

(1983) 09 BOM CK 0038
In the Bombay High Court
Case No : Writ Petition No. 1561 of 1983

Manohar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 16-09-1983

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 19(4)

Citation : AIR 1984 Bom 47

Hon'ble Judges : Shah, J; Mohta, J

Bench : Division Bench

Advocate : A.P. Deshpande, for the Appellant; A.A. Desai, Asstt. Govt. Pleader for Advocate General and S.V. Padhya, for the Respondent

Judgement

Shah, J.—In this petition under Article 226 of the Constitution the validity of sub-section (5) of S. 73-A of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "the Act") has been called in question.

2. Section 73-A of the Act was inserted in the Act by the Maharashtra Co-operative Societies (second Amendment) Act, 1969 (Act No. XXVII of 1969), which came into force on July 1, 1971 . Sub-section (5) of S. 73-A runs as under:

"(5) No person shall be , or shall continue to be a designated officer of any society of any of the categories referred to in sub-section (2) for a consecutive period of more than six years, and at the expiration of that period any such person shall appointed as a designated officer, until a period of three years has elapsed after the expiry of the aforesaid period of six years.

Explanation: For the purposes of this sub-section -

in calculating the consecutive period of six years in office, any period for which the person concerned may have been such officer, before the commencement of the Maharashtra Co-operative Societies (Second Amendment) Act, 1969, shall be ignored;

if any person resigns his office as a designated officer at any time within twelve months of the date on which the consecutive period of six years would, but for his resignation, have been completed, he shall be deemed to have completed the period of six years on his resignation."

3. The facts which had led to the challenge of this provision are not in dispute. The petitioner is a member of the vidarbha premier. Co-operative Housing Society Limite. Which is a society register under the Act, The petitioner is and Honorary Secretary of the society. Initially he was co-opted as the Honorary Secretary on July1, 1977 Prior to that on Nov 8, 1970 he was elected as a Member of the Managing committee. He was re-elected as a member of the Managing Committee on December 30, 1973 and as soon as there was a vacancy in the office of the Honorary Secretary of the society, on July1, 1977, he came to be co-opted as the Honorary Secretary of the society, As per Bye -law No. 34 of the Bye-laws of the Society , he was entitled to remain in the office for a period of five years. On the expiry of his term, fresh elections were held on November 28, 1982 . wherein he was elected as a Honorary Secretary , which post he could hold for a further period of five years as per Bye-law No. 34 However, as a result of sub-section (5) of section 73-A , he has incurred a disability to hold office on his completing his total tenure of six years on July 1, 1983.

4. Now sub-section (5) of S. 73-A of the Act refers to the disability incurred by a designated officer. Under sun-section (1) of S. 73-A " a designated officer" means the Chairman and the President, and includes any other officer of the society as may be declared by the State Government ,m by notification in the official Gazettee, to be a designated officer. But does not include any officer appointed or nominated by the state Government or by the Registrar "Officer" has been defined in S. 2(2) of the Act. According to this definition, Officer" means a person elected or appointed by a society to any office of such society according to its Bye-law and includes a Chairman, Vice-Chairman, President, Vice-President, Managing director, Manager, Secretary, treasurer, Member of the Committee and any other person elected or appointed under this Act, the rules or the bye-laws , to give directions in regard ot the business of such society.

5. By a Notification., published in the Maharashtra Government Gazette dated July 29, 1971, the Government Gazette, dated July 29, 1971 , the Government notified the following persons as designated officers and they are:

vice Chairman,

Vice President,

Secretary, Additional Secretary or the Joint Secretary when he is not a salaried employee of the society, and

the Managing Director or Joint Managing Director, when he is not salaried employee of the society.

It is , therefore, not disputed that the petitioner who is the Honorary Secretary of

the Society , is covered by this Notification and in view of the provisions of sub-section (5) of S. 73-A of the Act, he is liable to lose his office on his completing six years from July 1, 1977 in that office. It is under these circumstances that the petitioner, who would otherwise by virtue of his election on Nov. 28, 1982. Have been entitled to continue to hold the office till November 28, 1987 , has filed this petition challenging the validity of sub-section (5) of S. 73-A of the Act.

6. Mr. Deshpande, learned counsel appearing for the petitioner, submitted that the impugned provision violates the petitioner's fundamental right guaranteed to him under Art. 19(1)(c) of the Constitution as well as it offends the right to equality guaranteed by the provision under Article 14 of the constitution. As far as the challenge under Article 14 of the Constitution is concerned, the learned counsel fairly conceded that the challenge on that count is not open to him in view of the decision of the Division Bench of this court in *Shri Siddheshwar Sahakari Sakhar Karkhana Ltd; v. State of Maharashtra*, writ Petn, No 1418 of 1981, decided on April 15, 1983 : 1983 Mah Lj 719 . In that case the validity of this very provision was under challenge as violative of Article 14 of the Constitution . The division Bench held that this provision was under challenge as violative of Article 14 of the Constitution. The division Bench held that this provision is not discretionary and does not impinge upon the rights guaranteed under Article 14 of the Constitution. The learned counsel . however, faintly argued that in that case the Division Bench did not consider some shades or aspects which, according to him. Had a material bearing on the validity of the impugned provision. So far as violation of Art. 14 is concerned. All that was contended by the learned counsel was that the impugned sub-section (1) of Section 73-A merely specifies the various officers who may hold office without specifying their duties of such officers, with the result that the designated officer indicated in the notification may be hit by the bar of six year rule incorporated in sub-section (5) of Sec. 73-A . While an officer doing similar duties in a different society will easily escape the bar merely by changing the nomenclature of the office held by such a person. In other words what is contended is that since every society is free under the Act to make its own bye-laws., the society would very easily be in a position to get out of the clutches of sub-section (5) of S. 73-A by just changing the nomenclature of the office of the Secretary Additional Secretary or the Joint Secretary as envisaged by the notification of July 29, 1971 by just designating him as a Deputy Secretary. Apart from the fact that we do not see any merit in this contention. We consider ourselves bound by the decision of the Division Bench that the impugned provision does not violate Art. 14. We also find that no compelling ground has been made out before us which would justify reconsideration of the view taken by the division Bench. In this connection, Mr. Desai, appearing for the respondents relied on the observations of the Supreme Court in *Delhi Cloth and General Mills Ltd. Vs. Shambhu Nath Mukherji and Others*, the Court observed.

"Where the Supreme Court has held that Section 10 of the Industrial disputes Act is intra vires and repelled the objection under Article 14 of the Constitution it

would not be permissible to raise the question again by submitting that a new ground could be raised to sustain the objection. It is certainly easy to discover fresh grounds of attack to sustain the same objection. But that cannot be permitted once the law has been laid down by the Supreme Court holding that section 10 of the Act does not violate article 14 of the Constitution."

The counsel was unable to produce before us any instance of a society where the duties of a Secretary, Additional Secretary or joint Secretary have been entrusted to an officer by designating him as Deputy Secretary. The argument obviously proceeds on the assumption that while framing the byelaws, it would be possible for a society to manipulate its provisions in such a manner that the bar in sub-section (5) of Section 73-A could be avoided by just giving a different nomenclature to the designated officer though the duties performed may be same. The argument loses sight of the fact that though the society is entitled to frame its own byelaws, they are required to be framed and registered in accordance with the provisions of the Act. The provisions of the Act contain sufficient safeguards against any such possible attempt on the part of a society to circumvent the provisions of Section 73-A(5). Under sub-section (1) of Section 8 of the Act, for the purposes of registration, the application must be accompanied by a copy of the proposed byelaws of the society. Under sub-section (1) of Section 9 of the Act the society is entitled to be registered if the Registrar is satisfied that the proposed society has complied with the provisions of the Act and the rules and that the proposed byelaws are not contrary to the Act or the rules. Again sub-section (1) of Section 13 provides that no amendment of the byelaws of the Society is valid until registered under the Act and for the purpose of registration of an amendment of the byelaws, a copy of the amendment passed in the manner prescribed, at a general meeting of the society, shall be forwarded to the Registrar. The Registrar is empowered to take a decision as to whether the amended byelaws should be registered. Sub-section (1) of Section 14 of the Act confers powers on Registrar to call upon the society to make an amendment of the bye-laws of the society if he considers it necessary or desirable in the interest of the society. Having regard to the scheme of the Act and the inbuilt safeguards, we do not think that there is any basis to assume that a society would be able to circumvent the bar u/s 73-A(5) by merely framing the bye-laws in a particular manner. It is therefore not possible to accept the contention that the impugned provision violates Article 14 on the ground urged before us.

7. Now advertent to the challenge under Article 19(1)(c) of the Constitution we may mention that in writ petn. No. 1418 of 1981 : 1983 Mah LJ 719 (cited supra) the impugned provisions were also challenged as violative of Article 19(1)(c) of the Constitution. Paragraph 40 of the commenting that the challenge was expressly given up and, therefore, the Division Bench did not think it necessary to deal with the challenge on the ground of violation of Article 19(1)(c) of the Constitution. The challenge to the impugned provision as being violative of Art. 19(1)(c), therefore, cannot be said to have been concluded by the decision of the Division

Bench. It was urged by the counsel that the right to form associations or unions. Which is protected under Article 19(1)(c) of the Constitution includes the right to continue the association with its composition as voluntarily agreed upon by its members. It was urged that the society has the right to choose its own officers and this right has been exercised by electing the petitioner to work as the Secretary of the society for a period of five years. The bye-law No 34 framed by the society provides that the office bearers elected by it are to hold office for five years. Any interference with this arrangement voluntarily agreed to by the society, it was said violated the right to continue the association with its composition viz the carrying on the management of the society by the office bearers elected for a period of five years. It was contended that by enacting the impugned provision the legislature has clearly impinged upon the fundamental right guaranteed under Article 19(1) (c) . It was also contended that the provision is not saved by sub-clause (4) of Article 19 as it is not possible to say that the impugned provision is in the interest of the sovereignty or integrity of India or public order or morality. In support of his contentions strong reliance was placed by the learned counsel on the decision of the Supreme Court in Smt. Damyanti Naranga Vs. The Union of India (UOI) and Others,

8. In order to appreciate the contention, it is necessary to peruse the relevant provisions of the Act. The Preamble says that the Act has been passed with a view to providing for the orderly development of the co-operative movement in the State in accordance with the relevant directive principles of State policy enunciated in the Constitution. This also clear from the provisions of Section 4 that it is only a society having as its objects the promotion of the economic interests or general welfare of its members. Or of the public. In accordance with cooperative principles. Or a society established with the object of facilitating the operations of any such society may be registered under this Act. The word "may" is important society is not compulsory , but voluntary.

9. Section 8 of the Act says that an application for the registration of the society must be accompanied by copies of the proposed byelaws of the society and as provided in Section 9 the proposed society will be registered under the Act by the Registrar only if it has complied with the provisions of the Act and rules and that its proposed byelaws are not contrary to the Act or to the rules. Section 13. Which relates to amendment to the byelaws has got to be registered under the Act by following the prescribed procedure and it is only when the Registrar accepts the amendment that it becomes enforceable.

10. Section 14 of the Act even empowers the Registrar to call upon the society to make an amendment of the byelaws if in his opinion it is necessary or desirable in the interest of the society. Section 17 relates to provision for amalgamation of the societies which amalgamation can be effected by a resolution of the members of the society and with the previous approval of the Registrar. This action of the society u/s 17 is voluntary. But Sec. 18 empowers the Registrar to

direct amalgamation of societies in public interest or in the interest of cooperative movement or for the purpose of securing proper management of the society. Section 78 of the Act confers powers of supersession on the Registrar and he can even appoint another committee in place of the existing committee. Then Section 77-A and 79 relate to the powers of the Registrar to enforce performance or give directions to the society in public interest. A society can even be wound up by the Registrar u/s 102 in the circumstances mentioned in the section/.

11. These salient features of the various provisions of the Act. Coupled with the object of the enactment, make it quite clear that a society which is registered under the Act has (sic) in accordance with the provisions of the Act. The Act, however. Does not prohibit formation of a society for carrying on the activities which may be carried by a society registered under the Act. The only restriction being to the use of the word " cooperative". As provided in Section 145 of the Act. Thus the activities envisaged by the different types of societies that can be registered under, and governed by the Act can be carried on freely without any restriction by an association or society which is not registered under the Act. There is no compulsion to carry on activities which could be carried on by a society registered under the Act.

12. That the registration is not compulsory is clear from the word " may "used in Section 4. There is no compulsion that the society shall be registered as a society under the Act. Moreover, the reasons for getting the society registered under the Act are obvious. The registration of a society carries with it several privileges and benefits, not only under the Act, but also under various other enactments and also various schemes of the Government which are available exclusively to societies registered under the Act, a society registered under the Act gets the Status of a body corporate under S. 36 . u/s 20, two or more societies with the previous approval of the Registrar can enter into partnership for carrying out any specific business , or business and to such a partnership the provisions of Indian Partnership Act, 1932, do not apply. Sections 41 and 42 inter alia provide for exemption from compulsory registration of instruments relating to shares and debentures of society and the State Government's power to exempt from taxation certain classes of societies. Section 47 provides for prior claim of society in respect of certain dues owing by a member of the society., This is a special privilege and the prior claim of the society is only subject to the claim the government in respect of land revenue or any money recoverable as land revenue and to the provisions of Sections 60 and 61 of the Code of Civil Procedure. A provision analogous to Section 80 of the CPC is made in Section 164 of the Act which renders it obligatory to serve a notice on the society before a suit against the society is filed. Chapter V of the Act incorporates provisions for Government and to the societies. Then it is common Knowledge that under the policy of the government various concessions and priorities are given to the societies registered under the Act.

13. It is thus clear from the scheme emanating from the various provisions of the enactment that the act of registration of a society is voluntary. There is no provision in this enactment or any other enactment which compels the members to get the society registered. Further the registration can be had only on the basis that the society is willing to abide by the byelaws, as may be approved by the Registrar under the Act as well as the provisions of the Act and the rules framed thereunder. By making an application for registration, the members voluntarily accept the position that the byelaws framed by them must be approved by the Registrar; that their byelaws are subject to amendments as may be directed by the Registrar and further that the society would be governed by the provisions of the Act as well as the rules framed thereunder and that any byelaw framed by the society must not be inconsistent with the statutory provisions of the Act.

14. Now coming to the impugned provision of Section 73-A(5) of the Act, all that it does is to restrict the enjoyment of office by the designated officer, if he has held the office for a continuous period of six years and such officer is not eligible to be re-elected or re-appointed for a period of three years after the expiry of the period of six years. Such a provision could have been made in the byelaws of the society at the time of registration. Such provision could have been made in the byelaws of the society at the instance of the Registrar at any time during the continuance of the society or could be made by a provision of the Act itself as is done in the present case. The restrictions whether contained in the byelaws or the rules or the provisions of the Act comes into operation by reason of the registration of the society under the Act which is the result of a purely voluntary act of its members and as such it is difficult to see how the petitioner can complain of any infringement of Article 19(1)(c) merely because the period of office of the designated officer is restricted by the impugned provision.

15. The learned counsel relied upon the decision of the supreme court in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, and contended that the test to be applied for determining the constitutional validity of the provisions was the State action with reference to fundamental rights. A test of direct and immediate effect of the State action. It has been held in that case that-

"..... in testing the validity of the State action with reference to fundamental rights. What the Court must consider is the direct and inevitable consequence of the State action."

We are unable to appreciate how the principle laid down in the said case has any application to the instant case so far as the applicability of Article 19(1)(c) is concerned. When the members by their voluntary action decide to get the society registered and thus of their own volition submit to the restrictions as may be incorporated in the byelaw of the society or in the Act itself, provided the provisions contained in the Act are not otherwise invalid. The element of compulsion or imposition by the State of its will against the wishes of the

members of the society which would be a condition precedent for sustaining a challenge under Article 19(1)(c) being itself absent, the challenge based on the alleged violation of the right under that Article, in our view is misconceived/

16. In *Smt. Damyanti Naranga Vs. The Union of India (UOI) and Others*, , on which reliance has been placed, the facts were that by the Central Act No. 13 of 1962 a Hindi Sahitya Sammelan, a society registered under the Societies Registration Act, 1860, was constituted as a body corporate. The corporate body was, however, composed of not only persons who were members of the socety, but also others who were given the right under the Central Act to be members of the Sammelan without the consent of pre-existing members. u/s 4 of the Act apart from the persons who are members of the society, some more members were 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. Thus the incorporation of the society as well as induction of members which is the direct and inevitable effect of the Central Act is without the consent, express or implied, of the pre-existing members. It was in this context that the Supreme court held the provisions of the Act to contravene Article 19(1)(c) of the Constitution. The Supreme Court held .

"The Act does not merely regulate the administration of the affairs of the society; what it does is to alter the composition of the society itself as we have indicated above. 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 these who have voluntarily joined it, will be a law violating the right to form an association."

17. As far as the impugned provision of sub-section (5) of Section 73-A of the Act is concerned, it is not a provision which restricts the right to continue the association or composition that is voluntarily agreed upon by the persons forming an Association. All that it restricts is the continuance in office of the designated officer if he has been continuously in the office for a period of six years and the bar continues to apply only for a period of three years and thereafter he is free to be elected as one of the designated officers as per the byelaws of the society . In our opinion, *Smt. Damyanti Naranga Vs. The Union of India (UOI) and Others*, is clearly distinguishable in that the incorporation of the Sammelan under the

Central Act was the result of legislative compulsion and did not depend upon making voluntary application by the existing members of Corporation as in the case of a society registered under the Act on an application for that purpose made voluntarily by its members,. As we have noticed from the provisions of the Act above, the members of the society are under no compulsion to make an application for registration of the society under the Act, but by making an application for registration under the Act, they voluntarily application by the existing members of Corporation as in the case of a society registered under the Act on an application for that purpose made voluntarily by its members. As we have noticed from the provisions of the Act above, the members of the society are under no compulsion to make an application for registration on the society under the Act, but by making an application for registration under the Act, they voluntarily submit to the acceptance of the provisions of the Act , as binding on them. In other words, by voluntarily agreeing to be a society registered under the Act, they also voluntarily agree to the Provisions of the Act including the provisions such as the framing of bye laws consistent with the object of the provisions such as the framing of bye laws consistent with the object of the provisions of the Act and even agreeing to byelaws that may be directed to be made by the Registrar. It is under the byelaws that the designated officer continues to remain in the office for a particular period. The period could be restricted even at the instance of the Registrar by amending the byelaws as a result of the statutory provision like sub-section (5) of Sec. 73-A . we do not see how the provisions of this nature, in any manner , impinge upon the right of the members to form an association guaranteed under Article 19(1)(c) of the constitution. In our opinion, it is equally difficult to appreciate the argument that a provision of this nature takes away the rights of the members to continue the association with its composition as voluntarily agreed upon by them when there is no obligation or compulsion to get the society registered provision can be said to be one regulating the affairs of the society without in any manner encroaching upon the right to continue the association with its composition agreed upon by them.

18. It may be mentioned that it is now uniform pattern in cooperative law all over the country to restrict tenure of certain officers and provision similar to those of S. 73-A have been made in the relevant State laws pertaining to co-operative societies in other parts of the country. For instance, in Delhi cooperative Societies Act, 1970, there is a disqualification clause in S. 31(5) therein it is provided that a person shall be disqualified for election as or for being the president, Vice president, Chairman. Vice Chairman, Managing Director, Secretary, Joint Secretary or Treasurer of a Committee-

if he has held any such office on that committee during two consecutive terms, whether full or part,

if he holds any such office on a committee of another co-operative society of the same type;

if he holds any such office on the committee of three or more cooperative societies of a different type or different types."

19 . Again in the Punjab Cooperative Societies Act, Section 26-B of that Act provides that-

"(1) No individual shall, at any time, be a member of committee of -

more than two primary societies , and

(b) more than one central and one apex society.

And further that no person shall be eligible for being elected to the committee of any cooperative society after he has served on the committee of that society, whether before or after or partly before and partly after the commencement of the Punjab cooperative Societies (Amendment) Act. 1969 for a continuous period of not less than six years unless a period of not less than three years has expired since he last so served. Thus the Act is quite analogous to the one contained in Section 73-A of the Bombay Enactment. The decision of the Division Bench of this Court in Writ Petn. No. 1418 of 1981: 1983 Mah LJ 719 further shows that on all India Conference of the Chief Ministers and of State Ministers for Cooperation was held at Madras on June 18, 1968 and the important measures suggested by the said Conference in regard to the curbing of vested interests in cooperative societies were: (1) restriction on holding office for more than the prescribed number of terms., (2) restriction on holding office simultaneously in a number institutions, and (3) regular election by an independent authority and that in keeping with the National Policy of removing vested interests attaining the object of the cooperative movement which is to work as an instrument of uplift of weaker and poorer sections of the society and with a view to make the cooperative societies broad based and democratic institutions rather than to allow them to be monopolised by a few persons and for the purpose of orderly development of the cooperative movement and further in accordance with the relevant directive principles of the State policy enumerated in the Constitution of India, the provisions in Section 73-A were inserted in the Act by Maharashtra Amendment Act No. 27 of 1969.

20. It would be relevant to refer to the decision of the Supreme Court in *Raghubar Dayal Jai Prakash Vs. The Union of India (UOI) and Others*, . In that case, the question related to the validity of some of the provisions of the Forward Contracts (Regulation) Act, 1952 which canalised forward trading in the context of the recognised association. Section 6 thereof required a recognised association not to amend its rules except with the previous approval of the Central Government and Section 10 empowers the Central Government to direct rules to be made in case the recognised association failed to take action to comply with the order for themselves making the rules. These provisions were challenged on the ground that the right to form association carried with it the right to determine its internal arrangements by framing rules and regulations. While rejecting the challenge. The court observed that "no association can be

compelled to apply for recognition, but ifm it does so, it was bound to be governed by the provisions of the Act under which the recognition was granted".

21. Having regard to the above discussion, we are of the view that the contention that sub-section (5) of S. 73-A encroaches upon the rights guaranteed under Article 19(1)(c) is without any merit and in this view of the matter, ti would not be necessary to justify the provision in clause (4) of Article 19 of the Constitution.

22. Even assuming that the impugned provisions can be said to encroach upon Art. 19(1)(c), we are also of the opinion that the provsion can be justified under clause (4) of Art. 19 as it imposes reasonable restriction in the interest of morality. While. Dealing with this aspect, it would be useful to refer to passages from different books relating to principles of co-operation extracted in Brij Gopal Denga and Others Vs. State of Madhya Pradesh and Another, , where the provisions of S. 19-c(2) of the Madhya Pradesh Co-operative Societies Act conferring power on the Registrar " to expel a member when it is necessary or desirable in the interests of the society" were challenged as being violative of Art. 19(1) . It was held by the court having regard to the scheme of the Act and the fact that there is no compulsion to apply for registration of the society under the Act,. There is no question of affecting the right under Art. . The Court also held that the provsion was also justified under Art. 19(4) as it imposes reasonable restriction in the interest of society. The passage from the judgment runs thus (para 8)

"The basic principle of cooperation is that the members join as human persons and not as capitalists. Cooperation is a form of organisation wherein persons associate together as human beings on the basis of equality for the promotion of the economic interest of themselves. Cooperation is a method of doing business with an ethical base. "Each for all, and all for each" is the motto of cooperation. Cooperation not only develops the latent business capacity of its members; it produces leaders; it encourages the growth of social virtues; honesty and loyalty become imperative; the prospect of a better life obtainable by concerted effort is opened up; the individual realises that there is something more to be sought than mere material gain for himself. Cooperation being a business - cum-moral movement , the success of the enterprise depends upon the reality with which each one of the members works for the achieve ment of the object of the organisation; (See law and principles of cooperation by H. Calvart, pp. 18, 19, 22, and 45). The committee on cooperation in India emphasised the moral aspect of cooperation. To quote their words; "the theroy of cooperative is very briefly that an isolated and power less individual can by association with others and by moral development and mutual support, obtain in his own degree the material advantages available to wealthy or powerful persons and thereby develop himself to the fullest extent of his natural abilities. By the union of forces, material advancement is secured and by united action self-reliance is fostered and it is from the inter-action of these influences that it isa hoped to

attain the effective realisation of the higher and more prosperous standard of life which has been characterised as better business, better farming and better living; we have found that there is a tendency not only among the outside public but also among supporters of the movement to be little its moral aspect and to regard this as superfluous idealism. Cooperation in actual practice must often fall far short of the standards aimed at and details inconsistent with cooperative ideals have often to be accepted in the hope that they may lead to better things. We wish clearly to express our opinion that it is to true cooperation alone, that is, to a co-operation which recognises the moral aspect of the question that Government must look for the amelioration of the masses and not to a pseudo-cooperative edifice, however, imposing, which is built in ignorance of cooperative principles. The movement is essentially a moral one and it is individualistic rather than socialistic. It provides as a substitute for material assets" honesty and a sense of moral obligation and keeps in view the moral rather than the material sanction" (pp . 5 and 6 of the Theory and practice of Cooperation in India and Abroad by Kulkarni, vol. 1) Cooperation as a mode of doing business. Is at present applied as the solution of many economic problems. Cooperation is harnessed to almost all forms of economic activity. Though cooperation was introduced in this country as a remedy for rural indebtedness, it has been applied successfully in wide range of activities such as production, distribution, banking , supply marketing, housing and insurance: (See Theory and Practice of Cooperation in India and Abroad by Kulkarni, Vol. I, P.2) As observed by a Division Bench of this court in *Kamta Prasad Vs. Registrar, Co-operative Societies and Another*, , "The cooperative movement is both a theory of life and a system of business. It is as form of voluntary association where individuals unite for mutual aid in the production and distribution of wealth upon principles of equity, reason and common good. It stands for distributive justice and asserts the principle of equality and equity ensuring to all those engaged. In the production of wealth a share proportionately commensurate with the degree of their contribution. It provides as a substitute for material assets. Honestly and a sense of moral obligation and keeps in view the moral rather than the material sanction. The movement is thus a great movement."

23. Now the word "morality" occurs both in cls./ (2) and (4) of Art. 19. Under Clause (4) it provides that nothing in sub clause (c) of the said clause shall prevent the state from making any law imposing, in the interests of the sovereignty and integrity of India, or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause . The impugned provision does not touch upon the aspect of sovereignty and integrity of India/ It is also doubtful whether the impugned provision could be justified as placing reasonable restrictions in the interest of public order. The question is whether the restrictions contained therein constitutes reasonable restrictions in the interest of "morality" has not been defined in the constitution. To our mind, morality contemplated by clause (4) of art. 19 of the Constitution. The word "morality" has not been defined in the constitution. To our mind, morality

contemplated by clause (4) of Article 19 is in the nature of public morality and it must be construed to mean public morality understood by the people as a whole. Mr. Deshpande submitted that the word "morality" occurring in clauses (2) and (4) of Article 19 means sexual morality. In support of his contention, reliance was placed on the decision of the Supreme Court in *Gherulal Parakh Vs. Mahadeodas Maiya and Others*, . In that case the Court was required to construe the word "immoral" occurring in section 23 of the Indian Contract Act. On a construction of the provisions of S. 23 and having regard to the juxtaposition in which the word occurs, as opposed to public policy in Section 23, the Court held that the legislative intention was to give such a restricted meaning to the word "morality" occurring in Art. 19(4) . the intent and purpose of the two provisions is different. The word "morality", occurring in clause (4) of Art. 19 must be understood as "public morality" in the wider sense as understood by the people as a whole.

24. In *Fram Nusservanji Balsara Vs. State of Bombay and Another*, . The provisions of Sec 23 (a) of the Bombay Prohibition Act, 1949. Which prohibited commencing and intoxicant was challenged. The Court held that it could not be said to be a law in the interest of morality and was not saved by clause (2) of Art. 19. In holding so, Chagla, C. J. speaking for the Full Bench observed (at P. 221):

".....morality referred to in Art. 19(2) is not the ad hoc morality created by the State Legislature, It is a morality which is accepted by all the world or at least throughout the length and breadth of India. It is absurd to suggest that when drinking is permissible in the majority of States in India, the mere commendation of a drink would constitute an encroachment upon morality."

In *Brij Gopal Danga and Others Vs. State of Madhya Pradesh and Another*, . The Madhya Pradesh High Court held that the word "morality" which occurs in clauses (2) and (4) of Article 19 means ideas about right and wrong which are accepted by the right thinking members of the society as a whole of the country. While recognising that "morality" is a fluid concept , and its content will depend upon the time, place and stage of civilization, the Court rejected the contention that the word "morality" in art. 19 should be restricted to sexual morality. We are in respectful agreement with the view taken by the Madhya Pradesh High Court that the word "morality" occurring in Art. 19(4) is not restricted to sexual morality.

25. Now as indicated earlier, enactment of provisions analogous to impugned provisions analogous to impugned provision is a national phenomenon and is not confined to the Bombay Act alone. The principal motive in enacting such a provision is undeniably to curb the creation of vested interests in Co-operative society. This is quite clear from the Statement of Objects and Reasons found in Bill NO. 10 of 1969, which came to be enacted in Maharashtra Act No. 27 of 1969 (See: Maharashtra Government Gazette, Part V, dated March 27, 1969 at page 103). Apart from the other considerations referred to in the Objects of the Bill, emphasis has been on the aspect of checking the unhealthy tendencies and to

curb the concentration of power in a few individuals, which tendencies have been virtually destroying the very object of the cooperative movement.

"Clause 12: In the co-operative movement in this State a group of persons have been holding the key position in several important co-operative institutions simultaneously and for long periods, with the result that new leadership is not being built up to the desired extent and the movement is tending to become a close preserve of a few individuals. To check this unhealthy tendency and to give a more democratic character to the cooperative institutions, it is necessary to prescribe certain limitations in the statute itself. Accordingly, it has been proposed that a person should not hold an important office like Chairman or President in more than one society at each of the three levels viz. Apex, district and Taluka level. Similarly, it has been proposed that a person should not hold such office at more than two levels at the same time. It is also proposed to provide that a person should not be a designated officer of any such society for more than six consecutive years."

As observed by the Division Bench in *Sidheswar Sah. Sakhar Karkhana v. State of Maharashtra* 1983 Mah Lj 79:

"The whole object of enactment of Section 73-A(1) and (5), therefore, was to prevent the co-operative societies becoming a preserve of a few individuals because for a long time, the same group of persons dominated the co-operative societies. The reasonable period during which the person could be allowed to continue to hold the office of a designated officer was determined by the Legislature at six years, Section 5 of S. 73-A thus apart from providing that a person shall not continue to be a designated officer for more than the consecutive period of six years, had therefore necessarily to provide for an automatic termination of the status as an authorised officer at the expiry of the said period of six years."

26. It was urged by Mr. Deshpande that the view taken by the Madhya Pradesh High Court in *Brij Gopal Denga and Others Vs. State of Madhya Pradesh and Another*, is contrary to the decision of the Full Bench of this court in *Fram Nusservanji Balsara Vs. State of Bombay and Another*. It does appear that the Madhya Pradesh High Court did not agree with the view taken by the Full Bench that morality which is accepted by all the world. The view taken by the Full Bench of this Court is binding on us. The Full Bench did observe that the morality is the morality generally accepted throughout the length and breadth of India. We have indicated above that the co-operative movement is now a national phenomenon and, therefore, the principles of morality underlying the co-operative principles or can be said to have been accepted generally throughout India.

27. Considered in the light of the object of the Act, the circumstances and the background in which the impugned provision came to be enacted or evil sought to be remedied thereby, we are of the view that even assuming that the

impugned provision offends Art. 19(1)(c). The restrictions imposed are reasonable restrictions in the interest of morality within the meaning of Article 19(4) . Taking any view of the matter, therefore the impugned provision is valid and does not in any manner affect the right of the members of the society under Article 19(1)(c) of Constitution of India. We may also mention that the society of which the petitioner is a member has in this petition supported the legislation.

28. In the result, the petition fails. Rule discharged. In the circumstances, there will be no order as to costs.

Mr. Deshpande prays for a certificate under Art. 134(a) of the constitution of India. We see no reason to grant the prayer. Mr. Deshpande also prays for continuance of the interim relief already granted by this Court . Since we have upheld the validity of the impugned provision, we also see no reason to grant this prayer.

29. Rule discharged.