(1978) 12 P&H CK 0007

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 3992 of 1978

Mota Singh, Etc. APPELLANT

Vs

State of Punjab, Etc. RESPONDENT

Date of Decision : 21-12-1978

Acts Referred:

Constitution of India, 1950 — Article 13, 14, 19, 31, 31A
Defence of India Rules, 1962 — Rule 26, 30(1)
General Clauses Act, 1897 — Section 14
Government of India Act, 1915 — Section 108
Interpretation Act, 1889 — Section 32
Punjab General Clauses Act, 1898 — Section 12
Saurashtra Barkhali Abolition Act, 1951 — Section 5

Citation : (1979) 1 ILR (P&H) 338

Hon'ble Judges : S.S. Sandhawalia, C.J;S.C. Mital, J;R.N. Mittal, J

Bench : Full Bench

Advocate : B.S. Khoji, for the Appellant; I.S. Tiwana, Additional A.G. and M.S. Kang, for Respondents 3 to 5, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sandhawalia, C.J.—A challenge to the constitutionality of the power of compulsory amalgamation of societies vested in the Registrar of Cooperative Societies recently by Sub-sections (8), (9), (10), (11) and (12) of Section 13 of; the Punjab Co-operative Societies Act (by Punjab Act No. 8 of 1978) has necessitated this reference to the Full Bench in this set of four connected writ petitions.

2. As is manifest, the aforesaid issue as also some ancillary ones to which reference would follow hereinafter are pristinely legal and, therefore, a brief reference to the facts in Civil Writ Petition

No. 3992 of 1978 would suffice. The 113 writ-Petitioners therein claim to be the members of the Behbalpur Co-operative Agricultural Service society which is duly registered under the Punjab Co-operative societies Act and is averred to have in all about 360 members. It is the claim of me Petitioners that the Society aforesaid has a sound financial position and was, therefore, both administratively and financially viable and able to provide the essential services to its members. However, alter the recent additions of sub-sections (8) to (12) of Section 13 of the Punjab Co-operative Societies Act, the Assistant Registrar of Co-operative Societies, exercising the powers of the Registrar had passed the impugned; proposed order, Annexure P-1, under the aforesaid provisions, directing the amalgamation of the Behbalpur Co-operative Agricultural Service Society along with the Kot Fatuhi Co-operative Agricultural Service Society and the Kotla Co-operative Agricultural Service Society Limited with the principal Society of the Thinda Co-operative Agricultural Service Society. It has been stated in the aforesaid impugned order that the Assistant Registrar after due consideration of the financial position and working condition of the aforesaid societies had come to the conclusion that they were not financially or administratively viable units and. had failed to provide essential services to their members and, therefore, it would be in the interest of the amalgamating societies to amalgamate with the principal society, so that the latter can function thereafter as a sound viable financial and administrative unit. Alter specifying the conditions in the proposed order, a notice had been served on the amalgamating societies and the principal society as also their creditors that if any society or any creditor of such society or societies has objections to such amalgamation, they may file the same before the 16th of September, 1978. Similar, if not identical orders have been passed by the respective Assistant Registrars with regard to the other co-operative societies and aggrieved thereby, the Petitioners have preferred these writ petitions.

3. Ere I come to the material provisions of sub-sections (8) to (12) of Section 13, which are under challenge, it is necessary to recall, albeit briefly, the legislative history preceding their enactment. Section 13 deals with the amalgamation, transfer of assets and liabilities, and division of co-operative societies. Sub-sections (1) to (7), which already existed on the Statute Book, provided for a voluntary amalgamation or division of co-operative societies conditional on the passing of a resolution by the two-third majority of the members present and voting subject to the previous approval of the Registrar. The necessary procedural details for effecting such voluntary amalgamation or division of co-operative societies were spelled out in Sub-section (1) to (7) of Section 13, it may be highlighted that the Punjab Co-operative Societies Act, 1961, continues to be in force in fact in both the States of Punjab and Haryana. By the Haryana Act No. 13 of 1971, Sub-sections (8) to (12) were added to Section 13 as applicable to Haryana providing for what may be conveniently called the compulsory amalgamation or division of the societies on the satisfaction of the Registrar. It is not disputed at the bar that the aforesaid provisions thereby vesting the power of amalgamation in the Registrar, if not in pari materia with the provisions of the Punjab Act No. 8 of 1978, which are under challenge are at least very intimately analogous thereto. The Haryana amendment was made the subject-matter of challenge during the continuance of the emergency and the

limited constitutional challenge that was then available in view of the suspension of the fundamental rights under Articles 14 and 19 of the Constitution was repelled by the Division Bench in The Amerheri Co-operative Agricultural Service Society, Amerheri and Anr v. The State of Haryana and Ors. 1976 P.L.J. 302.

4. Mr. B.S. Khoji, the learned Counsel for the Petitioners, in all these writ petitions has laid no challenge to the correctness of the said judgment and indeed has placed substantial reliance therein. The primary contention in this context raised by him is that after the lifting of the emergency he is now entitled to challenge the analogous, if not identical, provisions'' of Sub-sections (8) to (12) added to Section 13 by the Punjab Act No. 8 of 1978 on the basis of Articles 14, 19 and 31 of the Constitution of India. Counsel was, however, fair enough to concede forthwith that he was unable to press any attack on the basis of Article 31 and wished to confine his argument resting on Articles 14 and 19 of the Constitution only.

5. On behalf of the Respondent-State of Punjab, Mr. I. Section Tiwana, the learned Additional Advocate General, Punjab, has at the very threshold raised the objection that by virtue of Article 31A(1)(c), no challenge under Articles 14 and 19 of the Constitution is now permissible to the provisions of Sub-sections (8) to (12) of Section 13 of the Punjab Co-operative Societies Act, as amended. It has been forcefully contended that co-operative societies were clearly and squarely within the ambit of the word ''corporation'' as used in the aforesaid Article and further that there was no manner of doubt that the law under challenge was patently in public interest and equally for the proper management of the co-operative societies.

6. I take the view that the challenge on behalf of the Petitioners on the basis of Articles 14 and 19 must founder against the aforesaid preliminary objection. It is, therefore, necessary to read the material portions of Article 31-A of the Constitution:

31-A. Saving of laws providing for acquisition of estates, etc.

(1) Notwithstanding anything contained in Article 13, no law providing for:

(a) * * * * *

(b) * * * * *

(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or

(d) * * * * *

(e) * * * * *

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31:

Provided that where such law is a law made by the Legislature of a State, the provision of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent:

Provided further * * * *

* * * *

(2) * * * *

7. At the very outset it may be noticed that this is not in dispute that Punjab Act No. a of 1978 has received the assent of the President and, therefore, satisfied the conditions laid down by the first proviso to Article 31A(1). Now, it is plain that as far as the bar to the challenge to the constitutionality of the impugned provisions under Articles 14 and 19 is concerned, the first material question is whether the co-operative societies registered under the Act are covered by the word ''corporation'' as used in Clause (c) of Article 31A(1). Apart from authority, it appears plain to me on principle A also that a co-operative society which undoubtedly has been clothed with legal personality must squarely fall within the term ''corporation'' as used in Article 31A. It is undisputed that the word ''corporation'' has neither been defined in the Constitution nor has it so been defined in the Punjab Co-operative Societies Act. Its generic or ordinary dictionary meaning has, therefore, to be taken into account. On that premises alone, a co-operative society registered under the Act would be well covered by the terminology'' used in Article 31A(1)(c). However, particular reference in this connection is called for to Section 30 of the Punjab Co-operative Societies Act, which is in the following words:

Co-operative societies to be bodies corporate:

The registration of a co-operative society shall render it a body corporate by the name under which it is registered having perpetual succession and a common seal, and with power to hold property, enter into contract, institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it is constituted.

It should be obvious from the above that the provisions of this section clothes a co-operative society registered under the Act with all the hallmarks of corporate personality. In terms of the statute a co-operative society is a body corporate having perpetual succession and a common seal along with the power to hold property and to ener into contracts. These in essence are the indicia of the corporation and it would follow a fortiori that a co-operative society duly registered would come squarely within the ambit of this term.

8. Principle apart, their Lordships in The Board of Trustees, Ayurvedic and Unani Tibia College, Delhi Vs. The State of Delhi and Another, , in paragraph 9 of the report adverted to the question whether an association of individuals would, in the legal sense of the word, become a Corporation, and laid down what in essence are the indicia of a Corporation in the following terms:

There is authority of long standing for saying that the essence of a corporation consists in (1) lawful authority of incorporation, (2) the persons to be incorporated, (3) a name by which the persons are incorporated, (4) a place, and (5) words sufficient in law to show incorporation. No particular words are necessary for the creation of a corporation; any expression showing an intention to incorporate will be sufficient.

9. In view of the above I believe it would be wasteful to elaborate because it appears to me that a co-operative society duly registered satisfies each of the essential tests authoritatively laid. Equally relevant it is to note that a Division Bench judgment of this Court in Sant Sadhu Singh and Ors. v. The State of Punjab and Anr. AIR 1970 P&H 528, to which I was a party has unreservedly held that cooperative societies are corporations. Mr. Khoji had vainly attempted to contend that this finding was arrived at on the basis of a concession and, therefore, was not entitled to any great weight. I am unable to agree because a perusal of the judgment would show that the Bench apart from arriving at the conclusion on its own had noticed that the concession was plainly based on the observations in Board of Trustees'' case (supra) and indeed the matter appeared to be so plain that it was consequently not seriously contested before the Bench.

10. In fairness to Mr. Khoji, I may notice that he attempted to rely on entry 43 of the Union List of the Seventh Schedule of the Constitution for raising a finical argument that a co-operative society must not be deemed as a body corporate. Entry 43 is in the following terms:

Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies.

The aforesaid entry, far from in any way advancing the argument of Mr. Khoji, appears to me on the other hand as buttressing the stand taken on behalf of the Respondent-State. It has been rightly pointed out on its behalf that the entry in fact would indicate that cooperative societies were clearly being treated as a species of the larger genus of corporations and had to be expressly excluded out of the ambit by so providing in, the entry.

11. In view of the above, I am firmly of the view that cooperative societies registered under the Act would come clearly within the concept of a ''corporation'' generally and in particular as the term has been used in Article 31A(1)(c).

12. Once the aforesaid finding is arrived at, the only other prerequisite for invoking the bar under Article 31A(1)(c) would be whether the impugned Sub-sections (8) to (12) of Section 13 provide for the amalgamation of the co-operative societies either in public interest or in order to secure their proper management. At the very) outset it may be highlighted that these conditions are in the alternative and if either one of them is satisfied, then the impugnied provisions would come within the protection of Article 31A and would be beyond

the pale of any challenge under Articles 14 and 19. Indeed Mr. Khoji did not controvert the proposition that the conditions of public interest or proper management may exist in the alternative.

13. In the aforesaid context, learned Counsel for the Petitioners had launched his challenge rather on a high note by contending that because Sub-sections (8) to (12) of Section 13 do not specifically use the words "public interest or proper management" of co-operative societies, therefore, per se the protection of Article 31A could not be afforded to such legislation. Carried to its logical length, the argument was that unless the impugned legislation in terms uses the words "public interest" or "proper management of the corporation", the protection of Article 31A would never become available to such a statute.

14. I am unable to agree and to adopt so doctrainaire and so hyper-technical a construction as has been canvassed on behalf of the Petitioners. No authority could be cited before us for any such proposition and Mr. Khoji even when pressed very fairly conceded that he could cite no judgment in support of his contention. Nor does this line of reasoning commend itself to me on principle. Reading of Article 31A would show that what is contemplated therein, is that the law providing for the amalgamation of corporations should be in a public interest or for the proper management or corporations and not merely that as a formula the impugned legislation should say so. I take the view that on principle it would be for the Court to find and assess on the larger perspective of the legislation whether it directs the amalgamation of the corporations in public interest, or is aimed towards the better management of a corporation or corporations. What the constitutional mandate appears to require is a finding by the Court to that effect and not merely a declaration to this effect incorporated in the Act itself. The kind of construction which is sought to be placed by Mr. Khoji thereon would tend to reduce the meaningful requirements of Clause (c) of Article 31A(1) to one of a mere mechanical formula which should be necessarily repeated in the statute. To put it pithily what Article 31A visualizes is a law which in substance provides for amalgamation in public interest or proper management and not merely a law mechanically declaring it to be so. I am clearly of the view that Article 31A(1)(c) does not envisage any prerequisite that the impugned legislation must in specific terms declare or repeat that the amalgamation is in public interest or for proper management.

15. I am more than amply fortified in the view I take by the Full Bench judgment in Kalikakumarsinhji Lagdhirji and Ors. v. Saurashtra State AIR 1952 Sau 114, were Shah. C.J. speaking for the Bench and construing Clause (a) of Article 31A observed as follows:

Mr. Shah''s first contention is that the impugned Act does not fall within the scope of Article 31A because it does not provide for an acquisition by the State of any estate or of rights therein and that in any event it does not provide for the acquisition by the State. As to the first part of this contention, it is argued that the Act must provide expressly in some Section or the other for the vesting of the Estate or the rights therein in the State and that in as much as the impugned Act did not contain any express provision of this kind, the Act was bad. Reference was made to Section 5 of the Saurashtra Barkhali Abolition Act, 1951, (XXVI of 1951), which says that on the commencement of the said Act, all rights, title and interest of all the Barkhalidars in Barkhali lands shall cease and be vested in the State free from all encumbrances, subject to the provisions of this Act, and it was argued that the impugned Act does not contain a similar provision regarding vesting in the State. However, the provision in the Barkhali Abolition Act was necessary because the Act itself provided for the abolition forthwith of the Barkhali tenure. Quite apart from it, it is in our opinion, not necessary that the impugned Act must expressly state that the Estate or the rights therein acquired under the Act vest in the State, and it will be sufficient if the provisions of the Act themselves show that the acquisition was by the State. In so far as Article 31A speaks of the extinguishment of the rights, the Act does specifically provide for the extinguishment of the Girasdars'' rights in their estate.

I would, therefore, conclude that it is not a prerequisite of Article 31A(1)(c) that the impugned statute must itself declare in terms that the amalgamation of the corporations is either in public interest or in order to secure the proper management thereof.

16. Descending to a lower plank, Mr. Khoji had then contended that if his abstruse argument that the words "public interest" or "proper management" must form part of the statute is unsustainable, then in the alternative it must be firmly and irrevocably established that the challenged law satisfies either of the two contentions. Indeed, it may be noticed that ultimately Mr. Khoji had very fairly conceded that in the absence of any express prescription, the requisites of public interest or proper management of the corporation can also be impliedly read into the statute. However, he contended that in the present case nothing warranted any implied finding that the provisions for the purposes of amalgamation of societies in Section 13(8) to (12) were either in public interest or were necessarily directed towards the proper management of the co-operative societies.

17. I am wholly unable to agree. The history of the cooperative movement and its principles in Europe and in particular in India as also its altruistic objects are too well known and it is unnecessary to launch an elaborate dissertation on the point. It would perhaps suffice to mention that the learned Judges of the Full Bench in H. Puttappa and Ors. v. The State of Karnataka and Ors. AIR 1978 Kar 148, after adverting to this aspect and noticing that in India co-operative movement was initiated by the Government and) since its inception has been largely nurtured and guided by the Government concluded as follows:

It, however, remained as a welfare movement aiming at the betterment of the poor man''s lot. Its principles, according to us, are no more than the rules of business varying from time to time by statutory enactments keeping, of course, undisturbed the democratic structure of the organisation.

It is thus plain that in a country so poverty ridden as ours, a democratic, voluntary and Government guided movement aimed at alleviating the poor man''s lot is certainly a matter of public interest.

18. Adverting now from the general and larger principles of the co-operative movement to the particular situation existing in the State of Punjab with which the Legislature was faced and the mischief which Section 13(8) to (12) were directed to remedy, they cannot be better highlighted than in the averments made by the Respondent-State in its return in the peculiar context of the existing co-operative societies in the State of Punjab which by and large had become static and more or less moribund:

However, it may be pointed out that reorganization of cooperative societies is a national programme and is being taken at the instance of the Reserve Bank of India. The Amending Act is a piece of social legislation introduced with the purpose of streamlining co-operative ventures and to implement the National Programme of making the co-operative credit structure viable. It is in the interest of co-operative movement and public generally. It may Be mentioned here that there are approximately 11,000 Co-operative Agricultural Service Societies in the State of Punjab a majority of which are dormant or non-viable and are not functioning. The agriculturist members of these dormant societies are not able to avail of the agricultural credit provided by the Reserve Bank of India, through Cooperative Central Banks, as these dormant and non-viable societies are not eligible for the loans required by their members due 10 their unsatisfactory functioning. These societies have been proving to be bottle-necks in the free flow of agricultural credit from the Reserve Bank of. India to the agriculturist. The aspect has been engaging the attention of Reserve Bank of India and also the Government at the Centre and the States for a considerable time. To meet with this difficulty, it was decided that the viability progiamme should be introduced with a view to make the primary co-operative agricultural service societies viable to meet the vast expansion of credit to support the intensive agricultural programme and also to enable them to take up marketing, distribution and other activities, This decision was taken in the interest of the general public. It is pursuant to the recommendations made by the Reserve Bank of India that Act No. 8 of 1978 has been enacted adding sub-sections (8) to (12) to Section 13 of the Act. The purpose is to improve agricultural credit through Co-operative Agricultural Service Societies and thus help the intensive agricultural programme. The provisions added by the Amending Act can neither be called discriminatory or unreasonable and are not hit by Article 14 or 19 of the Constitution of India. The provisions, on the other hand, have been added in the interest of the general public and as pointed out in preliminary objection No. 1, they are saved by Article 31A(1)(c) of the Constitution of India. (Emphasis supplied).

19. If any doubt yet lingers and indeed there can be hardly any, then one may further turn to the relevant part of the statement of objects and reasons

attached to the Bill which culminated in the Amending Punjab Act No. 8 of 1978:

The proposed amendment of Section 13 of the Punjab Cooperative Societies Act, 1961, is to reorganise the primary co-operative societies to make them financially and administratively viable. Such viable societies will be in a position to employ required number of whole-time employees, and will offer better facilities and services to the farmers. In due course, these societies will be in a position to undertake extension work also in addition to disbursement of credit and distribution of agricultural inputs and essential commodities. Amendment of Section 14 is only consequential.

20. Adverting now to the actual language of Sub-section (8), it may be noticed that the Registrar is not clothed with any arbitrary power to amalgamate one or more co-operative societies. As the very opening lines of Sub-section (8) would indicate the prerequisite is that he should be satisfied that it is necessary in the interest of the co-operative society or co-operative societies which are to be amalgamated. It is, therefore, plain that the statute itself highlights the better interest and welfare of the corporate bodies as a prerequisite for initiating action u/s 13(8).

21. Considering all the aforesaid factors and taking an overall view it appears to me that both public interest and the proper and better management of the co-operative societies are writ large as the underlying object of the amending provisions.

22. I hold, therefore, that the added Sub-sections (8) to (12) of Section 13 come squarely; within the protection of Article 31A(1)(c) of the Constitution of India. Being thus shielded against all attack on the basis of Articles 14, 19 or 31, the challenge to their constitutionality under the aforesaid Articles must therefore be repelled at the very threshold. In this view of the matter we had deemed it wasteful to allow Mr. Khoji to elaborate the nature or content of his challenge under Articles 14, 19 or 31.

23. I must, however, notice that on behalf of the Respondents two recent Full Bench judgments reported as H. Puttappa and Ors. v. The State of Kamataka and Ors. (5 supra) and Seetha-pathi Nageswara Rao and Ors. v. The Govt, of A.P. and Ors. AIR 1978 AP 121, were cited wherein even the challenge under Articles 14 and 19 against similar though not identical provisions for the amalgamation of the co-operative societies has been repelled. In view of this in Seethapathi Nageswara Rao''s case (supra), the Bench did not choose to go into the question of the protection under Article 31A(1)(c) and apparently this point either did not arise or was not raised in H. Puttappa''s case (supra). However, in fairness to Mr Khoji, the learned Counsel for the Petitioners, we must notice that he had contended that Article 31A(1)(c) could protect only amalgamation and not the division of the co-operative societies. However, as the present set of cases admittedly pertain to amalgamation, the point aforesaid does not at all arise for our consideration. I would, therefore, scrupulously exclude it from the arena of

adjudication.

24. The constitutional challenge being now out of the way, the deck is cleared for the examination of a three-fold argument raised on merits by Mr. Khoji. He first assailed the proposed order of amalgamation (Annexure P-1) duly served upon the Society and its creditors, whereby objections were invited from the Society, its creditors or members with regard to the proposed amalgamation, in accordance with the statute and within the prescribed period of time. The primary ground of attack here was that by virtue of the proposed order (and the final order which may subsequently come to be passed in its wake) the Petitioner-members of the Society were individually affected adversely in so far as the Society to which they belong was likely to lose not only its identity but also its existence as a legal entity by being merged in or amalgamated with the principal Society. It was contended that the process here being at least quasi judicial and the interests of the members being vitally affected, the rules of natural justice must necessarily be read into the statute generally and u/s 13(9) in particular so as to require a notice of the proposed order not only to the Society and its creditors but to its members as well. On these premises, it was argued that admittedly no notice having been served on the individual members of the Society, the proposed amalgamation should be quashed as being in flagrant violation of the principles of natural justice.

25. Now, the primary reliance for the aforesaid contention has been placed on the Amerheri Co-operative Agricultural Service Society''s case (supra) and it must clearly be admitted that the judgment undoubtedly lends weight to this contention and indeed one of the factors necessitating this reference to the Full Bench was the forceful challenge to the correctness of the view expressed therein. The observations relevant on this point appear in paragraph 15 of the report wherein the learned Judges, whilst construing the analogous provisions of the Haryana Amendment which had provided only for the service of the proposed notice on the Society, had nevertheless held that the rules of natural justice require that both the members of the Society and its creditors individually were entitled to be served with a copy of the proposed order in order to enable them to raise objections within the time prescribed by law. This was one of the primary reasons for which the writ petition in the said case was allowed. With great respect to the learned Judges of the Division Bench, I am unable to see eye to eye with them on this rather significant issue.

26. Since the argument here must necessarily revolve around the statutory provisions inserted by Punjab Act No. 8 of 1978, it is necessary to read the relevant provisions of Section 13 of the Punjab Co-operative Societies Act, 1961:

(8) Where the Registrar is satisfied that it is necessary in the interest of the co-operative society or co-operative societies that:

(i) any co-operative society be divided to form two or more co-operative societies; or

(ii) one or more co-operative societies be amalgamated with any other co-operative society; or

(iii) two or more co-operative societies be amalgamated to form a new co-operative society,

then, notwithstanding anything hereinbefore contained, the Registrar may, after consulting the financing institution, if any, provide for:

(a) the division of that co-operative society into two or more co-operative societies; or

(b) the amalgamation of the society or societies

(i) with any other co-operative society; or

(ii) to form a new co-operative society, with such constitution including representation on the committee property rights, interests, liabilities, duties and obligations, as may be specified in the order.

(9) No order shall be made under Sub-section (8) unless:

(a) a copy of the proposed order has been sent under certificate of posting to the society or societies concern-ad and the creditors;

(b) the Registrar has considered the objections received from the society or societies concerned or from any member or creditor of such society or societies within such period, being not less than fifteen days from the date of posting of the proposed order, as may be specified by the Registrar in this behalf in the proposed order.

(10) The Registrar may, after considering the objections referred to in sub-section (9), make such modification in the proposed order as he may deem fit and the order may contain such incidental, consequential and supplemental provisions as the Registrar may deem necessary to give effect to the same.

(11) A member or creditor who had objected to the proposed order under sub-section (9) shall have the option of withdrawing his share, deposits or loans, as the case may be, on an application which shall be made to the society to which his share, deposit or loan stands allocated by virtue of the order under Sub-section (8), within a period of thirty days of the date of such order.

(12) Save as provided in Sub-section (11), the order passed by the Registrar under Sub-section (8) shall be final and where such, an order involves the transfer of any assets and liabilities the same shall, notwithstanding anything contained in any law for the time being in force, be a sufficient conveyance to vest the assets and liabilities in the society in which these are vested under that order, without any further assurance.

27. At the very outset, it deserves to be highlighted that the rules of natural justice are not embodied rules. They cannot be raised to the pedestal of either

constitutional or fundamental rights so as to override the mandate of the Legislature whether express or by necessary intendment. These rules can operate only in areas not covered by a law validly made and cannot supplant the law Equally well settled it is that the Legislature can exclude the rules of natural justice either expressly or by necessary implication It has, therefore, been rightly said that these rules come in only in areas where the mandate of the Legislature is otherwise silent.

Therefore, if a statutory provision, either specifically or otherwise excludes the application of any or all the principals of natural justice, there would be no warrant for a Court, to ignore the statutory mandated and nevertheless thrust the rules of natural in Union of India (UOI) Vs. Col. J.N. Sinha and Another, .

28. Construing the provisions of Section 13(8) to (12) in the light of the aforesaid cardinal principal, it appears to be evident that the legislature when enacting the same was itself more than amply conscious of the rules of natural justice and the requirement or necessity of notice to the parties affected by the order of amalgamation. Section 13, Sub-section (9), expressly laid down that no order of amalgamation under the preeding sub-section would be passed unless a copy of the proposed order had been duly dispatched under certificate of posting to the society of societies concerned as also the creditors thereof. The Legislature in its wisdom, therefore, had specified both the nature and the content of the notice, the parties which in its view were necessarily to be informed thereof and even the mode in which the notice was to be sent.

29. It is then to be borne in mind that so far as the present amending legislation in the Punjab is concerned in this very statute, namely, the Punjab Co-operative Societies Act, the sister State of Haryana had already effected an amendment of Section 13 thereof more than seven years earlier by the Haryana Act No. 13 of 1971. It would bear repetition that Section 13, subjections (8) to (12), as applicable in Haryana are intimately analogous if not identical to the provision which falls for construction herein. Section 13, sub-section (9), as applicable in Haryana had expressly provided for the service of a copy of the proposed order on the society or societies concerned and to no one else. The Punjab Legislature apparently aware of the provisions and perhaps borrowing the same extended the ambit of the notice from a society or the societies concerned to their creditors as well. The Legislature in its wisdom, however, did not deem it necessary to provide for a notice to the members as well and by necessary implication has designedly excluded them from its ambit.

30. It is not as if the Legislature was oblivious of the rights of the members of the societies altogether. Section 13, Sub-section (9), Clause (b), in terms visualises objections being received from any member of the society or societies concerned within a specified period, Section 13, sub-section (11), equally conferred a right on a member or a creditor who had objected to the proposed order under the aforesaid provisions to exercise its option of withdrawing of his share of deposits or loans, as the case may me, within a period of thirty days of

the order of amalgamation. It is plain, therefore, that the Legislature was more than amply alive to the rights of the members, the impact of the order of amalgamation thereon but in the self same provisions it designedly excluded any notice or the service of a copy of the proposed order of amalgamation being sent to each individual member of every society. The intent of the Legislature, therefore, in this context appears to me plain and manifest. Therefore, for good and valid reasons, they had excluded each individual member of the societies concerned from the requirement of notice to them.

31. it may equally be kept in mind that the judgment of the Division Bench in Amarheri Co-operative Agricultural Service Society''s case was pronounced two years prior to the present enactment and it is a well known canon of construction that as a matter of law the Legislature is presumed to know the previous state of the law and the authoritative construction placed thereupon by the Courts. In that judgment it had been held that the rules of natural justice require that both the members and the creditors were also entitled to be served with a copy of the proposed order. Nevertheless, the Legislature in its wisdom when adding Sub-section (9) to Section 13 of the statute designedly included the societies as such and their creditors but made no mention of the necessity of any notice or the service of the proposed order On individual members. The inevitable inference would, therefore, be that whilst extending the scope of the service of the proposed order on societies alone (as existing in the State of Haryana), the Punjab Legislature in its wisdom included within its ambit the category of creditors only and by necessary implication excluded therefrom the class of individual members of all the societies.

32. Reference in this context may instructively be made to the preceding Section 12 of the Act. This provides for the change of liabilty and Sub-section (2) thereof in terms lays down that when a co-operative society has passed a resolution to change the form or extent of its liability, it shall forthwith give notice thereof in writing to all its members and creditors. It is plain from this that in the very preceding section the Legislature has expressly provided for notice to all the members of the society in a particular context. To reiterate, therefore, the Legislature seems to be fully aware of the necessity or the requirement of notice to individual members and when in the following Section 13, it did not choose to include the individual members for the purpose of notice, the inevitable inference would be that it intended to exclude them.

33. Now in the light of the totality of circumstances aforesaid, can one claim to be wiser than the Legislature to hold that though fully alive to the rights of the members in this context, it had not deemed it necessary to provide for notice to them yet by a process of interpretation, the members should be put at par with the societies and the creditors to whom expressly the Legislature had provided the requisite notice by way of the service of a proposed order? Can the rules of natural justice be stretched thus far so as to override the clear though implied intendment of the Legislature, and, in fact, to legislate in the garb of

construction? To say that notice of the proposed order or something analogous to it must be also served on the members of each society in the face of their patent exclusion, would be virtually amending Sub-section (9) and adding thereto in order to read it as follows:

Section 13(9) : No order shall be made under sub-section (8), unless

(a) a copy of the proposed order has been sent under certificate of posting to the society or societies concerned and the creditors; and the individual members of each of the society or societies concerned.

34. In my humble view, it would be unwarranted to make such an addition in the existing Section 13(9), and, to put it in a homely phrase, this would amount to putting words in the mouth of the Legislature.

35. Again the reasons which seem to have rightly impelled the Legislature in excluding the members from all those entitled to notice before the final order of amalgamation is passed appear to be legion and are not far to seek. The first one which comes to mind is the argument ab inconvenienti if such a requirement were to be imposed. For a moment, keeping to the case in hand, the Petitioners belong to the Behbalpur Co-operative Agricultural Society which is averred to have 360 members itself. This society as also the Kot Fatuhi Agricultural Service Society and the Kotla Cooperative Agricultural Society are to be amalgamated with the Thinda Co-operative Agricultural Service Society. Even in the present case, if the requirement of the service of a copy of the proposed order on each individual member is to be made mandatory, then perhaps more than a thousand to two thousand individual members must necessarily be intimiated at the very threshold before the order of amalgamation can be finalised. The number of the members of an individual society is not limited and it was stated at the bar that there are big co-operative societies whose membership would be individually more than a thousand. In the context of such societies, a requirement that each individual member must be served with a notice would involve the statutory obligation to inform thousands of persons before effect or finality could be given to an order of amalgamation. It is well settled that a violation of the principles of natural justice would vitiate a proceeding or the action taken. Therefore, even the failure to serve one individual member or a set of individual members would invalidate an order of amalgamation. Consequently, it would be plain that a doctrinaire approach in this field may virtually frustrate the whole purpose and object of a speedy amalgamation of non-viable societies. It is significant in this case that speed and despatch in this context is of importance because from the moment of the proposed order till finality is given to the order of amalgamation, all the societies within its ambit would become more or less moribund. It is obviously for this reason that Sub-section (12) of Section 13 has sought to attach finality to the order of amalgamation passed by the Registrar and no appeal or revision against the same has been envisaged by the statute. It was perhaps in this larger prospect of the great inconvenience, the impracticability and the ultimate harm that may ensue to the public weal that the Legislature in

its wisdom confined the notice of the proposed order to the society or societies concerned and their creditors.

36. Yet again the principle of corporate personality seems to underline the Legislature''s mandate that the notice of amalgamation should be served on the society or societies concerned alone and not on each individual member thereof. In strictness, body corporate is distinct and separate from its members and that is the essence of corporate personality. Therefore, the body adversely affected by the order of amalgamation is the legal entity or the corporation and in this case the co-operative society concerned. The Legislature, therefore, had a clear rationale in confining the notice to the legal person which is directly and materially affected by the order of amalgamation. Mr. I.S. Tiwana was on firm and plausible footing that in essence the adverse effect, if any, is on the legal entity which will lose its identity by the amalgamation and not necessarily on its individual members. A plausible example was given that a non-viable or a near bankrupt co-operative society which is merged in a more prosperous and a viable one would neither be itself adversely affected nor anyone of its individual members may necessarily be so. In any case, there appears to be a clear rationale in confining the requirement of notice to the body corporate itself rather than extending it to each individual member thereof. That being so, it is clearly a matter of policy for which the Legislature and the administrative authority are the best judges.

37. I must now advert to an equally plausible argument raised by Mr. I.S. Tiwana, learned Counsel for the Respondent-State. He argued with force and cogency that a notice to the society is a notice to its members. It was rightly pointed out that in all matters concerning the society inevitably service has to be effected on the society at its registered address and that would normally suffice as a matter of law. As to how the society internally conveys this to its individual members or office-bearers is a matter entirely of its indoor management. Therefore, the Legislature was on a sound footing that adequate notice having been served on the societies, notice to individual members could be dispensed with. In any case, this could be more easily and adequately cared for by subsidiary directions. This is even manifest when reference is made to Annexure P-1, the copy of the proposed order served on the society. This in itself-directed the Secretary of the concerned society that he should call the General Body Meeting of the Society and bring the contents of the said proposed order to the notice of all the members. He was further directed to call the said General Body Meeting at a short notice under Rule 80(i) of the Punjab Co-operative Service Societies Rules, 1963 and sanction for this short notice was expressly granted and enclosed with the proposed order.

38. Again it is not as if the individual members of the society have either been totally barred or excluded by the statute altogether with regard to their rights in the society consequent upon amalgamation. Section 13(9), Clause (b), expressly confers the right to file objections on every member of the society which have to

be considered by the Registrar before he passed the final order of amalgamation u/s 13(10). Further Section 13(11) confers the right on each member who has filed objections to the proposed order to withdraw his share, deposits or loans, as the case may be, by making an application. The Legislature thus seems to have made adequate provision to safeguard the rights of the individual members as well and if it in its wisdom, for realms which appeared to be patent, it has excluded the individual members from the ambit of notice, it is not for the Courts, to override the mandate and direct otherwise.

39. Lastly, in this context a note of caution has to be struck that the argument of the requirement of notice to every person interested, when logically stretched, would extend to absurd lengths. It is undeniable that the amalgamation of a society would equally affect all, in any case, many of its employees. Similarly, the amalgamation cannot but have the same effect on the rights of those persons who had contracted with the society as a legal entity. If the contention were to be carried to its logical extreme, it may require that all employees and contractors whose interests are to be affected by the amalgamation would be equally entitled to a notice on the principles of natural justice. This to my mind would be neither practicable nor desirable.

40. Having examined the matter in some depth on principle, logic, and the settled canons of construction, 1 must now inevitably turn to the judgment in Amerheri Co-operative Agricultural Service Society''s case which undoubtedly forms the corner-stone of the argument of the Petitioner in this context. Adverting specifically to the reasoning of the Division Bench in the only material paragraph 15 of the report, it seems to be manifest that the issue does not seem to have been adequately and thoroughly canvassed before their Lordships. There does not appear any discussion on principle which can possibly underline the extention and with'' great respect, if I may, say so, the over-extension of the rules of natural justice. The innumerable considerations which apparently weighed with the Legislature and have been noticed above by me both as regards the exclusion of the rules of natural justice by necessary intendment and the rationale for doing so have not even been remotely adverted to and were obviously not brought to the notice of their Lordships. Principle apart, the only authority strictly bearing on the point referred to in the judgment is The Govindpur Agricultural Credit Co-operative Society and Another Vs. Assistant Registrar, Co-operative Societies and Another, . Apparently, relying on this judgment, it was held that in addition to the consultation with the financing institutions of the societies to be affected by the proposed order u/s 13(8) of the Act each society, its members and the creditors were also to be served with the copy of the proposed order sent in draft. With great deference it seems to me that apparently an error in construing the true ratio of the decision in the Govindpur Agricultural Credit Co-operative Society''s case (supra) seems to have crept in. Learned Counsel, for the parties were perhaps remiss in not pointing it out adequately before the Bench. A reference to this judgment would first show that indeed the relevant provisions of the Orissa Co-operative Societies Act were

substantially and entirely different from what falls for construction here. The significant thing therein, however, was that the statute was so utterly silent with regard to the requirement of notice that it did not even provide for any intimation being given to the co-operative society or societies concerned far from making any mention of the individual members of the societies or their creditors. Nor did the statute provide for the passing of any proposed order of amalgamation and the service thereof upon any one. It was in this context and in the total absence and silence of the statutory provisions with regard to notice that the learned Judges of the Orissa Division Bench rightly invoked the rules of natural justice and that also with regard to the society or societies alone which were to be amalgamated. The only finding or the rotio which I am able to detect on a close reading of the judgment is that the society or societies alone have a right to a hearing. The learned Judges nowhere laid down that either the individual members of such society or further that the creditors thereof were to be treated on an identical footing or that there was any requirement of some kind of notice with regard to them also. By what appears to be an apparent slip, the learned Judges in Amerheri Co-operative Agricultural Service Society''s case had construed the ratio of the Orissa judgment as requiring that all the societies, the members and the creditors were at par and entitled to similar notice. Erroneously assuming this to be the ratio of, the judgment and obviously following the same, the Bench in Amerheri Co-operative Agricultural Service Society''s case held that in addition to the consultation with the financing institutions, the service of the proposed order on all the societies, their individual members as also their creditors was equally a requirement of natural justice.

41. For the detailed reasons recorded earlier, I am constrained to hold with great deference that the observations of the Division Bench in paragraph 15 of the report in Amerheri Co-operative Agricultural Service Society''s case are not sustainable either on principle or precedent. I would, therefore, overrule the view expressed therein.

42. To conclude on this aspect, it appears to me that the Legislature has by necessary intendment excluded the requirement of notice to individual members of all the societies concerned and as discussed above, it has valid and cogent reasons for doing so. In my view, there is hence no warrant for sitting in judgment over the wisdom of the Legislature in a matter of larger policy and the requirement of notice to individual members cannot be incorporated in the statute by a process of interpretation.

43. Now, the second contention of Mr. B.S. Khoji on behalf of the Petitioners again takes its inspiration from another set of observations made in Amerheri Co-operative Agriculture Service Society''s case. He contended that the proposed order of amalgamation, Annexure P-1, served on the societies in accordance with Section 13(8) and (9) was a bald and defective one in so far as it did not contain all the requirements and information about the membership, assets and liabilities, property, rights, interests, duties and obligations of not only the

principal society but also of each one of the other societies which are sought to be amalgamated therewith. It was argued with some vehemence that the rules of natural justice extend thus far as to require that every individual member of the society as also the societies concerned must be served with all available materials in this context and unless that was done, there was a grave violation of the principles of natural justice. To be more, specific, it was contended in terms that carbon copies of each material document with regard to every one of the society or societies as also all other documents on which reliance or reference may have been made by the Registrar must be annexed to the proposed order and be duly served not. only on every society but on every individual member thereof. This having been admittedly not done, it was argued that the principles of natural justice stood violated and no objections could be, filed either by the society or the societies concerned or their individual members and the creditors. On this ground alone, we were invited to quash the proposed order of amalgamation, admittedly served on the societies concerned.

44. As already noticed, the submissions spring from the observations in paragraph 16 of the report in Amerheri Co-operative Agricultural Service Society''s case. These undoubtedly lend credence to the contention and therein it has been observed as follows:

A copy of the proposed order has also to contain all the information regarding the society or societies to be affected by the order. It is only after the matters are known to the society or its members or creditors that they can be in a position to raise objections and also to make suggestions and make up their minds to withdraw from the membership or to withdraw their deposits. If the relevant material concerning the constitution property, rights, interests, liabilities, duties and obligations of the concerned society or the societies, as the case may be, is not made known, the purposes of the provisions cannot be achieved as no effective objections and suggestions can be made by the society, its members or creditors.

Further, the Bench had concluded in that case that as no detailed material and copies of the necessary documents had been supplied along with the proposed order to the societies concerned, no effective objections could be filed and there was thus an apparent violation of the principles of natural justice and this was held to be a separate and independent ground for quashing the proposed order of amalgamation in the said case.

45. Yet again with considerable regret and deference, I am unable to agree or to subscribe to the tenor and the line of reasoning adopted by the Division Bench. This indeed was more or less a corollary to their earlier view regarding the necessity of notice to each individual member of the society and their creditors. Therefore, to avoid pointless repetition, it suffices to say that whatever has been said earlier by me in the context of the issuance of notice to individual members applies mutatis mutandis to the added claim of service of copies of all material documents as an essential requirement of natural justice.

46. Now what calls for added comment in this limited context is that the Legislature seems to be alive to the requirements of natural justice both as regards the persons to whom notice was necessary as also the nature and content thereof. Therefore, in Sub-section (9) of Section 13, it expressly provided not only the person or persons to whom such notice was to be given but also the form of the notice as well, namely, a copy of the proposed order, and, went further to provide even the mode and its service, i.e. through post under a certificate of posting. Reference herein has necessarily to be made to the preceding Sub-section (8) which laid down that when on adequate materials, the Registrar is satisfied that it is necessary in the interest of the co-operative societies to amalgamate any two or more of them, he may after consulting the financing institution, if any, direct such amalgamation providing for all details regarding the representation on the Committee of the principal society, property, rights, interests, liabilities, duties and obligations which he would lay down in the proposed order. The nature and the content of the proposed order is, therefore, provided for and governed by Section 13(8). It is this proposed order which the Legislature in its wisdom required to be served on the societies concerned and the creditors which in its view were entitled to such notice. It appears plain to me, therefore, that the Legislature way fully conscious of the content of the notice which it wished to give to the persons entitled thereto in its view. The question squarely arises whether the rules of natural justice can be stretched so far as to hold that even where the Legislature has adverted to and provided for the nature and the content of a notice to be given to the persons entitled thereto, nevertheless by way of interpretation it may be over-ridden and it be directed that something more may be inflexibly added thereto or be subtracted therefrom. I do not think so. To repeat, it has rightly been said that the rules of natural justice are not embodied rules. The only rule of natural justice in this context I am aware of is the well-known one of audi alteram partem. The larger and the only requirement thereunder is that the person concerned must be given an opportunity to be heard. Can one, therefore, go further on the purported basis of the principles of natural justice to lay down not only that the party must be heard but further prescribe the form of the notice, its contents, the documents and annexures which must be attached thereto and this also in a field where the Legislature has itself done so. I believe that such procedural and finical details are the province of the-Legislature and cannot be imposed either on the principles of natural justice or by way of construction where none are so provided. It has been repeatedly held that even the right of personal hearing is not the mandatory requirement of natural justice and it is for the authority concerned to cletermine the manner in which the opportunity of hearing in a particular context is to be afforded.

47. The argument ab inconvenienti which was notice earlier in the context of the alleged requirement of notice to each individual member of the society applies in a manifold manner in the present context. Who indeed is to determine which and what is the vital material for the necessary documents which must be annexed to

the proprosed order? How and when can it be postulated that the Assistant Registrar has the knowledge, the access and the wherewithal to locate, trace and copy out all the data which (as a matter of opinion) may be said to be material to either the process of amalgamation or for the purposes of making objections thereto? In a case of an amalgamation of numerous large societies, a requirement of this nature coupled with that of service on individual members would involve the forwarding of every material document to thousands of individual members of the societies and also inevitably entail the preparation posting and service of thousands of copies of documents for each of them. Is that within the bounds of either possibility or even desirability, and in any case, can it be raised to an inflexible requirement of the law even when the Legislature does not say so? My answer to the question is necessarily in the negative.

48. In holding as above, one may not be understood even remotely to mean that the societies, the members or the creditors are to be denied access to what may be relevant for the purpose of filing the objections. All that I intend to say is that it cannot be made the inflexible requirement of the law or lay down as statutory burden and duty (by way of interpretation) on the authority to serve copies of all material documents on the parties concerned. Mr. I.S. Tiwana has rightly pointed out that the society itself and its members have a right of access to all relevant materials of their own. Similarly, the statute and the rules made under the Co-operative Societies Act as also the practice thereunder may well enable the society and the members to have access to the material documents with regard to the other societies, like its balance-sheets etc. In any case, no legal bar could be shown on behalf of the Petitioners to have access or inspection of tee material documents either in the possession of the Registrar or of the amalgamating societies. Herein as also in other cases, it is assumed that the authorities will act fairly and conscientiously and even liberally in affording access to material documents and the learned Counsel for the Respondent-State fairly took that stand. It was stated by Mr. Tiwana at the bar that in the context of amalgamation, the liegistrar or the societies concerned would not refuse inspection or copies to a diligent member of a society who wishes to see them for the purpose of making objections, if necessary. It is otherwise plain that if in a particular case, access to materials necessary for the making of an objection has been illegally and wrongly denied, leading to a grave miscarriage of justice, a Court of law would not hesitate to intervene in favour of the injured citizen in the particular case. However, the pendulum cannot be swung to the absolute extreme of laying down by a process of interpretation that copies of all material documents must be individually made and served on every society and on every individual member or creditor thereof.

49. Adverting inevitably to the specific reasoning of the Division Bench in the solitary paragraph 16 of the report in Amerhari Co-operative Agricultural Service Society''s case, it again appears that the question was not adequately canvassed and agitated before their Lordships. No authority has been adverted to nor is there any exhaustive discussion of the principle. The matter seems to have been

accepted as a mere consequence or corollary to the preceding finding of their Lordships that notice was a necessary requirement to each individual member of the Society as also its creditors. All the infirmities in the reasoning in that context which have been noticed earlier are, therefore, equally applicable in the present context. It may also be recalled that the Orissa authority in the Govindpur Agricultural Credit Co-operative Society''s case (supra) did not at all advert to or even remotely say anything with regard to the contents of the notice or the necessity of serving a proposed order and further of the copies of all material documents being annexed thereto. In fact under the Orissa Co-operative Societies Act, there appears to be no corresponding provision to any proposed order of amalgamation or the service thereof on the concerned parties and the invitation of objections with regard thereto. The said judgment, therefore, is wholly silent with regard to the contents, documents, copies etc. which must be furnished or added or attached to a proposed order. No support could, therefore, be derived from that judgment in this context.

50. For the deailed reasons recorded above, with respect I hold that the view of the Bench in Amerheri Co-operative Agricultural Service Society''s case that all the detailed material and copies of documents must be annexed to and must be served on the parties concerned cannot be sustained and would, therefore, overrule the observations in paragraph 16 of the report. I would, however, wish to make it clear that the overruling of this judgment is confined only to the two issues propounded upon in paragraphs 15 and 16 of the report and as the other matters discussed in that judgment have not been canvassed before us, I would naturally express no opinion with regard thereto.

51. The second contention of Mr. Khoji is hence equally without merit and it is held that neither the rules of natural justice nor the requirement of the statute herein require the annexation of the copies of all material documents to the proposed order served on those entitled thereto.

52. Before parting with the aforesaid aspect of this judgment with regard to the applicability of the principles of natural justice, I feel compelled to notice the extreme contention of Mr. I. Section Tiwana for the Respondent-State that the Registrar whilst acting under Sub-section (8) and (9) of Section 13 exercises functions which are purely or in any case primarily administrative. Reliance was placed by him on Radeshyam Khare and Another Vs. The State of Madhya Pradesh and Others, , wherein the distinction between the administrative and the quasi judicial function has been brought out authoritatively. Great emphasis was placed on Section 13(8) which merely requires the satisfaction of the Registrar with regard to the necessity and the interests of the co-operative societies before passing the order of amalgamation. On this statutory basis, reliance was placed on The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, . to contend that wherein an authority is to be satisfied, then the function is primarily subjective and the principles of natural justice would, therefore, be wholly excluded.

53. The above argument was pressed before us with considerable emphasis. However, as I have come to the'' conclusion above that the principles of natural justice, even if attracted, stand excluded by necessary intendment by the Legislature, it is wholly unnecessary to examine or pronounce upon this contention. I would, therefore, refrain from entering the thicket of'' the controversy whether the exercise of power u/s 13 by the Registrar is wholly or primarily administrative. Therefore, 1 would decline to express any opinion thereon and it suffices merely to notice the contention in fairness to Mr. Tiwana.

54. Now the third and indeed the last meaningful argument of Mr. Khoji on behalf of the Petitioner is that the order of amalgamation, Annexure P-1, admittedly passed by the Assistant Registrar is wholly without jurisdiction and should be quashed on that score. Elaborating the argument, the counsel contended that the statute vests only the Registrar with the power to pass the propsed or final order of amalgamation of Societies and this has been so done only by Punjab Act No. 8 of 1978. The argument is that the Assistant Registrars were delegated with the powers of the Registrar by a notification way back in 1963 when no such powers u/s 13(8) to (12) existed in the statute. It is contended that in the absence of any fresh notification conferring the powers recently vested in the Registrar by Punjab Act No. 8 of 1978 upon the Assistant Registrars, the latter cannot pretend to exercise this power which was not within the ambit of the statute when the same was delegated to them. Primary reliance for this contention is on a Single Bench decision of this Court reported as Kulwant Singh v. The Deputy Registrar Cooperative Societies. Rohtak 1969 P.L.R. 1016.

55. Herein again it must be fairly conceded that the judgment aforesaid fully supports the submission raised by Mr. Khoji and it is the correctness of that view which is really at stake. Therein an identical argument found favour with Narula. J. (as he then was) on a similar submission made by Mr. Khoji before him. It was observed as follows:

By notification, dated September 12, 1963 (annexure ''A'' to the return of the Deputy Registrar) the State Government delegated all the powers of the Registrar exerciseable under sub-section (2) of Section 3 of the Act to the Joint Registrar and the Deputy Registrars of Co-operative Societies in the State. The argument of Mr. Khoji is that Section 3(2) does not and, in fact, cannot provide for prospective delegation and that what can be deemed to have been delegated by the notification, dated September 12, 1963, cannot go beyond the field of powers which were exerciseable by the Registrar on the date of the said notification. The learned Counsel submits that inasmuch as the authority conferred by Rule 50(1)(i-a) was conferred on the Registrar for the first time on September 3, 1965, the said jurisdiction could not be deemed to have been delegated in advance to the Deputy Registrar and could be validly delegated only if a proper notification in that respect was issued at any time after September 3, 1965. I find great force in this submission of Mr. Khoji, who is supported in this proposition by a Division Bench judgment of the Bombay High Court in Emperor

v. Ravangouda Lingangouda Patil AIR 1944 Bom 259. which was followed by a Division Bench of the Madhya Pradesh High Court in Amar Singh Rajendra Singh Vs. State of Madhya Pradesh and Others, .

With great respect. I am unable to agree with the view propounded above and it appears to me that the basic fallacy underlying the same is the failure to notice the sharp and meaningful distinction between a mere delegation of power by an authority on one hand and the conferment thereof under a statute. In order to truly appreciate, it is necessary to first set down the provisions of Section 3 of the Act under which the powers of the Registrar u/s 13 have been conferred on the Assistant Registrars:

3. Registrar and other officers and their powers:

(1) The Government may appoint a person to be the

Registrar of Co-operative Societies for the State.

(2) To assist the Registrar in his functions under this Act, the Government may appoint such number of Additional Registrars, Joint Registrars, Deputy Registrars, Assistant Registrars, and other persons with such designation as it may think fit.

(3) The Government may, by general or special order confer on any person appointed under Sub-section (2) all or any of the powers of the Registrar under this Act,

(4) Every person appointed under Sub-section (2) shall exercise his powers subject to the general superintendence and control of the Registrar.

(5) Notwithstanding anything contained in this Act where any power of the Registrar is exercised by any authority by virtue of the order issued by the Government under Sub-section (3) the order passed or decision made by such authority shall, for the purposes of appeal, be deemed to be the order or decision of that authority and not of the Registrar.

Now a plain reading of the aforesaid provision would make it manifest that herein the jurisdiction to appoint the Registrar or functionaries to assist him or to confer on any person the powers of the Registrar, has been expressly vested by the statue in the Government itself. There is no question of any delegation here nor has the word been remotely used in the whole of the section either expressly or impliedly. Just as under sub-section (1) the Government appoints a Registrar or under sub-section (2) it appoints Additional Registrars, Joint Registrars, Deputy Registrars and Assistant Regittrars to assist him, in the same) manner it has been empowered, by general or special order, to confer on any of the aforementioned persons all or any of the powers of the Registrar under this Act. Consequently, it is plainly the exercise of the power by the Government to appoint or confer powers under the law or the statute. In sharp contradistinction it should be noticed that the present case is not one where the Registrar himself is in any way delegating his powers to the Assistant Registrars and in fact no such provision exists in the statute or at least was pointed out to us. Admittedly, the powers u/s 13 have been conferred by the Government itself--vide notification dated the 11th of September, 1963 originally, and subsequently modified by the same authority. On the bare language of Section 3 of the Act, therefore, the power here is plainly one of appointment or conferment of powers under the statute and not one of delegation by the Registrar.

56. Viewed in the above perspective which appears to me as the only correct one, it is evident that Narula, J. in Kulwant Singh''s case (supra) proceeded on an erroneous assumption. Reference to the judgment and the brief reasoning thereof In paragraph two of the report would indicate that it seems to have been assumed on all hands that the case was one of delegation. It was on that premises that the learned Single Judge came to the conclusion that there could not be any delegation in advance to the Deputy Registrars of powers which at that stage were not vested in the Registrar by the statute. It was entirely on the premise that the case was one of delegation of powers that reliance was placed on Emperor v. Rayangouda Lingengouda Patil, (12 supra), wherein the powers of the Government of Bombay under Rule 26 of the Defence of India Rules were delegated to all District Magistrates. Once it is held that the case is not one of delegation, that judgment would be plainly distinguishable. The position is identical as regards Amarsingh-Rajendra Singh''s case (supra) which was also referred to and relied upon. This again was a case under the Defence of India Rules, wherein also the powers of the State Government under Rule 30(1)(b) of the Defence of India Rules, 1962, had been delegated to all the District Magistrates. For obvious reasons, this case would be equally distinguishable.

57. For the aforesaid reasons and with great respect, I am firmly of the view that Kulwant Singh''s case (supra) on this point does not lay down the law correctly and I am constrained to overrule the same.

58. It would also be conducive to the clarity of precedent to'' mention that Mr. Khoji also referred to the Division Bench judgment in Shri Ram Singh and Ors. v. Shri S.L. Kapur I.A.S. Registrar. Co-operative Societies, Punjab and Ors. 1975 P.L.J. 232, in which reference was made to Kulwant Singh''s case (supra). It was argued by Mr. Khoji that the Division Bench had also affirmed or followed the view propounded in Kulwant Singh''s case. The observations of the Division Bench on this point appear to be slightly obscure but, if the said judgment can in any way be construed as an affirmance of the view in Kulwant Singh''s case (supra), the same must also be overruled on the limited and specific point.

59. Once it is held that herein the power u/s 13 conferred on the Assistant Registrars by the Government itself is not a matter of delegation, then it appears to be more or less plain on principle that the said power can be exercised from time to time. Apart from principle, reference in this connection may be made to Section 12 of the Punjab General Clauses Act which in terms lays down that where by any Punjab Act any power is conferred, then the power may be

exercised from time to time as occasion arises. Identical provisions appear in Section 14 of the General Clauses Act, 1897, as well. Principle and statute apart, there are then the binding observations of their Lordships in National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee), . In that case it was sought to be argued that the power vested in the High Court to make rules u/s 108 of the Government of India Act, 1915, would be limited only to the jurisdiction already possessed by the High Court at that very time and would not be attracted to the enlargement of such power by the subsequent Government of India Act, 1935. Repelling such a contention, their Lordships observed as follows:

It is thus difficult to accept the argument that the power vested in the High Court under Sub-section (1) of Section 108 was a limited one, and could only be exercised in respect to such jurisdiction as the High Court possessed on the date when the Act of 1915 came into force. The words of the sub-section "vested in the court" cannot be read as meaning "now vested in the court". It is a well-known rule of construction that when a power is conferred by a statute that power may be exercised from time to time when occasion arises unless a contrary intention appears. This rule has been given statutory recognition in Section 32, Interpretation Act. The purpose of the ... reference to Section 108 in Clause 15 of the Letters Patent was to incorporate that power in the charter of the Court itself, and not to make it moribund at that stage and make it rigid and inflexible. We are, therefore, of the opinion that Section 108 of the Government of India Act 1915 conferred power on the High Court which that Court could exercise from time to time with reference to its jurisdiction whether existing at the coming into force of the Government of India Act, 1915 or whether conferred on it by any subsequent legislation.

In view of the language of the statute, on principle, and the authoritative precedent aforesaid, the third and the last contention of Mr. Khoji that the Assistant Registrar had no jurisdiction to pass the impugned order of amalgamation must be categorically repelled.

60. Before parting with this judgment, it may be noticed in fairness to Mr. Khoji that he had rather half-heartedly sought to contend that the order of amalgamation was factually not well founded and that the Societies to which the Petitioners belong were financially and administratively viable. I am clearly of the view that this argument is plainly not; open to the Petitioners at this stage. The statute gives them the right to file objections within the prescribed time against the proposed order of amalgamation. It is only after considering the objections filed by the Societies concerned the members, and the creditors, that the Registrar attaches finality to the proposed order by making such modifications therein as he may deem fit. The Petitioners, therefore, must resort to their statutory remedy of filing objections as regards the factual aspects and the merits of each proposed order of amalgamation.

61. In the light of the aforesaid discussion, all these writ petitions are without

merit and are hereby dismissed. However, in view of the difficult questions of law falling for determination, the parties are left to bear their own costs.

S.C. Mittal, J.

62. I agree.

Rajendra Nath Mittal, J.

63. I agree.

