

(1987) 01 PAT CK 0013

In the Patna High Court

Case No : Civil Writ Jurn. Case No's. 3469, 3479 and 4067 of 1981 and 1031 of 1986

Chandeshwar Prasad and

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 06-01-1987

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 1987 Patna 208 : (1987) 35 BLJR 318 : (1987) PLJR 159

Hon'ble Judges : S.S. Sandhawalia, C.J.; Uday Sinha, J.; S.S. Hasan, J

Bench : Full Bench

Advocate : A. Bose, S.P. Gupta, Kaushal Kumar, Md. Shahjahan Ali Khan, Kisto Kumar Gupta and V. Raman, for the Appellant; Kamlapati Singh, Govt. Pleader No. 5 and Ishwari Singh, Srinath Pathak, Abhay Kr. Singh and Sangeeta Das Gupta, Jr. Counsel, for the Respondent

Judgement

S.S. Sandhawalia, C.J.—The significant question in the field of co-operative law which looms large in this reference to the Full Bench is whether the wide ranging, unguided and uncanalised powers conferred by Section 65A Bihar and Orissa Co-operative Societies Act, 1935, on the State Government to call for any and every proceedings before the Registrar or his subordinates or any other person and decide them as it may deem fit, suffer from the vice of arbitrariness and thus infract Article 14 of the Constitution? If not, the narrower question is whether Section 65A includes within its sweep the strictly judicial matters pending before the Registrar u/s 48 of the said Act?

2. In this set of four connected writ jurisdiction cases, the representative matrix of facts may be noticed somewhat briefly from C.W.J.C.No. 4067 of 1981 (Piro Vyapar Mandal Sahyog Samiti Ltd. v. The State of Bihar), the petitioner, Piro Vyapar Mandal Sahyog Samiti Ltd. is a society registered under the Bihar and Orissa Co-operative Societies Act, 1935 (hereinafter referred to as the "Act") and respondent 6 is a member of the said society. The petitioner society filed an award case before respondent 4, the Assistant Registrar, Co-operative Societies,

Arrah, for the realisation of a sum of Rs. 3,322/- in principal and Rs. 902/75 paise as interest thereon. After hearing, respondent 4 rejected the aforesaid case by his order dt. 16th Feb. 1981. Aggrieved thereby, the petitioner moved an appeal u/s 48(6) of the Act before respondent 3, the Deputy Registrar, Co-operative Societies, Patna Division, Patna. The latter allowed the said appeal and held respondent 6 liable for the amount claimed (vide annexure 2 to the writ petition). Against the aforesaid order, respondent 6 purported to file a review case u/s 65A of the Act before the Minister of Co-operation, Government of Bihar, respondent 2, and the latter (vide order, annexure 1) admitted the same and stayed the operation of the orders of the Deputy Registrar, Co-operative Societies, meanwhile, ex parte. Later the petitioner society, on receipt of a notice, filed a written statement before respondent 2 taking the stand that he had no jurisdiction to entertain the said petition u/s 65A of the Act against an order on appeal which had achieved finality. It is the petitioner's grievance that thereafter respondent 2 has not fixed any date of hearing of the case and he has no intention of disposing of the case before him. As a consequence, the certificate proceedings under the Public Demands Recovery Act to effectuate the award passed against respondent 6 has also been stayed and the petitioner is left with no remedy. Aggrieved thereby the present petition has been filed.

3. In the counter-affidavit filed on behalf of respondent 6 the broad factual position is not denied, but it is reiterated that respondent 2, the Minister, has full jurisdiction to send for any proceedings u/s 65 irrespective of their finality or otherwise and pass such orders as he deems fit.

4. This case originally came up before a learned single Judge who noticing the significance of the question referred the same to a Division Bench. Before the Division Bench yet again a conflict of precedent within the Court was projected necessitating reference to a larger Bench. During the course of the hearing before the Full Bench itself, the vires of Section 65A came to be frontally assailed and permission was granted to amend the petition accordingly. In compliance therewith, a supplementary affidavit has been filed to assail Section 65A of the Act as ultra vires the Constitution.

5. The significant and the threshold question herein is whether Section 65A suffers from such a vice of arbitrariness as to infract the equality clause under Article 14 of the Constitution. This issue must necessarily revolve round the language of Section 65A of the j Act and the unguided wide-ranging powers conferred by the said section and it is thus apt to read it at the very outset --

"65A. The power of the State Government to review the order of the Registrar.-- Notwithstanding anything to the contrary contained in this Act, the State Government may, of its own motion or on an application made to it by any party aggrieved by the constitution or reconstitution, amalgamation, election, supersession, liquidation or any other matter concerning working of the society call for any record of inspection or enquiry made under this Act or proceedings of any matter pending before the Registrar or his subordinate or any person acting

under his authority and examine and pass such orders as it may deem fit."

6. In considering the core question aforesaid, the legislative history of Section 65A would not only be relevant but indeed provides a clue to the problem. It is well to recall that this provision was no part of the statute when originally enacted in 1935 and it was not till the year 1976 when it came to be inserted therein. This was done by Bihar Act 21 of 1976. A reference to the said amending Act would show that the primal purpose was to provide for some special provisions pertaining to primary agricultural credit societies, farmers' service societies and multipurpose co-operative societies. With that end in view, an altogether new Chap. VI-B containing Sections 44AP, 44AQ, 44AR and 44AS were added to the main Act, However, the presents. 65A was also inserted thereby with another procedural Section 65B to provide for the removal of difficulties arising in giving effect to the provisions of this Act. It would thus appear that Section 65A was added to the statute during the promulgation of the emergency when Articles Hand 19 as yet stood suspended and the provision did not have to satisfy the cardinal tests provided thereby.

7. Perhaps at the outset a misapprehension about the nature of Section 65A may first be removed. On behalf of the respondent State it was sought to be glibly argued that the provision is not exceptional in nature but is the usual one of the last repository of revisional power vested in the : State. To my mind, it is nothing of that kind. What first calls for notice is that this section does not merely confer a power on the State Government to revise matters decided by the Registrar or by officials exercising such power as a revisional or supervisory authority over them. On the contrary, it extends to any , and every matter which may as yet be merely pending before the Registrar and not only him but any one of his subordinates or any other person acting under his authority. The State Government is empowered to call for any such record and pass such orders as it may deem fit. Thus, in no uncertain terms, the wide-ranging power includes in its sweep the jurisdiction to decide all issues at the very threshold or original stage itself if the State Government is so minded and wipe away all considerations by an arbitrator or officer exercising the powers of Registrar and even the Registrar himself. It is thus not merely supervisory or revisional jurisdiction but a blanket power to decide in the original stage as well.

8. Yet again, the blanket power under the provision of Section 65A in the nakedness of its authority provides no criterion or guideline whatsoever for its purported exercise. Power is vested to pass orders as the State Government may deem fit. Unlike the well-known classes of re visional authority, it is not limited to be exercised where there has been a lack of jurisdiction in the authority below or a failure to exercise such jurisdiction. It is not conditioned by any illegality or material irregularity for its exercise. The requirements of incorrectness, impropriety or irregularity of the proceeding is again not a prerequisite herein. The well-known and well-established prerequisites for the exercise of a revisional or supervisory power are conspicuous by their absence for the exercise of the

power and equally there is no limitation whatsoever on the width of the orders that may be deemed fit.

9. Lastly, it may be noticed in this context that the power herein is conferred not upon a court or a judicial authority. It has been repeatedly said that whenever discretion is vested in a court, it is a judicial discretion to be exercised on well known and guided principles and not on humour or whimsicality. However, executive and political discretion is not governed by any such parameters. In *Lachandeo Sahni and Another Vs. State of Bihar and Others*, it has been held that the power u/s 65A can be exercised by the Minister and not by the Secretary of the department. Thus, the section vests this blanket power not in the confines of any guided judicial discretion but primarily an executive and, indeed, a political functionary. It is in the light of the aforementioned factors that the nature and the character of the power conferred by Section 65A has to be adjudged for its reasonableness on the touchstone of Article 14.

10. One may now proceed to examine the matter with some pointed reference to Section 48 of the Act and the exercise of judicial or quasi judicial powers therein. It was common ground before us that Section 65A includes within its sweep the provisions of Section 48 as well and indeed with particularity both the cases herein arise under the later provision. The provisions of Section 48 providing for disputes and the resolving thereof in the co-operative field are somewhat too well-known to call for any overly elaboration. Clauses (a) to (e) of Sub-section (1) of Section 48 cover a very wide ranging field of disputes touching the business of a registered society which have to be mandatorily referred to the Registrar. On receipt of such reference, the Registrar may either decide the dispute or transfer it for disposal to a person exercising the powers of a Registrar or to an arbitrator. Mr. Bose, the learned counsel for the petitioners, rightly highlighted that the proceedings herein are judicial proceedings *stricto sensu*. The section not only provides for a virtual judicial adjudication of such disputes and further for an appeal against such an adjudication, but indeed finality attaches to it by Sub-sections (6) and (9), which are in the terms following : --

Section 48(6) "Any person aggrieved by any decision given in dispute transferred or referred under Clauses (b) or (c) of Sub-section (2) may, within three months from the date of such decision, appeal to the Registrar."

Section 48(9) "Save as expressly provided in this section, a decision of the Registrar under this section, and subject to the orders of the Registrar on appeal or review, a decision given in a dispute transferred or referred under Clauses (b) or (c) of Sub-section (2) shall be final."

Our attention was also drawn to Sub-section (8) to highlight the judicial nature of the proceeding in so far as it authorises the Registrar, in apparently ticklish legal issues, to state a case and refer it to the District Judge for decision which is given finality by that sub-section. Section 49 then confers certain powers of a civil court on the Registrar and persons acting as arbitrators u/s 48. They are

entitled thereby to act in the same manner as is provided in the case of a civil court under the Civil P.C. 1908. Section 57 then creates a bar of jurisdiction to the civil court in matters required to be referred and adjudicated u/s 48. Our attention was also drawn to Rule 66, Bihar Co-operative Societies Rules, 1959 (hereinafter called the "Rules") which provides for the procedure in appeal and revision. Particular notice is called for to Sub-rule (4) thereof which is in the following terms :--

Rule 66(4) "For the purpose of this rule the appellate authority shall have all the powers of a court of appeal as provided in the Civil P.C. 1908."

The exhaustive provisions of Rule 68 pertaining to disputes arising u/s 48 are then equally meaningful for emphasising the judicial nature of the proceeding.

11. It is thus plain that Section 48 when read with Sections 49 and 57 along with the statutory rules, which now form an integral part of the Act, would leave no manner of doubt that the exercise of power u/s 48 is a judicial power. Not only that, the Act has itself intended to give finality thereto by the express provisions of Sub-sections (8) and (9) of Section 48. It would be somewhat wasteful to labour this point because it has already been the subject of discussion and adjudication by the final Court in *Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another*, . That was a case from this very Court and on a conspectus of provisions of this very Act their Lordships held as follows :

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

12. In the light of the aforesaid enunciation one may now move forward from the Pole Star finding that the Registrar or any person exercising his powers u/s 48 is a Court and the proceedings before him are judicial in nature. Once that is so, learned counsel for the petitioners Mr. Bose, was on the firmest footing in contending that Section 65A, which purports to confer power on the State Executive to totally override a Court and its judicial proceedings without any guidelines, is per se arbitrary and irrational. This is so on the settled and

authoritative rule that the pristinely judicial process cannot be intruded into by the State Executive and not even by legislative mandate or indeed by a constitutional amendment. Herein reliance was rightly placed on Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another, wherein Clauses (4) and (5) of Article 329-A inserted by the 39th Amendment of the Constitution, were struck down. Chandrachud, J. (as his Lordship then was) in concurring with the majority observed as under :

"But so much, I suppose, can be said with reasonable certainty that the rule of law means that the exercise of powers of government shall be conditioned by law and that subject to the exceptions to the doctrine of equality, no one shall be exposed to the arbitrary will of the Government. Dicey gave three meanings to rule of law : Absence of arbitrary power, equality before the law or the equal subjection of all classes to the ordinary law of the land administered by ordinary law courts and that the Constitution is not the source but the consequence of the rights of individuals, as defined and enforced by the Courts..."

To further buttress the aforesaid enunciation, Mr. Bose, the learned counsel for the petitioners, had further relied on the following observations in Chandrika Jha Vs. State of Bihar and Others, :

"....Presumably, the Chief Minister dealt with the question as if it were an executive function of the State Government and thereby clearly exceeded his powers in usurping the statutory functions of the Registrar under bye-law 29..... Some of the functions exercised under "executive powers" may include powers such as the supervisory jurisdiction of the State Government u/s 65A of the Act. The Executive cannot, however, go against the provisions of the Constitution or of any law.... In our opinion, the State Government cannot for itself exercise the statutory functions of the Registrar under the Act or the Rules.

Neither the Chief Minister nor the Minister for Co-operation or Industries had the power to arrogate to himself the statutory functions of the Registrar under bye-law 29....."

13. In the light of the above, if the Minister cannot arrogate to himself the ordinary statutory functions of the Registrar, then it would be doubly so in the statutory judicial functions of the Registrar u/s 48. If it were to be held otherwise then Section 65A would authorise a purely executive and indeed a political functionary like the Minister of the State Government to interfere in a purely judicial process and in a field where their Lordships in Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another, have held that the Registrar is to all intents and purposes, a Court discharging the same functions and duties in the same manner as a Court of law is expected to do. Permitting so would be something which neither principle nor precedent can possibly countenance. Indeed such a construction would in effect confer the purely judicial powers of the Registrar u/s 48 on the Minister under the garb of Section 65A. In essence, the Minister would then be performing not merely the statutory

functions of the Registrar but his purely judicial functions as well and constitute himself as a Judge or a Court of law. Further, as already noticed, Section 65A is devoid of any limitation or of any guidelines and it confers the power in naked arbitrariness for deciding the matter as the Minister deems fit dehors any law or rule. Therefore, such power u/s 65A authorising interference in such purely judicial field would be plainly arbitrary irrational and unconstitutional.

14. Now apart from the larger principle of the intrusion of unguided executive powers into fields purely judicial, the learned counsel for the petitioners individually analysed the tremendous arbitrariness which arises from the exercise of the blankest power of the State Government to call any and every proceedings before it and decide them as the Minister thinks fit. Taking these up seriatim, one may first notice the blanket power of interference at the threshold stage of the constitution or the reconstitution of Co-operative Societies. This field is provided for in considerable detail by the provisions of Sections 9, 10 and 11 as also by a wide variety of rules framed under the Act. The statute visualises an application for registration to the Registrar only and spells out the requirement of such an application in Section 9 itself. The Registrar alone is authorised to require such further information in this regard which he may consider necessary. Yet again, when any question about the eligibility of membership, e.g., whether a person is agriculturist or a non-agriculturist or a person is a resident of a particular town or a village or group of villages and whether two or more villages shall be considered to form a group and further whether any person belongs to any tribe, class or occupation are all questions which the statute vests for decision in the Registrar alone whose decision in this context has been declared to be final. This is so mandated in express terms by Section 10. Lastly, both the power and the duty is laid on the Registrar to be first satisfied that the Society has complied with all the provisions of the Act and the Rules and its bye-laws are in no way contrary to the statute and thereafter if he thinks fit he may register the society. The power to refuse registration is also vested in the Registrar but by Sub-section (3) of Section 11 a statutory appeal against such refusal is provided against such decision of the Registrar within two months from the date of his order. I would not wish to enter the thicket of the rules and of the model bye-laws which are relevant for the purpose of constitution of a Society. Indeed it is something too manifest to call for any further elaboration that the initial constitution and registration of a cooperative society is a detailed and intricate matter well provided for by the Act and the Rules which have to be administered only by the expertise of a man well versed therein. The power of the Registrar in this regard and the procedure therefore are canalised and channelled in the well-guided parameters by the statute and the precise methodology has been laid down therefore by the detailed provisions under the Act. However, all this is sought to be negated and set at naught by a single arbitrary stroke of Section 65A whereby even at the threshold stage of the constitution and registration of a society the Minister may summon the matter before him and decide the whole intricate matter by his fiat as the section in terms says as he may deem fit. In

his whimsicality he may, if he chooses, register a Society which may not even barely meet the requirements of the statute, or, on the other hand, may arbitrarily refuse registration to one well meriting such registration. Plainly enough, the State Government or the Minister cannot transpose themselves into a Registrar and to comply with the mandated provisions of the statute. As I said earlier, the Act as enacted originally, did not even remotely visualise such a blanket provision which came in only in the year 1976, by the Bihar Cooperative Societies (Amendment) Act, 1976, (Act XXI of 1976), after 42 years of its enactment. The situations of the State Government or its Minister and the Registrar under the Act are inherently different under the Act. Yet again the vested right of appeal from the action of the Registrar would then be set at naught because plainly enough there can be no appeal from Caesar to Caesar and thus from the action of the Minister to the State Government u/s 10(3) of the Act. The said Sub-section (3) would, in fact, be obliterated from the statute in the event of the exercise of power u/s 65A. The inherent legal anomalies, indeed absurdities, which would result from the exercise of the power u/s 65A, qua the relevant provision of the statute, are indeed too patent. The inherent statutory conundrums that would arise by the Minister arrogating to himself all the functions of the Registrar under Sections 9, 10 and 11 of the Act and the Rules and bye-laws for the purposes of constituting a Society become obviously beyond any resolution. What has been stated in this context applies equally and indeed doubly in the re-constitution of societies. Herein also the Minister is empowered to call for any matter of re-constitution of a society as well. Unguided power with regard to the very constitution and reconstitution of a co-operative Society cannot even remotely conform to the test of reasonableness under Article 14 of the Constitution.

15. One may now advert to the power qua the amalgamation of co-operative societies. What has been said above with regard to the constitution and reconstitution of societies would apply even with greater force with regard to amalgamation. That it is a matter replete with intricacy is somewhat self-evident. It would appear that prior to 1976 there did not exist any specific provision for the amalgamation of several societies. This was in turn provided for by insertion of Sections 44AQ and 44AR in the Act. A look to the detailed provisions of Section 44AQ would indicate that though labelled as a single section it is virtually a cluster of sections providing a detailed procedure for such amalgamation. I would not burden this judgment in quoting the provisions in extenso. It suffices to mention that the power to amalgamate is rested in the satisfaction and the opinion of the Registrar that the amalgamation of two or more societies is necessary in order to improve the working, or, in the alternative, for increasing its strength or usefulness, and he may on that basis direct their amalgamation into a single society and register the same as a new society. On such amalgamation the Registrar is empowered to depute an officer of the State Government to perform such functions as may be prescribed till the new managing committee is constituted. Other provisions and details are specified in

six sub-sections of Section 44AQ of the Act. In terms subsequent Section 44AR provides for statutory appeal against the order of the Registrar within 30 days of the date of the order to the State Government, which is then obliged to give a hearing to the objections and thereafter decide the matter, which has been given finality and cannot be challenged in any court of law. Yet again, all these detailed provisions are wholly overridden and virtually obliterated by the power u/s 65A of the Minister to forthwith call for any matter of amalgamation before himself and decide it as he deems fit. Clearly, in such a situation the appellate power u/s 44AR would be wholly nullified. The conflict of precedent with regard to the constitutionality, applicability and the actual administering of the amalgamation provisions is proof enough of the niceties and intricacies involved in such an exercise. Reference in this connection may be made to the Full Bench judgment of the Punjab & Haryana High Court in *Mota Singh v. State of Punjab* ILR (1979) P & H 338 which has received tacit affirmance from the final Court later. The blanket interference in so sensitive and intricate a field even at the threshold stage by the Minister without any rule or guideline, reminds one of the picturesque observation of Krishna Iyer, J. in *Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others*, :

"...But it is one thing to affirm the jurisdiction, another to authorise its free exercise like a bull in a china shop."

16. Moving ahead one may now advert to the equally sensitive and, perhaps, even more controversial field of election, squarely and precisely prescribed for by the Act and the Rules framed thereunder. Section 14 of the Act mandates that the management of a society, registered under the Act, shall be vested in a managing committee constituted in accordance with the Rules. Sub-section (3) of that section then provides that the term of the members and the office-bearers of the Managing Committee of a registered society shall be three co-operative years and they shall continue to hold office after expiry of their term till the elections are held or for six months from the close of the co-operative year, which is earlier. Rule 22 of the Bihar Cooperative Societies Rules, 1959 (hereinafter referred to as "the Rules") then provides that apart from nomination by the Registrar to the managing committee of a registered society, including its office-bearers, shall be elected by votes from amongst the members of the society at the annual general meeting held in accordance with the bye-laws. Rules 20 and 21 provide in great detail for holding of the general meeting and the procedure thereat. It is unnecessary to delve very deeply into the model bye-laws, which yet again provide for holding of the various kinds of general meetings and functions of the annual general meeting and elections to be held thereat vide model bye-laws 20 to 30. It was common ground before us that election disputes come fairly and squarely within the ambit of Section 48 of the Act, to which some detailed reference has already been made, which may not be repeated. Barring the fact that the Registrar may make a reference of such dispute and adjudication thereof has been clothed with finality after appeal by Sub-sections (6) and (9) of Section 48 of the Act. It was common ground before

us that election dispute would also come squarely within the ambit of Section 48 of the Act and if any authority is needed for the proposition it is available in *Mam Raj v. State of Haryana*, AIR 1982 Punj and Har 211 (FB).

17. It would be manifest from the above that virtually a complete code for both election to the co-operative societies, which lies at the heart of the co-operative movement, and the resolving of election disputes in appellate forum has been provided under the Act. Nevertheless, Section 65A empowers the Minister either suo motu or on an application to call for any matter pertaining to an election or election dispute before the Registrar or a subordinate or any other person under the Act and pass such orders as he may deem fit. In this context perhaps one cannot lose sight of the practical aspect that elections to major, societies may have a total or partial hue of politics and the Minister cannot entirely lose his basic colour of being a political functionary. Nevertheless, u/s 65A of the Act at one stroke the whole elaborate machinery providing for election to the societies, which, as already noticed, is the heart throb of the co-operative movement, is sought to be set at naught by the Minister deciding either the election or election disputes as he may deem fit. Not the least inkling is given as to what procedure he has to follow. The hallowed and democratic right of election may completely be overridden roughshod and the whole gamut of provision so meticulously provided by the statute for free and fair election to the managing committee and Chairman, etc., may either be given a goby or be decided by a person who cannot possibly have the image of impartiality. There is not a hint or a guideline or policy of control on the basis of which the Minister is to interfere in and set aside elections or election disputes in his arbitrary fiat as he may deem fit.

18. Coming now to supersession it may be recalled that the Act vests the management of the society inflexibly in the elected managing committee. Spirit of co-operative movement is self-help, non-profit motive and democratic working thereof evidenced by electoral process. However, Section 41 of the Act provides a limited power in the Registrar for the supersession of the managing committees for reasons spelt out by the statute. Such supersession, as Sub-section (1) of Section 41 of the Act in its very opening line indicates, is rested on the opinion of the Registrar and on the basis that the managing committee is mismanaging the affairs of the society. The section further provides for an opportunity to the managing committee to state its objection and then a detailed procedure to be followed before dissolving the managing committee and vesting control of the society in a person or persons appointed by the Registrar. Section 41 with subsequent amendment and accretion thereto has, as many as 10 sub-sections, and to use a phrase employed earlier, is indeed a cluster of sections in essence. This section with care and meticulous detail provides for the requirements for supersession, the period therefor, interim management thereunder and termination of such supersession of managing committees. An appeal is then provided against the orders u/s 41. The Act is so careful that it provides u/s 60 that the power of hearing appeal u/s 40 cannot be delegated to any subordinate authority and apparently must be exercised at the highest level.

19. Now, despite the care and qualifications with which the statute has hedged and confined the power to supersede the duly elected Managing Committees, Section 65A again provides a blanket power in the Minister to call for any matter pertaining to supersession of the managing committee and decide the same, yet again, as he may deem fit. It bears repetition that he would be governed by no procedure and as has been noticed earlier the moment he chooses to do so, the provisions of appeal against the supersession by the Registrar would be all set at naught when the State Government decides the issues at the threshold stage itself. This would involve a headlong clash with the vested right of appeal given in the case of supersession by the authorities below and the underlying purpose of Section 60 which prohibits delegation. All these are short-circuited by the mere expediency and whimsicality of the Minister calling for record and deciding the sensitive issue of supersession at any stage whatsoever and entirely as he may deem fit.

20. Lastly in the equally crucial and final provisions of winding up and liquidation the Minister has again been clothed u/s 65A with sky high powers governed by neither any procedure nor by any restraint. The Act has with utmost care provided by Sections 42, 43 and 44 with regard to the winding up of a registered society and an appeal against the same or liquidation or dissolution of the said society. It is clear that u/s 42 such a winding up has to be rested on the firm foundation of Clauses (a) and (b) of the said section. This is to be equally done after proceedings have been undertaken under Sections 34, 35, 36 and 37, or on the basis of an application by 3/4th members of the society, and only when the Registrar is clearly of the opinion that the society has to be dissolved or where its number has fallen below the prescribed limit. If any of those conditions are not satisfied a right of appeal is vested in every member of the society affected by such winding up order to the State Government within two months from the date of its publication. The winding up order again would not take effect until the expiry of two months from the date of publication of such order in the official gazette, and if an appeal be preferred, unless and until it is confirmed by notification or affirmance in appeal. Liquidation and dissolution thereafter are provided in great detail by eight sub-sections of Section 44 of the Act.

21. Equally well it is to recall that by virtue of Chap. VIB inserted by Act XXI of 1976 and Section 44-AQ therein a power was vested in the Registrar to order liquidation of societies. However, this was narrowly within the field of the primary agricultural credit societies, farmers service societies, and multipurpose co-operative societies only. But herein also the power of liquidation was not a blanket one and could be exercised only either in the clear interest of the Co-operative Movement, or for the purpose of securing proper management of the society or for the reason that the society had not been working as a viable unit or that it had incurred bad debts and remained inactive. Herein again a statutory appeal against any order u/s 44-AQ was provided by Section 44AR which mandated its disposal after duly hearing the parties and their objection.

22. Precedent has repeatedly reiterated and highlighted that for the winding up and liquidation of a society or a company which in essence is the civil death of a legal person, the requirements of the Act have to be meticulously satisfied. Any such action can always be impugned and is invariably set at naught if this transgresses these defined statutory parameters. However, u/s 63A of the Act all this is sought to be obliterated and it is provided that even in the matter of winding up, dissolution or liquidation which, as noticed, is an issue of life and death for the corporate body, the Minister may send for the record and decide these sensitive and conclusive matters forthwith as he may deem fit untrammelled by any limitations and unguided by any procedure.

23. I have so far highlighted the specific heads covered by Section 65A which are otherwise provided in the greatest detail by the statute over which a blanket unguided power is sought to be given to the Minister u/s 65A to dispose them of as he may think fit. But it is not only over these enumerated matters that this power extends. Section 65A in the residuary clause then proceeds to refer to every niche and corner of cooperative working and places it unreservedly under the whimsicality of executive action by providing that the same may be decided as deemed fit by the Minister. Apart from the enumerated matters the State Government is entitled to call for "any other matter concerning the working of the society". The width of the power is manifest and requires no further elaboration. Not only that the power is yet again vested "to call for any record of Inspection or inquiry made under this Act or proceedings of any matter". Herein again it is well to recall that there are statutory provisions providing in detail for an inspection or an inquiry by the Registrar under Sections 34, 35 and 36 of the Act. These are thus again without let or hindrance placed within the fiat of Section 65A. It may be recalled that the power extends not only to matters pending before the Registrar but equally to all persons subordinate to him and also to any and every person acting under his authority. In essence, Section 65A thus creates a Frankenstein monster whose shadow pervades every provision of statute and every niche and corner of cooperative work upon which he may at any time choose to lay his hand and dispose of the same by passing such orders as deemed fit. Learned counsel for the petitioners was thus right in his submission that in essence Section 65A is an executive repeal of all earlier statutory provisions and vesting the whole gamut of the powers in the hands of the State Government and its Minister without let or hindrance. No method is provided for the exercise of these powers; no guideline is even remotely indicated in the section; no procedure is provided for the exercise of these powers. Indeed, counsel rightly highlighted this aspect by pointing out that Section 65A does not even talk of what the Minister may think fit, but whatever he may deem fit. Even no application of mind or thought is mandated by the section.

24. Learned counsel for the petitioners had rightly highlighted that the blanket power in the nakedness of authority which is conferred by Section 65A authorises the Minister to call for any matter under the sun in the cooperative field and

decide it as he deems fit. It was rightly argued that the purported detailed wordings of Section 65A are somewhat misleading and in fact it can be summarised in the terms following :

"Notwithstanding anything to the contrary contained in this Act the State Government may of its own motion call the proceedings of any matter pending before the Registrar, or his subordinates, or any person acting under his authority and examine and pass such orders as it may deem fit."

The statutory and legal effect of the provision, therefore, is that it amounts to an arrogation of all the powers in the statute in the executive fiat of the State Government notwithstanding all the previous provisions of the Act and amounts to a virtual repeal and overriding of all those provisions on the basis of a criterion no other than what the State Government may deem fit. The core question is whether such a provision can withstand the test of reasonableness under Article 14. To my mind, the answer is plainly in the negative.

25. It remains to advert to the somewhat brief observations made in this context by the Division Bench in *Hare Krishna Upadhyay v. State of Bihar*, 1979 BBCJ (HC) 109. Therein the momentous issue of the vires of Section 65A has been disposed of somewhat cryptically in a paragraph or two of the judgment in the end. It would appear that the learned counsel for the parties were remiss in not highlighting the issue from all its facets which have been considered in some detail above. No in-depth analysis of the language and sweep of Section 65A was attempted. Neither any principle nor the meaningful precedents referred to above have been adverted to for arriving at the brief conclusion that Section 65A was not violative of Article 14. Perhaps as a palliative it was sought to be observed that the State Government would follow the procedure and the norms enjoined upon the Registrar whilst acting u/s 65A. I have already sought to demonstrate earlier that those limitations, procedure and discretions vested in the Registrar by their very nature cannot be imposed upon the State Government nor can the Minister transpose himself identically to the role of the Registrar. That result is an inherent impossibility. As pointed out earlier, the vested right of appeal to the State Government granted by the numerous earlier provisions is thus sought to be set at naught and nullified on basic rule that there cannot be an appeal from Caesar to Caesar. With the deepest respect, the judgment on this point does not lay down the law correctly and has to be overruled.

26. To sum up, it bears repetition that Section 65A was inserted nearly four decades after the enforcement of the Act by the amending Act 21 of 1976 during the proclamation of the emergency when the basic freedoms stood suspended. The basic purpose of the amending provision was to add Chap. VI-B to the statute and no rationale or reason is indicated in the Objects and Purposes of the same for the addition of a provision of the nature of Section 65A. Despite repeated pinpointing, the learned counsel for the respondent-State was unable to indicate any rationale and necessity of a provision of this nature after the Act and its working had held the field for more than forty years. As has been noticed

earlier, the provision is not merely an ultimate repository of a revisional power but a blanket power to decide all matters in the original stage itself by the State Government. The power is exercisable, as noticed by precedent, by the Minister who is both an executive and political functionary. It warrants a blatant interference by executive action in fields and arenas, some of which are judicial *stricto sensu* and others which are pristinely quasi-judicial. It also authorises total interference by the Minister in the registration, constitution and re-constitution of the cooperative societies which would completely override, if not obliterate, the provision of Sections 9, 10 and 11 and a wide variety of statutory rules thereunder. In the realm of the amalgamation of co-operative societies the provision would be in headlong clash with Sections 44AQ and 44AR and materially effaced them off the statute book. In the equally sensitive field of election, which would come well within the ambit of disputes u/s 48 and the relevant statutory rules, the resolving thereof is a purely judicial function under the Act, the section warrants a blatant invasion of judicial functions by purely discretionary executive fiat. In the arena of supersession, a whimsical interference is warranted in the detailed provisions of Section 41 and the relevant statutory rules apart from obliterating the right of appeal and negating the mandate of Section 60. Lastly, even in the closing rites of a legal person like the society, by way of its winding up, dissolution and liquidation which are matters of great moment provided in the deepest detail by the provisions of Sections 34, 35, 36, 37, 44 and 44AQ they are all sought to be overridden roughshod in a single stroke by the impugned Section 65A. This apart in each and every matter concerning the working of the society apart from the specifically named and enumerated ones, the Minister is yet clothed with a power of blanket interference.

27. Perhaps, the Achille's heel of the provision is yet the total absence of any criterion, guideline or rationale, by which such an unguided and untrammelled power is to be exercised. Perhaps even a rationalising process is obviated because the statute does not even say that the Minister may decide as he thinks fit and, indeed, all that Section 65A requires is that the Minister may decide whatever he may deem fit. One is reminded of the words of Chandrachud, J., (as his Lordship then was) in *Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another*, even with regard to the higher fields of the amending powers of the Constitution itself -

"I find it contrary to the basic tenets of our Constitution to hold that the Amending Body is an amalgam of all powers legislative, executive and judicial. "Whatever pleases the emperor has the force of law" is not an article of democratic faith. The basis of our Constitution is a well-planned legal order, the presuppositions of which are accepted by the people as determining the methods by which the functions of the Government will be discharged and the power of the State shall be used."

On the aforesaid analogy, "whatever pleases the Minister and whatever he deems

fit has the force of law" cannot be made an article of legal faith u/s 65A. To my mind, the section in its unguided arbitrariness plainly violates the equality clause and the rule of reasonableness enshrined in Article 14. Consequently it is hereby struck down.

28. To finally conclude, the answer to the question posed at the very outset is rendered in the affirmative and it is held that the wide-ranging, unguided and uncanalised powers conferred by Section 65A of the Act on the State Government to call for any and every proceedings before the Registrar or his subordinates or any other person and decide them as it may deem fit, plainly suffer from the vice of arbitrariness and consequently infract Article 14 of the Constitution. In view of this finding, it is unnecessary and academic to adjudicate on the narrower question whether Section 65A would include within its sweep the strictly judicial matters pending before the Registrar u/s 48 of the said Act.

29. In the light of the above, C.W.J.C. No. 4067 of 1981 (Piro Vyapar Sahyog Samata Ltd. v. The State of Bihar) is allowed with costs and the impugned order of the Minister (annexure I) dt. 11th Aug. 1981 is hereby quashed.

30. C.W.J.C. No. 1031 of 1986 (Mr. Mohsin AH Biswas v. The State of Bihar) is allowed with costs and the impugned order of the Minister dt. 14th Feb. 1986 (annexure 4) and all consequential orders are hereby quashed.

31. C.W.J.C. No. 3469 of 1981 (Chandeshwar Prasad v. The State of Bihar) is allowed with costs and the impugned order of the Minister dated 18th of August, 1981 (annexure 3) is hereby quashed.

32. C.W.J.C. No. 3470 of 1981 (Ram Dular Sharma v. The State of Bihar) is allowed with costs and the impugned order of the Minister dt. 18th Aug. 1981 (annexure 8) and the consequential orders are hereby quashed.

Udaysinha, J.

33. I agree.

S. Shamsul Hasan, J.

34. I agree.