(2013) 06 KL CK 0073

In the High Court Of Kerala

Case No : Writ Petition (C) No''s. 28628, 28874, 28875, 28876, 28959, 29108, 29460, 29679, 29743 of 2012

Aravindan J. and Others APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 10-06-2013

Acts Referred:

Citation : (2013) 3 KHC 612

Hon'ble Judges : A.M. Shaffique, J

Bench : Single Bench

Advocate : Thomas Abraham, Merciamma Mathew, K.S. Haridas, V. Renjith Kumar, P.C. Sasidharan, Aravinda Kumar Babu T. K., E.S. Ashraf, C.P. Pradeep, M. Sasindran, V. Venugopal, M.M. Monaye, M. Paul Varghese and Desi Matthai, for the Appellant; D. Somasundaram, (Senior Government Pleader), C.K. Jayakumar, (Standing Counsel, Tvm Dist. Co-op. Bank Ltd.), Jacob P. Alex, (Standing Counsel, Pathanamthitta Dist Co-op. Bank Ltd.), I. Sheela Devi, (Standing Counsel, Ernakulam Dist. Co-op. Bank Ltd.), Joice George, (Standing Counsel, Idukki Dist. Co-op. Bank Ltd.), George Poonthottam, (Standing Counsel, Idukki Dist Co-op. Bank Ltd.), D. Sreekumar, (Standing Counsel, Thrissur Dist. Co-op. Bank Ltd.), M. Meena John, B.S. Swathy Kumar, V. Beena, K.V. Suprabha and P.P. Jacob, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Shaffique, J.—These writ petitions raise common issues and hence decided by a common judgment. The challenge is with respect to the implementation of the provisions of the Kerala Co-operative Societies (Amendment) Act, 2012 (Act 13 of 2012) (hereinafter referred as Act 13 of 2012) with reference to certain District Co-operative Banks. In exercise of the powers conferred by clause (1) of Article 213 of the Constitution of India, the Governor of Kerala promulgated Ordinance No. 18/2012, by which the Kerala Co-operative Societies Act, 1969 (hereinafter referred as the Act) has been amended. Ordinance No. 18 of 2012 was replaced by Act 13 of 2012. Registrar of Co-operative Societies has given directions to District Co-operative banks to amend the bye-laws in accordance with Act 13 of 2012 and to conduct elections in accordance with the provisions contained in the Kerala Co-operative Societies Act, Rules and the bye-laws of the Bank.

2. Sections 2, 5 and 6 of the Act 13 of 2012 reads as under:

2. Amendment of Section 2.--In the Kerala Co-operative Societies Act, 1969 (21 of 1969) (hereinafter referred to as the principal Act), in Section 2,--

(i) for clause (ia), the following clause shall be substituted, namely:

(ia) "District Co-operative Bank" means a central society, the principal object of which is to raise funds to be lent to its members and individuals, with jurisdiction over one revenue district and having as its members any type of primary societies and Federal and Central societies having headquarters in such district

(ii) in clause (oc), for the existing proviso, the following proviso shall be substituted, namely:

Provided that no Primary Co-operative Agricultural and Rural Development Bank shall be registered without the bifurcation of assets and liabilities of the existing societies having the area of operation in more than one Taluk and the societies shall restrict their operation in the area of the respective society on such bifurcation.

(iii) after clause (qb), the following clause shall be inserted, namely:

(qc) "Special Officer" means an officer, not below the rank of an Assistant Registrar, appointed by the Registrar to take into custody the assets and liabilities of the society which secured registration without bifurcating the area of operation of an existing society and to register new societies and to constitute committees as provided in Section 28 of the Act.

5. Special provision in respect of the existing District Co-operative Banks.--

(1) Notwithstanding anything contained in the principal Act, or in any judgment, decree or order of any Court, Tribunal or other authority, on the commencement of the Kerala Co-operative societies (Second Amendment) Ordinance, 2012 (18 of 2012),--

(a) any primary society which had ceased to be a member of the District Co-operative Bank as on the commencement of the Kerala Co-operative Societies (Amendment) Act, 2008 (9 of 2009) shall be deemed to have become members of such District Co-operative Bank and the share amount, if any, of such society transferred to suspense account shall be deemed to be the share amount in respect of the said society;

(b) the nominal or associate member admitted after the commencement of the Kerala Co-operative Societies (Amendment) Act, 2008 (9 of 2009) shall cease to be the members of the District Co-operative Bank and shall apply for membership in the District Co-operative Bank afresh;

(c) the committee in office of the District Co-operative Bank at such commencement shall cease to exist and the Registrar shall be competent to appoint a new committee or one or more administrator or administrators who need not be members of the society, to manage the affairs of the Bank for a period not exceeding six months, as may be specified in the order, which period may, at the discretion of the Registrar, be extended from time to time, so however, that the aggregate period does not exceed one year.

(2) The committee or the administrator or the administrators appointed under sub-section (1) shall, subject to the control of the Registrar and to such instructions as he may, from time to time give, have the power to exercise the powers and perform the functions of the committee or of any officer of the society and take such action as may be required in the interest of the society.

(3) The committee or the administrator or the administrators shall before the expiry of its or his or their term of office, arrange for the constitution of a new committee in accordance with the provisions contained in the principal Act and the bye-laws of the Bank.

6. Repeal and Saving.--(1) The Kerala Co-operative Societies (Amendment) Ordinance, 2012 (26 of 2012) is hereby repealed.

(2) Notwithstanding such repeal, anything done or deemed to have been done or any action taken or deemed to have been taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act, as amended by this Act.

3. WP (C) No. 28876 of 2012, is concerning Thrissur District Co-operative Bank. According to the petitioner, the Bank had enhanced the share value of A class and C class members, which was approved by the Registrar of Co-operative Societies. Consequently the bye-law was amended which was also approved by the Registrar of Co-operative Societies and the members were given opportunity to remit the enhanced share value. Certain societies which failed to remit the enhanced share value ceased to be members and their share amounts were credited to their respective SB/CD/Loan Account or to the Head Office suspense/ liabilities account. Therefore the case of the petitioners is that those members who lost their membership due to their failure to remit the enhanced share value cannot be treated as members who lost membership on the Kerala Co-operative Societies (Amendment) Act, 2008 (9 of 2009) coming into force. The contention of the petitioners is that such members who lost their membership cannot participate in the meeting convened by the Registrar.

4. Reference is made to Section 19 of the Co-operative Societies Act which says that no member of the society shall exercise the rights of the member unless he had made such payments to the society in respect of members or has acquired such interest in the society as may be prescribed by the Rules or bye-laws of the bank. As per Rule 20 of the Co-operative Societies Rules the payments to acquire right of membership shall include subscription to share capital and any other

payments required to be made under the bye-laws. According to the petitioner, a communication had been issued by the Registrar of Cooperative Societies on 22/11/2012 contemplating to amend the bye-laws of the society and has directed to conduct the election in the manner prescribed in the notice. Ext. P2 is the said notice.

5. Another contention urged by the petitioner is that the election to the General Body is to be held in terms of the principal Act. All the A and C class shareholders excluding A class shareholders enrolled after 2007 are issued with notice of the meeting. According to the petitioner unless the bye-law is amended as proposed, convening the general body meeting by including all persons who have ceased to be members is illegal and unjust.

6. One another contention raised by the petitioner is that the principal Act mentioned in Act 13 of 2012 is the unamended Act and therefore no person who got a right to be a member in terms of Act 13 of 2012 cannot have any say in the affairs of the society. Therefore their participation in the meeting is clearly illegal.

7. Yet another contention urged is that the Administrator has no power or authority to enroll new members and if so done, it is against the provisions of the Co-operative Society Act.

8. In the counter-affidavit filed by the 2nd respondent, it is inter alia contended that the Governor of Kerala promulgated Ordinance No. 18/2012, in exercise of the powers conferred by clause (1) of Article 213 of the Constitution of India, by which, the Kerala Cooperative Societies Act, 1969 has been amended. The term District Co-operative Bank as amended by the ordinance defines District Co-operative Bank as a Central Society, the principal object of which is to raise funds to be lent to its members and individuals, with jurisdiction over one revenue district and having as its members any type of Primary Societies and Federal and Central Societies having head quarters in such District. As per the amendment to sub-section (1) of Section 18, the second and third proviso is omitted. Sub-section (1) of Section 28 of the Act has been amended to incorporate sub-section (IF), (IG), (IH) and (II) after sub-section (IE).

9. Ordinance No. 18 of 2012 was replaced by Act 13 of 2012. Registrar of Cooperative Societies vide letter No. C.B(3)7298/2012 dated 22/11/2012 has given directions to District Co-operative banks to amend the bye-laws in accordance with the Act 13 of 2012 and to conduct elections in accordance with the provisions contained in the Kerala Co-operative Societies Act, Rules and the bye-laws of the Bank.

10. It is also contended that since the Primary Societies of some District Co-operative banks which have acquired voting right as per special provision of the Act 13 of 2012 cannot exercise the rights and privileges including voting right, as per Section 19 of the Act read with Rule 20 of the Kerala Co-operative Societies Rules (hereinafter referred as the Rules) as they were not financially sound

enough to pay the balance portion of the enhanced share amount, in order to ensure rights and privileges including voting right to all primary societies, on the request of the Registrar of Co-operative Societies, Government, in exercise of the powers conferred by Section 101 of the Act and Rule 181 of the Rules exempted all Primary Societies who have acquired voting right as per special provision of Act 13 of 2012, from the provisions of Section 19 of the Act and Rules 20 and 28 of the Rules vide GO (P) No. 45/2012/Co-op. dated 13/4/2012 produced as Ext. R2(a).

11. It is also contended that as per Rule 5 of the Rules, the bye-laws of a society shall not be contrary to the provisions of the Kerala Co-operative Societies Act, 1969. The existing bye-law provisions of all District Co-operative Banks were contrary to the provisions of Act as amended by Act 13 of 2012 and therefore directions were issued to the Banks to amend the bye-laws in conformity with the Act. Hence those societies who have been incapacitated in exercising voting-right due to non-remittance of enhanced share value has acquired membership consequent to the enactment of Act 13 of 2012 with effect from 11/02/2012 read with GO (P) No. 45/2012/Co-op. dated 13/04/2012. Therefore they were eligible to exercise voting rights as a member.

12. It is further contended that the General Body of all District Co-operative Banks passed the amendment of bye-laws in accordance with Act 13 of 2012 and submitted the proposal for registration of the same to the Registrar of Co-operative Societies and the Registrar of Co-operative Societies registered the amendments of the bye-laws under clause 2 of Section 12 of the Act, in accordance with Act 13 of 2012. As per the amended bye-laws Administrators/ Administrative Committee of all District Co-operative Banks resolved to conduct the election of the District Co-operative Banks and proposal for the same has been submitted to the Kerala State Co-operative Election Commission. The State Co-operative Election Commission has notified the election of all the District Co-operative Banks.

13. Counter-affidavit is filed by the 4th respondent, supporting the stand taken by the Government and contends that the election process is on.

14. WP (C) No. 28875 of 2012 is in respect of Chenkara Service Co-operative Bank. The petitioner is the elected president and a delegate to the Idukki District Co-operative Bank. The Society which the petitioner represents is an A class member of the Idukki District Co-operative Bank. Petitioner contends that the bye-law of the society was amended as per order dated 29/08/2011 of the Registrar of Co-operative Societies enhancing the share value. Those persons who had not remitted the enhanced share value was proposed to be removed and according to the petitioners, 232 societies were removed who lost their members due to non-remittance of enhanced share value. At present there are only 328 affiliated societies as per Ext. P5 list which was approved by the general body on 12/12/2011. The contention of the petitioner is that those persons who are not members to the society are permitted to participate in the meeting by

virtue of Act 13 of 2012, which according to the petitioner is totally illegal as several persons have ceased to be members and the bye-law cannot be amended by convening a meeting of persons who are not members of the society. Grounds taken are identical to WP (C) No. 28876 of 2012.

15. WP (C) No. 28874 of 2012 is filed by the elected president of Thumbanampoyka Service Co-operative Bank who is a delegate of Pathanamthitta District Co-operative Bank. The contentions raised are identical to that of the contentions urged in the other cases.

16. WP (C) No. 29108 is filed by the President of the removed Board of Directors of Ernakulam District Co-operative Bank. In this case also the petitioner has a case that the general body meeting is convened. It is contended that by the recent amendment to the Co-operative Societies Act the structure and nature of the District Co-operative Bank in Kerala have been drastically altered by giving full-fledged membership to Co-operative Societies other than Primary Agricultural Credit Societies and Urban Banks. The General Manager of the bank has called a general body meeting to be held on 07/12/2012. Ext. P1 is the said notice. The agenda includes amendment of the bye-law as well. According to the petitioner though as per Section 5 of Act 13 of 2012 only those societies who ceased to be members as per Kerala Co-operative Society (Amendment) Act 9 of 2009 and were primary societies as on 10/12/2007 are eligible to be members of the District Co-operative Banks, the Registrar of Co-operative Societies has issued a circular dated 22/11/2012 directing that those societies who are members as on 10/12/2007 are eligible to be members of the District Co-operative Banks. Ext. P3 is the said circular. The contention of the petitioner is that as per the audited balance sheet of the District Co-operative Bank during the period 2007-2008 there were only 663 societies. But the 5th respondent bank has issued notices to 761 societies for conducting general body meeting. According to the petitioner some of the societies were already removed from membership of the District Cooperative Bank long ago. Reference is made to Ext. P6 resolution by which many such members were removed and Ext. P7 is the list of the removed societies. According to the petitioner, the 3rd respondent is proceeding to grant membership to 78 new illegitimate societies with the ulterior motive of upsetting the majority in the general body meeting in favour of the nominees of the party in power in the State. Reference is made to Rule 26 of the Rules relating to prohibiting admission to the members which reads as under:

26. Prohibition on admission of members and transfers of shares on the eve of general meeting.--(1) No society shall admit members or approve the transfer of shares within sixty days prior to the date of election or the date of the general body meeting.

(2) Any person admitted as member and any person in whose favour transfer of shares has been approved in contravention of the rule shall not have the right to membership or the right to vote at the said election or at the general body meeting.

The petitioner therefore seeks to issue appropriate directions to respondents 4 and 5 to permit only the eligible members as stated in Ext. P5 list to participate in the general body meeting and to restrain the respondents from admitting any new society as member.

17. In the counter-affidavit filed by the 5th respondent it is stated that the Ordinance promulgated has come into force on 11/02/2012. In order to constitute elected committees in relation to the District Co-operative Banks steps were to be taken to conduct the election in conformity with the provisions of Act 13 of 2012. Notice was issued on 23/11/2012 for convening the general body meeting of the bank by intimating all the member societies which are otherwise entitled to participate in such a general body meeting in terms of Section 5(1)(a) of Act 13 of 2012. It is also stated that the bank has not admitted/granted membership to any society violating the provisions of Act 13 of 2012 or the bye-law of the bank. New members were admitted only till 10/12/2012 as per the directions of the High Court of Kerala and as per the directions from the Registrar of Co-operative Societies in the light of the judgments of the High Court of Kerala and by operation of the Section 8A(2) of the Act and Rules. The bank has issued notices to 763 societies to attend the General Body. The bye-law has been amended since the same was passed by the general body as on 07/12/2012 and a notification has been issued by the Election Commission for conducting the election.

18. WP (C) No. 29743 of 2012 is filed by the former President of Palakkad District Co-operative Bank. He is a delegate of the member society of the 1st respondent bank and they were removed from office as per Ordinance promulgated on 11/02/2012 which was replaced by Act 13 of 2012. The Registrar has issued a direction to the Administrator of the District Co-operative Bank directing to convene general body meeting for carrying out amendment to the bye-laws. Petitioner contends that 309 members have attended the general body meeting held on 07/12/2012. The general body decided to amend the bye-law except clauses 5(1) and 5(2). According to the petitioner the fair copy of the minutes of the meeting were not provided to them. Ext. PA is produced to contend that it is the resolution passed in the said meeting. The apprehension of the petitioner is that there is an attempt to concoct a resolution and register the same overlooking Ext. P6. Hence the petitioner seeks for a direction to the 1st respondent to consider P4 amendment and pass orders of approval within a time frame and for a direction to accept Ext. P4 as a resolution of the general body of the Palakkad District Co-operative Bank held on 07/12/2012.

19. In WP (C) 29679 of 2012, the petitioner is a former president of Kannur District Co-operative Bank who is a delegate of Panniyannur Service Co-operative Bank, a member society of the 1st respondent bank. They are removed from the office in terms of an Ordinance promulgated on 11/10/2012 and was later replaced by Act 13 of 2012. According to the petitioner, a notice was issued scheduling the general body meeting on 07/12/2012. About 400 members

attended the meeting. In the general body 322 members have signed and participated. They unanimously passed the amendment to bye-law clause No. 26 regarding the constitution of the Board of Directors and rejected the amendment to the other provisions. It is the case of the petitioner that Ext. P7 is the true copy of the proceedings of the general body held on 07/12/2012. As against the actual decision in the general body an attempt has been made by the respondents to concoct a different decision which according to the petitioner is to be restrained. The relief sought for is similar to that of WP (C) No. 29743 of 2012.

20. Counter-affidavit is filed by the 1st respondent inter alia contending that the total number of members registered is 1023. P7 is the fabricated document prepared entering the names of some persons after supplying different sheets to each group. It is contended that the actual general body meeting of the bank commenced at 11 a.m. on 07/12/2012 under the presidentship of M. Narayanankutty. The Administrator Smt. P. Laila rendered the welcome speech and Sri. A.K. Purushothaman the General Manager in-charge offered vote of thanks. In the said meeting the proposed amendment to the bye-laws were passed by the 2/3rd majority of the members of the general body meeting. The proceedings of the general body meeting along with the amended bye-laws were sent to the Registrar for registration which was registered on 11/12/2012. The respondents therefore denied all the contentions urged in this regard.

21. WP (C) No. 28959 of 2012 is filed by the former president of Kannur District Co-operative Bank who is also a delegate of Panniyannur Service Co-operative Bank. The writ petition is filed contending that after the amendment of the Act in the year 2009 only 142 members remained in the rolls of the bank. The share amount of ''A'' class members is 5000 and share amount of ''C'' class members is 100. Several societies were liquidated much prior to the amendment Act, 2009. Liquidators of those societies have requested the bank to return the share amount and the entire amount in the account of those societies including the share amount were withdrawn by liquidators. The contention of the petitioner is that by virtue of the Ordinance 18 of 2012 which was later replaced by Amendment Act 13 of 2012 though it is stated in Section 5(1)(a) of the Amendment Act that any primary society which ceased to be a member of the District Co-operative Bank as on the commencement of the Kerala Co-operative Societies (Amendment) Act, 2008, (9 of 2009) shall be deemed to have become members of such District Co-operative Bank, those members of the bank who had ceased to be members prior to the commencement of the Amendment Act of 2008 cannot be permitted to participate in the general body. According to the petitioner about 1158 miscellaneous societies are going to be inducted as members of the societies under the guise of the amended provision is bad in law. The contentions urged by the petitioner is that notice had been issued to persons who does not have the requisite share amount which is illegal and arbitrary. The contentions are similar to those raised in WP (C) No. 28874 of 2012.

22. In WP (C) No. 28628 of 2012 the petitioner was an office bearer of the

Thiruvananthapuram District Co-operative Bank. He is a representative of Vattiyoorkavu Service Co-operative Bank which is an A class member. In this writ petition also, the petitioner challenges the decision to amend the bye-laws by convening an extra ordinary general body on 07/12/2012. According to the petitioner, the general body can be convened only in accordance with the existing bye-laws. It clearly states that only the 121 A class members can attend to vote in the general body. According to the petitioner, no notice had been issued to several other members for the purpose of amending the bye-laws which is not valid.

23. WP (C) No. 29460 of 2012 is filed by the Vattiyoorkavu Service Co-operative Bank Ltd. represented by its President and a former member of the Board of Directors of the Thiruvananthapuram District Co-operative Bank. The contentions raised is similar to the contentions urged in WP (C) No. 28628 of 2012.

24. WP (C) No. 30040 of 2012 is filed by a former director of the Board of Directors of the Kozhikode District Co-operative Bank Ltd. inter alia challenging the action of the respondents in convening a general body meeting by inviting those who have ceased to be members of the society. It is contended by the petitioner that there are only 374 members in the society and as against which, the respondents have issued notice to various other persons who are not eligible to be members of the society at the relevant point of time. In other words the contention is that those societies who were not deemed to be members in terms of Section 5(1)(a) of the Act 13 of 2012 are also permitted to participate in the general body for amending the bye-laws.

24A. The first question to be considered in these writ petitions is whether the respondents can permit persons who had been removed from membership for non-payment of enhanced share value to participate and vote in the extra ordinary general body meeting convened for amendment of the bye-laws on the basis of Section 5(1)(a) of the Act 13 of 2012.

25. For a clear understanding of the contentions urged by the petitioner, the very purport of the Amendment Act has to be considered first. It is not in dispute that Section 5(1)(a) is a transitory provision which takes care of the situation that ought to occur on the Amendment Act coming into force. As per Section 1 of Act 13 of 2012, Section 5 of the Act shall be deemed to have come into force on 11/02/2012. As on 11/02/2012, Section 5(1) indicates that, notwithstanding anything contained in the principal Act, on the commencement of the Ordinance 18 of 2012, any primary society which had ceased to be a member of the District Co-operative Bank as on the commencement of the Kerala Co-operative Societies (Amendment) Act, 2008 (9 of 2009) (hereinafter referred as ''Act 9 of 2009'') shall be deemed to have become members of such District Co-operative Bank. That apart the share amount, if any, of such society transferred to suspense account shall be deemed to be the share amount in respect of the said society. The definition of District Co-operative Bank underwent changes on several occasions. The definition prior to the commencement of Act 9 of 2009, as per

Amendment Act 3 of 2002 read as under:

District Co-operative Bank'' means a Central society, the principal object of which is to raise funds to be lent to its members and individuals, with jurisdiction over one revenue district and having as its members any type of primary societies and Federal and Central societies having headquarters in such district.

By virtue of the Ordinance No. 62 of 2007, which was replaced by Act 9 of 2009 the definition of District Co-operative Bank was changed confining the membership to only ''Primary Agricultural Credit Societies'' and ''Urban Co-operative Banks'' and the principal object of which is to raise funds to be lend to its members including nominal or associate members. By Act 9 of 2009 the definition of District Co-operative Bank stood as under:

2(ia) District Co-operative Bank means a Central Society having jurisdiction over one revenue district and having as its members Primary Agricultural Credit Societies and Urban Co-operative Banks and the principal object of which is to raise funds to be lent to its members, including nominal or associate members.

By Act 13 of 2012 the definition that existed prior to Act 9 of 2009 has been reintroduced.

26. When the transitory provision u/s 5(1)(a) of Act 13 of 2012 is considered based on the amendments to the definition of District Co-operative Bank from Amendment Act 3 of 2002 to 13 of 2012 one could see that those societies or members of District Co-operative Banks who lost their membership on account of Act 9 of 2009 coming into force is permitted to continue as members.

27. The contention now urged is that after the Amendment Act 9 of 2009, the bye-laws of the society had been amended and there had been an enhancement in the share value. Those members who failed to pay the enhanced share value in terms with the bye-law conditions can never be treated as members of the society.

28. A reference to Ordinance 62 of 2007 which was replaced by Act 9 of 2009 will clarify this position. By virtue of Act 9 of 2009 which came into force with effect from 11/12/2007 the following provisos were incorporated u/s 18(1) of the Act which read as follows:

Provided that a District Co-operative Bank may admit any Co-operative Society registered under the provisions of the Act other than primary, agricultural credit societies and urban co-operative banks functioning within its area of operation as nominal or associate member:

Provided further that the members of a District Co-operative Bank other than primary agricultural credit societies and urban co-operative banks as on the date of commencement of the Kerala Co-operative Society (Amendment) Act, 2008 shall become nominal or associate members of such District Co-operative Banks, at such commencement.

Therefore with effect from the date when the District Co-operative Bank''s definition was introduced as on 11/12/2007 the District Co-operative Bank was permitted to admit any Co-operative Society other than primary agricultural credit societies and other co-operative banks functioning within its area of operation as nominal or associate member. Similarly those societies which lost their membership was deemed to have become nominal or associate members of such District Co-operative Banks. In other words District Co-operative Banks were permitted to admit new members from societies other than ''Primary Agricultural Credit Societies'' and ''Urban Co-operative Banks'' as nominal or associate member and those members who lost their membership on account of Act 9 of 2009 was treated as nominal or associate members.

29. Now, if one reads Section 5(1)(b) of Act 13 of 2012 it indicates that the nominal or associate members admitted after the commencement of Amendment Act 9 of 2009 shall cease to be members of the District Co-operative Bank and shall apply for membership afresh. Therefore in respect of members who lost their membership on Act 9 of 2009 coming into force continued to be members by virtue of Section 5(1)(a) and those members who were newly admitted by virtue of Act 9 of 2009 were to apply afresh for membership. The whole concept of this amendment was to bring the District Co-operative Bank to a position which existed prior to Act 9 of 2009. The contention urged by the petitioners is that, it is not by the coming into force of Act 9 of 2009 that certain members lost their membership, but when the members failed to pay the enhanced share value at a time when the share value was increased. Such members who failed to pay the enhanced share value were not entitled to become members and they cannot be treated as persons who got the benefit of the transitory provision u/s 5(1)(a) or (b).

30. The learned counsel for the petitioner relied upon the judgment of the learned Single Judge of this Court in V.R. Krishnan Ezhuthachan Vs. The Assistant Registrar of Co-operative Societies and Others, wherein this Court had held that payment of share money is an essential condition for membership and unless the share money is paid the applicant does not become a member. Another judgment relied upon is M.K. Vasavan Vs. District Coir Project Officer and Others, wherein a Division Bench of this Court found that the members of the society is entitled to voting right in the election to the managing committee even though they have not paid the entire share value which was permitted to be paid in instalments. The learned Single Judge of this Court in Rajan Vs. Electoral Officer, again opined that members who had not paid the entire share value as on the date of publication of final voters list cannot have any voting right.

31. It is true that a member who has not paid the enhanced share value ceases to be a member of the Society after the last date fixed for such payment. Section 19 of the Act read with Rule 20 of the Rules is clear in that regard. This difficulty is sought to be remedied by the Government in the form of the transitory provisions as well as the Government Order GO (P) No. 45/2012/Co-op. dated

13/04/2012 as per SRO No. 257/2012 which reads as under:

S.R.O. No. 257/2012.--WHEREAS, u/s 19 of the Kerala Co-operative Societies Act, 1969 (21 of 1969) no member of a society shall exercise the rights of a member unless he has made such payments to the society in respect of membership or has acquired such interest in the society, as may be prescribed by the rules or the bye-laws;

AND WHEREAS, under Rule 20 of the Kerala Co-operative Societies Rules, 1969, the payment to acquire right of membership include - (i) admission fee (ii) subscription to share capital (iii) any other payments required to be made under the bye-laws;

AND WHEREAS, under Rule 28 of the Kerala Co-operative Societies Rules, 1969, no member of a society shall be eligible to vote at the meeting fixed for any election to the committee of that society, unless 60 (sixty) days prior to the date of such meeting he acquires the number of shares for membership as may be provided in the bye-laws of the society of which he is a member;

AND WHEREAS, clause (ia) of Section 2 of the Kerala Co-operative Societies Act, 1969 amended by Act 9 of 2009 whereby membership in District Co-operative Banks were confined only to Primary Agricultural Credit Societies and Urban Co-operative Banks and all other primary societies as on the 11th December, 2007 became nominal or associate members. Subsequently certain District Co-operative Banks have amended their bye-laws and enhanced the face value of shares of members who have voting right;

AND WHEREAS, Ordinance No. 18 of 2012 was promulgated whereby the term "District Co-operative Bank" was amended defining that "District Co-operative Bank" means a central society, the principal object of which is to raise funds to be lent to its members and individuals, with jurisdiction over one revenue district and having as its members any type of primary societies and Federal and Central societies having headquarters in such district. As per the above amendment all primary societies which had been excluded from exercising the rights and privileges including voting right, consequent to the amendment in Act 9 of 2009 became eligible to exercise the above rights and privileges. But the primary societies (other than Primary Agricultural Credit Societies and Urban Co-operative Banks) of certain District Co-operative Banks cannot exercise the rights and privileges including voting right because as per Section 19 of the Kerala Co-operative Societies Act, 1969 no member of a society shall exercise the rights of a member unless he has made "such payments" to the society in respect of membership or has acquired such interest in the society, as may be prescribed by the rules or the bye-laws;

AND WHEREAS, the Registrar of Co-operative Societies has reported that the primary societies of some District Co-operative Banks which have acquired voting right consequent to the promulgation of Ordinance No. 18 of 2012 cannot exercise the rights and privileges including voting right, as Rule 20 prescribes the payments to be made by a member to acquire rights of member which includes admission fee, subscription to share capital and any other payments required to be made under bye-laws. Most of the Primary Co-operative Societies such as Scheduled Castes and Scheduled Tribes Development Co-operative Societies, Fishermen Co-operative Societies, Vanitha Co-operative Societies, Milk Cooperative Societies, Primary Consumer Co-operative Societies, Hospital Co-operative Societies, Labour Contract Co-operative Societies, Printing Co-operative Societies, Employees Co-operative Societies, Khadi and Village Industries Co-operative Societies, Coir Co-operative Societies, Housing Co-operative Societies and all other miscellaneous Co-operative Societies, such as Lawyers Co-operative Societies, Motor Transport Cooperative Societies, Residents Welfare Co-operative Societies etc. are not financially sound enough to pay the balance portion of the enhanced share amount;

AND WHEREAS, the Registrar of Co-operative Societies has reported that open and voluntary membership and democratic control is the basic principle of co-operation and that to ensure these principles and also to ensure rights and privileges including voting right to all primary societies who have acquired membership in the District Co-operative Bank consequent to the promulgation of Ordinance No. 18 of 2012, exemption from the provisions of Section 19 of the Kerala Co-operative Societies Act, 1969 and exemption from Rule 20 and 28 of the Kerala Co-operative Societies Rules. 1969 is necessary in respect of those primary societies. The Registrar, therefore, recommended to exempt all primary societies who have acquired rights and privileges including voting right consequent to promulgation of Ordinance No. 18 of 2012 from the provisions of Section 19 of the Kerala Co-operative Societies Act, 1969 and read with Rule 20 and 28 of the Kerala Co-operative Societies Rules, 1969;

NOW, THEREFORE, in exercise of the powers conferred by Section 101 of the Kerala Co-operative Societies Act, 1969 and Rule 181 of the Kerala Co-operative Societies Rules. 1969, the Government of Kerala hereby exempt all primary societies who have acquired membership consequent to the promulgation of Ordinance No. 18 of 2012 from provision of Section 19 of the Kerala Co-operative Societies Act, 1969 and Rules 20 and 28 of the Kerala Co-operative Societies Rules, 1969 for the purpose of enabling the said societies to exercise voting right in District Co-operative Banks.

The power of the Government in issuing such an order exercising its statutory power u/s 101 of the Act cannot be disputed. The resultant position is that, on the aforesaid Government Order coming into effect there is a complete exemption for all societies which had become members, by Act 13 of 2012, from the effect of Section 19 read with Rule 20 and 28 of the Rules and they were entitled to exercise their vote in the District Co-operative Banks. Therefore I do not think that the conduct of election by permitting those members who had failed to pay the enhanced share value, or whose name had already been removed from membership due to such non-payment is bad in law.

32. By amendment to Section 2(ia) under Act 13 of 2012 when the position as obtained prior to 11/1272007 is concerned, such members who were removed by the amendment by virtue of Act 9 of 2009 on 11/12/2007 obtained a right to be treated as members of the society by the deeming provision. This apparently was the effect of stating that "any primary society which had ceased to be a member of the District Co-operative Bank as on the commencement of the Kerala Co-operative Society (Amendment) Act, 2008 (9 of 2009) shall be deemed to have become members of such District Co-operative Banks".

33. Another contention raised by the petitioners is with reference to Section 5(3) of Act 13 of 2012 as per which the Administrator is to constitute a new committee in accordance with the provisions contained in the ''principal Act'' and the ''bye-laws'' of the bank. The argument is that when reference is made to the ''principal Act'' it refers to the unamended Act and not with reference to the amendments made by Act 13 of 2012. Hence in order to amend the bye-laws, a meeting is to be convened in accordance with the principal Act and the prevailing bye-laws. Therefore, the administrator has no jurisdiction to conduct a general body meeting by invoking the provisions of the amended Act. The learned counsel for the petitioners relied upon the judgments in M/s. Punjab Traders and others Vs. State of Punjab Traders and others, , K. Balakrishna Rao and Others Vs. Haji Abdulla Sait and Others, and Sunny Kruiakore and Others Vs. State of Kerala and Others, to emphasise the meaning and effect of the principal Act in relation to an amendment Act. I do not think that there could be any doubt regarding the meaning of the word principal act mentioned in the amendment Act. It can only mean the unamended principal Act.

34. The respondents however relied upon Yadlapati Venkateswarlu Vs. The State of Andhra Pradesh and another, , State of Maharashtra Vs. Vithalrao Ganpatrao Warhade, and Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others, to contend that when the principal Act is amended from a previous date and the transitory provisions take effect from 11/02/2012, the principal Act had already undergone an amendment and when a purposive interpretation is given to the provisions, in order to achieve the object of legislation the interpretation as contended by the petitioners is not possible. No doubt Act 13 of 2012 while referring to the principal Act can only mean the Act which was in force prior to the Act 13 of 2012 coming into force. Act 13 of 2012 only replaces Ordinance No. 26 of 2012. The amendment and the transitory provisions have come into force by way of Ordinance No. 26 of 2012. Section 6 of the Act 13 of 2012 reads as under:

6. Repeal and Saving.--(1) The Kerala Co-operative Societies (Amendment) Ordinance, 2012 (26 of 2012) is hereby repealed.

(2) Notwithstanding such repeal, anything done or deemed to have done or any action taken or deemed to be taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the principal Act, as amended by this Act.

Therefore when all actions taken pursuant to Ordinance 26 of 2012 coming into force is deemed to be acts done under the principal Act, the reference to principal Act u/s 5(3) of Act 13 of 2012 can only mean the principal Act as amended by the Ordinance 26 of 2012. Though several judgments had been relied upon by the learned counsel for the petitioner regarding the meaning of the word "principal Act" mentioned in Section 5(3) of Act 13 of 2012, I think the matter is covered by a three Judge Bench judgment of the Supreme Court in M/ s. Orient Paper and Industries Ltd. and another Vs. State of Orissa and others, That was a case in which Orissa Forest Produce (Control of Trade) Act, 1981 was amended by the Amendment Act 4 of 1989. By virtue of the amendment, a provision was incorporated in the principal Act with retrospective effect A question arose regarding the effect of such a deeming provision. The Supreme Court held that once the Statute permits to imagine a certain state of affairs, that imagination should not be allowed to be boggled when it comes to inevitable corollaries of that state of affair. The relevant paragraphs are paragraphs 13 and 14 which reads as under

13. Sub-section (2) of Section 1 of Act 4 of 1989 says that the Act "shall be deemed to have come into force on the date on which the Orissa Forest Produce (Control of Trade) Act, 1981 (hereinafter referred to as ''the principal Act'') had come into force, i.e. September 5, 1981 when the principal Act was notified in the Orissa Gazette". The effect of this amendment is that all contracts and grants relating to the purchase, sale, collection etc. of forest produce, including profit a prendre, stood rescinded as from the date on which Act 22 of 1981 came into force in the particular areas in respect of the forest produce in question. The produce in question here being bamboos, the principal Act, as amended by Act 4 of 1989 with effect from September 5, 1981, was attracted in full force repudiating all contractual rights or grants of profit a prendre relating to bamboos wherever grown or found within the State as from the date specified by the notification issued u/s 1(3) of the Act, i.e. October 1, 1988.

14. The resultant position is that the contractors have lost all their rights under contract or grant respecting bamboos and they are deemed to have lost such rights, not prospectively from April 3, 1989, when the assent of the President to Act 4 of 1989 was first published in the official Gazette (as per Section 3(1)(ii) of the Orissa General Clauses Act, 1937), but from October 1, 1988 which is the date specified in the notification dated September 21, 1988, issued u/s 1(3) of Act 22 of 1981. In other words, the effect of Act 4 of 1989 is that the provisions of that Act are projected backwards and read into Act 22 of 1981, and all the provisions of the principal Act, including the provisions added by the Amending Act, are deemed to have been on the Statute book as from September 5, 1981, when the principal Act was notified in the Orissa Gazette, and the principal Act, including the amended provisions, came into force only as from the date specified in the notification issued u/s 1(3) which, as seen above, in respect of the bamboos in the areas in question, was October 1, 1988.

35. In Shamrao V. Parulekar (supra), Constitution Bench of the Supreme Court held as under:

The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all. This is the rule in England: see Craies on Statute Law, 5th Edn., p. 207; it is the law in America: see Crawford on Statutory Construction, p. 110; and it is the law which the Privy Council applied to India in Keshoram Poddar v. Nundo Lal Mallick.

36. In the case on hand, Section 1 of Act 13 of 2012 reads as under:

1. Short title and commencement.--(1) This Act may be called the Kerala Co-operative Societies (Amendment) Act, 2012.

(2) Clauses (ii) and (iii) of Section 2 and clause (i) of Section 4 shall be deemed to have come into force on the 12th day of August, 2011, clause (i) of Section 2, Section 3, clause (ii) of Section 4 and Section 5 shall be deemed to have come into force on the 11th day of February, 2012 and the remaining provisions of this Act shall be deemed to have come into force on the 11th day of April, 2012.

Sub-section 2 of Section 1 indicates the date on which the amended provisions have come into force. With respect to clause 1 that is amendment to clause (ia) regarding definition of District Co-operative Bank and Section 5 has come into force on 11/02/2012. Therefore, as far as the principal Act is concerned, clause (ia) of Section 2 of the principal Act has been amended with effect from the said date. Amendment to Section 28 has come into effect on 11/04/2012. Section 5 starts with non obstante clause and the deeming provisions apply notwithstanding anything contained in the principal Act. Therefore the effect of the principal Act mentioned u/s 5(3) could be the principal Act which is amended with effect from the respective dates under sub-section 2 of Section 1 of the Act 13 of 2012.

37. Another contention that has to be considered is the effect of Section 5(3) of Act 13 of 2012 wherein it states that a new committee has to be formed in accordance with the provisions of the "bye-laws" of the bank. The respondent contends that when the Act makes provisions and deeming provisions of creating membership of the members who had lost their membership prior to the coming into force of Act 9 of 2009, despite the amendment in the bye-laws when Act gives protection to the members who had lost their membership after the managing committees had come into effect by virtue of the amendment, even though the bye-law is not amended, those members who had lost their membership will have the right to exercise their vote in the meeting. The following judgments are relied upon:

(i) In Babaji Kondaji Garad Vs. Nasik Merchants Co-operative Bank Ltd., Nasik and Others, the Supreme Court held as under:

15. Section 73B provides a legislative mandate. Rule 61 has a status of subsidiary legislation or delegated legislation. Bye-law of a Co-operative society can at best have the status of an article of association of a company governed by the Companies Act, 1956 and as held by this Court in Co-operative Central Bank Ltd. v. Additional Industrial Tribunal, Andhra Pradesh the bye-laws of a Co-operative society framed in pursuance of the provision of the relevant Act cannot be held to be law or to have the force of law. They are neither statutory in character nor they have statutory flavour so as to be raised to the status of law. Now if there is any conflict between a Statute and the subordinate legislation, it does not require elaborate reasoning to firmly state that the Statute prevails over subordinate legislation and the bye-law if not in conformity with the Statute in order to give effect to the statutory provision the rule or bye-law has to be ignored. The statutory provision has precedence and must be complied with. Further the opinion of the Deputy Registrar as expressed in his circular dated February 1, 1979 and his letter dated June 4, 1979 has no relevance because his lack of knowledge or misunderstanding of law as expressed in his opinion has no relevance. The High Court relying upon the aforementioned two documents observed as under:

There is no inconsistency between Section 73B and the bye-laws because even Government has construed Section 73B in such manner that even though the bye-laws are not amended and reserved seats remained unfilled by election the same can be filled up by co-option.

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 statutory provision, opinion of executive branch is hardly relevant. Nor can the Court abdicate in favour of such opinion.

(ii) In Burmah Shell Co-op. Housing Society Ltd. v. CIT : 1995 Supp (1) SCC 533 Supreme Court held as under:

This appeal is a sequel to the proceedings initiated by the Income Tax Department under Chapter XX-C of the Income Tax Act, 1961 (the Act). The property in dispute was auctioned by the Income Tax Department and the same was purchased by a non-resident Indian. The owner of the house was a member of the appellant-housing society and the plot was allotted to him as a member of the said society. It is not disputed that the auction-purchaser is neither a member of the society nor resident of Delhi. The appellant-society challenged the auction-sale by the Income Tax Department on the ground that under the bye-laws of the society the sale could only be made to a resident of Delhi who was not owning any other property. The High Court dismissed the writ petition holding that the provisions of the Act have overriding effect on the bye-laws of the society. We see no ground to interfere with the view taken by the High Court. The appeal is dismissed. No costs.

38. In the light of the aforesaid judgments, I am of the view that the contention urged by the respondents in this regard has to be accepted. The bye laws of the society which goes contrary to the provisions of the amended Act will have no relevance and conduct of meeting to amend the bye-laws is only a formality to be complied with in relation to the amendments that had been incorporated by Act 13 of 2012.

39. In respect of two writ petitions. WP (C) 29679 of 2012 and WP (C) No. 29743 of 2012, the contention urged is that though meetings were held the minutes of the meetings were concocted by the departmental authorities. I do not think that such an issue can be considered by this Court in these proceedings. If the petitioners have any grievance regarding the manner in which the election had been conducted or the procedure adopted they can as well rely upon the statutory remedy available under the Act by filing an appeal or other proceedings as envisaged under the Co-operative Societies Act. They cannot invoke the jurisdiction of this Court to consider the disputed questions of fact of a substantial nature.

40. The respondents have raised the question of jurisdiction in the matter. According to them, the petitioners who are members of the concerned District Co-operative Banks represent various societies and therefore they cannot challenge the action taken by the departmental authorities. In the above writ petitions, the petitioners have pointed out certain irregularities in the conduct of meeting, on the ground that the authorities have wrongly applied the provisions of Act 13 of 2012 and therefore there is violation of the statutory provisions. This, according to me, is a matter which could be considered by this Court in these proceedings and therefore I am of the view that the writ petitions are maintainable. Having found that there is no illegality in the actions taken by the departmental authorities in the matter of conducting the elections, I am of the view that no relief can be granted in these writ petitions and hence the same are dismissed.

