

(2010) 04 BOM CK 0085

In the Bombay High Court

Case No : Writ Petition No's. 5463 of 1996, 119 and 2268 of 2006

Pune District Supervision Co-operative Society and Daund Taluka Supervision Co-operative Society Limited and Executive Officer Shri N.D. Kapre APPELLANT

Vs

The State of Maharashtra and The District Deputy Registrar Co-operative Societies
 Mangalwedha Taluka Co-op. Supervisory Society Limited and Others Vs The State of Maharashtra and The Divisional Joint Registrar, Co-operative Societies, Pune Division
 Kolhapur Zilla Dekhreh Sahkari Sanstha Maryadit Vs The State of Maharashtra and Others RESPONDENT

Date of Decision : 22-04-2010

Acts Referred:

Co-operative Societies Act, 1960 — Section 14

Citation : (2010) 3 ALLMR 833 : (2010) 5 BomCR 210

Hon'ble Judges : R.M. Savant, J;A.M. Khanwilkar, J

Bench : Division Bench

Advocate : G.S. Godbole and Manjiri Parasnis, Writ Petition Nos. 124/2006, 5463/1996, 119/2006, 3145/2006 and 4158/2006 and M.L. Patil, Writ Petition No. 2268/2006 and D.R. Talankar, Writ Petition No. 7490/2006, for the Appellant; C.R. Sonawane, Assistant Government Pleader for the Respondent Nos. 1 to 4, for the Respondent

Final Decision : Allowed

Judgement

R.M. Savant, J.—The above group of Petitions raise a common issue and involve identical facts and therefore, are heard and disposed of together. The challenge in the above Writ Petitions, save and except Writ Petition No. 5463 of 1996 is to the Circular dated 28th October, 2005 (Ex.O) issued by Respondent No. 2, the Letter/Order dated 19th October, 2005 (Ex.Q) issued by the Respondent No. 1 to the Respondent No. 2 and the Letter/Order dated 17th December, 2005 (Ex.P) issued by the Respondent No. 4. In Writ Petition No. 5463 of 1996, the challenge is to the Letter/Order dated 25th September, 2006 issued by the Respondent No.

3. The Letter/Order dated 19th August, 1996 issued by the Respondent No. 1. The said Letters/Orders are the predecessors to the Letters/Orders impugned in Writ Petition No. 124 of 2006 and the other companion matters.

2. The Petitioners in Writ Petition Nos. 124 of 2006, 2268 of 1996, 3145 of 2006, 4158 of 2006, 5436 of 1996 and 7490 of 2006 are the District Supervision Co-operative Societies namely the Solapur District Supervision Co-operative Society, Kolhapur Zilla Dekhreh Sahkari Sanstha Maryadit, Thane District Supervision Co-operative Society Limited, Ahmednagar Zilla Dekhreh Sahakari Sanstha Limited, Sindhudurg Zilla Dekhreh Sahakari Sanstha Maryadit and Pune District Supervision Co-operative Society and another. The Petitioner in Writ Petition No. 119 of 2006 is a Taluka Supervision Society namely Mangalwedha Taluka Co-operative Supervision Society Limited, Solapur and others. As mentioned here in above, all the aforesaid District Supervision Co-operative Societies and the Taluka Supervision Co-operative Society have challenged the Letters/Orders mentioned here in above. For the sake of convenience the facts in Writ Petition No. 124 of 2006 would be referred to, as the same has been treated as lead matter.

3. The genesis of the issue which arises in the above Petitions is in the introduction of Section 69A in the Cooperative Societies Act, 1960 (Hereinafter referred to as "Said Act") which was introduced by way of amendment in the said Act in the year 1975 with a view to provide for proper supervision of the working of the Primary Agricultural Credit Co-operative Societies and Multipurpose Co-operative Societies. It appears that the State felt the need to establish the cadre of Societies to be known as the Co-operative State Supervision Cadre. The basic intention of the legislature in introducing Section 69A seem to be streamlining the manner of functioning of the various Societies and facilitate the speedy recovery of loan etc. with a view to maintain proper growth and health of the Co-operative movement. It is in the said background that the said Section 69A was introduced in the statute book in the year 1975. The salient features of the said Section 69A are as under:

(i) Co-operative State Cadre constitution of Secretaries of Primary Agricultural Credit Cooperative Society, Multipurpose Co-operative Society etc.

(ii) Immediate supervisory control of the cadre given to the Taluka Supervision Society consisting of the Societies Act to which the cadre persons are deputed.

(iii) Fund known as Co-operative State cadre employment fund established for the meeting expenses of the cadre.

(iv) Societies deriving the benefit from the cadre to contribute to the fund. Such Societies to be notified by the State Government.

(v) The State Government granted powers to make rules relating to the fund.

4. The State Government in exercise of the powers conferred u/s 69A(4) of the said Act issued a Notification bearing No. CDR10179/3008 - (21)-2C dated 3rd

March, 1979 directing all the District Central Co-operative Banks except the Bombay DCC and the Ahmednagar DCC to contribute to the Supervision Funds. The State Government also felt the need to appoint a Committee of experts to submit a report to the State Government in respect of the problems faced by and the functioning of the Supervision Societies and hence, by Government Resolution dated 11th March, 1989 the Respondent No. 1 appointed a Committee under the Chairmanship of Padmashree Shamrao Kadam for making various recommendations to the State Government in respect of the cadre of Secretaries (Gat Sachiv). The said Committee carried out exhaustive work and submitted its report dated 5th July, 1989 to the State Government. The said report inter alia disclosed various aspects including the service conditions of Secretaries, the control to be exercised on the Primary Agricultural Credit Co-operative Society. Since at the time District Supervision Society was in existence, the Committee in its report noted that it was intended to have full time Executive Officer preferably an officer from the District Central Cooperative Bank to look after the day to day business of the Supervision Society. It was further observed by the said Committee in Clause 5.10 of its report that there was no representation of the Co-operative Societies in which the Secretaries were deputed. It was further observed that since the District Deputy Registrar of the Co-operative Society in particular District was over burdened with various legal and other works under the said Act, it was impossible for the said District Deputy Registrar to devote much attention to the work of the Supervision Society. It was, therefore, the recommendation of the said Committee headed by Shri Shamrao Kadam that a Committee of eight persons having proper representation of the DCC Bank should be the Managing Committee of such Society. The aforesaid recommendation is relevant from the point of view of the present Petitions.

5. It appears that the State Government i.e. Respondent No. 1 herein considered the said report and after such consideration issued a Government Resolution dated 13th October, 1989 accepting various recommendations of the said Shamrao Kadam Committee in respect of the recommendations in respect of the District Level Supervision Society. It was decided that by the State Government vide Clause 4(a) to the Schedule of the said Resolution to accept the recommendations of the Committee. In the light of the said Government Resolution dated 13th October, 1989 the Model Bye laws for the District Co-operative Supervision Societies were prepared by the Registrar. The said Model Byelaws were thereafter approved. The Petitioners above named, who are the District Supervision Societies adopted the Model Byelaws. Under the said Model Byelaws especially Bye-law Number 15, the constitution of the Managing Committee of the District Supervision Society having a total of ten members is conceptualized. The said Clause provides that the Assistant Registrar of Co-operative Societies or an Officer of the District Central Co-operative Bank to be appointed as Ex-officio officer/Chief Executive Officer either on deputation or with additional charge. Thus, it was left to the Managing Committee of the Societies like the Petitioners to choose as to whether an Officer of the rank of the Assistant

Registrar of the Co-operative Department or an Officer of the District Central Co-operative Bank to be appointed as the Executive Officer or Secretary.

6. The purpose and intent of establishment of the Supervisory Co-operative Societies at the Taluka and District level is to have direct and effective control over the working of the various Primary Rural Credit Co-operative Societies. The intention is to see that the work of recovery of loans which are lent and disbursed by the various Societies to its members should be done properly and efficiently, and also to ensure that the Societies make repayment of their loans which are taken from the District Central Co-operative Banks. As can be seen the approved Model Bye-laws give a choice to the District Cooperative Supervision Society to have either an Assistant Registrar or an Officer from the District Central Co-operative Bank as its Chief Executive Officer according to its choice. The Co-operative movement at the Taluka level depends upon finance from the District Co-operative Central Banks and since the loans are provided by the concerned District Central Cooperative Bank a proper control of the District Central Cooperative Bank over the recovery of loans was thought essential. With a view to give some sort of autonomy to the District Co-operative Supervision Societies, they were given a choice of either having an Officer from the District Central Cooperative Bank or an Officer of the Co-operative Department as Member Secretary-cum-Chief Executive Officer. Since the work of the Chief Executive Officer of the District Supervision Society involves the work of supervision over the work of the Block Secretary and recovery of the loan of the District Central Cooperative Bank, a person having expertise in financial matters and recovery of loans in the Co-operative Sectors was required to be the Chief Executive Officer of the Taluka Co-operative Society. The approved Model Bye-laws, therefore, provide for autonomy to the Supervision Societies in the matter of the appointment of the Chief Executive Officer. It would be relevant to note that the District Central Co-operative Bank in each of the Districts in respect of which the Petitions have been filed make a major contribution to the Supervision Fund from which the affairs of the respective Petitioners - Societies are conducted. The contribution of the concerned District Central Co-operative Bank is increasing by the year and due to the said contribution made by the District Central Co-operative Bank, the Societies like the Petitioners above named are able to sustain themselves and function.

It would be pertinent to note that the Apex Society of the Supervisory Co-operative Society is the Maharashtra Government Sanvargikaran Society Limited, Pune. The said Society, in its Annual General Meeting has decided that it would be in the interest of the Supervision Society to appoint employee of the District Central Co-operative Bank as Chief Executive Officer by Resolution No. 1A passed in the meeting dated 12th November, 1994, it was decided that the Commissioner of Co-operation, be reported to issue a specific direction to appoint a Bank Officer as Chief Executive Officer of the District Supervision Society. It would also be pertinent to note that Resolution was also passed in the meeting dated 11th October, 1994 of the Apex Society that in all the District

Supervision Co-operative Societies, a Officer from the concerned DCC Bank should be appointed as Chief Executive Officer. A meeting was also held on 12th November, 1999 under the chairmanship of the then Hon"ble Minister for Co-operation of the State of Maharashtra in respect of the difficulties of the Block Secretary and it was clarified therein vide Resolution No. 3 that the Executive Officer of the District Supervision Society and Taluka Supervision Society should be appointed from the DCC Bank and that if necessary amendment be made to that effect in the Bye-laws. From the above conspectus of facts it can be seen that a conscious decision was taken at the Government level to appoint an Officer of the District Central Co-operative Bank as the Executive Officer of the District Supervision Society so as to ensure timely payment of the Salary of the Block Secretaries and to ensure proper control over the working of the Co-operative Credit Societies and Primary Societies with a view to have proper loan recovery, it was also felt necessary that District Central Co-operative Bank should have control over working of the Credit Society. From the averments made in all the above Petitions, all the Petitioners above named which are District Supervision Societies had appointed an Officer from the concerned District Central Co-operative Bank as its Chief Executive Officer-cum Member Secretary and it is their case that due to the experience and knowledge of the said Officer, there was substantial improvement in the working of the Petitioner - Societies. There was also an autonomy vested in them either to appoint an Officer from the Co-operative Department of the State Government i.e. Assistant Registrar or an Officer from the District Central Co-operative Bank as Executive Officer. This autonomy was available to them under the Bye laws which are duly approved by the State Government inasmuch as there are model Byelaws prepared by the Respondent No. 2 herein. Therefore, there was no authority with the Respondents herein to direct the Petitioner - Societies to appoint an Officer from the Co-operative Department as their Secretary/Executive Officer. As such the impugned directions have the effect of curtailing the rights, that the Petitioner - Societies have as regards their management.

7. It appears that the Respondent No. 3 herein by Order dated 28th September, 1996 directed the Petitioners - Societies that in pursuance of the letter dated 19th August, 1996 issued by the Respondent No. 1 herein i.e. the State Government, he was appointing himself as Secretary/Executive Officer of the Petitioner - Societies. As the said letter 20th September, 1996 indicates the same was issued by the Respondent No. 3 in view of the letter dated 19th August, 1996 issued by the Respondent No. 1. Aggrieved by the said Letter/Order issued by the Respondent No. 1 dated 19th August, 1996 and the Letter/Order dated 20th September, 1996 issued by the Respondent No. 3. The Petitioner in Writ Petition No. 119 of 2006 had filed Writ Petition No. 4905 of 1996 in this Court challenging the legality, validity and propriety of the said Letters/Orders. The said Writ Petition came to be admitted by this Court. An interim relief came to be granted thereby staying the appointment of the Respondent No. 2 - as the Chief Executive Officer of the Petitioner - Societies. Another Writ Petition No. 4904 of

1996 came to be filed by one Mohol Taluka Sahakari Maryadit and another challenging the same Order dated 19th August, 1996 passed by the Respondent No. 1. The said Writ Petition was also admitted. Interim reliefs were granted staying the said Letter/Order dated 19th August, 1996.

8. Whilst the said Writ Petitions were pending, a Circular came to be issued on 20th January, 2003 which was purportedly issued as a consequence of the decision taken in the meeting conveyed in the office of NABARD. The said decision was to the effect that in all the District Supervision Cooperative Societies, the officer of the concerned District Central Co-operative Bank should be appointed as the Chief Executive Officer. The said Circular, therefore, was placed on record by the Petitioner - Societies by way of an Affidavit-in-rejoinder in the said Writ Petition No. 4905 of 1996. The said Writ Petitions being 4904 of 1996 and 4905 of 1996 were disposed of by this Court by accepting the Circular dated 23rd January, 2003 issued by the Commissioner for Co-operation and the Registrar of the Co-operative Society, that the officer of the concerned District Central Co-operative Bank would function as Chief Executive Officer and Member Secretary of the concerned District and Taluka level Supervision Societies by Judgment and Order dated 27th February, 2003. It is the case of the Petitioners that the said Judgment and Order dated 27th February, 2003 has attained finality as the matter was not carried in Appeal to the Apex Court by the State Government.

9. In spite of the said Circular dated 23rd January, 2003 issued by the Commissioner for Co-operation and Registrar of Co-operative Society on the basis of which Writ Petition Nos. 4904 of 1996 and 4905 of 1996 came to be disposed of by Order dated 27th February, 2003. The Chief Executive Officer of the Maharashtra State Cadres Co-operative Society Limited, who is Divisional Joint Registrar of the Co-operative Societies, Pune Region, Pune, informed the Petitioners that the Respondent No. 2 herein has issued Order/Circular dated 28th October, 2005 directing that the District Deputy Registrar of Co-operative Societies in every District should be appointed as Member Secretary and Chief Executive Officer of the District Supervisory Society and directing that the Deputy Registrar/Assistant Registrar of Co-operative Society in every Taluka should be appointed as Member Secretary and Executive Officer of the Taluka Supervisory Society. The said Circular dated 20th October, 2005, it appears has been issued by the Respondent No. 2. On the basis of said Letter/Order dated 19th October, 2005 issued by the Respondent No. 1, it further appears that on the basis of the Letter/Order dated 19th October, 2005, the Respondent No. 4 herein has issued the Letter/Order dated 17th December, 2005 and by the said Order, the Respondent No. 4 herein has directed that in furtherance of the Circular dated 28th October, 2005 issued by the Respondent No. 2, he was appointing the Respondent No. 3 herein as Member Secretary/Executive Officer of the Petitioner - Societies. As indicated above, the said Circular dated 20th October, 2005, the letter dated 8th November, 2005 and the Order dated 17th December, 2005 issued by the Respondent No. 4 are impugned in the above

Petitions. As mentioned earlier in so far as Writ Petition of 1996 is concerned, the said Writ Petition raises the same challenge as raised in the year 1996 by Writ Petition Nos. 4904 of 1996 and 4905 of 1996 challenging the predecessor/Order/Circular issued by the Respondent No. 1 which were impliedly withdrawn in view of the Circular dated 20th January, 2003 issued by the Commissioner for Co-operation and Registrar of the Societies and on the basis of which the said Writ Petitions being numbers 4904 of 1996 and 4905 of 1996 were disposed of.

10. We have heard Mr. G.S. Gobdole, the learned Counsel for the Petitioners in all the Writ Petitions except Writ Petition Nos. 2268 of 2006 and 7490 of 2006, Mr. M. L. Patil, the learned Counsel appearing for the Petitioners in W.P. No. 2268/2006, Dr. D.R. Talankar in W.P. No. 7490/2006 and Mr. C.R. Sonawane, the learned Assistant Government Pleader.

11. On behalf of the Petitioners, it is contended by the learned Counsel Shri Godbole that the Respondent No. 1 - State having appointed the said Shamrao Kadam Committee to go into the various aspects of the functioning of the said Supervision Societies and having accepted the recommendations of the said Committee by issuing a Government Resolution dated 13th October, 1989. It was not open for the Respondent No. 1 to take a decision contrary to decision which has been taken vide said Government Resolution dated 13th October, 1989 without there being any material to support such a decision. The learned Counsel further submitted that the Orders do not disclose that the State Government has taken a decision pursuant to any new study being carried out as regards the functioning of the Supervision Societies. The entire action, therefore, according to the learned Counsel in issuing the impugned Orders is capricious and arbitrary.

12. The learned Counsel further submitted that the model Bye-laws have been approved by the Respondent No. 2 in which is ingrained the decision of leaving it to the Supervision Societies to appoint the Assistant Registrar or the Deputy Registrar as the Chief Executive Officer of the Supervision Societies. Having approved the Model Bye-laws, if the Respondent No. 1 wanted a change in the set up then an appropriate action u/s 14 of the said Act ought to have been taken by the Respondent No. 1 to amend the said Model Bye-laws. The learned Counsel submitted that the Respondents in issuing the directions as contained in the impugned Letters/Orders have virtually interfered in the management of the Supervision Societies by directing them to appoint the District Deputy Registrar as the Secretary/Chief Executive Officer of the Supervision Societies which is contrary to the mandate of Sections 72 and 73 of the said Act. The learned Counsel further submitted that in view of the past litigation wherein the predecessor Letters/Orders issued by the Respondents whereby similar action taken by the Respondents was challenged and which Writ Petitions were disposed of in view of the Circular issued by the State Government dated 23rd January, 2003, whereby the Respondents had once again reverted to the original position of leaving the choice to the Supervision Societies of appointing either the Assistant Registrar or an Officer of the District Central Co-operative Bank. The

Respondents therefore in now issuing the impugned Orders have acted in an unreasonable and arbitrary manner. The learned Counsel further submitted that in view of the fact that the earlier litigation challenging an identical action taken by the State having been disposed of on the basis of the Circular dated 23rd January, 2003, it was not open for the Respondent No. 1 to once again resort to the self same action without there being any material available with the Respondent No. 1. According to the learned Counsel the said Order passed in the said Writ Petitions having become final, it was not open for the State to resort to the same action. The learned Counsel lastly submitted that the Respondents in issuing the impugned Letters/Orders have thereby acted virtually in total disregard to the Orders passed in the said Writ Petition Nos. 4904 of 1996 and 4905 of 1996. The learned Counsel for the Petitioners, therefore, submitted that the above Writ Petitions are required to be allowed by quashing and setting aside the impugned Letters/Orders.

13. The learned Counsel Shri M.L. Patil and Dr. D.R. Talankar for the Petitioners in Writ Petition No. 2268/2006 and Writ Petition No. 7490/2006 did not advance any other submission, however they submitted that the Writ Petitions filed by the said Petitioners should be allowed.

14. On behalf of the Respondents the learned Assistant impugned Letters/Orders are issued under the provisions of the said Act and especially Section 69A thereof. The learned Assistant Government Pleader submitted that the said action has been taken with a view to see that the policies of the Respondent No. 1 i.e. the State are implemented. The learned Assistant Government Pleader further submitted that the impugned Letters/Orders have been issued as the Respondent No. 1 was of the view that the control of the Supervision Societies ought to be in a person, who is independent and who is not amenable to the influence of the Managing Committee as it was seen that the Managing Committee at times is influenced by vested interest in particular matters. The learned AGP submitted that in any event, the post of the Chief Executive Officer has been created to act as a control over the affairs and management of the Societies so that the Society is not run in a manner which is detrimental to the Co-operative movement. Hence, to ensure the said objective the Respondents thought it fit to issue the Letters/Orders which are impugned in the present Petitions and have given our anxious consideration to the rival contentions.

16. In view of the stand taken by the Respondent No. 1 - State that the impugned Letters/Orders have been issued in terms of Section 69A of the said Act. It would be appropriate to consider whether the said provision confers power on the Respondent No. 1 to take the action as has been taken in the instant case. The said Section 69A is reproduced herein under:

(69) A. Constitution of Co-operative State Cadre of Secretaries of certain societies and establishment of Employment Fund for such cadre. - (1) There shall be constituted a Cooperative State Cadre of Secretaries of primary agricultural credit societies, multipurpose cooperative societies and service co-operatives and

such other classes of societies as may be prescribed in this behalf (hereinafter in this section referred to as "the Co-operative State Cadre") consisting of persons recruited for this purpose by the Central Societies notified in this behalf by the State Government. The number of persons to be recruited and their conditions of service shall be determined by the Central Societies in accordance with such general or special guidelines, if any, as may be issued by the State Government, from time to time.

(2) A Central Society may, from time to time, depute any person appointed by it to that Cadre to work under any society referred to in sub-section (1), as it may consider necessary. Where any such person is posted to work under any society, his services shall be taken over by the society on such post, for such period and on such other terms and conditions, as the Central Society may determine, but the person so posted shall draw his salary and allowances from the Fund established under Sub-section (3).

(2A) The immediate initial supervisory control on the person appointed to the cadre and deputed or posted to work as secretary under each of the societies referred to in sub-section (1) shall be with the Taluka Supervision Society consisting of the societies, in each respective Taluka to which such persons are deputed, as members thereof and registered for the purpose. The Taluka Supervision Society, shall exercise such powers and discharge such functions or perform such duties as may be conferred or imposed on it by the bye-laws of such society.

(3) An Apex society notified in this behalf by the State Government shall establish a Fund to be called " the Co-operative State Cadre Employment Fund", which when established, shall be deemed to have been established with effect from the 1st day of July, 1973. It shall be utilised for meeting the expenses on the salaries, allowances and other emoluments to be paid to the persons appointed to the Co-operative State Cadre and the other expenditure relating to the Cadre.

(4) (a) Every society or class or classes of societies, which in the opinion of the State Government, derive any benefit, directly or indirectly, from the services of any Secretary belonging to the Cooperative State Cadre of Secretaries, and

(b) Every other body corporate carrying on any trade, business or industry or class or classes of such corporate bodies, which in the opinion of the State Government, derives such benefit as aforesaid, and which are notified by the State Government in this behalf, from time to time, by general or special order, shall, with effect from the 1st day of July, 1977, contribute annually to the said Fund, at such rate and in such manner as may be prescribed, and different rates may be prescribed for different societies or other corporate bodies or class or classes of societies or class or classes of other corporate bodies. In determining the rate or rates of contribution, the State Government shall take into consideration the expenditure referred to in sub-section (3), the services likely to

be rendered and the financial condition of the societies or other bodies concerned.

Explanation. - Notwithstanding anything contained in any law for the time being in force, for the purposes of levy and collection of the contribution to the said Fund by any other corporate body to which section applies, such corporate body shall be deemed to be a society governed by this Act.)

(5) Where there a failure to comply with the requirements of the last preceding sub-section, the Registrar may serve a demand notice on the society concerned to pay the contribution within two months from the date of demand. Such demand shall be a charge on the income of the society. If the contribution is not paid within the period aforesaid, the Registrar may direct any Bank or person having custody of the funds of the society to pay the amount of the contribution immediately, and such Bank or person shall comply with the orders of the Registrar. Every payment made pursuant to such direction shall be a sufficient discharge to such Bank or person from all liability to the society in respect of any sum so paid by it or him out of the moneys of the society in his custody.

(6) The State Government may make rules regulating all matters connected with or ancillary to the custody and maintenance of, the payment of moneys into, and the expenditure and withdrawal of moneys from, the said Fund.

(7) Notwithstanding anything contained in subsections (1) to (6), on and from the 1st day of January, 2009, nothing in sub-sections (1) to (6) shall apply to a co-operative credit structure entity.)

17. A reading of the said Section, therefore, discloses that it is under the said Section that Co-operative State Cadre of Secretaries of primary agricultural Credit Societies, multipurpose Co-operative Societies and service Co-operative Societies and such other classes of Societies as may be prescribed in that behalf consisting of persons recruited for this purpose by the Central Societies notified in this behalf of the State Government, is postulated. The power of regulation, if any, as can be seen is only in sub-section 6 of the said provision. The said regulatory power is only limited to all matters connected with or ancillary to the custody and maintenance of the payment of monies into and the expenditure and withdrawal of monies from the said fund. The said Section, therefore, does not give any regulatory power in so far as the management of the Societies is concerned which management in terms of the said Act is vested with the Managing Committee of the Society. In our view, therefore, reliance placed by the Respondent No. 1 on Section 69A for issuing the impugned letters/orders is totally misplaced hence, the impugned letters/orders which have the effect of interfering with the management of the Societies do not have the statutory backing and are therefore illegal.

18. It would be significant to note that after the said Section 69A was introduced in the statute book the Respondent No. 1 - State had appointed a Committee headed by an expert in the Co-operative field Shri Shamrao Kadam, for making various recommendations to the Respondent No. 1 in respect of the cadre of the

Secretaries. The said Committee had gone into various aspects of the service conditions of the Secretaries and the control over the Supervision Societies over the Primary Societies. The Committee in its report has noted that it was necessary to have a full time Executive Officer preferably an Officer from the concerned District Central Cooperative Bank to look after day to day business of the Supervision Societies. It was further observed by the Committee that since the District Deputy Registrar of Cooperative Societies in the particular District was already overburdened with various legal and other matters falling within his jurisdiction under the said Act. It was not practically possible for the District Deputy Registrar to pay much attention to the work of the Supervision Societies. It was, therefore, the recommendation of the said Shamrao Kadam Committee that a Committee of eight persons having a representative of the District Central Co-operative Bank who should be the Managing Committee of such Supervision Societies. It is further, significant to note that the said report of the Shamrao Kadam Committee was accepted by the State Government and consequently, Government Resolution dated 13th October, 1989 came to be issued accepting the various recommendations made by the said Shamrao Kadam Committee. Clause 4(a) of the Schedule to the said Government Resolution specifically refers to the recommendations of the Committee in respect of the District Level Supervision Societies. As a result of the acceptance of the Report of the said Shamrao Kadam Committee, Model Bye-laws were prepared by the Registrar and approved. In terms of Bye law No. 15 of the Model Bye laws an Assistant Registrar of Co-operative Society or an Officer of the District Central Co-operative Bank is to be appointed as Ex-officio Secretary/Chief Executive Officer of the Supervision Societies. The aforesaid facts, therefore, indicate that Respondent No. 1 had taken a conscious decision based on the recommendations of the Shamrao Kadam Committee which decision was reflected in the approved Model Bye Laws framed by the Registrar and therefore, the State without there being any material on record or without there being any further study being carried out could not have reversed the decision already taken of leaving it to the Supervision Societies either to appoint the Assistant Registrar or an Officer of the District Central Cooperative Bank as the Chief Executive Officer. The impugned Letters/Orders, therefore, in our view are unsustainable on the said ground also.

19. The said decision in our view is also contrary to the Bye-Laws especially in the fact situation of this case wherein Model Bye Laws were framed pursuant to the decision taken by the State Government to accept the recommendations of the said Shamrao Kadam Committee and the Bye Laws having been framed by incorporating the essence of the recommendations of the said Committee in the Bye Laws.

20. It is also required to be seen that essentially the functioning of the Supervision Societies is to supervise the Primary Societies who advance loans to the agriculturists for various purposes. The said loans are advanced under the aegis of the concerned District Central Co-operative Banks. The concerned District Central Co-operative Banks, therefore, have a stake in the proper

functioning of the said Supervision Societies as the recovery of the loans advanced by them depends on the Supervision Societies. The District Central Cooperative Banks have, therefore, a stake in the functioning of the Supervision Societies and therefore, in the said context the Shamrao Kadam Committee had observed that it would be in the interest of the District Central Co-operative Banks that an Officer of the said Bank, functions as a Chief Executive Officer/ Secretary of the Supervision Societies. The impugned Letters/Orders, therefore, have the effect of interfering with the functioning of the said Supervision Societies, who otherwise were entitled to choose between the Assistant Registrar or an Officer of the District Central Co-operative Bank to be the Chief Executive Officer or Secretary of the Supervision Societies. A conscious decision taken, therefore, is sought to be reversed by an executive fiat without there being any material for the same.

Another aspect to be noted is that if the District Deputy Registrar is required to play two roles namely the Chief Executive Officer as also discharge his duties as District Deputy Registrar under the said Act it would result in conflict of interests as the District Deputy Registrar then would have to decide upon the actions taken by him as a Chief Executive Officer of the Supervision Societies which would not be in the interest of the functioning of the Supervision Societies or his functioning as the District Deputy Registrar.

It would also be significant to note that the similar action of the Respondents in the year 1996 was challenged by the supervision societies by filing Writ Petition Nos. 4904 of 1996 and 4905 of 1996 which Writ Petitions came to be disposed of in view of the Order passed in the year 2003. By which Order the Respondents had again reverted back to the original position, whereby leaving the choice of choosing between the Assistant Registrar or an Officer of the DCC Bank to act as Chief Executive Officer to the concerned supervision society. The said Order passed in the said Writ Petition Nos. 4904 of 1996 and 4905 of 1996 having become final and binding, it was not open for the Respondents to once again reverse the decision as contained in the said Circular. In our view, therefore, the impugned Letters/Orders are unsustainable on the aforesaid ground also.

Insofar as Writ Petition No. 5463 of 1996 is concerned, it appears that the said Writ Petition remained to be disposed of along with Writ Petition Nos. 4904 of 1996 and 4905 of 1996, and is therefore pending. For the aforesaid reasons, the said Writ Petition would also have to be allowed and is accordingly allowed. Therefore, for all the aforesaid reasons the impugned Letters/Orders dated 19th October, 2005 and 17th December, 2005 Exhibit "O" and "N" are unsustainable and are, therefore, quashed and set aside.

21. Rule is accordingly made absolute in terms of prayer Clause (a) of the Petitions with parties to bear their respective costs.