construed that the Registrar himself referred the dispute to the Asstt. Registrar and any person exercising the power of the Registrar in this behalf is to be in the parameters of his delegate and that, therefore, the Registrar himself cannot revise his own order under s. 56. We find it difficult to approve the ratio of the High Court. At the cost of repetition we point out that s. 6, sub-section (1) and sub-section 2 (a) make a distinction between "the Registrar" and "a person exercising the powers of the Registrar". Sub-section (4) further amplifies the exercise of the power of the Registrar by the Additional Registrar as his delegate.

11. The culpable negligence, misconduct, misappropriation, fraudulent conduct etc. are relevant facts to be established in the proceedings under s. 40. But that is not so under s. 48. Therefore, mere initiation or an order passed under s. 40 does not divest the jurisdiction or power of the Registrar under s. 48 when it was referred to for a decision of the dispute. Exercise of the jurisdiction to pass an award under s. ,18(3) or revision under s.-56 does not amount to double jeopardy. We are informed that an appeal before the Government is pending against surcharge order under s. 40. We express no opinion thereon. We hold that exercise of the power to pass an award under s. 48 does not amount to double jeopardy. The appellate order of the Dy. Registrar is obviously and palpably illegal and rightly corrected. The appeal is accordingly dismissed, but since none appeared for the respondents we order no costs.

Appeal dismissed

Gajanan Narayan Patil And Ors. v Dattatraya Waman Patil And Ors.

Bench	B.C. Ray, Kuldip Singh, Mr.Justice R.M. Sahai
Where Reported	1990 Indlaw SC 715; (1990) 3 SCC 634; AIR 1990 SC 1023; 1990 (1) BC 400; [1990] 69 Comp Cas 1; JT 1990 (1) SC 517; 1990(1) SCALE 305; [1990] 1 S.C.R. 491; 1990 (2) UJ 174
Case Digest	**Summary:** Labour and Industrial Law - Industrial Disputes Act, 1947 - Industries (Development And Regulation) Act, 1951 - SICA, 1986 - Constitution, art. 32 - Closure of some industrial units - Around 10,000 workmen losing job - Claim their dues - Provisional liquidator appointed - Assets deterioating fastly - prompt action required - State Govt. proposed to nationalise some of the viable units - The Central Govt. also giving support - Directions sought from the SC -Revival of those viable units allowed , after giving Directions - Petition allowed.

Case No : Civil Appeal Nos. 4676 and 4793 of 1989

The Judgment was delivered by : B. C. Ray, J.

2. The matrix of the case is that the appellants who are the duly elected Directors of the Sanjay Sahakari Sakhar Karkhana Ltd. hereinafter to be termed as "Karkhana" signed a requisition and sent the same to respondent No. 3, the Joint Director of Sugar and Joint Registrar, Cooperative Societies, Maharashtra State, Pune requesting him to summon a special meeting of the Committee of the Karkhana to consider the proposed motion of no-confidence against the Chairman of the Committee, Dattatraya Waman Patil, respondent No. 1. This requisition was signed by more than one-third of the total members of the committee in accordance with the provision of cl. (2) of Section 73-ID of the Maharashtra **Cooperative Societies Act**, 1960 (Maharashtra Act 24 of 1961). The above requisition was received in the office of the Joint Director of Sugar and Joint Registrar, Cooperative Societies, Maharashtra State, Pune, respondent 3.

   On a consideration of the provision of Section 73-ID, read with Rule 57-A and bye-law 29 of the bye-laws of the Society, the High Court allowed the writ petition holding that the three members of the second category who have got a limited right to vote at a meeting except at a meeting to elect Chairman or Vice-Chairman are entitled to be served with notices of the special meeting and to participate in the said meeting and as the two nominees of the financial institutions and the expert co-opted members had not been served with the notices of requisition meeting, the requisition meeting cannot be held. Instead of quashing the notice issued by respondent 3 convening the meeting, the High Court directed the Registrar, respondent 3 to issue fresh notices to the elected members as well as to the three Directors of the second category before holding the meeting and disposed of the writ petition accordingly. The High Court however restrained the Chairman to enter into new contracts as well as giving any fresh commitment on behalf of the Karkhana.

10. The requisition to call the special meeting of the committee of a society to consider a motion of no-confidence against the President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer, or other officer of the society, by whatever designation called, who holds office by virtue of his elections to that office, shall be made in Form M-18. The requisition shall be accompanied by:

(a) the grounds of no-confidence

(b) the text of the motion of no-confidence to be moved

(c) the names of the Committee members who shall move the motion of no-confidence

(d) a list of members of the Committee specifying their full names, and address who are, for the time being, entitled to sit and vote at any meeting of the committee.

(e) signatures of the members of the Committee who are signing the requisition duly attested by the Chief Executive Officer of the society or Special Executive Magistrate or Executive Magistrate or any gazetted officer of the government.

11. The requisition referred to in sub-rule (1) shall be delivered in person to the Registrar. Such requisition or requisitions shall be delivered in duplicate in each case. The Registrar on ascertaining that the requisition or requisitions, as the case may be, have been signed by not less than one-third members of the Committee who for the time being are entitled to sit and vote at any meeting of the committee of society shall:

(a) receive and acknowledge the requisition under his signature with date and time

(b) issue notice, within 7 days from the date of receipt of the requisition, convening the special meeting for that purpose specifying therein place, date, time, name and designation of the officer who shall be presiding over such meeting, to all the members of the Committee, the presiding officer and the Managing Director, General Manager, Manager, paid Secretary, Group Secretary or such employee of the society, whom the Registrar has directed to produce the minutes book of Committee meetings of the society. This notice of no-confidence, shall also be issued, to the officer or officers against whom the motion of no-confidence is being moved, and shall be accompanied by the copy of the requisition along with enclosures and agenda(5) The time of the meeting shall be between office hours of the authorised officer. The meeting shall be held either in the office of the Registrar or in the office of the person authorised by the Registrar to preside over the meeting

12. No other subject, except the motion or motions of no-confidence shall be kept on the agenda. The Registrar or the officer authorised to preside over the meeting shall not allow any other person to enter the place of meeting except the person or persons appointed to assist him, the officer of the society who has produced the minutes book, the officer or officers against whom the motion of no-confidence is moved, the members of the committee who are for the time being entitled to sit and vote at any meeting of the committee, who are present at the commencement of the meeting and police officer or officers if called by him to maintain the law and order."

18. It is also evident from the provisions of bye-law 29 that the representative of the State Government shall not be entitled to vote on any subject at any meeting of the Board, but his opinion may be recorded in the minute book. So far the representatives referred to in clauses D(i) and (D) (ii) in

bye-law 29, that is, the representatives of the financing institutions as well as the expert nominee (co-opted) falling under bye-law 29(E) are entitled to participate in the special meeting and also cast their votes in such meeting. This being the position, it is against the provisions of the Act, Rules and bye-laws of the society to hold that the members falling under bye-law 29(D)(i), and (ii) as well as the expert nominee (co-opted) under bye-law 29(E) are not entitled to sit and vote in the meeting of the Committee convened for consideration of the no confidence motion against the Chairman, Board of Directors or for that of the Managing Committee. This interpretation will be wholly going against the clear meaning of the expression, namely, members who are entitled to sit and vote at any meeting of the Committee.

The right to participate in the special meeting as well as to vote for such meeting is a statutory right and it flows from the provision of the Act, Rules and bye-law of the society. It has nothing to do with democracy. The words "entitled to sit and vote in any meeting" of the society refer to member to sit and vote not in every meeting but in any meeting of the society. The only express bar provided in S. 27 is that the members, that is, the Director-representatives of the financial institutions as well as the Expert Director (co-opted) are not competent to participate only in the election of members of the society. The said Directors have been conferred the right to participate in any meeting including the special meeting of the Board of Directors or of the Managing Committee of the society. It is appropriate to refer to Jamuna Prasad Mukhariya v. Lachhi Ram 1955 Vol. 1 S.C.R. 608 1954 Indlaw SC 52 at 610. It has been observed "the right to stand as a candidate and contest an election is not a common law right. It is a special right created by statute and can only be exercised on the conditions laid down by the statute. The Fundamental Rights chapter has no bearing on a right like this created by statute. The appellant have no fundamental right to be elected Members of Parliament. If they want that they must observe the rules".

The impugned notice convening the special meeting is wholly illegal and unwarranted. Furthermore, as we have found hereinbefore that the two Directors representing the financial institutions as well as the expert nominee (co-opted) are entitled to participate in the special meeting of the committee and also to vote at the same meeting as regards the no-confidence motion, the non-service of the notice of the said meeting on the aforesaid Directors renders the said special meeting illegal as there has been an infringement of the provisions of the said Act, Rule 57-A of the Maharashtra Cooperative Societies Rule, 1961 and bye-laws 29-D(i) and (ii) 29-E of the bye laws of the society. We, therefore, dismiss the appeal and allow the writ petition filed in the High Court. The appellant will pay costs quantified at Rs. 5, 000 to the respondents.

20. R.M. SAHAI, J.

The short question of law that arises for consideration in this appeal directed against the order of the Bombay High Court, is whether the nominees of financial institutions and co-opted Technical Directors who are not entitled under bye-law 29 of the Sanjay Sahakari Sakhar Karkhana Ltd. (hereinafter called as 'Society') framed under the Maharashtra Co-operative Societies Act, 1960 (for brevity 'Act'), either to function as Chairman or Vice-Chairman of the Board of Directors of the Society or to vote at their election are entitled to participate in a special meeting requisitioned for consideration of motion of no-confidence under Section 73-ID of the Act.

21. Resolution to requisition a special meeting to consider motion of no-confidence against the Chairman of the Board, signed by more than one-third members of the Board, was delivered to the Registrar as required by Rule 57-A along with a list of members who were entitled to sit and vote. Notices on it were issued u/cl. (b) of sub-rule (2) of Rule 57-A to elected members only. Validity of it and consequent proceedings were challenged before the High Court, amongst others, for being violative of Rule 57-A as it required the Registrar to issue notices to all members of the Board. Further nominees of financial institutions being vitally involved in the welfare of the Society, their presence was essential for effective and meaningful discussion even if they were not entitled to sit and vote. Various other objections were raised. But the High Court did not find merit in any except the one relating to non-issuance of notice to nominees of financial institutions and the expert co-opted by the Board. Reason for it was wider construction of the expression "who are for the time being entitled to sit and vote at any meeting of the committee" used in Section 73-ID of the Act. The High Court found that even though it would have been more logical to restrict such right to those alone who were entitled to elect yet it widened the ambit of the expression because if two meanings were possible then the meaning which extended the right to vote rather than that which limited should be accepted. It also found that right to vote on a resolution of no-confidence being an important matter affecting the Society, it should be extended to even nominated members who had a right to vote at some meeting.

25. Elections in a democracy have been conceived as an instrument of selecting the best qualitatively superior and politically valuable. Who should be entitled to reverse the selection? Those who elect or any other numbers increased by any methodology or law adding representatives and nominees are not entitled to participate in selection? If the value of the elective process has to have primacy then those worth of choice should not be permitted to be squeezed out by those who are precluded from leadership or electing the leader. This basic concept does not stand altered or modified either by any provision in the Act or Rules. Literal construction of expression 'entitled to sit and vote' if it results in negation of the democratic process or is against logic and is fraught with danger of the removal of an elected representative by nominees of financial institutions or government then it has to be avoided.

26. Reverting to statutory rights the scheme of the Act does not warrant the conclusion that such members are entitled to participate in meetings requisitioned under Section 73-ID. Sub-s. (9) of S. 27 reads as under:

"27. (9) No nominees of the government or of any financing bank on any society shall be entitled to vote at any election of its committee".

27. It clearly and unequivocally debars nominees of financial institutions or government representatives from exercising any right to vote any election meeting. Therefore, the provisions in the bye-law debarring such a member from voting at election of the Chairman or Vice-Chairman cannot be interpreted to mean as permitting such representatives to vote at other election meetings as that may result in invalidating the bye-law. Even if such members have some right to vote in some meetings other than election meetings or they have right to record their opinion it does not entitle them to participate or even served with notice of vote of confidence as nature of meeting for considering motion of no-confidence has all the characteristics both in content and effect of an election meeting. Voting is sine quo non of election and u/cl. (i) of sub-rule (7) of Rule 57-A, the

decision to retain Chairman is arrived at by voting and such right, namely, right to vote in election meeting being non-extent in nominees of financial institutions or of government the expression "entitled to sit and vote" used in Section 73-ID has to be read as excluding such members from its ambit. Such a reading of the provision is necessary not only because it is more logical but also that is the outcome of combine reading of sub-s. (9) of Section 27, Section 73-ID and bye-law 29.

28. For these reasons, this appeal succeeds and is allowed. The writ petition filed in the High Court is dismissed. But there shall be no order as to costs.

Appeals allowed

Pundalik v
District Deputy Registrar, Co-Operative Societies, Chandrapur and Others

Bench	K.N. Saikia, M.M. Punchhi
Where Reported	1991 Indlaw SC 539; (1991) 2 SCC 423; 1992 (2) BankCLR 207; 1991 (3) Bom.C.R. 154; [1991] 72 Comp Cas 38; JT 1992 (2) SC 576; 1991(1) SCALE 299; [1991] 1 S.C.R. 675; 1991 (1) UJ 560
Case Digest	**Subject:** Banking & Finance; Corporate **Keywords:** Maharashtra Co-operative Society Act, 1960 **Summary:** Election - Maharashtra Co-operative Societies Act, 1960, ss. 73 FF, 78(1), 91, 144 E, 144 T and 154 - Elections of Directors to the District Central Cooperative Bank - Disqualification - Legality of - Whether appellant is a defaulter and whether setting aside of his election was justified? - Held, the day, an installment falls due, on its due date, failure to pay, results in default and that default continues from day to day until it is repaid - Considered by this principle, appellant can be said to have made default on first day of his directorship and on every subsequent day till installment or installments were paid submission, has, therefore, to be rejected - Sub-s. (2) of s. 73 FF says that a member who has incurred any disqualification under sub-s. (1) shall cease to be a member of committee and his seat thereupon be deemed to be vacant - Appeal dismissed.

Case No : CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4974 of 1990. From the Judgment and Order dated 20.6.1990 of the Bombay High Court in W.P. 2403 of 1989.

The Judgment was delivered by : K. N. Saikia, J.

1. Pursuant to the Notification issued in June 1986 the elections of Directors to the District Central Cooperative Bank, Chandrapur, hereinafter referred to as 'the Bank' the appellant filed his nomination papers in July 1986, and he was elected on 18.8.1986 as one of the Directors of the Bank from the Brehmapuri Agricultral Sales and Purchase Society. His election was not called in question according to the procedure prescribed by the Maharashtra **Cooperative Societies Act**, 1960, hereinafter referred to as 'the Act'.

2. On 8.1.1987, the District Deputy Registrar of the Cooperative Societies, Chandrapur, hereinafter referred to as 'the Deputy Registrar', issued a notice to the appellant under section 78(1) of the Act to show cause within 15 days as to why he should not be removed from the Board of Directors of the Bank as per the provisions of section 73FF, and directed him to remain present on 2.2.1987 at 11 A.M. in the Deputy Director's office. The notice stated that the appellant had borrowed a loan of total Rs. 10,000 (Rs. 7,000 as debt and Rs. 3,000 subsidy) from the Bank and

he kept the loan constanty in arrears till 21.10.1986, and being elected as Director of the Bank on 18.8.1986. till then he was working as the Director of the Bank. The notice further said:

"Because you have remained in arrars of the loan instalments as referred above to the Maharashtra State Cooperative Land Development Bank, under Section 73FF(i)(b) of the Maharashtra State **Cooperative Societies Act**, 1960*, you are disqualified to be elected or to continue as Director or Executive Committee Member of the Executive Committee of a Cooperative Society and u/s 73FF(2) of* Maharashtra State **Cooperative Societies Act**, 1960 *a person committing defaults ceased to be the Executive Committee (member) or Director.*

Sub-section (2) says:

"A member who has incurred any disqualification under sub-section (1), shall cease to be a member of the committee and his seat shall thereupon be deemed to be vacant."

10. This section was inserted by Maharashtra Act, XX of 1986 with effect from 12.5.86. If the impugned order is found to have been passed by way of setting aside the election of the appellant the order would be bad as the appellant's election had not been called in question in accordance with the procedure prescribad by the Act. However, the notice has ex facie been issued under section 78 of the Act. No doubt there is reference to the appellant's having been a defaulter and disqualified for being elected but it has been addressed to the appellant as Director of the Bank and also stated: "You have been elected as Director on the Board of Directors of Chandrapur District Central Cooperative Bank on 18.8.1986 and today on this date you are working as the Director of the said Bank." It also refers to the appellant's being disqualified or to continue as Director or Executive Committee member of the Executive Committee' under section 73FF of the Act and about ceasing too be a Director by committing default. From the above contents, there is no room for holding that the appellant's election has been set aside by the impugned order; on the other hand, the emphasis is on the appellant's being disqualified to continue as Director or creasing to be Director on account of his having committed default. The question of generalibus specialia derogant-special things take from general or generalia specialibus non derogant general words do not derogate from special, therefore, does not arise. What was stated in the report in Hundraj Kanayalal Sajnani v. Union of India, AIR 1990 SC 1106 1990 Indlaw SC 747will not be relevant. The question of repugnancy involved in Zaverbhai Amaidas. v. The State of Bombay, [1955] 1 SCR 799 1954 Indlaw SC 122 does not arise in this case. The decision in Maharashtra State Board of Education v. Paritosh Sheth, [1985] 1 SCR 29 1984 Indlaw SC 322 is also not apposite. The provisions relating to election have to be interpreted harmoniously with other provisions of the Act such as in section 78(1). Interpretare concordare leges legibus est optimus interpretendi modus. To interpret and in such a way as to harmonize laws with laws is the best mode of interpretation.

13. Similarly the submission that the defalult must have been one committed after the Act came into force has also to be rejected on the same ground that immediately on the Act coming into force the appellant was a defaulter and so long that default continued he must be taken to have made default until repayment.

14. What then would be the consequence of such a default. Sub-section (2) of section 73FF says that a member who has incurred any disqualification under sub-section (1) shall cease to be a

member of the Committee and his seat shall thereupon be deemed to be vacant. Therefore, the moment the appellant after election continued to be in default, and, therefore, must be taken to have made default, stood disqualified and thereby ceased to be a member of the committee and his seat deemed to have fallen vacant. In this view of the matter the notice of the Deputy Registrar was in effect to say that the appellant had already ceased to be a Director and his seat already fell vacant. In Keshaorao Narayanrao Patil v. District Deputy Registrar reported in 1987 Maharashtra Law Journal 709 Bombay High Court held that s. 73FF(2) did not operate automatically and that passing of an order of removal was necessary. This has to be interpreted in the context of the provisions in the section.

15. In this view of the matter there could not be any infirmity either in the notice or in the impugned order of removal.

16. The result is that this appeal fails and is dismissed. The interim orders, if any, stand vacated. No. costs.

Appeal dismissed

Jackson Co-Operative Credit Society Limited v Co-Operative Banks and Societies Employees'

Bench	T.K. Thommen, M.M. Dutt
Where Reported	1989 Indlaw SC 554; (1989) 3 SCC 89; (1989) SCC (L&S) 424; AIR 1989 SC 1398; 1989 (1) CLR 636; 1989 (2) CompLJ 38; 1989 (58) FLR 906; JT 1989 (2) SC 31; 1989 LabIC 1369; 1989 (1) LLJ 563; 1989 (1) LLN 797; 1989(1) SCALE 965; [1989] 2 S.C.R. 266; 1989 (2) UJ 249
Case Digest	**Subject:** Corporate; Labour & Industrial Law; Service **Summary:** Labour and Industrial Law - Payment of Bonus Act ,1965, s. 6(d) and sch.3, item 4 - Maharashtra Co-operative Societies Rules, 1961, r. 54 - Computation for payment of bonus to the employees of Co-operative societies - Direction was issued to pay 20 percent bonus without regard to various amounts invested by it as permitted u/s. 66 of 1961Act and r. 54 of 1961 Rules - Question arise as to determination of the amount deductable from the Gross profit - Held, 8.5% of capital invested plus amounts carried forward to Reserve Fund u/s 66 will be deductible from the Gross profit - Appeal dismissed.

Case No : CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4042 of 1988. From the Judgment and Order dated 17.12. 1987 of the Bombay High Court in W.P. No. 1048 of 1982

The Judgment was delivered by: Thommen, J.

1. This civil appeal by special leave is directed against judgment dated 17.12.1987 of the High Court of Bombay in Writ Petition No. 1048 of 1982 instituted by the appellant, which is a Co-operative Credit Society. The 1st respondent is a Federation representing the employees of the appellant amongst others.

2. Setting aside the award of the Industrial Tribunal, the High Court held that the appellant was liable to pay its employees bonus at the rate of 20 per cent of its total annual earnings for the years 1975-76, 1976-77 and 1977-78.

3. The principal contention urged at the Bar against the impugned judgment is that the High Court went wrong in directing the appellant to pay bonus without regard to various amounts invested by it as permitted under the relevant provisions of the Maharashtra Cooperative Societies Act, 1960 (the "Co-operative Societies Act") and other amounts carried forward to its reserve fund. The appellant's counsel contends that the High Court did not correctly read the provisions of S. 6(d) of the Payment of Bonus Act, 1965 (The "Bonus Act") and item (4) of the Third Schedule to the said Act. Counsel further contends that the High Court was not justified in. placing reliance on the Explanation to the Third Schedule to the Bonus Act as it has no relevance to co-operative societies.

7. Accordingly, all such amounts held by the society as reserve fund in terms of S. 66 of the Co-operative Societies Act must qualify for deduction. The minimum reserve fund that is required to be maintained by S. 66 of the Co-operative Societies Act is one fourth of the net profits of each year. (If larger amounts are carried forward to the reserve fund in terms of Section 66, all such amounts will come within the ambit of item (4) of the Third Schedule to the Bonus Act and qualify for deduction.) Accordingly, we hold that 8.5 per cent of the capital invested by the society in its establishment as disclosed by its books of accounts, together with amounts carried forward to a reserve fund in compliance with S. 66 and other provisions of the Co-operative Societies Act read with the rules made there under (See Rule 54 of the Maharashtra Co-operative Societies Act, 1954) will be deductible in terms of S. 6 of the Bonus Act.

8. We must, however, point out that the High Court was not justified in placing any reliance on the Explanation to the Third Schedule to the Bonus Act for that has, as tightly pointed out by the appellant's counsel, no relevance to a co-operative society.

9. In this connection, we place on record that counsel on both sides agree that reference to 20 per cent in paragraph 11 of the judgment was wrong in respect of the year 1975-76. They agree that for that year, the correct figure is 18.78 per cent. Accordingly, we hold that reference to 20 per cent in paragraph 11 of the impugned judgment must be read as 18.78 per cent for the year 1975-76 and 20 per cent for the succeeding two years.

10. Subject to what we have stated above, we hold that the High Court was right in directing the appellant society to pay bonus to its employees. The society is liable to pay bonus at the rate of 20 per cent for the years 1976-77 and 1977-78 and 18.78 per cent for the year 1975-76.

11. In the circumstances, the appeal must fail and is accordingly dismissed. The parties shall bear their respective costs.

Appeal dismissed.

Broach Distt. Co-Operative Cotton Sales, Ginning v Commissioner Of Income Tax, Ahmedabad.

Bench	R.S. Pathak, M.H. Kania
Where Reported	1989 Indlaw SC 596; (1989) SCC (Tax) 351; (1989) 2 SCC 679; AIR 1989 SC 1493; 1989 (2) CompLJ 164; 1989 (77) CTR 70; [1989] 177 ITR 418; JT 1989 (2) SC 267; 1989(1) SCALE 1138; [1989] 2 S.C.R. 720; [1989] 44 TAXMAN 439; 1989 (2) UJ 150
Case Digest	**Summary:** Income Tax Act, 1961, s. 261 - Co-operative society marketing cotton of its members after ginning and pressing it - And levying charges for it on its members - Receipts from it exempt u/s. 81(i)(c) - To encourage co-operative activity - Dispute as to income in the light of s. 261 - (A) Question arise as to applicability of proviso to s. 81(i), as applicable before 01-04-1968 - (B) Can the plea that ginning and pressing changed the character of the cotton and was not agricultural produce of society's member, be allowed to be raised for first time before SC - Held, exemption u/cl.(c) of s. 81(i) allowed and not the proviso - The plea cannot be permitted to be taken now - Appeal allowed.

Case No : CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 5 135 15 (NT) of 1975. From the Judgment and Order dated 24.9.1973 of the Gujarat High Court in Income Tax Reference No. 31 of 1971

The Judgment was delivered by : R. S. Pathak, J.

1. These appeals by certificate granted by the High Court of Gujarat are directed against the judgment of the High Court answering the following question in favour of the Revenue and against the assessee:

   "Whether, on the facts and in the circumstances of the case, the income of the Society from ginning and pressing was exempt under section 81(i)(c) of the Income-Tax Act, 1961*, as it stood prior to its amendment on 1st April, 1968?"*

2. The assessee is a. co-operative society constituted under the Cooperative Societies Act. The objects of the society intend that it should press cotton and pack the bundles for its individual members as well as other customers, to Use its machinery for any useful work of its members, and to sell raw cotton seeds and other agricultural products. The assessee possesses a ginning and pressing factory to cater to the needs of its members. It gets raw cotton from the members, and ginns and presses the cotton for marketing on behalf of its members. For rendering the services of ginning and pressing before selling the goods, the assessee charges the members a certain amount by way of ginning and pressing charges. It also charges commission for the sale of the finished product.

2. This litigation has a long history. We consider it necessary to have a brief resume of relevant facts giving rise to this appeal. The Postal Co-operative House Construction Society Limited,

Kidwaipuri, Patna was registered on December 14, 1955 under the Bihar Co-operative Societies Act, 1935 (hereinafter referred to as the 'Act'). The object of the Society was to acquire land and construct houses and allot the same to its members. Initially, membership of the Society was limited to the post office employees posted in the District of Patna who may have put in at least 3 years continuous service in the department. Soon the society realised that with the limited resources of the postal employees employed in Patna the Society could not collect sufficient funds to acquire the land for construction of the houses. Faced with this difficulty, the Board of Directors of the Society passed a resolution on November 28, 1987 amending the bye-laws of the Society permitting the Central and State Government employees also to be the members of the Society. Pursuant to the resolution, the appellant, Kuver Nath Lal, and several other State Government employees were registered as members of the Society. The Society collected money from them to the tune of Rs 62, 000 and acquired land worth Rs 75, 000. It appears that subsequently when the houses were constructed the Society did not allot any house to the appellant. He raised a dispute which was referred to the arbitrator and in the arbitration proceedings it was ultimately held that the appellant was entitled to continue to be a member.

3. On April 11, 1969 the Registrar, Co-operative Societies, passed a supplementary award holding that the house no. 29 should be allotted to the appellant. The Society thereupon filed a writ petition under Article 226 of the Constitution of India before the High Court of Patna questioning the validity of the Registrar's award. The writ petition was allowed and the award of the Registrar, Co-operative Societies, was quashed on the finding that the appellant could not be a member of the Society as the Board of Directors had no power to amend the bye-laws inducting Central Government and State Government servants as members of the Society. The Court further held that the bye-laws could be amended only by the General Body or the Registrar. A special leave petition was filed in this Court by the appellant but subsequently he withdrew the same.

4. The appellant thereafter made an application to the Registrar requesting him to amend the bye-laws to protect the interest of the appellant and other government employees who had deposited money with the Society, which the Society utilised for acquiring the land and constructed houses. The Registrar issued notice under Section 26 of the Act to the Society directing it to amend the bye-laws or in default to show cause why the Registrar should not himself amend the bye-laws. The Society failed to amend the bye-laws, thereafter the Registrar amended the bye-laws of the Society permitting the State and Central Government employees to be the members of the Society by his order dated March 8, 1972. The order of the Registrar was confirmed in appeal by the Minister of the Co-operative Department. The Society thereupon filed a writ petition before the High Court under Article 226 of the Constitution challenging the order of the Registrar as confirmed by the Minister. A Division Bench of the High Court has by the impugned order set aside the order of the Registrar and the Minister on the ground that the amendment of bye-laws was made in the colourable exercise of power. Hence this appeal by special leave.

5. After hearing the learned counsel for the parties and having regard to the history of the litigation and the facts and circumstances of the case, it is apparent that the Society had itself invited other government servants to be its members; it had collected money from them, and utilised the same for purchasing the land over which houses were constructed. The Society later on backed out and challenged the continuance of the membership of the other government servants on a technical

ground that the bye-laws had not been amended by the General Body. The Registrar of the Co-operative Societies considered the entire matter and he held that having regard to the facts and the history of the Society, the public interest as well as the Society's interest required that the bye-laws be amended, to safeguard the interest of government servants whose money had been appropriated by the Society for acquiring land. The Registrar's order dated March 7, 1972 making amendments in the bye-laws was made in exercise of his statutory powers under Section 26 of the Act. The Registrar had not acted mala fide on any extraneous consideration instead he exercised his power in a just and reasonable manner to meet the exigency of the situation and to remove the injustice that was being caused to government servants who had been enrolled as members of the Society and deposited money with the Society. There was no question of any colourable exercise of power by the Registrar in amending the bye-laws of the Society. The High Court, in our opinion misdirected itself in interfering with the order of the Registrar.

Commissioner Of Income Tax, Lucknow v U.P. Cooperative Federation Ltd

Bench	Ranganath Misra, R.S. Pathak
Where Reported	1989 Indlaw SC 749; (1989) SCC (Cr) 183; (1989) 1 SCC 747; AIR 1989 SC 915; [1989] 65 Comp Cas 585; 1989 (2) CompLJ 43; 1989 (76) CTR 22; [1989] 176 ITR 435; JT 1989 (1) SC 258; 1989 SCALE 340; [1989] 1 S.C.R. 586; [1989] 43 TAXMAN 20
Case Digest	**Summary:** Income Tax & Direct Taxes - Income Tax Act, 1922, s. 14(3) - Co-operative society - Taxable income - Computation -operative Federation having member co-operative societies in State - Object, to regulate distribution and supply of coal, sugar etc through members - Sum given as securities and interest received from Co-operative Sugar Factory - Amount of interest received, if exempted - Held, not exempted u/s. 14(3) - However, sum of interest received from co-operative societies on temporary loan for financing sugar business could be exempted u/s. 14(3)(iii) - Answered in favour of department.

Case No : Civil Appeal No. 1228(NT) of 1975. From the Judgment and Order dated 29.11.1973 of the Allahabad High Court in I.T. Reference No. 842 of 1971.

The Judgment was delivered by : Ranganath Misra, J.

1. This appeal at the instance of the Revenue is by special leave. Two questions out of six referred by the Income Tax Appellate Tribunal, Allahabad, survive for consideration in this appeal and these are:

   (1) Whether on the facts and in the circumstances of the case, and on a true interpretation of the agreement, the Tribunal erred in holding that the sum of Rs.9,000 received as interest from Bazpur Cooperative Sugar Factory Ltd. is not covered under Section 14(3) of the Income Tax Act?

   (2) Whether on the facts and in the circumstances of the case, and on a true and correct interpretation of the various clauses of the agreement, the sum of Rs.51, 295 and Rs.58, 937 received as interest on advances would not be assessee's income from coal and sugar business and would thus be exempt under Section 14(3) of the Income Tax Act, 1922?

2. At the hearing it has been clarified by counsel for both parties that in the second question referred to above, the dispute is confined to the sum of Rs.51,295 only.

3. The relevant assessment year is 1961-62 corresponding to the accounting year ending with 30th June, 1960. The assessee is a cooperative society registered under the Cooperative Societies Act, 1912. This being an apex body, its members are various District Cooperative Societies, District

Cooperative Banks and some Government and other cooperative societies within the State of Uttar Pradesh. The principal object of the Society is to regulate the distribution and supply of items like coal, sugar, cloth etc. through the member cooperative societies.

8. Admittedly, the assessee's claim does not come under clause(i) of Section 14(3). Unless this sum is covered by Section 14(3)(iii), there would be no exemption. The sum of Rs. Two lakhs given as security in terms of the agreement was not an investment and, therefore, the amount of Rs.9,000 received by way of interest does not come within the purview of clause (iii). Mr. Salve for the assessee respondent has fairly conceded that it would be difficult on his part to press the claim of the assessee for exemption in respect of this sum. The conclusion of the High Court in regard to this amount has, therefore, tO be reversed and the stand of the Revenue to the effect that this amount represents taxable income has to be accepted.

9. Our answer to the first question, therefore, is that on the facts and in the circumstances of the case and on a true interpretation of the agreement, the Tribunal did not err in holding that the sum of Rs.9,000 received as interest from Bazpur Cooperative Sugar Factory Ltd. was not covered under Section 14(3) of the Income Tax Act.

11. Dispute covered by the second question to be answered is over this amount. The Income Tax Officer as also the two appellate authorities relying upon the decisions of the Bombay High Court in Sir Chinu Bhai Madav Lal v. Commissioner of income Tax, 37 I.T.R. 210 1936 Indlaw MUM 3 and Commissioner of Income Tax, Bombay City v. Bombay State Cooperative Bank Ltd., 59 I.T.R.31 1965 Indlaw MUM 50 held that the amount on which interest had been earned under the agreement did not constitute investment and, therefore, was not covered by Section 14(3)(iii) of the Act.

21. In our opinion, therefore, the amount of Rs.51,295 squarely came within Section 14(3)(iii) of the Act. The High Court, therefore, was right in its conclusion that no tax was payable on the said amount. We would like to point out that under Section 14(3) provision has been made to extend certain advantages to the cooperative societies in order that the legislative purpose of providing incentive to the cooperative movement may be fulfilled. The High Court was right in holding that the provisions contained in Section 14(3) should be liberally construed.

22. Our answer to the second question, therefore, is on the facts and in the circumstances of the case and on a true and correct interpretation of the various clauses of the agreement, the sum of Rs.51, 295 received as interest on advances in the assessee's income from sugar business was exempt under Section 14(3) of the Income Tax Act, 1922.

Commissioner Of Income Tax, U.P.-Ii, Lucknow v Bazpur Co-Operative Sugar Factory Limited

Bench	M.H. Kania, R.S. Pathak
Where Reported	1988 Indlaw SC 492; (1988) 3 SCC 553; AIR 1988 SC 1263; 1988 (2) CompLJ 198; 1988 (70) CTR 94; [1988] 172 ITR 321; JT 1988 (2) SC 597; 1988(1) SCALE 1016; [1988] 3 S.C.R. 1034; 1988 TAXLR 1095; [1988] 38 TAXMAN 195
Case Digest	**Summary:** Income Tax and Direct Taxes - Income Tax Act, 1922, s. 10 - Income Tax Act ,1961, s. 28 - Co-operative society - Manufacture and sale of sugar - Its Bye -law provide for deduction of certain amount from purchase price and credited to a fund - Fund meant for adjusting - Losses in working year, repayment of initial loan, redeeming govt. share and then share capital in sequence - Ammendment of the Bye-law with retrospective effect - Income tax assessment for year consequent to amendment - Whether it is within the powerof the society to amend bye-laws retrospectively - Whether the amount deducted were revenue receipts or capital receipts - Held, unamended bye-law applied - Amounts deducted were revenue receipts - Appeal allowed.

Case No : CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 563 and 564 of 1975. From the Judgment and Orders dated 15.11.71 and 9.5.72 of the Allahabad High Court in I.T.R. No. 67 of 1969 and 724 of 1971.

The Judgment was delivered by : Hon'ble Justice M. H. Kania

The relevant facts are as follows:-

2. The respondent (assessee) is a Co-operative Society registered under the Co-oprative Societies Act, 1912. It carries on the business of manufacture and sale of sugar and runs at a Mill situated at Bazpur. The relevant assessment year is the assessment year 1961-62, the corresponding to the accounting year 1st July, 1959 to 30th June, 1960, which was the relevant co-operative year. The assessee had established a fund called "Loss Equalization and Capital Redemption Reserve Fund". On the opening day of the year of account, namely, 1st July, 1959, a sum of Rs.1,30,196 stood to the credit of this fund. During the relevant accounting year, the respondent society added a sum of Rs.5,15.863 to this fund by deduction from the price payable by the respondent to its members for the supply of sugarcane received from its members. These deductions were made under the provisions of bye-law 50 of the Bye-laws of the respondent society, to which we shall presently come. Bye-law 50 under which the said amount was deducted from the price payable by the respondent to its members for the supply of sugarcane at the relevant time ran as follows:-

"There shall be established a Loss Equalisation and Capital Redemption Reserve Fund in the Society. Every producer shareholder shall deposit every year a sum not less than 32 np and not

more than 48 np per quintal of the sugarcane supplied by him to the society as may be determined by the Board. After adjusting the losses, if any, in the working year the deposits shall be allowed to accumulate and utilised for repayment of the initial loan from the Industrial Finance Corporation of India and thereafter for redeeming Government share.

The balance of the said deposit after meeting losses shall be used in being converted into share capital in accordance with bye-law 44(xix) and each producer share holder shall be issued shares of the society of the corresponding value in lieu thereof."

3. During the accounting year, the respondent debited a sum of Rs.2,34,354 to the said fund by adjusting this amount against the loss brought forward from the previous year, with the result that at the close of the said year on 30th June, 1960, the account showed a credit balance of Rs.4,11,705. A meeting of the Sub Committee of the respondent society which was held on August 26, 1964 took the view that bye-law 50 was not clear as to whether the fund in question was perpetual or terminable and also that it was not clear as to how the liability for the loss of the respondent society can be fastened on the said fund. The Sub Committee recommended an amendment of the bye-law 50 and pursuant to this recommendation, at a general meeting of the respondent held on 30th June, 1965, bye-law 50 was amended to run as follows:-

"There shall be established a Loss Equalisation and Capital Redemption Reserve Fund in the Society. Every producer share holder shall deposit every year a sum not less than 32 paise and not more than 48 paise per quintal of the sugarcane supplied by him to the society as may be terminated by the Board, until the shares to be subscribed by a member are fully paid up. The amounts standing to the credit of this fund presently or to be credited in future shall be used for making the partly paid shares fully paid up. The balance of the said account shall be refunded to the members concerned soon after the present loan from the Industrial Finance Corporation of India is repaid, where after the fund shall cease to exist.

5. The Division Bench of the High Court which disposed of the said reference agreed with the view of the Tribunal that the bye-law 50 of the bye-laws of the society was validly amended with retrospective effect and that retrospective effect must be given to that bye-law. The Division Bench took the view that in view of the amended bye-law the amount of Rs.5,15,863 was not an amount which the society could deal with as its income or according to its will and hence the source of the receipt was diverted. The High Court answered the question referred to it in affirmative and in favour of the assessee. The present appeal is directed against the said decision of the High Court.

13. If the provisions of the un-amended bye-law are to be applied, it is clear that these amounts which were deducted by the respondent from the price payable to its members on account of supply of sugarcane were deducted by the respondent from the price payable to its members on account of supply of sugarcane were deducted in the course of the trading operations of the respondent and these deductions were a part of its trading operations. The receipts by way of these deductions must, therefore, be regarded as revenue receipts and are liable to be included in the taxable income of the respondent. It is urged by Mr. Manchanda, that these receipts have been described in the bye-law 50 as deposits, but we fail to see how they can really be regarded as deposits. It was held by this Court in Chowringhee Sales Bureau P. Ltd. v. Commissioner of Income-tax,

West Bengal, [1973] 87 I.T.R. p. 541 1972 Indlaw SC 282 that it is the true nature and quality of the receipt and not the head under which it is entered in the account books as would prove decisive. If a receipt is a trading receipt, the fact that it is not so shown in the account books of the assessee would not prevent the assessing authority from treating it as a trading receipt. The same principle can be derived from the decision of this Court in Punjab Distilling Industries Ltd. v. Commissioner of Income-tax, Simla, [1959] 35 I.T.R. p. 519 1958 Indlaw SC 165. In that case, the assessee carried on business as a distiller of country liquor and sold the produce of its distiller to licensed wholesalers. Under a scheme devised by the Government, the distiller (assessee) was entitled to charge the wholesaler a price for the bottles in which the liquor was supplied, at rates fixed by the Government, which he was bound to repay when the bottles were returned. In addition to the price fixed under the Government scheme, the assessee took from the wholesalers certain further amounts, described as security deposits without the Government's sanction and entirely as a condition imposed by the assessee itself for the sale of its liquor. The moneys described as security deposits were also returned as and when the bottles were returned but in this case the entire sum taken in one transaction was refunded when 90 per cent of the bottles covered by it were returned. The price of the bottles received by the assessee was entered by it in its general trading account while the additional sum was entered in the general ledger under the heading "empty bottles return security deposit account." The question was whether the assessee could be assessed to tax on the balance of the amounts of these additional sums left after the refunds made out of the same. It was held that the additional amount described as security deposit by the assessee was really an extra price for the bottles and was a part of the consideration for the sale of liquor; it did not make any difference that the additional amount was entered in a separate ledger termed "empty bottles return deposit account". It was held that these additional amounts, which remained after the refunds were made, were trading receipts of the assessee and liable to tax. Applying these principles to the present case, in our opinion, it makes no difference that in the bye-law, these amounts have been referred to as deposits and the account in which these receipts were entered has been called "Loss Equalisation and Capital Redemption Reserve Fund". The essence of a deposit is that there must be a liability to return it to the party by whom or on whose behalf is made on the fulfilment of certain conditions. Under the amended bye-law, the amounts deducted from the price and credited to the said fund were first liable to be used in adjusting the losses of the respondent society in the working year; thereafter in the repayment of initial loan from the Industrial Finance Corporation of India and then for redeeming the Government share and only in the event of any balance being left, it was liable to be converted to share capital. The primary purpose for which the deposits were liable to be used was not to issue shares to the members from whose amounts the deductions were made but for the discharging liabilities of the respondent-society. In these circumstances, the receipts constituted by these deductions were really trading receipts of the assessee society and are liable to be included in its taxable income. In our view, the learned judges of the High Court were, with respect, in error in answering the question referred in the negative. In our opinion, the question referred must be answered in affirmative and in favour of the revenue.

14. In the result, the appeal succeeds and is allowed with costs. The respondent shall also pay to the appellant the costs incurred in Income-tax Reference No. 67 of 1979.

CIVIL APPEAL No.564 OF 1975

15. This is an appeal against the judgment of a Division Bench of the Allahabad High Court in Income-tax Reference No. 724 of 1971. The question referred to us for determination is as follows:-

"Whether on the facts and in the circumstances of the case, the sum of Rs.6,11,846 credited during the year of account to the loss equalisation and capital redemption reserve fund by deposits received from producer members of the society under Cl. 50 of its bye-laws is of revenue nature assessable to tax?."

16. In view of our decision, the appeal must be allowed and the question referred answered in the affirmative and in favour of the revenue. The appeal is allowed. No order as to costs. Appeal allowed.

Virendera Singh v
General Manager, Lucknow Producers Co-Operative Milk Union

Bench	Ranganath Misra, S. Ranganathan
Where Reported	1987 Indlaw SC 28454; (1989) Supp2 SCC 498; (1990) SCC (L&S) 103
Case Digest	**Summary:** Trusts & Associations - Service - Uttar Pradesh Co-operative Societies Act, 1965, s. 122 - Constitution of India, 1950, art. 14 - Respondent Union was under disciplinary control of Uttar Pradesh Co-operative Societies Institutional Service Board (Board) with regard to employees of respondent - Issuance of notification u/s. 122, wherein such disciplinary control was taken away - Whether such taking away of disciplinary control is violative of art. 14? - Admitted position, that there was no forum of appeal to challenge adverse orders - Appellants held to have been prejudiced by such absence of appellate forum - Direction issued to State of UP, to constitute Law Secretary of State as appellate forum for appellants - Appeals disposed of.

Case No : C.A. No. 4234 of 1985

The Order of the Court was as follows:

1. The appellant in each of these three appeals was an employee of Lucknow Producers' Co-operative Milk Union, respondent 1. All of them were punished in departmental proceedings. Separate writ petitions were filed in the High Court challenging the punishment and the writ petitions were disposed of by a common Judgment. At the time special leave was granted in the first two appeals it was confined to one question, namely, whether issuance of the notification under Section 122 of the Uttar Pradesh Cooperative Societies Act, 1965, taking away the disciplinary control of the Uttar Pradesh Cooperative Societies Institutional Service Board in regard to the employees of respondent 1 was violative of Article 14 of the Constitution.

4. In regard to the three cases before us we find that the High Court examined the contentions in the case of Ram Singh at length but did not go into the merit of the matter in regard to the other two. While dealing with the case of Ram Singh the High Court noticed that some of the aspects were factual and findings of fact had been reached which in exercise of the writ jurisdiction could not be gone into. The High Court also found that out of the several charges for which punishment had been imposed only two charges being 3 and 7 had been made out. Counsel for the appellant in that case contended before us that if an appellate forum was available factual aspects could have been examined and if one or two charges out of the many were found sustainable, the appellate authority could legitimately examine the justification of the punishment. The appellate has been deprived of all these benefits in the absence of the appellate forum.

5. On looking into the matter closely we satisfied that the appellants have been prejudiced by the absence of an appellate forum and were forced to approach the High Court. The writ jurisdiction

did not provide an adequate alternative forum and the petitioner should not suffer in such a situation. We accordingly permit the writ petitions before the High Court to be withdrawn. Necessarily the common decision of the High Court has to be vacated.

6. We direct the State of Uttar Pradesh which unfortunately is not a party in these appeals to constitute the Law Secretary of the State as the appellate forum for the appellants who undertake to prefer appeals within two weeks from today. The appeals shall be preferred before the Secretary, Cooperation, Government of Uttar Pradesh at Lucknow and the appeals shall be transferred to the Secretary, Law, Government of Uttar Pradesh for disposal. He will have all the powers of a departmental appellate authority to exercise in regard to these appeals.

   We hope and trust that the appellate authority shall dispose of these appeals within a reasonable time, not exceeding four months from the date of filing. Shri Srivastava seems to have moved the Allahabad High Court for initiating contempt proceedings. The contempt petition before the High Court is dismissed.

7. The appeals are disposed of accordingly. There would be no order for costs.

Appeals disposed of.

Jai Mahavir Co-Operative Housing Society Limited v Panchal Keshavlal Narbheram and Others

Bench	G.L. Oza, V. Khalid
Where Reported	1987 Indlaw SC 28422; (1987) 3 SCC 425; AIR 1987 SC 1513; 1987 (1) CCC 1047; JT 1987 (2) SC 576; 1987(1) SCALE 777; [1987] 2 S.C.R. 894; 1987 (1) UJ 744

Case No : Civil Appeal No. 1583 (N) of 1973

The Judgment was delivered by : G. L. Oza, J.

1. This appeal is by certificate granted by the High Court of Gujarat under Art. 133 of the Constitution of India by its order dated 6.4.73. The High Court by its order dated 6.4.73 dismissed the petition filed by the appellant questioning the correctness of the order of the Gujarat Cooperative Tribunal.

2. The facts necessary for disposal of this appeal are that appellant is a co-operative housing society registered with the Registrar of Cooperative Societies Gujarat under the provisions of the Act. It is alleged that this Society was formed on 2nd May 1961 with the object of providing housing facilities to its members. Respondent No.1 Panchal Keshavlal Narbheram was a founder member of this Society alongwith 11 others. It is alleged that the conduct of respondent No.1 was found to be detrimental to the interest of the Society and its working and the Society therefore invoked the provisions of Section 36 of the Act, passed a resolution dated 19.6.65 to expel respondent No.1 from the membership of the Society. A further opportunity to show cause was given to the respondent and on November 28, 1965 the appellant society passed a resolution expelling respondent No.1 from the membership of the Society.

7. After remand the parties proceeded with the trial and adduced oral evidence before the Registrar's nominee but during the trial on 16.2.70 the appellant-society made an application under sub-sec. (2) of sec. 96 to the District Registrar that the question relating to the expulsion of respondent No. 1 had already been decided in the sense that in the collateral proceedings the Registrar had recorded his approval under Sec. 36 of the Act to the action taken by the Society and therefore the dispute did not survive. On this application the District Registrar heard the parties and came to the conclusion that respondent No. 1 was precluded from contending that the impugned resolution expelling him from the membership of the society was illegal inasmuch as he had not preferred any appeal against the decision of the Registrar according his approval to the action taken by the Society under sec. 36.

8. The District Registrar was of the opinion that doctrine of resjudicata was attracted and therefore there was no dispute in existence between the parties. This order passed by the District Registrar on 19.6.70 was taken up in revision under Sec. 150 sub-clause 9 of the Act to the Tribunal. The Tribunal came to the conclusion that the District Registrar had no jurisdiction to re-open the question as to whether or not the matter referred by respondent No. 1 was a dispute within the

meaning of sub-sec. (1) of Sec. 96 at this subsequent stage. The view taken was that having already decided that the matter constituted a dispute under Sec. 96(1) at an early stage before he made a reference to the Registrar's nominee in exercise of powers under Sec. 97. The powers under sub-sec. (2) of Sec. 96 were exhausted and it was not competent for him to review his earlier decision. Accordingly the Tribunal by its order dated 6.2.71 allowed the revision petition, set aside the order passed by the District Registrar on June 25, 1970 and directed the Registrar's nominee to proceed with the decision of the matter expeditiously having regard to the fact that the dispute is an old one having its origin in a resolution passed by the appellant-society on November 28, 1965.

16. When the respondent submitted his dispute to the Registrar and the Registrar after examining the matter came to the conclusion that it was a dispute which could be entertained within the scope of Sec. 96 and therefore referred it to his nominee for decision. It could not be doubted that the Registrar exercised jurisdiction under Sec. 96 and came to the conclusion and therefore the High Court was right in coming to the conclusion that once the Registrar takes this decision he has no power to review his order. In this view of the matter we see no reason to entertain this appeal. The appeal is therefore dismissed. In the circumstances of the case parties are directed to bear their own costs.

Appeal Dismissed

Dharni Dhar Bhalla v District Co-Operative Bank Limited

Bench	A.N. Grover, I.D. Dua
Where Reported	1969 Indlaw SC 492; (1969) 3 SCC 694; 1969 UJ 632
Case Digest	**Subject:** Civil Procedure **Summary:** Civil Procedure Uttar Pradesh Co-operative Societies Act, 1912, s. 18 - Operative, Rules, rr. 15 and 115 - Principle of Natural Justice - Appellant was treasurer of Govt. Treasury u/s. 18 - Money was embezzled from Bank - Appellant was held liable for it - (A) Whether there had been complete failure to afford a proper opportunity to appellant to defend himself and properly present his case? - Held, proper or reasonable opportunity was not afforded to appellant to present his case - Appellant was not given a proper opportunity to defend his case - Haste manner in which award for such a large amount was given shows that Deputy Registrar had made up his mind to pass a decree against appellant even though view formed by him might not have been actuated by mala fides - (B) Exclusion of jurisdiction of civil courts - Held, exclusion of jurisdiction of Civil Courts must either be explicit, or clearly implied and further, even if jurisdiction is so excluded civil court can examine cases where provisions of statute have not been complied with or statutory tribunal has not acted in conformity with fundamental principles of judicial procedure - Appeal allowed.

Case No : C.A. No. 1556 of 1966.

The Judgment was delivered by: GROVER, J.

1. This is an appeal by special leave from a judgment of the Allahabad High Court. The facts may be briefly stated : The appellant was the treasurer of Government Treasury at Lakhimpur, District Kheri, in the State of Uttar Pradesh and the respondent as a body incorporated u/s. 18 of the U.P. Co-operative Societies Act, 1912 (Act II of 1912), hereinafter called the Act, carried on the business of banking at that place. According to the bylaws of the Bank an Honorary Treasurer was elected who held the office for a year. A sum of Rs. 10, 000/- was kept deposited with the Treasurer for disbursement on the Bank's account. When the appellant was re-elected as Honorary Treasurer in 1946 he represented that he did not have sufficient time to carry out the responsibilities of the post himself and he could act through his nominee only. It is stated that with the concurrence of the authorities of the Bank and with their knowledge one Mool Chand was nominated to act on his behalf.

2. It appears that a good deal of money was embezzled from the Bank and on December 12, 1952 the Managing Director lodged a report with the police. After investigation Mool Chand and Hazari Lal the Manager of the Bank were challaned. The Managing Director reported the matter to the Deputy Registrar, co-operative Societies, U.P. A meeting of the Board of Directors was

called for December 18, 1952 which was attended by the Deputy Registrar Shri Pant. According to the appellant Shri Pant stated at the meeting of the Board of Directors that the appellant being a Treasurer was liable to make god the loss and in case some difficulty was felt the matter might be referred to hi according to the provisions of Rule 15 of the U.P. Co-operative Societies following day. A claim was failed with Shri Pant the same afternoon and the summons served on the appellant in the evening on the same date. It was alleged that on the following day in spite of the appellant having submitted to Shri Pant that a copy of the claim had not been served on him with the summons and that the time was too short to enter upon the defence Shri Pant made an award in the sum of Rs. 1, 04, 319-7-4 against the appellant.

6. It was further found on a consideration of the evidence that Shri Pant violated the fundamental principles of natural justice by now allowing the appellant an opportunity of being heard. It was admitted before the trial judge that the summons for hearing was served on the appellant on the evening of December 18, 1952. The hearing was scheduled to commence on the morning of December 19, 1952. The appellant had filed a reply before the Deputy Registrar Shri Pant which showed that he had protested that the time allowed to him to answer the claim was much too short. The trial judge was of the opinion that the time given to the appellant, in the circumstances, was not sufficient to enable him to examine his evidence and properly cross-examine the witnesses against him.

7. The High Court did not agree with the trial judge that Shri Pant had made use of any prejudicial knowledge while making the award. It was found that Shri Pant did not render himself incapable of functioning as an arbitrator as he had not contravened any of the Rules or bye-laws. Nor did the High Court agree with the other finding of the trial judge that fair opportunity was not allowed to the appellant to defend himself.

10. This is an extraordinary way of conducting any proceedings which essentially were of a judicial nature. When such a large amount was involved and there were allegations of embezzlement against the appellant or his nominee Mool Chand, Shri Pant was duty bound to have furnished a copy of the plain to be appellant and to have given him a reasonable time for submitting his written statement and also for examining such evidence as he wanted to examine. Shri Pant finished everything on the following day and it is impossible to believe that any one cud have produced any defence in that short period. It is not possible to accept that any proper or reasonable opportunity was afforded to the appellant to present his case. It has not been contended and indeed could not be urged that the civil court did not have the jurisdiction to entertain the suit in the above circumstances.

11. It is settled law that the exclusion of the jurisdiction of the civil courts is not to be readily inferred. Such exclusion must either be explicit, or clearly implied and further even if the jurisdiction is so excluded the civil court can examine cases where the provisions of the statute have not been complied with or the statutory tribunal has not acted in conformity with fundamental principles of judicial procedure. See Secretary of State. Represented by the Collector of South Arcot v. Mask & Company. The suit was therefore rightly decreed by the Trial Court.

12. The appeal is allowed with costs and the decree of the High Court is set aside. The suit filed by

the appellant shall stand decreed. It will be open, however, to the appropriate authority under the Act to take, fresh proceedings relating to the amount in respect of which award was given by Shri Pant. Counsel for the appellant agrees that a proper award may be given afresh on the merits by the competent authority in accordance with law and that the appellant will not raise any objection relating to the validity of the Rules or the bye-laws framed under the Act or to the reference made thereunder.

Appeal allowed.

Jalgaon District Central Co-Operative Bankltd. v Pundalikrao Laxmanrao Suryawanshi & Ors.

Bench	I.D. Dua, J.M. Shelat, C.A. Vaidyialingam
Where Reported	1969 Indlaw SC 99; (1969) 2 SCC 713; AIR 1970 SC 1966; [1970] 2 S.C.R. 192
Case Digest	**Subject:** Service **Summary:** Service - Bombay **Cooperative Societies Act**, 1925, s. 41 - Constitution of India, 1950, art. 227 - Maharashtra **Cooperative Societies Act**, s. 97 - No valid rules in force when respondent retired - Question regarding payment of further gratuity applying old rules or new rules - Held, the effect of old r. 16, cannot be negatived by describing the process as mere withdrawal of the approval of the old rules and enforcement of the new ones, the process covered by r. 16 - The new rules could not detract from or prejudicially affect the vested rights created under the old rules - Appeal dismissed.

Case No : Civil Appeal No. 944 of 1966. Appeal by special leave from the judgment and order, dated March 30, 1'965 of the Bombay High Court in Special Civil Application No. 5 of 1964.

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

1. Pundalikrao Laxmanrao Suryawanshi plaintiff (respondent No. 1 in this Court) instituted arbitration proceedings in the Court of the Registrar's Nominee against the Jalgaon District Central Cooperative Bank Ltd., Jalgaon (appellant in this Court) for the recovery of a sum of Rs. 7,605/ as the balance of gratuity with interest at 6 per cent due from 1881962. The claim having been resisted, the same was disallowed on May 16, 1963. An appeal presented to the Maharashtra State Cooperative Tribunal under section 97 of the Maharashtra Cooperative Societies Act against the award of the Registrar's Nominee was dismissed and the said award was confirmed.

7. The contention that without there being a Gratuity Fund, the Bank cannot lawfully pay gratuity assumes that the Bank has no other resources out of which its liabilities under the Rules in question can be discharged an assumption which is not easy to upheld. Once the Gratuity Fund Rules imposing an obligation on the Bank to pay gratuity to its employees are approved by the Registrar, then this obligation, in our opinion, cannot be rendered nugatory merely because there is no separate Gratuity Fund. Rule 15 which provides for the applicability of section 41 of the Bombay Cooperative Societies Act VII of 1925 to the "administration of the Gratuity Fund" created under the rules in question, does not touch the question of the enforcement of these rules, and indeed even on behalf of the appellant, no attempt has been made to rely on Rule 15 for this purpose.

8. The appellant's counsel next relied on the new rules which were approved by the Joint Registrar of Cooperative Societies and were made retrospective in their operation so. as to be enforceable with effect from July 1, 1953. It was, however, conceded by Shri Chagla and, in our opinion,

rightly, that the new rules could not detract from or prejudicially affect the vested rights created under the old rules. Indeed old Rule 16, it may be recalled, prohibits the retrospective operation of the new rules with the object of protecting the interests of the employees.

9. The submission that the old rules have neither been repealed, nor altered, as contemplated by Rule 16, and that the Registrar has merely withdrawn his approval to the old rules and enforced the new ones, does not advance the appellant's case. The effect of old rule 16, in our opinion, cannot be negatived by describing the process as mere withdrawal of the approval of the old rules and enforcement of the new ones, for in real substance the process seems to us to be covered by Rule 16.

The appeal accordingly fails with no order as to costs.

Rama Rao and Another v Narayan and Another

Bench	J.C. Shah, A.N. Grover
Where Reported	1968 Indlaw SC 343; (1969) 1 SCC 167; AIR 1969 SC 724; 1969 CRLJ 1064; [1969] 3 S.C.R. 185
Case Digest	**Summary:** Criminal - Criminal Procedure Code, 1973, s. 195 - Indian Penal Code, 1860, ss. 465, 467, 477, 463 and 471 - Indian Evidence Act, s. 3 - Maharashtra Co-operative Societies Act, 1960, ss. 93,(3), 148, 95, 146(p), 2(2), 91 - (A) Whether nominee of Registrar appointed u/s. 95 of Maharashtra Co-operative Societies Act, 1960, was a 'court' within meaning of s. 195, CrPC, 1973? - Held, s. 95 authorises Registrar or his nominee or board of nominees to pass an order of attachment and other interlocutory orders - S. 195(2) of CrPC, 1973 enacts that term 'Court' includes a Civil, Revenue or Criminal Court, but does not include a Registrar or Sub-Registrar under Indian Registration Act, 1877 - Expression 'Court' is not restricted to Courts, Civil, Revenue or Criminal, it includes other Tribunals - Expression 'Court' is not defined in CrPC, 1973 - A Tribunal is not necessary a Court in strict sense exercising judicial power because (1) it gives a final decision; (2) hears witnesses on oath - There is no doubt that nominee exercising power to make an award u/s. 96 of Maharashtra Co-operative Societies Act, 1960, derives his authority not from statute but from investment by Registrar in his individual discretion - (B) Whether plea that complaint was not maintainable without sanction of Registrar? - Held, it was urged that ingredient of offences of forgery punishable u/s. 465, IPC, 1860 and of offence u/s. 146(p) are in substance same, and general provision is on that account repealed, and in any event in view of provision of s. 148(3) no prosecution may be initiated in respect of those offences otherwise than with previous sanction of the Registrar - Even destruction of books of account is penalised u/s. 146 - It is unnecessary in circumstances to consider question whether Maharashtra State Legislature was competent to repeal provisions of s. 465, IPC, 1860 - Appeal dismissed.

Case No : Criminal Appeal No. 51 of 1967. Appeal by special leave from the judgment and order dated October 3, 1966 of the Bombay High Court, Nagpur Bench in Criminal Revision Application No. 168 of 1966.

The Judgment was delivered by: J. C. Shah, J.

1. The Nagpur District Land Development Bank Ltd. is registered as a society under the Maharashtra Co-operative Societies Act, 1960. 'One Narayan Tanbaji Murkute applied for membership of the Bank as a "non-borrowing member". At a meeting of the Bank held on June 30, 1964, the application of Murkute and of 94 others were granted and they were enrolled as members. But

in the list of members entitled to take part in the General Meeting dated June 30, 1964 the names of Murkute and others were not included.

2. Murkute and others then applied to the Registrar Co- operative Societies for an order declaring that they were entitled to participate in the election of office-bearers and for an injunction restraining the President and the Secretary from holding the annual General Meeting. The Registrar referred the dispute for adjudication under s. 93 of the Maharashtra Co-operative Societies Act, 1960, to H. V. Kulkarni, his nominee. The nominee decided the dispute on May 7, 1965 and held that Murkute and other applicants were members of the Bank. In the proceeding before the nominee certain documents including the minutes book of the Bank were produced. It is claimed by Murkute that those 'books were fabricated by the President and the Secretary with a view to make it appear that Murkute and other persons were never elected members of the Bank.

10. Jurisdiction of the Civil Court by s. 91(3) to entertain a suit in respect of any dispute referred to in sub- s. (1) of s. 91 is expressly excluded and the dispute is required by law to be referred to the Registrar or his nominee. Against the decision of the Registrar's nominee an appeal lies under s. 97 and the order made for payment of money is enforceable as a decree of the Civil Court. The Registrar or his nominee called upon to decide the dispute are bound to hear it in the manner prescribed and they have power to summon and enforce attendance of witnesses and to compel them to give evidence on oath, affirmation or affidavit and to compel production of documents. The effect of these provisions, according to counsel for the Appellants, is that the judicial power of the State to deal with -and dispose of disputes of a civil nature which fall within the description of s. 91(1) is vested in the Registrar's nominee and he is on that account made a "court" within the normal connotation of the term.

15. The nominee of the Registrar acting under s. 96 performs the functions substantially of an arbitrator to whom a dispute is, referred for adjudication. The Registrar may appoint a single nominee or a board of nominees and may at any time, for reasons to be recorded in writing, withdraw such dispute from the nominee or 'board of nominees, and may decide the dispute himself, or refer it again for decision to another nominee, or board of nominees, -appointed by him. Under sub-s. (3) of s. 93 it is open to the Registrar to suspend proceedings in regard to any dispute, if the question at issue between -a society and a claimant or between different claimants, is one involving complicated questions of law or fact. The jurisdiction of the nominee or board of nominees arises by reason not of investment by statute, but by appointment made by the Registrar who exercises control over the proceeding. The nominee therefore derives his authority from his appointment by the Registrar: the Registrar is entitled to withdraw his authority; and the Registrar may fix the time within which a dispute shall be disposed of: his adjudication is again called an award. The nominee is even entitled to make a provision for the 'expenses payable to the Registrar or to himself. It is true that the procedure of the nominee is assimilated to the procedure followed in the trial of a civil proceeding. The nominee has the power to summon witnesses, to compel them to produce documents and he is required to hear the dispute in the manner prescribed by the Code of Civil Procedure. Thereby he is required to act judicially i.e. fairly and impartially: but the obligation to act judicially will not necessarily make him a court within the meaning of S. 195 of the Code.

16. The position of a nominee of the Registrar is analogous to that of an -arbitrator designated under a statutory arbitration to which the provisions of S. 47 of the Arbitration Act, 1940, apply.

20. We are unable to accept the contention that these two sections s. 146(p) of the Maharashtra Co-operative Societies Act and s. 465 P. Code,-are intended to deal with the same offence. It is true that certain acts may fall within both the sections. For instance, tampering with or altering or falsifying any, register, book of account or security, or making any false or fraudulent, entry in the register, book of account or document belonging to the society, may when done with the requisite intention mentioned in s. 464 read with s. 463 I.P. Code be also an offence under s. 146(p) of the Maharashtra Co-operative Societies Act. But that, in our judgment, is not a ground for holding 'that s. 465 I.P. Code and the related offences were intended to be pro tanto repealed by the enactment of s. 146(p) of the Maharashtra **Cooperative Societies Act**. When the Indian Penal Code seeks to impose in respect of offences under As, 477 imprisonment which may extend to imprisonment for life, or with imprisonment up to a period of seven years for an offence under s. 477A it would be difficult to hold that when committed by an officer or a member of a society the maximum punishment which can be imposed by virtue of s. 146(p) would be three years rigorous imprisonment only.

22. It is clear from a perusal of s. 146 (p) of the Maharashtra Co-operative Societies Act, 1960, and ss. 463 and 464 I.P. Code. that they are two distinct offences which are capable of being Committed with different intentions by different sets of persons and it, could not be contemplated that the Legislature of the State of Maharashtra intended to repeal pro tanto the provisions of S. 465 I.P. Code by enactment of s. 146 of the Maharashtra Co-operative Societies Act.

23. It is unnecessary in the circumstances to consider the question whether the Maharashtra State Legislature was competent to repeal the provisions of s. 465 I.P. Code. The law relating to Co-operative Societies may be enacted in exercise of the power under List II Entry 32 of the Seventh Schedule tothe Constitution, but if s. 146 is directly intended to trench upon a provision ,of the Indian Penal Code-falling within List 11 Entry 1, sanction of the President under Art. 254(2) would apparently be necessary. Both the contentions raised by counsel for the appellants fail. The appeal is dismissed.

Appeal dismissed

Deccan Merchants Co-operative Bank Limited v Dalichand Jugraj Jain and Others

Bench	S.M. Sikri, K.S. Hegde, R.S. Bachawat
Where Reported	1968 Indlaw SC 309; AIR 1969 SC 1320; [1970] 40 Comp Cas 187; [1969] 1 S.C.R. 887
Case Digest	**Summary:** Corporate - Bombay **Cooperative Societies Act**, 1925, s. 54 - Maharashtra Co-operative Society Act, 1960, s. 91 - Rent Act, s. 28 - Whether the dispute between the appellant/bank and the respondent can be referred by the Registrar for arbitration under sub-s. (1) of s. 91 of the Maharashtra Co-operative Societies Act, 1960? - No other court shall have jurisdiction to entertain any suit, proceeding or application or to deal with such claim or question - Court of small causes has exclusive jurisdiction u/s. 28 of the Rent Act to entertain a proceeding by a landlord for ejectment of a tenant - A dispute concerning the ejectment of a landlord is outside the purview of s. 91 of the Maharashtra Co-operative Societies Act - Held, appeal fails and is dismissed

Case No : C.A. No. 358 of 1967

The Judgment was delivered by: SIKRI, J.

1. This appeal by certificate granted by the High Court of Judicature at Bombay is directed against its judgment allowing the writ petition filed by the firm, M/s. Dalichand Jugraj Jain, first respondent before us - hereinafter referred to as "the petitioners"- u/art. 226 of the constitution, and setting aside the order of the Assistant Registrar (D), Co-operative Societies, Bombay, referring the dispute between the petitioners and the Deccan Merchants Co-operative Bank Ltd., appellants before us, hereinafter referred to as "the Bank".

3. The man point that arises in this appeal is whether the dispute between the petitioners and the bank can be referred by the Registrar for arbitration under sub-s. (1) of s. 91 of the Maharashtra Co-operative Societies Act, 1960 (XXXII of 1960), hereinafter, referred to as the Act.

23. Any dispute touching the business of a co-operative society between members or past members of the Society or person claiming through a members or past members, or between a member or past member or persons so claiming and the committee or any officer, shall be referred to the Registrar.

    "The reasoning of the Nagpur High Court does not appeal to us. Even if the expression "business of a co-operative society" occurring in the Rule is treated as not restricted to the dealings with the members of the society only but to include business which the co- operative societies under the law are empowered to transact, this does not mean that, whenever a member enters into any transaction whatsoever with the society and a dispute arises out of that transaction, then that dispute is a dispute between the society and a member of the society within the meaning of rule

26. The High Court did not rest its conclusion on the words "or any officer" occurring in rule 26, although it referred to the meaning of the word "officer". Therefore, we need not consider whether the decision can be sustained on that part of the rule.

14. In our opinion, the view expressed by the Madras, Bombay and Kerala High Courts is preferable to the view expressed by the Madhya Pradesh and the Nagpur High Courts. If this is the correct view, then was the lease or the tenancy rights obtained by the petitioners a right or title derived from a member as a member? It seems to us that, when the o regional owner executed e lease, he was not acting as a member but as mortgagor in possession, and, therefore, the bank's claim does not fall within s. 91(1)(b) of the Act. This takes us to the point whether the Rent Act applies to the facts of this case and, accordingly, the jurisdiction of the Registrar is ousted, and it is only the Court of Small Causes which has jurisdiction to eject the petitionersThe scheme of the various Rent Acts and the public policy underlying them are clear; the policy is to give protection to the tenants. Various powers have been conferred on the authorities under the Rent Acts to grant protection to the tenants against ejectment and other reliefs claimed by the landlords. S. 28 of the Rent Act, inter alia, provides"

19. It seems to us that the Act was passed, in the main, to shorten litigation, lessen its costs and to provide a summary procedure for the determination of the disputes relating to the internal management of the societies. But under the Rent Act a different social objective is intended to be achieved and for achieving that social objective it is necessary that a dispute between the landlord and the tenant should be dealt with buy the courts set up under the Rent Act and in accordance with the special provisions of the Rent Act. This social objective does not impinge on the objective underlying the Act. It seems to us that the two Acts can be harmonised best by holding that in matters covered by the Rent Act, its provisions, rather than the provisions of the Act, should apply. In view of these considerations, we are of the opinion that s. 91 of the Act does not affect the provisions of s. 28 of the Rent Act.

21. In our opinion, the High Court has jurisdiction to go into the disputed questions of fact and to quash an interlocutory order even though some sort of alternative remedy exists u/s. 154 of the Act. S. 154 of the Act, inter alia, enables the State Government to call for and examine the record of any inquiry or the proceedings of any other matter of any officer subordinate to them. This remedy can hardly be treated as an alternative remedy for the purposes of deciding the questions raised by the petitionersIt is not necessary to deal with the third point raised by the learned counsel for the bank, namely, that the Registrar when making an order u/s. 91(2) of the Act, is concerned only with the averments in the plaint. Even if it is so it does not disable the petitioners from raising the point that, on the facts as presented by them, the provisions of s. 91 of the Act did not apply to the dispute.

22. In the result the appeal fails and is dismissed with costs to respondents Nos. 1-2.

BACHAWAT J.

23. I agree that the dispute concerning the property purchased by the society from one of its members is not a dispute touching the business of the society. I also agree that the court of small causes

has exclusive jurisdiction under s. 28 of the Rent Act to entertain a proceeding by a landlord for ejectment of a tenant. A dispute concerning the ejectment of a landlord is outside the purview of s. 91 of the Maharashtra Co-operative Societies Act.

24. It has also been argued that, as the lease under which the contesting respondent is claiming was not executed by the owner in his capacity as member of the society, there is no dispute between the society and a person claiming through a member. On this last question, I express no opinion. Having regard to our findings on the other two points, the appeal must fail. I therefore, agree to the order proposed by my learned brother.

Appeal dismissed.

Commissioner of Income Tax, Bombay City Ii v Bombay State Co-operative Bank Limited

Bench	J.C. Shah, Vaidynathier Ramaswami
Where Reported	1967 Indlaw SC 360; [1968] 70 ITR 86
Case Digest	**Summary:** Income Tax & Direct Taxes - Indian Income Tax Act, 1922 - Notification No. FD (CR) R Dis No. 291-I T/25 D/- 25-08-1925 - Whether interest received from Govt. securities held by society as its stock in trade qualified for exemption? - Expression 'classes of income' in the opening part of the notification was intended to designate particular categories intended to be exempted - Exemption is not available to only interest received from Govt. securities held by society as investments - Held, exemption under notification applied to interest earned by a cooperative society from Govt. securities held by it as its stock-in-trade - Appeal dismissed.

The Judgment was delivered by: J. C. SHAH, J.

1. The respondent, a co-operative society registered under the Bombay Co-operative Societies Act, 1925, carries on the business of banking and for that purpose holds Government securities as its stock-in-trade. In proceedings for assessment to income-tax for the years 1953-54 and 1954-55 the Income-tax Appellate Tribunal declared that the interest received from the Government securities held by the society as its stock-intrade qualified for exemption under Notification No. F.D. (C.R.) R.Dis. No. 291-I.T/25 dated August 25, 1925, issued u/s. 60 of the Income-tax Act, and the High Court.of Bombay agreed with that view in a reference u/s. 66(1) of the Income-tax Act. The Commissioner has appealed against the order passed by the High Court The Income-tax Act, 1922, before it was amended by the Finance Act, 1955, contained no provision for exempting the income or profits earned by a co-operative society from liability to pay tax.

6. In Surat Peoples' Co-oparative Bank Ltd. v. Commissioner of Income-tax the Bombay High Court held that the word "investment" in the Explanation to the notification related only to such securities as did not form part of the stock-in-trade of the co-operative society, and since, in that case, the securities did form part of the stock-in-trade of a co-operative bank, the profit made by sale of the securities was not taxable. This view was apparently accepted by this court in Bihar State Co-operative Bank Ltd. v. Commissioner of Income-tax. In Bihar State Co-operative Bank's case, the appellant-society carried on the business of general banking and received interest on short-term deposits made by it with the Imperial Bank of India. The claim of the appellant-society for exemption from income-tax under the notification was rejected by the Tribunal. The High Court of Patna on a reference held that only the income derived from the business of the Co-operative society fell within the exemption and that the exemption was not available in regard to income derived from investment of fluid assets with third parties.

7. This court held that since the appellant-society was a bank and one of its objects was to carry on general business of.banking its normal business was to deal in money and credit and was not restricted to receiving deposits and lending money to its members or other societies, and, therefore, the money laid out in the form of deposit did not cease to be part of the circulating capital and interest from the deposits arose from the business of the bank and was exempt from income-tax under that notification. This court observed:

"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."

Madras Co-Operative Central Land Mortgage Bank v Commissioner Of Income-Tax, Madras

Bench	J.C. Shah, S.M. Sikri, Vaidynathier Ramaswami
Where Reported	1967 Indlaw SC 239; AIR 1968 SC 55; [1968] 38 Comp Cas 681; [1968] 67 ITR 89; [1968] 1 S.C.R. 30
Case Digest	**Summary:** Income Tax Act, 1922, ss. 14(3), 8, Expln. - Income Tax - Co-operative Society - Income from Govt. securities - Taxability - Rule as to apportionment into business and non-business income - Held, the income from securities is exempted u/s.14(3) in the proportion, which the capital of the society used for the purpose of the business bears to the total working capital - Appeal Allowed.

Case No : Civil Appeal No. 1975 of 1966

The Judgment was delivered by : J. C. Shah, J.

1. This is an appeal with special leave. The appellant is a Society registered under the Co-operative Societies Act, 1912. The following table sets out the data relating to the earnings, investments, working capital, outgoings and expenditure of the Society for the year ending June 30, 1955, relevant to the assessment year 1956-57:

2. In a proceeding for assessment of the total income of the Society to tax for the year 1956-57 it was claimed that under S. 14 (3) of the Indian Income-tax Act, 1922 (as added by S. 10 of the Finance Act, 1955, with effect from April 1, 1955) the income of the Society from business was exempt from payment of tax, and that in accordance with the instructions issued under S. 60 of the Act, out of the gross income from securities amounting to Rs. 4,30,053/-, Rs. 4,16,475/ being income attributable to the assets utilized in the business, only the balance of Rs. 13,578/ was chargeable to tax. In support of its claim the 'Society 'relied upon the instructions published in the Income-tax Manual, 1946.In the view of the Income-tax Officer the Society could not claim the benefit of the Departmental Instructions, since in the relevant year of assessment those instructions had ceased to operate, and the Society's claim was governed by the Explanation to s. 8 of the Income-tax Act as incorporated by the Finance Act of 1956, with effect from April 1, 1956. He accordingly computed the taxable income under the head"interest on securities" in the sum of Rs. 59,498/-. The Appellate Assistant Commissioner modified the order of the Income-tax Officer and reduced the taxable income under the head interest on securities" to Rs. 13,578/ applying the Departmental Instructions. He held that the Explanation to s. 8 of the Act applied to Banking Companies and not to Co-operative Societies. In appeal by the Commissioner of Income-tax the Appellate Tribunal reversed the order of the Appellate Assistant Commissioner, and restored the order of the Income-tax Officer. In the view of the Tribunal, the Explanation to s. 8 of the Act cannot be invoked as the Society was not a Banking, Company, but the principle

of the Explanation may well be called in aid and that the relief granted by the Income-tax Officer was the only relief to which the Society was entitled.

3. The following question of law was submitted by the Tribunal to the High Court of Madras:

"Whether the Tribunal is justified in law in holding that the taxable income of the assesses from interest on securities is Rs. 59,498/-?" The High Court reframed the question to read: Whether the taxable income of the assesses from interest on securities is Rs. 13,578/as contended by the assesses and as worked out on the basis of the Departmental instructions contained at pages 248 and 249 in Part III of the year 1946?", and answered it in favour of the Commissioner."

Thakur Jugal Kishore Sinha v Sitamarhi Central Co-Operative Bank Limited and Another

Bench	G.K. Mitter, J.M. Shelat
Where Reported	1967 Indlaw SC 456; AIR 1967 SC 1494; 1967 CRLJ 1380; [1967] 3 S.C.R. 163
Case Digest	**Subject:** Trusts & Associations **Keywords:** Registered Society, Contempt Of Courts Act, 1952, Public Servants (Inquiries) Act, 1850, Bihar and Orissa Co-operative Societies Act 1935, Public Servants Inquiries Act, 1850, Uttar Pradesh Panchayat Raj. Act, 1947 **Summary:** Election - Municipalities & Local Governments - Practice & Procedure - Service - Criminal - Trusts & Associations - Government of India Act, 1935 - Uttar Pradesh Panchayat Raj Act, 1947 - Contempt of Courts Act, 1952, s. 3 - Representation of People Act, 1951, ss. 33 and 36 - Public Servants Inquiries Act, 1850 - Bihar and Orissa Co-operative Societies Act, 1935, s. 48 - Appeal is directed against judgement and order of Court in Criminal Miscellaneous Appeal whereby appellant was found guilty of contempt of Court, i.e.,of Asst. Registrar, Co-operative Societies, exercising powers of Registrar, Cooperative Societies, u/s. 48 of Act - (A) Whether Asst. Registrar of Cooperative Societies was a court within the meaning of Contempt of Courts Act, 1952? - (B) Even if it was a court, whether it was a court subordinate to High Court? - (C) Whether words used by appellant in one of his grounds of appeal to Joint Registrar of Co-operative Societies, which formed basis of complaint, did amount to contempt of any court? - Held, (A) Asst. Registrar concerned, along with several other persons, was given power of Registrar under various sections of Act including s. 48 - A Registrar exercising powers u/s. 48 must therefore be held to discharge duties which would otherwise have fallen on ordinary civil and revenue courts of land - In such a case, in adjudicating upon a dispute referred u/s. 48 of Act, Registrar is to all intents and purposes a court discharging same functions and duties in same manner as a court of law is expected to do - Further held, (B) Every High Court shall have and exercise same jurisdiction, powers and authority, in accordance with same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts, of itself - Further held, (C) sub-s. (2) lays down that HC shall not take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under Indian Penal Code - Appeal dismissed.

Case No : Criminal Appeal No.18 of 1965

The Judgment was delivered by

1. Mitter, J. This appeal by certificate granted by the High Court at Patna under Art. 134(1)(c) of the Constitution is directed against the judgment and order of that court dated December 14, 1964 in Criminal Miscellaneous Appeal No. 6 of 1964 whereby the appellant was found guilty of contempt of , court, i.e., of the Assistant Registrar, Co-operative Societies, Sitamarhi Circle, exercising the powers of the Registrar, Cooperative Societies, Bihar under S. 48 of the Bihar and Orissa **Cooperative Societies Act**, 1935.

2. The three questions which were argued before us in this appeal were:- (1) Whether the Assistant Registrar of Cooperative Societies was a court within the meaning of the Contempt of Courts Act, 1952; (2) Even if it was a court, whether it was a court subordinate to the Patna High Court and (3) whether the words used by the appellant in one of his grounds of appeal to the Joint Registrar of Co-operative Societies, which formed the basis of the complaint, did amount to contempt of any court.

3. The facts necessary for the disposal of the appeal are as follows. The Sitamarhi Central Co-operative Bank Ltd. was a society registered under the Bihar and Orissa Co-operative Societies Act, 1935, hereinafter referred to as the Act. The appellant was the elected Chairman of the Society, and was in control of its entire affairs. The bank was engaged in carrying on a business inter alia in salt, sugar and kerosene oil. It was alleged that the appellant entrusted to one Suraj Banshi Choudhary the work of supplying, coal for which purpose he was given an advance of Rs. 7, 004-5-0 and that out of this amount a sum of Rs.. 5, 014-5-9 could not be realised from Suraj Banshi Choudhary. Thereafter, a surcharge proceeding under s. 40 of the Act was taken up before the Registrar of Co-operative Societies on December 22, 1953 when a sum of Rs. 14, 288-13-9 was held to be realisable from , be appellant and another person. The appellant went in appeal to the State Government and by an order dated March 28, 1957 the amount was reduced to Rs. 5, 014-5-9. The bank was not made a party to the appeal before the State Government and it raised a dispute under s. 48 of the Act that the appellant was liable for the whole of the original amount of Rs. 14, 288-13-9 on the , round that the State Government's order being ex parte was not binding on it. This dispute went to the Assistant Registrar of Co-operative Societies exercising powers of the Registrar under s. 48 of the Act. On May 15, 1964, the Assistant Registrar decided the matter upholding the contention of the bank and making the appellant liable for the entire amount of Rs. 14, 288-13-9. In the meantime, however, the appellant had challenged his liability for the amount of Rs. 5, 014-5-9 as determined in appeal by the State Government by a Writ Petition to the High Court of Patna which was dismissed. He then filed a title suit before the Subordinate Judge of Muzaffarpur who decreed it in his favour and at the time when the contempt matter was heard by the Patna High Court, an appeal preferred by the bank from the said decree was pending before the District Judge, Muzaffarpur. The appellant preferred an appeal to the Joint Registrar of Co-operative Societies against the order of the Assistant Registrar who was made respondent No. 2 in the appeal. One of the grounds of appeal ran as follows:- "For that the order of respondent No. 2 is mala fide inasmuch as after receiving the order of transfer he singled out this case out of so many for disposal before making over charge and used double standard in judging the charges against the defendants Nos. 1 and 2. It is prayed that it should

be declared that the order of the Assistant Registrar is without jurisdiction, illegal and mala fide and heavy costs should be awarded making respondent No. 2 responsible mainly for such costs."

4. The bank filed an application in the Patna High Court on August 14, 1964 for starting proceedings in contempt against the appellant. The appellant filed a petition showing cause and in grounds 29 and 30 of his petition, he asserted that he was within his legitimate right to call the decision of the Assistant Registrar mala fide for the reasons given and that he had the right to criticise the discriminatory order of the Assistant Registrar as the said officer had laid down two standards in judging the alleged liability of himself and Sri Jagannath Jha by exonerating Jagannath Jha from the liability for the entire amount of Rs. 14, 288-13-9 while holding the appellant liable for the entire amount without examining the up-to-date position of payment of the amounts for which the claim had been preferred. In a supplementary affidavit filed on October 28, 1964, the appellant further stated that the order of the Assistant Registrar was mala fide in that at the time when it was made the Assistant Registrar was due for transfer and he had picked out two or three cases out of about fifty pending before him.

5. The High Court at Patna turned down all the contentions of the appellant in an elaborate judgment and held that the appellant was guilty of a calculated contempt. He was sentenced to undergo simple imprisonment until the rising of the court and to pay a fine of Rs. 200 in default whereof he was to undergo a further simple imprisonment for two weeks.The last of the three points urged before this Court was the weakest to be advanced. There can be no doubt that the words used in this case in the grounds of appeal clearly amounted to 'contempt of court provided the Assistant Registrar was a court and the Contempt of Courts Act was applicable to the facts of the case. The Assistant Registrar was charged with having acted mala fide in that he had singled out the case of the appellant out of many for disposal and used a double standard in his adjudication against the appellant and Jagannath Jha clearly meaning thereby that the Assistant Registrar had fallen from the path of rectitude and had gone out of his way in taking up and disposing of the case of the appellant out of many which were pending before him and which he could not possibly have completed because of his imminent transfer.

6. According to Halsbury's Laws of England (Third Edition-Vol. 8) at p. 7:

"Any act done or writing published which is calculated to bring a court or a Judge into contempt, or to lower his authority, or to interfere with the due course of justice or the lawful process of the court, is a contempt of court. Any episode in the administration of justice may, however be publicly or privately criticised, provided that the criticism is fair and temperate and made in good faith. The absence of any intention to refer to a court is a material point in favour of a person alleged to be in contempt."

17. The question before the Assistant Registrar was whether the appellant and Jagannath Jha had caused loss to the bank and whether they were liable to compensate the bank for it. This arose out of audit proceedings. There was a written reference to the Registrar. There was a dispute between the bank on the one hand and the appellant and Jagannath Jha on the other to be decided with the assistance of arguments and on the evidence adduced. The dispute was a question of law dependent on the facts of the case and the decision disposed of the whole matter by finding the appellant liable for the entire amount. As we have already remarked, the Assistant Registrar had almost

all the powers which an ordinary civil court of the land would have, of summoning witnesses, compelling production of documents, examining witnesses on oath and coming to a conclusion on the evidence adduced and the arguments submitted. Under sub-r. (10) of r. 68 the parties could be represented by legal practitioners. The result is the same as if a decree was pronounced by a court of law. The adjudication of the Assistant Registrar was not based upon a private reference nor was his decision arrived at in a summary manner, but with all the paraphernalia of a court and the powers of an ordinary civil court of the land.We were however referred to decisions of certain High Courts in support of the contention that the Assistant Registrar was not a court for the purposes of the Contempt of Courts Act. the latest of these decisions is that of the Bombay High Court in Malabar Hill Co-operative Housing Society v. K. L. Gauba 1963 Indlaw MUM 52 at 152).

21. In our opinion, neither of these decisions lays down any reasoning which would compel us to hold that the Assistant Registrar of Co-operative Societies in this case was not a court. In the Bombay case, the matter was referred to the Assistant Registrar as a nominee who had to act as an arbitrator and make an award. So also in the Allahabad case, the Assistant Registrar merely acted as an arbitrator.

22. In the case before us, the Assistant Registrar was discharging the functions of the Registrar under s. 6(2) of the Act under the authority of the State Government delegating the powers of the Registrar to him.It was sought to be argued that a reference of a dispute had to be filed before the Registrar and under sub-s. 2(b) of s. 48 the Registrar transferred it for disposal to the Assistant Registrar and therefore his position was the same as that of a nominee under the Bombay Co-operative Societies Act. We do not think that contention is sound merely because sub-s. (2) (c) of s. 48 authorises the Registrar to refer a dispute for disposal of an arbitrator or arbitrators. This procedure was however not adopted in this case and we need not pause to consider what would have been the effect if the matter had been so transferred. The Assistant Registrar had all the powers of a Registrar in this case as noted in the delegation and he was competent to dispose of it in the same manner as the Registrar would have done. It is interesting to note that under r. 68 sub-r. (10) of the Bihar and Orissa Cooperative Societies Rules, 1959:

"In proceedings before the Registrar or arbitrator a party may be represented by a legal practitioner."

23. In conclusion, therefore, we must hold that the Assistant Registrar was functioning as a court in deciding the dispute between the bank and the appellant and Jagannath Jha.

24. Then comes the question as to whether the Assistant Registrar was a court subordinate to the High Court. The foundation , of the contention of the learned counsel for the appellant is provided by the difference in the wording of Arts . 227 and 228 of , the Constitution. Under sub-s. (1) of S. 3 of the Contempt of Courts Act, 1952 every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts , of itself. Sub-s. (2) lays down that the High Court shall not take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code. Under Art. 227 every High Court shall have

superintendence over all courts land tribunals throughout the territories in relation to which it exercises jurisdiction. Under Art. 228 if the High Court is satisfied that a cause pending in a court subordinate to it involves a substantial question of law as to the interpretation of the Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may either dispose of the case itself or determine the said question of law and return the case to the court from which the case has been so withdrawn. On the basis of the difference in language between these two Articles it was contended that the legislature in passing the Contempt of Courts Act in 1952 must be taken to have contemplated the cognizance of contempts of such courts only as would be covered by Art. 228 and not Art. 227. This has given rise to considerable judicial conflict as we shall presently note.

26. It was not necessary for the purpose of that case to take note of the difference, if any, between the words 'superintendence' and , subordination'. In Kapur Singh v. Jagat Narain 1951 Indlaw PNH 58) a Division Bench of the Punjab High Court took the view that "superintendence' would include the power to deal with a content of court of a kind not punishable by the Court of the Commissioner itself appointed to hold an inquiry under Public Servants Inquiries Act, 1850) and that for the purpose of the Contempt of Courts Act the word "subordinate" would include all courts and tribunals over which the High Court is given the power of superintendence under Art. 227 of the Constitution."

In our opinion, Art. 228 of the Constitution does not indicate that unless a High Court can withdraw a case to itself from another court for disposing of a substantial question of law as to the interpretation of the Constitution, the latter court is not subordinate to the High Court. This Article is only intended to confer jurisdiction and power on the High Court to withdraw a case for the purpose mentioned above from the ordinary courts of law whose decision may, in the normal course of things, be taken up to the High Court by way of an appeal. Art. 227 is of wider ambit; it does not limit the jurisdiction of the High Court to the hierarchy of courts functioning directly under it under the Civil Procedure Code and Criminal Procedure Code but it gives the High Court power to correct errors of various kinds of au courts and tribunals in appropriate cases. Needless to add that errors as to the interpretation of the Constitution is not out of the purview of Art. 227 although the High Court could not, under the powers conferred by this Article, withdraw a case to itself from a tribunal and dispose of the same, or determine merely the question of law as to the interpretation of the Constitution arising before the tribunal. In our view, the subordination for the purpose of s. 3 of the Contempt of Courts Act means judicial subordination and not subordination under the hierarchy of courts under the Civil Procedure Code or the Criminal Procedure Code.

31. It may not be out of place to note that "subordinate courts" have been dealt with in Chapter VI of the Constitution and Art. 235 of the Constitution gives the High Court "the control over District Courts and courts subordinating thereto" by providing for powers like the posting and promotion, and the grant of leave to persons belonging to the judicial service of a State. Such control is not judicial control and a court may be subordinate to a High Court for purposes other than judicial control. Even before , "tie framing of the Constitution s. 2 of the Contempt of Courts Alit, 1926 made express provision giving the High Courts in India the same jurisdiction, power and authority in accordance with the same practice and procedure in respect of contempt

of courts subordinate to them as they had in respect of contempts of themselves. The preamble to the Act shows that it was enacted for the purpose of resolving doubts as to the powers of High Courts to punish contempts of courts and to define and limit the powers exercisable by the High Courts and Chief Courts in punishing contempts of court. The Contempt of Courts Act, 1952 repealed the Act of 1926 and reenacted the provisions thereof in substantially the same language. In England" the Queen's Bench Division has a general superintendence over all crimes whatsoever and watches over the proceedings of inferior courts, not only to prevent them from exceeding their jurisdiction or otherwise acting contrary to law, but also to prevent persons from interfering with the course of justice in such courts ": , Vol. 8, page 19.Generally speaking" any conduct that tends to bring the authority and administration of the law into disrespect or disregard or to interfere with or prejudice party litigants or their witnesses during their litigation "amounts to contempt of court: see Oswald on Contempts page 6. In order that courts should be able to dispense justice without fear or favour, affection or ill will, it is essential that litigants who resort to courts should so conduct themselves as not to bring the authority and the administration of law into disrespect or disregard. Neither should they exceed the limits of fair criticism or use language casting aspersions on the probity of the courts or questioning the bona fides of their judgments. This applies equally to all Judges and all litigants irrespective of the status of the Judge, i.e., whether he occupies one of the highest judicial offices in the land or is the presiding officer of a court of very limited jurisdiction. It is in the interests of justice and administration of law that litigants should show the same respect to a court, no matter whether it is highest in the land or whether it is one of inferior jurisdiction only. The Contempt of Courts Act, 1952 does not define 'contempt' or ` courts' and in the interest of justice any conduct of the kind mentioned above towards any person who can be called a 'court' should be amenable to the jurisdiction under the Contempt of Courts Act, 1952. It must be borne in mind that we do not propose to lay down that all Registrars of all Co-operative Societies 'in the different States are "courts" for the purpose of the Contempt of Courts Act, 1952. Our decision is expressly limited to the Registrar and the Assistant Registrar like the one before us governed by"

The Bihar and Orissa Co-operative Societies Act.The second point also fails and the appeal is dismissed.

G.C. Appeal dismissed.

CoOperative Credit Society Limited v Northern Railway Co-Industrial Tribunal, Jaipur, and Another

Bench	Vishishtha Bhargava, G.K. Mitter
Where Reported	1967 Indlaw SC 16; AIR 1967 SC 1182; 1967 (15) FLR 71; 1967 (2) LLJ 46; [1967] 2 S.C.R. 476
Case Digest	**Summary:** Labour & Industrial Law - Co-operative Societies Act - Industrial Disputes Act, 1947, s. 10(1)(d) - Constitution of India, 1950, art. 311 - Whether tribunal was justified in setting aside order of removal of 'K' from service passed by society? - Charges which were served on 'K' were vague and he had no opportunity to reply - Material which was available in support of charges was also never disclosed to him - Mere fact that 'K' did not appear on date fixed for enquiry and that he did not appear on date fixed for enquiry will not, satisfy requirement of principles of natural justice - That he should have been told of details of charges and material available in support of these charge should have been disclosed to him - No adequate opportunity having been given to 'K', tribunal was perfectly justified in setting aside order of removal based on report of committee - Held, order of tribunal needs no interference - Appeal dismissed.

Case No : C.A. No. 496 of 1965,

The Judgment was delivered by : Bhargava, J

1. Per Bhargava, JThe appellant in this appeal, brought up by special leave, is the Northern Railway Co-operative Credit Society, Ltd., Jodhpur (hereinafter referred to as the society) which is an association of the employees of the Northern Railway at Jodhpur registered in 1920 under the Co-operative Societies Act. The society had in its employment ten or eleven persons including Kanraj Mehta, the head clerk, Madho Lal, the accountant, and three other clerks, A. C. Sharma, V. D. Sharma and G. S. Saxena. At a meeting of the committee of management held on April 6, 1956, it was decided to hold the thirty-sixth and thirty-seventh annual general meeting of the shareholders for the years 1953-54 and 1954-55 and April 28, 1956, i.e., after a period of about twenty-two days. Thereafter. Kanraj Mehta, the head clerk, on April 8, 1956 applied for leave on medical grounds, having submitted a certificate from a registered vaid. Initially, the application for leave was for four days, but, by subsequent applications, he continued to extend his leave up to May 2, 1956. The other four clerks, mentioned above, also put in applications between April 12, 1956 and April 15, 1956, on similar medical certificates and continued their leave up to dates falling between April 30, 1956 and May 4, 1956. The industrial dispute decided by the award, against which the present appeal is directed, related to four of these clerks-Kanraj Mehta, A. C. Sharma, V. D. Sharma and G. S. Saxena, against whom the society decided to take disciplinary action. The case of the society was that these persons had conspired to paralyze the working of the society at the time of the impending annual general meeting on April 28, 1956, by collectively

submitting sickness certificates. In the case of Kanraj Mehta, the society issued a letter in response to his application for leave directing him to attend the railway dispensary at 7-45 hours on April 20, 1956, and asking him to report to Dr. B. P. Mathur for medical examination. Kanraj did not comply with this direction and continued to send further applications for leave accompanied by the certificates of the vaid. His leave application were never actually sanctioned, but he was allowed to resume duty after the expiry of the leave asked for by him in his last application, i.e., on May 3, 1956. Then, on May 19, 1956, the society issued a chargesheet against Kanraj Mehta containing five charges which are reproduced below : "(i) To instigate and conspire to paralyze the working of the society at the time of the impending annual general meeting on 28 April, 1956 by collectively submitting sick certificates.

(ii) Disobedience of orders in not attending for medical examination - vide honorary secretary's letter No. CCS/Est. of April 19, 1956 which goes to show that you were not prepared to face the medical examination as you had pretended to be sick.

(iii) Taking active part in the issue and distribution of certain leaflets issued against the management of the society.

(iv) Carrying vilifying propaganda in connexion with the elections of the society at the annual general meeting on April 28, 1956.

(v) Instigating the depositors to withdraw their deposits from the society and thus undermining the very existence of the institution."

7. In this appeal, learned counsel appearing for the society urged three points before us and we proceed to take them one by one.The first point urged was that, in this case, the reference to the industrial tribunal was incompetent, because the dispute referred to the tribunal was an individual dispute of four employees and was not an industrial dispute as it was not taken up by the workmen of the society. It was urged that the union which had sponsored the dispute was a union of railway employees only and not of the workmen of the society which was separate and distinct from the railway administration. When this point was raised on behalf of the appellant, a preliminary objection was taken by learned counsel appearing for the respondents that this plea sought to be raised on behalf of the appellant was barred by the principle of res judicata. It was urged that, while the reference was pending before the industrial tribunal, the society filed a petition under Art. 226 of the Constitution in the High Court of Judicature for Rajasthan at Jodhpur, praying that a writ of prohibition be issued directing the industrial tribunal to refrain from taking any proceedings in this reference on the ground that the reference did not relate to an industrial dispute. The plea that the reference did not relate to an industrial dispute was on the same ground which was sought to be urged before us, viz., that the dispute had not been taken up by the workmen of the society and the sponsoring of the dispute by the railway employees' union did not make it an industrial dispute.

8. A Division Bench of the High Court, by its judgment dated 7 February 1962, dismissed the petition holding that the reference was competent on the ground that it was at least sponsored by 4 out of 11 workmen of the society. Against the judgment of the High Court, the appellant could have come up to this Court in appeal, but failed to do so and submitted to that judgment. The plea of learned counsel for the respondents was that that judgment having become final it was no longer

open to the appellant to raise this plea in the present appeal against the subsequent award given by the tribunal after exercising jurisdiction which the tribunal was permitted to exercise by that judgment of the High Court.On behalf of the appellant, learned Counsel, however, urged that the order made by the High Court was in the nature of an interlocutory order and it was open to the appellant to challenge the correctness of that decision of the High Court in the appeal. In support of his proposition that it is not be necessary that an interlocutory order must be challenged immediately by an appeal and can be challenged when an appeal is filed against the final order in a civil proceeding, learned counsel relied on a decision of this Court in Satyadhyan Ghosal and others v. Smt. Deorajin Debi and another [1960 Indlaw SC 413]. In that case, a question had arisen about the applicability of S.28 of the Calcutta Thika Tenancy Act, 1949. The plea relating to it was rejected by the Munsif trying the suit. Against that order of the Munsif, a revision was filed in the High Court under S. 115 of the Code of Civil Procedure. The High Court held that the operation of S.28 of the Act was not affected by the subsequent amendment Act and remanded the case to the Munsif of disposal according to law. Thereafter, the Munsif passed the final decree in the suit, and against that decree, an appeal was brought to this Court after going through the usual procedure of moving the other Courts having jurisdiction. It was in these circumstances that this Court held that the order of the High Court, holding that S.28 of the Act was applicable, could not operate as res judicata in the appeal before this Court, because the High Court's order of remand was merely an interlocutory order which did not terminate the proceedings pending in the Munsif's Court and which had not been appealed from at that stage. Consequently, in the appeal from the final decree or order it was open to the party concerned to challenge the correctness of the High Court's decision. It is to be noted that there were two special features in that case. One was that the order of the High Court, which was held not to bring in the principle of res judicata, was an interlocutory order, and the other was that it was made in a pending suit which, as a result of that order, did not finally terminate. In fact, the order of the High Court did not finally terminate any proceedings at all. On the other hand, in the case before us, the order relied upon by learned counsel for the respondents was not an interlocutory order and was not made in the proceedings pending before the tribunal. The order of the High Court was made in a completely independent proceeding instituted by a petition under Art. 226 of the Constitution for issue of a writ of prohibition. It was held by this Court in Ramesh and another v. Gendalal Motilal Patni and others 1966 Indlaw SC 395] that : "when exercising jurisdiction under Art. 226 of the Constitution, the High Court does not hear an appeal or revision. The High Court is moved to intervene and to bring before itself the record of a case decided by or pending before a Court or tribunal or any authority within the High Court's jurisdiction. A petition to the High Court invoking this jurisdiction is a proceeding quite independent of the original controversy. The controversy in the High Court, in proceeding arising under Art. 226, ordinarily is whether a decision of, or a proceeding before a Court or tribunal or authority, should be allowed to stand or should be quashed for want of jurisdiction or on account of errors of law apparent on the face of the record. A decision in the exercise of this jurisdiction, whether interfering with the proceeding impugned or declining to do so, is a final decision in so far as the High Court is concerned because it terminates finally the special proceeding before it."

15. It is true that the tribunal correctly held that Kanraj was not entitled to be represented by a stranger to the society at the enquiry proposed to be held against him. In fact, the correspondence which

passed between Kanraj and the society shows that Kanraj was taking a very unreasonable and undesirable attitude in this matter and his conduct in persistently demanding representation by a stranger and on that account refusing to participate in the enquiry deserves to be condemned. That circumstances, however, will not make the enquiry valid, unless it be held that an adequate opportunity was given to Kanraj to meet the charges framed against him. The charges, as we have indicated above, which were served on Kanraj were very vague and he had no opportunity to give a reply to them. The material which was available in support of these charges was also never disclosed to him. The mere fact that Kanraj did not appear on the date fixed for the enquiry will not, in these circumstances, satisfy the requirement of the principles of natural justice that he should have been told of the details of the charges and the material available in support of these charges was also never disclosed to him. The mere fact that Kanraj did not appear on the date fixed for the enquiry will not, in these circumstances, satisfy the requirement of the principles of natural justice that he should have been told of the details of the charges and the material available in support of these charge should have been disclosed to him. It seems to us that it was in view of this omission that the subsequent notice was given by the vice-chairman to Kanraj to show cause when the vice-chairman had formed his provisional opinion on the basis of the report of the committee of enquiry that the charges were proved and Kanraj should be removed from service.

16. This subsequent show-cause notice by the vice-chairman was, no doubt, not required by any rule or law analogous to Art. 311 of the Constitution, but, in the instant case, this subsequent opportunity which was offered by the vice-chairman was the only opportunity which could have satisfied the requirement of principles of natural justice, because in the earlier enquiry Kanraj had already been prejudiced by the vagueness of the charges and by the omission to disclose to him the material in support of those charges. In the enquiry, no adequate opportunity having been given to Kanraj, the tribunal was perfectly justified in setting aside the order of removal based on the report of the committee of enquiry, and it appears that it was in view of the aspect explained by us above that the tribunal proceeded to lay down that it was open to the society to institute a fresh enquiry and give an opportunity to Kanraj to show cause after supplying copies of necessary documents to him as claimed by him when the notice dated September 19, 1956 was issued to him. Consequently, we consider that the order passed by the tribunal was fully justified.The third and the last point urged by learned counsel for the appellant was that, even if the tribunal held that the order of removal of Kanraj was unjustified, the tribunal should not have directed his re-instatement, because the society had taken a specific plea before the tribunal that the society had lost confidence in Kanraj. In support of this proposition, learned counsel relied on the decision of this Court in Assam Oil Company, Ltd., New Delhi v. Its workmen 1960 Indlaw SC 163]. It appears to us that there might have been some force in this submission if the position had still remained as it was when the tribunal made its direction for reinstatement. We were, however, informed by learned counsel for the appellant that, subsequent to the order of the tribunal, Kanraj was actually reinstated and fresh proceedings for his dismissal were taken by the society against him. The information given was that, in fact, a fresh order of removal of Kanraj from service has already been passed and that order is the subject matter of another industrial dispute before an industrial tribunal. In that industrial dispute, the question of the compensation payable to Kanraj is also under consideration. We think that, in view of these

subsequent proceedings, it would not now be at all appropriate for this Court to set aside the order of the tribunal directing reinstatement of Kanraj and thus create complications in respect of these subsequent proceedings. The position might have been different if we had come to the view that the tribunal was altogether wrong in setting aside the order of removal from service of Kanraj. While we are of the view that the order was justified we do not think that any interference with the rest of the order of the tribunal is called for.

The appeal fails and is dismissed with costs.

Uttar Pradesh Co-Operative Federation Limited v Messrs Sunder Brothers of Delhi

Bench	Vaidynathier Ramaswami, K. Subba Rao
Where Reported	1966 Indlaw SC 90; AIR 1967 SC 249; [1966] Supp S.C.R. 215
Case Digest	**Summary:** Arbitration & ADR - Practice & Procedure - Arbitration Act, 1940, ss. 34, 46 and 47 - **Cooperative Societies Act**, 1912, s. 51 - Respondent alleged that Registrar, Co-operative Societies approved termination of contract of Managing Agency with plaintiff - Whether lower court rightly exercised their jurisdiction u/s. 34 in not granting stay of proceedings of suit - It is manifest that strict principle of sanctity of contract is subject to discretion of Court u/s. 34, for there must be read in every such agreement an implied term or condition that it would be enforceable only if Court, having due regard to other surrounding circumstances, thinks fit in its discretion to enforce it - If discretion has been exercised by trial court reasonably and in a judicial manner fact that appellate court would have taken different view may not justify interference with trial court's exercise of discretion - Held, HC properly exercised its discretion u/s. 34 in not granting a stay of proceedings in suit - Appellant made out no case for our interference with order of High Court refusing stay of proceedings in suit u/s. 34 - Appeal dismissed.

Case No : Civil Appeal No. 426 of 1964

The Judgment was delivered by : V. Ramaswami, J.

1. This appeal is brought, by special leave, from the judgment of the Punjab High Court dated February 22, 1962 in Civil Revision No. 331-D of 1958 whereby the High Court upheld and confirmed the judgment of the Appellate Court and set aside the judgment of the trial court staying proceedings in the suit.

2. The Uttar Pradesh Co-operative Federation Limited (hereinafter referred to as the 'Society') was registered under the Cooperative Societies Act No. II of 1912 at Lucknow and was carrying on the business of plying public carriers on Kanpur-Delhi route. The Society had been granted, for this purpose, permits by the Uttar Pradesh Government and Delhi Administration for seven vehicles. In March, 1954, the Society entered into an agreement with the plaintiffs-M/s Sunder Brothers-through Bimal Kumar Jain and Dhan Kumar Jain by which they were appointed as Managing Agents for carrying on the business as public carriers. The terms of the Managing Agency agreement were embodied in a letter dated March 2, 1954 written by the Secretary of the Society. Clause 28 of the agreement reads as follows:-

   "That in the event of there being any dispute regarding the terms and conditions of this agreement and your appointment hereunder as Managing Agents of the aforesaid business or any matter

arising from and relating thereto or the subject matter thereof, such dispute shall be decided by arbitration as provided under Co-operative Societies Act II of 1912 *and you undertake and agree to be bound by the provisions for arbitration in the said Act".*

8. There is also another ground why the proceedings in the suit should not be stayed in the present case. If Rules 115 and 116 of the Co-operative Societies Rules are applicable then the reference of the dispute has to be made to the Registrar of the Co-operative Societies who may either decide the dispute himself or refer the dispute to an arbitrator or two joint arbitrators appointed by him or to three arbitrators, of whom one shall be nominated by each of the parties to the dispute and the third by the Registrar who shall also appoint one of the arbitrators to act as Chairman. It is alleged by the respondent that the Registrar of Co-operative Societies is ex-officio President of the Society and it was with his approval that the agreement in dispute was terminated. It was also pointed out that the Registrar was the chief controlling and supervising officer of the Society under its bye-laws. It was submitted for the respondent that the Registrar may not, therefore, act fairly in the matter and it is improper that he should be an arbitrator in the dispute between the parties.

9. In our opinion, there is much validity in this argument. The legal position is that an order of stay of suit under s. 34 of the Indian Arbitration Act will not be granted if it can be shown that there is good ground for apprehending that the arbitrator will not act fairly in the matter or that it is for some reason improper that he should arbitrate in the dispute between the parties. It is, of course, the normal duty of the Court to hold the parties to the contract and to make them present their disputes to the forum of their choice but an order to stay the legal proceedings in a Court of law will not be granted if-it is shown that there is good ground for apprehending that the arbitrator will not act fairly in the matter or that it is for some reason improper that he should arbitrate in the dispute. Reference may be made, in this connection, to the decision of the House of Lords in Bristol Corporation v. John And & Co., [1913] A.C. 241. . This case was concerned with an application for stay of proceedings under s. 4 of the English Arbitration Act which is similar to s. 34 of the Indian Arbitration Act. Upon the settlement of the final account there arose a bona fide dispute of a substantial character between the contractor and the engineer, who was the arbitrator under the contract, involving a probable conflict of evidence between, them. The House of Lords held, affirming the decision of the Court of appeal, that the fact that the engineer, without any fault of his own, must necessarily be placed in the position of a Judge and a witness is a sufficient reason why the matter should not be referred in accordance with the contract. At pp. 247-248 of the report Lord Atkinson stated as follows:

"Whether it be wise or unwise, prudent or the contrary, he has stipulated that a person who is a servant of the person with whom he contracts shall be the judge to decide upon matters upon which necessarily that arbitrator has himself formed opinions. But though the contractor is bound by that contract, still he has a right to demand that, notwithstanding those preformed views of the engineer, that gentleman shall listen to argument and determine the matter submitted to him as fairly as he can as an honest man; and if it be shown in fact that there is any reasonable prospect that he will be so biased as to be likely not to decide fairly upon those matters, then the contractor is allowed to escape from his bargain and to have the matters in dispute tried by one of the ordinary tribunals of the land. But I think he has more than that right. If, without any

fault of his own, the engineer has put himself in such a position that it is not fitting or decorous or proper that he should act as arbitrator in any one or more of those disputes, the contractor has the right to appeal to a Court of law and they are entitled to say, in answer to an application to the Court to exercise the discretion which the 4th section of the Arbitration Act *vests in them, "We are not satisfied that there is not some reason for not submitting these questions to the arbitrator". In the present case the question is, has that taken place"?*

13. It is well-established that where the discretion vested in the Court under s. 34 of the Indian Arbitration Act has been exercised by the lower court the appellate court should be slow to interfere with the exercise of that discretion. In dealing with the matter raised before it at the appellate stage the appellate court would normally not be justified in interfering with the exercise of the discretion under appeal solely on the ground that if it had considered the matter at the trial stage it may have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. As is often said, it is ordinarily not open to the appellate court to substitute its own exercise of discretion for that of the trial Judge; but if it appears to the, appellate court that in exercising its discretion the trial court has acted unreasonably or capriciously or has ignored relevant facts then it would certainly be open to the appellate court to interfere with the trial court's exercise of discretion. This principle is well-established; but, as has been observed by Viscount Simon, L. C., in Charles Osenton & Co. v. Johnston:

"The law as to the reversal by a court of appeal of an order made by a Judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well-settled principles in an individual case".

14. For these reasons we hold that the appellant has made out no case for our interference with the order of the High Court refusing stay of the proceedings in the suit under S. 34 of the Indian Arbitration Act. The appeal accordingly fails and is dismissed with costs.

Appeal dismissed

Thirunagar Panchayat v Madurai Co-Operative House Construction Society

Bench	Vaidynathier Ramaswami
Where Reported	1966 Indlaw SC 333; AIR 1966 SC 1807; [1966] Supp S.C.R. 118

Case No : C.A. No. 374 of 1965

The Judgment was delivered by : V. Ramaswami, J.

1. This appeal is brought, by special leave, from the judgment and decree of the Madras High Court dated August 9, 1963 in Letters Patent Appeal No. 45 of 1962.

2. The suit which is the subject-matter of this appeal was filed by the Tirunagar Panchayat, hereinafter called the 'Panchayat', against the Madurai Co-operative House Construction Society (hereinafter called the 'Society') in the District Munsif's Court of Tirumangalam. The Tirunagar Colony has been formed by the Society. The Colony consists of about 300 houses and its total population exceeds 1,500.

3. At its inception the colony was within the jurisdiction of the Tirupparakundram Panchayat. On February 21, 1955 the Tirunagar colony was excluded from Tirupparankundram Pan- chayat and was declared as a separate village and was constituted as a separate Panchayat known as Tirunagar Panchayat. In the formation of the colony the Society has laid out and set apart and formed public roads, parks, play grounds and other public common places. There was a change in the Board of Directors of the. defendant-Society and as a consequence of this change the Society passed a resolution on July 23, 1956 cancelling its previous resolution handing over the roads, streets and scavenging arrangements to the Panchayat. The Panchayat therefore filed a suit-O.S. 38 of 1957, in the District Munsif's Court of Tirumengalam for an injunction restraining the Society and its servants from obstructing and interfering with its lawful exercise of statutory duties relating to the roads and streets in Tirunagar and cleaning of latrines, public and private, lighting the houses and roads and making arrangements for the civic needs of the village of Tirunagar. The Society contested the suit on the ground that the Constitution of the Panchayat was illegal as the provisions of the Madras Village Panchayats Act (Madras Act 10 of 1950), hereinafter to be called the 'Act', had not been complied with. The Society also contended that the public cannot use the roads or streets as a matter of right, that the entire colony was a closed one and no outsider except the members of the Society had the right to enter the colony and that the Parks, central oval, play grounds and open spaces were the exclusive properties of the Society. The contentions of the Society were all over-ruled by the trial court and a permanent injunction was granted to the plaintiff-Panchayat, as prayed for. The decision of the trial court was affirmed by the Subordinate Judge of Madurai in A.S. 92 of 1958.

5. The question presented for determination in this appeal is whether there is a statutory vesting in the panchayat of the parks, play grounds, schools, libraries and other public places which the

Society provided for its members and whether the Panchayat is entitled to a permanent injunction restraining the Society and its servants in the manner decreed by the trial court.

8. The rules framed under the Co-operative Societies Act for the formation of House Building Societies required that when an area is set apart for a residential colony provisions for schools, markets, theatres, hospitals, clubs, religious places etc. should be made in the layout. Reference was made, on behalf of the appellant, to the layout plan Ex. A- 44 for the Tirunagar Housing colony. There is evidence in this case that the Government had assigned to the House Building Society free of cost an area of about 5 acres for the proposed public amenities like schools, markets etc. It was submitted on behalf of the appellant that the parks, play grounds, hospitals, schools etc. of the Tirunagar Housing Colony would vest in the Panchayat under s. 58 of the Act. We do not consider that there is any justification for this argument. Under s. 56 of the Act all 'public roads' in any village shall vest in the Panchayat together with all, pavements, stones and other materials thereof, all sewers, drains, drainage works, tunnels and culverts, whether made at the cost of the panchayat fund or otherwise.

10. We are accordingly of the opinion that the scope of s. 58 of the Act must be confined to communal property and income of the panchayat which by custom belongs to the villagers in common or has been administered for their benefit as a matter of custom, and the scope of that section cannot be extended to include parks, play grounds, hospitals, libraries and schools provided by the Society for the benefit of the members of the Tirunagar colony.

11. For these reasons we hold that the judgment and decree of the High Court in Letters Patent Appeal No. 45 of 1962 is correct and this appeal must be dismissed with costs.

Appeal dismissed.

Everest Apartments Co-Operative Housing Society Limited v State of Maharashtra and Others

Bench	Mohammad Hidayatullah, K. Subba Rao, R.S. Bachawat
Where Reported	1966 Indlaw SC 385; AIR 1966 SC 1449; 1966 (68) BomLR 664; 1966 MahLJ 643; [1966] 3 S.C.R. 365
Case Digest	**Subject:** Trusts & Associations **Summary:** Miscellaneous - Maharashtra Co-operative Societies Act, 1960, ss. 23(3), 149(9), 154 - (A) Is finality u/s 23(3) subject to s. 154? - No doubt that s. 154 is potential but not compulsive - Held, power is reposed in Govt. to intervene to do justice when occasion demands it and of occasion for its exercise, Govt. is made sole judge - This power can be exercised in all case except in a case in which a similar power has already been exercised by Tribunal u/s 149(9) of Act - (B) Has a party a right to move State Govt. u/s 154? - Further held, as Govt. is not compelled to take action, unless it thinks fit, party who moves Govt. cannot claim that he has a right of appeal or revision - Govt. may act or may not act; choice is of Govt. - There is no right of relief as in an appeal or revision under two codes - Appeal allowed.

Case No : C.A. No. 1 of 1966

The Judgment was delivered by: M. Hidayatullah, J.

1. In this appeal by special leave we are not concerned with the merits of the controversy between the appellant and the fourth respondent, who are the contesting parties; because only two short questions of law arise for our decision. The appellant is a registered co-operative Housing Society, registered under the Maharashtra Co-operative Societies Act, 1960 (XXIV of 1961). The Society was promoted by two individuals for the construction of a block of flats in Bombay. Shivdasani (respondent 4) claims to have paid the entrance fee, share money and other demands and complaints that his membership was wrongly rejected by the Society. The Society denies these statements and the claim. We are not concerned with the details of this dispute. What we are concerned with is this:

2. On being informed of the rejection of his application for membership, Shivdasani filed an appeal under s. 23(2) of the above Act, which was heard and decided in his favour by the District Deputy Registrar, Co-operative Societies, and Bombay. The Society filed an application before the State Government for revision purporting to be under s. 154 of the Act. This application was rejected.

12. The Act has provided for appeals in other sections and the decision on appeal is stated to be final. Yet the power of superintendence is given to the State Government in general terms in respect of any inquiry or proceeding with only one exception, namely, the proceedings of the Maharashtra State Tribunal, when the Tribunal calls for and examines the record of any proceeding

in which an appeal lies to it, for the purpose of satisfying itself as to the legality or propriety of any decision or order passed. By mentioning one specific exception to the general power, the Act has indicated an intention to include every other inquiry or proceeding within the Action by Governments as contemplated by s. 154. Mr. De, however, contends, firstly, that the Action by Government is intended to be on its own motion and not by application, and, secondly, that the power need not be exercised unless Government itself feels that its exercise is necessary. He refers, by way of contrast, to the opening words of s. 150 where provision is made for review of orders of the Tribunal in these words:

17. The extreme position does not obtain here because there is no right to interference in the same way as in a judicial proceeding. Government may act or may not act; the choice is of Government. There is no right of relief as in an appeal or revision under the two Codes. But to say that Government has no jurisdiction at all in the matter is to err, and that is what Government did in this case.

18. The order of the High Court in these circumstances overlooked' that the Government had denied to itself a jurisdiction which it undoubtedly possessed by considering that the finality of the order under s. 23(3) precluded action under s. 154. The High Court ought to have issued a mandamus to Government to deal with the application before it within its jurisdiction under s. 154. That mandamus shall now issue to Government. The appeal is thus allowed with costs

Appeal allowed.

Vasudev Gopalkrishna Tamwekar v The Board Of Liquidators Happyhome Co-Operative Housing Soci

Bench	Bhuvaneshwar Prasad Sinha, N. Rajagopala Ayyangar, J.C. Shah
Where Reported	1963 Indlaw SC 190; AIR 1967 SC 369; 1964 (66) BomLR 205; 1964 MahLJ 410; [1964] 3 S.C.R. 964
Case Digest	**Subject:** Land & Property **Keywords:** Landlord And Tenant **Summary:** Land & Property - Bombay **Cooperative Societies Act**, 1925, s. 54 - Bombay Rents, Hotel and Lodging House Rents Control Act, 1947, s. 28 - Specific Relief Act, s. 27A - Whether the appellant was a tenant under the society by virtue of the agreement? - Real nature of a transaction has to be determined on a proper construction of the document as a whole and not upon any particular words used in the document - Held, High Court correct that it was a mere description, or misdescription, of the appellant and that, in law, the appellant could not claim that relationship of landlord and tenant had been created by virtue of the agreement - HC rightly held that there was no relationship of landlord and tenant between the parties - No justification for the plea taken by appellant that he was a tenant governed by the provisions of the Rent Control Act - Appeal dismissed.

Case No : Civil Appeal No. 578 of 1961.

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

1. This appeal on a certificate granted by the High Court of Judicature at Bombay is directed against the judgment and order of a Division Bench of that Court, dated March 12,1959, reversing those of the judge of the Bombay Civil Court, passed in Chamber Summons, in Arbitration case No. A.B.N./C.H.O.-2310/88 of 1954-55.

2. It is necessary to state the following facts in order to bring out the points in controversy between the parties. The Happy Home Cooperative Housing Society Ltd. hereinafter referred to as the Society was registered in February 1949. It obtained a lease of a piece of land measuring about 12 thousand sq. yards situate at Nehru Road, Vile Parle (East) Bombay. The Society divided this land into 17 plots to be allotted to each one of its members for building purposes. A member was under the obligation of payment of premium, annual rent of Re. 1/-, and other incidental charges and to construct a house on the plot. The Society advanced loans to the members to enable them to construct their houses. The premium in respect of the land and the loan advanced, as aforesaid, together with interest, was repayable in monthly installments. Accordingly, Plot. No. 10, measuring about 676 sq. yds. was allotted to the appellant, and other plots were similarly allotted to other members for constructing their respective houses. Through the agency of the

Society, the appellant constructed a house on his plot. The construction was completed and the appellant occupied the building on or about May 1, 1951. The sum of Rs. 26,922/- odd was advanced by way of loan, to the appellant.

6. The main question in controversy in this case is whether the Award made under the Act, which became a decree of the Civil Court, under the certificate of the Registrar; under s. 59, was without jurisdiction, and, therefore, incapable of execution. The answer to this question depends upon the answer to the other question whether the appellant was a 'tenant' under the Society, by virtue of the agreement aforesaid of March 26, 1952. If it is held that the agreement aforesaid did not create the relationship of landlord and tenant, but that the appellant continued to be the debtor of the Society until all the outstanding amount advanced to him in respect of the plot and the structure bad been liquidated, the Rent Control Act, and s. 28 thereof, will be out of the way of the parties. In that case, the proceedings before the Registrar, the Award of the Arbitrators and the execution proceedings taken out by the Society would all be adjudged to be valid and binding upon the parties.

12. It is well-settled that the real nature of a transaction has to be determined on a proper construction of the document as a whole and not upon any particular words used in the document. The agreement construed as a whole leaves no manner of doubt that it was an agreement between the appellant and the Society to grant a sub-lease of Plot No. 10 only after the appellant had fulfilled his part of the agreement, namely, had paid all the outstanding amounts due to the Society in respect of the premium on the plot, the amounts advanced for construction of the house and the interest accrued due until the entire amount had been liquidated. The sub-lease would have to be executed by the Registrar of the Co-operative Societies in token of the consent of the Government of Bombay, which was a condition precedent to the validity of the sub-lease. The agreement in question, therefore, evidences nothing more than an executor contract that on the appellant fulfilling his obligations to the Society, including the payment of the entire dues aforesaid, the Society would execute the sub-lease in his favor subject to the consent of Government of Bombay, who held the first mortgage on the entire land, including Plot No. 10.

16. The Award was, therefore, a perfectly valid Award and there was absolutely no justification for the plea taken by the appellant that he was a tenant who was governed by the provisions of the Rent Control Act (Bombay Act 57 of 1947). But the appellant contended that whatever view we may take of the relation created by the document, by virtue of s. 28 of Bombay Act 57 of 1947 the Committee of arbitrators appointed under the Bombay Cooperative Societies Act 7 of 1925 had no jurisdiction to adjudicate upon the question whether the appellant was a tenant of the premises of the society, and reliance in that behalf was placed upon the judgment of this Court in Babulal Bhuramal v. Nandram Shivram 1958 Indlaw SC 38 (A.I.R. (1959) S.C. 677). In considering that argument attention must first be invited to S. 28 of Bombay Act 57 of 1947, which in so far as it is material, provides :

"(1) Notwithstanding anything contained in any law and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or proceeding would not, but for this provision, be within its jurisdiction, (a) in Greater Bombay, the Court of Small Causes, Bombay; (aa) x x x x (b) x x x x shall have jurisdiction to entertain and try any suit or proceeding between a landlord, and a tenant relating to the recovery of rent or possession of any premises to which

any of the provisions of this Part apply and to decide any application made under this Act and to deal with any claim or question arising out of this Act or any of its provisions and subject to the provisions of sub-section (2), no other court shall have jurisdiction to entertain any such suit, proceeding or application or to deal with such claim or question."

19. There is nothing in the judgment of this Court in Babulal Bhuramal'a Case (A.I,R. (1958) S.C. 677.), which supports the view that by merely setting up a Plea that he is a tenant in respect of the premises in dispute, the jurisdiction of the ordinary Courts to decide a suit, proceeding or application would be displaced. The facts which gave rise to the appeal decided by this Court in Babulal's case (A.I,R. (1958) S.C. 677.), may be noticed. The landlord filed in the Court of Small Causes a suit in ejectment against the tenant, after terminating the tenancy, and to that suit impleaded two persons who the landlord alleged had no right to be on the premises. The Court held that those two persons were not lawful sub-tenants and had no right to remain in the premises and passed a decree in ejectment against the three defendants. The three defendants then commenced an action in the Bombay City Court for a declaration that the first of them was a tenant of the landlord, and the other two were lawful sub-tenants and were entitled to the protection of Bombay Act 57 of 1947. The City Court held that it had jurisdiction to try the suit, but dismissed it on the merits. The High Court of Bombay confirmed the decree holding that the City Court had no jurisdiction to entertain the suit, but expressed no opinion on the merits. This Court affirmed the view of the High Court. The Court in that case was considering the true effect of s. 28 of Bombay Act 57 of 1947 in the light of the averments made by the plaintiffs who alleged that they were tenants and the denial by the defendant landlord of the tenancy set up. The Court observed on p. 681 :

"The suit did not cease to be a suit between a landlord and a tenant merely because the defendants denied the claim of the plaintiffs. Whether the plaintiffs were the tenants would be a claim or question arising out of the Act or any of its provisions which had to be dealt with by the Court trying the suit. On a proper interpretation of the provisions of s. 28 one suit contemplated in that section is not only a suit between a landlord and a tenant in which that relationship is admitted but also a suit in which it is claimed that the relationship of a landlord and a tenant within the meaning Of the Act subsists between the parties."

20. There is nothing in these observations to support the plea that the jurisdiction of the ordinary courts to try a suit or proceeding relating to recovery of possession of any premises to which Part 11 of the Act applies is displaced as, soon as the contesting party raises a plea about the relationship of a landlord and a tenant.

21. In the result the appeal fails and is hereby dismissed with costs.

Appeal dismissed.

Sugauli Sugar Works Private Limited v Assistant Registrar, Co-Operative Societies

Bench	Bhuvaneshwar Prasad Sinha, K. Subba Rao, N. Rajagopala Ayyangar, J.R. Madholkar, T.L. Venkatarama Aiyyar
Where Reported	1962 Indlaw SC 367; AIR 1962 SC 1367; 1962 (5) FLR 31; [1962] 3 S.C.R. 804; [1962] Supp3 S.C.R. 804
Case Digest	**Subject:** Labour & Industrial Law; Municipalities & Local Governments **Summary:** Miscellaneous - Bihar and Orissa Co-operative Societies Act, 1935, s. 48 - Jurisdiction of Asst. Registar under Act - Dispute is between a registered society, second respondent, and appellant, a non-member, in respect of claim for commission and interest thereon - Held, these matters are wholly beyond purview of s. 48 of Act, when it is remembered that second respondent is not a financing bank and that appellant is not an agriculturist to whom any advances in cash or kind had been made or could have been made so as to bring appellant within purview of s. 48(1)(e) - Appeal allowed.

Case No : Civil Appeal No. 100 of 1962.

The Judgment was delivered by: Bhuvneshwar P. Sinha, J.

1. This appeal, by special leave, is directed against the order of a Division Bench of the Patna High Court, dated October 30, 1961, dismissing in limine the appellant's petition dated October 24, 1961, under Arts. 226 and 227 of the Constitution, being Miscellaneous Judicial Case No. 954 of 1961, for a writ of Prohibition directing the first respondent not to proceed with the Award case No. 101 of 1961, and a writ of certiorari for quashing the order of the said respondent, dated September 29, 1961. The appellant is a private limited company, incorporated under the under the Indian companies Act, with its registered office at Calcutta. It carries on the business of manufacturing sugar in its factory at Sugauli in the district of Champaran, in Bihar. The first respondent is the Assistant Registrar, Co operative Societies, Motihari Circle, Motihari, in the State of Bihar; the second respondent is the Union of Cooperative Societies, and is registered under the Bihar and Orissa Co operative Societies Act (B. & O. Act VI of 1935) (to be referred to hereinafter as the Act); the third respondent is the State of Bihar.

2. The High Court, following its previous decision aforesaid, summarily dismissed the application. The appellant moved this Court, and obtained special leave to appeal from the order of the High Court, dismissing his application. This Court granted the special leave on December 4, 1961. The appellant moved this Court for stay, which was finally heard on January 11 ,1962 and the Court directed that the appeal be heard peremptorily on February 15, this year. That is how the matter comes before us for hearing of the main appeal. The only question for determination in this appeal is whether under the provisions of the Act, the first respondent had jurisdiction' to hear and determine the dispute referred to him at the instance of the second respondent. The answer

to the question raised in this appeal must depend upon the interpretation of the provisions of the Act.

Before examining the provisions of the Act, as it stands at present, it is necessary to set out the legislative history of the law on the subject. When the Cooperative movement was set up in the beginning of this century, the law governing co. operative societies was enacted as The Co operative Societies Act (11 of 1912), by the Indian Legislature. That Central Act continued in force in Bihar and Orissa until it was repealed by the Bihar and Orissa Legislative Council by the Bihar & Orissa Cooperative Societies Act (B. & O. Act VI of 1935), after obtaining the previous sanction of the Governor General, under subs. 3 of a. 80A of the Government of '.India Act. the Act of 1935 was enacted with a view to consolidate and amend the law relating to cooperative societies in the Province of Bihar and Orissa, as it then was.

7. From the provisions of the Act, set out above, it is manifest that the Act created a special tribunal, namely, the registrar of Cooperative Societies, to deal with certain disputes specified in s. 48(1) (a) to (e). This special tribunal was created with a view to shortening litigation and providing speedy relief to registered societies and their members in their disputes inter se in respect of the business of the society. Before the amendments introduced by the Act of 1948 the disputes which could be, entertained by the Registrar were disputes amongst members, past members or their heirs or their sureties, or between a society and other registered societies (without meaning to exhaust all the categories.) But, before the amendments, one who was not a member of a society or was not claiming through a member or a past member or a deceased member, or was not a surety of a member or a deceased member, was not subject to the jurisdiction of the Registrar under s. 48.

That is to say, any dispute between a society or its members, past members or deceased members or surities of such members on the one hand and non members on the other, was not within the purview of the section so that, the appellant company, which is not a registered society, or a member of a registered society, could not have its claim, or a claim against it by a registered society, referred to the Registrar for decision, under this section, Such a dispute by a society or its members against a non member had to be taken to the ordinary courts for decision. In our opinion, the contention raised on behalf of the appellant is correct. By the amending Act of 1948, the aforesaid relevant and important amendments Were introduced into the Act.

In the instant case, it is manifest that the dispute is between a registered society, the second respondent, and the appellant, a non member, in respect of the claim for commission and interest thereon for supply of sugarcane, and the appellant alleges that it has a counterclaim of a lakh and fifty thousand rupees for short and irregular supply of sugarcane 'against that respondent. These are matters which, in our view, are wholly beyond the purview of s. 48 of the Act, when it is remembered that the second respondent is not a financing bank and that the appellant is not an agriculturist to whom any advances in cash or kind had been made or could have been made so as to bring the appellant within the purview of s.48 (1) e), and consequentially of Explanation 1. The decision of the Patna High Court to the contrary is, therefore, not correct.

9. In the result, the appeal is allowed with costs, and it is directed that the Registrar should not entertain the reference, and should not adjudicate upon the dispute, and not make an award. The main contesting parties must be left to their remedies in the ordinary courts.

Appeal allowed.

Mannalal Jain v State of Assam and Others

Bench	S.K. Das, Bhuvaneshwar Prasad Sinha, A.K. Sarkar, N. Rajagopala Ayyangar, J.R. Madholkar
Where Reported	1961 Indlaw SC 425; AIR 1962 SC 386; 1962 (2) SCJ 93; [1962] 3 S.C.R. 936
Case Digest	**Summary:** Trade - Co-operative Societies Act, 1912 - Constitution of India, 1950 - Essential Commodities Act, 1955 - Import and Export (Control) Act. 1947 - Prohibition Act - Licensing Authority - Foodgrains - W.P. was filed by the petitioner in which he stated that he was carrying on a business dealing in rice and paddy - 1955 Act was enacted in the year 1955 - In exercise of the powers conferred by s. 3 of the said Act, read with a notification by which the said powers were delegated by the Central Govt. to the Govt. of Assam, the latter Govt. made an Order called the Assam Foodgrains (Licensing and Control) Order, 1958 - Result of this was that no dealing in rice and paddy in wholesale quantities was permissible unless the petitioner obtained a license from the relevant licensing authority - Petitioner stated that he obtained such a license in 1958 - Licence expired in the end of the same year and the petitioner's case was that in 1959 he also carried on his business though there was some dispute as to whether he had obtained a license for that year - Later he received a letter from office of Deputy Director of Supply which stated that license would not be renewed after 31-12-1959 - This communication was the result of a decision taken by Govt. of Assam on the advice of Food Advisory Council to give a right of monopoly procurement of paddy to a cooperative society in a certain district - Whether there was any question for violation of art. 14 - Held, if the duty of the licensing authority was quasi-judicial in its nature, then it was difficult to appreciate how it can be said that its decision would offend art. 14 - It was clear that the co-operative societies form a class by themselves and a provision giving preference to such a class, would be a good provision because the object of the Act would be better served thereby for the reasons earlier mentioned, such provision would have a clear nexus with the object of the Act and therefore satisfy the test of art. 14 - Court did not think any question of violation of art. 14 can be seriously pressed - Petition allowed.

Case No : Petition No. 303 of 1960

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

1. This writ petition by one Mannalal Jain was originally filed on 17 October 1960, and the order complained of was dated 13 September 1960. This was an order made by the Deputy Commissioner, Kamrup Gauhati, rejecting an application made by the petitioner for the grant of a license for the year 1960 for dealing 'in rice and paddy under the relevant provisions of the

Assam Foodgrains (Licensing and Control) Order, 1960. This writ petition was put up for hearing in this Court on 02 February 1961. The hearing was, however, adjourned sine die, because it was stated before us that the period of licence for 1960 had already expired and a fresh application would have to be made for a license for 1961. A fresh application was accordingly made by the petitioner on 04 February 1961. But before that date: a fresh Assam Foodgrains (Licensing, and Control) Order, 1961 was made by the Governor of Assam and the application made by the Petitioner had to be dealt with under the new Order. No order having been made on this fresh application by the Deputy Commissioner, the petitioner moved this Court by means of a petition (C.M.P. No. 850 of 1961) asking for certain reliefs, one of which was that the respondents, namely, the licensing authorities, should be directed to consider the application of the petitioner and grant him a license. On 11 April 1961 an order was made rejecting the application of the petitioner. This order which is impugned before us was in these terms.

15. We proceed now to a consideration of the grounds of attack and the replies thereto. As to the first ground of attack it must be made clear at the very outset that the vires of the Essential Commodities Act, 1955 have not been challenged before us. What has been contended before us is that s.3 of the Act gives, certain powers to the Central Government, which powers the Central Government has delegated the State Government of Assam. These powers it is contended, do not authorise the insertion of sub-cl. (e) of cl. 5 of the Control Order, 1961; in other words the argument is that whether the applicant for a licence is a, co-operative Society or not has no relevance whatsoever to the objects fur which s. 3 grants the powers to the Central-Government or its delegate to make certain Orders. Sub-s. (1) of a. 3 is relevant to this argument and reads:

*"3 (1) If the Central Government is of *onion that it is necessary or expedient an to do for maintaining or increasing supplies of my essential commodity or for securing their equitable distribution and availability at fair prices it may by, order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein."*

17. We cannot accept this argument in the very broad terms in which it has been stated. We are astisfied that cl. 5 of the Control Order, 1961 does not provide for a monopoly in favour of cooperative societies. The clause enumerates five matters and states that the licensing authority shall have regard to those matters in granting or refusing a license. The five matters enumerated in the clause are not exhaustive of the matters which the licensing authority may consider; because the clause says that the matters enumerated therein are five "among other matters" which the licensing authority may consider. Obviously enough it is open to Ye licensing authority to consider all matters relevant to, the'grant or refusal of a license and the; five matters enumerated in the clause merely highlight some of those matters.All that can be said is that sub-cl. (e) enables the licensing authority to,; prefer a co-operative society in certain circumstances in the matter of granting a license; in other words, there may be cases or localities : where the considerations set out in sub-cl. (e) may override other considerations, in the matter of granting a license. We do not think that subcl. (e) has any more far reaching effect. Indeed the: learned Attorney-General appearing for : the respondents conceded that sub-cl. (e) of cl. 45 did not have the effect of creating a monopoly in favour of co-operative societies.

20. We are of the view that by reason of the position which cooperative societies may occupy in the village economy of a particular area,, it cannot be laid down as a general proposition that sub-cl.(e)

of cl 5 of of the Control Order, 1961, is unrelated to the objects mentioned in s. 3 of the Essential Commodities Act, 1955. There may be places or areas where co-operative societies are in a better position for maintaining or increasing supplies of rice and., paddy and even, forsecuring their equitable distribution and availability at fair prices. We must, therefore repel the very broadly stated contention of the learned counsel for the petitioner that sub-cl. (e) of cl. 5 of the Control Order, 1961, can have no-relation whatsoever to the two objects mentioned in s. 3 of the Essential Commodities Act, 1955. On behalf of them petitioner reliance was placed on the decision in Ramanlal Nagardas v. M. S. Palnitkar, A. I. R. 1961 Guj. 38 1960 Indlaw GUJ 20. That was a case in which the validity of State action in entrusting wholesale distribution of sugar which is an essential commodity under the Essential Commodities Act, 1955, to Co-operative Societies only and excluding other dealers holding similar licenses like the co-operative 'societies from such distribution, was challenged and adore for consideration. It was held that a State could make a classification for the purpose of achieving particular legislative objects but the classification must satisfy two conditions : (1) it must be founded on intelligible differentia, and (2) the differentia must have a rational relation to the objects sought to be achieved. The question was considered from the point of view of Art. 14 of the Constitution and it was held that the action of the State Government in entrusting wholesale distribution of sugar to cooperative societies to the exclusion of other licence-holders amounted to a discrimination which violated the right guaranteed under Art. 14. The principles underlying Art. 14 of the Constitution are now well-settled and have been enunciated and explained in a number of decisions of this Court and we consider it unnecessary to refer to those principles in detail. In the case under our consideration no discrimination has been made between one class of licenseholders and another class of license-holders as in the case of Ramanlal Nagardas V. M. S. Palnitkar, A.I.R. 1961 Guj. 38 1960 Indlaw GUJ 20. What has happened in the present' case is that licenses have been granted only to cooperative societies and a license has been denied to the petitioner, the licensing authority proceeding on the footing that a monopoly must be created in favour of co-operative societies.

23. Before we part with this case we express our deep concern over the manner in which the State Government or its officers have issued instructions in the matter of granting' of licenses, instructions which clearly' enough are not in consonance with the provisions of law governing the grant of such licenses. We doubt the wisdom of issuing executive instructions in matters which are governed provisions of law; even if it be considered necessary to issue instructions in such a matter,, the instructions cannot be so 'framed or utilised as to override the provisions of law. Such a method 'Will destroy the very basis of the rule of law and strike at the very root of orderly administration of law. We have thought it necessary to refer to this matter because we feel that the instructions which the State Government or its officers have issued in the matter of granting of licenses for the procurement of paddy are not in consonance with the provisions of el. 5 of the Control Order 1961.

24. In the result the petition is allowed with costs and the necessary orders should now issue as directed above.

SARKAR J.

25. The petitioner is a citizen of India and carries on business as dealer in rice and paddy in the State of Assam. Since 1958, dealing in rice and paddy was controlled in that State by Orders made by

the State Government from time to time under the Essential Commodities Act, 1955 by virtue of powers delegated to it by the Central Government under s. 5 of that Act. These Orders here. after called Licensing Orders,, provided that no person could engage in any purchase, sale or storage for sale of any foodgrains, which included rice and paddy in wholesale quantities except, under and in accordance with the terms and condition of a licence business involving issued thereunder.

52. It was contended that the licensing authority in granting the licence to the co-operative society had only carried out the directions of the Government and had not acted independently. I find no basis for this contention apart from the bald allegation of the petitioners which is denied by the respondent. N directions by the Assam Government for the year 1961 have been produced. The instructions to which I have earlier referred requiring the licence to be given to the co-operative societies were confined to the year 1959-60. That had no force in regard to the year 1961 with which we are concerned. Those instructions cannot be taken as operating for all time to come for then the licensing authority's order granting licences to a co-operative society in future years will always have 'to be held to have been made under these instructions. I am unable to take such a view of the matter. As already stated, the High Court had by its Order of 10 August 1960 asked the licensing authority to proceed in a quasi-judicial manner. There is no reason to think that the licensing authority had not observed this direction of the High Court.

53. It also seems to me reasonable to think that the Assam Government inserted cl. (e) in paragraph 5 of the Licensing Order, 1961 in view of the judgments of the High Court of Assam to which I have earlier referred. The Assam Government obviously intended that the licensing authority would in view of cl. (e) give preference to the co-operative societies. Furthermore, s. 4 of the Act provides that an order made under s. 3 conferring powers on any officer or authority may contain directions to him as to the exercise of such powers. In my view, for the reasons earlier stated, a direction in the Licensing Order to give preference to cooperative societies would not be bad. It seems to me that cl. (e) of paragraph 5 of the Licensing Order, 1961 really amounts to such a direction. It was not necessary after the Licensing Order, 1961 for the Government of Assam therefore to give any other direction to the licensing authority. I do not think any question of violation of Art. 14 can be seriously pressed. If the duty of the licensing authority was quasi-judicial in its nature, then it is difficult to appreciate how it can be said that its decision would offend Art. 14. In any case, it seems to me quite clear that the co-operative societies form a class by themselves and a provision giving preference to such a class, would be a good provision because the object of the Act would be better served thereby for the reasons earlier mentioned; such provision would have a clear nexus with the object of the Act and therefore satisfy the test of Art. 14. Looking at the matter from any point of view it seems to me that the Order of the licensing authority giving preference to the co-operative Societies is not open to any objection. In my view that was a fair Order to have been made in the circumstances of this case.

I would for these reasons dismiss this petition.

MUDHOLKAR, J.

I agree with the judgment delivered by Sarkar, J.

54. By Court-In accordance with the opinion of the majority this Writ Petition is allowed with costs.

Petition Allowed.

Registrar, Co-Operative Societies Dharam Chand and Others(In re) v Dharam Chand And Others

Bench	Kailas Nath Wanchoo, Pralhad Balacharya Gajendragadkar, A.K. Sarkar, K.C. Das Gupta, N. Rajagopala Ayyangar
Where Reported	1961 Indlaw SC 311; AIR 1961 SC 1743; [1961] 31 Comp Cas 454; [1962] 2 S.C.R. 433
Case Digest	**Subject:** Corporate; Municipalities & Local Governments; Trusts & Associations **Summary:** Corporate - Co-operative Societies Act, 1912, ss. 17 and 43 - Co-operative Rules, rr. 18 and 30(3) - Constitution of India, 1950, art.226 Co-operative bank - Defalcation - Application u/r 18 for award against members of managing committee - Registrar deciding to act as arbitrator - Objection on ground of official bias - Not upheld - Appeal allowed.

Case No : Civil Appeal No. 1 of 1958

The Judgment was delivered by : Kailas Nath Wanchoo, J.

1. This is an appeal on a certificate granted by the Judicial Commissioner, Ajmer. The brief facts necessary for present purposes are these.,, There is a Bank in Ajmer known as the Commercial Co-operative Bank Limited, Ajmer (hereinafter referred to as the Bank), which is registered under the Co-operative Societies Act, No. 11 of 1912 (hereinafter referred to as the Act). Dharam Chand, respondent No. 1 (hereinafter referred to as the respondent), along with certain other respondents were members of the managing committee of the Bank. One Nandlal Sharma was the paid manager of the Bank. This man disappeared in 1953 and thereafter defalcation to the extent of about Rs. 6,34,000 was detected. Consequently, the managing committee passed a resolution suspending the business of the Bank subject to the approval of the Registrar. The then Registrar Shri Nagar approved the resolution and appointed an Inspector of Co-operative Societies to hold an immediate inquiry. He also appointed a firm of Chartered Accountants as investigating auditors. On investigation by the auditors embezzlement to the extent of about Rs. 6,34,000 was found. Thereupon the successor Registrar, Shri Chitnis, gave notice to the respondent and other members of the managing committee on February 26, 1955, asking them to show cause why the committee should not be suspended under r. 30(3) of the Rules framed under the Act. A reply to the notice was given by the respondent and others in which they denied allegations of mismanagement, etc. The then Registrar Shri Chitnis however appointed an administrator of the Bank after removing the managing committee.

7. The official bias of the Registrar is sought to be based on two circumstances: the first is the notice issued by the then Registrar on February 26, 1955, asking the members of the managing committee (including the respondent) to show cause why they should not be suspended, and the

second is that the Registrar is the head of the Co-operative Department and as such has certain legal powers over all Cooperative Societies (including the Bank) in his administrative capacity and therefore he would not be an impartial person to decide this dispute, particularly in view of the provisions of s. 17 of the Act.

8. We are of opinion that there is no force in either of the contentions. Turning to the notice of February 26, 1955, we are of opinion that there can be no inference of bias against the Registrar as such because he gave that notice and afterwards ordered the removal of the managing committee. That notice was based on the report of the investigating auditors and was concerned with the collective responsibility of the managing committee in the discharge of their duties. The proceedings under that notice have nothing in ,common with the proceedings in the present dispute which, as we have already said, are in the nature of misfeasance proceedings against certain members of the managing committee and in which their individual responsibility as members of the managing committee to make good the loss caused by the embezzlement falls to be considered. So far as the proceedings under the notice are concerned, the only question was whether on the facts found by the investigating auditors the managing committee should as a whole be allowed to act as such and all that the Registrar in that connection did was to decide on the facts found by the investigating auditors that the managing committee should no longer be allowed to manage the affairs of the Bank.

9. That is a very different matter from the dispute in the present proceedings, namely, whether the particular members of the managing committee against whom the application under r. 18 has been made are responsible for making good the loss caused to the Bank by the embezzlement, the fact of which is not in dispute. In the present proceedings therefore the Registrar will have to decide the individual responsibility of the various members of the managing committee (including the respondent) in the matter of making good the loss caused to the Bank. We are therefore of opinion that the fact that the Registrar gave that notice for the purpose of the removal of the managing committee is no reason to hold that he would be biased in the investigation of individual responsibility of various members of the managing committee in this matter. We cannot therefore agree with the Judicial Commissioner that there can be any official bias in the Registrar on this ground in connection with the present dispute and that such bias disentitles him to act as a judge or arbitrator under r. 18.

11. We fail to appreciate how this general supervision of the Registrar over all Co-operative Societies can be said to amount to a bias in him so as to disentitle him to act as a judge or arbitrator under r. 18. It is not the respondent's case that the Registrar is in any way responsible for the day to day working of the Bank. All that he is concerned with is to see that the accounts of the Bank are audited yearly, and if necessary, to make inspections of the Bank, if so authorised by the Act and the Rules. That, however, does not mean that the Registrar is bound to shield the auditors or his subordinates who might have made the inspection of the Bank and would so conduct the proceedings as to put the blame on the members of the managing committee. Even if some blame attaches to the auditors appointed by the Registrar or to his subordinates who might have inspected the Bank, their fault would be that they failed to detect the embezzlement till the paid manager absconded. That, however, does not mean that the Registrar was at any time a party to the fraud which resulted in the embezzlement. Even the Judicial Commissioner recognises

that the Registrar has no personal interest in the matter and that he would but for the bias found by the Judicial Commissioner have been a most proper person to decide the dispute. Therefore even if we bear in mind the fact that the Registrar is the administrative head of the Department, we see nothing inherent in the situation which shows any official bias whatsoever in him so far as adjudication of this dispute is concerned.

13. It seems to us, therefore, that the learned Judicial Commissioner was in error in thinking that the Registrar was biased. For the reasons earlier mentioned, we do not think that any such blemish attached to the Registrar. That being so, no question of his inability to act as a judge under the rule of natural justice that no man shall be judge in his own cause, arises. The judgment of the learned Judicial Commissioner has to be set aside on this ground alone.

14. We do not wish however to be understood as having made any pronouncement that if it had been proved that the Registrar was suffering from any bias, then the present would have been a fit case for the issue of a writ of prohibition as asked by the respondent. Before the writ could be issued a further question would have to be decided whether in view of the statute, that is, r. 18 of the Rules framed under s. 43 of the Act, there was any scope for applying the rule of natural justice on which the contesting respondent relied. A question of this kind was mentioned in Gullapalli Nageswar Rao and Others V. State of Andhra Pradesh and Others [1960] 1 S.C. R. 580 1959 Indlaw SC 104. In the view that we have taken it is unnecessary to go into that question and we do not do so.

15. The result is that the appeal is allowed and the judgment of the Judicial Commissioner is set aside. The petition will stand dismissed. Respondent No. 1 will pay the costs throughout. We trust that there will be no further reason to delay the termination of the proceedings under the rules by the Registrar.

Hoshiarpur Central Company Operative Bank Limited v Commissioner of Income Tax, Simla

Bench	Mohammad Hidayatullah, S.K. Das, J.C. Shah
Where Reported	1960 Indlaw SC 334; AIR 1960 SC 1303; [1960] 40 ITR 421; 1961 (2) MLJ(SC) 9; 1961 (2) SCJ 70; [1961] 1 S.C.R. 107
Case Digest	**Summary:** Income Tax & Direct Taxes - Indian Income Tax Act, 1922, ss. 6, 10 and 12 - **Cooperative Societies Act**, s. 31 - Notification R Dis No 291-I T /25 D/-25-08-1925, as subsequently amended - Whether income of appellant is exempt under Notification? - Appellant is a cooperative bank and deals in sugar and standard cloth with special permission of authorities - Second para of explanation in notification exempts profits made by a cooperative society in transaction with its members and not to profits made in any other way - A cooperative society primarily exists for business with members and not for business with non members - Held, profits were exempt under notification - Appeal allowed.

Case No : C.A. No. 238 of 1955

The Judgment was delivered by : M. Hidayatullah. J.

1. This is an appeal against the judgment and order of the High Court of Punjab with the certificate of the Court granted under s. 66A(2) of the Indian Income-tax Act.

2. The Hoshiarpur Central Co-operative Bank, Ltd., Hoshiarpur, hereinafter referred to as the Bank, is the appellant., and the Commissioner of Income-tax, Simla, is the respondent. For the assessment years 1948-49 and 1949-50, the Income-tax Officer included in the assessment of the Bank certain income which had accrued to the Bank as profits from trading in controlled commodities like sugar, cloth, kerosene, etc., which the Bank was allowed to deal in, with the approval of the Registrar of Co-operative Societies conveyed in a letter dated September 28, 1954. The Bank claimed exemption under a notification issued Under s. 60 of the Income-tax Act, but the contention was not accepted. On appeal, the Appellate Assistant Commissioner reversed the decision, which, on further appeal, was reversed by the Appellate Tribunal, Delhi Branch. The Appellate Tribunal, however, raised, and referred the following question to the High Court under s. 66(1) of the Income-tax Act:

   " Where a co-operative Bank deals in sugar and standard cloth with special permission of the authorities and earns income from such activities, is such income exempt from tax under item 2 of the Government of India Notification F. D. (C. R.) Notification R. Dis. No. 291-1. T/25 dated 25th August, 1925, as subsequently amended (Income-tax Manual, 10th Edition, Part II, pages 257-258) ?"

3. The High Court answered the question against the Bank, but certified the case as fit for appeal to this Court, and hence this appeal.

10. The question is plainly one of construction of the notification. In support of the case of the Department, the learned Attorney-General relies on two arguments. He first refers to the opening words of the second para of the notification, viz., " The profits of any Cooperative Society ". These words, it is argued, refer to profits made by a Co-operative Society in its business as a pure Co-operative Society, or, in other words, in business with its own members within the four corners of the Co-operative Societies Act, 1912 and the byelaws made under that Act. No doubt, a Co-operative Society primarily exists for business with members and not for business with non-members; but the words of the notification and even those more specifically relied upon, are wide enough to include any business whether of the one kind or other. It cannot be denied that the Bank is a Co-operative Society and is claiming the exemption only as such, and further that it is claiming the exemption in respect of profits from a business carried on by it. It was for this reason that the attempt to bring the profits within " other, sources " covered by s. 12 of the Indian Income-tax Act was rightly abandoned in this Court. If this is the obvious position, it follows that the words " the profits of any Co-operative Society " are wide enough to cover profits-from any business, and there is nothing to show that the profits there mentioned are only the profits from business with members.

11. It is next argued that a Co-operative Society exists for business with members, and that the Co-operative Societies Act and the bye-laws of the Bank reflect this character of the business undertakings. This intention underlying the Co-operative Societies Act and the bye-laws, it is urged, is the key to the interpretation of the notification, and it must, therefore, be limited to profits from business with members only. In support of this argument, reference is made to observations in The Madras Central Urban Bank Ltd. v. Commissioner of Income-tax, ((1929) I.L.R. 52 1931 Indlaw MAD 3 Mad. 640), The Madras Provincial Co-operative Bank Ltd. v. Commissioner of Income-tax, ((1933) I.L.R. 56 Mad. 837 1933 Indlaw MAD 2 F.B) and Commissioner of Income-tax, Burma v. The Bengalee Urban Co-operative Credit Society, Ltd., ((1933) I.L.R. 11 Ran. 521 1933 Indlaw RANG 16), where it was pointed out that the notification covered only profits from business with members. The first two cases were of interest derived from moneys invested in Government Securities to comply with orders of Government to the Societies to keep 40 per cent of the total liabilities always ready at hand, and it was said that the profits were not from business with members. In the last of the three cases, it was pointed out that the exemption was grounded on the principle that a person cannot make a loss or profits out of himself', and strictly speaking, only such profits as were made in business with members were exempt.

12. The position since these cases were decided has been materially altered by the addition of the Explanation. The Explanation now takes us back to the kinds of income to be found in s. 6 of the Indian Income-tax Act where business profits are, in a category by themselves, more exhaustively treated in s. 10. There are other heads of income of distinct characteristics which are treated separately, and then there is a residuary head which includes income from ‚other sources" which for that reason are innominate. The Explanation cannot be said to imply a general approval of the earlier decisions. Such a conclusion does not necessarily follow, because if the paragraph of the notification was clear enough there was hardly any need for the Explanation. The addition of

the Explanation clears once for all any doubt that might have arisen as to the ambit of the word " profits". After the addition of the Explanation and even before it, the word denoted profits from business and not income which arose, apart from business. It must not be overlooked that at the time when the notification was first issued and also when it was amended, it was not even contemplated that Co-operative Societies would be permitted to deal in commodities in short supply with a view to ensuring their equitable distribution among the consumers. It was, however, always open to the appropriate Government to allow a Society to extend its business operations to trading with persons other than its members subject to conditions and restrictions, vide s. 31 of the Co-operative Societies Act. This has, in fact, been done here. Once there is this extension of the business of a Co-operative Society, the general words of the notification include the profits from such business within the exemption, and it would require more than a supposed underlying intention to negative the exemption. To gather the meaning of the notification in the light of an alleged intention is to reverse the well-known canon of interpretation. In our opinion, the profits were exempt under the notification, and the answer to the question ought to have been in the affirmative.

13. In the result, we allow the appeal with costs here and in the High Court.

Appeal allowed.

Chandi Prasad Singh v State of Uttar Pradesh

Bench	T.L. Venkatarama Aiyyar, Vivian Bose
Where Reported	1955 Indlaw SC 30; AIR 1956 SC 149; 1956 ALJ 153; 1956 CRLJ 322; 1956 (1) MLJ 88; 1956 (1) MLJ(SC) 88; 1956 SCJ 146; [1955] 2 S.C.R. 1035
Case Digest	**Subject:** Criminal **Keywords:** Code of Criminal Procedure 1898, Co-operative Societies Act, misa **Summary:** Contract & Commercial - Criminal - Code of Criminal Procedure, 1898, ss. 307, 536, 234, 235 and 537 - Indian Penal Code, 1860, ss. 408 and 409 - Contract Act, 1872, s. 182 - Appellant was chief promoter of society and collected money from prospective shareholders by way of share money - The Society did not function after the collection of funds - Some of the members wrote a letter to the Registrar of Co-operative Societies pointing out that Society had not functioned ever since its incorporation and asking that steps might be taken for examination of its accounts and, if necessary for its being wound up - Trial of offences some of which are triable with jury and others with assessors - (A)Whether Sessions Judge had jurisdiction to refer whole case to High Court u/s. 307 of CrPC,1898? - S. 307 of CrPC applies in terms only to trials with aid of a jury - Held, there is therefore no power in Sessions Court to refer cases tried with aid of assessors for decision of HC -(B) Whether in present case appellant is a servant or an agent and also whether appellant in present case should be charged u/s. 408 or 409 of IPC? - Held, true status of appellant was that of a servant and not of an agent, and that he should have been charged under s. 408 and not under s. 409 of IPC - Further held, moreover, whether appellant should be charged u/ss. 408 or s. 409 was of no importance in present case as sentence imposed on him under u/s 409, viz, four years' rigorous imprisonment could be maintained even u/s. 408 - (C) Whether failure of accused to raise an objection in trial Court that he had been deprived of benefit of trial by jury by being tried u/s 409 IPC, is triable by jury in appeal to Supreme Court u/s 536 CrPC? Held, that failure of accused to raise an objection in trial Court that he had been deprived of benefit of trial by jury by being tried u/s. 409 IPC, would preclude him from raising objection in appeal to Supreme Court - (D) Whether s. 235 or s. 234 of CrPC, 1898, will apply on offences arising out of same acts and forming part of same transaction? - Held, that accused charged with three offences u/s. 409 and one u/s. 477-A of IPC - On offences arising out of same acts and forming part of same transaction s. 235 will apply and not s. 234 of CrPC - Appeal dismissed.

Case No : Criminal Appeal No. 150 of 1954. On appeal by leave from the judgment and order Dt. 23rd March 1954 of the Allahabad High Court (Lucknow Bench) in Cr.A. No. 112 of 1953 connected with Criminal Reference Register No. 15 of 1953 arising out of the judgment and order Dt. 24 February 1953 in Sessions Trial No. 5 of 1952 of the Sessions Court at Lucknow.

The Judgment was delivered by : T. L. Venkatarama Aiyyar, J.

1. This is an appeal by special leave against the judgment of the High Court of Allahabad affirming the conviction of the appellant by the Sessions Judge, Lucknow under sections 409 and 477-A of the Indian Penal Code.

2. On 12-2-1949 a Society known as the Model Town Co-operative Housing Society, Ltd., was registered under the provisions of the Co-operative Societies Act (II of 1912), its object being to acquire vacant sites in the town of Lucknow and to allot them to its members so as to enable them to build houses of their own. The appellant was the chief promoter thereof, and collected monies from prospective shareholders by way of share money. The first general body meeting of the Society was held on 1-3-1949. At that meeting, the appellant was elected Honorary Secretary and one Sri Munna Lal Tewari as Treasurer. The latter having resigned, one S. C.Varma was appointed Treasurer in his stead. On 22-4-1949, there was a meeting of the Managing Committee, at which the appellant was directed to band over the accounts of the Society and its funds to its Treasurer. The appellant gave a list of 38 persons as members of the Society, delivered cheques issued by 13 of them as their share money, and paid a sum of Rs. 3,500 being the amount stated to have been received by him from the other 25 members as share money. The Society did not function thereafter.

6. Reliance is placed in support of this contention on the observations in Emperor v. Haria Dhobi, (A.I.R. 1937 Patna 66 1937 Indlaw PAT 228). We are unable to agree with this contention. If the procedure adopted by the Sessions Judge is to be held to be illegal, it can only be on the ground that he contravened some provision of law which requires him to refer the whole case to the High Court. It is conceded that the only provision of law dealing with this matter is section 307. But that section applies in terms only to trials with the aid of a jury. There is therefore no power in the Sessions Court to refer cases tried with the aid of assessors for decision of the High Court under that section. That was the view taken in Pachaimuthu In re, ([1932] I.L R. 55 Mad 715 1932 Indlaw MAD 88), where it was held that the Assistant Sessions Judge had no jurisdiction to refer under section 307 the whole case to the High Court, that he should himself dispose of the charges which were triable with the aid of assessors, and that the reference in respect of those charges was bad. This decision was followed in Emperor v. Lachman Gangota, (A.I.R. 1934 Patna 424). The same view has also been taken by the High Court of Bombay in a number of cases: Vide Emperor v. Kalidas, ([1898] 8 Bom. L.R. 599), Emperor v. Vyankat Sing, ([1907] 9 Bom. L.R. 1057) and Emperor v. Chanbasappa, (A.I.R. 1932 Bom. 61 1931 Indlaw MUM 95). We are accordingly of opinion that the Sessions Judge had contravened no provision of law, and had committed no illegality in deciding the case, in so far as it related to the charge under section 409, himself In this case there is the further fact that the appellant preferred an appeal against his conviction under section 409 by the Sessions Judge, and that appeal was heard along with the reference under section 307 in respect of the charge under section 477-A, and that they were both of them disposed of by the same judgment.

8. It is next contended that there has been a violation of section 234 of the Code of Criminal Procedure in that the appellant had been charged with three offences under section 409 and one under section 477-A. But the case is governed by section 235, as the several offences under sections 409 and 477-A arise out of the same acts and form part of the same transaction. Moreover, the appellant, has failed to show any prejudice as required by section 537. This objection must accordingly be overruled.

9. It was finally contended that there had been no proper examination of the appellant under section 342, and that therefore the conviction was illegal. This objection was not raised in the Courts below, and is sought to be raised in this Court by a supplemental proceeding. We find no substance in this objection.

In the result, this appeal fails and is dismissed.

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

ON THE 13TH DAY OF JULY, 2015

BEFORE

THE HON'BLE MR.JUSTICE RAVI MALIMATH

AND

THE HON'BLE MR.JUSTICE G.NARENDAD
I.T.A.NO.5019/2012

BETWEEN:

SHREE SIDDESHWAR SOUHARDHANA
SAHAKARI NIYAMIT,
TQ: BILAGI, DIST: BAGALKOT – 587116,
PA NO. AACAS9345R.

… APPELLANT

(BY SRI.H.R.KAMBIYAVAR FOR
M/S.K.R.PRASAD, ADV.)

AND:

THE INCOME TAX OFFICER,
WARD-1, BAGALKOT.

… RESPONDENT

(BY SRI.Y.V.RAVIRAJ, ADV.)

JUDGMENT

The appellant filed return of income for the assessment year 2007-08 declaring yearly income after claiming deduction under the 80P(2)(a)(i) of the Income Tax Act, 1961 (for short 'the Act'). During the assessment proceedings, it was noticed that the appellant had invested its surplus in Bilagi Sugar Mills Ltd., Badagandi and Bilagi Pattana Sahakari Bank, Bilagi. The interest earned on these investments was disallowed by the Assessing Officer. He held that the assessee had invested its surplus as deposit in a private limited company and therefore income received is not relatable to the business of the assessee company and therefore such income is not eligible for deduction. The Assessing Officer placed

reliance on the judgment in I.T.A.No.1568/2005 dated 30.09.2008 in the case of Totgarh Co-operative Sale Society Ltd., Vs. ITO Ward 1, Sirsi. The appellant carried the said order in appeal before the Commissioner of Income Tax (Appeals). The appeal was dismissed.

2. By order dated 22.11.2012, the appeal was admitted to consider the following two substantial questions of law:

"i) Whether on the facts and in the circumstances of the case the appellant was entitled to exemption under Section 80P(2)(a)(i) of the Act, in respect of interest received form investments of its surplus funds made with the members of the Society?

ii) Whether on the facts and in the circumstances of the case, the interest income received by the appellant from investments/deposits of its surplus fund with the Member Company is exempt from tax on the Principle of Mutuality?"

5. It is submitted that the facts as narrated in the aforesaid judgment are in identical terms to the facts of the present Co-operative Society. There is no difference so far as the facts are concerned. In view of the submission made and the question of law having been answered in the aforesaid judgment of the division bench of this Court, we are of the view that the said decision requires to be followed in this case also. Hence, the substantial question of law is accordingly answered in favour of the assessee and against the revenue.

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 5TH DAY OF FEBRUARY 2014

PRESENT

THE HON'BLE MR.JUSTICE N.KUMAR

AND

THE HON'BLE MR.JUSTICE C.R.KUMARASWAMY

INCOME TAX APPEAL NO.5006/2013

BETWEEN:
1. THE COMMISSIONER OF INCOME TAX
DR. B.R.AMBEDKAR ROAD
BELGAUM
2. THE INCOME TAX OFFICER
WARD I, BAGALKOT

… APPELLANTS

(BY SRI. Y.V.RAVIRAJ, ADVOCATE)

A N D :

SRI BILURU GURUBASAVA PATTINA
SAHAKARI SANGHA NIYAMITHA
BAGALKOT

… RESPONDENT

(BY SRI. A. SHANKAR, ADVOCATE)

JUDGMENT

2. The assessee is a Credit Co-operative Society engaged in providing credit facilities to its members. It has filed returns of the income for the assessment year 2007-08 claiming deduction under Section 80P(2)(a)(i) amounting to Rs.2,04,03,878/- (Rupees Two Crore Four lakh Three Thousand Eight Hundred and Seventy Eight only). The Assessing Officer has passed assessment under Section 143(3) of the Act on 29.12.2009 disallowing to the tune of Rs.1,66,47,180/- (Rupees One Crore Sixty Six Lakh Forty Seven Thousand One Hundred and Eighty only) in respect of

interest received from Gem Sugars Limited, Bilagi Sugars Limited and Nirani Cements Limited. However, the Assessing officer allowed deduction under Section 80P(2)(a)(i) to the extent of Rs.1,93,73,000/- (Rupees One Crore Ninety Three Lakh Seventy Three Thousand only).

3. The Commissioner of Income Tax invoking his power under Section 263 of the Act, issued notice to the assessee calling upon him to shos-cause as to why the order of assessment should not be set-aside in view of Section 80P(4) of the Act. After service of notice, the assessee entered appearance and brought to the notice of the authority that the assessee is not a Co-operative bank and therefore, Section 80P(4) has no application to the case of the assessee. However, the Revisional Authority was of the view that the assessing authority has not considered the application of Section 80P(4) which was inserted with effect from 01.04.2007 and therefore, he set-aside the order of assessment and remanded the matter back to the Assessing Authority to consider the applicability of the aforesaid provision.

9. This court had an occasion to consider Section 263 of the Act in the case of – **COMMISSIONER OF INCOME-TAX AND ANOTHER V. DIGITAL GLOBAL SOFT LTD.** (2013) 354 ITR 489 (Karn) where paragraph-18, it has held as under:

"As is clear from the wording in section 263, the Commissioner gets the jurisdiction to revise any proceedings under this Act if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the Revenue. Therefore, it is clear that he cannot exercise the power of revision solely on the ground that the order passed is erroneous. He gets jurisdiction only if such erroneous order is prejudicial to the interest of the Revenue. "Prejudicial to the Revenue" means, lawful revenue due to the State has not been realized or cannot be realized. In other words, by the order of the assessing authority if the lawful revenue to the State has not been realized or cannot be realized, as the said order is prejudicial to the interests of the Revenue and also erroneous, he gets jurisdiction to interfere with the said order under section 263. Therefore, for attracting section 263, the condition precedent is (a) the order of the Assessing Officer sought to be revised is erroneous, and (b) it is prejudicial to the interests of the Revenue. If one of them is absent, i.e., if the order of the Income-tax Officer is erroneous but is not prejudicial to the Revenue, recourse cannot be had to section 263(1) of the Act. The satisfaction of both the conditions stipulated in the section is the sine qua non for the Commissioner to exercise his jurisdiction under Section 263."

In the instant case, when the e status of the assessee is a Co-operative society and is not a Co-operative bank, the order passed by the Assessing Authority extending the benefit of exemption from payment of tax under Section 80P(2)(a)(i) of the Act is correct. There is no error. When there is no error, the question of order being prejudicial would not arise. The Tribunal has rightly entertained the appeal and set-aside the order. Therefore, the said order is in accordance with law and cannot be found fault with. The substantial question of law is answered in favour of the assessee and against the revenue.