

(1989) 03 KAR CK 0002

In the Karnataka High Court

Case No : Writ Petition No's. 3549, 4155 and 5872 of 1988 and 1919 of 1989

H. Shivappa

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 15-03-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Karnataka Co-operative Societies Act, 1959 — Section 121, 154, 30 (1) (b), 30 A, 54

Citation : (1989) ILR (Kar) 1741 : (1989) 2 KarLJ 295

Hon'ble Judges : Bopanna, J

Bench : Single Bench

Advocate : C.N. Rodnavar, H.K. Vasudeva Reddy, R.K. Masur, H.B. Dattar and A.K. Subbaiah, for the Appellant; N. Santosh Hegde, B.J. Somayaji, HCGP for R-1 to 3, A.M. Farooq and S.N. Hatti for R-4, for the Respondent

Final Decision : Dismissed

Judgement

Bopanna, J.—Writ Petition No. 3549 of 1988 is filed by the Chairman and the Vice-Chairman of Bhadra Sahakari Sakkare Karkhane Niyamitha, Doddabathi, which is the 4th respondent herein challenging the order dated 18-2-1988 made by the State Government under the provisions of Section 30A of the Karnataka Co-operative Societies Act 1959 (in short "the Act"). By that order the State Government on a consideration of 23 charges levelled against the Management of the 4th respondent-Society superseded the Board of Management of the said Society and appointed the Deputy Commissioner of Chitradurga as the Special Officer in addition to his own duties to manage the affairs of the said society with immediate effect for a period of one year or until further orders whichever is earlier. The very same order is challenged by a shareholder of the Society by name B. Veerappa in W.P.No. 1919 of 1989.

2. In Writ Petition No. 4155 of 1988 as many as 202 members of the Society claiming to be agriculturists and growers of sugarcane have challenged the very same order.

3. In Writ Petition No. 5872 of 1988 the workers of the Society represented by the Bhadra Sahakari Sakkre Karkhane Niyamitha Employees Union and the Secretary of the said Union have challenged the said order of the State Government.

4. The facts are not in serious controversy in all these petitions as the order impugned is common to all the petitions. But some of the allegations made by these petitioners against the State Government are not identical and therefore a brief advertence to those averments may be necessary before I consider the validity of the impugned order made u/s 30A of the Act.

5. The material allegations against the State Government are found in Writ Petition No. 3549 of 1988 filed by the President and Vice President of the Society. From these allegations it appears that the genesis of the dispute between the parties goes back to the year 1974. The society was established in the year 1969 and the first Board of Management was nominated by the State Government on 27-6-1969 for a period of five years. Thereafter, the Government in exertion of the power conferred on it under Sections 54 and 154 of the Act appointed five officers to the Board of Management including the Chairman and the Managing Director to manage the affairs of the Society by its order dated 14-3-1974. Subsequently the first Board of Management was selected by 26-6-1974 but the Chairman of the Board was nominated by an order dated 14-3-1974. The said order was challenged in this Court and the same was quashed by this Court with a direction that the Chairman of the Society should be elected from amongst the Directors. Accordingly, the first Chairman was selected on 30-6-1980. Thereafter, presumably in terms of the provisions of Section 28-A(4) of the Act, every year elections to the posts of Chairman and Vice Chairman were held. The election to the Board of Management was also held as and when vacancies arose under the provisions of the Act and the Rules made thereunder. According to these petitioners, the sugar factory was functioning in a satisfactory manner but after the elections to the State Assembly in the year 1983 the State Government at the instance of certain political leaders of the area belonging to the Janatha Party by order No. RDC 8 COF 83 dated 25-1-1983 superseded the Board of Management of the Society u/s 30A of the Act and appointed a Deputy Commissioner as the Special Officer. That order of the Government was challenged in Writ Petition No. 1968 of 1983 by the 2nd petitioner. This Court by its order dated 31-1-1983 stayed the order of supersession passed by the State Government and that order was subsequently modified with a direction that the elected Board shall continue in office till the disposal of the Writ Petition. But the State Government on 7-5-1983 once again exercised the power u/s 30A of the Act by taking shelter u/s 121 of the Act. That order also came to be challenged in two Writ Petitions Nos. 9413 of 1983 and 9235 of 1983 and both the Writ Petitions were allowed by this Court on 15-6-1983. An appeal was preferred by the State Government before the Division Bench and the Division Bench on 15-7-1983 made an order directing the Society to hold the elections to the Board of Management on or before 15-11-1983. Accordingly, elections were held on

10-11-1983 and the new Board of Management was constituted for the Management of the Society and in that new Board of Management these petitioners were elected as the Directors. The said Board of Management continued till the expiry of its term of three years and thereafter on 16-12-1986 fresh elections were again held and another new Board of Management came to be elected and in the said election the 1st petitioner was elected as Chairman and the 2nd petitioner as Vice Chairman, The term of office of this Board of Management would expire on 16-12-1989 in the ordinary course in the light of Section 28A(3) of the Act but on account of the impugned order of supersession Annexure-A, the term of office of the Chairman and the Vice Chairman came to an abrupt end and they have challenged the said order of supersession on various grounds more particularly mentioned in paragraphs 6 to 12 of the petition. The sum and substance of the allegations is that the losses sustained by the society during the earlier years was not on account of the miss-management by the present Board of Directors but they were sustained during the tenure of the Administrator who was appointed by the State Government in the year 1983; that the Administrator was also responsible for various acts of miss-finance and malfeasance; that after the new Board of Management came to be elected in the year 1983, the management of the factory was satisfactory; that after the election to the new Board of Management under the leadership of petitioners, the society was functioning smoothly; that since the petitioners belong to the Congress (I) party which is opposed to the present ruling Janatha Party in the State, the local leaders especially the leaders from Devanagere and Harihar taluks had brought pressure on the Government to issue a "Show Cause Notice" to the petitioners alleging certain irregularities; that the petitioners have given very satisfactory explanation answering each and every point in the said show cause notice, but all the same, without a proper consideration of the explanation, the State Government with a view to satisfy the aspirations of the local political leaders who belong to the rival Janata Party had made this impugned order. As regards the charges levelled against the Board of Management, the petitioners have averred that the entire allegations are false and were made with the mala fide intention only to make out a false case against the management to satisfy the "bosses of the Janata" Party." According to the petitioners, if the State Government had cared to look into the explanation submitted by the Board of Management, they would not have proceeded to take such an extreme step but on the contrary they were acting at the behest of the political leaders of the area and they are more interested in obliging them; that no reasons are given by the State Government as to why action u/s 30A of the Act should be taken even though there is a provision u/s 30 of the Act for taking remedial action; that the power u/s 30A should be exercised only in extreme circumstances wherein the affairs of the co-operative society are on the verge of collapse causing hardship and loss to the members; but no such circumstances could be found either from the "show cause notice" or from the order impugned, and therefore, the said order is not sustainable in law; that a reading of the order would clearly show that every trivial matter was blown up out of all proportions only with the

intention to take over the management by creating a false ground; that much was made about engaging of a servant by the Chairman, expenditure on guest house, advances to the employees, loans to the member growers for the purpose of growing sugar cane etc., which are recovered at the end of season, selling of the old vehicles, even though they were sold by issuing a notification and calling for public tenders and that those trivial matters could not be the subject matters of an order of supersession u/s 30A of the Act.

6. An interim order was sought for by these petitioners and it was granted. However, on an application made by the State Government that order was vacated and the Deputy Commissioner now continues to manage the affairs of the Society.

7. In Writ Petition No. 5872 of 1988 and Writ Petition No. 4155 of 1988 as many as 202 members of the society have challenged the very same order and they have put the blame on the Administrator or the Special Officer who was appointed some time in the year 1983, for the losses sustained by the Society to the extent of Rs. 81,95,000/-. Their grievance is that the present Board of Management should not be made the scapegoat for the losses sustained during the period of the Administrator appointed in the year 1983. Significantly they do not allege any mala fides against the State Government inspite of the action taken against the Society u/s 30A of the Act but have confined their brief to certain legal contentions based on the provisions of the Act.

8. In W.P.No. 5872 of 1988 filed by the workmen, the allegations made against the State Government are that the Janatha Government has been not fair from the very inception to the sugar factories in the Cooperative Sector and that for example it has destroyed the Gauribidanur Sahakara Sakkare Karkhane Ltd., Gauribidanur, Kolar District and Sri Mahadeshwara Sahakara Sakkare Karkhane Niyamitha, Kollegal and other sugar factories by appointing Special Officers after superseding the Committee of Management and then sold the factories to its supporters who are well known Liquor Kings and Industrial Tycoons in the State, "just for a song". In the case of those two factories, the interest of the working class has been completely ignored and sacrificed and today hundreds of families of the workers, who had all along toiled "with their sweat and blood" in building up those factories are fighting for their survival not only in the Courts of law but elsewhere; that even their basic right to work and to their livelihood which is guaranteed under Article 21 of the Constitution of India is taken away and their rightful grievances are not even redressed by the Government, which has been acting prejudicially to the interest of the working class etc. etc. They also accuse the Government of having a vested interest in the affairs of the Society in that they went to take over the society under the guise of supersession and later-on hand it over to the private sector. They have also alleged that the impugned order of supersession was actuated by political considerations in that the present management is in the hands of persons who belong to the Congress Party and with a view to dislodge them from the positions which they are occupying the

impugned order is made. In paragraph-6 of the Writ Petition it is pointed out by them that one Raibag Sahakara Sakkare Karkhane Niyamitha, Raibag which is controlled and managed by the members of the Janatha Party headed by the ex-Minister in the Janatha Government, has been permitted to function without the intervention of the Government u/s 30A of the Act and though they had taken action against this Society u/s 30A and an order was passed for the supersession of that Society, that order was subsequently revoked and that society is now controlled by a person belonging to the Janatha Party. They have also taken up other pleas which are similar to those pleaded by the President and the Vice-president in Writ Petition No. 3549 of 1988 and W.P.No. 1919 of 1989 filed by a single shareholder of the society. So in these four Writ Petitions, we have the members of the Society, the President and the Vice President of the Society, the workmen of the society and a single shareholder of the Society and all of them allege that the action of the State Government u/s 30A is not warranted on the facts and circumstances of this case and that action is motivated by political considerations and not for the betterment of the society's affairs and therefore the impugned order Annexure-A the order of supersession calls for interference by this Court.

9. The State Government has entered appearance in all these cases and filed its statement of objections. I will take up the statement of objections filed by the State Government in Writ Petition No. 3549 of 1988. According to the State Government, it had invested Rs. 182 lakhs out of total paid up share capital of Rs. 268.9 lakhs of the Society and it has given a loan of Rs. 115 lakhs to the Society; that it has stood guarantee for the loan amount of Rs. 482 lakhs which is due from the society to the various financial institutions; that the society incurred a gross loss of Rs. 1,24,15,447.28 ps. during 1985-86; that as on 30-9-1986 the Society has incurred a total loss of Rs. 6,78,03,436-96 ps; that the overdoes to financial institutions are of such a high magnitude that the financing institutions have expressed legitimate apprehensions about the capacity of this society to pay back the loans ever; that the financing institutions have decided to invoke the guarantee that the Government has given to them; that the Government has decided to pay the first instalment of Rs. 25 lakhs out of its own funds this year to the financing institutions because the Society has defaulted in payment from its own funds this year to the financing institutions; that the Society has failed to repay the term loans as and when they were due; that as per the audit report, the Society has to pay overdue loan of Rs. 3,93,96,918-31 ps. as on 30-9-1986 to the financing institutions; that the over due loan to the District Central Co-operative Bank is Rs. 1,23,83,953-62 ps; that since the Government had stood guarantee for the repayment of the loans advanced by Industrial Financial Corporation of India, LIC of India, and Industrial Development Bank all these institutions were approaching the Chief Minister frequently with a view to expedite the payment of those loans which had become overdue and since the Government was satisfied that the Board of Management of the Society was not serious about maintaining financial discipline in the

management of the society. It is further averred that as per the Bye-laws of the society, all types of advances should not be given to its employees but the Society has given various types of advances like, advances to purchase transportation vehicles, advances to the staff but the same interest was not taken by the society for the recovery of such advances; that shows there is dereliction of the duty to improve the financial position; that on 30-9-1986 the amount to be recovered from the cane growers is Rs. 1,13,584.81 and the same has been brought forward without any change; that it has been observed by the auditor that suitable action should be taken against concerned persons in accordance with law for the recovery of the balance amount and in case of any delay the management should be held responsible for the losses; that the Board of Management have not taken any action and remained silent in the matter; that during the year 1984-85 the balance purchase advance was Rs. 52,60,764-80 ps. During this year Rs. 24,81,480-01 was paid and Rs. 2,64,610-66 was received. As at the end of the year Rs. 14,77,634-15 remained as balance and for this amount reconciliation statement has not been produced by the Management; that even though the Auditor in the last audit report has written that action has not been initiated for the recovery of advances, fresh purchase advances are being paid and for this, the Board of Management is responsible. In paragraph-17 of the return, the Statement has averred that the Society has spent Rs. 61,865-66 towards the guest house expenses and even though the society had incurred losses every year continuously the guest house expenses are increasing and when such is the position the society should have been very careful and minimised the expenses on this item. But the society has spent liberally without understanding its weak financial position. The State Government has also referred to the Audit Report touching upon the inventory of the factory stores. It appears from the observation made by the Auditor in the Audit Report that the Management of the Society in running the factory without following the proper procedure in regard to the maintenance of inventories, receipt of stores and disposal of the same. In para-20 of the return, it has averred that as on 30-9-1986 the outstanding dues to be recovered are as follows:

"(a) Medium term loan - Rs. 7,657.60;

(b) Loan for Sugar Cane Seeds Rs. 27,26,956.14;

(c) Loan for manure - Rs. 2,10,992.53 Total Rs. 29,45,606.27. Regarding loans on Sugar Cane Seeds during the period 1985-86, Rs. 12,32,397.89 has been received and amount of Rs. 17,69,571.84 has been advanced and the balance remained to be recovered as at the end of the year is Rs. 27,26,956.14. On the same basis, out of the manure loan, Rs. 17,426.50 has been received. Rs. 2,28,419.03 has been advanced. As at the end of the year Rs. 1,10,992.53 is outstanding."

In paragraphs-21, 22, 23 and the remaining paragraphs in the return the State Government has adverted to various other financial irregularities committed by

the society. It is unnecessary to traverse these allegations item wise since the sum and substance of the allegations made by the State Government is that the management of the society had not paid any attention to the financial discipline to be maintained and therefore the State Government had no option but to take over the Management of the Society by appointing the Deputy Commissioner. The allegations of mala fides and extraneous considerations alleged against them by these petitioners are also denied.

10. In Writ Petition No. 5872 of 1988 the State Government has reiterated all the averments made in the return filed in W.P.No. 3549 of 1988 and there is no need to traverse them separately in this order. In W.P.No. 1919 of 1989, the State Government has relied on the report of the Director of Sugar and Ex-Officio Additional Registrar of Co-operative Societies and the 23 charges listed by him against the society and the answers given by them to those 23 charges for sustaining the impugned order. The State Government has taken the stand that all the 23 charges are of very serious nature and that the Committee of the Management has failed in its duty to pay the term loan to the financial institution on the due dates; that the financial institutions had decided to invoke the guarantee that the State Government had given to them in favour of the society. By that guarantee the Government is put in a very tight position and therefore certain drastic action with a view to ward off the threat of invocation of the guarantee by the financial institutions was required. In paragraph-4 of the return the State Government has referred to the report of the Director dated 6-1-1989 recommending that the Special Officer appointed by Government Order dated 18-2-1988 be continued for a further period of one year. In that report the Director of Sugar has made certain serious allegations against the internal working of the society. He has stated in that report that out of 6,600 persons as "A" class share holders, about 50% have not at all fully paid their share capital amount of Rs. 1,000/-; that a few are very old shareholders; that the society has enrolled about 100 shareholders from areas outside its jurisdiction; that a few of them are enrolled as voters also and they have been exercising their voting rights; that out of "A" class share holders, only 2500 are supplying cane regularly and about 4,000 do not supply cane at all; that merchants, doctors, journalists have been enrolled as "A" class shareholders which represents grower members only. Thus, the legitimate rights of the farmers who grow and supply sugarcane have been seriously affected; that nearly 5795 farmers have non-refundable deposits outstanding against their names. Out of this, 3300 farmers are not at all shareholders and they have been categorised as "E" class shareholders and they are supplying cane continuously. But they have not been given the rights of grower members; that the majority of the farmers who supply cane have been kept out of "A" class membership leading to minority domination; that about 1200 members have not had the benefit of conversion of NRD amount into shares; that the conversion in NRD amount into share have not been done properly resulting in the bulk of farmers being deprived of their rights and privileges as shareholders; about 130 shareholders have been omitted in the

list even though they have paid share capital amount of Rs. 1000/- and residing within the jurisdiction areas; that about 400 people who were ineligible have been included in the voters' list through wrong classification of shareholders and that the Government, by notification No. CMW 172 COF 88, dated 14-2-1989, extended the term of appointment of the Special Officer for a further period of one year with effect from 18-2-1989 or until further orders whichever is earlier and the Government has directed that the election to the Board of Management shall be conducted within this extended period.

11. In paragraph-5 of the return the State Government has highlighted the performance of the Special Officer after he took over charge. Against the accumulating loss of Rs. 678 lakhs as on 30-9-1986 which was Increased to Rs. 754 lakhs as on 30-9-1987 the Special Officer has repaid a sum of Rs. 94 lakhs including Rs. 18 lakhs paid by the Government. That apart, for the current year, the society had been deducting Rs. 20 per bag of sugar and further repaid Rs. 26 lakhs. Thus, during the tenure of one year of Special Officer, about Rs. 130 lakhs had been repaid towards loans of the society and thus he has considerably reduced the financial burden of the society; that in the field of production and in the matter of helping the growers, the Special Officer had done a commendable job during his tenure; that in the year 1986-87, the cane area was only 550 acres, but the same was 6700 acres for the year 1987-88 and under the administration of Special Officer for 1987-88, the cane area was increased to 11,400 acres that for the current year; the society had not taken any hypothecation loan or pre-production loan and as per the estimated accounts, the society would be paying a sum of Rs. 100 lakhs towards loan and interest; that the labour-management relationship had also been cordial and all pending disputes had been amicably settled during the period of the Special Officer; that there has been substantial control in inventory expenditure for example, in the year 1986-87, there was a purchase of Engineering items of Rs. 22,78,293-67; for the year 1987-88 the same was brought down to Rs. 14,87,354-96, which was still brought down for the year 1988-89 (upto January 1989) to Rs. 6,46,347-02, and during the management of the previous committee of management, there was huge expenditure incurred in the purchase of items value of which was wholly disproportionate to the needs of the factory. This expenditure was effectively controlled; that the computerised inventory system had been introduced to avoid human error or malpractice; that during the management of the superseded committee of management, maintenance and repairs of machinery were being given to sub-contractors and annual expenditure in this regard Rs. 5 to 6 lakhs on an average. But during the tenure of Special Officer, all maintenance and repair works had been done through the factory workers.

12. The State Government in para-6 onwards has denied the allegation of malafides and extraneous considerations alleged against it. They have also relied on the decision of the Division Bench of this Court in R.V. Patil Vs. State of Karnataka, in support of the impugned order. As regards the applicability of

Section 30A of the Act, the State Government has averred that since the Society was not functioning in accordance with the Act, Rules and Bye-laws, it passed the impugned order in the interest of the Society.

13. On these averments made by the petitioners and the State Government in the return filed by it, the points that arise for consideration are:

"(1) Whether the impugned order is without jurisdiction?

(2) Whether the impugned order is vitiated by malafides and extraneous considerations as alleged by the petitioners?

(3) Whether the impugned order could be justified under the provisions of Section 30A of the Act on the ground that the State Government was satisfied that the society was not functioning in accordance with the provisions of the Act, the Rules made thereunder or its Bye-laws or any order or direction or circular issued by it?"

14. The power of the State Government to make an order u/s 30A of the Act is not challenged and could not be challenged in the light of the decision of the Division Bench of this Court in R.V. Patil's case. The validity of Section 30A of the Act was challenged on the ground that it conferred arbitrary power on the State Government by excluding the principles of natural justice before an order could be made u/s 30A of the Act. The Division Bench of this Court in para-15 of its Judgment has observed as follows:

"Section 30A vests a power in the State Government to appoint a Special Officer in the place of the committee of management. Condition precedent for the exercise of the power is the satisfaction arrived at by the Government that the Co-operative Society is not functioning in accordance with the provisions of the Act or the Rules made thereunder, etc. In other words, the power is exercised so that, the Co-operative Society may be made to function in accordance with the provisions of the Act, Rules, or any other valid, binding mandates it is not necessary for us to discuss the scope of this provision in detail and express our opinion further in view of the decision of a Division Bench of this Court in H.L. MACHADO etc. etc. v. GOVERNMENT OF KARNATAKA etc. (W.P.No. 16989 of 1984 & 9256 of 1985 DD 4/5-2-1986) cited before us by Sri Datar. At para-14, after quoting a passage from Maxwell on Interpretation of Statutes, the Division Bench observed -

"....If we apply that correct Rule of Construction, it is obvious that Government can and must exercise the power u/s 30A of the Act only when immediately and urgent action is called for and not in all and every cases where the affairs of the society can be effectively regulated in any event u/s 30 of the Act. We are of the view that this construction becomes all the more necessary when the right of hearing earlier recognised by this Court in Jagadish Patil Vs. The State of Karnataka and Others, is expressly excluded by Section 30A(1A) of the Act. Bearing these principles, we now proceed to examine the impugned orders."

"Thereafter the learned Judges examined the particular order impugned therein to find out whether the above condition was satisfied, and held that in the impugned orders therein did not satisfy the above requirement. It was found there, that

"Even placing the most charitable construction suggested by the learned Government Advocate on the reports, notes and minutes, we are constrained to observe that Government had not formed an opinion that immediate, urgent and precipitate action was called for to achieve the purpose and objects of Section 30A of the Act. We also do not find from any of the records placed before us that the affairs of the societies had reached a breakdown in their management and that immediate and urgent intervention of the Government was necessary to put them on rails."

15. The petitioners have also not made any grievance about the exclusion of the principles of natural justice, but their grievance is that the charges levelled against the management of the society did not warrant any action against the society u/s 30A of the Act since the other provisions of the Act namely, Section 30 and also the power of liquidating the society u/s 73 of the Act would have taken care of the interest of the members of the society or the Government. But the State Government has resorted to Section 30A obviously with a view to take control over the affairs of the society to the detriment of the rights of the members of the Board of Management who belong to the rival political party. It is on record that earlier, the management had been served with a notice u/s 30 of the Act and in response to the said notice under the President and Vice President had submitted their explanations. The very same explanation was taken into consideration by the State Government for invoking Section 30A of the Act. On these proved facts, the learned Counsel for the petitioners raised the plea of malafides in the action taken by the State Government.

16. This contention of the learned Counsel overlooks the difference in the language of Section 30 of the Act and 30A of the Act. u/s 30(1)(b), the Registrar of the Co-operative Society, if in his opinion finds that a co-operative society is not functioning in accordance with the provisions of the Act, the Rules or Bye-laws or any Order or direction issued by the State Government or the Registrar, may, after giving the committee an opportunity to state its objections, If any, by order in writing, remove the said committee, and appoint an administrator to manage the affairs of the society for such period, not exceeding one year, as may be specified by him.

17. u/s 30A, the State Government if It is satisfied that any co-operative society is not functioning in accordance with the provisions of this Act or the Rules made thereunder or its Bye-laws or any order, direction or circular issued by the State Government or the Registrar, it may, notwithstanding anything in this Act, by order, appoint a Special Officer for such Co-operative Society for such period not exceeding two years.

18. Section 30A is not controlled by the provisions of Section 30 in view of the non-obstinate clause as it appears in Section 30A of the Act. On the very same grounds on which the Registrar can appoint an administrator, the State Government could act on a report made to it by the Registrar or if it is otherwise satisfied. So, the plea of lack of jurisdiction advanced by the learned Counsel for the petitioners on the ground that the contemplated action u/s 30 of the Act was given up and the State Government resorted to action u/s 30A is of no avail on the plain terms of Section 30A of the Act. The impugned order therefore cannot be said to be without jurisdiction and the State Government was competent to make that order provided the requirement of Section 30A is established.

19. That takes me to the second contention of the petitioners - whether the impugned order is vitiated by malafides and extraneous considerations in view of the fact that the Committee of the Management of the society is controlled by the Congress-I members and the State Government which is controlled by the Janatha party was anxious to put an end to the control of management of the society by the Congress-I members. The pleadings of the parties, in these petitions strike a discordant note. The workmen are complaining of the capitalist policy of the Government and allege that the Government is bent upon taking over the factories with a view to sell them to the private sector. The members of the society do not make any such allegations against the Government nor do they plead any political bias against the Government but that have rested their case on legal contentions. But a single shareholder in W.P.No. 1919 of 1989 and the President and the Vice President who are admittedly the members of the Congress-I political party have made a very serious charge of political bias on account of the fact that the State Government is controlled by the Janatha Party. In my view, the plea of malafides alleged against the State Government on account of the fact that they are controlled by the rival political party is not established by the material placed before this Court. There has been litigation in respect of the management of this society since the year 1974 but it is not the case of the petitioners that all the earlier orders of supersession were made purely on political grounds. Even granting that the earlier orders of supersession were quashed by this Court it does not necessarily mean that the present order is also made on account of political considerations. The 23 charges framed against the society are part of the records and the society has submitted its charge wise explanation to these charges. Annexure-C is the explanation given by the 1st petitioner to the 23 charges levelled against the society. He has not taken the contention that these charges were framed on account of political vendetta and/or extraneous considerations. In the explanation (Annexure-C) dated 26-12-1987 running upto 11 foolscap closely typed matter, petitioners-1 and 2 in W.P.No. 3549 of 1988 i.e., the Chairman and the Vice Chairman who are members of Congress-I Party have not alleged any political vendetta against the Government in respect of the charges levelled against them. Perhaps those charges were levelled by the Director of Sugar and not by the State Government. But even then nothing prevented these petitions if they had been convinced that

these charges were made on account of political bias to take the plea at the earliest stage of the controversy between the parties. Petitioner-1 is also a Lawyer by profession and a very knowledgeable person. From the averments made in page-10 of the explanation, it could be seen that these petitioners were only opposed to the interference by the Director of Sugar or the Registrar as the case may be in the working of the Co-operative movement In the State. They have relied on a decision of this Court in Writ Petition Nos. 9413 to 9235 of 1988 N.G. Naganna Gowda v. State and Ors. and have quoted the observations made by the learned Judge of this Court in that case as follows:

"The Co-operative movement in its very concept is democratic and voluntary. Its regulation is to see that in such a movement the public are not put to a loss and the subject for which the society is incorporated under the Act is not defeated. Therefore, wide powers are conferred upon the Government in the matter of regulation of the Co-operative Societies incorporated under the Act. More so, when much of the finance of the societies is supplied by the State either by way of grant or as loans. But the right to manage Societies by democratically elected representatives on the Board of Management of the Society is part of the policy of the Act and one of its essential character. Without that the Co-operative movement can at best be extension of the executive branch of the Government and no more. It is only in circumstances which are contemplated in Sub-section (1) of Section 30 of the Act, in a situation arising u/s 30 of the Act, that either the Registrar of Co-operative Societies or the State Government is empowered to supersede or replace the elected Board of Management by an Administrator or Special Officer as the case may be. It is not a normal occurrence in the regulation of the Co-operative movement, but the exception."

20. In the explanation, what all the petitioners had contended in reply to the "show cause notice" is that the charges levelled against them do not warrant the invocation of the powers u/s 30 of the Act. If the plea of malafides fails, as I have held just now, the only point that survives for consideration is whether the State Government was satisfied that the society was not functioning in accordance with the provisions of this Act, the Rules made thereunder or its Bye-laws or any order, or direction or circular issued by the State Government or the Registrar as the case may be. Before I proceed further on this aspect of the case, the provisions of Section 30(1)(b) which conferred on the Registrar the power to appoint the Administrator should be noticed. Under that sub-section, the Registrar has the power to appoint the Administrator if the Society is not functioning in accordance with the provisions of the Acts or Rules or Bye-laws or any order or direction Issued by the State Government or the Registrar as the case may be. The same words are found in Section 30A(1) and additionally, the word Circular" is also found. That means to say that the scope of the power of the State Government u/s 30A is wider than the scope of the power of the Registrar for appointment of the Administrator u/s 30(1)(b) of the Act. Now from the material placed before this Court in the return filed by the State Government as also in the material found in the impugned order (Annexure-A), could it be

said that the State Government was satisfied that this Society was not functioning in accordance with the provisions of the Act and the Rules or Bye-laws or any order or direction or circular " issued by the State Government or the Registrar as the case may be?

21. That takes me to the meaning to be given to the word "satisfied" in Section 30A of the Act. The legislature having excluded the right of hearing to the Co-operative Societies, is it conceivable that the State Government on its subjective satisfaction on the report made to it by the Registrar or otherwise is empowered to appoint a Special Officer for the Society for a period not exceeding 2 years? In Section 30 of the Act the word used are "in the opinion of the Registrar". But in Section 30A, the words used are "where the State Government on a report made to it by the Registrar or otherwise, is satisfied..." Why did the Legislature use two different standards of proof - one in Section 30 and the other in Section 30A of the Act? The degree of proof for the purpose of Section 30 (Supersession of Committee) is not the same for the purpose of Section 30A (Appointment of Special Officer). Similar words are found in the provisions of Section 18A(1) and 18-AA(1) of the Industries (Development and Regulation) Act, 1951. u/s 18-AA(1) of the Industries (Development and Regulation) Act, 1951, it is open to the Central Government, if it is satisfied from the documentary or other evidence in its possession in relation to an Industrial undertaking that the person in charge of such industrial undertaking have by reckless investments or creation of encumbrances on the assets of the industrial undertaking, or diversion of funds, brought about a situation which is likely to affect the production of articles manufactured or produced in the industrial undertaking, and that immediate action is necessary to prevent such a situation, may, by a notified order, authorise any person or body of persons (hereafter referred to as the "authorised person") to take over the management of the whole or any part of the industrial undertaking or to exercise in respect of the whole or any part of the undertaking such functions of control as may be specified in the order. But u/s 18-A(1), if the Central Government is of opinion that an industrial undertaking to which directions have been issued in pursuance of Section 16 has failed to comply with such directions, the Central Government may, by notified order, authorise any person or body of persons to take over the management of the whole or any part of the undertaking or to exercise, in respect of the whole or any part of the undertaking such functions of control as may be specified in the order. Dealing with these two Sections, the Supreme Court in *Swadeshi Cotton Mills Vs. Union of India (UOI)*, observed in para 52 of its Judgment as follows:

"A comparison of the provisions of Section 18-A(1)(b) and Section 18-AA(1)(a) would bring out two main points of distinction: First, action u/s 18-A(1)(b) can be taken only after an investigation had been made u/s 15, while u/s 18-AA(1) (a) or (b) action can be taken without such investigation. The language, scheme and setting of Section 18-AA read in the light of the Objects and Reasons for enacting this provision make this position clear beyond doubt. Second, before taking action u/s 18-A(1)(b), the Central Government has to form an opinion on

the basis of the investigation conducted u/s 15, in regard to the existence of the objective fact, namely: that the industrial undertaking is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest, while u/s 18-AA(1)(a) the Government has to satisfy itself that the persons in charge of the undertaking have brought about a situation likely to cause fall in production, by committing any of the three kinds of acts specified in that provision. This shows that the preliminary objective fact attributable to the persons in charge of the management or affairs of the undertaking, on the basis of which action may be taken u/s 18-A(1)(b), is of far wider amplitude than the circumstances, the existence of which is a sine qua non for taking action u/s 18-AA(1). The phrase "highly detrimental to the scheduled industry or public interest" in Section 18-A is capable of being construed to cover a large variety of acts or things which may be considered wrong with the manner of running the industry by the management. In contrast with it, action u/s 18-AA(1)(a) can be taken only if the Central Government is satisfied with regard to the existence of the twin conditions specifically mentioned therein, on the basis of evidence in its possession."

Adopting the same construction to the language of Section 30A of the Act, I am inclined to take the view that a greater degree of proof is necessary u/s 30A for the State Government to invoke the provisions of Section 30A. Then what is the degree of satisfaction, the State Government should have? Is it beyond all reasonable doubt? Or is it the subjective satisfaction on the material placed? It should be noticed that the provisions of Section 30A, as observed by the Division Bench, would be attracted only under certain extraordinary circumstances. The Division Bench following the earlier decision of another Division Bench in *H.L. MACHADO ETC. v. GOVERNMENT OF KARNATAKA ETC.* W.P.No. 16989 of 1984 & W.P.No. 9256 of 1985 DD 4/5-2-1986 has ruled in *R.V. Patil's* case that this power is available to meet the situation created by emergency. Though the word "emergency" is not found in the language of Section 30A, the Division Bench has used that word with a view to bring out the distinction between the purpose and object of Section 30 and the purpose and object of Section 30A and that observation is binding on this Court. So what is the emergency that has arisen in these cases. As many as 26 charges were levelled against the Society and those charges have been answered by the Society to the best of its ability. Do those charges either individually or cumulatively establish an emergency compelling the Government to invoke the power u/s 30A? It may be noticed that we are not dealing with emergency legislation but with an emergency procedure. In *LARCHBANK (OWNERS) v. BRITISH PETROL (OWNERS)* 1943 AC 299 the House of Lords had occasion to consider the meaning of the word "emergency" in the context of a claim which arose on account of a collision between two ships on the high seas. The Admiralty directions were that the use of whistles or sirens in a fog by ships in convoy was undesirable and that they should not be sounded "except in emergency or on hearing another ship approaching, when the master must use his discretion." Lord Atkin speaking for the Court observed thus:

"Nevertheless, the Admiralty instruction giving a master discretion to sound a fog signal "in emergency" did not apply, for "emergency" means a sudden occurrence of facts causing an apprehension of danger, and in this case there was no such occurrence after the fog had come down. Fog itself could not constitute an emergency. My Lords, it would seem to follow that although the Admiralty instructions expressly give to the master a discretion to sound a fog signal when he hears another ship approaching, they do not give him a similar discretion when he knows otherwise than by hearing that another ship is approaching. This seems to me impossible result. I think with respect that in this case too much deference was shown to the meaning in the dictionary consulted, which was too narrow. "Emergency" can be used to describe a state of things which is not the result of a sudden occurrence. A condition of things causing a reasonable apprehension of the near approach of danger would, I think, constitute an emergency. The gradual approach of a hostile invader might well at some time or other constitute an emergency. So might the position arising from the presence of a large hostile force encamped near the frontier and only awaiting favourable conditions for an advance, Indeed, the phrase "state of emergency" seems to indicate the absence of suddenness. To ascertain the true meaning of the words we must bear in mind the circumstances in which they are used, in a book of information and instructions issued by sailors to sailors and no be construed accordingly. I cannot believe that it was contemplated that there should be a distinction between hearing and knowing of approach, or that the expression of "hearing" excluded "knowing" from the general phrase "emergency" I am of opinion that Bucknill, J rightly construed the instruction and that his finding that the master ought as a matter of reasonable nautical skill to have exercised his discretion by sounding a fog signal must stand, all the more because it is supported by the advice of all the five nautical assessors who have assisted the Judge, the Court of Appeal and this House. I agree that the appeal should be allowed and the Judgment of Bucknill J. restored."

The House of Lords reversed the Judgment of the Court of Appeal and restored the Judgment of Bucknill, J. the trial Judge, after agreeing with the views expressed by the trial Judge on the meaning of the word "emergency". I have adverted to this decision to satisfy myself whether on the facts pleaded by the State Government in the return as also in the impugned order a state of emergency had arisen which compelled the State Government to invoke the powers u/s 30A. Following the reasoning of the House of Lords, it can be said that in this case, though there was no sudden development of facts or situation which necessitated action u/s 30A, there are material facts which had come to the fore gradually, if not all of a sudden, for the State Government to take action u/s 30A. One material fact placed before this Court is the invocation of Bank guarantee by the financial institutions on the ground that the Society had failed to keep up the repayments of the dues and also the arrears to the tune of nearly Rs. 3 to 4 crores to these financial institutions. In all these petitions the petitioners have scrupulously avoided making any reference to this serious

charge against the Society. The petitioners in Writ Petition, i.e., W.P.No. 3549 of 1988 do not refer to these charges at all in the Writ Petition because they have no answer to that charge. They have raised several defences to the other charges and I am prepared to go along with them and say that the other charges perhaps may not be very material but are trivial! and they may not attract the drastic action u/s 30A. But the first charge, viz., failure to repay the loans due to the financial institutions, is a serious charge in the sense that huge amounts far exceeding the paid up capital and authorised capital of the society is due to the financial institutions and the plea of the State Government is that these institutions were threatening to invoke the bank guarantee furnished by the State Government. In the course of the arguments I did feel a doubt about this defence of the State Government, since the return filed by them was not supported by any documentary evidence. That is the reason why I called upon the learned Senior Counsel to produce the file relating to this charge since I felt that the entire case could be disposed of on this point along without going into the various other charges which had been characterised by the petitioners as trivial. The file in this regard bearing No. CMW 68 COF 87 and the nothings made in the file disclose the following state of affairs regarding the repayment of the term loan due to IFCI, ICICI, IDBI and LIC. The file has a reference to the D.O. letter of S.K. Rishi, Executive Director of IFCI, New Delhi, addressed to the Chief Secretary, Government of Karnataka and to the reply from the Chief Secretary of the Corporation Department to Sri S.K. Rishi. In response to these two letters there is a reference to the meeting with the management of the Society on 19-6-1987. The amount said to be due is Rs. 488.73 lakhs. The meeting could not be held on the scheduled date as the Government had not invited the Managing Director of the 4th respondent/Society and therefore, a fresh meeting was fixed on 6-7-1987 at 4.00 p.m. and the following were invited for the meeting:

1. Director, -Sugar.
2. IFCI local representative.
3. Bhadra SSK Managing Director.

The next noting in the file is that since the Managing Director of the Society was busy in connection with Board meeting on 6-7-1987 the meeting was postponed to 9-7-1987 at 4.00 p.m. and the Managing Director was informed over phone as also Mr. Chougale of IFCI and the Director of Sugar. The meeting was held as scheduled on 9-7-1987 at 4.00 p.m. The noting made in the file shows that the Government was asked to wait for the proceedings to be sent by the Director of Sugar. On 3-8-1987 there is another endorsement in the file as follows:

"We may await proceedings of the meeting as at para 6NF."

On 14-8-1987 a draft notice was put up for approval of the Government and the same was issued on 17-8-1987. Again a draft letter was put up for approval on 21-9-1987 and the same was issued on 29-9-1987. The outcome of these

meetings is that the Executive Director of IFCI had requested the Government to provide funds to the Society to clear off the over dues to the financial institutions. This is clear from the proceedings of the Government dated 24-3-1988. The preamble to the proceedings of the Government discloses that the Co-operative Sugar Factories in the State of Karnataka who have taken Term loans from Financing Institutions on the guarantee from the State Government are not regular in the payment of instalments of principal and payment of interest as and when they were due. In this connection, the Chairman of Industrial Development Bank of India had meeting with the Chief Minister on 6-12-1986 and again in the month of March 1987 and discussed the matter regarding clearance of overdoes by Co-operative Sugar Factories. In these meetings, the Chairman, Industrial Development Bank of India had pointed out that the overdoes of premium of loan and interest by the Co-operative Sugar Factories are mounting and that it was the responsibility of the State Government as guarantor to ensure that the Co-operative Sugar Factories do not default in the payment of dues to the Financing Institutions. In that meeting the Chief Minister had reportedly given an assurance that the over due interest of certain co-operative sugar factories, to a certain extent will be cleared as early as possible. Based on that assurance, the Chairman, Industrial Development Bank of India had agreed to consider rescheduling the overdue instalment of principal amount. The Chairman, Industrial Development Bank of India had also written a letter to the Chief Minister on 13-3-1987 reiterating his request and making the specific point that it would not be possible for the financing institutions to support any fresh proposals in the cooperative sector in Karnataka till overdue interest were cleared by the Co-operative Sugar Factories and requested the Chief Minister to make suitable arrangements to clear the overdoes from the dual perspective of the State Government being the guarantor of the loans and of the incapacity of the Sugar Factories to generate adequate internal resources to be able to pay back the overdoes.

The main reason for committing defaults in the payment of overdue principal and interest on term loans are, non-availability of sufficient sugarcane for economical crushing, financial indiscipline, payment of higher cane price and policy of the Union Government in fixing most un-remunerative prices of both levy and free sale sugar. This position has been considerably improved since 1985 due to enhancement of free sale quota and also the price of levy sugar.

After these deliberations, the Director of Sugar has put in maximum efforts and arranged to clear overdoes to an extent of Rs. 388.68 lakhs as at the end of September 1987 from the seven Sugar Factories.

The file also contains the explanation of the Managing Director of the Society in reply to the letter of the Secretary to the Government, Corporation Department, dated 8-1-1988. In that letter the Managing Director has stated that the Society had already paid Rs. 22.72 lakhs to the Financial Institutions during the current year as on 31-12-1987 and the balance amount would be paid as and when the

sugar pledged to the Bank is released. He has added that the realisation of amount during off-season depends upon the quantity of sugar to be released by the Government of India and price of free sugar in market which is fluctuating day by day. Hence it is very difficult to intimate the amount payable during off-season. However, he would arrange to pay the maximum amount during 1987-88 as per the directions of Director of Sugar and also keeping in view the total liability on the part of the factory towards cane price payment and other essential payments. Further, he requested to take Immediate action about the rehabilitation proposal of the karkhane, which was pending in their office. So, on this say of the Managing Director of the Society, the Society itself has expressed its helplessness in meeting the demands of the financial institutions and it was earnestly seeking immediate intervention of the State Government for the rehabilitation proposal of the factory. The file also contains one letter from the LIC dated 30-11-1987 requesting the Chief Secretary, Government of Karnataka to place necessary funds at the disposal of the Society to enable the Society for early clearance of the institutional dues at an early date. There is another letter of the IFCI dated 20-11-1987 addressed to the Chief Secretary, Government of Karnataka, reminding him that it has neither received any reply from the Government in the matter nor the Society has cleared overdoes of the order of Rs. 488.73 lakhs to the Institutions and requesting the State Government to place the necessary funds at the disposal of the Society to enable the Society to clear the overdoes of the institutions forthwith. There is another letter dated 4-11-1987 from IFCI to the Chief Secretary requesting the State Government to expedite placing of funds at the disposal of the Society so that the overdoes of the Institutions are paid without delay. Another letter dated 26-10-1987 from the Director of Sugar to the Secretary to Government gives the break-up of the institutional loans aggregating to Rs. 509.36 lakhs and suggests certain proposals to clear off the dues. The proposal is that "after evaluating all aspects and examination of the sources of availability of funds of the factory, the factory was directed by issuing directions u/s 30B of KCS Act 1959, to remit Rs. 6.00 lakhs by availing hypothecation loan on stores. In addition the factory was also directed to authorise the D.C.C. Bank to pass on atleast Rs. 30/- per bag of sugar produced and pledged from 1987-88 season and Rs. 20/- on the existing stock as and when released.

As per this direction, the Karkhane has so far remitted the following amount (institution-wise):

I.D.B.I. ...	Rs.4,15,520-00	I.F.C.I. ...	Rs.5,39,000-00	I.C .I.C.I. ...
Rs.4,90,740-00	_____	Total ...	Rs.	14,45,260-00

Besides, all efforts are being made by the Karkhane to clear the overdoes towards institutional finance.

In view of the above circumstances, it is necessary on the part of the Financial Institutions to wait till such time the financial position of the Karkhane is

improved. Therefore, I request you to kindly recommend the same to the financial institutions.

The letter of the Executive Director of IFCI S.K. Rishi dated 7-9-1987 shows the gravity of the situation caused by the huge outstandings. He has stated as follows:

"While the efforts being made by the State Government are appreciated, it is felt that the proposed arrangements may not ultimately prove workable in view of sub optimal level of performance of BSSK in the past and it cannot be expected to take care of its own clearance of the Institutional defaults of the magnitude of Rs. 488.73 lakhs. You would appreciate that the Institutions cannot be expected to wait indefinitely in the matter of recovery of their dues particularly when the viability of BSSK is in doubt.

You will kindly appreciate that unless the institutional liabilities are paid off and burden on interest is reduced through budgetary allocation by the State Government the Society would not be in a position to operate on a viable footing. Keeping the socio economic angle in view, I would urge upon you to make available funds at the disposal of the Society for clearance of the overdoes of the Institutions and avoid Institutions taking recourse to legal action against BSSK, including invocation of the guarantee furnished by the Government of Karnataka as one of the guarantors."

There is yet another letter dated 5-6-1987 from the same Executive Director of IFCI to the Chief Secretary. In that letter he has stated as follows:

"I may mention that in case no positive response could be received within a month from the side of the State Government, the Institutions would be left with no other option but to take recourse to legal action as approved by the decision making levels. I would, therefore, deeply appreciate to receive a line in reply from you in the matter within the above, period."

All these letters of the financial institutions to the Chief Secretary show that the Government had arranged certain meetings with the authorities of the Society to explore the ways and means of the Society honouring its commitments to the financial institutions. All this material found in the Government file shows that the Financial crisis was gradually becoming serious since 1987 and that crisis resulted in an emergency procedure action u/s 30A of the Act. In the light of the meaning of the word "emergency" as propounded by the House of Lords in the Larch Bank case, it is not necessary that the emergency should be something which should occur all of a sudden and take everyone connected with the management of the society as also the Government by surprise. It is sufficient that the facts necessary for invoking the emergency procedure emerge one after another gradually and ultimately the cumulative effect of all these facts would compel the Government to take drastic action as provided u/s 30A of the Act. In my view, though the word "emergency" as such is not found in Section 30A, from the decision of the Division Bench to which I have adverted to earlier it is

possible to apply the meaning of the word "emergency" to the facts of this case to come to the conclusion that there was material before the State Government for invoking the provisions of Section 30A of the Act. I may say that the other charges (excepting those which are the subject matter of another pending Writ Petition) relating to mismanagement of the business of the Society would not have been sufficient for invoking the provisions of Section 30A. But the first charge which is a substantial charge, i.e., failure of the Society to repay the huge amounts due to the financial institutions, is sufficient for the Government to invoke the power u/s 30A of the Act. Then the question for consideration is whether the Government was satisfied that it should resort to the provisions of Section 30A for superseding the Committee of Management and for appointing an Administrator. I am inclined to agree with the argument of the learned Counsel for the petitioner that it is subjective satisfaction based on objective consideration and that satisfaction is subject to the judicial review and this Court could go into the question whether the Government was satisfied that it was a case for invoking the provisions of Section 30A of the Act. The word "satisfied" has to be understood and interpreted in the context in which it is used. Dictionary meaning of the word "satisfied" would not be helpful in putting a proper construction on the word as it appears in Section 30A of the Act. In *ROSS CLUNIS v. PARADOPOULLOS AND ORS* 1958(2) AER 23. the Privy Council dealing with the Emergency legislation which was enacted during the 11 World War had occasion to consider the word "satisfied" as it occurs in Regulation No. 5 of the Emergency Powers Orders in Council, 1939. The relevant regulation which arose for consideration was "In holding inquiries under these regulations the Commissioner shall satisfy himself that the inhabitants of the said area are given adequate opportunity of understanding the subject matter of the inquiry and making representations thereon, and, subject thereto, such inquiry shall be conducted in such manner as the Commissioner thinks fit." Both the trial Court and the Appellate Court had taken the view that on the wording of Regulation 5(2) there was no material before the Commissioner to take the view that he had satisfied himself in regard to the requirement of Regulation 5(2). In reversal of the decision of the Courts below, the Privy Council observed as follows:

"Counsel for the appellant submitted that the only duty cast on the appellant was to satisfy himself of these facts; that the test was a subjective one, and the statement in para 12 of the appellant's affidavit of December 4, 1956 (See p. 30, letter B, ante), was a complete answer to the argument of Counsel for the respondents, unless it could be shown that the statement in the affidavit was not made in good faith, and bad faith was not alleged. Their Lordships feel the force of this argument, but they think that if it could be shown that there were no grounds on which the appellant could be sc satisfied, a Court might infer either that he did not honestly form that view or that, in forming it, he could not have applied his mind to the relevant facts. In the present case, however, there were ample grounds on which the appellant could feel "satisfied" of the matters mentioned in Regulation 5(2)."

The Privy Council after referring to the additional affidavit came to the conclusion that -

"When these affidavits are read in conjunction with the appellant's affidavit of December 4, 1956, it is manifest that the appellant had ample reason for being satisfied that the inhabitants of Limassol "had adequate opportunity of understanding the subject-matter of the inquiry and of making representations thereon," And it is to be noted that the opportunity given of making representations had the widespread results set out in para-9 of the appellant's affidavit of December 4, 1956."

In my view, the facts in our case, though they do not relate to emergency legislation, are more or less similar to the facts of the Privy Council case. I would not have been inclined to accept the return of the State Government at its face value in regard to the reasons given for invoking the provisions of Section 30A. That is the reason I called for the file pertaining to the invocation of the Bank guarantee by the financial Institutions and on going through the file I am of the view that there was material before the State Government and the State Government was satisfied on the basis of that material for taking action u/s 30A.

22. However, a contention was raised by Mr. Vasudeva Reddy and Mr. Datar, Senior Advocates appearing for the petitioners that the petitioners particularly petitioners-1 and 2 in Writ Petition No. 3549 of 1988 have been made scapegoats for the dereliction of duties by the previous Management and the previous Administrator and, therefore, they should not be made responsible for the present state of affairs of the Society from the financial point of view. There are decisions of this Court on this point which take the view that the present Managing Committee should not be made liable for the omissions and commissions committed by the previous managing committees. Without expressing any opinion on the correctness of these decisions, I would point out that the Supreme Court in *Jt. Registrar of Co-operative Societies Madras and Others Vs. P.S. Rajagopal Naidu and Others*, has rejected this contention in para 9 of its Judgment. Justice Hegde speaking for the Court observed thus:

"The single Judge laid a great deal of emphasis on the Committee being an elected body and the prejudice that would be caused to its members if they are visited with the consequences of supersession on account of irregularities and improper functioning of the previous members of the Committee. What was argued before the High Court was that one-third members of the Committee have to retire every year and fresh members have to be elected. If certain grave irregularities are committed, say in the years 1964, 1965, it would be unfair to the new members who have been elected to supersede the committee in 1968. We do not consider that that would be the correct approach in construing Section 72 which is meant for superseding the Committee as a whole when its working discloses such irregularities or improprieties as would justify its supersession. Normally it would be expected that only that Committee would be superseded whose functioning has been found to be highly defective. The object of

supersession apparently is to appoint a Special Officer or a managing committee in order to set the working of the society right. It is not difficult to envisage a situation where mal-administration by a Committee has so adversely affected the functioning of the society that it is essential in the interests of the society itself to give temporarily the control of its affairs to a neutral authority. At any rate if the operation of Section 72 in certain circumstances is likely to operate harshly so far as certain members of the Committee are concerned, it is not possible to read into it other provisions of the Act which are not incorporated in the Section expressly, or by necessary implication.

We have been taken through the material parts of the orders of the Registrar and the Joint Registrar and we do not find any such infirmities in them which would justify interference by the High Court under Article 226 of the Constitution."

This ruling of the Supreme Court is an effective answer to the contentions of the learned Counsel for the petitioners in W.P.No. 3549 of 1988.

23. There is one more point which would go against these petitioners. Even assuming that requisite materials before the State Government, viz., various acts of omissions and commissions said to have been committed by the Society, did not warrant the invocation of the power u/s 30A of the Act if the State Government had bona fide taken the view that it is only by appointment of a Special Officer the financial crisis created by the Society would be overcome, it is not open for this Court to interfere with the decision of the State Government under Article 226 of the Constitution, even if this Court were to come to a different conclusion on the very same set of facts. In *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, the discretion conferred by Section 237(b) of the Companies Act to order an investigation into the company's affairs was challenged. The learned single Judge and the Division Bench of the Madras High Court having turned down the case of the Company, it approached the Supreme Court by special leave. The appeal was allowed on the facts of that case. But the principle enunciated by the Supreme Court regarding the powers of this Court under Article 226 to interfere with matters arising under Administrative Law should be noticed. Justice Hidayatullah as he then was speaking for the majority view expressed thus:

"No doubt the formation of opinion is subjective but the existence of circumstances relevant to the inference as the sine qua non for action must be demonstrable. If the action is questioned on the ground that no circumstances leading to an inference of the kind contemplated by the Section exists, the action might be exposed to interference unless the existence of the circumstances is made out. As ray brother Shelat has put it trenchantly:

"It is not reasonable to say that the clause permitted the Government to say that it has formed the opinion on circumstances which it thinks exist.

Since the existence of "circumstances" is a condition fundamental to the making of an opinion, the existence of the circumstances, if questioned, has to be proved

at least prima facie. It is not sufficient to assert that the circumstances exist and give no clue to what they are because the circumstances must be such as to lead to conclusions of certain definiteness. The conclusions must relate to an intent to defraud, a fraudulent or unlawful purpose, fraud or misconduct or the withholding of information of a particular kind. We have to see whether the Chairman in his affidavit has shown the existence of circumstances leading to such tentative conclusions. If he has, his action cannot be questioned because the inference is to be drawn subjectively and even if this Court would not have drawn a similar inference that fact would be irrelevant."

Applying the same test to the facts of this case, I am of the view that it cannot be said that there was no material at all for the Government to come to the conclusion that the Society was not functioning in accordance with the provisions of the Act or the Rules made thereunder or its Bye-laws or Orders, directions or circulars issued by the State Government. There was an Order of the State Government or at least a direction or circular asking the Society to clear off their dues. The proposal made by the Society to clear off the dues is found in the answer given by the Society to the charge sheet. By that proposal the Society was in a position to pay a paltry sum of Rs. 15 to 20 lakhs per year towards its huge outstanding. That would not be sufficient when the aggregate amounts due to the financial institutions are about Rs. 4 and odd crores and, therefore, there was material before the Government and the Government was satisfied by that material that the Society should be taken over by the appointment of a Special Officer. Applying the test in Barium Chemicals Case, even if this Court were to come to the conclusion that the Government could have taken recourse to other channels to meet the situation it is not possible to hold that this is a fit case for interference under Article 226 of the Constitution. The State Government had exercised its power to appoint the Administrator for a period of one year and that period expired on 18-2-1989. However, by the subsequent notification dated 14-2-1989 which was made during the pendency of these Writ Petitions, the State Government had extended the period of the Administrator for a further period of one year with effect from 18-2-1989 until further orders whichever is earlier to manage the affairs of the Society. So the Administrator is empowered to manage the affairs of the Society till 18-2-1990 or until further orders whichever is earlier. It is hoped that the Administrator will restore normalcy, put the Society on its rails and hand over the management to the elected body before 18-12-1990. For these reasons these petitions are dismissed.