
(1987) 06 AP CK 0011

In the Andhra Pradesh High Court

Case No : Writ Appeal No's. 138 and 187 of 1987

M. Ranga Reddy

APPELLANT

Vs

State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 23-06-1987

Acts Referred:

Constitution of India, 1950 — Article 133, 14, 19, 19(1), 226

Citation : AIR 1989 AP 81

Hon'ble Judges : Sriramulu, J;Jeevan Reddy, J

Bench : Division Bench

Advocate : K. Ramakrishna Reddy and K. Pratap Reddy, for the Appellant; A.G., for the Respondent

Final Decision : Dismissed

Judgement

Jeevan Reddy, J.—These Writ Appeals are but links in a chain of writ petitions filed in this court to compel the Government and its officers to hold elections to the Committees of 7,000 primary Level Co-operative Societies in this State. The prayer in these writ petitions is no doubt different, but they manifest the ongoing struggle between the societies and the State.

2. Among the several categories of societies, Credit Societies constitute one category. These credit Societies cater to the needs of agriculturists all over the State. Until recently there were two types of Credit Societies one for extending short term and the other for long-term loans. Primary agricultural Co-operative Societies about 7,000 in number provide short term credit to their members. Above these Primary Agricultural Co-operative Societies were 27,000 District Co-operative Central Banks, with the State Co-operative Central Bank at the apex. So far as long-term credits are concerned, there were Primary Agricultural Land Mortgage Banks, which were subsequently designated as primary Agricultural Development Banks. They are 218 in number, and mostly they operate at Taluk level. Above these 218 Agricultural Development Banks was the State Cooperative Agricultural Development Bank the Apex Bank.

3. Elections to Primary Agricultural Cooperative Societies were held in 1981. The term of the committees elected was three years, which was expiring in 1984. On 4-8-1984 the Government issued a Memo No. 41090 (Co-op), directing the conduct of elections to elect new committees. On 20-9-1984, however, the Registrar of Co-operative Societies telegraphically instructed all the Collectors to appoint "Official persons in charge" in place of elected committees, in as much as the term of the elected committee is over. These instructions were challenged by several societies in this court by way of Writ Petitions. This court suspended the said instructions. Thereupon, the Government issued G.O.Ms. No. 1614 dated 9-4-1984 extending the term of the managing committees of various societies for a period of three months. This period was extended further by another three months in G.O. Rt.No. 2029, dated 24-12-1984.

4. On 15-3-1985 the Government issued G.O.Rt. No. 411 postponing the elections for six months, and directing further that "in the interest of holding free and fair elections, promoting healthy growth of co-operative movement, to expedite the audit of accounts and finalisation of misappropriation cases, it is felt that official persons in charge may be appointed instead of extending the term of the existing managing committees. The Registrar was directed to take appropriate action. This G.O. was challenged in this court in several writ petitions. In W.P.M.P. No. 3465 of 1985 etc. in W.P. No. 2579 of 1985 etc. one of us (Jeevan Reddy) on 2-4-1985 suspended the directions (contained in the said G.O.) which are extracted hereinbefore, and added, "it is however made clear that this order does not preclude the Registrar of Co-operative Societies, or other competent authorities exercising the powers of the Registrar, from examining the individual facts relevant to each of these two committees and passing appropriate orders in the light of the principles enunciated in the aforesaid Full Bench decision (AIR 1977 Andh Pra 278 . Pending such further orders by appropriate authority, the elected committees shall be, and shall continue in office." The idea behind the said order was that where the elected committees are functioning properly, they shall be continued, but where the committees are guilty of any irregularities or other misfeasance, an official person in charge shall be appointed. So that as it may, the Government promptly filed a Writ Appeal aggrieved by the last sentence in the above direction, and got it deleted by a Bench of this court in W.A. No. 354 of 1985 etc. While confirming the other directions in the order dated 2-4-1985 the Bench merely deleted the last sentence, viz, "pending such further orders by the appropriate authority, the elected committees shall be, and shall continue in office". The order of the Bench is dated 5-4-1985.

5. On 22-4-1985 the Government of Andhra Pradesh issued Ordinance No. 4 of 1985. Section 35 of the Ordinance provided that "notwithstanding anything in any judgment, decree, or order of any Court or Tribunal or other authority to the contrary, the committee which is constituted before the commencement of Andhra Pradesh Cooperative Societies(Amendment) Ordinance, and continuing as such at such commencement after the expiry of its term or the extended

term, if any, shall on such commencement cease to function and all the members thereof shall be deemed to have vacated their offices and elections to societies shall be held by the Registrar within a period of six months from the date of commencement of the said Ordinance in accordance with the provisions of the Act and the Rules made thereunder." This was followed by another Ordinance, being Ordinance No. 6 of 1985, issued on 13-5-1985. By virtue of this Section 35 of Ordinance No. 4 of 1985 was amended to provide that "elections to societies shall be held by the Registrar within a period of six months from the date of commencement of the said ordinance in accordance with the provisions of the principal Act and the Rules made thereunder." Both these Ordinances were replaced by A.P. Co-operative Societies (Amendment) Act, No. 21, 1985. In other words, by virtue of these Ordinances, which in turn were replaced by the Amendment Act, all the elected committees were sent out of office and was promised that the elections will be held within six months from 22-4-1985. In other words, elections in accordance with the provisions of the Act and the rules were promised to be conducted on or before 22-10-1985. No elections were, however, held.

6. In Jan. 1986, two writ petitions were filed in this Court, being W.P. Nos. 961 and 1168 of 1986 (reported in 1986 (2) Andh LT 695), for a direction to the Government to hold elections to co-operative societies, as provided by the Amendment Act 21 of 1985, mentioned above. These Writ Petitions were filed because no elections were held on or before 22-10-1985 as commanded by the said Amendment Act, nor were any steps being taken to hold elections. The said writ petitions were allowed by a learned single Judge of this Court on 16-4-1986. The learned single Judge issued a mandamus to the Government to conduct elections to all the Primary Agricultural Co-operative Societies within three months from the date of receipt of the said order. Elections were directed to be conducted not only for primary Agricultural Co-operative Societies, but also for marketing and Consumers" Co-operative Societies. This direction was again appealed against by the State in Writ Appeals Nos. 503 and 504 of 1986 (reported in 1987 (1) Andh LT 197).

7. Meanwhile, a few other writ petitions. were filed, being W.P. No. 4065 of 1985 etc. which came up before a Bench of this Court. The relief sought for in these Writ Petitions was again the same, viz., to hold elections. The writ petitions were disposed of on 24-6-

1986 under the following order :

"The learned Government Pleader today made statement in the Court that having regard to a decision rendered by a single Judge of this Court in another case, the State Government is taking steps to hold the elections for all the Co-operative Societies in the State. Having regard to the statement, Sri Ramakrishna Reddy, the learned Counsel for the petitioners, states that he wishes to withdraw the writ petition, with reservation that in the event of any necessity he may file a fresh application on the self-same grounds as in these writ petitions. In view of

the above statement, the writ petition ordered to be closed."

8. Not only no elections were held as promised by the learned Government Pleader before the Bench, but Writ Appeals Nos. 503 and 504 of 1986 referred to above, were prosecuted with re-doubled vigour. The Bench, however, dismissed the Writ Appeals, strongly castigating the Government for the attitude adopted by it throughout in this matter. The Writ Appeals were disposed of on 31-10-1986 (reported in 1987 (1) Andh LT 197). By that date, the period prescribed by the learned single Judge for conducting the elections was over. The Bench, therefore, directed the Government "to take expeditious steps for holding elections to the managing committees of these societies so as to enable the newly elected managing committees to assume office on or before Jan. 26, 1987". Again no elections were held on or before 26-1-1987. The petitioners, therefore, moved a Contempt Case. When the Contempt case came up for orders before the Bench, it was represented by the Government that because of the strike by non-Gazetted Officers of the Government, elections could not be held. Thereupon, the Bench directed for the conduct of elections to the managing committees of the Primary Societies covered by our judgment dated 31-10-1986, notification under Rule 22 of the A.P. Co-operative Societies Rules shall be issued within 14 days from the date on which the N.G.Os. call off the strike. Thereafter further steps for holding of the elections to the Primary Societies, District Societies and the Apex Societies, one class after the other, may be taken so as to ensure that the whole process of elections to the primary societies, the district societies and the apex societies is completed within the minimum period required in that behalf. Whatever extension of time is required from 26-1-1987, the date-line fixed by us, would be applied for on this basis by the respondents. This order was made on 29-11-1986. The N.G.Os' strike was called off on 29-12-1986 yet no action was taken in terms of the above directions of this Court.

9. The Government now approached the State Legislature with a Bill amending the A.P. Co-operative Societies Act. It was enacted as Andhra Pradesh Co-operative Societies (Amendment) Act, I of 1987, published in the Andhra Pradesh Gazette dated Jan. 9, 1987. Three important features of this Amendment Act are relevant herein, viz.

i) Section 15-A of the A.P. Co-operative Societies Act which provides for amalgamation and merger of non-viable cooperative societies with viable co-operative societies was amended to empower the Registrar not only to amalgamate and merge, but also to divide and restrict, or transfer the area of operation of a Society, or to liquidate the society for any of the reasons mentioned in Sub-section (1) of the said section. Some other procedural changes were also brought about.

ii) all the long term Agricultural Credit Cooperative Societies, i.e. 218 Primary Agricultural Development Banks, were abolished by Section 11(1) of the Act. Certain consequential provisions were made in Sub-section (2) of Section 11. The idea was that even the long-term credit should be handled by the Primary

Agricultural Co-operative Societies what is called the "single-window system;

(iii) by section 12 of the Amendment Act, Section 36 of the A.P. Co-operative Societies (Amendment) Act No. 21 of 1985, was amended and it was now provided that "notwithstanding anything in the principal Act and any judgment, decree or order of any Court or Tribunal, or other authority to the contrary, it shall be lawful for the Registrar to hold elections to the societies before 30th June 1987 in accordance with the provisions of the principle Act and the Rules made thereunder."" which means that notwithstanding the directions of this Court, elections were proposed to be held only by 30th June, 1987. It is then that the present Writ Petitions and some other writ petitions were filed, questioning the constitutional validity of the 1987 Amendment Act. All the three features mentioned above are assailed in these petitions. One of the writ petitions was heard and dismissed by a learned single Judge of this Court, against which a writ appeal has been preferred by the writ petitioners. The learned single Judge negated the several contentions urged by the petitioners in W.P. No. 341/87, which are reiterated before us in Writ Appeal No. 187/87. In W.P. No. 328/87 an additional point is also urged. Following are the contentions urged by the petitioners.

i. Section 12 of the 1987 Amendment Act has the effect of directly nullifying the orders and directions of this Court, which is beyond the competence of the Andhra Pradesh Legislature. Section 12 should be declared as unconstitutional and a direction should issue to the Government to hold elections in pursuance of this Court's directions, ignoring the abolition of Primary Agricultural Development Banks, i.e. with reference to and in accordance with the position obtaining in 1986--

ii. Section 11 of the 1987 Amendment Act abolishing all the Primary Agricultural Development Banks is violative of Article 19(1)(c) of the Constitution. After abolishing the said societies, their members are made nominal members of Co-operative Societies of the District concerned for a temporary period, i.e. till the loans taken by them are discharged. Thereafter they cease to be members of Co-operative Central Banks as well. All the assets of the Primary Agricultural Development Banks are also transferred to Co-operative Central Bank without making any provision to the members of such Agricultural Development Banks--

iii. The amendments made by 1987 Amendment Act in Section 15-A(i), viz., the conferment of power to divide or liquidate co-operative Society, and/or to restrict the area of its operation is violative of Article 19(1)(c) and Article 14 of the Constitution, and is not saved by Article 31-A(1)(c) of the Constitution. "Amalgamation" and "division" are two opposite concepts and, therefore, "division" cannot be brought within the purview of "amalgamation" under Article 31-A(1)(c).

10. On behalf of the Government it is contended by the learned Advocate-General that the Government never intended to disobey the orders of this Court,

nor was any disrespect intended to be shown. The delay in holding the elections is only because the State Government wanted to introduce the "single-window system" recommended by the Central Government. The single-window system was cleared by the Central Govt. only in 1986, where after necessary amendments had to be carried out in the Act, and the elections are now being held in accordance with Section 12 of the 1987 Amendment Act. It is brought to our notice that polling is to be held on 28th June, 1987."

11. From the narration of facts given above, the following facts are evident:

i) The Government violated the spirit and scheme of the Act by not holding elections on the expiry of the terms of the committees in Sept./Oct. 1984. (The societies or their committees cannot hold elections themselves; they have to be notified and held by the designated officers). It is not shown that if the elections had been held as contemplated by the Act, it would have prevented the introduction of single-window system. The term of the elected committees could have been cut short and new elections notified, at any time, by amending the Act and/or the Rules, as the case may be. If indeed the elections had been held, the elected committees would have by now completed their term of three years, except for about 3 to 4 months.

ii) Government's antipathy towards the elected committees :

Having not held the elections and having thereby acted contrary to the spirit and scheme of the Act, the Government has been taking several steps for sending the elected committees out of office, so as to enable it to appoint petty officers belonging not only to co-operative Department but to other departments as well, as official persons in charge of these societies. These persons in charge have continued for years together, which is again a violation of the spirit and scheme of the Act, and beyond the contemplation and conceptual confines of Clause (7) of Section 32 of the Act.

iii) Violation of Legislative command :

Ordinances 4 and 5 of 1985 enacted into Amendment Act 21 of 1985, directed that the, elections shall be held on or before 22-10-1985. This was an amendment introduced by the Government itself. This legislative command was simply ignored. By virtue of the 1987 Amendment Act, passed in Jan. 1987, the Government got the said time limit extended up to the end of June, 1987.

iv) Government's disobedience and disregard to the directions of this court issued under Article 226 of the Constitution and violation of solemn assurances given to this Court:

This is too self-evident and needs no repetition. The last direction was to hold and complete the elections on or before Jan. 26, 1987, which was modified to say that the election process should start as soon as the N.G.Os." strike is over. But the time schedule already fixed was directed to be adhered to. The Government just ignored these directions. It did not choose to apply for

extension of time; it never thought it fit to tell this court that the Legislature has passed the 1987 Amendment Act; that for certain reasons, if any, elections cannot be held as directed by this Court, and that, therefore, time should be extended. Evidently thinking that Section 12 of the 1987 Amendment Act provides a protective umbrella to it, the Government simply ignored the orders of this Court, if indeed the 1987 Amendment Act had provided that elections can be held before the end of Dec. 1987, the Government would have evidently thought it can conduct the elections by Dec. 1987, notwithstanding the several orders of this Court.

12. The above situation brings to our mind what Justice Brandies of United States Supreme Court said way back in 1928. .

He said : "In a Government of laws, existence of the Government will "be imperilled if it fails to observe the law scrupulously if the Government becomes a law-breaker, it breeds contempt for law : it invites every man to become a law unto himself; it invites anarchy..." We can do no more than repeat these words and stress their significance. If the Government itself violates the law, if it violates the orders of the Court with what grace can it ask the citizens to have respect for law? The consequences of such violation may not be immediately apparent; the Government may get away with such Violations and may gain their short-term political objectives; but in the long term they debilitate and destroy the constitutiona1 system, by enervating the rule of law. The explanation that all this was done out of concern for introducing "Single-window System" falls flat in the circumstances of the case and for the reasons mentioned above. This laudable objective single window system could also have been achieved in our opinion without violating the law and the orders of this court.

13. The learned Advocate-General conceded that the spirit and scheme of the Act requires elections to be held before the term of the incumbent committee expires. He agreed that appointing the official persons in charge and keeping them in office for long periods as a general rule is equally contrary to the spirit and scheme of the Act. We are saying this because on earlier occasions the Government and its advocates have been arguing which argument has sometimes found acceptance with one or the other Judges of this Court that once the term of an elected committee is over, it has no right to continue in office, and that it is perfectly legitimate for the Registrar to appoint such persons as he thinks appropriate as persons in charge. Such an argument, we must say, adopts a wholly untenable and unjustifiable approach. The angle from which the matter should be approached is not whether the elected committee has a right to continue in office beyond its term. The proper approach is whether it is permissible for the Government not to hold elections and appoint persons in charge for long periods. We are told that because the officials of the Co-operative Dept. were not sufficient, the officials of other departments were also indented for to act as persons in charge of thousands of co-operative societies. Such postponement of elections is itself contrary to the scheme of the

Act. The appointment of persons in charge provided by Section 32(7) was conceived to meet a limited situation; it was never intended as a substitute for elected committees. Further, whenever elections are postponed for unavoidable reasons, the elected committee should be continued in office (if necessary, by recording reasons therefore) provided the Committee is not guilty of any irregularities or other malpractices. Only where the committee is guilty of irregularities and/or malpractices would it be not in the interest of the society . to continue such committee. The interest of the society demands that an elected committee should manage its affairs rather than, a puisne officer of the Co-operative Department nominated by the Registrar. The basic idea underlying a co-operative society js that the members should themselves manage their own affairs and improve their economic lot in such mariner as they think appropriate subject, of course, to the relevant laws. An official person in charge is the last person to be contemplated for achieving the said purpose. We hope and trust that the Government shall not hereafter contend that once the term is over, the elected committee, even if it is not guilty of any irregularities and/or malpractices, has no right to continue in office and that they can appoint any one they like as person in charge. Indeed, this is the principle affirmed by a Full Bench of this Court in M. Gidda Reddy Vs. Special Category Deputy Registrar and Personal Assistant to Collector, Kurnool and Another, .

14. Now let us consider the constitutional validity of Section 12 of the 1987 Amendment Act, Section 12, really speaking, is an amendment of Section 36 of the A.P. Co-operative Societies (Amendment Act) No. 21 of 1985. As stated above, elections ought to have been held in Sept/Oct. 1984. They were not so held Writ Petitions were filed praying for directions to conduct the elections. It is in the above circumstances that Ordinances Nos. 4 and 6 of 1985 were issued providing that elections shall be held on or before 22-10-1985. Not only no elections were held in 1985, no elections were held in 1986. There was a legislative mandate to conduct elections before 22-10-1985. That was violated, There were orders of the Court and representatives by the Government before this Court that elections shall be held soon; yet no elections were held in 1986. Ultimately this Court issued directions to conduct and complete the elections before Jan. 1987. This order was modified in certain respects; but, in essence, the order stood. The Government evidently found that it cannot get any further extension of time from this Court even if it applied. It. therefore, chose to adopt the alternative of approaching the Legislature where it has a majority. The Legislature obliged the Government by extending the time for holding elections up to 30-6-1987. In truth and in substance, that is what Section 12 has done. The question is whether this is permissible? The question is whether the Legislature was competent to do it? But the more important question is -- assuming that Section 12 is not valid and was beyond the competence of the A.P. Legislature -- what is the relief that this Court can grant in such a situation? whether it is possible or practicable for this Court to say "ignore the amendments brought about by 1987 Amendment Act; ignore the single window system

introduced in pursuance of the said Amendment Act; restore status quo ante obtaining prior to the introduction of single window system" and direct the elections to be conducted on that basis to put it differently, whether it is possible for this Court to. restore the Primary Agricultural Development Banks to life, ignoring their abolition u/s 11 of the Amendment Act. and direct elections to be held to them, as also to all the Primary Agricultural Cooperative Societies ignoring the amalgamations mergers, and divisions effected in pursuance of the 1987 Amendment Act. We are of the opinion that this cannot be done unless and until Section 11 is struck down, and also the further amendments in Section 15-A are struck down, as contended by the Counsel for the petitioners. We, therefore, now turn to the validity of the amendments brought about in Section 15-A and to the validity of Section 11.

15. The attack of the petitioners in this behalf is mainly premised on the fundamental right to freedom of association, and the freedom to practice one's own profession and occupation, guaranteed respectively by Sub-clauses (c) and (g) of Article 19(1). The argument based on Article 19(1)(c) is developed on the following lines; Article 19(1)(c) guarantees the freedom of association to all the citizens of this country. This right includes the right not to be associated with any person or persons with whom one does not like to associate; Smt. Damyanti Naranga Vs. The Union of India (UOI) and Others, . The Co-operative Societies Act merely recognizes this fundamental right. The Act must be consistent with this right and any restrictions placed by it must be justified by Clause (4) of Article 19. The abolition of Primary Agricultural Development Banks by legislative fiat violates the freedom of association of their respective members. When certain persons want to remain as an association in the form of a Co-operative Society, the State cannot tell them not to associate with one another; it cannot disband such association. From this point of view, Section 11 clearly violates the right guaranteed by Article 19(1)(c). The appellant in the Writ Appeal is an association of all the Primary Agricultural Credit Co-operative Societies; they are all members of the Co-operative Central Banks. After abolishing the Primary Agricultural Development Banks their members are transferred to Co-operative Central Banks, no doubt temporarily, without a right to vote, until the loans taken by them are discharged. But even this thrusting of new members upon members of the Co-operative Central Banks is equally violative of Article 19(1)(c). The said provision is bad for violating the right guaranteed by Article 19(1)(g) as well. All the assets and properties of Primary Agricultural Development Banks are transferred to Cooperative Central Banks without reference to without consulting and without the consent of the members of Agricultural Development Banks. For all these reasons, it is argued, Section 11 is unconstitutional and void.

16. Inasmuch as the decision of the Supreme Court in Smt. Damyanti Naranga Vs. The Union of India (UOI) and Others, constitutes the main basis of attack it would be appropriate if we examine the principle of the said decision. A society had been registered in 1914 under the Societies Registration Act, 1860, with Head Office at Allahabad, under the name of Hindi Sahitya Sammelan. The

Society owned landed properties and buildings at Allahabad and some other places in India. In 1950 differences arose between members of the Society with respect to the conduct of its affairs, which led to litigation in Allahabad Courts. The U.P. Legislature intervened and enacted the U.P. Hindi Sahitya Sammalen Act of 1956 under which a statutory Body was created under the same name, which was to take over all the activities and properties of the Society. The Allahabad High Court, however, declared the Act void, whereupon the Parliament took up the matter. The Parliament passed the "Hindi Sahitya Sammelan Act, 1962" after making the necessary declaration required by Entry 63 of List-I of the Seventh Schedule to the Constitution. Under this Act a "Sammelan" was constituted and it was declared to be a body corporate, with its Head Office at Allahabad. Its membership was to consist of the members of the Society, as also certain other persons specified in Section 4(2). Provision was made for admission of fresh members in future as well. The properties of the Society were to devolve upon the statutory body known as "Sammelan". The constitutionality of the Act was challenged in Allahabad High Court but with no success. The High Court was of the opinion that there was no infringement of Article 19(1)(c), inasmuch as the original members of the Society were also continued as members of the "Sammelan". The Supreme Court, on an examination of the provisions of the Act, came to the opinion that "the Sammelan under the Act is composed not only of persons who were members of the society but of others who have been given the right to be members of the Sammelan without the consent of the pre-existing members. These members have been added without any option being available to the existing members of the Society to elect or refuse to elect them as members which was the right they possessed under the constitution of the Society itself.... Under this power (rule-making power) u/s 12(I)(a) the rules framed could make provisions for admission of persons as members whom the original members of the society may never have liked to admit in their Society. The number of such new members could even be so large as to leave the original members in a small minority with the result that those members could become totally ineffective in the SocietyFurther u/s 7(2) of the Act, the Governing Body of the new Sammelan is to consist of such number of persons, not exceeding 55. as the Central Government may from time to time determine; and out of these, a number not exceeding 7 are to be nominated by the Central Government from among educationistsThese 7 nominees become members of the Sammelan.... It will thus be seen that the Sammelan, which has come into existence under the Act, is not identical with the Sammelan which was registered as, a societyCertain persons have been added as members by the Act and by the Rules. Admission of future members is no longer at the choice of the original members who had formed the Association.... This is clear interference with the right to form an association which had been exercised by the members of the Society by forming the Society with its constitution, under which they were members and future members could only come in as a result of their choice by being elected by their working Committee.... 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..." Accordingly, the Act was struck down. It was found that the Act is not saved by Clause (4) of Article 19. The question is whether the above principle can be extended to and applied in the case of members of a Co-operative Society incorporated under the A.P. Co-operative Societies Act. This decision has been explained in the recent decision of the Supreme Court in *Daman Singh and Others Vs. State of Punjab and Others*, . The attack in that case was upon certain provisions of the Punjab Co-operative Societies Act, which provided for amalgamation of certain societies with other societies, if the Registrar was satisfied that such a course is necessary in the interest of Co-operative Society or Co-operative Societies, It was argued that such amalgamation interferes with the fundamental right to form an association, guaranteed by Article 19(1)(c). Reliance was placed upon the observations aforesaid in *Smt. Danyanti Naranga Vs. The Union of India (UOI) and Others*, . Dealing with the said submission, the Supreme Court observed:

"That case has no application whatever to the situation before us. It was a case where an unregistered society was by statute converted into a registered society which bore no resemblance whatever to the original society. New members could be admitted in large numbers so as to reduce the original members to an insignificant minority. The composition of the society itself was transformed by the Act and the voluntary nature of the association of the members who formed the original society was totally destroyed. The Act was, therefore, struck-down by the Court as contravening the fundamental right guaranteed by Article 19(1)(f). In the cases before us we are concerned with co-operative societies which from the inception are governed by statute. They are created by statute, they are controlled by statute and so there can be no objection to statutory interference with their composition on the ground of contravention of the individual right of freedom of association...."

17. This question was also considered by a Full Bench of Karnataka High Court in *H. Puttappa and Others Vs. The State of Karnataka and Others*, . In that case too, the attack was upon the provisions in the Karnataka Co-operative Societies Act providing for amalgamation of non-viable societies with viable societies. Dealing with the attack based upon Article 19(1)(c), majority observed in the first instance that the society as such cannot make the said complaint, inasmuch as the fundamental rights guaranteed by Article 19(1) are available only to citizens, and not to corporations, and then proceeded to observe :

"The provisions in the Act govern the duties and privileges, rights and liabilities, property and funds, the audit inspection and surcharge, the dissolution and amalgamation of co-operative societies and its members. The Act thus regulates

the economic interests of the members and controls the trading activities of the societies in the interest of the public or in the interest of the advancement of the cooperative movement. The process of amalgamation and division or reorganisation of co-operative societies relates only to structural alterations in the Corporate bodies and cannot be construed as a restriction on the right guaranteed to the citizens by Article 19(1)(c)."

It was further observed :

"It is now a settled principle that the freedom to form an association guaranteed to the citizens by Article 19(1)(c) does not include the freedom to achieve any objects of the association. The amalgamation, compulsive or consensual, pertains to the rights of the latter category."

Smt. Damyanti Naranga Vs. The Union of India (UOI) and Others, was distinguished on facts, and a Full Bench decision of this Court in Kaamareddy Suryanarayana and Another Vs. The District Co-operative Officer-cum-Election Officer, The West Godavari Co-operative Sugars Ltd. and Others, was relied upon, which held that the right to form a co-operative society under the Co-operative Societies Act is not a fundamental right and that it is only a right given under the Act subject to its provisions and the Rules framed thereunder.

18. So far as the attack based upon Article 19(1)(g) is concerned, we may refer to certain observations in another Full Bench decision of this Court in Seethapathi Nageswara Rao and Others Vs. The Govt. of Andhra Pradesh and Others, . In that case the constitutional validity of Section 15A of the Andhra Pradesh Co-operative Societies Act which provided for amalgamation or merger of non-viable societies with viable societies was attacked both on the ground of violation of Article 19(1)(c) as well as Article 19(1)(g). So far as the attack based upon Article 19(1)(g) was concerned, the law was held to be a reasonable restriction in the interest of general public, within the meaning of Clause (6) of Article 19.

19. We may also refer to a Division Bench Judgment of this Court in D. Papi Reddy v. Dy. Registrar Co-operative Societies, (1972) 2 Andh LT 61 wherein Section 15 of the Cooperative Societies Act was assailed as being violative of Article 19(1)(c). Section 15 of the Co-operative Societies Act provides for amalgamation, as well as division of a society, if such a course is found necessary in the interest of societies, or of the Co-operative movement. The Bench held that the provision for amalgamation or division does not violate the freedom guaranteed by Article 19(1)(c). The petitioners, it was held, have a right to form an association as citizens of this country, but they do not have a fundamental right to form a registered society or an association. Registration of a Society, it was observed, is entirely a voluntary act and it can be effected only in conformity with the provisions of the Act. The Act provides for registration of society its amalgamation, and for other matters, and inasmuch there is no right vested in the members to form a registered society the provisions of Section 15 of the Act are not violative of Article 19(1)(c).

20. From the above decisions, the principle that emerges is that while the right to form an association or a Union is a fundamental right of a citizen, there is no fundamental right to form a Co-operative Society under the Co-operative Societies Act. The formation of a Co-operative society, its management conduct of its affairs, and its winding up etc. are all matters governed by the relevant statute. If persons want to form a co-operative society, they have to do it only in accordance with the provisions of the relevant statute. Such statute can provide for classification of societies, the conditions which they must observe in the conduct of their affairs, the control and supervision subject to which they should operate, the manner in which their committees should be elected, and so on and so forth. Such a statute can always provide for amalgamation, merger, liquidation, and reorganisation of societies. It would not be reasonable to deny to the Legislature the right to bring about structural changes, or to effect structural reorganisation of societies in the interest of the co-operative societies themselves, their members and the co-operative movement as a whole. It cannot be argued that once a cooperative society is registered, its existence can never be put an end to in any circumstances. Indeed, the Act recognizes several modes of putting an end to the existence of a co-operative society, viz. by amalgamation, by merger, by division, and by liquidation. The abolition of a particular category of societies is also one of the modes, now provided by the Amendment Act. It is not as if the abolition of the Agricultural Development Banks is being done without a purpose, or arbitrarily. It is being done to introduce the "single window system" which is recommended and cleared by the Central Government. The idea is that hereafter all credit to the agriculturists should flow from one society, and not from two sets of societies. It cannot be said that this object is either unreasonable or adverse to the interest of the societies, or their members, or the co-operative movement as a whole. The principle of *Smt. Damyanti Naranga Vs. The Union of India (UOI) and Others*, supra has no application herein, inasmuch as that was a case where a society incorporated under the Societies Registration Act was sought to be converted into a statutory body and in that process its membership and all allied matters were sought to be changed to the prejudice of the existing members. That is not the case here. As a measure of reorganising the credit societies one class of societies (i.e. Agricultural Development Banks) is being abolished, and their work is being allotted to the other (existing) category of societies. It is also provided that if the members of the abolished societies want to become members of the concerned Primary Agricultural Co-operative Societies, they shall be admitted as such. As stated above, since the registration of a co-operative society, or the right to become a member of a cooperative society is not a right within the meaning of Article 19(1)(g) of the Constitution, the taking away of such right cannot also be treated as infringement of the said right. It is, therefore, not possible to agree with the counsel for the petitioners that Section 11 of the Amendment Act is void for the reason that it violates Article 19(1)(c).

21. Now coming to the attack based upon Article 19(1)(g) we do not think it

appropriate to go into the said question in these two writ petitions. No Agricultural Development Bank as such has come forward, nor any members of such abolished Banks have come forward complaining that their properties and other assets are being transferred to Co-operative Central Banks without reference to them and without making any provisions for sharing the surplus by their erstwhile members. Such a general question cannot be gone into in these writ petitions which are filed by the.

Association of Primary Agricultural Cooperative Societies and also a few of their members.

22. We are equally unable to see any room for complaining of discrimination or arbitrariness in this behalf.

23. Now we shall take up the attack upon the amendment to Section 15-A, brought about by the 1987 Amendment Act. Sub-section (1) of Section 15-A before it was amended by the 1987 Amendment Act, provided for amalgamation or merger of a non-viable society with a viable society. It also provided for liquidation of non-viable societies. The 1987 Amendment Act enlarges the powers of the Registrar. Under the amended Section 15-A the Registrar is not only entitled to amalgamate or merge any society with another society, but is also entitled to divide and restrict or transfer the area of operations of a society. It would be appropriate to read Sub-section (1) before and after amendment. They read thus :

Before Amendment After Amendment

15-A Identification of viability of societies and consequences thereof.

15-A Identification of viability of societies and consequences thereof :

1. Notwithstanding anything in this Act or the Rules made thereunder or the bye-laws of the societies concerned, if the Registrar is of the opinion that it is necessary to amalgamate or merge any society with any other such society or to liquidate it, for any of the following purposes, namely ;

1. Notwithstanding anything in this Act or; the rules made thereunder or the bye-laws of the society concerned, if the Registrar is of the opinion that it is necessary to amalgamate or merge any society with any other such society or to divide and restrict or transfer the area of operation of a society for any of the following -purpose namely ;

(a) for ensuring economic viability of any or all the societies concerned; or "

(a) for ensuring economic viability of any or all the societies concerned or

(b) for avoiding overlapping or conflict of jurisdiction of societies. in any area; or

(b) for avoiding overlapping of conflict of jurisdictions of societies in any area; or

(c) for securing proper management of any society; or.

(c) for securing proper management of any society; or

(d) in the interest of the co-operative movement in general and of Co-operative credit structure in particular in the state taken as a whole; or

(d) in the interest of the Co-operative movement in general and of co-operative credit structure in particular in the state taken as a whole or

(e) for any other reason in the public interest. He may identify the viable and the potentially viable societies which may be retained and the non-viable societies which may be merged or amalgamated or liquidated, as the case may be, and by a notice to be published in the District Gazette, specify the area of operation of each such viable or potentially viable society to be retained and each such non-viable society or societies to be liquidated or to be merged or amalgamated with any viable or potentially viable society indicated in the said notice and invite objections or suggestions from the societies or any members, depositors, creditors, employees or other persons concerned with affairs of each such society to be received within fifteen days from the date of publication of the notice in the District Gazette.

(e) for any other reason in the public interest he may identify the viable and non-viable societies which may be retained or divided with consequential restriction of the area of operation or the transfer of such area or amalgamated or liquidated as the case may be, and may by a notification to be published in the prescribed manner, specify the area of operation of each such society or societies to be retained, divided or amalgamated with any other society indicated in the said notification and invite objections or suggestions from the societies or any members, depositors, creditors, employees or other persons concerned with the affairs of each such society to be received within twenty one days from the date of publication of the Notification.

Explanation : For the purpose of this Section :(1) the term "Registrar" means the person on whom the power of the Registrar under this section are conferred under CL (n) of Section 2.

Explanation ; For the purposes of this section, the term "Registrar", means the person on whom the powers of the Registrar under this section are conferred under CL (n) of Section 2.

ii) the society may convene the general body meeting within seven days from the date of publication of the notification..."

24. The underlined portions have either been added or substituted, as the case may be, by the Amendment Act. It is stated by the learned Advocate General for the respondents that the provisions for dividing the societies, or restricting or transferring the area of operation of the societies, was made with a view to make these societies co-extensive with the newly formed Mandals. The idea was that no society should have its area of operation spread over more than one Mandal. The objective appears to be that the area of operation of a society should be

within a given mandal only, since that would contribute to convenience of all concerned. At this juncture, it may be mentioned that Section 15 of the Co-operative Societies Act not only provides for amalgamation but also for division. It says :

"15(1) : Where in the opinion of the Registrar, any division or amalgamation of the societies is necessary in the interests of societies or of the Co-operative movement, the Registrar shall, after consulting the financing bank to which such societies are indebted, call upon the committee of such societies, by notice in writing containing such particulars as may be prescribed and within such time as may be specified in the notice, to so divide or amalgamate as the case may be."

The Section further provides that if the societies fail to comply with the said direction, the Registrar shall, after giving an opportunity in the manner prescribed to make their representation, direct the amalgamation or division, as the case may be, and may also provide for consequential matters. The validity of Section 15 was upheld in *D. Papi Reddy v. Dy. Registrar, Co-operative Societies*, (1972) 2 Andh LT 61 which the validity of Section 15-A was upheld by a Full Bench of this Court in *Seethapathi Nageswara Rao and Others Vs. The Govt. of Andhra Pradesh and Others*, . The power to divide or restrict or transfer the area of operation of cooperative societies added in Section 15-A by the 1987 Amendment Act is qualitatively speaking no different from the power conferred by Section 15 of the Act, though procedurally they are different. While under Section 15 the Registrar is to first call upon the societies to amalgamate or divide, and only when they refuse to obey the directive, can he effect the amalgamation or division, as the case may be u/s 15-A the intermediate step is avoided. In the interest of matters provided in Sub-section (1) of Section 15-A if the Registrar is of the opinion that such division, or restricting or transferring the area of operation of a society is necessary, he may do it himself, of course, after giving notice to the affected societies, in the manner prescribed. Whether it is amalgamation, merger, division, liquidation or restricting or transferring the area of operation, they are all steps to be taken in the interests of improving the conditions and affairs of cooperative societies. Indeed, both Section 15, as well as Section 15-A clearly and expressly say, more particularly Section 15-A, The grounds upon which any of the said actions can be taken are specified in Sub-section (1) the opinion of the Registrar is not subjective, but is objective, to be formed after giving notice to the affected societies. It is true that by so doing, the members of one society are transferred to another society or members of one society are divided into two societies, and sometimes the area of operation of a given society is altered; but, these are all steps conceived in the interest of better functioning of cooperative societies themselves. The procedure prescribed by Section 15-A cannot also be said to be arbitrary, because it provides not only the grounds upon which the said steps are to be taken, but also provides for giving a hearing to the affected societies, and their committees. The order of the Registrar is also subject to appeal, or revision, under the Act. We are, therefore, unable to say that the amendments brought about by the 1987 Amendment Act

in Section 15-A are void, either for violation of Article 19(1)(g) or Article 14 of the Constitution. In such a case, it is unnecessary for us to examine whether the said amendments are "protected by Sub-Clause (c) in Clause (1) of Article 31-A of the Constitution. Only if and when the petitioners succeed in establishing that any of the provisions of Section 15-A or the amendments brought about therein violate Article 14 and/or Article 19 would the necessity for the State to seek protection of Article 31-A(l)(c) arise. .

25. It is then argued by Mr. K. Pratap Reddy, the learned Counsel for the petitioners, that Explanation (ii) to Sub-section (1) of Section 15-A introduced by the 1987 Amendment Act provides for the General Body meeting of a Society to be convened within seven days of the date of publication of the notification, and that taking advantage of the said provision, General Body Meetings have been called with one day's notice in thousand of cases. He submitted that providing such a Short interval for convening of General Body meetings is arbitrary, and hence Explanation (ii) should be struck down, for procedural unreasonableness both under Article 14 and Article 19 of the Constitution. We are not satisfied. Let us put the problem in proper focus. Section 15-A (i) provides that, before taking action thereunder, the Registrar should first "identify the viable and non-viable societies which may be retained or divided with consequential restriction of the area of operation or the transfer of such area or amalgamated or liquidated, as the case may be" and then issue a notification to be published in the prescribed manner, specifying "the area of operation of each such society or societies to be retained, divided, or amalgamated with any other society indicated in the said notification, and invite objections or suggestions from the societies or any members, depositors, creditors, employees or other persons concerned with the affairs of each such society to be received within twenty-one days from the date of publication of the notification." Having thus provided, Explanation (ii) says that any society may convene the general body meeting within seven days from the date of publication of the notification. This provision is evidently made because, in the bye-laws of these societies, normally a longer period than seven days is prescribed for calling the general-body meeting. We are told that, generally speaking, it is fourteen days. Now, but for Explanation (ii), fourteen days notice is required for calling the general-body meeting, and if such a notice is given, it may ultimately prove not possible to submit the explanation, objections, or suggestions, as the case may be, to the notification within the prescribed period of 21 days. It is for this reason that Explanation (ii), provides that a general-body meeting may be convened with seven days' notice. Explanation (ii) does not mean that a general-body meeting can be called with one day's notice, or with a notice of less than seven days. Seven days' notice is the minimum contemplated by this explanation. It is not correct to read the said Explanation as empowering the societies to call a general-body meeting with one, two, or even six days' notice. It must at least be a seven days' notice. So construed, there is no voice in Explanation (ii).

26. It is then contended by Mr. Pratap Reddy that in thousands of cases general-

body meetings have been called with one or two days" notice by the official persons in charge who are acting for the committees in all such societies, and that such a notice is illegal, arbitrary, and a mere farce in the circumstances. He therefore requested us to set aside all the orders passed by the Registrar, on this ground. We do not think that such a course is permissible for us in those writ petitions. We are only concerned with the proper interpretation to be placed upon Explanation (ii). If in a given case a notice of less than seven days has been given, it has to be examined in a properly constituted writ petition whether such notice is bad; whether the proceedings of the meeting held in pursuance of such a notice are invalid; and what effect it has upon the action taken by the Registrar u/s 15-A? That is not a general issue to be agitated by an Association, or by a single member of one society. There are thousands of societies in the State, and we do not know in how many cases such shorter notice was given nor is it necessary for us to examine what effect or consequence such shorter notice, if any, has in a given case.

27. For the above reasons, the attack upon the constitutional validity of both Section 2 and Section 11 of the Andhra Pradesh Co-operative Societies (Amendment) Act, 1987, fails.

28. So far as the attack upon Section 12 of the said Amendment Act is concerned, we think it unnecessary to go into it for the reasons mentioned hereinbefore. We hope and trust that a similar situation would not be allowed to arise in future.

29. Accordingly, both the writ appeals are dismissed in the circumstances, without costs.

30. The learned counsel for the appellants/writ- petitioners make an oral request for leave to appeal to Supreme Court under Article 133 of the Constitution of India. We do not, however, think that this case involves any substantial question of law of general importance which in our opinion needs to be considered by the Supreme Court. We have merely applied and followed the decisions of the Supreme Court in disposing of the questions urged before us.

31. Leave refused.