

(2013) 12 KL CK 0072

In the High Court Of Kerala

Case No : Writ Petition (C) No's. 24577 and 28603 of 2013

Mohanan

APPELLANT

Vs

Sulthan Batheri Service Co-operative Bank Ltd.

RESPONDENT

Date of Decision : 24-12-2013

Acts Referred:

Citation : (2014) 1 KLT 425

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : K.K. Chandran Pillai, Thomas James Mundackal, Arun Antony, S. Ambily, K.V. Shenu and P. Narayanan, for the Appellant; George Poothottam and Spl. Government Pleader (D. Somasundaram), for the Respondent

Judgement

K. Vinod Chandran, J.—W.P. (C) No. 24577 of 2013 essentially is a lament that the last frontiers which maintained a semblance of democratic functioning and good governance has been invaded by short-sighted political considerations. A Society commenced in the 1950's is said to have been administered by members who chose to hide their political identities, at least when it came to the election and administration of the Society. They too succumbed to the seducing possibilities held-forth by "absolute power". The petitioners are the members of the Managing Committee elected to power in 2008, the last elections. They confess to have fallen prey to that lure and brought out their political affiliations to align themselves to form a majority so as to take over the administration of the Society. The rival group is said to have relentlessly pursued their agenda to come back to power. Whether the attempt to divide the Society is in furtherance of that agenda and even then or otherwise whether it is in consonance with the Kerala Co-operative Societies Act 1969 (hereinafter referred to as "the Act"), the Kerala Co-operative Societies Rules, 1969 (for brevity, "the Rules") and the Bye-laws of the Society is the question urged in one of the above Writ Petitions. W.P. (C) No. 28603 of 2013 seeks an expeditious conduct of election to the Society. The facts, briefly stated, are that the Board of Directors took charge in the year 2012 after a duly conducted election and the 3 petitioners along with 5 others

constituted the majority group in a Board, having a total of 15 members. One member from the petitioners' group resigned, thus causing a stalemate in the administration, which was further confounded by the resignation of all the 7 members in the other group. This resulted in a lack of quorum and an Administrator was appointed in December, 2012. After a period of 6 months, an Administrative Committee, consisting of respondents 5 to 7, was appointed by the Registrar with the 5th respondent as the Convenor.

2. With respect to the antecedents, it is to be noticed that 2 Societies were granted registration in the Nenmeni and Noolpuzha Grama Panchayats, overlapping the area of operation of the respondent-Bank. The Board of Directors of the respondent-Bank, who were in office at that point of time, contested the registration of the two new Societies and admittedly in the year 2003 itself a resolution was placed before the general body of the respondent-Bank, to divide the Society into three, which was rejected by a vast majority. This is the agenda, which the minority group in the Board of Directors, which took charge in 2012, is alleged to have pursued, when resigning from the Board of Directors and facilitating 3 persons amongst them to be appointed as the members of the Administrative Committee.

3. Incidentally it is also averred by the petitioners that the challenge against the formation of the 2 new societies of Nenmeni and Noolpuzha was pursued by the erstwhile office bearers of the Society, before the various statutory authorities, and this Court. However, the Writ Petition filed before this Court against the order of the Government approving such registration was withdrawn after the present Administrative Committee came into office. This contention though accepted by respondents 5 to 7, is countered on the premise that the formation of the new societies is not a subject matter arising in the present case and if the petitioners were aggrieved by the withdrawal of the said Writ Petition, they ought to seek remedies against the same.

4. W.P. (C) No. 24577 of 2013 essentially assails the decision taken in the Annual General Meeting (A.G.M.) held on 14.08.2013, to restrict the area of operation of the respondent-Bank to the Sulthan Batheri Grama Panchayat alone, and to sever the areas coming within the Noolpuzha and Nenmeni Grama Panchayats, so as to bring the respective areas under the Grama Panchayats within the area of operation of the new Service Co-operative Banks/Societies registered therein. The Administrative Committee appointed to carry on the day-to-day affairs of the respondent-Bank could not have taken a policy decision to divide the Society and surrender the assets and liabilities as also the members to the newly formed societies, is the contention. The resolution of the General Body is challenged on the ground that, it is not done in consonance with the Act and Rules. The members of the Administrative Committee, who were respondents 5 to 7, as also the Department seeks to sustain this action as one in consonance with the Act and Rules and attempts to project the division as a necessary statutory mandate.

5. I have heard Sri. K.K. Chandran Pillai, learned Senior Counsel appearing for

the petitioners, learned counsel Sri. George Poothottam appearing for respondents 5 to 7 and the learned Special Government Pleader (Co-operation) appearing for the official respondents.

6. Exhibit P1 is the notice dated 05.08.2013, published on 07.08.2013, by which an A.G.M. of the respondent-Bank was convened on 14.08.2013. S. 29 of the Act speaks of A.G.M. and the periodicity of holding the same as also the matters to be considered thereon. Sub-s. (5) also provides for a notice stating the place, date and hour of the meeting together with the agenda. Ext. P2 is the profit and loss account, draft budget and the audit report placed before the general body; as per agenda item Nos. 5 to 9 in Ext. P1. Item Nos. 1 to 4 and 13 to 15 in Ext. P1 are incidental to every meeting. Item No. 10 refers to "bye-law amendments/ approval of new bye-laws", the details of which are said to have been published in the Notice Board. Item No. 11 deals with S. 14B and R. 41 and the procedure in accordance with the same" and item No. 12 is the interactive session. At item No. 10, there is a descriptive note given as Note-4, which refers to many amendments; but not any matter touching upon the area of operation or the transfer of assets and liabilities.

7. On the basis of the said notice, an A.G.M. was convened on 14.8.2013, in which altercations occurred between the members and which led to the arrest and removal of many members. Allegations and counter-allegations are made by both the groups, which this Court need not look into, to resolve the present controversy. Suffice it to say, the petitioners assert that the meeting was disrupted because there was not even a Minutes Book in the venue of the meeting to record the attendance or the proceedings of the meeting and the respondents 5 to 7; overwhelmed by the number of members present, refused to record the attendance. This resulted in a row, which ultimately ended in many of the members being arrested and removed from the venue. The respondents 5 to 7 vehemently allege that there was a conscious attempt on the part of the petitioners to somehow disrupt the meeting which was averted by the timely intervention of the police and the meeting was carried on with 321 members. The bye-law provided for only a quorum of one-third of the total members or 25, whichever is lower, which stood satisfied, is their contention. The total membership of the Society comes to 12900, is an admitted fact.

8. In any event, the respondents urge, the resolution placed in the meeting was unanimously passed and the general body decided to restrict the area of operation of the respondent-Bank as indicated above and surrender the assets and liabilities to the newly formed societies in the other two Grama Panchayats. Ext. P14 notice dated 27.8.2013 was also published on 29.8.2013, declaring the resolution passed and calling upon the members who have individual dissent, to submit an application/option as per S. 14(4) of the Act.

9. The Act provides for amalgamation, transfer of assets and liabilities and division of society by S. 14, which, prior to 14.2.2013, required previous approval of the Registrar. After amendment, the requirement is only a resolution

passed in a general body meeting, convened as per the Act and the Rules. What is then contemplated is only a notice under sub-s. (4) of S. 14 to the members and creditors for exercising an option to withdraw the shares, deposits or loans, as the case may be. Sub-s. (5) is a deeming provision by which the members or creditors who have not chosen to exercise an option within the period specified in sub-s. (4) would be deemed to have given assent to the proposals in the resolution. On meeting the claims raised in the options exercised by the creditors or members and after the stipulated notice period, on the deemed assent; the resolution takes effect. Under sub-s. (7), in the case of a resolution involving any transfer of assets and liabilities, that resolution would be a conveyance vesting such assets and liabilities in the transferee. So much; all parties agree, is a fait accompli, which could be achieved by the general body of the society without any intervention from the Department.

10. In effectuating a resolution passed under S. 14, one has to necessarily look at R. 13 of the Rules. Sub-rr. (1) and (2) of R. 13 speaks of an application to the Registrar by every society deciding to act under S. 14 and the approval of the Registrar. This, according to the learned Senior Counsel appearing for the petitioners, is redundant after 14.2.2013 when the previous approval of the Registrar has been taken away by an amendment to S. 14. But, however, sub-rules (3) and (4) acts with full force. Before amendment, after an approval was received, and after amendment, even without such approval, the society desiring to act under S. 14, has to convene a special general body meeting, called specifically for the purpose, giving 15 clear days notice and a resolution passed with two-third majority, for amalgamation, transfer of assets and liabilities or for division; as mandated by sub-r. (3) of R. 13. Sub-r. (3) also mandates that in the case of amalgamation or division, the resolution shall include the draft bye-laws proposed for adoption. Then the society is to report to the Registrar the fact of a resolution so passed, under sub-s. (6) of S. 14, on receipt of which, the Registrar shall satisfy himself on the procedure and if properly followed, declare the resolution to have taken effect.

11. The bye-laws of the respondent-Bank, extracts of which are produced as Ext. P18, indicate that as per bye-law 4, the area of operation of the Bank extends over Batheri, Kidanganad, Noolpuzha and Nenmeni Villages. The convening of a general body meeting in the ordinary course requires a clear notice of 7 days and bye-law 25(3) provides that in the notice for general body, if any amendments to the bye-laws are proposed, each member should be given stipulated notice and the notice should be clear and cogent as to the amendments proposed. Any bye-law amendment so proposed has to be specifically recorded in the Minutes Book as per bye-law 30(b). The Minutes Book so kept for the general body meetings and special general body meetings are to be maintained as per bye-law 67(1). Bye-law 71 speaks of amendments to the bye-laws, which are to be made only in a special general body and no such amendment shall be made unless it is passed with a majority of the attending members.

12. The respondents 5 to 7 raise a preliminary objection, with respect to the maintainability of the Writ Petition under Art. 226, when there are available alternate remedies against the resolution adopted by the general body, viz., under R. 176, before the Registrar who is competent to rescind a resolution passed by the Society. The respondents 5 to 7 reminds this Court that this Court has always showed restraint in exercising jurisdiction under Art. 226 in such matters and prays that the Writ Petition be dismissed relegating the parties to the statutory authorities. It is also contended that the stage of convening a special general body meeting has not reached. Respondents 5 to 7 contend that the Administrative Committee has not taken any policy decision and it was the general body of the Society which took a resolution, that too, unanimously, for dividing the Society. This again is projected as being a statutory mandate going by S. 2(oaa), being the definition of "Primary Agricultural Credit Society", read with S. 7(1)(c).

13. The Department too, by a counter affidavit, supports the contention that what has been done by the general body of the Society is only compliance of the mandate of S. 2, which restricts the area of operation of a society defined therein, confining it to a Village, Panchayat or a Municipality. Since the area of operation of the respondent-Society was spread over 4 villages, the division effected by the general body was a necessity to comply with the statutory mandate. Especially the mandate of S. 7(1)(c) "that the area of operation of the proposed society and the area of operation of another society of similar type do not overlap". It is also contended by respondents 5 to 7 that the stage of convening of a special general body has not reached. Only then would there be any cause of action and reason for concern to the petitioners, is the contention. The Department supports respondents 5 to 7 in so far as stating that the Registrar's function arises only when such resolution is passed in a special general body meeting and is placed before the Registrar as provided under sub-r. (5) of R. 13. The learned Special Government Pleader as also the learned counsel appearing for respondents 5 to 7, on the above contentions, seek dismissal of the Writ Petitions.

14. On the background of the various provisions of the bye-laws, Act and the Rules, this Court is enjoined upon to decide as to whether the resolution passed in the A.G.M. of the respondent-Society is in accordance with law or not Normally this would have been best left to the statutory authority. It is also very evident that under R. 176, pointed out by the respondents themselves, the Joint Registrar is competent to look into these aspects in deciding upon whether a resolution is to be rescinded or not. In this context, it has to be specifically noticed that the petitioners were consistently before the official respondents. Ext. P5 was a complaint filed before the 9th respondent, Joint Registrar, on 16.08.2013, where the petitioners allegedly complained about the farce of a general body meeting convened by the respondents 5 to 7, which was claimed to have been consciously disrupted with the aid of the police to carry a resolution which was never notified to the members. Then again a total number of 519

members; more than the members who are said to have been present and participating in the A.G.M., filed a complaint, Ext. P6, before the 8th respondent, the Registrar of Co-operative Societies. None from the Department moved a little finger to allay the apprehension of the petitioners or to enquire into what actually happened at the meeting.

15. Again an application was moved before the 9th respondent to direct the 1st respondent-Bank to give the details of the resolution said to have been passed on 14.8.2013. Specifically a prayer was made for rescinding the resolution by Ext. P9, filed before the 9th respondent. If R. 176 were to be invoked, definitely the official respondents could have done so on any of the complaints filed by the petitioners and the other members of the respondent-Bank. The receipt of these applications, exhibited along with the Writ Petition, is not disputed by the Department in its counter affidavit, which is filed by the Joint Registrar of Co-operative Societies (General), Wynad, who is the 9th respondent herein. The 9th respondent, who is purported to have powers under R. 176, on whom the respondents predictably place absolute faith; has filed a counter affidavit supporting the stand of respondents 5 to 7.

16. The Joint Registrar specifically points out in the counter affidavit that 2 other Primary Agricultural Credit Societies, viz., Noolpuzha Service Co-operative Society Ltd., with Noolpuzha Panchayat as its area of operation; and Nenmeni Service Co-operative Society Ltd., with Nenmeni Panchayat as its area of operation, have been functioning from 2003 onwards and there is overlapping of the area of operation of the 1st respondent-Bank. The Joint Registrar supports the stand of respondents 5 to 7 that S. 7(1)(c) of the Act restricts any overlap of the area of operation of two societies and the restriction or rather confinement of the area of operation as provided in S. 2(oaa) would point to the fact that the general body of the Society has complied with the statutory mandate in resolving to divide itself into three. It is anybody's guess as to what could happen if the petitioners are relegated to the remedy under R. 176 when the authority conferred with such power files an affidavit before this Court supporting the resolution purportedly adopted in the A.G.M. of the Society. Hence, this Court is constrained to invoke its powers under Art. 226 to examine as to whether the action was in any manner illegal or irregular in so far as the mandatory procedures are concerned.

17. The learned counsel for the petitioner relies upon *Gangadharan v. Administrator* (1988 (1) KLT 624), *Raghavan Nair Vs. The Joint Registrar of Co-operative Societies and Others*, *Trissur District Co-operative Bank Vs. State of Kerala*, and *Jt. Registrar of Co-op. Societies Vs. T.A. Kuttappan and Others*, *Gangadharan (supra)* is relied on to contend that the Administrator or Administrative Committee cannot take policy decisions and can only discharge routine functions. However, it is to be noticed that this Court, in the said judgment, had merely spoken about the desirability to limit the powers of the Administrator, to routine matters and directed the State Government to introduce

necessary measures supportive of democratic functioning of the Co-operative Societies. This was also the ratio in Thrissur District Co-op. Bank (*supra*). In the nature of examination conducted and carried on by this Court in the instant case, the question whether an Administrative Committee can take policy decisions need not be looked into.

18. Raghavan Nair (*supra*) dealt with the powers of an Administrator or an Administrative Committee to effect regular appointments in a Co-operative Society. Suffice it to notice the decision of the Supreme Court in T.A. Kuttappan (*supra*), which indicated the role of an Administrator or a Committee appointed by the Registrar, in case of a supersession; as one to bring on an even keel a ship which was in doldrums. In the event of an administrative impasse, the situation can be no different, because the intention is not to thwart the democratic functioning, but to ensure that there is no stalemate in the functioning of the Society in the interregnum in which the Society is put back into the hands of an elected Managing Committee.

19. This Court is conscious of its limitations, since a Society is not a creature of Statute and the Statute entails and obliges only registration and regulation by the Department. The prescription in the Act, Rules and the bye-laws are fairly clear and has been detailed in the earlier part of this judgment. Obviously the notice, Ext. P1, is published on 07.08.2013, which complies with bye-law 24, wherein 7 clear days are prescribed for convening an A.G.M. Whether clear 15 days are required as provided under sub-r. (3) of R. 13 would be discussed later. What is indicated in Ext. P1 as item No. 11 is merely "14B Section, R. 41 and the procedure with respect to the same". This cannot be taken as a clear and cogent description of what is proposed to be moved at the general body meeting. While saying so, this Court has to necessarily notice that the provision mandating clear and cogent description, is with respect to a bye-law amendment. The contention of the petitioners that, no division could be effected without a bye-law amendment, thus, assumes significance. Admittedly the area of operation of the Society is spread over 4 villages, which area of operation was determined by bye-law 4. Any division or transfer of assets and liabilities, especially involving reduction of the area of operation, has to be necessarily done, only after a bye-law amendment

20. It is the contention of the learned Senior Counsel for the petitioners that the division of the Society in the present case cannot be effected without an amendment to the bye-laws, since, as noticed above, bye-law 4 depicts the area of operation as the four villages of Batheri, Kidanganad, Noolpuzha and Nenmeni. This contention is manifestly correct. To remove Nenmeni and Noolpuzha from the area of operation of the Bank, what is to be primarily done, is the amendment of the bye-laws and only then can there be a resolution passed under S. 14, which should be one passed in a special general body meeting. Such bye-law amendment again would require a clear 15 days notice with the amendment proposed being detailed clearly and cogently in the notice. These provisions,

obviously, has been given a complete go-by in the instant case. The Administrative Committee, which is implementing the agenda to divide the society into three has proceeded in total violation of the statutory provisions.

21. This Court is disabled in looking at the resolution, for, the respondents 5 to 7 have merely asserted that the resolution was passed and has not cared to produce it before this Court. It is contended that a new Minutes Book was used for the general body meeting on 14.8.2013 and a resolution was placed before the members present and voting, who unanimously decided to divide the Society into three. The petitioners have, by way of various representations before the 8th and 9th respondents, sought for a direction to the respondents 5 to 7 to issue a copy of the same. The application filed under the Right to Information Act was also declined.

22. The petitioners also specifically allege that the Secretary is a mere stooge and the actions of the respondents 5 to 7 lend credence to such allegation, when they chose to file an affidavit with the Convenor of the Administrative Committee representing the Society. The Convenor specifically avers that the counter affidavit is sworn to on behalf of respondents 1 to 3 and 5 to 7. The Chief Executive Officer of the Society, being the Secretary, is the person in charge of the books of the Society and that officer has not chosen to file an affidavit and has willingly conceded to the Convenor. Curiously enough, the counter affidavit also does not produce the resolution.

23. What is available with the Court is only Ext. P14, produced by the petitioners, by which the respondents 5 to 7 stand. Looking at Ext. P14, the resolution was one which decided to confine the area of operation of the respondent-Bank to Sulthan Batheri Grama Panchayat and concede Noolpuzha and Nenmeni Grama Panchayats to the existing Service Co-operative Banks in that area. It also decides to divide the members and creditors and transfer the assets and liabilities to the said two Societies. The publication, Ext. P14, invites "individual dissents" in the form of applications/option under sub-s. (4) of S. 14. Sub-s. (4) of S. 14 does not speak of any "individual dissent" and merely requires the exercise of an option by the individual member or the creditor to withdraw the shares, deposits or loans and on such option being not exercised, deems an assent to the proposal, as per sub-s. (5) of S. 14.

24. If, as the respondents contended, a special general body meeting was required under R. 13 subsequent to Ext. P14, it is not clear as to how that could have been convened after the members have exercised option or on no option being exercised. After the two months period stipulated in Ext. P14, necessarily the division would come into effect as provided under sub-s. (6) of S. 14. Such division having come into effect, the respondent-Bank with the area of operation spreading over the 4 villages taking in three Grama Panchayats, would no longer be available in that form and state and there could be no special general body meeting of the respondent-Bank as such, including the members within the four villages. What would remain after 2 months is a report to the Registrar detailing

the satisfaction of the options exercised by the members and creditors on the deemed assent of those members who did not choose to do the same. Upon such report, Registrar would have to decide on the approval to be granted. From the counter affidavit of the Joint Registrar, which reflects the view of the Department, it requires no divining as to what the Joint Registrar would do.

25. In the context of the finding that no action could have been taken under S. 14 without a bye-law amendment, the resolution purportedly passed unanimously by the general body cannot be sustained under the provisions of the Act, Rules and bye-laws. It is also to be noticed that Ext. P1, even according to the respondents, intimates the members about the division of the Society as per item No. 11 referring to S. 14B and R.41. S. 14B does not refer to amalgamation, etc., but partnership to Co-operative Societies. What was indicated could have been S. 14(1)(b), which speaks of dividing itself into two or more societies. That was also not done in the instant case and what has been effectively done is the transfer of assets and liabilities, whole or part, to two societies as referred to in sub-cl. (a) of S. 14(1). In that view of the matter, R.41, dealing with procedure regarding the constitution of committees of new societies in the case of a division of a society, also is not relevant. In such circumstance, though Ext. P1 notice has been issued with clear 7 days notice, item No. 11, which is relied upon by the respondents, has absolutely no connection with the decision taken, as revealed in Ext. P14.

26. For a comprehensive understanding, it is deemed fit that the contention of the respondents 5 to 7 as also the Department that the transfer as effected, evidenced by Ext. P14, was in compliance of a statutory mandate, is also examined. The respondents 5 to 7 in their counter affidavit list out the procedure to be adopted in the case of an action under S. 14 as under:

- (1) Proposal for division to be approved by the General Body u/s 14.
- (2) After the approval of the same, time should be given to the members to exercise their option, within 2 months.
- (3) The said proposal has to submit before the Joint Registrar under Rule 13(2).
- (4) The said approval of the Joint Registrar has to be approved by the Special General body convened under Rule 13(3).
- (5) After approving the same by the Special General Body the said fact-has to be reported to the Joint Registrar; and
- (6) Finally, the Joint Registrar issue a declaration that Resolution has taken into effect and thus division of the 1st respondent society become final.

27. There is no mandate in S. 14 or R. 13 to first place the resolution in the general body and on its passing, to be approved by the Joint Registrar and then to place the approval before a special general body, which resolution, on being passed, has to be further declared by the Joint Registrar to have taken effect. S.

14 has to be read along with the Rules framed, under S. 109 of the Act. The procedure and conditions for change in the form and extent of the liability of the societies is one of the matters in which S. 109 confers rule making authority on the Government. R. 13 prescribes such procedure.

28. Readings 14 with R. 13, there is a mandate for a resolution under S. 14 to be placed before a special general body meeting called for the purpose, giving clear 15 days notice. As was noticed earlier, on the prior approval being omitted in S. 14 by Act 8/2013, sub-rr. (1) and (2) of R. 13 becomes redundant. Hence, in prescribing the procedure to be adopted by a society under S. 14, sub-r. (3) of R. 13 is relevant. On such resolution being passed, sub-rr. (4) of R. 13 notices the deeming provision under sub-s. (6) of S. 14 and mandates a report to the Registrar on such resolution having taken effect under sub-s. (6) of S. 14. The Registrar, under sub-r. (5) of R. 13, has only to satisfy that the procedure has been properly followed to bring out a declaration that the resolution has taken effect. This is the proper understanding of the procedure to be followed under S. 14 read with R. 13. The attempt of the respondents is only to somehow defend their actions, which fall short of the statutory mandate in passing a resolution under S. 14.

29. Next is the contention based on definition of S. 2(oaa) and S. 7(1)(c). The respondents rely on *Irinjalakuda Co-operative Agricultural and Rural development Bank Ltd. Vs. Kerala State Co-operative Agricultural and Rural Development Bank Ltd. and Others*, concerned with S. 2(oc), which reads as under:--

Primary Co-operative Agricultural and Rural Development Bank" means a society having its area of operation confined to a taluk "and the principal object of which is to provide for long term credit for agricultural and rural development activities;

30. S. 2, as has been substituted in 2010 and renumbered in 2013, confines the area of operation of a Primary Agricultural Credit Society to a Village, Panchayat or a Municipality. S. 2(oaa) and the provisos reads as under:

(oaa) "Primary Agricultural Credit Society" means a Service Co-operative Society, a Service Co-operative Bank, a Farmers Service Co-operative Bank and a Rural Bank, the principal object of which is to undertake agricultural credit activities and to provide loans and advances for agricultural purposes, the rate of interest on such loans and advances shall be the rate fixed by the Registrar and having its area of operation confined to a Village, Panchayath or a Municipality:

Provided that the restriction regarding the area of operation shall not apply to Societies or Banks in existence at the commencement of the Kerala Co-operative Societies (Amendment) Act; 1999 (1 of 2000):

Provided further that if the above principal object is not fulfilled, such societies shall lose all characteristics of a Primary Agricultural Credit Society as specified in the Act, Rules and Bye-laws except the existing staff strength.

The 1st proviso, hence, saves the respondent-Society from the restriction in sub-clause (oaa), since it has been in existence before Act 1 of 2000.

31. Petitioner Society in Irinjalakuda C.B.L. (Supra) had its area of operation spreading over two taluks in Thrissur Districts. Essentially the challenge was against another Primary Co-operative Agricultural and Rural Development Bank (PCARD) being established in one of the Taluks. The Court found that the above definition of a PCARD Bank mandates the trimming of area of operation confining the same to a Taluk and also found that sub-s. (5) of S. 12 of the Act confers power on the Registrar to compulsorily alter the area of operation. It is to be noticed that there is an essential difference between the definition of a PCARD Bank under S. 2(oc) and a Primary Agricultural Credit Society defined under S. 2(oaa). The 1st proviso to S. 2(oaa) specifically exempts the petitioner herein from confining its area of operation to a Village, Panchayath or a Municipality. It is also of considerable import that sub-s. (5) of S. 12 stands omitted by Act No. 8 of 2013. The said decision in such circumstance is not applicable herein.

32. The reliance placed on S. 7(1)(c) is also frivolous. S. 7 relates to registration and sub-clause (c) of sub-s. (i) speaks of the satisfaction of the Registrar that the area of operation of the proposed society, sought to be registered, and the area of operation of another society of similar type do not overlap. Such is a satisfaction to be arrived at on a new society seeking registration under the Act. Such satisfaction would have been relevant when two new societies in the Nenmeni and Noolpuzha Panchayats sought for registration, the area of operation of which would definitely overlap that of the existing respondent-Society. Be that as it may, that is not an issue raised herein. However, it can be unequivocally and definitely held that S. 7(1)(c) or restriction in S. 2(oaa) is not applicable to the respondent-Society which was registered as early as in the 1950's.

33. What remains to be considered is as to what is the relief that could possibly be granted under Article 226 of the Constitution of India, in the context of the existing alternate statutory remedy. It has already been held that the statutory remedy available under R. 176 does not at all provide the petitioners with an effective remedy, since the Department has categorically in the counter affidavit put their cards on the table. It does not require any deep probe to come to the conclusion that the Department's declared view on the subject would render such statutory remedy to be one which is not efficacious. Though, as noticed above, the Society is not a creature of statute, the mandate of a registration and the regulatory measures as also the hedged-in safeguards provided for the smooth, democratic functioning of the Co-operative Societies to achieve the objects as envisaged in the directive principles of State policy enumerated in the Constitution of India makes the statute one enacted on grounds of public policy. This Court cannot shut its eyes to the flagrant contravention of law by a set of Administrators appointed to carry on the functions of the Society. By reason of the elected Managing Committee having been rendered quorum-less, the stop-gap arrangement, cannot result in the affairs of the society being altered so

drastically, causing discernible prejudice to the members. In such context, it would only be proper for this Court to invoke the jurisdiction under Art. 226 to bring back the society to its original state. This Court cannot and does not make any judgmental observations on the sanctity, viability or practicability of the action purportedly taken under S. 14. It would be for the general body of the Society to decide that. But, the procedural irregularity is glaring and perceivable. An examination of that, is the power conferred on the Registrar, under sub-r. (5) of R. 13 before a declaration is made. According to this Court, that alone would remain to be done on the expiry of the stipulated time in Ext. P14.

34. The Registrar also has the jurisdiction to rescind the resolution as provided for under R. 176, when such resolution appears to him to be ultra vires the objects of the Society or is against the provisions of the Act, Rules or bye-laws or of any directions or instructions issued by the Department, or calculated to disturb the peaceful and orderly working of the society or is contrary to the better interest of the society. The respondents rely on a decision of learned Single Judge of this Court in N.A. Gregory Vs. The Secretary Manimala Service Co. Operative Bank and others, to contend that R. 176 enables the Registrar to scrutinize the validity of a resolution. That was a case in which the President of a Co-operative Society was removed by a "No Confidence Motion". It was held that even if there was no such provision in the Act and Rules or the bye-laws; if the Managing Committee could elect a President then they should be deemed to have power to undo what they have done. The power to move a "No Confidence Motion" in the absence of a specific provision in the Act, Rules and Bye-laws of a society, declared by the above decision, was set at naught by a Full Bench decision of this Court in S. Lakshmanan, President, Thiruvilwamala Weavers Co-operative Society Vs. V.Velliankeri, member of Board of Directors, Thiruvilwamala Weavers Co-operative Society Ltd. and Ors, However it has to be noticed that the power under S. 176 as dilated upon in Gregory (supra) has not been interfered with by the Full Bench. Apposite in the instant case, is the finding of the learned Single Judge that a resolution to have validity has to pass the dual test; of it being not contrary to the Act, Rules or Bye-laws and it having been passed at a meeting convened and held in accordance with law.

35. As was noticed in the present case, the remedy under R. 176 is rendered illusory; insofar as the applications filed by the petitioners and other members, have failed to motivate the authority under R. 176 to act. Quite contrary to the power conferred and the duty enjoined upon the Joint Registrar, a counter affidavit is filed justifying the action of the Society purportedly taken under S. 14. There is hence a complete break down of the machinery contemplated under R. 176. The Hon'ble Supreme Court has held in State of M.P. and Others Vs. Sanjay Nagayach and Others, that "When an authority invested with the power purports to act on its own but in substance the power is exercised by external guidance or pressure, it would amount to non-exercise of power, statutorily vested" (Sic. Para 36). This Court is constrained, in the facts of the case, to arrogate to itself the powers conferred on the Registrar to examine the procedure

and the compliance of the provisions of the Act, Rules and bye-laws to hold that the society cannot transfer its assets and liabilities and effectuate a division by virtue of the resolution alleged to have been unanimously passed in the A.G.M. dated 14.08.1013 under S. 14 of the Act and R. 13 of the Rules. It is declared that such resolution is bad for the reasons stated above and the notice, Ext. P 1, could not have concluded in such a resolution. Before parting with the case, it has to be noticed that it is unfortunate that the officers of the Department willingly agree and shoulder the baggage of one group or the other for base and petty considerations. It does not speak well of the self-respect of those officers who are statutorily enjoined to take forward the avowed object of advancing the co-operative movement in the country, which has now been recognised as a Constitutional right. It is to be noticed that this Court had many a time commented upon the highly politicised manner in which the co-operative sector in the State is carried oil (Gangadharan v. Administrator, 1988 (1) KLT 624; Padmanabhan v. Joint Registrar, 1995 (1) KLT 486). The Honourable Supreme Court has also in Sanjay Nagayach (supra) reminded the statutory functionaries under the respective Co-operative enactments to ensure conduct which is above suspicion and emphasized the need to function independently without external pressure. It has been directed that "a statutory authority shall not act with pre-conceived notion and shall not speak his masters voice, because the formation of opinion must be his own, not of somebody else in power, to achieve some ulterior motive." (Sic. Para 37) Despite the anguish and concern expressed by this Court as also the directions issued by the Hon"ble Supreme Court, the Department acts; like a chameleon changing colours with the political wind.

W.P. (C) No. 24577 of 2013 is allowed with the declaration as stated above. W.P. (C) No. 28603 of 2013 is also allowed, directing the official respondents to ensure that the Administrative Committee passes a resolution and take steps to conduct an election to the respondent-Society within a period of six months from today.