
(1979) 06 MP CK 0001

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No"s. 342 and 396 of 1977

Brij Gopal Denga and Others

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 25-06-1979

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1), 19(2), 19(4), 19(6)

Citation : AIR 1979 MP 173 : (1979) ILR (MP) 571 : (1980) JLJ 536 : (1979) 24 MPLJ 695 : (1978) MPLJ 70

Hon'ble Judges : G.P. Singh, C.J.;B.C. Verma, J

Bench : Division Bench

Advocate : Gulab Gupta, for the Appellant; K.K. Adhikari, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Singh, C.J.

This order shall also dispose of Misc, Petition No. 396 of 1977.

The petitioners in both these petitions which are filed under Article 226 of the Constitution, challenged the constitutional validity of Sub-sections (2) and (3) of Section 19-C of the Madhya Pradesh Co-operative Societies Act, 19.60, hereinafter referred to as the Act.

Petitioner No. 1 in Misc. Petition No. 342 of 1977 is a citizen of India. Petitioners 2 and 3 in this petition are co-operative societies registered under the provisions of the Act. Petitioner No. 1 is a member of these societies. He is also a member of some other cooperative societies of Chhatarpur District. By order dated 23rd June 1977, passed under Sub-sections (2) and (3) of Section 19-C of the Act, the Registrar, Co-operative Societies, expelled the petitioner No. 1 from all the societies of which he was a member for a period of five years.

The petitioner in Misc. Petition No. 396 of 1977 was a member of four co-

operative societies. He was also connected with several other co-operative societies in various capacities. By order dated 25th August 1977, passed under Sub-sections (2) and (3) of Section 19-C, the Registrar expelled the petitioner from the four societies of which he was a member.

The aforesaid orders of expulsion are challenged by the petitioners on the ground that provisions of Sub-sections (2) and (3) of Section 19-C are ultra vires and void as they infringe the fundamental right guaranteed under Article 19(1)(c) of the Constitution, viz. the freedom to form associations. The orders of expulsion are also attacked on merits in the petitions; but at the stage of arguments the only ground pressed was the constitutional validity of the aforesaid sub-sections, for the petitioners have an alternative remedy of challenging the orders on merits by filing appeals u/s 77 of the Act.

The long title of the Act shows that it was enacted to consolidate and amend the laws relating to Co-operative Societies in Madhya Pradesh. Different laws on Co-operatives were in force in the constituent units of the State. As indicated in the objects and reasons, the Act was passed "in order to have one uniform law for the whole State and with a view to strengthening and developing the Co-operative movement and to extend the assistance by the State including State partnership, wherever necessary." Section 2 (z) defines "society" to mean a co-operative society registered or deemed to be registered under the Act. The deeming clause is obviously enacted to take in a society registered under the repealed Acts. Section 4 of the Act provides that "subject to the provisions of this Act, a society which has as its objects the promotion of the economic interest of its members or their general welfare in accordance with co-operative principles or a society established with the object of facilitating the operations of such a society, may be registered under the Act. The expression "may be registered" as used in Section 4, will show that registration is not compulsory. Section 6 provides for conditions of registration, Section 8 confers power on the Registrar to decide certain questions pertaining to registration. Section 9 provides that if the Registrar is satisfied that society has complied with the provisions of the Act and the rules and that its proposed bye-laws are not contrary to the Act or the rules, he may register the society and its bye-law with modifications as he may consider necessary. The section further provides that no society shall be registered, if in the opinion of the Registrar, it is likely to be economically unsound or is likely to have an adverse effect upon any other society. Section 10 of the Act classifies the societies under ten heads, namely : (i) Consumers' Society; (ii) Farming Society; (iii) Federal Society; (iv) Housing Society; (v) Marketing Society; (vi) Multipurpose Society; (vii) Producers' Society; (viii) Processing Society; (ix) Resource Society; and (x) General Society. The Registrar may further classify the societies falling under any of these heads under the following categories : (a) Apex Society; (b) Central Society; and (c) Primary Society. Section 19 of the Act provides as to who may become members of the society. An individual competent to contract; any other society; a public trust; a firm, company or any other body corporate, registered, established or

constituted under any law for the time being in force; a society registered under the M. P. Societies Registration Act, 1959, and the State Government may become member of a society. Section 19-A provides for disqualification of members. A person is not eligible for admission if he is an undischarged insolvent; if he has been sentenced for an offence involving moral turpitude; and if he or any member of his family, having common interest with him, carries on business similar to one carried on by the society. If a person becomes subsequently disqualified to be a member he ceases to be a member as provided in Section 19-B. Section 19-C of which Sub-sections (2) and (3) are challenged, deals with expulsion of members. Sub-section (1) of Section 19-C provides for expulsion of members, by a resolution passed by the Board of Management of the Society which is called the Committee, Sub-section (2) confers power on the Registrar to expel a member of a society when it appears to him "to be necessary or desirable in the interest of the society." Sub-section (3) provides that no member of a society, who has been expelled, shall be eligible for readmission as a member of the society up to a period of five years. It would be useful to quote the entire section. The section is as follows :

"19-C. Expulsion of members. -- (1) The Committee may, by a resolution passed by three-fourths majority of the members present and voting at a meeting held for the purposes, expel a member if he--

- (a) intentionally does any act likely to injure the credit of the society or bring it to disrepute; or
- (b) wilfully deceives the society by false statement; or
- (c) carries on any business which comes or is likely to come into conflict with the business carried on by the society; or
- (d) persistently makes default in payment of his dues or fails to comply with any provisions of the bye-laws :

Provided that no such resolution shall be valid unless the member concerned has been given seven days' notice, either personally or by registered post, of the proposal to expel him and has been given an opportunity to represent his case to the committee.

(2) Notwithstanding anything contained in the Act or rules or bye-laws made thereunder where it appears to the Registrar to be necessary or desirable in the interest of the society to expel a member from the society he may call upon such member and the society, to explain within a period to be specified by him why such member should not be expelled from the society. If the member or society fails to furnish his or its explanation within the time specified or after considering the explanation, if received, the Registrar may pass an order expelling a member from the society.

(3) No member of a society, who has been expelled under Sub-section (1) or Sub-section (2) shall be eligible for re-admission as a member of the society up

to a period of five years from the date of such expulsion."

Section 31 of the Act provides that the registration of a society shall render it a body corporate by the name under which it is registered, having perpetual succession and a common seal, and with power to hold property, enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it was constituted. A society may be wound up u/s 69 by an order of the Registrar when he is of opinion that the society ought to be wound up. The Registrar may also direct the winding up of a society; (a) where the society has not commenced working within a reasonable time of its registration or has ceased to work; or (b) where in the opinion of the Registrar the society has been working mainly for promoting the interest of any individual or group of individuals and not of the members generally; or (c) where the society has ceased to comply with any conditions as to registration or management under the Act, rules or bye-laws; and (d) where the primary credit society continues to be in default by not recovering its full overdue demand from members for continuous three co-operative years and even after supersession, it fails to recover full overdue demand. Section 73 provides that no person other than a society registered under the Act and a person or his successor in his interests of any name or title under which he traded or carried on business at the date on which the Act came into force, shall, without the sanction of the State Government, function, trade or carry on business under any name or title of which the word "Co-operative" or its equivalent in any Indian language forms part. The Act makes various provisions for control of the affairs of the society by the Registrar. The Act only applies to societies registered under the Act. Apart from the benefit of incorporation, a society governed by the Act has certain privileges to which we shall refer later. The Act does not make it compulsory for a society to register itself under the Act. But a society not registered under the Act cannot use the word "Co-operative" as a part of its name and cannot enjoy the privileges available to a registered society.

The contention raised by the learned counsel for the petitioners that Sub-sections (2) and (3) of Section 19-C are void as they impinge upon a citizen's fundamental right guaranteed under Article 10(1)(c) of the Constitution, is as follows. The petitioners submit that the right to form association implies that persons forming an association have also the right to continue as members of the association and that any law which takes away the membership of those who have voluntarily joined will be a law violating the right to form the association. It is also submitted that the power of the Registrar to expel a member conferred on him by Sub-section (2), on the ground that the expulsion is necessary or desirable in the interests of the society, is unrelated to any of the matters referred to in Clause (4) of Article 19 of the Constitution and is, therefore, invalid. The petitioners heavily relied upon the case of *Smt. Damyanti Naranga Vs. The Union of India (UOI) and Others*, .

To appreciate the correctness of this argument, it is necessary to understand the

nature of a co-operative society. We have already seen that societies which can be registered under the Act are those which have (as) their objects the promotion of the economic interest of their members or their general welfare in accordance with the co-operative principles or similar objects, The basic principle of co-operation is that the members join as human persons and not as capitalists. Co-operation is a form of organisation wherein persons associate together as human beings on the basis of equality for the promotion of the economic interest of themselves. Co-operation is a method of doing business with an ethical base. "Each for all, and all for each" is the motto of co-operation. Co-operation not only develops the latent business capacity of its members; it produces leaders; it encourages the growth of social virtues; honesty and loyalty become imperative; the prospect of a better life obtainable by concerted effort is opened up; the individual realises that there is something more to be sought than mere material gain for himself. Co-operation being a business-cum-moral movement, the success of the enterprise depends upon the reality with which each one of the members works for the achievement of the object of the organisation : [See Law and Principles of Co-operation by H. Calvert, pp. 18, 19, 22 and 45.]. The Committee on Co-operation in India emphasised the moral aspect of cooperation. To quote their words : "The theory of co-operation is very briefly that an isolated and powerless individual can, by association, with others and by moral development and mutual support, obtain in his own degree the material advantages available to wealthy or powerful persons and thereby develop himself to the fullest extent of his natural abilities. By the union of forces, material advancement is secured and by united action self-reliance is fostered and it is from the interaction of these influences that it is hoped to attain the effective realisation of the higher and more prosperous standard of life which has been characterised as better business, better farming and better living; we have found that there is a tendency not only among the outside public but also among supporters of the movement to belittle its moral aspect and to regard this as superfluous idealism. Co-operation in actual practice must often fall far short of the standards aimed at and details inconsistent with co-operative ideals have often to be accepted in the hope that they may lead to better things. We wish clearly to express our opinion that it is to true co-operation alone, that is, to a co-operation which recognises the moral aspect of the question that Government must look for the amelioration of the masses and not to a pseudo-co-operative edifice, however imposing, which is built in ignorance of co-operative principles, The movement is essentially a moral one and it is individualistic rather than socialistic. It provides as a substitute for material assets "honesty and a sense of moral obligation and keeps in view the moral than the material sanction." [pp. 5 and 6 of Theory and Practice of Co-operation in India and Abroad by Kulkarni, Vol. 1]. Co-operation as a mode of doing business, is at present applied as the solution of many economic problems. Co-operation is harnessed to almost all forms of economic activity. Though co-operation was introduced in this country as a remedy for rural indebtedness, it has been applied successfully in a wide range of activities such as production, distribution, banking, supply, marketing,

housing and insurance : [See Theory and Practice of Co-operation in India and Abroad by Kulkarni, Vol. 1, p. 2]. As observed by a Division Bench of this Court in Kamta Prasad Vs. Registrar, Co-operative Societies and Another, . "The co-operative movement is both a theory of life and a system of business. It is a form of voluntary association where individuals unite for mutual aid in the production and distribution of wealth upon principles of equity, reason and common good. It stands for distributive justice and asserts the principle of equality and equity ensuring to all those engaged in the production of wealth a share proportionately commensurate with the degree of their contribution. It provides as a substitute for material assets, honesty and a sense of moral obligation and keeps in view the moral rather than the material sanction. The movement is thus a great movement."

The fundamental right to form associations or unions guaranteed under Article 19(1)(c) can be restricted by law as provided in Clause (4) of Article 19 only when the law imposes reasonable restrictions on the exercise of the right in the interest of the sovereignty and integrity of India or public order or morality. In contrast, the fundamental right to practise any profession, or to carry on any occupation, trade or business, guaranteed under Article 19(1)(g) can be restricted by law imposing reasonable restrictions in the interests of the general public or for the protection of the interests of any Scheduled Tribe as provided in Clause (5) of Article 19. The power conferred on the Registrar by Sub-section (2) of Section 19-C of the Act to expel a member from a society if it appears to him to be necessary or desirable in the interests of the society, is obviously not relatable to sovereignty or integrity of India or public order referred to in Clause (4) of Article 19. Therefore, it has first to be considered whether the power conferred on the Registrar to expel a member is a restriction on the fundamental right to form association as contended by the petitioners; and in case it is so, whether the restriction is a reasonable restriction in the interest of morality. It will also have to be considered whether the said power is a restriction on the fundamental right to carry on business and the restriction is a reasonable restriction in the interests of the general public.

It was settled in the case of All India Bank Employees' Association Vs. National Industrial Tribunal and Others, that Article 19(1)(c) does not imply a constitutional guarantee that every association shall effectively achieve the purpose for which it was formed without interference by law except on the grounds relevant to the preservation of public order or morality set out in Clause (4) of that Article. The Supreme Court pointed out that "the acceptance of any such guarantee would mean that while in the case of an individual citizen to whom a right to carry on a trade or business or pursue an occupation is guaranteed by Article 19(1)(g), the validity of a law which imposed any restriction on this guaranteed right would have to be tested by the criteria laid down by Clause (6) of Article 19, if however, he associated with another and carried on the same activity -- say as a partnership, or as a company etc., he obtains larger rights of a different content and with different characteristics

which include the right to have the validity of legislation restricting his activities tested by different standards, viz., those laid down in Clause (4) of Article 19." The Court also observed that "as the stream can rise no higher than the source, associations of citizens cannot lay claim to rights not open to citizens, or claim freedom from restrictions to which the citizens composing it are subject." The Court further said : "If an association were formed for the purpose of carrying on business, the right to form it would be guaranteed by Sub-clause (c) of Clause (1) of Article 19 subject to any law restricting that right conforming to Clause (4) of Article 19. As regards its business activities, however, and the achievement of the objects for which it was brought into existence, its rights would be those guaranteed by Sub-clause (g) of Clause (1) of Article 19, subject to any relevant law on the matter conforming to Clause (3) of Article 19." These principles were affirmed by the Supreme Court in *Raghubar Dayal Jai Prakash Vs. The Union of India (UOI) and Others*, and the argument that the right guaranteed under Article 19(1)(c) was not merely the right to form an association but included the functioning of the association without any restraints not dictated by the need of preserving public order or interests of morality was rejected : (See p. 270). In *Raghubar Dayal's* case, the question related to the validity of certain provisions of the Forward Contracts (Regulation) Act, 1952 which canalised forward trading in notified goods through recognised associations. Section 6 required a recognised association not to amend its rules except with the approval of the Central Government and Section 10 empowered the Central Government to direct rules to be made with power, in case the recognised association failed to take action to comply with the order of the Government, to themselves make the rules. Those provisions of the Act were challenged on the ground that the right to form associations carried with it the right to determine its internal arrangement by framing rules, bye-laws and regulations; and as the impugned provisions conferred power on the Central Government to determine the rules and bye-laws under which the association could function, they violated the fundamental right to form associations. Rejecting this challenge, the Court observed that the control of forward trading was a legitimate subject of legislative interference and regulation, that the manner in which the regulation was effected and the machinery employed for achieving it were matters of legislative policy and that the impugned provisions proceeded on the basis that the tradesmen entrusted with the task of regulating these transactions should be subject to control so as effectively to further the policy of legitimate trade and to avoid evil consequences of undesirable speculation. The Court also observed that no association was compelled to apply for recognition; but if it applied for recognition, it was bound by the provisions of the Act under which recognition was granted. Another principle to be kept in view is that in deciding whether a provision impinges upon a fundamental right, the test to be applied is of "direct and inevitable" effect, or "doctrine of intended and real effect" as reaffirmed by the Supreme Court in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, . The Supreme Court in that case pointed out that the doctrine of pith and substance or object and form of the State action which held the sway in the beginning, was finally rejected in

Rustom Cavasjee Cooper Vs. Union of India (UOI), and the approach approved in that case was to see the direct and inevitable effect or consequence of the State action on the fundamental right alleged to have been infringed.

It is in the light of these principles that the validity of the petitioners' contention has to be examined. Now we have already seen that a society is not compelled to apply for registration under the Act. Formation of a society is a voluntary act on the part of its members and so is the act of making an application for registration under the Act. The fundamental right to form an association does not carry with it the right to have the association recognised or registered. When a society applies for registration under the Act, it must be assumed that its members agree to be bound by the regulatory provisions of the Act for getting the privileges which the Act confers on a registered society. These privileges are purely statutory and are not in any way adjunct to the fundamental right to form an association. A society on registration becomes a body corporate which saves the individual members from liability on transaction entered into with the society. The Companies Act, 1956 does not apply to a registered society (Section 92). A registered society has prior claim for recovering any debt or outstanding demand owing to it by any member or past member or deceased member and it has first charge upon certain properties belonging to these persons for recovering the dues (see Sections 40 and 41). A registered society can be given State aid if the aid is necessary in the interest of the society (Section 45). The Act provides its own machinery for settlement of any dispute touching the constitution, management or business of a society or its liquidation and the jurisdiction of Civil Courts is barred in these matters (Sections 64 and 82). A registered society is very often granted privileges also under other enactments. For example, the Income Tax Act, 1961, exempts from charge of Income Tax a variety of income of a registered cooperative society and the Motor Vehicles Act, 1939, confers a preferential right to get a stage carriage permit on a registered co-operative society. In return for these privileges, the Act confers wide powers of control and supervision of the affairs of the society on the Registrar. The impugned power of expulsion of a member conferred on the Registrar by Section 19-C (2), if expulsion is desirable or necessary in the interests of the society, is a power of this nature. Co-operative business in general concerns persons of limited means and needs encouragement, protection and regulation by the State as one of the steps for achieving the goals set out in Articles 39 and 43 of the Constitution. As already seen, if a society does not want to subject itself to the control of the Registrar, including the power of expulsion of a member u/s 19-C (2), it need not apply for registration. Such society can carry on co-operative business but it cannot use the word "Co-operative" as a part of its name and cannot enjoy the privileges conferred upon societies registered under the Act. There is no fundamental right to the use of the word "Co-operative" as a part of the name of society engaged in co-operative business. Similarly, there is no fundamental right to have a society registered or to get the statutory privileges conferred by the Act and other Acts on registered Co-operative societies. In these circumstances,

and especially when there is no statutory compulsion that every co-operative society must get itself registered and when the making of an application for registration under the Act is a voluntary act on the part of members of a society, it cannot be held that Section 19-C (2) of the Act infringes the fundamental rights of the members of a society to form associations or unions, conferred by Article 19(1)(c) of the Constitution. In our opinion, the principle applied in the case of *Raghubar Dayal v. Union of India* (supra) fully applies here. As the members themselves by applying for registration voluntarily accept the power of the Registrar to expel a member, it cannot be said that the direct and inevitable effect of the impugned provisions is to infringe the fundamental right to form associations. A society or any voluntary association can have its own rules or bye-laws made by its members for expelling a member. Such a rule or bye-law does not contravene the fundamental right to form an association. Similarly, when the members, who, to begin with, form the society, by their voluntary act of applying for registration under the Act, impliedly accept that the Registrar will have the power to expel a member, it cannot be said that the power of the Registrar is an invasion of their fundamental right to form an association.

In *Damyanti v. Union of India* (supra), a case strongly relied upon by the learned counsel for the petitioners, by Central Act No. 13 of 1962, the Hindi Sahitya Sammelan, a society registered under the Societies Registration Act, 1860, was constituted as a body corporate. The corporate body was, however, composed not only of persons who were members of the society, but also of others who were given the right under the Central Act to be members of the Sammelan without the consent of the pre-existing members. It would be seen that the incorporation of the society and induction of new members were direct and inevitable effects of the Central Act without any express or implied consent of the pre-existing members. It was in this context that the Supreme Court held the Central Act to be invalid as contravening Article 19(1)(c) of the Constitution and observed : "The right to form an association necessarily implies that the persons forming the association have also the right to continue to be associated only with 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 rights to form an association. The important distinguishing feature of Damayanti's case is that the incorporation of the Sammelan under the Central Act was the result of legislative compulsion and did not depend upon the making of voluntary application by the existing members for incorporation. Damyanti's case, therefore, has no application here. In the case of *O.K. Ghosh and Another Vs. E.X. Joseph*, also relied upon by the petitioners, the Court invalidated Rule 4-B of the Central Civil Services (Conduct) Rules, 1955, which laid down that no Government servant shall join or continue to be member of any service association of Government servants which was not recognised by the Government. Here also it will be seen that the compulsion of the rule was that a

Government servant could join only a recognised association. The recognition to an association could be refused on grounds unconnected with matters referred to in Clause (4) of Article 19. It was in these circumstances that the rule was struck down as encroaching upon the right to form an association. In the case before us, as already emphasised, the incorporation of a society under the Act by registration and the application of the regulatory provisions of the Act to a registered society result from the voluntary act of the members of the society in making the application for registration. This important feature of the Act, as already noticed bears strong resemblance to the case of *Raghubar Dayal v. Union of India* (supra) where an association to be recognised under the Forward Contracts (Regulation) Act, 1952, had to make an application for recognition which implied the acceptance of the regulatory provisions of the said Act. In our opinion, the ruling in *O. K. Ghosh's* case is not applicable here.

We have already seen that cooperation is a method of doing business. The members of an association or a society formed for business purposes can only claim the right to carry on the business like all other citizens subject to restrictions imposable under Clause (6) of Article 19. The impugned provisions of the Act which enable the Registrar to expel a member if it is desirable or necessary in the interests of the society, are intended to protect the business of the society and the interests of its members. The power conferred on the Registrar is in the interests of the general public within the meaning of Clause (6) of Article 19. The expression "in the interests of general public" does not require that the legislation to fall within the protection of Clause (6) must be in the interests of the public of the whole of the Republic. The expression means nothing more than "in public interests" and a legislation intended to protect the interests of a limited class of persons may well be "in the interests of the general public"; See *Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others*, . The restriction imposed by the impugned provisions is reasonable. The Registrar is required to give notice to the member concerned to explain why he should not be expelled. The power conferred is quasi-judicial in nature. The Act provides for an appeal against the order of the Registrar. The expulsion debars a member for re-admission as a member for a period of five years. Even an expulsion by the members themselves under Sub-section (1) of Section 19-C has the same effect. In our opinion, the impugned provisions constitute reasonable restrictions in the interests of the general public within the meaning of Clause (6) of Article 19.

We have earlier expressed our opinion that the impugned provisions do not infringe the right to form associations guaranteed under Article 19(1)(c). However, even on the assumption that expulsion of a member by the Registrar affects his right under Article 19(1)(c), we are of opinion that the power conferred on the Registrar constitutes reasonable restriction in the interests of morality within the meaning of Clause (4) of Article 19.

The word "morality" occurs in Clauses (2) and (4) of Article 19. By morality, in

our opinion, here is meant the ideas about right and wrong which are accepted by the right thinking members of the society as a whole of the country. Morality is a fluid concept and its content will depend upon the time, place and stage of civilisation. A fluid concept of this nature naturally gives rise to the difficulty in its application. Even so we are not prepared to accept that there is any good reason to limit "morality" in Article 19 to sexual morality. We are conscious that the Supreme Court limited the meaning of the word "immoral" in Section 23 of the Contract Act to sexual immorality : *Gherulal Parakh Vs. Mahadeodas Maiya and Others*, . The main reason why limited meaning is given to the word "immoral" in Section 23 is that the word occurs there in juxtaposition with an equally illusive concept, "public policy" and there would be overlapping if wide meaning is given to the word "immoral" for, in its wide sense, what is immoral may be against public policy. This reasoning is not available for limiting the meaning of the word "morality" in Clauses (2) and (4) of Article 19. The Patna High Court in *In Re Bharati Press* AIR 1951 Pat 12 at p. 20 (SB) expressed the view that the words "decency or morality" as they occur in Clause (2) of Article 19 are limited to offences against decency and morals in Chapter XIV of the Penal Code i.e. Sections 292-94. We are respectfully unable to agree with this view. Acceptance of the view of the Patna High Court will unduly restrict the power of the Legislature to deal in future with new evils undermining the moral base of the Indian society. Indeed, Young Persons (Harmful Publications) Act, 1956, enacted by Parliament which prohibits the dissemination of pictorial and other publications containing stories of glorification of crime, violence and vice, illustrates the necessity of not confining the meaning of the word "morality" to sexual morality or to offences against decency and morals contained in the Penal Code. We, however, agree that controversial ideas about a course of conduct being right or wrong cannot be resolved by bringing them within the ambit of morality. A conduct is immoral or against morality only when it is so felt generally by right thinking persons in the Indian society. It was, therefore, rightly held in *Fram Nusservanji Balsara Vs. State of Bombay and Another*, (approved on this point in appeal in *State of Bombay v. F. N. Balsara* AIR 1951 SC 318) that Section 23(a) of the Bombay Prohibition Act, 1939, which prohibited commencing of any intoxicant was not a law in the interests of morality and was not saved by Clause (2) of Article 19. In holding so, Chagla, C. J. observed : "the morality referred to in Article 19(2) is not the ad hoc morality created by the State Legislature. It is a morality which is accepted by all the world or at least throughout the length and breadth of India. It is absurd to suggest that when drinking is permissible in the majority of States in India, mere commendation of a drink would constitute an encroachment upon morality." We do not, however, agree that morality within Article 19 is one which is accepted by all the world. It is rightly said by Basu that "owing to ethnic, cultural and even physiological differences it is not possible to formulate a universal standard of morality" and that differing pronouncements by Courts of different countries on *Lady Chatterley's Lover* illustrate this point, (Basu, the Constitution of India Vol. 1. page 635, 5th Edition. *Kingsley Pictures Corpn. v. Regents* (1959) 360 US 684

and Ranjit D. Udeshi Vs. State of Maharashtra,). As earlier stated by us, a conduct is immoral or against morality when it is so felt generally by right thinking members in the Indian society. It is in the light of these principles that it has to be seen whether Section 19-C (2) is protected being in the interest of morality within Clause (2) of Article 19.

Section 19-C (2) enables the Registrar to expel a member when it is "necessary or desirable in the interests of the society." The expression "necessary or desirable in the interests of the society" must in the context be construed to embrace grounds similar to those on which a member can be expelled by a resolution of the Committee of the society u/s 19-C (1). The power of expulsion of a member by a resolution of the Committee can be exercised when he: "(a) intentionally does any act likely to injure the credit of the society or bring it to disrepute; or (b) wilfully deceives the society by false statements; or (c) carries on any business which comes or is likely to come into conflict with the business carried on by the society; or (d) persistently makes default in payment of his dues or fails to comply with any provisions of the bye-laws." These grounds on which a member can be expelled u/s 19-C (1) are illustrative as to when it would be necessary or desirable to expel a member u/s 19-C (2). Speaking! briefly, a member is expelled when he acts against the interests of the society and undermines the moral base of doing business in co-operation. We have already seen that co-operation is a great moral movement and provides as a substitute for material assets, honesty and sense of moral obligation and keeps in view the moral rather than the material sanction. Having regard to the true nature of co-operation which the Act intends to foster, the power of expulsion of a member conferred on the Registrar by Section 19-C (2) can be described to be a power for preservation of morality amongst the members which is absolutely necessary for doing business in co-operation. Laws encouraging co-operatives are in force in most of the States, if not all. In States where there is no State law on the subject, the gap is filled by the Co-operative Societies Act, 1912. The people in our Socialist Secular Democratic Republic thus generally realise that cooperation being a great moral movement is especially suited to our country where most of the people have limited means. The power of expulsion of a member, whether exercised by the members or the Registrar, is a power to preserve the moral base of a co-operative society. It appears that the Legislature thought that it would not be enough to authorise expulsion of a member by the Committee of the society alone and the Registrar should also have the power to expel a member, for a majority in the Committee may be won over by an unscrupulous member by using unfair means. We cannot lose sight of the fact that our laws are made by the elected representatives of the people and that there is a strong presumption that they are consistent with the moral norms of the society. Viewed in this way. Section 19-C (2) is a reasonable restriction in the interests of morality on the fundamental right to form an association within the meaning of Clause (4) of Article 19. We have already seen that the power conferred is quasi-judicial in nature and the order of expulsion is appealable and that the period of

five years during which a person is ineligible to become a member is also reasonable. The impugned provisions of Sub-sections (2) and (3) of Section 19-C of the Act thus fall within the protection of Clause (4) of Article 19.

For the reasons stated above, we reject the challenge to the constitutional validity of Sub-sections (2) and (3) of Section 19-C of the Act. As earlier pointed out, the merits of the order of expulsion can be agitated in appeal for which provision is made in the Act. If the appeals have not yet been filed, they can be filed now and it would be open to the appellate authority to condone the delay in filing the appeals u/s 79.

The petitions fail and are dismissed, but without any orders as to costs. The security amount be refunded to the petitioners.