

(2021) 11 PAT CK 0050

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 14267, 15188 Of 2014

Laxmikant Sharma

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 30-11-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 19, 19(1)(c), 19(4), 19(6), 43(b), 243ZH, 243(ZL)

Bihar Co-Operative Societies Rules, 1959 — Rule 7, 7(1), 7(2), 7(4)

Bihar Cooperative Societies Act, 1935 — Section 2(e), 2(l), 14, 27(1), 32A(1)(n), 32A(1)(p), 44AQ, 44AQ(6), 44AT, 44AU, 48, 66

Prevention Of Food Adulteration Act, 1954 — Section 23(1)

Citation : (2021) 11 PAT CK 0050

Hon'ble Judges : Sanjay Karol, CJ;S. Kumar, J

Bench : Division Bench

Advocate : Tuhin Shankar, Rajiv Kumar Singh, Y.V. Giri, Ashish Giri, Lalit Kishore, Pawan Kumar

Final Decision : Disposed Of

Judgement

1. The following issues arise for consideration:

1. Whether the Bihar Co-operative Societies Rules, 1959 (referred to as the Rules) suffer from the vice of excessive delegation of the powers envisaged under the parent Statute, i.e. the Bihar Co-operative Societies Act, 1935 (referred to as the Act)?

2. Whether the power to the specified officers to grant membership in a society violates Article 19(1)(c) of the Constitution of India; and provisions of the Act?

3. Whether the order passed by a superior authority can be subjected to scrutiny by an authority subordinate to it? Whether the Rules provide for a redressal or appeal mechanism against the orders passed by such subordinate authority? Hence, whether Rule 7(4) of the subordinate legislation (Rules) is manifestly arbitrary?

2. The Petitioners in the present petition are a Primary Agricultural Co-operative Society ("PACS") and are aggrieved by the State's actions dated 25.03.2013, directing PACS to enrol a minimum of 1000 members from amongst the weaker section of particular caste denominations. This was to be done by way of a special camp in the presence of all the members of the Managing Committee, Block Co-operative Extension Officer, and the PACS Manager, failing which disciplinary proceedings were to be initiated against all concerned. This action was challenged in CWJC No. 18367 of 2013 titled Dasdhrath Singh versus The State of Bihar & Ors. Vide order dated 01.11.2013, this Court stayed the directives issued by the State Government.

3. However, the State Government directed the local officers of various districts to commence the exercise of membership drive of the PACS at their level. Under that, the BDO, Paliganj, inducted many persons as members of the Petitioner-Society. This was vide letter Nos. 1225, 1225(ka) dated 26.06.2014, letter No. 1273, 1285 dated 28.06.2014, letter Nos. 1287, 1300, 1301 dated 30.06.2014 and the exercise was carried out under Rule 7(4) of the Rules.

4. The petitioners claim that the exercise of power is by a usurpation of the powers of the PACS and its Managing Committee.

5. Hence the writ petition (CWJC No.14267 of 2014 titled as Laxmikant Sharma & Ors. Versus the State of Bihar & Ors.) with the following prayers:-

"(i) To declare that the provisions of impugned Rule 7(4) of the Bihar Cooperative Societies Rules, 1959 as ultra vires the Constitution of India being violative of Articles 19(1)(c), 43(b) and 243(ZL) of the Constitution of India as well as ultra vires the Sections 27(1), 32A(1)(n) and (p) of the Bihar Cooperative Societies Act, 1935 in so far as the same completely encroaches the domain of the Primary Agricultural Society registered under the Bihar Co-operative Societies Act, 1935 with respect to the Membership of the PACS giving the said power/prerogative to the Government functionaries such as Block Development Officer, Assistant Registrar, Cooperative Societies and District Cooperative Officer.

(ii) To consequently quash the order dated 26.06.2014 contained in letters No.1225, 1225(ka), order dated 28.6.2014 contained in letters No.1273, 1285, order dated 30.06.2014 contained in letter No.1287, 1300 and 1301 issued by the Block Development Officer, Paliganj in exercise of power vested in him under Rule 7(4) of the Bihar Cooperative Societies Rules, 1959 by which 250 persons were made members of petitioners Primary Agricultural Cooperative Society, Paliganj (Patna) as being illegal and without jurisdiction.

(iii) To any other relief or reliefs for which the petitioners are found to be entitled in the facts and circumstances of the case."

6. Similar is the relief and issue in the analogous matter.

Submissions of the Petitioner

7. Shri Y. V. Giri, learned Senior Advocate appearing for the petitioners, submits that under Rule 7, any person wanting to obtain Membership of a society has to apply in Form-V. The Act is a self-contained Code and Rule 7(4) suffers from the vice of-

(a) excessive delegation; (b) arbitrariness; and (c) introduction of Rule 7(4) encroaches upon the power of the Society/PACS to have any say on the issue of Membership, as any un-desirous applicant may approach the concerned Officer and have himself inducted as a member.

8. Opposing the petition, learned Advocate General argued that:- (a) There is a presumption of a statute being constitutionally valid. (b) A principal or subordinate legislation can be held to be ultra vires only due to lack of legislative competence; ultra vires the Constitution or the parent Statute.

(c) In any event, an attempt must be made to save the statute by reading down and not striking it. (d) Subordinate legislation was brought in the line and spirit of the parent statute, i.e. the Act. The object was to give effect to the provisions of Section 2(l) of Chapter-I; sub-section (6) of Section 44AQ of Chapter VI-C; as also Section 44AT and 44AU of Chapter- VI-D of the Act. (e) Elaborating further, it is argued that the statute's mandate is that every Primary Agriculture Credit Society is represented by at least one adult member of the family who shall be a nominal or associate member of the Society and entitled to a right to vote. Section 44AT (Chapter VI-D), given the non-obstante clause contained therein, has an overriding effect on the other provisions of the Act or the Rules framed thereunder, as also the bylaws of the Society. (f) Further, a person who wants to become a borrower or depositor of a Primary Agriculture Credit Society shall compulsorily be made a member or an associate member with full voting rights.

Provisions of Law

9. The golden web that runs through the fabric of the co-operation movements is of self-help and mutual help through democratic management and a conscious eschewing of the profit motive. With the Constitution's Ninety-seventh Amendment, with effect from 15th February 2012, an impetus was given to the Cooperative Societies movement by insertion of Part IX-B in the Constitution of India. This whole Chapter dealing with co-operative societies comprising Articles 243ZH to 243 ZT was introduced, enabling the Legislature to make provisions concerning the incorporation, regulation and winding up of co-operative societies based on the principles of voluntary formation, democratic member-control, member-economic participation and autonomous functioning.

10. Much prior thereto, the Bihar Co-operative Societies Act, 1935 (referred to as the Act) came to be incorporated. This was with an endeavour of expediting the facilitation of formation, working and consolidation of co-operative societies for the promotion of thrift, self-help and mutual and among agriculturists and other persons with common needs. All laws relating to Co-operative Societies within the State of Bihar stood consolidated and amended for that purpose.

11. The Act is a complete Code in itself, right from the formation till the liquidation of a Society. The Act's object, inter alia, is to promote self-help, non-profit motive and democratic working thereof evidenced by the electoral process. The State is enjoined with a duty to act in a manner to promote the concept of co-operation. The Act comprising of 67 Sections is divided into VIII Chapters.

12. Chapter I (Section 2) contains the definition clause; Chapter II (Sections 6 to 12) deals with the Registration of Societies; Chapter III (Sections 13 to 26) deals with incorporation, duties and privileges of registered societies.

13. The State has framed Rules termed the Bihar Co-operative Societies Rules, 1959 (referred to as the Rules) to make the Act functional.

14. For the adjudication of lis, the relevant provisions of the Act and the Rules are reproduced as under:

Bihar Co-operative Societies Act, 1935

2. Definitions. -

"(f) 'member' includes a person joining in the application for the registration of a society and a person admitted to Membership after registration in accordance with the rules and the bye-laws of such Society;"

"(fff) 'nominal or associate member' means a member who possesses such privileges or rights of a member of a society, and who is subject only to such liabilities of a member as may be specified by the bye-laws;"

"(gggg) 'Primary agricultural credit society' means a cooperative society, the primary object of which is to render assistance, financial or otherwise, to farmers, rural artisans and agricultural labourers and includes farmers service society and multipurpose cooperative Society;"

"27. Right of a Member. - (1) Member of a Co-operative Society shall exercise the rights of a member after he has made such payment to the Society in respect of Membership as may be prescribed in the rules or Bye-laws of the Society:

Provided that notwithstanding anything contained in any provisions of this Act, the member of a Cooperative society can exercise the right to vote at the election of members of the Board of Society only after ensuring minimum attendance, as required in the meetings convened for participation in management of the Society and availing of minimum requisite services of the Society as may be prescribed by the Rules or the By-laws of the Society made under this Act.

(2) Every Co-operative Society shall provide access to every member to the books, information and accounts of the Co-operative Society kept in regular transaction of its business with such member.

(3) Every member of a Co-operative Society shall have the right to get all

information/documents regarding books, information and accounts of the Co-operative Society kept in regular transaction of its business. The Chief Executive Officer/Manager of the Co-operative Society shall ensure access to the member to all required information/documents.

(4) The members of any Cooperative Society shall have the right to get cooperative education and cooperative related training as per the Rules or Bye-laws made under any provisions of this Act."

"32A. Annual General Meeting. (1)

.....(n) appeal of a person whose application for Membership has been rejected or whose Membership has been terminated by the Board."

"44 AQ. Power of Registrar to order liquidation of Societies and amalgamation of several Societies.-

.....(2) (a) In order to achieve the objective of this Act, to bring uniformity in the operation of the societies under this Chapter, to enhance their strength and usefulness and to make them viable for the purpose of development of agriculture, the area of a Primary Agriculture Credit Society shall be co-terminus with that of a panchayat and there will be only one such Society in each panchayat.

.... ..

.....(6) Every family residing within the local limits of the new Society determined under sub-section (2) shall be represented by at least one adult member of the family who shall be a normal or associate member of the Society and shall be entitled to a right of voting if he pays a membership fee and may become a full-fledged member of the Society if he purchases at least one share of the Society and he shall be entitled to receive loan therefrom and shall also be eligible to hold any elective post of the Society."

"44AT. Over-riding effect of Chapter VI-D- Notwithstanding anything contrary or inconsistent contained in any other chapter of this Act or the Bihar Self Supporting Co-operating Societies Act 1996 or rules framed thereunder or bye-laws of any registered society or orders issued thereunder, the provisions of this chapter shall have overriding effect."

"44AU. Ensuring Membership of Primary

Agricultural Credit Society to depositors and borrowers.- Every person who is a borrower or depositor of a Primary Agriculture Credit Society or wants to become a borrower or depositor of such Society shall be compulsorily made a member or an associate member of such Society in terms of sub-section (6) of section- 44 AQ with full voting rights."

The disputes resolution mechanism is provided under Section 48 of the Act.

"66. Power to make rules.-

....(ii) prescribe the conditions to be complied with by persons applying for admission or admitted as members and provide for the election and the admission of member and the payment to be made and the interests to be acquired before the exercise of the right of Membership."

The Bihar Co-operative Societies Rules, 1959

"7. Admission to Membership. - (1) (a) Every person desiring admission to Membership of a registered society shall apply in form V.

(b) The Secretary of the Society or any person duly authorised by him in this behalf shall immediately grant a receipt for the application in the form at the foot of form V.

(c) In case the Secretary of the Society or any such person as aforesaid does not receive the application or grant a receipt for it, the applicant may submit his application to the Block Development Officer or the Assistant Registrar or Cooperative Societies or the District Cooperative Officer, who shall immediately grant him a receipt for the application in the prescribed form, and shall at once send the same to the Society concerned.

(d) The application shall be considered by a Managing Committee of the Society and the decision of the Committee thereon shall be communicated to the applicant within 15 days of receipt of the application and, where the application is rejected, with reasons therefore.

(e) If no decision is communicated to the applicant within the period specified above, it shall be deemed that the application has been accepted and the applicant has been admitted to the Membership of the Society.

(2) A person whose application for admission to Membership has been rejected by the managing committee may, within sixty days of the communication of the decision to him appeal to the Registrar whose decision shall be final.

(3) On payment of the admission fee and share money as prescribed in the bye-laws, a member shall be entitled to all the rights and shall be subject to all the liabilities of a member.

(4) Notwithstanding anything contrary contained in this Rule or bye-laws of a Primary Agriculture Credit Society, if any person applies for Membership of such a society with a declaration to the Block Development Officer or Assistant Registrar, Cooperative Societies or District Co-operative Officer that-

(a) he fulfills the criteria for attaining Membership of such a society,

(b) no other member of his family is a member of the Society and

(c) he has applied for Membership to the managing committee of such Society and has not been admitted as a member,

the concerned Block Development Officer or Assistant Registrar Co-operative

Societies or District Co-operative Officer, as the case may be, shall order such person to be made a member of the said Society."

(Emphasis supplied)

15. It is thus seen that a member includes a person joining in the application for registration of a society and admitted to Membership after registration under the Rules and the bye-laws of such Society. Nominal or associate member means a member who possesses such privileges or rights of a member of Society and is subject only to such liabilities of a member as may be specified by the bye-laws.

16. Primary Agricultural Credit Society would encompass a co-operative society, the primary object of which is to render assistance, financial or otherwise, to farmers, rural artisans and agricultural labourers and would further include farmers service society and multipurpose co-operative Society. A short Term Co-operative Credit Society includes the Primary Agricultural Credit Societies.

17. The Act specifically does not provide a person who can be and how he can be admitted as a member of a Primary Agricultural Credit Society. However, it does mandate that every person residing within the local limits of such Society shall be represented by at least one adult member of the family, who shall be nominal or associate member of the Society and entitled to a right to vote upon payment of membership fee. And also have a right to become a full-fledged member of the Society if he purchases at least one share, thus entitling him to receive a loan and being eligible to hold any elective post of the Society.

18. The dispute resolution mechanism amongst the members, including persons claiming through members or deceased members, is regulated under the provision of Section 48, but what is important is that by virtue of clause (n) of sub-section (1) of Section 32A, an appeal against the rejection of an application of Membership lies before the Board of a Co-operative Society which expression would include Managing Committee (sub-section (e) of Section 2) for which meeting of the agent is to be convened within six months.

19. Section 66, empowers the State Government to prescribe rules, more specifically, in laying down conditions to be complied with by the persons applying for admission and admitted as members and the payment to be made and the interests to be acquired before the exercise of the right of Membership.

20. The State Government has framed the Rules, and we are concerned with Rule 7, which we have already reproduced (supra). Every person desirous of being admitted as a member of a registered society has to apply in Form V. The same is extracted as under:-

"FORM No. V

[Rule 7 (1)]

Form of application for Membership

To

THE COMMITTEE OF MANAGEMENT

COOPERATIVE SOCIETY

Sir,

I hereby apply for admission as a member of the --

----Society. I have carefully read the bye-laws and rules of the society/ the bye-laws and rule have been read out and explained to me I hereby agree to abide by the same.

I request that you will allot me-----
shares and I hereby agree to accept the same or any less number that you may allot to me. I am/am not a member of-----
Society.

I also do hereby nominate the person named below as the person to whom shall be transferred my shares, deposits and loans or any other interest in the Society after my death.

Yours faithfully.

Signature

Father's or husband's name

Age

Profession

Permanent Address

Present Address

Name of nominee

Relationship

Age of nominee

Address of nominee

We (members of the Society)

-----					recommend		that
-----	be	admitted	as	a	member	of	the
-----							Society
-----					Signature		of

(1) ----- and

(2) ----- "

21. The applicant must submit the form to the Secretary of the Society, who shall immediately issue a receipt. In the event of failure, the applicant can submit an application to the Block Development Officer (BDO), the Assistant Registrar of the Co-operative Societies, or the District Co-operative Officer, who is also obliged to issue a receipt and, in turn, send the form to the concerned Society. After that, the Management Committee of the Society is bound to decide to be communicated within fifteen days of receipt thereof. In the event of rejection of application, reasons are required to be afforded. It is not that the Management Committee can sit over such application for if no decision is communicated within the said period (15 days), the application is deemed to have been accepted with the applicant admitted to the Society's Membership. The matter is not put to rest there. By sub-rule (2) of Rule 7, a person whose application stands rejected by the Managing Committee has a right to prefer an appeal to the Registrar whose decision would be final. Thus, the Act and the Rules provide a self-contained mechanism for expeditious disposal of application for Membership and the consequential right to the applicant to file an appeal, if so required.

22. The Registrar is a person appointed to perform the duties of Registrar of Co-operative Societies under the Act, and the Board includes the Managing Committee to whom the management of the affairs of a Co-operative Society is entrusted. The Board is an elected body, and the Registrar is a nominated authority, senior-level functioning, above the rank of the Block Development Officer (BDO)/ the Assistant Registrar, Co-operative Societies/ or the District Co-operative Officer. But Rule 7(4) provides for an incongruous situation where notwithstanding the decision of the Managing Committee or the Registrar; the lower level functionary, i.e. the Block Development Officer or the Assistant Registrar of Co-operative Societies or the District Co-operative Officer, can sit over the judgment and admit any person to Membership. Thus, a subordinate authority (functionary) is to sit over the decision of the superior authority/body. The Act stipulates the time frame within which the application has to be procured and the decision taken thereupon. It is a complete code in itself. It provides for a mechanism of appeal. It provides a redressal mechanism to the aggrieved party that is truly in the spirit of mandate of sub-section (6) of Section 44 AQ whereby at least one adult member of the family should be a nominal/associate member/full-fledged member of a Primary Agricultural Credit Society.

23. Yet another anomaly in the Rule is the absence of any redressal mechanism either in the Act or the Rules, against the erroneous decision or misuse of powers by the authority constituted under Rule 7(4). It also renders nugatory the power envisaged under clause (n) of sub-section (1) of Section 32A and sub-rule (2) of Rule 7, providing a remedy for redressal to the aggrieved applicant.

Issue No.1 - Excessive Delegation of Power

24. The primary issue for our consideration is whether the subordinate

legislation, the Bihar Cooperative Societies Rules, 1959, is framed the powers envisaged under the parent Act, i.e. the Bihar Cooperative Societies Act, 1935.

25. Section 66 of the parent Act provides for the power to the State Government to make rules for the registered Co-operative societies. Sub-section (i) and (ii) provide the power to the State Government to make rules regarding the admission of members, conditions to be complied with by the applicants and the payments to be made. Although this section empowers the State Government to make rules regarding Membership of the Society, this power, as contemplated by the Legislature could not have envisaged the situation where the members of the Society would not exercise any control over new Membership.

26. Rule 7(4) seeks to make this existing procedure redundant and give unfettered powers to the officers of the State Government in providing Membership to applicants. There is no established procedure for appeal against the order of the BDO or the Assistant Registrar as provided for in the amended Rules.

27. The power to make rules regarding the admission of new members cannot overstep the fundamental right guaranteed under the Constitution of India under Article 19(1) (c). Therefore, the subordinate legislation, i.e. the Bihar Co-operative Societies Rules, 1959, is not empowered by the parent legislation to render the rights of the members of the Society redundant with regard to the admission of new members. The subordinate legislation is not empowered to do the same by the parent Act.

28. One of the basic requirements of a valid delegated legislation is that the authority to which the delegated power is delegated, i.e., delegatee, must keep within the prescribed limits of the delegation. The delegated legislation, if deemed to exceed these limits, can be struck down as ultra vires. In the case of State of Tamil Nadu v. P. Krishnamurthy, (2006) 4 SCC 517, the Hon'ble Apex Court laid down the parameters for judicial review of subordinate legislation. A delegated legislation can be challenged under any of the following grounds:

"15. ... (a) Lack of legislative competence to make the subordinate legislation.

(b) Violation of fundamental rights guaranteed under the Constitution of India.

(c) Violation of any provision of the Constitution of India.

(d) Failure to conform to the Statute under which it is made or exceeding the limits of authority conferred by the enabling Act.

(e) Repugnancy to the laws of the land, that is, any enactment.

(f) Manifest arbitrariness/unreasonableness (to an extent where the Court might well say that the legislature never intended to give authority to make such rules)."

29. The Court further provided certain features to be considered in ascertaining

the validity of the subordinate legislation.

"16. The Court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute."

30. When the subordinate authority exercises the power of rulemaking beyond the principles and objects laid down in the Act and the Rules are made without adherence to the provisions and guidelines of the Act, which provides such rulemaking power, it is declared ultra vires the parent Act.

31. In the case at hand, the Bihar Co-operative Societies Act, 1935 under Section 66 provides the State Government with the power to make rules regarding the conditions to be complied with while applying for Membership to such Co-operative Societies.

32. The delegated authority has enacted Rule 7(4) via an amendment to the Bihar Co-operative Societies Rules, 1959, which provides the power to the Block Development Officer (BDO) and Assistant Registrar, to make applicants members if the applicants satisfy certain conditions. But the procedure of Membership is already provided under Rule 7, requiring the Managing Committee of the relevant PACS to decide on the membership application, appeal whereof would lie to the Registrar.

33. A perusal of the provisions of the parent Act reveals the State Government is empowered to frame Rules and prescribe conditions to be complied with by applicants making an application for Membership to a co-operative society and also provide for admission of member with payment to be made and the interests to be acquired. The Act empowers the Government to make Rules for—
(a) prescribing conditions to be complied with by the persons for admission or admitted as member; (b) provide for the election; (c) admission of members;

(d) payment to be made; and (e) interests to be acquired before the exercise of the right of membership. All these expressions have to be read ejusdem generis and the expression provide for the "election and admission of member" would not encompass the power to induct a member de hors the statute, Rules or Form V stipulated in the Rules itself. A rule formed pursuant to the above stated powers cannot subvert the democratic member control of the Co-operative Society, which is an essential aspect as recognized by the Hon'ble Apex Court, and would include the exercise of grant of a membership to an applicant, by virtue of the word voluntary in so far as it pertains to an adult member of the family in question, or an executive officer being the appellate authority. The impugned Rule 7(4) oversteps this provision, empowering the Officers of the State Government like the BDO and the Assistant Registrar to decide to grant Membership to applicants without the need to consult with the existing members of the relevant PACS through its representatives, thereby fundamentally altering the nature and composition of the cooperative society. This power, therefore, is

grossly out of step with the provision of the parent Act and ought to be held ultra vires.

34. The striking down of the Rules, in no manner, impinges upon the right of an adult member of a family in the local area to be rightfully represented in PACS of that area. There cannot be any difficulty in agreeing with the submissions of the learned Advocate General that there is always a presumption that the Statute is constitutionally valid and that at the first instance, an endeavour must be made to read down, rather than strike down the provisions of statute. However, in the instant case, the rule is neither in the line with the parent Statute, nor is there any scope of the same being read down, with the only option, therefore, being to strike down the rule. As already observed, the remaining rules do take care of achieving the statutory object of inclusion of at least one adult member of the family in the society with a right to vote. Section 44 AT (Chapter VI-D), cannot be brought in to save the impugned rule for reasons already stated and more so, in view of the limited scope of the rule making power.

35. The law is well settled on the issue of the subordinate legislation exceeding its rulemaking power. The Hon'ble Apex Court in *Kerala SEB v. Indian Aluminium Co. Ltd.*, (1976) 1 SCC 466, explained the application of the rule of ultra vires to subordinate legislation. The Court held that where executive authority is given the power to frame subordinate legislation within the stated limits, rules made outside such limits would not be valid notwithstanding that the rules have been placed before the legislature and are subject to modification, amendment or annulment as the legislatures deem fit. The relevant extracts are as follows:

"25. ...We are, therefore, of opinion that the correct view is that notwithstanding the subordinate legislation being laid on the table of the House of Parliament or the State Legislature and being subject to such modification, annulment or amendment as they may make, the subordinate legislation cannot be said to be valid unless it is within the scope of the Rulemaking power provided in the Statute."

(Emphasis supplied)

36. In *Dwarka Nath v. Municipal Corporation of Delhi*. (1971) 2 SCC 314, the Hon'ble Apex Court observed that the inclusion of the requirement to mention the address of the manufacturer in the subordinate legislation was over its powers under Section 23(1) of the Prevention of Food Adulteration Act, 1954. The Act provided that the Central Government may prescribe rules to restrict packing and labelling of food articles, with the object that it would not deceive the public so to its quality and quantity. The impugned rule requiring the manufacture to mention the address did not fall within the limits of "quality and quantity" as prescribed under the parent Act and hence was held to be ultra vires.

37. In *Vipulbhai M. Chaudhary v. Gujarat Cooperative Milk Marketing Federation Limited and Others*, (2015) 8 SCC 1, the Hon'ble Apex Court held that:-

"The principle of representative democracy is the election of representatives by the people otherwise eligible to cast their vote and the people thus elected, constituting the body for the management of an institution. Thus, in the case of cooperative societies, after the amendment in the Constitution, there has to be a Board of elected representatives, which may be called Board of Directors or Governing Body or a Managing Committee, etc. to which the members entrust the direction and control of the management of the affairs of the society. That representative body selects one among the elected representatives as its Chairman or any other office-bearer, as the case may be. Selection is the act of carefully choosing someone as the most suitable to be the leader or office-bearer. Thus, there is a lot of difference between election of delegates/representatives to constitute a body and selection of a person by the body from amongst the elected members to be the leader. It is to be borne in mind that the management and control of the society is entrusted to the representative body viz. the Board of Directors and that the Chairperson elected by the Board of Directors is the Chairperson of the society and not of the Board of Directors."

The Hon'ble Court further held that:-

"In a democratic institution, confidence is the foundation on which the superstructure of democracy is built. The bedrock of democratic accountability rests on the confidence of the electorate. If the representative body does not have confidence in the office-bearer whom they selected, democracy demands such officer to be removed in a democratic manner. A cooperative society is registered on cooperative principles of democracy, equity, equality and solidarity. Democratic accountability, mutual trust, fairness, impartiality, unity or agreement of feeling among the delegates, cooperativeness, etc. are some of the cardinal dimensions of the cooperative principles. A body built on such principles cannot be led by a captain in whom the co-sailors have no confidence. If a person has been selected to an office through democratic process, and when that person loses the confidence of the representatives who selected him, those representatives should necessarily have a democratic right to remove such an office-bearer in whom they do not have confidence, in case those institutions are viewed under the Constitution/statutes as democratic institutions."

38. Although it has been enacted in pursuance of the power provided under Section 66, the impugned rule does not comply with the limits thereunder. The challenged rule offers unfettered power to officers of the State Government regarding Membership to PACS; does not provide a mechanism for redressal against the decision; and that it allows for the control to a State Government Officer to make an applicant a member of the relevant PACS, not conforming to the existing procedure of Membership as stipulated under Sections 26, 44AQ; 44AT; or 44AU of the Act.

39. Given that the impugned rule has not been framed within limits placed by the parent Act, i.e. the unit of prescribing conditions to be complied with, before application for Membership, the same ought to be held ultra vires the parent Act.

40. Further, it is necessary to establish whether the subordinate legislation is violative of constitutional provisions. The petitioners have challenged its validity because it is violative of Article 19(1)(c) of the Constitution. This has been discussed in the subsequent issues.

Issue No. 2 - Violation of Article 19(c)

41. Article 19(1)(c) of the Constitution of India guarantees the right to every citizen to form associations, unions or cooperative societies of their choice voluntarily, subject, of course, to reasonable restrictions imposed by the law. This right is a voluntary act, and thus unwarranted or impermissible. The freedom under this Article is not only for the formation of such societies but also extends to the effective functioning of these associations and/or societies to enable them to achieve their lawful objectives.

42. Any association, union or cooperative Society formed under the right guaranteed by Article 19(1)(c) is a creature of Statute, and the provisions of the Statute abridge the rights of the Society and its members. Therefore, objections to statutory intervention merely on the grounds of freedom to form an association or cooperative societies are not permissible.

43. One of the essential features of the right guaranteed under Article 19(1)(c) is the right of the members of the association, union or co-operative Society to continue to associate with only those whom they voluntarily admit and agree to include in their association, union or co-operative society. Any change or statutory intervention which affects the right of the members to continue to function as members of the association, where the members are not provided with the option to reject the inclusion of new members or have their Membership taken away, would violate the right to form associations under Article 19.

44. The law regarding challenging the constitutional validity of subordinate legislation for its violation of fundamental rights and constitutional provisions is well settled.

45. The Hon'ble Apex Court has consistently upheld that subordinate legislation ought to be struck down when violating fundamental rights and constitutional provisions. In *Air India v. Nargesh Meerza*, (1981) 4 SCC 335, the Hon'ble Apex Court held that the impugned delegated legislation ought to be struck down as it is violative of Article 14 of the Constitution. The Court found that the condition which provided termination of service for air-hostesses upon her first pregnancy to be most unreasonable and arbitrary terming it as "manifestly unreasonable and arbitrary".

46. Further, in *Dwarka Prasad Laxmi Narain v. State of U.P.*, 1954 SCR 803 and *Lakshman v. State of M.P.*, (1983) 3 SCC 275, the Hon'ble Apex Court struck down the subordinate legislation on the ground that it violated fundamental rights and other constitutional provisions. Therefore, the subordinate legislation must conform with the requirements of the Constitution and the fundamental

rights.

47. The question at hand, is whether the subordinate legislation enacted by the State Government can usurp the power of the Society to determine its own Membership. It is well settled that the composition of the Society is one of the essential features that are guaranteed by Article 19(1)(c). The introduction of Rule 7(4) in the Bihar Cooperative Societies Rules 1959 trudges over the right of members of the PACS to regulate the Membership in the PACS. Therefore, the voluntary nature of the association is eradicated, and it no longer resembles the Co-operative Society that was originally created.

48. Rule 7(4) provides unfettered power to the State Government and its local officers to determine which applicant shall be made a member to a PACS. It cannot be workable alongside the existing procedures of Rule 7(1) and 7(2). An applicant is not required to interact with, be inspected by, or even make the Society aware of their desire to become a member before an order can inevitably make them a member of the State Government or its other officers.

49. The parent Act envisages the role of an appellate authority through Section 48 and the subordinate legislation through Rule 7(2) on the issue of Membership. The role is given to the person appointed as the Registrar of Co-operative Societies under the Statute. The position of any appellate authority is essential for keeping a check on the powers of the executive or other bodies. Rule 7(4) does not provide for a procedure of appeal to the decision of the BDO or the Assistant Registrar either by the applicant in case of rejection, or the PACS in both cases of acceptance or rejection.

50. Rule 7(4) is an absolute power to make an applicant a member of the PACS and the situation is similar to the one described in *Damyanti Naranga v. Union of India*, (1971) 1 SCC 678, where the State Government is creating an alternative procedure for Membership which may result in a situation where the original members will become the minority in the Society which they founded, thus violating their fundamental right under Article 19(1)(c).

51. On behalf of the State, the submission has tried to provide a reason for the inclusion of Rule 7(4) that it was in consonance with the objects and purpose of the Statute. The Respondents submitted that the object of the Amendment introducing Rule 7(4) was to spread the benefits of the PACS to a larger section of the Society. They cite Section 44AQ and Section 44AU under the Act to justify the new members' inclusion in the PACS. Having perused the sections above, it appears that they only apply in the instance of granting benefit to at least one member of a family in the local area. A broader and more general power of giving Membership is not envisaged thereunder.

52. Learned Advocate General rightly points out that the noble object of the enactment of provisions of both the Chapters VI-C and VI-D is to ensure participation of every family in the cooperative movement, whereby at least one person from every family in the village is statutorily required to be made a

member of the Primary Agriculture Credit Society. Petitioner also does not dispute such a fact. However, the issue at hand is totally different, and the provisions of Sections 44AT and 44 AU, in any manner, do not advance the case of the State in rendering the amendment under the Rules to be in consonance with the provisions of the Act. The blanket power conferred upon a subordinate authority remains uncanalized, and as such in our considered view, it suffers from the vice of arbitrariness, more so when an authority subordinate to the appellate authority is conferred with the power of deciding issue of Membership, rendering the parties aggrieved under the Statute, to be remediless.

53. In *State of U.P. v. C.O.D Chheoki Employees' Cooperative Society*, (1997) 3 SCC 681, the Apex Court has held that no citizen has a fundamental right under Article 19(1)(c) to become a member of a Co-operative Society. The Statute governs the right of an individual. So, the right to become or to continue being a member of the Society is a statutory right. The grant of Membership is a mere opportunity that is dependant upon the acceptance given by the existing members of the Society subject to the bye-laws and the procedures under the Act and the Rules.

54. In *Thalappalam Service Coop. Bank Ltd. v. State of Kerala*, (2013) 16 SCC 82, the Hon'ble Apex Court has held that the rights of the citizens to form cooperative societies voluntarily is now considered to be a fundamental right.

55. In *Damyanti Naranga (supra)*, the Hon'ble Apex Court examined a question related to the Hindi Sahitya Sammelan, a society registered under the Societies Registration Act, 1860. The Parliament enacted the Hindi Sahitya Sammelan Act, under which outsiders were allowed to become members of the Sammelan without the decision of the original members. The Court, after analysing the right under Article 19(1) (c), held that any law altering the composition of the association compulsorily would be a breach of the right to form association because it violated the composite right of forming an association and the right to continue it as the original members desired. The relevant extracts are as follows:

"6....The result of this change in composition is that the members, who voluntarily formed the Association, 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. Such alteration in the composition of the Association itself clearly interferes with the right to continue to function as members of the Association which was voluntarily formed by the original founders. 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..."

(Emphasis supplied)

56. The case of Andhra Pradesh Dairy Development Corporation Federation v. B. Narasimha Reddy, (2011) 9 SCC 286, further reinforces Damyanti Naranga (supra) State is not permitted to change the fundamental character of the association or alter the composition of the Society itself. The relevant extracts are as follows:

"47. The cooperative movement by its very nature, is a form of voluntary association where individuals unite for mutual benefit in the production and distribution of wealth upon principles of equity, reason and common good. So, the basic purpose of forming a cooperative society remains to promote the economic interest of its members in accordance with the well-recognised cooperative principles. Members of an association have the right to be associated only with those whom they consider eligible to be admitted and have right to deny admission to those with whom they do not want to associate. The right to form an association cannot be infringed by forced inclusion of unwarranted persons in a group. Right to associate is for the purpose of enjoying in expressive activities. The constitutional right to freely associate with others encompasses associational ties designed to further the social, legal and economic benefits of the members of the association...."

(Emphasis supplied)

57. A discussion surrounding the rights under Article 19(1)(c) would necessarily include Article 43B. The concepts of promotion of voluntary formation, autonomous functioning, democratic control and management would conversely represent themselves in Article 19(1)(c).

58. We must assess whether Rule 7(4) would satisfy the requirement of public order or morality under Article 19(4) to be considered a reasonable restriction on the right of individuals to form co-operative societies.

59. Article 19(6) of the Constitution, the State ought to conform to two tests to satisfy the requirements of the Article, firstly that the restriction on the appellants' fundamental rights must be reasonable and secondly that it should be in the interest of the general public.

60. Therefore, in substituting the existing membership application procedure and making the current method redundant, the impugned rule has violated the fundamental right under Article 19(1)(c) and, as such, is ultra vires the Constitution.

61. While answering the question of reasonableness, we ought to also consider the arbitrariness and absurdity that emerge from the impugned rule. The same has been discussed subsequently.

Issue No. 3-Manifest Arbitrariness

62. We have already seen that one of the tests under which the constitutional

validity of subordinate legislation can be challenged is that it should not be manifestly arbitrary.

63. This situation presents absurdity at its outset, where a lower authority may scrutinise the order of a superior authority. The Registrar under the Act is clearly designated as the appellate authority and is empowered to decide disputes regarding the Membership of individuals. However, it is improbable that his subordinates can scrutinize, let alone overrule, the order regarding the rejection of application for Membership or termination of Membership.

64. Section 48 of the Act clearly provides that disputes regarding the business or functioning of the Society be referred to the Registrar who shall have the authority to decide the dispute himself; subject it to arbitration; or transfer it for disposal to another person exercising the control of the Registrar. In contrast, general members of a society are only allowed to vote on appeals regarding Membership issues. This power of general members is far from clearly defined and is unlikely to have been contemplated to rival the authority of the Registrar.

65. A general interpretation of any statutory right of appeal provides that the order or decision of an inferior authority is subject to the scrutiny of superior authority to ensure that the decision was correct and provide a mechanism to keep a check over the powers of the decision-making authority.

66. As already observed, procedure for appeal is laid under the parent Act as Section 48. However the impugned rule does not provide a procedure for redressal against the order of the BDO or the Assistant Registrar.

67. The law on 'manifest arbitrariness' is well explained by the Hon'ble Apex Court in *Khoday Distilleries Ltd. v. State of Karnataka*, (1996) 10 SCC 304. The Court observed as follows:

"13. ...The tests of arbitrary action which apply to executive actions do not necessarily apply to delegated legislation. In order that delegated legislation can be struck down, such legislation must be manifestly arbitrary; a law which could not be reasonably expected to emanate from an authority delegated with the law-making power. In *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India* (1985) 1 SCC 641, this Court said that a piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. A subordinate legislation may be questioned under Article 14 on the ground that it is unreasonable; 'unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary'....In India, arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. But subordinate legislation must be so arbitrary that it could not be said to be in conformity with the Statute or that it offends Article 14 of the Constitution."

68. Further, in *Sharma Transport v. State of A.P.*, (2002) 2 SCC 188, the Hon'ble Apex Court held that, to strike a delegated legislation as arbitrary, it has to be

established that there is manifest arbitrariness. The expression arbitrary means, "25. ...in an unreasonable manners fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone."

69. In *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, and as we have already discussed in *Nargesh Meerza* (Supra), the Hon'ble Apex Court has consistently held that administrative rulemaking power can be challenged on the grounds of reasonableness and arbitrariness within the purview of fundamental rights and constitutional provisions.

70. Rule 7(4) gives indiscriminate power to the executive to grant the Membership of a PACS to a person. It is contended that this rule diminishes the statutory authority of the Managing Committee of the PACS and makes Rule 7(1) and 7(2) redundant, and gives the executive power of appeal without declaring them an Appellate Authority.

71. There is no remedy available to the PACS or applicant in case of application rejection under Rule 7(4). The final authority of a society vests in the general body of members and is managed by the Managing Committee under Section 14 of the Societies Act. Given the application of Rule 7(4) the final authority rests with the Registrar of Cooperative Societies or State Government, and not the general body of members of the PACS.

72. Powers exercised by the Registrar of Co-operative Societies and State Government under the Cooperative Societies Act is only regulatory and supervisory in nature and not to interfere with the management of the affairs of the Society.

73. The impugned Rule 7(4) of the Bihar Co-operative Societies Rules, 1959 has created the following unreasonable and arbitrary situations:

a. An incongruous situation where the order of a superior officer, i.e. the Registrar of Co-operative Societies, is subject to scrutiny by an inferior officer, the BDO or the Assistant Registrar. The BDO or Assistant Registrar may award Membership to PACS irrespective of the order of the Registrar.

b. The power of dispute resolution regarding issues of Membership of the Registrar is inherently usurped by the BDO or the Assistant Registrar as the former's role is left redundant regarding the amendment.

c. The power of the BDO and Assistant Registrar is unchecked as there is no clear redressal method against their order, either for the applicant or the PACS for which application was made.

d. The powers of the general members of the PACS, that of voting on matters of appeal on the issue of Membership are taken away or rendered redundant as per the impugned Rule 7(4).

74. Given the above manifestly arbitrary and unreasonable situations given rise to by the impugned Rule, we are inclined to hold that Rule 7(4) of the Rules is ultra vires the parent Act for being manifestly arbitrary and unreasonable.

Conclusion

75. In conclusion, placing reliance on the above discussion and having answered the core issues surrounding Rule 7(4), this Court holds that it is ultra vires and unconstitutional for it falls foul of Article 19(1)(c) as also the Patent Statute, i.e. the Act. The reasons are summarized as follows:

- a. Rule 7(4) provides an alternative mechanism for admission of new members into a PACS without the need for the assent of its Managing Committee. This procedure makes the existing process redundant.
- b. The procedure under Rule 7(4) does not have a provision for an appeal against the authority's decision. A provision of appeal has been envisaged under the parent Act.
- c. Rule 7(4) falls foul of Article 19(1)(c) as it empowers the State to interfere with the composition of the Society in a manner not envisaged by the parent Act.
- d. The parent Act does not contemplate a situation where the State Government through its officers, can determine the composition of the Society without the consent of the original members.
- e. The object and purpose of Rule 7(4) do not satisfy the requirement of a reasonable restriction to the fundamental right guaranteed to every citizen under Article 19(1)(c).

76. The impugned rule 7(4) is held ultra vires the Constitution and the parent Act, inter alia, for the reasons:

- a. It is in excess of the powers prescribed under the parent Act.
- b. It is violative of Article 19(1)(c) as it makes the power of the general members deciding upon new Membership, redundant.
- c. It is manifestly arbitrary and unreasonable as it does not have a redressal mechanism or a procedure of appeal. Further, it creates an incongruous situation of usurping the power of a superior officer by making their order subject to scrutiny by subordinate officers.

77. Issues raised are thus answered accordingly.

78. Both the writ petitions are disposed of with the observations above.

79. Interlocutory Application(s), if any, shall stand disposed of.