

(1995) 03 AHC CK 0066

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 37981 of 1994

C.O.D.Chheoki Employees Co-Op.Society Ltd.,Alld.,and
Another

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 10-03-1995

Acts Referred:

Constitution of India, 1950 — Article 15, 19, 19(1)(c), 19(4)
Uttar Pradesh Co-operative Societies Rules, 1968 — Rule 393, 393A, 393B, 440, 444A(7)

Citation : (1995) 03 AHC CK 0066

Hon'ble Judges : R.A.Sharma, J and D.K.Seth, J

Final Decision : Allowed

Judgement

K. A. Sharma, J.—In Writ Petition No. 40006 of 1994 petitioner No. 1 is C.O.D. Chheoki Employees Cooperative Society Ltd. and Petitioner No. 2 is one of its members. In Writ Petition No. 40121 of 1994 petitioners are members of a Cooperative Housing Society, known as Natraj Sahkari Avas Samiti Ltd., Agra. They have tiled these writ petitions challenging the validity of Rules 393, 393A, 393B, 440, 444A (3) and 453 (5) (i) of U. P. Cooperative Societies Rules, 1968 (hereinafter referred to as the Rules) framed under U. P. Cooperative Societies Act, 1965 (hereinafter referred to as the Act), whereby provisions have been made for reservation of seats for Scheduled Castes or Scheduled Tribes, Backward Classes of citizens and women in the Committee of Management of the Cooperative Societies. Further prayer for quashing the election programme and determination of constituencies in their favour has also been made.

2. In response to our Order granting time to the respondents to file counteraffidavit, Assistant Registrar has filed counteraffidavit in Writ Petition No. 40006 of 1994 and the petitioners in reply thereto have filed rejoinder affidavit. We have heard learned counsel for the petitioners and the learned Standing Counsel. We have also heard Sri A. Kumar, who represents the interveners in Writ Petition No. 40006 of 1994 and Sri Jai Singh, learned Counsel for Cane

Cooperative Societies.

3. Learned Counsel for the petitioners have challenged the above rules on the following grounds :

(i) Reservation in election to the Committee of Management of the Cooperative Society is antithesis to cooperative movement as enacted in the U. P. Cooperative Societies Act, and is also beyond Legislative competence.

(ii) Bringing into society rank outsider by process of reservation and nomination is violative of Article 19(I)(c) of the Constitution of India.

(iii) Power conferred on the Government for nominating the members of the weaker section does not contain any guidelines and is arbitrary and ultra vires ;

(iv) State cannot make reservation under Article 15(3) and (4) of the Constitution of India in the Committee of Management of the Cooperative Societies.

(v) The definition of the expression "backward classes of citizens as contained in the explanation to subrule (i) of Rule 393 is contrary to the criteria laid down by Article 15(4) of the Constitution and

(vi) Constitutional scheme does not contemplate reservation in election for constituting a Committee of Management of Cooperative Society.

4. As the first two contentions are interlinked with each other, they are being decided together.

5. Cooperative Society is a voluntary association of persons formed by pooling their resources to achieve the common object on the basis of mutual help. The Act provides for registration and regulation of the activities of such a society. Section 4 lays down the criteria on the basis of which a society can be registered under the Act. This section is as under :

"4. Society which may be registered. Subject to the provisions of this Act, a society which has as its object the promotion of the economic interest of its members in accordance with cooperative principles or a society established with the object of facilitating the operations of such a society, may be registered under this Act.

Explanation. Cooperative principles shall include

(a) advancement of economic interest of the members in accordance with public morals, decency and the relevant directive principles of State policy enunciated in the Constitution of India,

(b) regulation and restriction of profit motive ;

(c) promotion of thrift, mutual aid and selfhelp ;

(d) voluntary membership ; and

(e) democratic constitution of the society."

According to the above section only "a society which has as its object the promotion of economic interest of its members" is entitled to registration. "Member" has been defined by Section 2(n), according to which "member" means a person who joined in the application for registration of a society or a person admitted to membership after such registration in accordance with the provisions of this Act, the rules and the byelaws for the time being in force but a reference to "members" anywhere in this Act in connection with the possession or exercise of any right or power or the existence or discharge of any liability or duty shall not include reference to any class of members who by reason of the provisions of this Act do not possess such right or power or have no such liability or duty." Accordingly to the above definition a person, who joined in the application for registration of a society or a person admitted to membership after such registration in accordance with the Act, Rules and the byelaws can be a member of the society. Section 6 deals with the application for registration and in this connection Rule 3 lays down that an application for registration is to be made in the form specified by the Registrar. Form "A" is such a form proscribed. Under Section 7 the registration can be granted to the society, if the application complies with the provisions of the Act and the rules and the objects of the society are in accordance with Section 4. Section 7 is as under:

"7. Registration.(I) If the Registrar is satisfied

(a) that the application complies with the provisions of this Act and the rules ;

(b) that the objects of the proposed society and in accordance with Section 4;

(c) that the proposed byelaws are not inconsistent with the provisions of this Act and the rules ; and P

(d) that the proposed society complies with the requirements of rules in regard to the existence of any conditions in general or for the class of societies to which the particular society belongs and with the requirements of sound business and has reasonable chances of success, the Registrar shall register the society and its byelaws.

Provided that where the byelaws accompanying the application for registration are such as have, after the enforcement of this Act already been approved by the Registrar or the type or class of cooperative societies to which the proposed society belongs, the Registrar shall pass final orders thereon either registering the society or refusing its registration within three months from the date of the receipt of the application by him and if he fails to do so, the applicants may make a representation to the authority competent to hear under Section 98 appeals against Registrar's order of refusal to register a society and if such authority, after calling for a report from the Registrar, passes an order for registration of society, the society shall be deemed to have been duly registered from the date of communication of such order to the Registrar.

(2) where the Registrar refuses to register a society, he shall communicate the order of refusal together with the reason therefore to such applicant as has been named in the application for this purpose and in default of such naming, to any one of the applicant."

Section 17 specifies the persons, who may be the members of a cooperative society. By virtue of Section 29 the Management of every cooperative society vests in a Committee of Management, which is to be elected and constituted by the members of the society. In view of Section 44 it is the duty of the Government to encourage and promote the cooperative movement in the State and to take such steps in this direction as may be necessary.

6. Section 130 of the Act empowers the Government to make rule to carry out the purpose of the Act. Its subsection (2)(xii) was amended in 1977, whereby provision was made authorising the Government to make rules regarding reservation of seats in the Committee of Management for woman and members belonging to weaker section. In the same year Clause (12A) was also added to subsection (2) of the said section enabling the Government to nominate woman and members belonging to weaker section in the Committee of Management. In pursuance of the above provision Rule 393 was amended laying down that a cooperative society may have as many persons on its Committee of Management as may be provided in its byelaws subject to the maximum of 15 persons. The proviso to the said rule laid down that the byelaws of the society shall also provide for reservation of seats in the Committee of Management for weaker section and woman. By the explanation appended to subrule (2) "weaker section" was defined so as to mean persons belonging to Scheduled Castes and Scheduled Tribes and includes landless agricultural labourers, artisans, marginal and small farmers. Old Rule 393 being relevant is reproduced below :

"393. (1) A cooperative society may have as many persons on its Committee of Management as may be provided in its byelaws subject to a maximum of fifteen persons. Any other committee or subcommittee of the society shall be smaller than its committee of management and in no case, such committee, or subcommittee shall consist of more than seven members.

Provided that the byelaws shall also provide for reservation of seats in the committee of management for

(a) Weaker section

(i) in the case of an apex society except U. P. Consumers Cooperative Federation not less than two,

(ii) in the case of central and primary society other than consumers and primary housing society not less than three out of which one member shall belong to Scheduled Castes or Schedule Tribes ;

(b) Women

- (i) in the case of U. P. Consumers Cooperative Federation, not less than two,
- (ii) in the case of central and primary consumers society not less than one third of the total number of members of the committee of management.

(2) Where a cooperative society referred to in subrule (1) for any reasons whatsoever, fails to elect on the committee of management such number of persons for whom seats are reserved or the vacancy occurs amongst them the vacancy or the deficiency shall be made good or filled in as the case may be by the State Government by nominating persons belonging to such class on the committee of management of such society.

Explanation. For the purpose of this rule

(1) The expression "Weaker Section" means persons belonging to the Scheduled Castes and Scheduled Tribes and includes landless agricultural labourer, artisans, marginal and small farmers.

(2) The expression "landless "marginal farmer" and meaning:

(i) "Landless agricultural labourer" means a person who on the date of commencement of this rule does not hold any land and whose principal means of livelihood is manual labour on agricultural land and includes a person who follows any one or more of the following occupations in the capacity of a labourer on wages, whether paid in cash or in kind or partly in cash and partly in kind, namely

(a) farming, including cultivation and tillage of soil;

(b) dairy farming ;

(c) production cultivation growing and harvesting of any horticultural commodity;

(d) raising of livestock, bees or poultry ; and

(e) any practice performed on a farm as incidental to or in conjunction with farm operations (including any forestry or timbering operations) and preparation for market and delivery to a cold storage or other warehouse or to market or to carriage for transportation of farm products.

(ii) "marginal farmer" means a person residing in a village who on the date of commencement of this rule holds agricultural land not exceeding one hectare of land and whose principal means of livelihood is income from agricultural land or by manual labour on such land, and includes a person cultivating land as an asami, or as a sharecropper ; (iii) "artisan" means a person residing in a village who on the date of commencement of this rule does not hold any agricultural land and whose principal source of livelihood is manual labour connected with

(a) the production or repair of traditional tools, implements and other articles or things used for agricultural or purposes ancillary thereto, or

(b) the practice of any other craft either by own labour or by labour of the

members of his, family.

(iv) "small farmer" means a person residing in a village who, on the date of commencement of this rule holds land exceeding one hectare but not exceeding two hectares, and whose principal source of livelihood is come from agricultural land or by mutual labour on such land and includes a person cultivating land as an asami or as a sharecropper."

Rule 393 requires provisions to be made in the byelaws of the society for reservation of seats in favour of woman and weaker section. The Rule itself did not make reservation directly and left it to be made by the society itself in its byelaws, that apart, the definition of "weaker section from the members of Scheduled Castes and Scheduled Tribes landless agricultural labourers, artisans, marginal and small farmers. Rule 393 (2) authorised the Government to nominate members of weaker section or woman on the Committee of Management of such society, which did not have any such person. The rules have been amended in 1994, whereby Rule 393 has been substituted by a new rule. New Rule 393 is as under :

"393. (1) A cooperative society may have as many persons on its Committee of Management as may be provided in its byelavs subject to a maximum of fifteen persons. Any other committee or subcommittee of the society shall be smaller than its Committee of Management and in no case such committee or subcommittee shall consist of more than seven members; Provided that in the Committee of Management of every cooperative society three seats shall be reserved of which one shall be reserved for Scheduled Castes or Scheduled Tribes, one for Backward Classes of citizens and one for woman ;

Provided further that in case of Uttar Pradesh Cooperative Consumer Federation Central and Primary Consumer Cooperative Societies three seats shall be reserved of which two shall be reserved for women and one for persons belonging to Scheduled Castes or Scheduled Tribes or Backward Classes of ? citizens. Explanation,In this rule expression "backward classes of citizens" shall have the meaning assigned to it in clause (b) of Section 1 of the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1994. (2) Where a cooperative society referred to in subrule (1) for any reason whatsoever, fails to elect on the Committee of Management such number of persons for whom seats are reserved or the vacancy occurs or the deficiency shall be made good or filled as the case may be, by the State Government by nominating persons belonging to such class on the Committee of Management of such society.

Expressions."Weaker section" referred to in these rules shall mean a person belonging to Scheduled Castes, Scheduled Tribes, Women and Backward classes of citizens referred to in the explanation of subrule (1)."

Under the above rule the provision of having not more than fifteen persons on the Committee of Management of a society according to its byelaws has been

retained. But by the two proviso appended to subrule (1) every ; society is under obligation to reserve seats in its Committee of Management for Scheduled Castes or Scheduled Tribes, Backward Classes of citizens and for woman. The expression. "Backward classes of citizens" has been assigned the same meaning, which has been given to it by clause (b) of Section 2 of the U. P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1994, which has been enacted for providing for reservation under Article 16 (4) of the Constitution. Subrule (2) has given power to the Government to nominate persons belonging to weaker section, if for any reason the society fails to elect on the Committee of Management such member of persons for whom seats are reserved. The expression "weaker section" has been defined by explanation (2), sub" rule (2) of Rule 393, according to which it means a person belonging to Scheduled Castes, Scheduled Tribes, Woman and Backward Classes of citizens. Under Sub Rules (4) to (8) of Rule 440 the Registrar has to determine amongst others, the number of seats reserved for weaker section and under Rule 444A (3) he has to reserve constituencies for them Rule 453 lays down disqualification of a member of Committee of Management of a cooperative society. According to clause (h) of subrule (1) of Rule 453, a person, who is not a member of general body of the society, cannot be a member of its Committee of Management. But in view of subrule (5).of the same Rule this disqualification is not applicable to a nominated member, with the result that the Government can nominate an outsider.

7. There are two competing rights : one is citizens" fundamental right under Article 19(1)(c) of the Constitution to form association. The other is the State"s right to make laws with respect to matters specified in Entry 32 of State List of Seventh Schedule of the Constitution, namely, "incorporation, regulation and winding up" of cooperative societies, Right to form an association under Article 19(1)(c) of the Constitution carries with it the right of not being compelled to have outsiders as members of the association so formed without the consent of those who formed it. In this connection reference may be made to *Damyanti v. Union of India*, AIR 1971 SC 966, wherein Supreme Court has laid down as under :

"The right to form an association, in our opinion necessarily implies that the persons forming the Association have also the right to continue to be associated with only those whom they voluntarily admit in the Association. Any law, by which members are introduced in the Voluntary Association without any option being given to the members to keep them out, or any law which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form an association. If we were to accept the submission that the right guaranteed by Article 19(I)(c) is confined to the initial stage of forming an Association and does not protect the right to continue the Association with the membership either chosen by the founders or regulated by rules made by the Association itself, the right would be meaningless because, as soon as an Association is formed, a law may be passed interfering with it a composition, so

that the Association formed may not be able to function at all. The right can be effective only if it is held to include within it the right to continue the Association with its composition as voluntarily agreed upon by the persons forming the Association. This aspect was recognised by this Court, though not in plain words, in the case of *G. K. Ghosh v. E. X. Joseph*, (1963) Supp 1 SCR 789 : AIR 1963 SC 812.....That case, thus, supports our view that the right to form an Association includes the right to its continuance and any law altering the composition of the Association compulsorily will be a breach of the right to form the Association.

* * *

This Court had also proceeded on the same basis in the case of *State of Madras v. V. G. Row*, 1952 SCR 597 ; AIR 1952 SC 196. Though this aspect was not clearly brought out in the judgment, the point, which came up for consideration, was decided on the basis that persons forming an Association had a right under Article 19(1)(c) to see that the composition of the Association continues as voluntarily agreed to by them. That decision was given in an appeal from a judgment of the High Court of Madras reported in *V. G. Row v. The State of Madras*, AIR 1951 Mad 147 (FB). In the High Court, this principle was clearly formulated by Rajagannar, C.J. in the following words :

"The word "form", therefore, must refer not only to the initial commencement of the association, but also to the continuance of the association as such."

The Act, in so far as it interferes with the composition of the society in constituting the *Sammelan*, therefore, violates the right of the original members of the Society to form an association guaranteed under Article (1)(c).

* * * *

Article 19(4), on the fact of it, cannot be called in aid to claim validity for the Act. Under Article 19(4), reasonable restrictions can be imposed only in the interests of the sovereignty and integrity of India, or in the interests of public order or morality. It has not been contended on behalf of the respondent, nor could it be contended that this alteration of the constitution of the society in the manner laid down by the Act was in the interests of the sovereignty and integrity of India, or in the interests of public order or morality. Not being protected under Article 19(4), it must be held that the provision contained in the Act for reconstituting the society into the *Sammelan* is void. Once that section is declared void, the whole Act becomes ineffective inasmuch as the formation of the new *Sammelan* is the very basis for all the other provisions contained in the Act."

In the case of *Damyanti v. Union of India* (supra) the dispute related to Hindi Sahitya *Sammelan*. It was registered as a society under the Societies Registration Act, 1860. The State of U. P. enacted U. P. Hindi Sahitya *Sammelan* Act of 1956 under which a statutory body with the same name was created in place of the registered society. This Act was declared ultra vires by this Court.

Thereafter Union of India passed an Act known as Hindi Sahitya Sammelan Act, 1962, whereby in addition to the original members, outsiders were also made members of the Sammelan. The validity of this Act was challenged before the Supreme Court in the above case, and the Supreme Court declared that Act as ultra vires on the ground of violation of the members' right under Article 19(1)(c) of the Constitution.

8. But the right to form an association does not include within it the further right to achieve the object and the purpose of the association so formed without interference by law enacted by the State. Supreme Court in *Lalit Narain Misra Institute of Economic Development and Social Change, Patna etc. v. State of Bihar etc. and other*, AIR 1988 SCI 136 has, in this connection, laid down as under :

"In this connection, we may refer to a decision of this Court in *All India Bank Employees' Association v. National Industrial Tribunal*, (1962) 3 SCR 269 : AIR 1962 SC 171, Ayyangar, J. speaking for the Court, observes that the right guaranteed by Article 19(1)(c) of the Constitution does not carry with it a concomitant right that unions formed for protecting the interests of labour shall achieve their object such that any interference to such achievement by any law would be unconstitutional unless it could be justified under Article 19(4) as being in the interests of public order or morality. The right under Article 19(1)(c) extends only to the formation of an association or union and in so far as the activities of the association or union are concerned or as regards the steps which the union might take to achieve its object, they are subject to such laws as may be framed and such laws cannot be tested under Article 19(4). This observation supports the view we have taken that the fundamental right guaranteed under Article 19(1)(c) does not extend to or embrace within it the objects or purposes or the activities of an association. In other words, it does not carry with it a further guarantee that the objects or purposes or activities of an association so formed shall not be interfered with by law except on sovereignty and integrity of India or Public order or morality."

9. State has the power under Entry 32 of the State List of Seventh Schedule of the Constitution to make law with respect to incorporation, regulation and winding up of the cooperative societies including such matters, which may be ancillary or incidental thereto. It can lay down norms and criteria for incorporation of the society. Provision can also be made for regulation of the administration and the activities of the society. The State is, thus, free to regulate the affairs of the societies including its business activities and in this connection it can provide for winding up, dissolution, division and amalgamation of the societies.

10. These are normal modes through which the activities of the corporations, which include cooperative societies, are regulated. No exception can be taken to such measures even if they incidentally affect the rights of the members to form associations. Reason is that after the associations/societies have been formed

they can be subjected to all reasonable restrictions, which may be imposed by law. In this connection reference may be made to *Daman Singh v. State of Punjab*, AIR 1985 SC 873, wherein the Supreme Court has rejected the plea of Article 19(1)(c) of the Constitution while upholding the amalgamation of the cooperative societies on the ground that after the societies are registered they are bound by the provisions of the Act under which they were registered, Same is the position when provision is made by nominating the representatives of the Government and the financing agencies, who have advanced loan or have helped the societies financially in any other manner in the formation or augmentation of their capital, on their Managing Committees. Section 34 of the Act contains such a provision. Such provisions have been made for safeguarding the interest of those, who have advanced money directly or indirectly to the societies. No exception can be taken to such provisions. They form part of regulatory provisions enacted in the Act for controlling and regulating the activities of the societies.

11. Although the State can regulate the activities of the societies; but it cannot change their composition in exercise of its regulatory powers. If it does so, its action will be hit by Article 19(1)(c) of the Constitution and the law laid down by the Supreme Court in *Damyanti v Union of India* (supra) and will be liable to be struck down. But if a provision is enacted by the State not with the object of changing the composition of the societies but for regulating their activities, it cannot be said to be bad even if it incidentally affect their composition. The distinction between the right to form an association and the power of the State to regulate the activities of the association so formed was reiterated by the Hon"ble Supreme Court in *Lalit Narain Misra Institute of Economic Development and Social Change v. State of Bihar* (supra) wherein while distinguishing the case of *Damyanti v. Union of India* (supra) it was laid down as under :

"The constitutionality of the Act was challenged accordingly on the ground that it interfered with the right of the association under Article 19(1)(c) of the Constitution. It has been held that the Act does not merely regulate the administration or the affairs of the Society ; what it does is to alter the composition of the society itself. The result of this change in composition is that the members, who voluntarily formed the society, are now compelled to Act in that Association with other members who have been imposed as members by the Act and in whose admission to membership they had no say. Further, it has been observed that the light to form association necessarily implies that the persons forming the Society have also the right to continue to be associated with only those whom they voluntarily admit in the Association. Any law by which members are introduced in the voluntary association without any option being given to the members to keep them out or any law which takes away the membership of those who have voluntarily joined, will be a law violating the right to form association. It has also been held that the ri*|ht guaranteed by Article 19(1)(c) is not confined to the initial stage of forming an association, but it also includes within it the right to continue the association.

The decision in Damyanti's case, AIR 1971 SC 966 (supra) has no manner of application to the facts of the present case. In that case, the composition of the Society was interfered with by introducing new members, which was construed by this Court as interference with the fundamental right of the Society to form association and to continue the same. In the instant case, the composition of the Society has not been touched at all. All that has been done is to nationalise the Institute of the Society by the acquisition of the assets and properties relating to the Institute. The Society may constitute its governing body in accordance with its rules without any interference by the Government."

12. Therefore, both the right of the individual to form an association and the right of the State to make laws with respect to incorporation, regulation and winding up of cooperative societies operate in different fields. A member's right under Article 19(1)(c) of the Constitution extends only to the formation of association and not beyond it and, therefore, does not carry with it the further guarantee of protection against interference by law by the State in the activities of the association. Similarly, the power of the State to regulate does not include within it the further power to interfere with the right to form association and to change the composition of the societies without the consent of their members unless its action can be justified under Article 19(4) of the Constitution ; although interference with such a right incidentally while enforcing the regulatory provisions enacted for regulating the activities of the societies and not for changing their composition, cannot be said to be bad. Therefore, if a provision is enacted not for regulating the activities of the societies but for changing their composition, it has to be struck down unless it can be saved under Article 19(4) of the Constitution.

13. The impugned rules have been made by the State not for the purpose of regulating the administration and the activities of the societies but for the sole purpose of altering their composition. They cannot be justified under Article 19(4) of the Constitution. In fact no attempt was made to defend them on those grounds. These rules, therefore, violate the rights of the members of the societies under Article 19(1)(c) of the Constitution and are also beyond the legislative power of the State.

14. The third submission is liable to be accepted. Government under subrule (2) of Rule 393 is free to nominate persons, who are not the members of the Society, on the Committee of Management, because disqualification laid down by the clause (h) of subrule (1) of Rule 453 is not applicable to nominated member. There are societies where the persons belonging to weaker section are not its members. Many societies like Housing Societies and those formed by the professionals do not have members belonging to weaker section. Housing Societies are formed by certain persons in order to purchase land, construct houses over it and to maintain them. These societies may not have members of weaker section as its members. Similarly, cooperative societies have been formed by members belonging to Scheduled Caste, for the purpose of collecting

hides and bones of the dead animals. Such societies may not have woman and members of backward classes as its members. The result is that the Government will be nominating outsiders on their Committee of Management, who have no common interest with the members of the cooperative societies. Such persons, though after being nominated as members of the Committee of Management, will have all the rights, powers and privileges but without any liability. These societies have been formed by the members by pooling their resources to better their economic interest. But more often instead of earning profits the societies go into losses. Such losses are borne/ shared by its members but the outsiders, who are nominated on the Committee of Management, will have no such liability. They know their term is fixed and there is no certainty of their being nominated again after the next election. Such a person will have hardly any interest in the well being of the Society and the economic interest of its members. There will be conflict of interest between the members of the Society and those who have been nominated. Besides, Rule 393(2) does not lay down any guidelines on the basis of which Government can select persons belonging to weaker section for nomination on the Committee of Management. The Government has unrestricted power under it to nominate any person belonging to weaker section irrespective of his/her qualification, merit, specialty and the interest. Government can nominate a person from far of place on the Committee of Management. Government can also nominate purely on political consideration without having regard to the interest of Society and its members. Government can exercise its power under this provision to distribute largesse to oblige people. The power conferred on the Government is naked and unguided power. Such a provision has to be struck down not because it is capable of being misused but because it contains no guidelines expressed or implied on the basis of which persons can be selected for nomination.

15. The fourth contention relates to the power of the Government under Article 15 (3) and (4) of the Constitution to make reservation in the Committee of Management of the Cooperative Societies. Under these provisions State can make special provision for woman and for advancement of any socially and educationally backward classes of citizens or for Scheduled Castes and Scheduled Tribes : but power under this article cannot be exercised by the Government so as to make reservation in associations voluntarily formed by the people even if such associations are registered under the legislative enactment. Merely because the society is registered under the Act, it does not lose its character of being voluntary private association. Rights under Article 19 (1) (c) of the Constitution can be subjected to reasonable restrictions by law only on the ground referred to in Clause (4) of Article 19 of the Constitution. These ; rights are not subject to Article 15 (5) and (4) of the Constitution and/or the orders, which may be passed by the Government thereunder. The impugned provisions, therefore, cannot be justified under Article 15 (4) of the Constitution.

16. The fifth contention relates to the definition of "backward classes of citizens". Under Rule 393 the expression "backward classes of citizens" has been given the

meaning assigned to it under clause (b) of Section 2 of the U. P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1994.

17. This Act was enacted providing for reservation under Article 16 (4) of the Constitution, whereunder reservation can be made only in favour of any backward classes of citizens, which in the opinion of the State is not adequately represented in the service under the State. Under Article 15 (4) reservation can only be made in favour of socially and educationally backward classes of citizens. For making reservation under Article 15 (4) the persons in whose favour reservation is to be made must be both socially and educationally backward, whereas under Article 16 (4) such a requirement is not there. This difference has been highlighted by the Supreme Court in *Indra Sawhney v. Union of India*, AIR 1993 SC 477, wherein in this connection it was laid down as under :

"Clause (4) of Article 16 does not contain the qualifying words "socially and educationally as does clause (4) Article 15. It may be remembered that Article 340 (which has remained unamended, does imply the expression "socially and educationally backward classes" and yet that expression does not find place in Article 16 (4). The reason is obvious : "backward class of citizens" in Article 16 (4) takes in Scheduled Tribes, Scheduled Castes and all other backward classes of citizens including the socially and educationally backward classes. Thus, certain classes which may not qualify for Article 15 (4) may qualify for Article 16(4). They may not qualify for Article 15 (4) but they may qualify as backward class of citizens for the purposes of Article 16 (4). It is equally relevant to notice that Article 340 does not expressly refer to services or to reservation in services under the State, though it may be that the Commission appointed thereunder may recommend reservation in appointments/posts in the services of the State as one of the steps for removing the difficulties under which SEBCs are labouring and for improving their conditions. Thus SEBCs referred to in Article 340 is only one of the categories for whom Article 16 (4) was enacted. Article 16 (4) applies to a much larger class than the one contemplated by Article 340. It would, thus, be not correct to say that "backward class of citizens" in Article 16 (4) are the same as the socially and educationally backward classes in Article 15 (4). Saying so would mean and imply reading a limitation into a beneficial provision like Article 16 (4)."

The result is that the criteria, on the basis of which reservation has been made under Article 16 (4) of the Constitution has been adopted for making reservation under Article 15 (4). Such an action is not justified, because the criteria in both the articles are different. Article 16 (4) is wider in scope than what is contained in Article 15 (4).

18. By Section 2 (b) of the U. P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1994 the expression "other backward classes of citizens" has been denned to mean "the backward classes of citizens specified in Scheduled 1. "This Scheduled contains fiftyfive

castes. Contention of the learned counsel for the petitioners is that some of the castes mentioned in the said Schedule are not socially backward and in fact belong to rich section of the rural areas and no reservation can be made in their favour under Article 15 (4) of the Constitution. It has further been contended that under the Old Rule 393 provision for reservation by amending the byelaws of the society was made in favour of woman and members of weaker section, which expression was defined so as to mean persons belonging to Scheduled Castes, Scheduled Tribes and included landless agricultural labourer, artisan, marginal and small farmer, but by the amendment in their places provision for reservation has been made in favour of many castes, which constitute rich section of the rural areas and are not socially backward. It is not possible to express any opinion on this contention, because of want of adequate pleadings and the material on record, In view of the facts and circumstances of the case, it is also not necessary to, deal with the last contention. In fact learned counsel for the petitioners have themselves raised this point half heartedly.

19. These writ petitions are allowed with costs. Both the provisos and the explanation to subrule (1) and subrule (2) of Rule 393, Rule 393A, Rule 393B, Clause (d) of subrule (4) and part of subrules (6) to (8) of Rule 440, so far as they relate to reservation of seats for weaker section, subrule (3) of Rule 444A and Clause (i) of subrule (5) of Rule 453 are declared ultra vires and are accordingly quashed. The election of the Committee of Management of the Cooperative Societies of the petitioners was held under the interim orders passed by this Court subject to the condition that election will not be acted upon. As the election in the reserved constituencies or the nomination in lieu thereof falls to the ground automatically in view of the declaration given above the respondents are directed to hold election afresh in the constituencies in accordance with law.