

(2014) 05 AHC CK 0284

In the Allahabad High Court

Case No : Civil Misc. Writ Petition Nos. 5731, 6999, 8134, 8858, 13174, 15867, 36461, 39457, 42147, 43046, 43411, 45867, 49463, 55366 of 2013 and 10170, 22446 of 2014

Rajpal Sharma

APPELLANT

Vs

State of UP

RESPONDENT

Date of Decision : 20-05-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 246(3), 277, 278, 32
Uttar Pradesh Co-operative Societies Act, 1965 — Section 120, 121, 121(1), 121(1], 122

Citation : (2014) 105 ALR 140

Hon'ble Judges : Surya Prakash Kesarwani, J

Bench : Single Bench

Advocate : H.R. Misra, Amit Kumar Yadav and K.M. Mishra, Advocate for the Appellant; V.C. Misra, Q.H. Siddiqui, S.C., Y.K. Srivastava, C.S.C. and Nikhil Kumar, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Surya Prakash Kesarwani, J.—Heard Sri H.R. Mishra, Senior Advocate, assisted by Sri Amit Kumar Yadav, learned counsel for the petitioners, Sri V.C. Mishra, learned Advocate General assisted by Sri Q.H. Siddiqui, learned Chief Standing Counsel and Sri Y.K. Srivastava, learned Standing Counsel for the respondents. In these writ petitions, petitioners have challenged the constitutional validity of the Primary Agricultural Credit Cooperative Society Ex-Cadre Regulation-2012 (hereinafter referred to as the "PACS Regulation, 2012") on the ground that it is in conflict with the provisions of Section 29-A of the U.P. Co-operative Societies Act, 1965.

2. Briefly stated the facts of the present case are that the petitioners claim that they were initially appointed as Accountant in respective Primary Agricultural Credit Co-operative Societies as defined u/s 2(a1) of the U.P. Co-operative Societies Act, 1965 (hereinafter referred to as the "Act"). The appointment of

secretaries in these societies was governed by the provisions of Uttar Pradesh Primary Agricultural Co-operative Societies Centralized Service Rule, 1976 [hereinafter referred to as "PACS Rules, 1976").

3. The PACS Rules 1976 was amended from time to time. By the Uttar Pradesh Primary Agricultural Co-operative Societies (12th Amendment) Rule, 2004, the U.P. Agricultural Co-operative Credit Society Service Cadre was declared dead cadre and it was provided that no person shall be appointed under the centralized service. Thus, the post of secretary of the Primary Agricultural Credit Societies under the PACS Rules, 1976 was declared dead cadre by Rules 23 of the 12th amendment Rules, 2004 and thus no person could be appointed under the centralized service cadre. vide para 5 of the circular dated 10th January, 2005 issued by the respondent No. 2, filed as annexure-3 to the writ petition; an alternative arrangement was made to authorize an employee of the society to officiate as secretary where the cadre secretary has been suspended/superannuate/dismissed from service/died, The petitioners claims themselves to have been officiating temporarily under the orders of the concerned Assistant Registrar, in addition to their normal work of the post they held, as evident from the orders of the Assistant Registrar, Co-operative Societies, U.P. Bulandshahar, dated 31.10.2002, 3.4.2001 and 6.10.2004 filed as Annexure 4 to Writ Petition No. 5731/2013. In these orders, it is clearly mentioned that the orders are wholly temporarily and can be withdrawn at any time, vide letter dated 1.4.2008, the respondent No. 2 informed the respondent No. 1 that post of secretary in 4035 societies are lying vacant, and therefore, the appropriate decision may be taken for appointment of secretaries by direct recruitment. As per Section 31 of the Act, Secretary shall be the Chief Executive Officer of the society and shall be appointed and removable by the society subject to the provisions of the Rules and Regulations framed under Sections 121 and 122 of the Act The respondent No. 2. vide letter dated 27th September, 2011 filed as annexure 6, directed all the Assistant Registrars etc that all the accountants who have been authorized temporarily to discharge responsibility of secretary shall be called as Secretary (non-cadre). The respondent No. 1 issued a Government Order dated 19th September, 2012 providing for appointment of secretaries in Primary Co-operative Societies who shall be an Ex-cadre employee of the Bank, normally for three years and the source of recruitment could be from the Ex-cadre created at the bank level. The appointment shall be made in three phases and such appointed Secretary shall be under the control of the bank. A circular dated 26th September, 2012 was issued by the respondent No. 2 to all the Assistant Registrars and all the Secretaries/General Manager of District Co-operative Bank Ltd. which was challenged before this Court in Writ Service Single No. 5485/2012 in which an interim order dated 16th October, 2012 was passed by Lucknow Bench of this Court as under:

"In compliance of the Court's orders, learned Standing counsel had sought instructions from the office of the Registrar-opposite party No, 2.

Learned Standing counsel Sri Neeraj Chaurasia has informed that Sri Surendra Chandra Srivastava, A.D.C.Q. (Cooperative) posted in the office of the Registrar, Cooperative is present in the Court. He has orally informed that the impugned orders contained in Annexure 1, 2 and 3 have been issued by the Registrar by the powers vested in him u/s 121 and 122. Learned counsel for the petitioner has drawn the attention of this Court toward Section 121 of the Act, The said Section empowers the Registrar to issue regulations and the regulations have to be published in the gazette and they had to become effective from the date of their publication, The impugned orders are in the form of Government orders and they are not regulations, as such, they cannot stand the test of Section 121. Prima facie a case is made out in favour of the petitioner,

Let counter-affidavit be filed within three weeks. List thereafter.

Till the next date of listing, the operation of impugned G.O. dated 19.9.2012, contained in Annexure 1 to the writ petition, the order dated 26.9.2012, contained in Annexure 2 and the consequential order dated 26.9.2012, contained in Annexure 3, shall remain stayed.

Meanwhile, the Registrar will have the liberty to make regulations, if he so chooses, in accordance with law."

4. It is stated by learned counsel for the petitioners that the said writ petition is still pending. However, in the mean time the impugned PACS Regulation-2012 has been enacted, the constitutional validity of which is under challenged in these writ petitions.

Submissions on behalf of petitioners

5. Shri H.R. Mishra submits as under:

(i) Registrar, Co-operative Societies, U.P. Lucknow is not vested with the power to frame the regulation for recruitment of cadre secretaries and as such the PACS Regulation-2012 published in the gazette on 20th December, 2012 is without authority of law,

(ii) The impugned PACS Regulation-2012 providing for recruitment has been framed by the Registrar u/s 121 of the Act while the power to frame rules in this regard vest in the State Government u/s 122-A,

(iii) Section 121 of the Act provides to frame regulation to regulate emoluments and other conditions of service which does not include recruitment, (iv) The filed of recruitment is occupied by the Rules, 1976 and as such it shall have overriding effect on the impugned regulations,

(v) The impugned regulation is in conflict with the provisions of Section 29A(1) (viii) under which the co-operative bank employees cannot be included in cadre secretary of the primary societies since, the banks employees are governed by separate set of rules,

6. In support of his submission Sri H.R. Mishra has relied upon the judgment in the case of Navnish Kumar Maurya and Others Vs. State of U.P. and Others,

Submission on behalf of State Respondents

7. Shri V.C. Mishra submits as under:

(i) Petitioners have no locus standi to challenge PACS Regulation-2012, inasmuch as according to their own case they were appointed as accountant and merely in case of exigency of non availability of secretaries because of declaration of secretary cadre as dying cadre by 12th Amendment Rules, 2014, the petitioners were given temporarily additional charge of secretaries. Thus, the petitioners have no right to the post of secretary, their right to the post on which they were appointed, is not affected by the impugned regulation,

(ii) The impugned regulation provides for recruitment to the post of secretaries in three phases. In the first phase, after screening the working of PACS cadre secretary/surplus staff of the bank will be included in Ex-cadre, In the second phase the working employees of PACS including In-charge Secretaries shall be included in the Ex-cadre who have minimum qualification of intermediate examination and have 10 years of working experience. After completion of the proceeding of the first and second phase, the rest of the vacant posts shall be filled from direct recruitment. Thus, the impugned regulation is beneficial to the petitioners also, inasmuch as they may be appointed on the post of Ex-cadre Secretary in the second phase provided they possess minimum educational qualification of intermediate and have 10 years working experience. Thus, impugned regulation does neither cause any prejudice nor adversely affect any rights of the petitioners. It is only because of the enactment of the impugned regulation that the petitioners would get a chance to be appointed as Ex-cadre Secretary.

(iii) The power to frame Regulation is conferred on the Registrar u/s 121(1] read with Section 31 of the Act and Rule 15(viii) and Rule 124 of the U.P. Co-operative Societies Rules, 1968.

(iv) Section 29-A is subject to Rules and Regulations and since the impugned Regulation has been framed in exercise of power conferred u/s 121(1) of the Act and as such it cannot be said to be in conflict with the provisions of Section 29-A(viii) of the Act. This provision cannot be read in isolation, It is well-settled principle of law that statute should be read in its entirety for interpreting a particular provisions. No provisions can be read in isolation. Reliance in this regard is placed on the judgment of Hon"ble Supreme Court in the case of Union of India (UOI) and Others Vs. Brigadier P.S. Gill,

(v) There is always presumption in favour of constitutional validity of the provisions. The petitioners have completely failed to demonstrate that the impugned regulation has been framed either beyond powers conferred under the Act or in conflict with any of the provisions of the Act or violates any of the

fundamental rights or other provisions under Constitution of India.

8. In support of his submissions Sri V.C. Mishra has relied upon the following judgments:

(i) Virendra Pal Singh and Others Vs. District Assistant Registrar, Cooperative Societies, Etah and Another,

(ii) Ramakant Shripad Sinai Advalpalkar Vs. Union of India and others,

(iii) Smt. Vijay Rani Vs. Regional Inspectress of Girls Schools, Region-I and Others

(iv) Union of India (UOI) and Others Vs. Brigadier P.S. Gill,

(v) Communities of Management District Cooperative Bank Ltd. v. Union of India and others, 203 (4) UPLBEC 3133 para 10, 13 to 15, 17, 32 and 33.

(v) Farhat Hussain Azad Vs. State of U.P. and Others,

Findings

9. I have carefully considered the submission of learned counsel for the parties and perused the records.

Locus-standi

10. It is undisputed that the petitioners were not appointed as secretaries in the societies in question. They are mainly accountant in the societies as per their own case in the writ petition. They were given additional charge of Secretary in the circumstances that post of secretaries were vacant in large number of PACS. By the 12th Amendment Rules, 2004 the cadre of secretary was declared a dying cadre and the provision for recruitment of cadre secretary stood deleted. As per their own showing they were working as "Ankik" in the society and were given additional charge of secretary by orders dated 31.10.2002 and 3.4.2001 filed as Annexure 4 in Writ Petition No. 5731/2013 in which it is clearly mentioned that these orders are wholly temporary and can be withdrawn at any time. Under the circumstances, the petitioners have no right to the post of secretary,

11. The impugned Regulation provides an opportunity for recruitment of employees of societies in the second phase on the post of Secretary provided the concerned employee possess minimum qualification of intermediate and has 10 years working experience. Therefore, if any of the petitioners possess the aforesaid qualification they shall get a chance to be appointed as Ex-cadre secretary under the impugned regulation. Thus, the impugned regulation is beneficial to the petitioners who possess the minimum qualification under the regulation.

12. The petitioners have completely failed to demonstrate or bring on record any material to establish that the impugned regulation violates any of their fundamental rights or any of the provisions of Constitution of India. Neither the

duly appointed secretaries nor the concerned co-operative societies are before this Court who may have locus standi to challenge the impugned regulation. The validity of the impugned regulation has been challenged by the petitioners without any factual foundation to show that any cause of action arose to them to challenge it. Under the circumstances the writ petitions itself are not maintainable. This is also the ratio of decision of Division Bench of this Court in the case of Abdul Khaliq and Others Vs. State of U.P. and Others, Principle of Testing Constitutional Validity of Subordinate Legislation.

13. The constitutional validity of an Act can be challenged only on two grounds viz. (i) lack of legislative competence-and (ii) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. Except the above two grounds, there is no third ground on the basis of which the law made by the competent legislature can be invalidated,

14. In the case of subordinate legislation an additional ground is available viz. (i) the rule must conform to the provision of the principal statute, (ii) it must be within rule making power. The basic test is to determine and consider the source of power which is relatable to the rule and the rule must be in accord with the parent statute as it cannot travel beyond it. While considering the validity of a subordinate legislation it is necessary to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the Court is simple and easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the Court should proceed with caution before declaring invalidity. The aforementioned principles of testing validity of subordinate legislation are well supported by the law laid down by Hon'ble Supreme Court in the case of General Officer Commanding-in-Chief v. Dr. Subhash Chandra Yadav, (1963) 2 SCC 351 para 14, Addl. District Magistrate (Rev.) Delhi Admn. Vs. Shri Siri Ram, , Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, State of Karnataka and Another Vs. H. Ganesh Kamath and Others, , Kunj Behari Lal Butail and Others Vs. State of H.P. and Others, , St. Johns Teachers Training Institute Vs. Regional Director, National Council for Teacher Education and Another, , Global Energy Ltd. and Another Vs. Central Electricity Regulatory Commission, State of Tamil Nadu and Another Vs. P. Krishnamurthy and Others, Pratap Chandra Mehta Vs. State Bar Council of M.P. and Others, and Union of India (UOI) and Others Vs. S. Srinivasan, Constitutional validity of PACS Regulation 2012

15. Keeping in view the aforementioned briefly stated basic principles of testing the constitutional validity of a subordinate legislation, this Court now proceed to

examine the source of power for enactment of the impugned regulation and the extent of power to frame regulation under the provisions of the Act.

16. Entry 32 of List II-State List to the Seventh Schedule read with Article 246(3) of the Constitution of India confers exclusive power on the State Legislature of any State to make laws for such State or any part thereof with respect to Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies. U.P. Co-operative Societies Act, 1965 has been enacted by the State Legislature within its power conferred under the Constitution as aforementioned.

17. Section 31 of the Act provides for appointment and removal of Secretary subject to the provisions of the rules and Regulations framed under Sections 121 and 122 of the Act. Section 31 is reproduced below:

"Section 31. The Secretary, his emoluments and functions.--(1) Except in the case of an apex society there shall be a Secretary of every co-operative society, to be appointed and removable by the society, subject to the provisions of the rules and regulations framed under Sections 121 and 122. The emoluments and other conditions of service of the Secretary shall be such as may be prescribed in the bye-laws of the society made in conformity with the rules and regulations made in this behalf.:

Provided that where a service for the post of Secretaries common to any class of co-operative societies has been created u/s 122-A, the recruitment, appointment, removal and other conditions of service of persons appointed to such posts, including persons appointed to such posts before the creation of such service, shall be governed by the provisions of that section and the rules made thereunder.

(2) The Secretary shall be the Chief Executive Officer of the Society and subject to such control and supervision of the Chairman and the Committee of Management as may be provided in the rules of the bye-laws of the society shall-

(a) be responsible for the sound management of the business of the society and its efficient administration;

(b) carry on the authorized and normal business of the society;

(c) subject to the provisions of the bye-laws of the society, operate its accounts and, except where the society has a cashier or treasurer, handle and keep in his custody its cash balances;

(d) sign and authenticate all documents for and on behalf of the society;

(e) be responsible for the proper maintenance of various books and records of the society and for the correct preparation and timely submission of periodical statements and returns in accordance with this Act, the rules, the bye-laws and the instructions of the Registrar or the State Government;

(f) convene meetings of the general body, the Committee of Management and any sub-committee constituted by the Committee of Management and maintain proper records of such meetings; and

(g) perform such other duties and exercise such other powers as may be imposed or conferred on him under the rules or the bye-laws of the society.

(3) A co-operative society may, subject to the provisions of the rules and the bye-laws and the regulations made u/s 121, Section 122 or Section 122-A, appoint, if necessary, one or more persons to assist the Secretary and to entrust him or them with such powers and duties of the Secretary as the society may deem fit.

(4) After a co-operative society has been registered and till such time as its Secretary is appointed under subsection (1) or for six months, whichever is earlier, the functions and duties of the Secretary shall be performed by such member of the society as may be provided in the rules and the bye-laws of the society."

18. Section 121 of the Act provides that the Registrar may, from time to time, frame regulation to regulate the emoluments and other conditions of service including the disciplinary control of employees in a cooperative society or a class of co-operative socialites and any society to which such terms are applicable, shall comply with those regulations and with any orders of the Registrar, issued to secure such compliance. The regulations framed under sub-section (1) shall be published in the Gazette and take effect from the date of such publication. Section 122 of the Act empowers the State Government to constitute an authority or authorities, in such manner as may be prescribed, for the recruitment, training and disciplinary control of the employees of co-operative societies, or a class of co-operative societies, and may require such authority or authorities to frame regulations regarding recruitment, emoluments, terms and conditions of service including disciplinary control of such employees and, subject to the provisions contained in Section 70, settlement of disputes between an employee of a co-operative society and the society. The Regulation so framed shall be published in the gazette and shall supersede any regulation made u/s 121. Section 121 of the Act is reproduced below:

"121. Power of registrar to determine terms of employment of society.--(1) The Registrar may, from time to time frame regulation to regulate the emoluments and other conditions of service including the disciplinary control of employees in a co-operative society or a class of co-operative societies and any society to which such terms are applicable, shall comply with those regulations and with any orders of the Registrar, issued to secure such compliance.

(2) The regulations framed under sub-section (1) shall be published in the Gazette and take effect from the date of such publication."

19. Thus as per provision of Section 121 of the Act the regulation may be framed by the Registrar to regulate the emoluments and other conditions which shall

include recruitment also. u/s 122 the authorities constituted may, subject to approval of the State Government; frame regulations regarding recruitment, employments, terms and conditions of service including disciplinary control. Undisputedly no provision was available for recruitment etc of Secretaries after Uttar Pradesh Primary Agricultural Cooperative Credit Societies Centralized Service (12th Amendment) Rules, 2004.

20. The impugned Regulation-2012 has been framed by the Registrar in exercise of power conferred u/s 121 of the Act. As per Rule 15(xviii) of the U.P. Co-operative Societies Rules, 1968 (hereinafter referred to as the "Rules 1968") the bye-laws of a co-operative society shall, subject to the provisions of the Act and the rules, cover the matters with regard to the appointment, suspension, removal and punishment of officers and employees of the society subject to the provisions of regulations framed under Sections 121 and 122.

21. Rule 124 of the Rules, 1968 provides that no co-operative society shall appoint any person as its secretary who does not possess the qualifications laid down u/s 120, or who fails to furnish the security as may, if any, be required under that section or who is a near relation of a member of the Committee of Management of the society. Every such appointment shall be subject to the regulations, if any, framed u/s 121 or 122.

22. The Explanation to Rule 125 of the Rules, 1968 indicates that while granting approval to the proposal of appointment of any person as Secretary of a cooperative society Registrar may consider him unsuitable only if the candidate does not fulfill the qualification laid down u/s 120 or under the Regulations framed u/s 121 or Section 122 or under any other provisions of the rules and the bye-laws or the candidate is a near relation of a member of committee of management, or having regard to the education, experience or other relevant qualifications, an obviously better candidate out of the applicants, in the opinion of the Registrar, is available for appointment.

23. From the above discussions, it is Clear that as per Section 31 of the Act, the appointment of Secretary and removal of Secretary of every co-operative societies is subject to the provisions of the Rules and Regulations framed under Sections 121 and 122 of the Act. Section 121 confers power on the Registrar to frame regulation to regulate the emoluments and other conditions of service including the disciplinary control of employees in a cooperative society or a class of co-operative societies. The U.P. Co-operative Societies Act, 1965 has been framed by the State Government in exercise of power conferred under the Act. Rule 15(viii) of the Rules 1968 recognizes the framing of the regulations under Sections 121 and 122 of the Act for appointment, suspension, removal and punishment of officers and employees of the society. Rule 124 of the Rules 1968 provides that appointment of any person in a co-operative society as its secretary shall be subject to the regulations, if any framed u/s 121 or 122 of the Act. Explanation (i) appended to Rule 125 of the Rules provides that for the purposes of this rule, a candidate will be considered unsuitable by the Registrar if

the candidate does not fulfill the qualification laid down u/s 120 or under the Regulations framed u/s 121 or Section 122 or under any other provisions of the rules and the bye-laws. The provisions of Section 29-A(viii) cannot be read in isolation. It provides for exercise of such powers and performance of such duties by the Committee of Management of a Primary Agricultural Co-operative Credit Society or a Central Co-operative Bank or an apex bank, in respect of appointment of officers or other staff to conduct the business of the society and define inter alia their duties, service conditions, leave concessions and disciplinary matters subject to the provisions of this Act, the rules and the bye-laws. Therefore, the provisions of Section 29-A(viii) cannot be read in isolation but it has to be read in harmony with the other of the provisions and the rules so that all may co-exist. This provision does not prohibit the framing of Regulations u/s 121 of the Act by the Registrar with respect to appointments of Secretary of Co-operative Societies. A conjoint reading of the provisions of Sections 121, 31, 120, 121 and 122 of the Act and Rule 15(xviii), 124 and 125 of the Rules leaves no manner of doubts that the Registrar is competent to frame Regulation u/s 121 of the Act with regard to appointment of persons as Secretary in any Cooperative Societies.

24. I have discussed the provisions of Sections 121 and 122 of the Act and Rule, 15, 124, 125 of the Rules, 1968 to examine the powers of the Registrar to frame the impugned Regulation-2012 and I find that the Registrar possess the power to frame regulations with regard to recruitment of Ex-cadre Secretary. The impugned Regulation has already been published in the gazette on 20th December, 2012 from which date it came into force. Thus, the conditions of Section 121 stands satisfied. The impugned Regulation has been framed well within the powers conferred u/s 121 of the Act, and therefore, the impugned Regulation does not suffer from the lack of legislative competency. In other words, the impugned Regulation 2012 has been framed by the Registrar well in accordance with the provisions and within the powers conferred u/s 121 of the Act.

25. The judgment in the case of Navnish Kumar Maurya (supra) relied by Sri H.R. Mishra has no bearing on the controversy involved in these writ petitions in the light of the provisions of the Act which have already been discussed above in detail. The submission of Sri Mishra that the Regulation-2012 is in conflict with Section 29-A of the Act, is wholly misconceived. The provision of Section 29-A and Section 121 has already been discussed above in detail. Apart from this Section 29-A came for consideration before a Division Bench of this Court in the case of Committee of Management, District Co-operative Bank Ltd. Vs. Union of India and Others, and the Division Bench judgment held as under:

"It is also relevant to note that Section 29-A of the Act begins with non-obstante clause, i.e., notwithstanding anything to the contrary in any other provisions of this Act, rules or bye laws of the society. Section 29-A of the Act thus gives an overriding effect wherever there may be any conflict with the existing provisions

of the Act, rules or bye-laws. When a statute uses non-obstante clause, the intent is to give enacting part of the provisions an over riding effect in case of a conflict. The Apex Court in the case of R.S. Raghunath Vs. State of Karnataka and another, after noticing the earlier judgment of the Apex Court laid down the following in paragraph-11:

".....On a conspectus of the above authorities it emerges 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. But 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 and if the words of the enactment are clear and are capable of a clear interpretation on a plain and grammatical construction of the words the non-obstante clause cannot cut down the construction and restrict the scope of its operation. In Such cases the non-obstante clause has to be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the Legislature by way of abundant caution and not by way of limiting the ambit and scope of the Special Rules."

As noted above, Section 29-A(a)(VIE) makes the power to appoint an officer subject to provisions of the Act. When any provision is made subject to the provisions of the Act, the enacting provision has to give way to the existing provisions.

When Section 29-A of sub-section (viii) of the Act which gives power to the Committee of Management to make such appointment expressly subject to the provisions of the Act, Rules and Bye-laws, the clear intention of the Act is that the other provisions of the Act is not to be disregarded rather they had to be given effect to despite the provisions of Section 29-A of the Act. The clear meaning is that Section 122 of the Act which empowers the State Government to create the authority to control the administration of the society for the purposes of recruitment, disciplinary enquiry and control has to be given effect to and the Regulation which has been framed u/s 122 of the Act is still operative and is to be given effect to."

(emphasis supplied by me)

26. The use of the phrase "subject to the provisions of" is used to give overriding effect. It is a form of conditional legislation. The phrase "subject to the provisions of this Act, the rules and the bye-laws" used in Section 29A(a)(viii) of the Act, only means, in accordance with the rules, regulation and bye-laws, if any. A constitution Bench of Hon"ble Supreme Court considered the meaning of the expression "subject to" in the case of The South India Corporation (P) Ltd. Vs. The Secretary, Board of Revenue Trivandrum and Another, and held in para 19 as under:

"19. That apart, even if Article 372 continues the pre-Constitution laws of taxation, that provision is expressly made subject to the other provisions of the

Constitution. The expression "subject to" conveys the idea of a provision yielding place to another provision or other provisions to which it is made subject. Further Article 278 opens out with a non-obstante clause. The phrase "notwithstanding anything in the Constitution" is equivalent to saying that in spite of the other articles of the Constitution, or that the other articles shall not be an impediment to the operation of Article 278. While Article 372 is subject to Article 278, Article 278 operates in its own sphere in spite of Article 372. The result is that Article 278 overrides Article 372; that is to say, notwithstanding the fact that a pre-Constitution taxation law continues in force under Article 372, the Union and the State Governments can enter into an agreement in terms of Article 278 in respect of Part B States depriving the State law of its efficacy. In one view Article 277 excludes the operation of Article 372, and in the other view, an agreement in terms of Article 278 overrides Article 372. In either view, the result is the same, namely, that at any rate during the period covered by the agreement the States ceased to have any power to impose the tax in respect of works contracts."

27. In the case of *The Printers (Mysore) Ltd. Vs. M.A. Rasheed and Others*, in para 18, 19 and 20, Hon"ble Supreme Court held as under:

"18. In *Surinder Singh v. Central Government*, it was held: (SCC P. 673, para 6)

"6. The High Court has held that the disposal of property forming part of the compensation pool was "subject" to the rules framed as contemplated by Sections 8 and 40 of the Act and since no rules had been framed by the Central Government with regard to the disposal of the urban agricultural property forming part of the compensation pool, the authority constituted under the Act had no jurisdiction to dispose of urban agricultural property by auction sale. Unless rules were framed as contemplated by the Act, according to the High Court the Central Government had no authority in law to issue executive directions for the sale and disposal of urban agricultural property. This view was taken, placing reliance on an earlier decision of a Division Bench of that Court in *Bishan Singh v. Central Government*. The Division Bench in *Bishan* case took the view that since the disposal of the compensation pool property was subject to the rules that may be made, and as no rules had been framed, the Central Government had no authority in law to issue administrative directions providing for the transfer of the urban agricultural land by auction sale. In our opinion the view taken by the High Court is incorrect. Where a statute confers powers on an authority to do certain acts or exercise power in respect of certain matters, subject to rules, the exercise of power conferred by the statute does not depend on the existence of rules unless the statute expressly provides for the same. In other words framing of the rules is not a condition precedent to the exercise of the power expressly and unconditionally conferred by the statute. The expression "subject to the rules" only means, in accordance with the rules, if any. If rules are framed, the powers so conferred on authority could be exercised in accordance with these rules. But if no rules are framed there is no void and the authority is not precluded from exercising the power conferred by the statute."

19. In *Ashok Leyland Ltd. v. State of Tamil Nadu*, this Court noticed "Subject to" is an expression whereby limitation is expressed. The order is conclusive for all purposes.

20. This Court further noticed the dictionary meaning of "subject to" stating:

"92. Furthermore, the expression "subject to" must be given effect to.

93. In *Black's Law Dictionary*, Fifth Edition at page 1278 the expression "Subject to" has been defined as under:

"Liable, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided, answerable for. *Homan v. Employers Reinsurance Corp.*"

28. Thus, I find no force in the submissions of Sri H.R. Mishra that due to enactment of Section 29-A of the Act by U.P. Act No. 47 of 2007, the Registrar shall have no power to frame regulation with regard to recruitment/appointment of the secretaries u/s 121 of the Act.

Presumption of Constitutional Validity:

29. The petitioners have neither pleaded nor argued that the impugned Regulation-2012 violates any of their fundamental rights guaranteed in Part III of the Constitution of India. It is well-settled law that there is always presumption in favour of constitutional validity of a statutory provisions and the burden is upon the person who attacks it to show that there has been transgression of constitutional principles. For sustaining the constitutionality of an Act, a Court may take into consideration matters of common knowledge, reports, preamble, history of the times, objection of the legislation and all other facts which are relevant. It must always be presumed that the legislature understands and correctly appreciates the need of its own people and that discrimination, if any, is based on adequate grounds and considerations. In catena of judgment, Hon'ble Supreme Court has laid down the law that the approach of the Court, while examining the challenge to the constitutionality of an enactment, is to start with the presumption of constitutionality. The Court should try to sustain its validity to the extent possible. The Court should not approach the enactment with a view to pick holes or to search for defects of drafting, much less inexactitude of language employed. The unconstitutionality must be plainly and clearly established before an enactment is declared as void. The same approach holds good while ascertaining the intent and purpose of an enactment.

30. In the case of *The Anant Mills Co. Ltd. Vs. State of Gujarat and Others*, the Hon'ble Supreme Court has held that:

"20. There is a presumption of the constitutional validity of a statutory provision. In case any party assails the validity of any provision on the ground that it is violative of Article 14 of the Constitution, it is for that party to make the necessary averments and adduce material to show discrimination violative of Article 14. No averments were made in the petitions before the High Court by the

petitioners that the assessments before the coming into force of Ordinance 6 of 1969 had been made by taking into account the rent restriction provisions of the Bombay Rent Act. Paragraph 2B and some other paragraphs of petition No. 233 of 1970 before the High Court, to which our attention was invited by Mr. Tarkunde, also do not contain that averment. No material on this factual aspect was in the circumstances produced either on behalf of the petitioners or the Corporation. The High Court, as already observed, decided the matter merely on the basis of a presumption. It is, in our opinion, extremely hazardous to decide the question of the constitutional validity of a provision on the basis of the supposed existence of certain facts by raising a presumption. The facts about the supposed existence of which presumption was raised by the High Court were of such a nature that a definite averment could have been made in respect of them and concrete material could have been produced in support of their existence or non-existence. Presumptions are resorted to when the matter does not admit of direct proof or when there is some practical difficulty to produce evidence to prove a particular fact. When, however, the fact to be established is of such a nature that direct evidence about its existence or nonexistence would be available, the proper course is to have the direct evidence rather than to decide the matter by resort to presumption. A pronouncement about the constitutional validity of a statutory provision affects not only the parties before the Court, but all other parties who may be affected by the impugned provision. There would, therefore, be inherent risk in striking down an impugned provision without having the complete factual data and full material before the Court. It was therefore, in our opinion, essential for the High Court to ascertain and field out the correct factual position before recording a finding that the impugned provision is violative of article 14. The fact that the High Court acted on an incorrect assumption is also borne out by the material which has been adduced before us in the writ petitions filed under article 32 of the Constitution."

31. In the case of Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, the Hon''ble Supreme Court has held that there is presumption that the legislature understands and correctly appreciates the need of its people. In the case of Union of India Vs. Elphinstone Spinning and Weaving Co. Ltd. and Others etc., the Hon''ble Supreme Court has laid down the law that the legislature does not exceed its jurisdiction. In the case of The State of Bihar and Others Vs. Charusila Dasi, the Hon''ble Supreme Court has laid down the law that there is presumption that the legislature does not intend to exceed its jurisdiction. In the case of Kedar Nath Singh Vs. State of Bihar, the Hon''ble Supreme Court held that provision should be construed in the manner as will uphold its constitutionality. In the case of Corporation of Calcutta and Another Vs. Liberty Cinema, , the Hon''ble Supreme Court has laid down the law that the provision should be read in the manner as will make it valid. Similar view has been expressed by the Constitution Bench of Supreme Court in the case of Anandji Haridas and Co. (P.) Ltd. Vs. S.P. Kushare, S.T.O. Nagpur and Others, In the case of Sunil Batra Vs. Delhi Administration and Others etc., the Hon''ble Supreme

Court observed that the legislature expresses wisdom of community. In the case of *State of Bihar and others, etc. etc. Vs. Bihar Distillery Ltd., etc.*, the Hon"ble Supreme Court observed that an Act made by legislature represents the will of people and cannot be lightly interfered with. In the case of *Zameer Ahmed Latifur Rehman Sheikh Vs. State of Maharashtra and Others*, the Hon"ble Supreme Court observed that every legally possible effort should be made to uphold the validity. In the case of *Greater Bombay Co-op. Bank Ltd. Vs. United Yarn Tex. Pvt. Ltd. and Others*, the Hon"ble Supreme Court observed as under:

"82. The constitutional validity of an Act can be challenged only on two grounds, viz. (i) lack of legislative competence; and (ii) violation of any of the Fundamental Rights guaranteed in Part III of the Constitution or of any other constitutional provision. In *State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc.*, this Court has opined that except the above two grounds, there is no third ground on the basis of which the law made by the competent legislature can be invalidated and that the ground of invalidation must necessarily fall within the four corners of the afore-mentioned two grounds.

83. Power to enact a law is derived by the State Assembly from List II of the Seventh Schedule of the Constitution. Entry 32 confers upon a State Legislature the power to constitute cooperative societies. The State of Maharashtra and the State of Andhra Pradesh both had enacted the MCS Act 1960 and the APCS Act, 1964 in exercise of the power vested in them by Entry 32 of List II of the Seventh Schedule of the Constitution. Power to the enact would include the power to re-enact or validate any provision of law in the State Legislature, provided the same falls in an entry of List II of Seventh Schedule of the Constitution with the restriction that such enactment should not nullify a judgment of a competent Court of law. In the appeals/SLPs/petitions filed against the judgment of the Andhra Pradesh High Court, the legislative competence of the State is involved for consideration. Judicial system has an important role to play in our body politic and has a solemn obligation to fulfil. In such circumstances, it is imperative upon the Courts while examining the scope of legislative action to be conscious to start with the presumption regarding the constitutional validity of the legislation. The burden of proof is upon the shoulders of the incumbent who challenges it. It is true that it is the duty of the constitutional Courts under our Constitution to declare a law enacted by Parliament or the State Legislature as unconstitutional when Parliament or the State Legislature had assumed to enact a law which is void, either for want of constitutional power to enact it or because the constitutional forms or conditions have not been observed or where the law infringes the fundamental rights enshrined and guaranteed in Part III of the Constitution.

84. As observed by this Court in *CST v. Radhakrishnan*, in considering the validity of a Statute the presumption is always in favour of constitutionality and the burden is upon the person who attacks it to show that there has been transgression of constitutional principles. For sustaining the constitutionality of

an Act, a Court may take into consideration matters of common knowledge, reports, preamble, history of the times, objection of the legislation and all other facts which are relevant. It must always be presumed that the legislature understands and correctly appreciates the need of its own people and that discrimination, if any, is based on adequate grounds and considerations. It is also well-settled that the Courts will be justified in giving a liberal interpretation in order to avoid constitutional invalidity. A provision conferring very wide and expansive powers on authority can be construed in conformity with legislative intent of exercise of power within constitutional limitations. Where a Statute is silent or is inarticulate, the Court would attempt to transmute the inarticulate and adopt a construction which would lean towards constitutionality albeit without departing from the material of which the law is woven. These principles have given rise to rule of "reading down" the provisions if it becomes necessary to uphold the validity of the law.

85. In *State of Bihar and others, etc. etc. Vs. Bihar Distillery Ltd., etc.,* , this Court indicated the approach which the Court should adopt while examining the validity/constitutionality of a legislation. It would be useful to remind ourselves of the principles laid down, which read: (SCC p. 466, para 17):

"The approach of the Court, while examining the challenge to the constitutionality of an enactment, is to start with the presumption of constitutionality. The Court should try to sustain its validity to the extent possible. It should strike down the enactment only when it is not possible to sustain it. The Court should not approach the enactment with a view to pick holes or to search for defects of drafting, much less inexactitude of language employed. Indeed, any such defects of drafting should be ignored out as part of the attempt to sustain the validity/constitutionality of the enactment. After all, an Act made by the legislature represents the will of the people and that cannot be lightly interfered with. The unconstitutionality must be plainly and clearly established before an enactment is declared as void. The same approach holds good while ascertaining the intent and purpose of an enactment or its scope and application."

In the same para, this Court further observed as follows:

The Court must recognize the fundamental nature and importance of legislative process and accord due regard and deference to it, just as the legislature and the executive are expected to show due regard and deference to the judiciary. It cannot also be forgotten that our Constitution recognizes and gives effect to the concept of equality between the three wings of the State and the concept of "checks and balances" inherent in such scheme."

Conclusion

32. In view of the discussions made I find that the impugned Regulation-2012 is wholly valid and does not suffer from any infirmity. The writ petitions are devoid of merit. In result, all the writ petitions fail and are hereby dismissed. However,

there shall be no order as to cost.