

(2023) 06 KL CK 0201

In the High Court Of Kerala

Case No : Writ Petition (C). Nos.9447, 9793, 14211, 14710, 15557, 15591, 15660 15762, 29611 & 32912 Of 2022

President/Delegate Of Patharam Milk Producers Co Operative
Society Ltd No 1 130(D)

APPELLANT

Vs

State Co Operative Election Commission

RESPONDENT

Date of Decision : 15-06-2023

Acts Referred:

Constitution of India, 1950 — Article 14

Kerala Co Operative Societies Act, 1969 — Section 8A(2), 8A(4), 20, 21, 23, 28(1K), 28(6), 28(7), 28(8), 28AB(3), 28AB(4), 32, 33, 33(2), 80BB(1)

Citation : (2023) 06 KL CK 0201

Hon'ble Judges : T.R. Ravi, J

Bench : Single Bench

Advocate : P.N.Mohanan, Amrutha Suresh, C.P.Sabari, R.Lakshmi Narayan, C.M.Nazar, Renjith Thampan, P.P.Thajudeen

Final Decision : Dismissed

Judgement

T.R. Ravi, J.

1. The issues involved in all the above Writ Petitions are intrinsically connected, and they are being heard and disposed of together. W.P.(C)No.9793 of 2022 is being treated as the main case for the purpose of convenience, and the facts are narrated on that basis.

WP(C)No.9793 of 2022

RELEVANT FACTS:-

2. The petitioners are Presidents of various Anand Pattern Milk Co-operative Societies (hereinafter referred to as APCOS) under the 4th respondent Central Society. The questions posed in the Writ Petition are (i) whether any member other than a delegate contemplated in Section 28(8) of the Kerala Co-operative Societies Act (hereinafter referred to as "the Act") can vote in the election to the

committee of the 4th respondent Society and (ii) whether societies granted membership/affiliation by the Administrator/Administrative Committee can vote in the election. The Writ Petition was heard along with several other Writ Petitions relating to the election to the managing committee of the 4th respondent, and all the Writ Petitions are disposed of together.

3. The election to the 4th respondent was notified as per Ext.P1 on 04.03.2022. The election was scheduled to be held on 09.04.2022. The preliminary voters' list was published on 05.03.2022. Objections were to be submitted on or before 11.03.2022. The objections were to be considered on 14.03.2022. Of 978 Societies included in the preliminary voters' list, 58 Societies were under the control of the Administrator/ Administrative Committee appointed by the concerned Deputy Directors of Dairy Development under Section 32 or 33 of the Act, and 23 of the members were admitted/affiliated by the Administrator/ Administrative Committee. The contention of the petitioners is that the 58 persons delegated by the Administrator and the 23 members who were included as members by the Administrator/Administrative Committee are not entitled to vote at the election. The contention is based on Section 28(8) of the Act, introduced by way of an amendment with effect from 12.02.2021 which says that only the President of the APCOS can be a delegate to participate in the General Body Meeting and contest the elections to the managing committee. The term of the elected committee was over on 16.02.2021, and an Administrative Committee took charge. The elected committee had taken a decision on 08.02.2021 to conduct the election, but the same was not recommended by the Department to the Election Commission. On 12.02.2021, sub-section (8) was added to Section 28, which required that the delegate of the member APCOS to attend the general body meetings and to contest the elections to the managing committee of the Regional Co-operative Milk Producers' Union shall be its President only. It is in the above background that the petitioners contend that the 58 Societies managed by Administrator or Administrative Committee that do not have a President cannot participate in the meeting or contest the election as a delegate. Regarding the 23 primary societies admitted to membership of the Central Society by the Administrative Committee, the petitioners place reliance on the decision in *Jt. Registrar of Co-operative Societies V. T.A.Kuttappan* reported in [2000 (2) KLT 480 (SC)] to contend that such persons cannot vote at the election.

4. The counsel for the petitioners points out that a Milk Society is one among the 15 types of Societies which are contemplated in the KCS Act. Amendments were brought in exclusively for the APCOS. These amendments were hence to be understood as overriding the other provisions of the Act, which apply to all societies. It is contended that the general provisions will have to give way to the special provisions.

5. On 16.03.2022, the Electoral Officer issued Ext.P4 order whereby the final voters' list was published. The 58 member Societies under the Administrator/

Administrative Committee were included in the list. So also, 11 APCOS were found to have deemed affiliation and hence entitled to be included. Twelve of the APCOS which were given affiliation by the Administrative Committee were deleted from the list. The final list contained 966 voters. Writ petitions were filed challenging the above action.

6. On 23.3.2022, an interim order was issued directing the votes cast by the delegates of societies under the control of Administrators/Administrative Committees to be kept in a separate box and to count the same separately. This Court had also permitted to declare the result of the election by considering the votes cast by such delegates in the separate box. The above order was challenged in appeal. A Division Bench of this Court on 8.4.2022 stayed the order and directed that the results of the election shall be declared only after obtaining orders from the Court. It was, however, made clear that in the event the votes cast by the delegates of the societies under the control of Administrators/Administrative Committee do not impact the result of the election, the Returning Officer is not precluded from declaring the results. The Writ appeal was later dismissed, directing the parties to make an appropriate motion before the Single Judge for early disposal of the Writ Petition. It was also directed that the interim order dated 8.4.2022 will continue in the meanwhile.

RELEVANT STATUTORY PROVISIONS: -

7. The relevant statutory provisions falling for consideration are extracted below:

"8A. Affiliation to apex society. -(1) Every Primary Co-operative Society or Central Co-operative Society may, within such time and in such manner, as may be prescribed, apply for affiliation to the concerned apex society or Central Society, as the case may be.

(2) Where the apex society or central society does not, within sixty days from the date of receipt of the application for affiliation, determine whether such affiliation should be given or not, such affiliation shall be deemed to have been given to the applicant society from the date on which the said period of sixty days expires.

(3) When the apex or Central Society, as the case may be, rejects an application for affiliation under sub-section (1), the aggrieved society may file an appeal before the Registrar against such rejection within thirty days from the date of receipt of the order of rejection and the Registrar shall dispose of the appeal within sixty days from the date of appeal.

(4) Notwithstanding anything contained in this Act or the Rules made thereunder or the bye-laws of a Regional Co-operative Milk Producers' Union, the Anand Pattern Milk Co-operative Societies having a regular elected Managing Committee and doing the business of milk procurement and sale within the area of operation of the Regional Co-operative Milk Producers' Union shall be admitted as members of the Regional Co-operative Milk Producers' Union"

"16B. Eligibility conditions to continue to be an active member of an Anand

Pattern Milk Co-operative Societies. -

(1) No member shall be eligible to continue to be an active member of an Anand Pattern Milk Co-operative Society if he/she-

(a) is not pouring milk not less than five hundred litres to the society for one hundred and eighty days during the preceding twelve months; and

(b) is not owning at least one milch cow or buffalo, by rearing them in cattle shed or in a farm setup either in his/her own land or in leased land, within the area of operation of the society.

(2) Only an active member referred to in sub-section (1) shall be eligible to become a member of the managing committee of an Anand Pattern Milk Co-operative Society and to continue as a member of such committee."

"20. Vote of members. Notwithstanding anything contained in any other provision of this Act or any other law, every member of a society shall have one vote in the affairs of the society:

Provided that—

(a) a member admitted within sixty days immediately prior to the date of election shall not have the right to vote;

(b) a nominal or associate member shall not have the right to vote;

(c) where the Government is a member of the society, each person nominated by the Government on the committee of the society shall have one vote each including the right to vote for election of office bearers of the society;

(d) an ex-officio member on the committee of a society shall have one vote but shall not have right to vote for election of office bearers of the society;

(e) in the case of an equality of votes, the chairman shall have and exercise a second or casting vote.

21. Manner of exercising vote: (1) Every member of a society shall exercise his vote in person.

(2) Notwithstanding anything contained in sub-section (1), a society or corporation or a statutory or non-statutory Board, Committee or other body of persons which is a member of another society may, subject to any rules made under this Act, appoint one of its members to vote on its behalf in the affairs of that other society.

"28. Appointment of committee. - (1)The general body of a society shall constitute a committee, for a period of five years in accordance with the bye-laws and entrust the management of the affairs of the society to such committee;

xxxxx xxxxx xxxx

(1K) Notwithstanding anything contained in this Act or Rules made thereunder or bye-laws, in a Regional Milk Producers Union having jurisdiction over more than one revenue district, the members of the committee representing each revenue district shall be elected by the member societies of that particular revenue district itself from among themselves.

xxxxx xxxxx xxxx

(6) Notwithstanding anything contained in this Act or rules made thereunder or bye-laws of a Regional Co-operative Milk Producers' Union, or in any other laws, Judgment or Decree or orders of any Court or Tribunal for the time being in force, no President of an Anand Pattern Milk Co-operative Society which is a member of a Regional Co-operative Milk Producers' Union, shall be eligible to hold office as a member of the Committee of the Regional Co-operative Milk Producers' Union for more than three terms or fifteen years whichever is higher.

Provided that the provisions of this sub-section shall not apply to members of the committee of the Regional Co-operative Milk Producers' Union holding office as such on the date of commencement of the Kerala Co-operative Societies (Amendment) Act, 2021 till the completion of till their original term of five years:

Provided further that the provisions in the above proviso shall not apply to the members of the committee whose tenure was extended beyond their original term of five years.";

(7) Notwithstanding anything contained in this Act or the rules made thereunder or the bye-laws of a Regional Co-operative Milk Producers' Union or in any other law, judgment or Decree or Orders of any court or Tribunal, for the time being in force, the President of an Anand Pattern Milk Co-operative Society, which is a member of the Regional Co-operative Milk Producers' Union shall be eligible to contest the elections to the committee of the Regional Co-operative Milk Producers' Union and hold office as a member of the committee of the Regional Co-op. Milk Producers' Union, only if the Anand Pattern Milk Co-operative Society to which he/she belongs, satisfies the following conditions, namely;-

(a) the society is placed in audit classification A or B, as prescribed, during the last audit conducted;

(b) supply milk procured and pooled by the member society to the Regional Co-operative Milk Producers' Union subject to a minimum quantity as fixed by the committee of the Regional Co-operative Milk Producers' Union:

Provided that the provisions of this sub-section shall not apply to those member societies for a period of two years which are revived after long duration of inactivity and those Primary Dairy Co-operative Societies whose bye-laws were amended to Anand Pattern, either from the date of restart of the society or from the date of registration of amendment of byelaws to Anand Pattern model bye-laws.

(8) Notwithstanding anything contained in this Act or the rules made there under or the bye-laws of a Regional Co-operative Milk Producers' Union or in any other law, judgement or Decree or Orders of any court or Tribunal, for the time being in force, the delegate of the member Anand Pattern Milk Co- operative Society to attend the general body meetings and to contest the elections to the managing committee of the Regional Co-operative Milk Producers' Union shall be the President of member Anand Pattern Milk Co-operative Societies only."

"28AB. Election and Removal of President, Vice President, etc.-

(1) A committee constituted under sub-section (1) of S.28 shall elect from themselves a President, a Vice-President, a Treasurer or any other officer by whatever name he is designated in the manner as may be prescribed.

(2) A committee shall remove from office the President, Vice-President or the Treasurer or any other officer of the committee if a motion expressing want of confidence in any or all of them is carried with the support of the majority of the members, of such committee in accordance with the procedure as may be prescribed.

(3) Notwithstanding anything contained in this Act or rules made thereunder or the bye-laws of a Regional Co-operative Milk Producers' Union or in any other laws, Judgment or Decree or Orders of any Court or Tribunal, for the time being in force, no President of an Anand Pattern Milk Co-operative Society shall be eligible to hold office as President or Chairman of a Regional Co-operative Milk Producers' Union for more than two consecutive term, whether in full or in part.

(4) Notwithstanding anything contained in this Act or rules made thereunder or the bye-laws of an Anand Pattern Milk Co-operative Society, or in any other laws, Judgment or Decree or Orders of any Court or Tribunal, for the time being in force, either the President or Vice-President of an Anand Pattern Milk Co-operative Society shall be women members."

"80BB. Recruitment Committee for appointments in Regional Co-operative Milk Producers' Union.

(1) Notwithstanding anything contained in this Act or rules made thereunder Government shall, by notification in the Gazette, constitute Recruitment Committees which shall be the competent committees for the entire selection and recruitment process of all permanent employees of the Regional Co-operative Milk Producers' Union.

(2) The Recruitment Committee for undertaking the selection process of all employees other than the Managing Director shall consist of not more than eight members. The Secretary to Government in charge of Dairy Development shall be the Chairman of the Committee and the Managing Director of the apex body of the Regional Co-operative Milk Producers' Union, appointed by the Government Shall be the Convener of the Committee. The other members shall be as follows namely:-

- (i) Registrar of Dairy (Co-operatives):
 - (ii) Chairman of the Apex Society:
 - (iii) Joint Director (General), Dairy Development Department or Joint Secretary to Government, Dairy Development Department, Government of Kerala,
 - (iv) An expert from Dairy Industry nominated by the Government.
 - (v) Chairman, Regional Co-operative Milk Producers' Union:
 - (vi) Managing Director, Regional Co-operative Milk Producers' Union.
- (3) The Recruitment Committee for undertaking the selection process of the Chief Executive of the Managing Director of the Regional Co-operative Milk Producers' Union shall consist of not more than four members. The Secretary to Government in charge of Dairy Development Department shall be the Chairman of the Committee and the Chairman of Regional Co-operative Milk Producers' Union shall be the Convener of the Committee. The other members shall be the Managing Director of the apex society and an expert from Dairy Industry, nominated by the Government."

"44A. Delegate of Societies in the committee to another society to be members of the committee:- The person appointed to represent a society in any other society and vote shall be a member of the committee of the society which he represents:

Provided that if the affairs of the society are managed by Administrator/ Administrators/Administrative Committee appointed under S.28 or S.32 or S.33 of the Act, the person or persons so appointed shall have power to nominate any member of the society to be its delegate in the other society and such delegate shall be eligible to vote and to be elected as a member of the committee of the other society in which he sits as a delegate if he is otherwise qualified to be a delegate under the relevant rules."

8. Sections 8A(4), 28(1K), 28(6), 28(7), 28(8), 28AB(3), 28AB(4), and 80BB(1) begin with a non-obstante clause and are provisions that apply specifically to APCOS. Section 20, though it begins with a non-obstante clause, is general in nature. Going by the plain meaning of Section 28(8), the President alone can be a delegate. The usage of the words 'shall' and 'only' in the sub-section would suggest that no other member can participate in the meeting or contest the election to the Managing Committee. The counsel for the petitioners points out that the Act had been in force from the year 1969, and it was in February 2021 that the Legislature, in its wisdom, thought it fit to amend the provisions of the Act so as to treat the APCOS differently.

9. The counsel for the petitioners submits that the amendment of Section 8A by the introduction of sub-section (4) with effect from 12.2.2021 creates a right in every APCOS which comply with the twin requirements of having a regular Managing Committee and doing business in milk procurement and sale

within the area of operation of a Regional Co-operative Milk Producers' Union, to be admitted as a member. Since the provision starts with a non-obstante clause, it is submitted that the provisions contained in sub-sections (1) to (3) of Section 8A cannot affect the right of an APCOS to be a member of the Union. It is submitted that the committee of the Apex/Central Society no longer has the option to deny membership, and the deeming provision contained in Section 8A(2) can no longer have any application in the case of APCOS. It is hence submitted that the decision to include some Societies alone on the ground of deemed affiliation cannot be legally sustained.

ARGUMENTS ADVANCED BY COUNSEL ON EITHER SIDE: -

10. Sri P.N.Mohanan learned counsel for the petitioners, relied on the judgments reported in *P.S.John v. Kerala State CRMF Ltd* [1984 KLT 853], *K.Shantaraj & Anr. v. M.L.Nagaraja & Ors.* [(1997) 6 SCC 37], *Raghavan Nair v. Joint Registrar of Co-operative Societies* [1998 (2) KLT 1068], *Joint Registrar of Co-operative Societies v. T.A.Kuttappan* [2000 (2) KLT 480], *Prakashkumar v. State Co-operative Election Commission* [2014 (1) KLT 68], *Abdurahiman P & Ors. v. State of Kerala & Ors.* [ILR 2020 (1) Kerala 176], *Ismail P.M. v Ammer-UI-Islam & Anr.* [ILR 2022 (2) Kerala 666] and *State (NCT of Delhi) v. Sanjay* [2014 (9) SCC 772] in support of his contentions.

11. In *John (supra)*, a Division Bench of this Court was considering the provision in the bye-laws of the Rubber Marketing Federation, which said that a delegate who can exercise vote for the election to the Board of Directors of the Federation should be a Director of the affiliated Society. The Court considered Section 21 of the Act, which says that the Society can appoint one of its members to exercise the vote and held that the provision in the bye-law which says that only a Director of the affiliated Society can vote can only be understood as a further qualification to be satisfied by the member, for exercising the vote.

12. In *Shantaraj (supra)*, the Hon'ble Supreme Court held that the Administrator could not enrol members to the Society and has to conduct the elections with the members on rolls, in accordance with the provisions of the Act, Rules, and the bye-laws of the Society. The above view was reiterated by the Hon'ble Supreme Court in *T.A.Kuttappan (supra)*. In *Prakashkumar (supra)*, a learned Single Judge followed the above judgments and held that the members so enrolled are liable to be removed from the electoral rolls. The nominations submitted by such enrolled members also fall to the ground, and such persons cannot contest the election. A later Division Bench of this Court in *Ravindran K. & Ors. v. State of Kerala & Ors.* [2022 KHC 3442] referred to the judgments in *T.A.Kuttappan (supra)* and *Prakashkumar (supra)* and reiterated the legal position.

13. In *Raghavan Nair (supra)*, a learned Single Judge held that the Administrator can only perform the functions of the Committee and cannot exercise the powers of the committee. The Court held that the Administrator does not have the power to effect any regular appointment in the Society. *Abdurahiman (supra)* was a

case in which this Court was considering the amalgamation of the District Co-operative Banks with the State Co-operative Bank. The Court referred to the judgment of the Hon'ble Supreme Court in NCT of Delhi(supra) wherein it was observed that a non-obstante clause is a legislative device to give an overriding effect to certain provisions over some contrary provisions that may be found within the same enactment or some other enactment.

14. In Philip v. State of Kerala [2008 (2) KLT 555], a Division Bench of this Court, dealing with the exclusion of certain Societies from voting rights in the District Co-operative Banks, held that the legislative wisdom should prevail and that the representatives of people are the best judges to say what is good for the people. In Ismail (supra), this Court considered the effect of the usage of the word "only" in Rule 226 of the Criminal Rules of Practice in the context of the grant of copies of proceedings to strangers and held that the word underscores the rigour in the matter of issuing copies of proceedings to strangers as it insists on an order of Court permitting the issuance of such copies. The above judgment is relied on to submit that the usage of the word "only" in Section 28(8) must be understood in the same manner.

15. Senior Advocate Sri Renjith Thampan appearing for the contesting respondents who were members enrolled by the Administrative Committee, contends that a non-obstante clause cannot be used to bulldoze statutory rights. It is submitted that the history of the enactment should be looked into for the purpose of appreciating the meaning of the Sections. It is further submitted that an effort should be made to interpret the statutory provisions keeping in mind democratic principles. It is submitted that if Section 28(8) is read as a whole, it is evident that the provision does not even contemplate Societies that are managed by Administrators or Administrative Committees and only considers Societies that are managed by elected committees. It is hence submitted that the restriction that the President alone should be the delegate at the general body meeting of the Union, and he alone will be entitled to contest, can apply only to Societies with elected committees. The Senior Counsel contends that as far as Societies under the control of the Administrator or the Administrative Committee are concerned, the statutory provision does not have any impact. Going by the other provisions of the KCS Act, the delegate can be a person authorised by the Administrator/Administrative Committee.

16. Another contention is that if Section 28(8) is to be understood in the manner suggested by the petitioners, it would lead to a situation where several Societies which are members of the Central Society will not be able to participate in the management of the Central Society and such an interpretation can never be justified in a democratically managed set up.

17. Section 20 of the Act is relied upon to submit that every member has one vote, and such entitlement cannot be taken away by a wrong interpretation given to Section 28(8). Section 21 is referred, to submit that one of the members of the Society can be a delegate, and there is no necessity that it should be the

President or any other Office Bearer. Rule 44A is referred to for contending that there can be delegates other than the President. Reference is made to the definition of general body meeting contained in Section 2K.

18. The Senior Counsel relied on the judgments reported in Devadoss (Dead) by LRs & Anr. v. Veera Makali Amman Koil Athalur [(1998) 7 SCC 286], Rib Tapes (India)(P) Ltd & Anr. v. Union of India & Ors. [1986 KHC 665 = 1986 (4) SCC 185], Vishal N.Kalsaria v. Bank of India 2016 (1) KHC 330 = [2016(3) SCC 762], Union of India & Anr. v. Mohit Minerals Private Limited [2022 KHC 6578 = (2022) 10 SCC 700], Shaji v. State Co-operative Election Commission(sic) [2004 KHC 722], Ahmedabad Municipal Corporation v. GTL Infrastructure Limited & Ors. [2016 KHC 6877 = 2017 (3) SCC 545], Atam Prakash v. State of Haryana & Ors. [1986 KHC 745 = (1986) 2 SCC 249], Ardhendu Kumar Das v. State of Odisha [2022 KHC 6615 = 2022 SCC OnLine SC 718], Managing Director, Chhattisgarh State Co-operative Bank Maryadit v. Zila Sahkari Kendriya Hank Maryadit & Ors. [2020 KHC 6258 = (2020)6 SC 411] and State of Kerala & Ors. v. A.Beevi Kannu [2014 (4) KHC 673 (FB)] in support of his contentions.

19. In Devadoss (supra), the Hon'ble Supreme Court considered whether the statement of objects and reasons of enactment could be looked into for determining the true meaning and effect of the substantive provisions of a Statute. Referring to earlier judgments of the Hon'ble Supreme Court, the Court held that the law is well settled that the statement of objects and reasons cannot be used to determine the true meaning, but it was permissible to refer to the same for the purpose of understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the Statute and the evil which the Statute sought to remedy. In Rib Tapes (supra), the Hon'ble Supreme Court observed that in order to interpret a particular provision and to infer the intention of the legislature, the Objects and Reasons stated in the Bill, when it is presented to the legislature, could be used. In Vishal (supra), the Hon'ble Supreme Court considered the question whether the provisions of the SARFAESI Act would override the provisions granting protection to tenants under the relevant rent control laws. The Supreme Court held that the two enactments operate in completely different spheres, and the provisions of the SARFAESI Act cannot be used to override the provisions of the Rent Control Act in cases where the tenancy was created prior to the mortgage in favour of the bank.

20. Mohit Minerals (supra) is relied upon by the Senior Counsel in support of the contention that even though the traditional view of the interpretation of Statutes is that legislative history is not readily used in interpreting a law, the modern trend of thinking on the subject has enabled Courts to look into the history of legislation to understand the full purport of the words used, and the mischief sought to be remedied by the law. The Senior Counsel relied on Shaji (supra) to submit that in appropriate cases, the Administrator will have to confer membership on persons depending upon the contingencies. Ahmedabad Municipal Corporation (supra), referred to, is a case where the Hon'ble Supreme

Court, while considering the principles of interpretation of the Constitution, stated that the principles of statutory interpretation would also apply to the interpretation of the Constitution. The Court, however, cautioned that it would be self-defeating to test the Constitutionality of a Statute by trying to interpret Constitutional expressions by referring to definitions contained in Statutes. The above judgment may not be relevant for the purpose of the case on hand since this Court is concerned with interpreting the Statute with reference to the words used and the non-obstante clause giving overriding effect. In *Atam Prakash*(supra), the Hon'ble Supreme Court was considering the classification for the purpose of exercising the right of pre-emption under the Punjab Pre-emption Act, 1913. The Apex Court held that while determining the constitutionality of a Statute, a cardinal rule is to look to the Preamble of the Constitution as the guiding light and to the Directive Principles of State Policy as the book of interpretation. It is stated that a liberal and progressive construction is required. In *Ardhendu Kumar* (supra), relied on by the Senior Counsel, the Hon'ble Supreme Court held that it is a settled principle of law that all the provisions in the Statute must be read harmoniously and that each provision has been brought by the legislature into the Statute book with some purpose. It is also stated that a provision should not be read in isolation and must be read in context to each other, and an attempt must be made to reconcile all the provisions of the Statute together unless it is impossible. The above judgment does not support the case of the respondents since it does not deal with the interpretative process to be adopted when there is a non-obstante clause. A non-obstante clause, by its very purpose and nature, can never be reconciled with the other provisions of a Statute, as it is to have an overriding effect over all other provisions. Reliance is also placed on *Chhattisgarh Co-operative Bank* (supra) to submit that when there is an apparent conflict between different provisions of a Statute, a harmonious construction should be resorted to. The effect of the above judgment is considered later in this judgment. In *A.Beevi Kannu*, the Full Bench of this Court was considering the interpretation to be placed on Clause 45(8) of the Kerala Rationing Order, 1966. The question was whether it is mandatory to give a notice or opportunity as contemplated in the first part of clause (8) for ordering temporary suspension of a licence pending enquiry against a ration dealer. The Full Bench considered the various decisions of the Hon'ble Supreme Court on the interpretation of a non-obstante clause and reiterated the principle that the non-obstante clause is appended to a provision with a view to give the enacting part of the provision an overriding effect in case of a conflict. The Bench also took note of the decisions which said that although ordinarily there should be a close approximation between the non-obstante clause and the operative part of the section, the non-obstante clause need not necessarily and always be co-extensive with the operative part so as to have the effect of cutting down the clear terms of an enactment. The effect of the above judgment is considered later in this judgment.

21. Adv. Sri P.C.Sasidharan appearing for some of the respondents, submitted

that the limitation in Section 28(8) can only be to attend the general body meeting and to contest the election. It is submitted that any person can be a delegate, but such a delegate can contest only if he is the President. It is hence submitted that there is no conflict between Section 28(8) and Rule 44A.

22. The counsel relied on the judgment reported in *Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha & Anr. v. State of Maharashtra & Ors.* [2001 (8) SCC 509] to submit that the remedy of the petitioner is to approach the Election Tribunal. The Hon'ble Supreme Court held that preparing the voters' list is an integral part of the election process, going by the provisions of the Maharashtra Co-operative Societies Act, 1960, and disputes regarding the same can be challenged in an election petition.

23. The Standing Counsel for the Union endorsed the arguments of the counsel for the other respondents. In addition, it is submitted that all meetings held for the election of members of the managing committee cannot be treated as general body meetings. The basis for the submission is that elections are held in several Revenue Districts separately, and no annual general body meeting of all the members of the Society is held for the purpose of electing the representatives from each district. It is hence submitted that since the meeting was not an annual general body meeting, there can be no restrictions regarding a delegate attending the meeting. The only restriction can be about contesting in the election. The Standing Counsel further contends that to interpret Section 28(8) to mean that it restricts the voting right of a Society managed by an administrator would have serious implications on the working of several other provisions of the Statute. Specific reference is made to Section 33, which deals with appointing an Administrator/Administrative Committee in certain circumstances. Section 33(2), as amended on 1.1.2000, says that the Administrator of the Administrative Committee appointed shall, subject to the control of the Registrar and such instructions as he may from time to time give, have the power to exercise all or any of the powers and functions of the committee or of any officer of the Society and take all such action as may be required in the interest of the society. Earlier, the Administrator was given power only to exercise all or any of the functions of the Committee, which was enlarged, permitting the exercise of powers of the Committee also. It is submitted that if the President alone can be a delegate, the scope and operation of Section 33(2) will be curtailed. Reference is also made to Sections 20 and 21 of the Act. Section 20 says that notwithstanding anything contained in any other provision of the Act or any other law, every member of a Society shall have one vote in the affairs of the Society. It is submitted that if the voting right is curtailed by Section 28(8), the right of a member under Section 20 is taken away. Section 21 deals with the manner of exercising votes and says that every member shall exercise his vote in person. The section further says that a Society or corporation or a statutory or non-statutory Board, committee, or other body of persons which is a member of another Society may, subject to any rules made under the Act, appoint one of its members to vote on its behalf in the affairs of

that Society. It is submitted that the right granted to a Society to appoint one of its members to vote on its behalf is also taken away by Section 28(8) when it says that the President alone can be the delegate.

24. The counsel relied on the judgments reported in *Sanjay Ramdas Patil v. Sanjay & Ors.* [2021 (10) SCC 306] and *Chief Justice of Andhra Pradesh v. L.V.A.Dixitulu* [AIR 1979 SC 193] in support of his contentions. In *Sanjay Ramdas* (supra), the question before the Hon'ble Supreme Court was whether the notification earmarking the office of the Mayor of the Dhule Municipal Corporation for Backward Class could be interfered with by the High Court and directions issued to reconsider the issue since there had been no reservation for Scheduled Caste category. The High Court held that the action was violative of the rotation policy. The Hon'ble Supreme Court, after referring to the various earlier decisions relating to the Interpretation of Statutes, concluded that "it is more than well settled that it is the duty of the Court to construe the Statute as a whole and that one provision of the Act has to be construed with reference to other provisions so as to make a consistent enactment of the whole Statute. It is the duty of the Court to avoid a head-on clash between two sections and construe the provisions which appear to be in conflict with each other in such a manner so as to harmonise them. It is further equally settled that while interpreting a particular statutory provision, it should not result into making the other provision a 'useless lumber' or a 'dead letter'. While construing the provisions, the Court will have to ascertain the intention of the law-making authority in the backdrop of dominant purpose and the underlying intendment of the Statute". In *Chief Justice* (supra), the Hon'ble Supreme Court held that where two alternative constructions are possible, the court must choose the one which will be in accord with the other parts of the Statute and ensure its smooth, harmonious working, and eschew the other which leads to absurdity, confusion or friction, contradiction and conflict between its various provisions, or undermines, or tends to defeat or destroy the basic scheme and purpose of the enactment. The Court further held that the above canons of construction apply to the interpretation of our Constitution with greater force because the Constitution is a living, integrated organism, having a soul and consciousness of its own.

25. In reply, Adv.Sri P.N.Mohanan submitted that an election is only a statutory right conferred under the Kerala Co-operative Societies Act and hence can be conducted only in accordance with the provisions of the Statute. No other principles can be read into the Statute when the Section is not in any way ambiguous. Regarding Rule 44A, it is submitted that Rule cannot operate against Section 28(8), and the main Rule is clear, and there is no necessity to look into the proviso.

26. The Special Government Pleader had made a submission based on a proposed amendment to the Act whereby delegates sent by Societies managed by Administrator/Administrative Committee were also made eligible to attend only general body meeting and vote at the election. The counsel for the

petitioners relies on the above circumstance to submit that such an amendment was sought to be brought in only because the Government was very much aware that as the law presently stands the President alone can be a delegate, who can contest in the election. It is submitted that if the interpretation sought to be placed by the counsel for the respondents is accepted, there was no necessity for bringing in such an amendment.

27. Advocate Sri R.T.Pradeep appearing for some of the respondents also relied on Chhattisgarh Co-operative Bank (supra) to submit that the provisions should be harmoniously construed, with particular reference to the other provisions of the Statute which deal with meetings and delegates.

28. Advocate Sri Anand N., appearing for some of the respondents, placed reliance on the decisions in R. vs. Secretary to Government [2022 (UKSC) 3] to contend that the plain meaning of the provision has to be looked into for understanding its meaning and purport. The question that was considered was whether Subordinate legislation was ultra vires because the fee fixed for a child or young person to get registered as a British citizen was at a level that many young applicants found to be unaffordable. The court held that "words and passages in a statute derive their meaning from their context. External aids to interpretation therefore must play a secondary role..... Other sources such as Law Commission reports, reports of Royal Commissions and advisory committees, and Government White Papers may disclose the background to a statute and assist the court to identify not only the mischief which it addresses but also the purpose of the legislation, thereby assisting a purposive interpretation of a particular statutory provision. The context disclosed by such materials is relevant to assist the court to ascertain the meaning of the statute, whether or not there is ambiguity and uncertainty, and indeed may reveal ambiguity and uncertainty..... But none of these external aids displace the meanings conveyed by the words of a statute that, after consideration of that context, are clear and unambiguous and which do not produce absurdity."

29. The Court referred to the observations in R v. Secretary of State for the Environment, Transport and the Regions, Ex parte Spath Holme Ltd. [(2001) AC 349,396], that "The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration. This is correct and may be helpful so long as it is remembered that the intention of Parliament is an objective concept, not subjective. The phrase is a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the language used. It is not the subjective intention of the minister or other persons who promoted the legislation. Nor is it the subjective intention of the draftsman, or of individual members or even of a majority of individual members of either House..... Thus, when courts say that such-and-such a meaning "cannot be what Parliament intended", they are saying only that the words under consideration cannot reasonably be taken as used by Parliament with that meaning."

ISSUES TO BE DECIDED :-

30. The questions to be answered are identified as below:

(A) Can the election process be challenged in a Writ Petition?

(B) Does Section 28(8) of the Act take away the "right to vote" of the Societies managed by Administrators/ Administrative Committees ?

(C) Do Sections 20, 21, and Rule 44A affect the manner in which Section 28(8) is to be interpreted ?

(D) Do sub-sections (1),(2), and (3) of Section 8A any longer apply to APCOS, in view of the introduction of sub-section (4) of Section 8A ?

31. The contentions raised by the respondents, on the whole, would amount to requiring the Court to read down Section 28 (8) in such a manner as to provide a right to all the Anand Pattern Milk Societies, whether or not they are managed by an elected body, to send a delegate of their choice to participate and contest in the election to the Managing Committee of the Union. One method of interpretation suggested for the above purpose is the harmonious construction of all the provisions of the Act, keeping in mind the democratic principles that govern Co-operative Societies. Another contention is that a plain reading of the section shows that it does not deal with Societies managed by Administrator/ Administrative Committees. The third contention is that the election of members from each district is conducted separately at a meeting of the delegates of the Societies that are located in that district and not in an Annual General Body Meeting of the Union, thus doing away with the requirement of the President as a delegate as contemplated in Section 28(8).

CONSIDERATION:

QUESTION (A)

32. Shri Sant Sadguru (supra), is relied upon to submit that the remedy of the petitioners is to approach the Election Tribunal. The Hon'ble Supreme Court held that the preparation of the voters' list is an integral part of the election process, going by the provisions of the Maharashtra Co-operative Societies Act, 1960, and disputes regarding the same can be challenged in an election petition. There can be no dispute regarding the above legal proposition. However, the above-said principles cannot be applied to the facts of this case. In this case, the Writ Petition was filed at the earliest stage of the election process, and the contention itself was that the draft voters' list was prepared overlooking the amendment of the Statute and in violation of the amended statutory provisions. The Writ Petition was entertained, taking note of this aspect, and interim directions were issued to keep votes in separate boxes. A Division Bench of this Court, in the writ appeal challenging the directions issued by the learned Single Judge, issued directions regarding the manner of casting a vote, declaration of result, etc., and directed the parties to move the Single Judge with an appropriate application to have the Writ Petition itself heard, directing further that the interim order issued by the Division Bench will remain in force till then. The Writ Petitions are being

heard and disposed of in the above circumstances, particularly since the objections raised against the draft voters' list, based on statutory ineligibility, go to the root of the matter.

QUESTIONS (B) AND (C)

33. The above two questions are being considered together. It is a settled legal proposition that the principles of harmonious construction are adopted when there is a conflict between two provisions within a Statute, or between provisions contained in different Statutes, to resolve the conflict and arrive at a construction that satisfies the purpose of the legislation. The principle cannot apply where such a construction would result in rendering a provision as "useless lumber" or "dead letter." It is not open to the Court to go behind the plain words and try to read into the provision what is not warranted by any canon of construction. The intention of the law-makers must be primarily ascertained from the language used in the Statute, and where the language is plain, there is no scope for any speculation on that behalf. When the law-makers themselves used the words "Notwithstanding anything contained in this Act or the Rules made thereunder or the bye-laws of a Regional Co-operative Milk Producers' Union or in any other law" along with the words "the delegate to attend the general body meetings and to contest the elections shall be the President of the member Anand Pattern Milk Co-operative Societies only", it would not be legitimate for this Court to go against the plain words and try to read into the proviso something which would involve either a deletion of the non-obstante clause or a re-writing thereof (See the Constitution Bench decision of the Hon'ble Supreme Court in *Ram Narain Sons Ltd. v. Asstt. [CST AIR 1955 SC 765]*. The extract from the judgment of the UK Supreme Court in *R v. Secretary (supra)* also lays down the principles in the right perspective.

34. The context in which the principles of law were stated in *Chhattisgarh Co-operative Bank (supra)* is totally different. On facts, the Hon'ble Supreme Court was dealing with a case where a statutory provision having a non-obstante clause intended to have an overriding effect was deleted. The effect was to take away the absolute power which was conferred on co-operative banks to appoint their CEO. It is in that context that the Court held that the other provisions have to be harmoniously read. In the case on hand, we are concerned with interpreting a provision that, on a plain reading, gives an overriding effect. An interpretation that takes away the overriding effect can never be accepted as the intention of the legislature in such cases. Section 28(8) of the Act is not the only provision that has been brought in by way of amendment, with a non-obstante clause, to deal exclusively with APCOS. The intention can only be understood as an introduction of specific provisions for a particular type of Society that need to be given overriding effect over the other provisions. The above conclusion is strengthened by the fact that almost all the amendments relating to APCOS, including a definition of APCOS, were brought into the Act by means of Amending Act 34 of 2021, which was published in the Gazette on 14.11.2021. The

provisions are brought into force with effect from 12.2.2021. The Objects and Reasons of the Amending Act refer to studies made regarding the functioning of the Milk Co-operative Societies and say that the amendments are brought in with a view to strengthening the functioning of the Primary Dairy Co-operative Societies and the Regional Co-operative Milk Producers' Union. No different intention appears from the Statement of Objects and Reasons to justify an interpretation that would take away the overriding effect of the amending provisions.

35. The judgment in *A.Beevi Kannu* rendered by the Full Bench of this Court while considering the interpretation to be placed on Clause 45(8) of the Kerala Rationing Order, 1966, does not improve the case of the respondents. A reading of Section 28(8) would show that the non-obstante clause in the sub-section does not in any manner conflict with the operative portion of the sub-section. Use of the words "shall" and "only" in the sub-section would only give more emphasis to the non-obstante clause and clarify what was intended.

36. None of the decisions regarding the principles of interpretation to be adopted which were cited, lay down a legal principle that, even in cases where a Statute uses a non-obstante clause, clearly intending an overriding effect to the provision, the Court can, by an interpretative process take away the effect of the non-obstante clause and make the provision subject to the other provisions of the enactment. Nor can any Court adopt such an interpretation since it will violate all canons of interpretation. A harmonious construction is required only to bring harmony when no conflict between the provisions in question was intended. When conflict is clearly intended, as in the case on hand, a harmonious construction cannot be adopted to do away with the conflict. It will not be out of place to observe that the very fact that the law-makers proposed to further amend the Act, pending the hearing of the Writ Petitions, to provide voting rights to Societies under the governance of Administrators of Administrative Committees would go to show that the provision as it stands takes away the right to vote.

37. Section 20, as amended with effect from 4.5.2002, also begins with a non-obstante clause and says that every member of a Society shall have one vote in the affairs of the Society. However, persons who were admitted as members within 60 days immediately prior to the date of the election are not entitled to vote. The legislature was fully aware of Section 20 when it amended Section 28 by adding sub-section (8), which again begins with a non-obstante clause. Section 20 is general in nature and applies to all Societies, while Section 28(8) specifically applies only to APCOS. Section 28(8) will hence override Section 20, and the right to vote stated in the main part of Section 20 is subject to the member complying with the requirement of Section 28(8). However, the proviso (a) of Section 20, which says that a member admitted within 60 days immediately prior to the date of the election shall not have the right to vote, will apply in the case of APCOS as well since it is a requirement for preparation of the

electoral roll and the smooth conduct of the election. Section 21(2), which permits a Society that is a member of another Society to appoint one of its members to vote on its behalf in the affairs of that other Society. As in the case of Section 20, in the case of Section 21 also, the provisions contained in Section 28(8) will have an overriding effect. Coming to the proviso to Rule 44A, firstly, it cannot go beyond the statutory provisions. Secondly, in the case of Rule 44A also, Section 28(8) will have an overriding effect, and the Rule cannot apply in the case of APCOS. Thirdly, the Rule ends with the words "if he is otherwise qualified to be a delegate under the relevant rules." Since the persons nominated by Administrator/ Administrative Committee are not "otherwise qualified" even under the provisions of the Parent Act, there is no question of such persons being otherwise qualified under the Rules. The questions B and C are answered, holding that the understanding or construction of Section 28(8) cannot in any manner be influenced by Sections 20, 21, and Rule 44A.

Question D :

38. In the light of the discussions regarding Questions B and C, no further elaborations regarding the effect of a non-obstante clause are required. Sub-section (4) of Section 8A has an overriding effect over sub-sections (1),(2), and (3) of Section 8A insofar as APCOS are concerned. Once Section 8A is given its full effect, there is no question of any deemed affiliation after the passage of 60 days. All the APCOS which satisfy the two conditions laid down in Section 8A(4) will be entitled to be a member. However, Section 8A(4) has to be read along with Proviso (a) of Section 20. The APCOS, which do not satisfy the twin requirements of Section 8A(4), before a period of 60 days prior to the date of the election, shall not have a right to vote. The fact that the Administrator/ Administrative Committee was in office during that period of time is inconsequential. The contentions regarding the right/power or absence of right/power of the Administrator/Administrative Committee to admit members need not be considered in view of Section 8A(4). The distinction sought to be made based on the fiction of deemed affiliation in terms of sub-sections (1),(2), and (3) of Section 8A will not apply in the case of APCOS.

39. In view of the conclusions above, the following orders are issued in W.P. (C)No.9793 of 2022.

The Returning Officer shall declare the results of the election:-

- (1) without taking into account the votes cast by the delegates of the Societies under the control of the Administrator/ Administrative Committee; and
- (2) without taking into account the votes cast by such of the 23 APCOS, which became members in terms of Section 8A(4) after the Administrator/ Administrative Committee was put in charge but had satisfied the requirements of Section 8A(4) only within 6 months prior to the date of the election.
- (3) The Returning Officer shall declare the results of the election afresh after

making necessary changes in the results already declared, which are not in accordance with the directions (1) and (2) above.

In view of the above conclusions on the legal issues and the directions above stated, the connected Writ Petitions are disposed of as follows:

W.P.(C)No.9447/2022:

40. The Writ Petition is filed by the Presidents of Milk Producers' Co-operative Societies, and the prayer in the Writ Petition is for a direction to respondents 1, 2, and 3 not to permit Societies/delegates included in Ext.P16 list to exercise their voting right in the elections scheduled to be held on 09.04.2022. Ext.P16 is a list of Societies that are governed by Administrator/ Administrative Committees. The contention is based on the amended Section 28(8) of the KCS Act. In view of the findings and directions issued above, no further directions are required in this Writ Petition.

W.P.(C)No.14211/2022:

41. The petitioner is a person who participated in the election. According to him, he had secured an equal number of votes as the 6th respondent and had made a request for re-counting. It is submitted that the re-counting was not permitted due to objections from the rival candidates and their election agents. The prayer is for computing and recounting. There is also a prayer for quashing Ext.P6, whereby the request for recounting was rejected. Since this Court has already issued directions regarding the votes that are to be taken into account, the Writ Petition is allowed, and the Electoral Officer is directed to re-count the votes as directed in paragraph 39 above and declare the result accordingly.

W.P.(C)No.14710/2022:

42. The Writ Petition has been filed by a person who had participated in the election. The prayer in the Writ Petition is for a direction to the 5th respondent to declare the petitioner as elected to the Managing Committee from the Scheduled Caste/Scheduled Tribes category. According to the petitioner, he had secured 150 votes from Societies with regular Managing Committees and a total number 152 votes, including votes of delegates of Societies managed by Administrators/ Administrative Committees. It is submitted that his rival, the 8th respondent, secured only 133 votes from Societies with regular Managing Committees and a total number of 150 votes, along with the votes of delegates of Societies managed by Administrators/Administrative Committees. It is hence submitted that the 5th respondent Returning Officer is bound to declare the petitioner as elected since the dispute regarding votes cast by delegates of Societies managed by Administrators/Administrative Committees will not impact the election. In view of the directions contained in paragraph 39 above, the Returning officer is directed to declare the result of the election in terms of the directions.

W.P.(C)No.15557/2022:

43. The petitioner herein is a candidate who participated in the election held to the Managing Committee of the 4th respondent. The prayer is for a direction to declare that the declaration of 7th respondent as elected to the Managing Committee of the 4th respondent is illegal. According to the petitioner, the votes cast in boxes II and III have impacted the results. It is hence submitted that the Returning Officer could not have declared the 7th respondent as elected, overlooking the claim of the petitioner. In view of the directions contained in paragraph 39 above, the Returning Officer is directed to declare the result of the election afresh, in accordance with the said directions.

W.P.(C)No.15591/2022:

44. The petitioners are elected Managing Committee members of the 2nd respondent whose term had expired on 16.2.2021. The prayer in the Writ Petition is for a direction to the 1st respondent to reconstitute the Administrative Committee by selecting a Managing Committee member elected from each district in the election held on 9.4.2022. In view of the directions contained in paragraph 39 above, the directions sought are no longer relevant, and no orders are required in this Writ Petition.

W.P.(C)No.15660/2022:

45. This Writ Petition is filed by a person who participated in the election. The prayer is for a declaration that votes polled by respondents 7 to 11 should be included only in Box II. There is also a prayer for quashing Ext.P8, to the extent it declares the 17th respondent as elected over the petitioner. In view of the directions issued in paragraph 39 above, no further directions are required in this Writ Petition except an observation that the Returning Officer shall consider whether the declaration of result of the 17th respondent is in accordance with directions contained in paragraph 39 and pass necessary orders.

W.P.(C)No.15762/2022:

46. The petitioner is the President of a Milk Producers' Co-operative Society. The prayer in the Writ Petition is for a declaration that Sl.Nos.189 and 192 having Member No.262 and 715 in Ext.P4 final voters' list are not entitled to vote in the election scheduled to be held on 28.5.2022 as per Ext.P1 notification. According to the petitioner, the above-said members are Societies which are managed by Administrators/Administrative Committees and in view of Section 28(8) of the KCS Act, the delegates of such Societies are not entitled to vote. The Writ Petition is disposed of with a declaration that the directions contained in paragraph 39 above will govern the entitlement of Member Nos.262 and 715 in Ext.P4 final voters' list.

W.P.(C)No.29611/2022:

47. The petitioner is the President of a Milk Society. The prayer in the Writ Petition is for a direction to respondents 1 and 2 not to permit anybody other than Presidents of the Anand Primary Societies to participate in the Annual

General Body scheduled to be held on 22.9.2022 and for a further direction not to take any policy decision with regard to Item Nos.11 and 12 contained in Ext.P2 agenda. There is also a prayer for a declaration that nominees of the Administrator cannot attend the Annual General Body scheduled to be held on 22.9.2022 and that the Administrative Committee has no power to take a policy decision. In view of the directions contained in paragraph 39 above, no further orders are required in this Writ Petition and the writ petition is closed.

W.P.(C)No.32912/2022:

48. The petitioner is an APCOS. The prayer in the Writ Petition is to declare that Section 28(8) of the KCS Act introduced as per Act 34/2021 with effect from 12.2.2021 is ultra vires and discriminatory, and violative of Article 14 of the Constitution of India. The contention of the petitioner is that Sections 20 and 21 of the KCS Act grant every member of a Co-operative Society a right to vote, and such votes are available to every member society affiliated to Central Societies. It is hence submitted that Section 28(8), which restricts such voting rights, is an unreasonable restriction and discriminatory in nature.

49. I have already considered the effect of the statutory provisions in detail in the earlier paragraphs and held that Sections 20 and 21 are general in nature and apply to all Societies, while Section 28(8) is an amendment brought in with respect to the APCOS alone. The legislature, in its wisdom, brought in substantial amendments with respect to APCOS, and Section 28(8) is only one such provision.

50. It is settled law that plenary legislation can be challenged only on the grounds of (a) want of legislative competence (b) contravention of any of the fundamental rights stipulated in Part III of the Constitution or any other right/provision of the Constitution. (See *Binoy Viswam v. Union of India* [(2017) 7 SCC 59], *State of M.P. v. Rakesh Kohli* [(2012) 6 SCC 312], *State of A.P. v. McDowell & Co.* [(1996) 3 SCC 709]. It is also well settled that there is always a presumption in favour of the constitutionality of an enactment, and the burden is upon him, who attacks it, to show that there has been a violation of the constitutional principles. (See *Mohd. Hanif Quareshi v. State of Bihar* [AIR 1958 SC 731], *Mahant Moti Das v. S.P. Sahi* [AIR 1959 SC 942], *Hamdard Dawakhana v. Union of India* [AIR 1960 SC 554], *Bengal Immunity Co. Ltd. v. State of Bihar* [AIR 1955 SC 661], *Charanjit Lal Chowdhury v. Union of India* [1950 SCC 833] and *State of Bombay v. F.N. Balsara* [1951 SCC 860].

51. The petitioner has challenged Section 28(8) as arbitrary and is against Sections 20 and 21 of the KCS Act, since it restricts the voting rights of a society. It is contended that Section 28(8) is discriminatory and violative of Article 14 of the Constitution of India.

52. The question whether a statutory provision is bad for the reason it discriminates can arise only when discrimination is made out between equals. It is settled law that the concept of equality in the Constitution of India is equality

among equals. It is also settled law that if discrimination is to be made out, one necessarily has to show that there has been an unreasonable classification. The question that will have to be posed is whether there is an intelligible differentia in making the classification and whether it serves the object sought to be achieved by the enactment.

53. In *Kangsari Haldar v. State of W.B.* [AIR 1960 SC 457], the Hon'ble Supreme Court held that the equality before the law, which is guaranteed by Article 14, no doubt prohibits class legislation, but it does not prohibit the legislature from legislating based on reasonable classification. If the classification is reasonable and is founded on intelligible differentia and the said differentia have a rational relation to the object sought to be achieved by the Statute based on such reasonable classification, the validity of the Statute cannot be successfully challenged under Article 14. In *State of W.B. v. Anwar Ali Sarkar* [(1952) 1 SCC 1], the Hon'ble Supreme Court held that there must be some yardstick to differentiate the class included and the others excluded from the group. On the facts, it was found that the differentia used for the classification was the total extent of landholding by every individual, and hence there is a yardstick used for constituting the class for the purpose of the scheme. The above view was reiterated by the Apex Court in *State of T.N. v. National South Indian River Interlinking Agriculturist Assn.* [(2021) 15 SCC 534].

54. Let us analyse the provisions of the KCS Act in the light of the above well settled principles of law. The KCS Act has been enacted to consolidate, amend, and unify the laws relating to Co-operative Societies in the State of Kerala. The Preamble of the KCS Act says that to provide for the development of the co-operative sector in Kerala, it is necessary to organise the co-operative societies in accordance with co-operative principles as self-governing, democratic institutions, to achieve the objects of equity, social justice, and economic development as envisaged in the Directive Principles of State Policy in the Constitution of India, etc. The Act itself contemplates at least 15 types of Co-operative Societies, and an APCOS is only one among them. There are provisions in the Act that govern only a certain type of Co-operative Society. The legislature is very much aware that societies of different kinds will have to be treated differently for carrying out the purposes of the enactment. A classification for the said purpose cannot be said to be unreasonable. There is an intelligible differentia in the classification since each such class has its own special identity. Each type of society has different criteria for membership, area of operation, objects, etc. A Milk Co-operative Society can never be compared to a consumer co-operative society or to a co-operative bank. The legislature, in its wisdom, thought it fit to have special provisions for the APCOS when the amendments were brought in during the year 2021. The object sought to be achieved by the amendments is to treat the APCOS differently, which is why all the provisions begin with a non-obstante clause. Since the APCOS are different from the other types of societies, it cannot be said that having different provisions in the same enactment to govern different types of societies, violates

the principles of equality enshrined in Article 14 of the Constitution of India. For instance, Section 16B of the KCS Act creates an ineligibility for a member of an APCOS to continue as an active member in certain circumstances, which are totally unique to such a type of society. A reference to Section 101 of the KCS Act is also useful in this context to understand the scope of the KCS Act. Section 101 gives power to the Government to exempt any society or class of societies from any of the provisions of the Act or to apply such provisions with modifications. Such a power can be exercised in the public interest by the issuance of a general or special order. In the case of APCOS, the introduction of different provisions has been made by a legislative exercise and not by the issuance of a general or special order by the executive.

55. I hence hold that Section 28(8) of the KCS Act is well within the legislative competence of the State Government, that there is no hostile discrimination in treating APCOS differently, that the section is not arbitrary, and that there is no violation of Article 14 involved. The Writ Petition fails and is dismissed.