(1981) 08 CAL CK 0015

In the Calcutta High Court

Case No : F.M.A.T. No. 843 of 1981

Ali Ahmed APPELLANT

Vs

State of West Bengal and Others RESPONDENT

Date of Decision : 05-08-1981

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1981 Cal 378 : (1981) 1 CALLT 103 : (1981) 2 CompLJ 362 : 86 CWN 246

Hon'ble Judges : M.M. Dutt, J;A.K. Sarkar, J

Bench : Division Bench

Advocate : B.N. Sen, Mahitosh Majumdar and Ashok Ganguly, for the Appellant; N.N. Guptoo, N.K. Charabarty and Sanjib Mishra for Respondents Nos. 4 and 5, A.P. Chatterjee and D.K. Banerjee, for the Respondent

Final Decision : Allowed

Judgement

M.M. Dutt, J.—In this appeal, the appellant All Ahmed has challenged the propriety of the order dated April 9, 1981 of a learned Judge of this Court discharging the Rule Nisi issued on the application of the appellant under Article 226 of the Constitution.

2. In the writ petition, the appellant has prayed for a declaration to the effect that the West Bengal Co-operative Societies (Second Amendment) Act. 1978 is ultra vires Articles 14 and 19(1)(c) of the Constitution of India. By the said Amendment Act a new provision being Section 26-A has been introduced into the West Bengal Co-operative Societies Act, 1973, hereinafter referred to as the Act. The appellant has also prayed for a writ in the nature of Mandamus commanding the respondents Nos. 1 to 4 to forbear from implementing the said Amendment Act in respect of the West Bengal State Cooperative Marketing Federation Limited commonly known as ''BENFD'', hereinafter referred to as the Society, and from acting on the basis thereof in any manner whatsoever for the purpose of dissolution of the Managing Committee of the Society.

3. The appellant was elected Chairman of the Managing Committee of the Society at the Annual General Meeting of the Society held on December 22, 1976. By a Notification dated October 18. 1977 issued u/s 26 (1) of the Act, the Managing Committee of the Society was dissolved by the Government. The appellant challenged the said notification dissolving the Managing Committee by filing a writ petition in this Court. A Rule Nisi was issued on the said writ petition and an interim order of stay of the operation of the said notification was made by this Court. Ultimately, on July 31. 1978, the Rule Nisi was made absolute and the notification was quashed. No appeal was preferred by the respondents Nos. 1 to 4. During the period the said Rule was pending in this Court, the Annual General Meeting of the Society could not be convened within the period of fifteen months after the date of the last preceding meeting held on Dec. 22, 1976, as provided in Sub-section (2) of Section 21 of the Act. As the period of eighteen months had also expired from the date of the last Annual General Meeting, the Registrar of Co-operative Societies. West Bengal, could not also call a general meeting of the Society in accordance with the provision of Sub-section (3) of Section 21 of the Act The Managing Committee of the So- ciety passed resolution on August 14. 1978 to the effect that the Government should be moved for according permission to the Registrar for holding the Annual General Meeting u/s 21 (4) of the Act. It appears that one Shri P. Vanamali, I. A. S., who was the Managing Director of the Society, by his letter dated November 4/6, 1978 addressed to the Registrar of Co-operative Societies. West Bengal, requested him to take steps so that the Government might be moved for according necessary permission for holding the Annual General Meeting. The appellant also wrote a letter to the Secretary. Co-operation Department, Government of West Bengal, to grant the necessary permission in terms of Section 21 (4) of the Act for holding the Annual General Meeting. In spite of these requests, neither the Registrar nor the Government of West Bengal took any steps for holding the Annual General Meeting of the Society. The last attempt was made by the appellant bv a letter written by his Advocate to the Secretary. Co-operation Department, Government of West Bengal, requesting him to give the necessary permission, but in vain. Thereafter, on December 15, 1978, the appellant filed a writ petition whereupon a Rule Nisi was issued by this Court calling upon the respondents to show-cause why the Annual General Meeting should not be held. The said Rule Nisi is still pending.

4. During the pendency of the said Rule, on February 3, 1979, the said Amendment Act of 1978 was passed by the West Bengal Legislature introducing into the Act Section 26-A. Section 26-A is as follows:

"26-A. Dissolution of managing committee in certain cases and appointment of special officer. -- Notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force --

(a) the managing committee of any of the co-operative societies mentioned in the Fifth Schedule shall, if the election of members of the managing committee of such society has not been held within a period of fifteen months after the date of the last preceding meeting held under Sub-section (1) of Section 21, stand dissolved with effect from the date immediately following the day on which said period of fifteen months expires;

(b) with effect from the date of dissolution of the managing committees of a co-operative society under Clause (a), the members of the managing committee of the said co-operative society shall be deemed to have vacated their offices:

(c) upon such dissolution of the managing committee the Registrar shall, by notification in the Official Gazette, appoint a special officer for managing the affairs of the co-operative society and for making arrangement for the reconstitution of a new managing committee of the co-operative society in accordance with the provision of this Act and the rules made thereunder and the by-laws of the society within a period not exceeding one year from the date of such dissolution;

Provided that till such special officer is appointed under this clause, the highest executive of the society, by whatever designation he may be called, shall manage the affairs of such society.

Explanation. -- In case of any dispute as to who is the highest executive of the society, the Registrar''s decision shall be final;

(d) with effect from the date of dissolution of the managing committee of a co-operative society under Clause (a) --(i) all properties of the co-operative society shall vest in the Registrar; and

(ii) subject to the control and direction of the Registrar, the highest executive of the society or the special officer, as the case may be shall exercise all the powers and perform all the duties which may, under this Act, the rules and the by-laws, be exercised or performed by the managing committee or any officer of the society;

(e) where a special officer has been appointed under Clause (c), the Registrar may, by order, fix the remuneration of the special officer, and the remuneration so fixed shall be paid out of the funds of the co-operative society whose affairs are managed by such special officer;

(f) the special officer appointed under Clause (c) shall hold office until the managing committee is reconstituted." After the enactment of Section 26-A, on February 12, 1979, the appellant filed another writ petition inter alia challenging the constitutional validity of Section 26-A. The Rule Nisi out of which this appeal arises was issued on the said writ petition by A. K. Mookerji J. An interim order of injunction restraining the respondents Nos. 1 to 4 from giving effect to the provision of Section 26-A in respect of the Society was also granted. On December 18, 1979, A. K. Mookerji J. passed an order in accordance with the submissions made by the learned counsel of the parties.

5. By the said order, the learned Judge appointed the Managing Director of the Society as the Special Officer for the purpose of holding the election of the members of the Managing Committee of the Society including the election of its delegates and constituents in accordance with law. It was directed that the Special Officer would hold the election within a period of six months from the date of the said order. Further, it was directed that upon the constitution of the Managing Committee, would take over charge from the present management and the present management would cease to function, and the interim order as modified would continue till the assumption of charge by the new Managing Committee.

6. It appears that after the said order was passed by the learned Judge, the State Government in exercise of its power u/s 21 (4) of the Act directed the holding of the Annual General Meeting of the Society. Thereafter, on June 17, 1980, the Annual General Meeting was held and the Managing Committee was reconstituted as directed by the learned Judge. On July 8, 1980, the State Government made its nomination on the Managing Committee of the Society in accordance with Section 28 (1) of the Act.

7. While the Managing Committee of the Society had been functioning since the date of its reconstitution on June 17, 1980, on March 17. 1981, B. C. Basak. J. vacated the interim order that was granted by A. K. Mookherji J. although the Rule Nisi did not appear in the list of the learned Judge and consequently, the appellant did not get any opportunity to appear before the learned Judge and oppose the prayer of the respondents Nos. 1 to 4 for vacating the interim order. It may be stated that there was no question of vacating the interim order as in terms of the order dated December 18, 1979 the interim order spent its force after the new Managing Committee had taken over charge of the management of the Society. There was, therefore, no interim order that could be vacated. Be that as it may, it appears that after the interim order was vacated without the knowledge of the appellant, the Managing Director of the Society who, as stated already, was appointed a Special Officer for the purpose of holding the election of the members of the Managing Committee, admitted a charge report to the effect that the election of the members of the Managing Committee of the Society held on June 17, 1980 had become infructuous after the said interim order was vacated, and that he had assumed charge of the Society with effect from that date, that is, March 21, 1981. In other words, the Managing Director of the Society superseded the Managing Committee. The matter was brought to the notice of Basak, J. by the appellant and it was pointed out on his behalf that the interim order was vacated without giving him any opportunity of being heard, as a result of which the Managing Director had superseded the Managing Committee and took over charge of the Society. The learned Judge recalled the order vacating the interim order but did not interfere with the taking over of the charge of the Society by the Managing Director in super session of the reconstituted Managing Committee. Again, the matter appeared before Basak. J. on April 6. 1981 and the learned Judge, after hearing the submissions made on behalf of the

parties, directed the Managing Director to run the administration of the Society and further directed that reconstituted Managing Committee would have no power of Management

8. Being aggrieved by the said order of Basak J. the appellant preferred an appeal to this Court and this Court by its judgment dated April 9, 1981 held inter alia that prima facie the reconstitution of the Managing Committee was made in accordance with law and, accordingly, directed the Managing Director to hand over charge of the Society to the appellant, who was the Chairman of the reconstituted Managing Committee. On that very day, that is, on April 9, 1981, the Managing Director refund to hand over charge of the Society to the appellant or to the re- constituted Managing Committee on the ground that a Special Officer had been appointed under the new provision of Section 26-A (c) of the Act by the Registrar of Co-operative Societies, West Bengal. Another incident happened on that day, namely, the learned Judge discharged the Rule Nisi out of which this appeal arises. The relevant portion of the order dated April 9, 1981 of the learned Judge discharging the Rule Nisi is as follows:

"In this matter, the only question raised is the question of validity of Section 26-A of the West Bengal Co-operative Societies Act, 1973. I have already decided this question in another similar matter and I have held that the said section is intra vires. In that view of the matter, there is no merit in this Rule and I pass similar order.

The application is accordingly, dismissed and the Rule is discharged. All interim orders are vacated. There will be no order as to costs."

9. On April 10, 1981, on the prayer made on behalf of the appellant we directed the parties including the Managing Director of the Society to maintain status quo as on April 8. 1981 with regard to the Management of the Society. On April 16. 1981, we directed the Special Officer purported to have been appointed by the Registrar u/s 26-A (c) of the Act to be added as a party respondent in the appeal and also in the application for interim order. On April 21, 1981, we directed that the Managing Director of the Society would continue to manage the affairs of the Society as a Special Officer as he had been doing till April 8, 1981 under the order of the learned trial Judge and stayed the operation of the order of appointment of the Special Officer u/s 26-A (c) of the Act by the notification dated April 9, 1981 Published in the Calcutta Gazette (Extraordinary) dated April 10 1981. Ultimately, by an order dated May 6, 1981, we directed the said interim order to continue till the disposal of the appeal.

10. It is not disputed that the Managing Committee that was constituted in the Annual General Meeting held on December 22, 1976 was in accordance with the provision of Section 21 (1) of the Act. Under Sub-section (2) of Section 21, such meeting shall be held not more than fifteen months after the date of the last preceding meeting held under Sub-section (1). Sub-section (3) inter alia provides that on the failure of the Managing Committee of the Society to call the meeting

within the period of fifteen months, the Registrar shall call, or authorise any of his officers to call a general meeting within the period of three months from the date of expiry of the aforesaid fifteen months. Under Sub-section (4) the State Government has the power, in special circumstances, to permit the Registrar to call the general meeting even after the expiry of eighteen months from the date of the last preceding meeting held under Sub-section (1). In the instant case, the Annual General Meeting could not be called by the Managing Committee within a period of fifteen months or by the Registrar within a period of eighteen months inasmuch as the Managing Committee was dissolved and a writ petition was pending in this Court in which the notification dissolving the Managing Committee was challenged. After the order of dissolution was quashed and the Managing Committee was restored to the Management of the Society, they tried their best to get the Annual General Meeting called by the Registrar u/s 21 (4) of the Act but failed. The Managing Committee was, however, reconstituted on June 17, 1980, by the said interim order dated December 18, 1979 of A. K. Mookerji, J. This reconstitution of the Managing Committee was made not u/s 26-A but u/s 21 (4) read with Section 23 (2) of the Act. Section 23 (2) inter alia provides that no person, who has been a member of the Managing Committee of a Co-operative Society for consecutive three terms or three years, whichever is less, shall be eligible for being a member of the managing committee of the said society through re-election or by appointment or co-option within a period of two years from the date of his retirement or voluntary resignation, as the case may be. Thus the Managing Committee was reconstituted in terms of the said order dated December 18. 1979 of A. K. Mookerji J. with the election of 1/3rd of the members of the Managing Committee, it has been stated already, that the State Government had, before such reconstitution of the Managing Committee, accorded its permission u/s 21 (4) and, after such reconstitution, placed its nominee on the Managing Committee u/s 28 (1) of the Act.

11. At this stage, it may be stated that in discharging the Rule the learned Judge has not given any reason in the impugned order, but has referred to his decision in a similar matter where it has been held by him that Section 26-A is not ultra vires. Unfortunately, the judgment in the said other matter is not forthcoming. As requested by the learned counsel of the parties, we propose to dispose of the appeal without the said judgment of the learned Judge stated to have been delivered in a similar case which is also pending before us in appeal.

12. The first question that requires consideration in this appeal is whether the reconstitution of the Managing Committee was made by way of an interim arrangement pending the disposal of the Rule Nisi out of which this appeal arises. It is urged by Mr. Arcn Prakash Chatterjee, learned Senior Standing Counsel appearing on behalf of the State of West Bengal that such re-constitution of the Managing Committee was not in accordance with Section 21 (1) of the Act but it was reconstituted under the order of the learned Judge by way of an interim arrangement. It is submitted by him that, after the Rule Nisi was discharged and the interim order was vacated, the Managing Committee was

automatically dissolved and Section 26A became operative. It is contended by him that even assuming that the reconstitution of the Managing Committee was held not by way of an interim arrangement, still it was not held in conformity to the provisions of the Act. It is urged that the members who were elected to the Managing Committee had certain disqualifications which disentitled them to be elected as members of the Managing Committee and as such, the said Managing Committee was not reconstituted even in terms of the order of A. K. Mookerji, J. under which such reconstitution was to be made in accordance with law. He submits that the Registrar of Co-operative Societies, West Bengal was perfectly justified in ignoring the reconstitution of the said Managing Committee and in appointing a Special Officer for managing the affairs of the Co-operative Society u/s 26-A (c) of the Act.

13. The re constitution of the Managing Committee was held under the order of A. K. Mookerji J. dated Dec. 18. 1979. It is submitted by Mr. Bhola Nath Sen, learned counsel appearing on behalf of the appellant that the said order was made by the learned Judge by consent of parties. There is, however, no indication in the said order that it was passed by consent of parties; at the same time, there is also no indication that such reconstitution was opposed by any of the parties. We do not think we are called upon to decide whether or not the said order was made by consent of parties. But on a consideration of the facts, as stated above, we are of the view that the learned Judge did not intend that the reconstitution of the Managing Committee would be only by way of any interim arrangement pending the disposal of the Rule Nisi. The order by which the learned Judge directed reconstitution of the Managing Committee by holding an election in accordance with law, that is to say, in accordance with the provisions of the Act, was passed in modification of the interim order that was already granted by him. The learned Judge directed in the said order that upon the constitution of the Managing Committee, the new Managing Committee would take over charge from the present management and the present management would cease to function. Further, it was directed that the interim order as modified would continue till the assumption of charge by the new Managing Committee. This indicates that the learned Judge was not making an interim arrangement as submitted on behalf of the respondents. This view also finds support from the fact that the State Government accorded permission u/s 21 (4) and after the reconstitution of the Managing Committee placed its nominee on the reconstituted Managing Committee u/s 28 (1) of the Act. It is significant to be noticed that at the time the learned Judge modified the interim order and directed the holding of election of the members of the Managing Committee, no submission appears to have been made on behalf of the respondents Nos. 1 to 4 that such reconstitution of the Managing Committee should be made in terms of the provision of Section 26-A (c) of the Act, that is to say, by treating the Managing Committee as dissolved and electing all the members thereof.

14. As to the question whether the election was held and the reconstitution of the Managing Committee was made in accordance with the provisions of the Act

or whether the members who were elected on the Managing Committee were disqualified and, as such, not eligible for being elected, could not be decided by the Registrar of Co-operative Societies in exercise of his power u/s 26A (c) of the Act. Section 26A (c) does not confer any power on the Registrar to decide whether the re-constitution of a managing committee was made in accordance with the provisions of the Act and the rules framed there under. Under Clause (a) of Section 26A, if the election of members of the managing committee of a society mentioned in the 5th Schedule has not been held within a period of fifteen months after the date of the last preceding meeting held u/s 21 (1), the Managing Committee of such Society shall stand dissolved with effect from the date immediately following the day on which the said period of fifteen months expires. Clause (c) of Section 26-A authorises the Registrar to appoint a Special Officer for managing the affairs of the dissolved Managing Committee and for making arrangement for reconstitution of a new Managing Committee. Thus the Registrar is only concerned as to whether or not the election of the members of the Managing Committee has been held within fifteen months of the last preceding meeting. He has, in our opinion, no power and authority to decide the question as to the legality or otherwise of an election of members on the Managing Committee of a Society.

15. The real question is whether Section 26-A applies to cases where the said period of fifteen months had expired before the enactment of Section 26-A. In other words, the question is whether Section 26-A is retrospective in operation. Normally it should be presumed that a statute is prospective in operation unless it is made retrospective either expressly or by necessary implication. As we read Section 26-A, it is clear to us that it is prospective in operation. The words "shall .... stand dissolved with effect from the date immediately following the day on which the said period of fifteen months expires" in Clause (a) of Section 26-A and the words "the Registrar shall" in Clause (c) of Section 26-A clearly indicate that the section is prospective in operation. To hold that Section 26-A is retrospective in operation will lead to manifest absurdity. Under Clause (a) of Section 26-A, the date of dissolution has been fixed to be the date following the day on which the said period of fifteen months expires. The Registrar shall appoint a Special Officer for managing the society and for holding the election within a period not exceeding one year from the date of such dissolution. There may be cases where the said period of one year had expired before the enactment of Section 26A and in such cases, the section will not be applicable. Even if we ignore the General Meeting that was held in terms of the said order dated December 18, 1979, then, admittedly, the last Annual General Meeting of the Society was held on December 22, 1976, the period of fifteen months from that date had expired on March 3, 1977 and the period of one year from that date had expired on March 3, 1978, that is, long before the enactment of Section 26-A. Thus Section 26-A does not also in terms apply to the instant case. We are unable to accept the contention of Mr. Chatterjee that the date of dissolution of the Managing Committee shall be the date on which Section 26-A

was enacted. If this contention is accepted that will be, in our opinion, putting some words into the section which are not there. Clause (a) of Section 26-A specifies the date of dissolution of the Managing Committee which is the date following the day on which the period of fifteen months expires. On a proper construction of Section 26-A, we hold that the section is not retrospective in operation, but it applies prospectively. The provision of Section 26-A will apply in those cases where the period of fifteen months referred to in Clause (a) of the section expires after the enactment of the section. The notification No. 6266 dated April 9, 1981, published in the Calcutta Gazette (Extraordinary) on April 10, 1981 and issued by the Registrar of Co-operative Societies, West Bengal u/s 26-A (c) of the Act appointing a Special Officer for managing the affairs of the Society and for making arrangement for the reconstitution of a new Managing Committee of the Society is, therefore, illegal and ultra vires Section 26-A and is void.

16. It is, however, contended by Mr, Chatteriee that the writ petition was not maintainable only at the instance of the appellant Ali Ahmed, the Chairman of the Society. It is submitted by him that as the other members of the Managing Committee of the Society has not joined the appellant in the writ petition, it was not maintainable, and the appellant has no locus standi to challenge the said notification issued by the Registrar of Co-operative Societies, West Bengal, u/s 26-A (c) of the Act or to challenge the constitutional validity of the provision of Section, 26-A. In support of this contention, much reliance has been Placed by the learned Senior Standing Counsel on a decision of the Privy Council in Durayappah v. Fernando, (1967) 2 All ER 152. At page 160 of the report Lord Upjohn observed as follows;

"Their Lordships therefore are clearly of opinion that the order of the Minister on May 29, 1966, was voidable and not a nullity. Being voidable it was voidable only at the instance of the person against whom the order was made, that is the council: but the council has not complained. The appellant was no doubt mayor at the time of its dissolution, but that does not give him any right to complain independently of the council. He must show that he is representing the council or suing on its behalf or that by reason of certain circumstances -- such for example as that the council could not use its seal because it is in the possession of the Municipal Commissioner, or that for other reasons it has been impracticable for the members of the council to meet to pass the necessary resolutions -- the council cannot be the plaintiff. Had that been shown then there are well known procedures whereby the plaintiff can sue on behalf of himself and the other corporators making the council a defendant, and on pleading and proving the necessary facts may be able to establish in the action that he is entitled to assert the rights of the council. That, however, is not suggested in this case. The appellant sets up the case that as Mayor he is entitled to complain, but as such he plainly is not. If the council is dissolved, the office of Mayor is dissolved with it and he has no independent right of complaint, because he holds no office that is independent of the council. If the Mayor were to be heard individually he could only deal with complaints against the council with which ex hypotheses the council itself did not wish to deal. So accordingly, it seems to their Lordships that on this short ground the appellant cannot maintain this action,"

17. The above observation, in our opinion, is of no help to the respondents. In the instant case, the appellant has challenged the constitutional validity of Section 26-A, and it has also been submitted on behalf of the appellant that the said notification issued by the Registrar of Co-operative Societies appointing a Special Officer is a nullity. Indeed, we have held that Section 26-A does not apply to the facts and circumstances of the case, and that the said notification is void. So, in terms of the above observation of the Privy Council, as the said notification is a nullity, the Managing Committee of the Society continues and, accordingly the Chairman has locus standi to file the writ petition without the other members joining him. Further, in the writ petition, out of which this appeal arises, the appellant has not challenged any specific order passed by the respondents Nos. 1 to 4, but what has been challenged is the constitutional validity of Section 26-A. At the time the writ petition was filed, there was no order dissolving the Managing Committee of the Society and so the question of any order being void or voidable as was in the Privy Council case of Durayappah v. Fernando (supra) does not arise. What has been laid down by the Privy Council in the said decision is that when an order dissolving the council is voidable and not void, such an order cannot be challenged at the instance of a Mayor of the council alone. But if such an order is void or a nullity an action will be maintainable at the instance of the Mayor of the council alone. The facts and circumstances of the instant case are different from those in the said Privy Council case, and the principles of law laid down therein cannot, therefore, be invoked.

18. Mr. Naranarayan Gooptu, learned Senior Government Pleader appearing on behalf of the Managing Director and the Society, the respondents Nos. 4 and 5 have urged that the scope and ambit of the writ petition cannot be enlarged. His contention is that as the appellant has only called in question the constitutional validity of Section 26-A, he cannot be permitted to challenge the notification issued by the Registrar of Co-operative Societies u/s 26-A (c) of the Act without an amendment of the writ petition incorporating therein such challenge. Further, he submits that as the notification was not issued on the date the writ petition was filed by the appellant, the appellant had no cause of action for challenging the validity of Section 26-A or the said notification. We are unable to accept the contention. It is true that in the writ petition, the constitutional validity of Section 26-A was challenged, but there was also another prayer for the issue of a writ in the nature of Mandamus commanding the respondents to forbear from implementing the provision of Section 26-A and from acting on the basis thereof for the purpose of dissolution of the Managing Committee of the Society. It is now well settled that the High Court has the jurisdiction to mould the prayers in a writ petition and grant relief to the aggrieved party to which he is entitled under the law, although such relief has not been specifically asked for. On behalf of the appellant, no argument has been advanced before us regarding the

constitutional validity of Section 26-A, for it has no manner of application in the instant case as it is not retrospective in operation. The notification u/s 26-A (c) was issued immediately after the discharge of the Rule Nisi. The appellant had undoubtedly, in our opinion, the right to challenge the said notification by a separate writ petition. But, we do not think that he cannot challenge the same in the pending proceeding, that is to say, in the instant appeal. The issuance of the said notification is a subsequent fact and is very much relevant to the question of dissolution of the Managing Committee of the Society. The Court has the power to take notice of subsequent events for the purpose of complete adjudication of disputes between the parties and for shortening litigation. If we had not taken notice of the issuance of the notification, the parties would be driven to a further litigation, In our opinion, technicalities should not stand in the way of this Court in a proceeding under Article 226 of the Constitution in completely adjudicating the issue. In this connection, we may refer to an observation of the Supreme Court in Pasupuleti Venkateswarlu Vs. The Motor and General Traders, . It has been observed that for making the right or remedy claimed by party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed. In the instant case, for effectively adjudicating the disputes between the parties, we feel that not only we should, but we must also consider the validity of the said notification u/s 26-A (c) of the Act and, indeed, after such consideration we have come to the conclusion that it is illegal and invalid. No other point has been urged on behalf of either party,

19. In the circumstances, we set aside the order of the learned Judge and make the Rule absolute. The notification No. 6266 dated April 9, 1981, published in the Calcutta Gazette (Extraordinary) dated April 10. 1981, issued by the Registrar of Co-operative Societies, West Bengal, u/s 26-A (c) of the Act being illegal, inoperative and void, is quashed. The respondents Nos. 1 to 4 and also the added respondent who is the Special Officer appointed under the said notification are directed to forbear from interfering in any manner whatsoever with the Managing Committee reconstituted in terms of the order dated December 18. 1978 of A. K. Mookerii J. The respondents Nos. 1 to 4 and the Special Officer, the added respondent, shall forthwith deliver charge of the Society to the said Managing Committee through the appellant, who is the Chairman of the said Managing Committee. Let appropriate writs issue in the above terms. All interim orders are vacated.

20. The appeal is allowed, but in view of the facts and circumstances of the case, there will be no order for costs.

21. We make it clear that we have not said anything as to the constitutional validity or otherwise of Section 26A of the Act.

22. As prayed for by the learned Senior Standing Counsel, operation of this

judgment will remain stayed for a period of seven days only from date.

A.K. Sarkar, J.

23. I agree.

