
(2011) 12 OHC CK 0020
In the Orissa High Court
Case No : Writ Petition (C) No. 23504 of 2011

Ranjita Kahali

APPELLANT

Vs

State of Orissa and others

RESPONDENT

Date of Decision : 21-12-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1)(C), 19(4), 21
Orissa Co-operative Societies (Amendment) Act, 2011 — Section 2, 28, 28(1), 28(2), 28A
Orissa Co-operative Societies Act, 1962 — Section 134(1), 134(2), 16, 16(1), 20

Citation : (2011) 12 OHC CK 0020

Hon'ble Judges : S.K. Mishra, J;B.P. Das, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.K. Mishra, J.—In this bunch of writ petitions the petitioners, office bearers of different Co-operative Societies, have assailed the vires of the Orissa Cooperative Societies (Amendment) Act, 2011(hereinafter referred to as "the Amendment Act" for brevity). They specifically assailed the provisions of Section 2(g)(i) and 2(g)(ii) of Section 28 of the Amendment Act and the administrative action pursuant thereto whereby the Registrar, Co-operative Societies, opposite party no.2, has nominated persons other than the elected members to constitute the Managing Committee of the respective Co-operative Societies.

2. It is not disputed that there are about seven thousand Co-operative Societies in the whole of State of Orissa. Various Co-operative Societies were managed by the elected members and some cases the election has been held very recently. In such backdrop the Orissa State Legislative Assembly passed the Amendment Act whereby among other things it sought to amend the provision of reservation for various backward communities. By virtue of such an amendment, the management committees of all societies were dissolved from the date of the notification of such amendment and the management vested with the Registrar of the Co-operative Society. In order to understand the various amending

provision it is necessary to look into the various amendment that has been carried out by virtue of the Amendment Act.

3. The Orissa Co-operative Societies Act, 1962 (hereinafter referred to as the "Act" for brevity) at various point of time, has been amended by the legislative assembly prior to the present Amendment Act. As the matters stood, Section 16 of the Act provided for the persons who may become members of a Co-operative Society. Sub-section (1) provided for the membership of a Co-operative Society. Clause (b) provided no person shall be admitted as member of a Society other than a primary society, except the following, namely:

(i) any Society

(ii) the State Government;

(iii) the Central Government;

(iv) any other person as may be prescribed; and.

(v) a Co-operative Society registered under the Orissa Self-Help Co-operatives Act, 2001.

Sub-section (1-a) provided that notwithstanding anything to the contrary contained in any other provisions of this Act, and the rules or bye-laws framed thereunder, the members of the Committee including the co-opted members, if any, but excluding the members nominated or appointed under Clause (ii) of Sub-section (1-b) of Section 28, Sub-section (1) of Section 31 and Sub-section (1) of Section 32, of the primary Societies affiliated to the Central Society or an Apex Society shall be deemed to be the members of their respective Central Society or, as the case may be, the Apex Society or both, with effect from the date of commencement of the Orissa Co-operative Societies (Amendment) Act, 1997 so long as they continue as member of the Committees of Primary Societies. This section in effect provided for deeming membership of the Central and Co-operative Societies to which the Primary Societies have been affiliated. By virtue of Section 2 of the Amendment Act the provision of sub-section (1-a) of Section 16 of the Act is omitted. Thereby the deeming provision regarding membership of the Central and Apex Societies is deleted.

4. Prior to the amendment Section 20 read as follows:

20. Vote of members - Every member of a Society shall have one vote in the affairs of the Society: [Provided that -

(a) [***]

(b) Where two individuals have been admitted as joint members, they shall have one vote which may be exercised by any one of them;

(c) Where the State Government or the Central Government is a member of the Society, each person nominated by or on behalf of such Government on the Committee shall have one vote;

(d) Where there is an equality of votes at a meeting on the affairs of the Society other than election of its office-bearers or amendment of its Bye-Laws, the person presiding over the meeting shall have a second and deciding vote; and

(e) Where a member of the Society is simultaneously electing the President and the member of the Committee from his constituency, he shall have one vote for electing the President and another for the member.]

By virtue of an amendment after the proviso to Section 20 the following has been added:

Provided further that every member of an Electoral College referred to in Clause (ii-a) of sub-section (1) of Section 28-A shall have one vote in the matter of election of the member of the Committee of a Central and Apex Society.

Thus, by virtue of this amendment the legislature introduced the concept of Electoral College, which shall elect the committees of Central and Apex Society.

5. Section 28 of the principal Act provides the Society to have a Committee. The provisions of the said section provide for the powers of the Committee and also provide that there shall be a President and Vice President for the Committee [sub-section (1-a)]. Sub-section (1-aa) provided that the term of the Committee shall be four years from the date of assumption of the office by the Committee. This sub-section is amended and instead of four years the tenure is fixed at five years.

Before amendment Sub-section (1-b) provided that the expiration of the period of four years shall operate as dissolution of the Committee and thereafter the members including the President and Vice President shall be deemed to have vacated the office and in case no election has been completed by the date of such dissolution the management of the Society shall vest with the Registrar. By amendment the legislature substituted four years by five years. This is in consonance with the amendment of sub section (1-aa).

6. Section 4 of the Amendment Act introduced further changes of Section 28 of the principal Act and in place of Clauses (b),(c),(d),(e),(f) and (g) the new clauses were introduced. Prior to the amendment Clauses (b), (c), (d), (e), (f) and (g) of sub-section (2) of Section 28 of the Amendment Act read follows:

(b) In the case of a Large-sized Adivasi Multipurpose Co-operative Society, two thirds of the total number of elected members of the Committee shall be from among the members belonging to the Scheduled Tribes, so however that the said two third shall also include women members numbering not less than one third of the total number of such elected members.

Provided that the offices of the President and Vice-President shall be reserved for the Scheduled Tribes.

Explanation -The principle for determining whether a society is a large sized Adivasi Multipurpose Co-operative Society or not shall be such as may be prescribed.

(c) In the case of a Primary Society other than Large-sized Adivasi Multipurpose Co-operative Societies, two members each shall be from the Scheduled Castes and the Scheduled Tribes, three from Other Backward Classes including Socially and Educationally Backward Classes and two from Women members, so that among each of the said Scheduled Castes, Scheduled Tribes and Other Backward Classes including Socially and Educationally Backward Classes of members, there shall be one woman.

(d) In the case of a Central Society, two members each shall be from the Scheduled Castes and the Scheduled Tribes, three from Other Backward Classes including Socially and Educationally Backward Classes and two from Women members, so that among each of the said Scheduled Castes, Scheduled Tribes and Other Backward Classes including Socially and Educationally Backward Classes of members there shall be one woman.

(e) In the case of an Apex Society, three members each shall be from the Scheduled Casts and the Scheduled Tribes, four from other Backward Classes including Socially and Educationally Backward Classes and three from Women members, so that among each of the said Scheduled Castes and Scheduled Tribes members, there shall be one woman and among the Other Backward Classes including Socially and Educationally Backward Classes members, there shall be two women.

Provided that, save as provided in the aforesaid clauses there will be no bar for the members belonging to the said reserved categories to contest the election against the remaining seats in the Managing Committee of the Primary, Central and Apex Co-operative Societies.

(f) Notwithstanding anything contained in this Sub-section -(i) in the event of the seats in the Committee reserved for Women, Scheduled Castes, Scheduled Tribes and Other Backward Classes remaining unfilled in any election of a Primary Central or Apex Society, the Committee of the Society shall co-opt., the required number of such categories of members from among the members of the Society or, where the required number of such categories of members is not available for such co-option, the Committee shall co-opt the required number of members from amongst the members of the Society belonging to any category to fill up such seats, and for the purpose of making such co-option, the vacancies in the unfilled seats reserved for the said categories shall not invalidate the Constitution or functioning of the Committee, if otherwise it would be having a quorum.

(ii) the terms of office of every such co-opted member shall be co-terminus with the other members of the Committee;

(iii)[***]

(g) (i) Notwithstanding anything to the contrary contained in this Act, Rules and Bye-laws, the Committee(which shall include a preliminary Committee) of every Primary Society, Central Society and Apex Society existing immediately before

the date of commencement of the Orissa Co-operative Societies (Amendment) Act, 2001 shall stand dissolved with effect from the said date and the members including the President and the Vice-President of every such Committee shall be deemed to have vacated their offices on that date, and where, on the date of such commencement, the management of any such society continues to vest in the Registrar, the proceedings or actions taken, if any, for constitution of the Committee thereof shall stand cancelled;

(ii) the management of every society, the Committee of which is so dissolved or which so continues to vest in the Registrar, shall vest or, as the case may be, shall so continue to vest in the Registrar, and the Registrar or a Committee nominated by him from amongst the members of the society, or a member society affiliated to it or a society affiliated to such member society, as far as practicable representing in Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women, shall manage the affairs of the society and take all or any policy decision including admission of members in relation to the society till the Committee is constituted in accordance with the provisions of this act;

(iii) every Society referred to in Sub-clause (ii) shall amend its bye-laws as may be necessary, so as to bring them in conformity with the provisions of this Act as amended by the Orissa Co-operative Societies (Amendment) Act, 2001 and reconstitute the Committee within six months from the date of commencement of the said Act; and

(iv) in the event of any Society failing to so amend its bye-laws and reconstitute the Committee within the period specified in sub-clause (iii), the Registrar shall make such amendment and reconstitute the Committee within [seventy-five months] following the date of expiry of the period so specified.

7. After the amendment clauses (b), (c), (d), (e), (f) and (g) of sub section (2) of Section 28 read as follows:

(b) in the case of a Large-sized Adivasi Multipurpose Co-operative Society, in the total number of elected members of the Committee, there shall be representation from among the members belonging to the Scheduled Tribes, which shall be proportional to the ratio between the members belonging to the Scheduled Tribes and the total number of members of the said Society, so however that the said scheduled Tribe representation shall also include woman members whose number shall be proportional to the ratio between the woman members belonging to the Scheduled Tribes and the total number of the members belonging to the said Scheduled Tribes..

Provided that the offices of the President and Vice-President shall be reserved for the Scheduled Tribes.

Explanation -The principle for determining whether a society is a large sized Adivasi Multipurpose Co-operative Society or not shall be such as may be prescribed.

(c) In the case of a Primary Society other than Large-sized Adivasi Multipurpose Co-operative Society in the total number of elected members of the Committee, there shall be representation from among the members belonging to the Scheduled Castes, the Scheduled Tribes, the Other Backward Classes including Socially and Educationally Backward Classes and the Women which shall be proportional to the ratio between the members belonging to each said category and the total number of members of the said society, so that among each of the said Scheduled Castes, Scheduled Tribes and Other Backward Classes including Socially and Educationally Backward Classes of members, there shall be representation of woman which shall be proportional to the ratio between the woman members belonging to each said category and the total number of members of that category.

(d) In the case of a Central Society, in the total number of elected members of the Committee, there shall be representation from among the members belonging to the Scheduled Castes, the Scheduled Tribes, the Other Backward Classes including Socially and Educationally Backward Classes and the Women which shall be proportional to the ratio between the members belonging to each said category and the total number of members of the Electoral College referred to in clause (ii-a) of sub-section (1) of Section 28-A, so that among each of the said Scheduled Castes, the Scheduled Tribes and the Other Backward Classes including Socially and Educationally Backward Classes of members, there shall be representation of woman which shall be proportional to the ratio between the woman members belonging to each said category in the said Electoral College and the total number of members of that category in that Electoral College.

(e) In the case of an Apex Society, in the total number of elected members of the Committee, there shall be representation from among the members belonging to the Scheduled Castes, the Scheduled Tribes, the Other Backward Classes including Socially and Educationally Backward Classes and the Women which shall be proportional to the ratio between the members belonging to each said category and the total number of members of the Electoral College referred to in clause (ii-a) of sub-section (1) of Section 28-A, so that among each of the said Scheduled Castes, the Scheduled Tribes and the Other Backward Classes including Socially and Educationally Backward Classes of members, there shall be representation of woman which shall be proportional to the ratio between the woman members belonging to each said category in the said Electoral College and the total number of members of that category in that Electoral College.

Provided that, save as provided in the aforesaid clauses there will be no bar for the members belonging to the said reserved categories to contest the election against the remaining seats in the Managing Committee of the Primary, Central and Apex Co-operative Societies.

Provided further that there shall be at least one representation from each said reserved category, if any.

(f) Notwithstanding anything contained in this sub-section -

(i) in the event of the seats in the Committee reserved for Women, Scheduled Castes, Scheduled Tribes and Other Backward Classes including Socially and Educationally Backward Classes remain unfilled in any election of a Primary Central or Apex Society, the Committee of the Society shall co-opt., the required number of such categories of members from among the members of the Primary Society, or as the case may be from among the members of the Electoral College of the Central or Apex Society, and for the purpose of making such co-option, the vacancies in the unfilled seats reserved for the said categories shall not invalidate the Constitution or functioning of the Committee, if otherwise it would be having a quorum.

(ii) the terms of office of every such co-opted member shall be co-terminus with the other members of the Committee;

(g) (i) Notwithstanding anything to the contrary contained in this Act, Rules and Bye-laws, the Committee(which shall include a preliminary Committee) of every Primary Society, Central Society and Apex Society existing immediately before the date of commencement of the Orissa Co-operative Societies (Amendment)Act, 2011 shall stand dissolved with effect from the said date and the members including the President and the Vice-President of every such Committee shall be deemed to have vacated their offices on that date, and where, on the date of such commencement, the management of any such society continues to vest in the Registrar, the proceedings or actions taken, if any, for constitution of the Committee thereof shall stand cancelled;

(ii) the management of every society, the Committee of which is so dissolved or which so continues to vest in the Registrar, shall vest or, as the case may be, shall so continue to vest in the Registrar, and the Registrar or a Committee nominated by him from amongst the members of the society, or a member society affiliated to it or a society affiliated to such member society, as far as practicable representing in Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women, shall manage the affairs of the society and take all or any policy decision including admission of members in relation to the society till the Committee is constituted in accordance with the provisions of this act;

(iii) every Society referred to in Sub-clause (ii) shall amend its bye-laws, as may be necessary, so as to bring them in conformity with the provisions of this Act as amended by the Orissa Co-operative Societies (Amendment) Act, 2011 and reconstitute the Committee within six months from the date of commencement of the said Act; and

(iv) n the event of any Society failing to so amend its bye-laws and reconstitute the Committee within the period specified in sub-clause (iii), the Registrar shall make such amendment and reconstitute the Committee within six months following the date of expiry of the period so specified.

In Section 28-A of the principal Act, in sub-section (1), for clause (ii), the following clauses shall be substituted namely:

(ii) Other members of the Committee of a Primary Society shall be elected in such manner by and from among the General Body of members of the Society qualified for the purpose organized into such different constituencies as may be prescribed.

(ii-a) Other members of the Committee of a Central Society and an Apex Society shall be elected in such manner by and from among the qualified members of the Electoral College formed in such manner organized into such different constituencies as may be prescribed.

8. Thus the provision for reservation as it stood prior to amendment is that the committee of an Apex Society shall constitute twenty one members whereas the Committee of a Central Society will be fifteen members including the President and Vice-President. Similarly, the Committee of a Primary Society shall consist of 15 members including the President and Vice-President. There is no change in this number. However, the legislature has sought to amend the procedure of reservation of the members of the Committee. Previously it was fixed in the sense for every primary society there should be two members each from Scheduled Caste and Scheduled Tribe, three from Other Backward Classes and two Women members, so that among each of the said Scheduled Castes and Scheduled Tribes and Other Backward Classes there shall be one woman.

In case of Central Society two members each from Scheduled Castes and Scheduled Tribes, three from Other Backward Classes, two from Women members, so that among each of the said Scheduled Castes and Scheduled Tribes and Other Backward Classes, there shall be one woman.

In case of Apex Society, three members each from the Scheduled Castes and the Scheduled Tribes, four from Other Backward Classes and three women members, so that among each of the said Scheduled Castes, Scheduled Tribes and Other Backward Classes categories, there shall be two women. This provision has been done away with. Instead the legislature has introduced the concept of proportional representation. In other words in place of fixed number of members from Scheduled Castes and Scheduled Tribes, the amending provision provides that the members representing the Scheduled Castes, Scheduled Tribes, Other Backward Classes and women shall be proportional to the number of such persons in the members of the society.

This section also aimed at dissolving all the Committees existing on the date of the Amendment Act came into force and the management of the society vest with the Registrar, who was to manage the Co-operative Society himself, or nominate a Committee from amongst the members of the Co-operative Society or affiliated society, who shall be representing Scheduled Castes, Scheduled Tribes, Other Backward Classes and women to continue to manage the society. There is also stipulation that the rule shall be accordingly amended by each

society within six months failing which the Registrar shall make such amendment within six months thereafter.

9. Section 28-A of the principal Act provides for election of members of the Committee. Sub-section (1) of clause (i) provides that the President of the Committee of every Society shall be indirectly elected, in the manner prescribed, by and from among the members of the Committee. As the provision originally stood clause (ii) of sub-section (1) of Section 28-A provided that other members of the Committee shall be elected in the prescribed manner and from among the General Body of members of the Society qualified for the purpose so however that, where the membership of the Society is required to be organized into different constituencies in accordance with its Bye-laws, only the members belonging to any such constituency shall elect the members of the Committee for that constituency. This provision has been substituted by the following:

(ii) Other members of the Committee of a Primary Society shall be elected in such manner by and from among the General Body of members of the Society qualified for the purpose organized into such different constituencies as may be prescribed.

(ii-a) Other members of the Committee of a Central Society and an Apex Society shall be elected in such manner by and from among the qualified members of the Electoral College formed in such manner organized into such different constituencies as may be prescribed.

These amending provisions introduced that the members of the Committee of Central Society and the Apex Society shall be elected by and from among the qualified members of the Electoral College formed in such manner organized into different constituencies as may be prescribed. Thus, the concept of Electoral College and its power of electing different members of the Committee has been introduced.

10. In assailing the constitutional validity of the Act as well as the Administrative action, learned counsel appearing for the petitioners have contended that the act is passed with mala fide intention, it is arbitrary and that it is a colourable piece of legislation. Learned counsel also have submitted that Amendment Act is in conflict with the provision of Constitution of India. The Statement and object of the said Act is to increase the representation of the Weaker Section of the Society namely, Scheduled Castes, Scheduled Tribes and Other Backward Classes, but in effect it may have the result of reducing the representation of these Weaker Sections. It is further contended that the amendment is unworkable as the deeming memberships have been deleted. It is also contended that as the Act do not define the Electoral College and same is left to the discretion of the State Executive, it has resulted in excess delegation of the legislative function of the legislature and, therefore, is invalid. Learned counsel for the petitioners also contend that the action of the Registrar in dissolving ninety three societies out of seven thousand in a single day without following any

procedure or without proper exercise is arbitrary and is liable to be set aside. Such an act is challenged on the ground of non-application of mind also.

12. Learned Advocate General, on the other hand, submitted that the intention of legislature is irrelevant, if it has the competence to legislate on the subject it has passed the legislation. Colourable exercise of legislation relates only to the competence of the legislature and it cannot be pressed into service to decide an Act to be colourable piece of legislation depending upon the intention of the legislature. Secondly, it is submitted that malice cannot imputed on legislature while legislating any Act. Learned Advocate General also submitted that the Act was necessary in view of the fact that the principle adopted by the State to give proportional representation to the Weaker Sections instead of giving reservation by a fixed member. Negating the contention of excessive delegation, it has been argued by the State that there are parameters in the Act itself to show that there has been no unbridled and unguided delegation of power to the executive and, therefore, the Act should be held to be valid. Coming to the first contention of the Act being a colourable piece of legislation, reliance has been placed by both the sides on K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa, , wherein a constitution bench of the Supreme Court has examined the constitutional validity of the Orissa Estate Abolition Act and laid down the principles when an Act can be called a colourable piece of legislation. At paragraph-9 of the judgment appearing at Page 379 the Hon"ble Supreme Court made it clear at the outset that the doctrine of colourable legislation does not involve any question of "bona fides" or "mala fides" on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the legislature lacks competency, the question of motive does not arise at all. A distinction, however, exists between a legislature which is legally omnipotent like the British Parliament and the laws promulgated by which could not be challenged on the ground of in competency, and a legislature which enjoys only a limited or a qualified jurisdiction.

The Hon"ble Supreme Court further held in the said case that if the constitution of a State divided the legislative powers amongst different bodies, which have to act within their respective spheres marked out by specific legislative entries, or if there are limitations on the legislative authority in the shape of fundamental rights, questions do arise as to whether the legislature in a particular case has or has not, in respect to the subject matter of the statute or in the method of enacting it, transgressed the limits of its constitutional powers. Such transgression may be patent, manifest or direct, but it may also be disguised, covert and indirect and it is to this later class of cases that the expression "colourable legislation" has been applied in certain judicial pronouncements. The idea conveyed by the expression is that although apparently a legislature in passing a statute purported to act within the limits of its powers, yet in substance and in reality it transgressed these powers, the transgression being

veiled by what appears, on proper examination, to be a mere pretence or disguise.

The Hon''ble Supreme Court further held that in other words, it is the substance of the Act that is material and not merely the form or outward appearance, and if the subject matter in substance is something which is beyond the powers of that legislature to legislate upon, the form in which the law is clothed would not save it from condemnation. The legislature cannot violate the constitutional prohibitions by employing an indirect method. In cases like these, the enquiry must always be as to the true nature and character of the challenged legislation and it is the result of such investigation and not the form alone that will determine as to whether or not it relates to a subject which is within the powers of the legislative authority.

13. Subsequently in Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, , a constitutional Bench of the Supreme Court has approved the principle enunciated in the case of K.C. Gajapati Narayan Deo (supra). At page 316 in the last sub-paragraph of Paragraph-7 the Supreme Court summarized the law on the subject. The Hon''ble Supreme Court held that the legislature can only make laws within its legislative competence. Its legislative field may be circumscribed by specific legislative entries or limited by Fundamental Rights created by the Constitution. The legislature cannot over-step the field of its competency, directly or indirectly. The Court will scrutinize the law to ascertain whether the legislature by device purports to make a law which, though in form appears to be within its sphere, in effect and substance, reaches beyond it. If in fact, it has power to make the law, its motives in making the law are irrelevant.

14. The Hon''ble Supreme Court in State of Kerala and Another Vs. Peoples Union for civil Liberties, Kerala State Unit and Others, has examined the concept of colourable legislation. The Hon''ble Supreme Court also quoted with approval the aforesaid case of K.C. Gajapati Narayan Deo(supra) and host other cases and has come to the following conclusions:

(a) The substance of the impugned Act must be looked at to determine whether it is in pith and substance within a particular entry whatever its ancillary effect may be.

(b) Where the encroachment is ostensibly ancillary but in truth beyond the competence of the enacting authority, the statute will be a colourable piece of legislation and constitutionally invalid. If the statute is legislatively competent the enquiry into the motive which persuaded the Parliament or the State Legislature into passing the Act is irrelevant.

(c) Apart from passing the test of legislative competency, the Act must be otherwise legally valid and would also have to pass the test of constitutionality in the sense that it cannot be in violation of the provisions of the Constitution nor can it operate extraterritorially.

Thereafter the Hon"ble Supreme Court has opined that doctrine of colourable legislation is strictly confined to the question of legislative competence of the State Legislature to enact a statute and whenever the rights conferred upon a class of persons including the protected class were statutory in nature, they cannot be categorised as plainly constitutional rights. It is one thing to say that some rights are constitutional in nature/origin being part of the expansive regime of Article 21, but it would not be correct to raise the same to the exalted status of constitutional rights. A right which primarily flows from a statute, cannot claim its constitutional pedigree to become a constitutional threshold, against which constitutionality of a statute can be tested. It is trite that a right which may be conferred by a statute can also be taken away by another.

In the aforesaid case the Hon"ble Supreme Court further held that in the event of a statute being held within the ambit of the legislative competence of the State Legislature, could be declared ultra vires only on the premise that it is violative of the provisions of Part III of the Constitution of India or any other provisions but not on the ground of colourable exercise of power or mala fide on the part of the legislature. The object, purpose or design should be taken into consideration for the purpose of examining the constitutionality on the touchstone of the provisions of Part III of the Constitution of India and not otherwise.

15. In this light an examination of Articles 245 and 246 of the Constitution of India reveal that Article 245 provides for extent of laws made by Parliament and by the Legislatures of States. It provides that subject to the provisions of the Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State. Article 246, clause (1) provides that notwithstanding anything contained in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I of the Seventh Schedule. Clause (2) of the said Article provides that notwithstanding anything in clause (3), Parliament and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule which is referred to as the Concurrent List. In Clause-3 of Article 246 the legislature of the State has exclusive power to make laws for such State with respect to any of the matters enumerated in List II, i.e. the State List. Entry 32 of the State list contains among others, Co-operative Societies. Thus, the State legislature is competent to legislate law relating to Co-operative Societies.

The other aspects of the contention raised by the learned counsels whether it is violative of any provisions of the constitution or it breaches any fundamental right as guaranteed in Part III of the Constitution of India is to be considered. Firstly, it is argued that the Act is arbitrary in nature and, therefore, is violative of Article 14 of the Indian Constitution. It is trite that anything arbitrary or without any reasonable basis is violative of the principles enunciated in Article 14

of the Indian Constitution. In this backdrop an examination of the statement and objects for which the Act has been passed will show the reason for which the Act has been enacted. The statement of objects and reasons of the Act provides that the Government as a matter of policy, is committed to suitably provide for the representations to the weaker sections, namely, Schedule Castes, Scheduled Tribes and Other Backward Classes including Socially and Educationally Backward Classes and Women for their effective participation in the management of the Co-operative Societies which functions, generally, in a three tier structure with the Primary at the base level, the Central at the middle and the Apex Societies at the top.

It is further stated in the said statement of objects that the existing provisions of deemed membership of the elected and co-opted members of the Primaries, Central and Apex Societies, by virtue of which these members can become members of the Central and Apex Societies automatically, is against the principle of voluntary membership in the Co-operative Societies. So it is necessary to do away with the system of deemed membership, to bring the provisions of the Act in harmony with the principle of voluntarism in Cooperatives.

It is further stated that the members of the Central and Apex Societies which also include the deemed members, representing the Primary Societies, constitute the voters of such Central and Apex Societies. Since the deemed membership provision is proposed to be deleted, such Central and Apex Societies need to have Electoral Colleges for elections to their Committees in order to provide adequate and suitable representation to the aforesaid weaker sections in such Central and Apex Societies.

It is further stated that as the term of the office of the Committee of Management of the Cooperative Societies is four years where as that of the elected bodies like the Panchayati Raj Institutions, Urban Local Bodies etc. is five years. In order to have uniformity, the terms office of the Committee of Societies was proposed to be enhanced to five years.

The existing provisions of the Orissa Cooperative Societies Act, 1962 provides for caste-based reservation in the Committee of the Primary, Central and Apex Societies with fixed number of seats reserved for each categories of Scheduled Caste, Scheduled Tribe, Other Backward Classes including Socially and Educationally Backward Classes and Women irrespective of the number of members of such categories in the Society. In order to have suitable and adequate representation of different categories of weaker section of members in the Committee of Societies, it was proposed to have representations of such categories on proportionate basis, i.e., proportional to their numbers in the Societies.

The statement of objects further reveals that in view of the proposed changes incorporating the policy of proportionate representation of Scheduled Caste, Scheduled Tribe, Other Backward Classes including Socially and Educationally

Backward Classes and Women members in the Committee of Primary, Central and Apex Societies, the Committees of all such Cooperative Societies, which were contrary to the above policy, need to be dissolved and the management of such societies vested with the Registrar of Cooperative Societies who may manage the affairs by himself or nominate a Committee with representation of Scheduled Caste, Scheduled Tribe, Other Backward Classes including Socially and Educationally Backward Classes and Women members of the Society or member of Society affiliated to it or a Society affiliated to such member Society.

Thus, it is stated with a view to having uniform and proper representation of Scheduled Caste, Scheduled Tribe, Other Backward Classes including Socially and Educationally Backward Classes and Women to the Committee of the Societies proportionate to their numbers in the Society, the General Body of Members of the "Electoral College" in the case of Central and Apex Societies need to be organized into different constituencies as would be required for the purpose. Hence changes were sought to be made in the existing provisions of the Act.

The Act, therefore, was passed by the Legislature and it received the assent of the Governor and then it was notified on 24th September, 2011 that 24th September, 2011 is the date on which the Orissa Co-operative Societies (Amendment) Act, 2011 came into force.

16. Thus, keeping in view the aforesaid objective, it is to be decided whether the object to be achieved is achievable by such an amendment. Mr. S.K.Padhi, learned Senior counsel for the petitioner in one of the cases, argued that if such an amendment is enforced, then it will have an anomalous impact on the representation in view of the fact that in certain Societies the representation of the weaker sections may become insignificant. In fact he has given the data regarding two Urban Cooperative Banks, which are Primary Societies, viz., Cuttack Urban Cooperative Bank Ltd. and Rourkela Urban Cooperative Bank Ltd. and demonstrated that the percentage of reservation of the weaker section has drastically reduced from the existing reservation of fixed numbers.

However, learned Advocate General submitted it was never the intention of the Legislature to increase the reservation of seats in favour of weaker sections. It is, as stated in the statement and object, to give adequate and suitable representation to the weaker section of the society. However by picking one or two cases, it cannot be taken as a general rule that in all cases such a reservation by proportional representation of the weaker section shall only decrease. In certain cases, it may increase. So the argument that the Amendment Act will in fact have a negative impact and will not achieve the result, it is seeking to achieve is erroneous and cannot be upheld.

17. Mr. Pitambar Acharya, learned counsel for the petitioner, in course of argument has submitted that the Act is unworkable in the sense that the concept "deemed members" has been deleted and, therefore, who shall become the members of the Central and Apex Co-operative Societies. This view is also

erroneous in view of the fact the Amendment Act provides for an Electoral College, which is to be constituted, as may be prescribed by the Rules. Such Electoral College will constitute members from whom the members of the Central and Apex Co-operative Societies shall be elected. It is unacceptable that the amendment sought is unworkable and cannot be implemented. We have already noticed that the intention of the Legislature in enacting a particular statute on a subject, in which it has the competence, is irrelevant. Thus, the argument that the Amendment Act has been passed with mala fide intention is of no avail to the petitioners.

18. The other question that remains to be seen is whether the Act is violative of any of the provisions of Part III of the Constitution of India. It is submitted that in addition to violation of Article 14 it also violate Article 19(1) (c) of the Constitution of India. Article 19(1)(c) provides for the fundamental right to form associations and unions.

In *Dharam Dutt and Others Vs. Union of India (UOI) and Others*, , the Hon''ble Supreme Court relying upon *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, and *All India Bank Employees'' Association Vs. National Industrial Tribunal and Others*, , has held that a right to form associations or unions does not include within its ken as a fundamental right a right to form associations or unions for achieving a particular object or running a particular institution, the same being a concomitant or concomitant to a concomitant of a fundamental right, but not the fundamental right itself. The associations or unions of citizens cannot further claim as a fundamental right that they must also be able to achieve the purpose for which they have come into existence so that any interference with such achievement by law shall be unconstitutional, unless the same could be justified under Article 19(4) as being a restriction imposed in the interest of public order or morality. At paragraph-28, the Hon''ble Supreme Court further held that a right to form unions guaranteed by Article 19(1)(c) does not carry with a fundamental right in the union so formed to achieve every object for which it was formed with the legal consequence that any legislation not falling within clause (4) of Article 19 may in any way hamper the fulfilment of those objects, should be declared unconstitutional and void. Thus, the rights guaranteed under Article 19(1)(c) also do not include within its ambit the right to manage the Society in a particular way. Hence, the Amendment Act, especially Section 28(2)(g)(ii), cannot be said to be violating the Article 19(1)(c) of the Constitution.

19. The provisions of the Amendment Act have been criticized as being arbitrary and, therefore, violative of Article 14 of the Constitution of India. Before examining the validity of an Act passed by the Legislation within its competence, it is proper to take into account the various judicial pronouncements and to examine the role of Court vis-?-vis the powers of Legislature to enact any law.

In *Government of Andhra Pradesh and Others Vs. Smt. P. Laxmi Devi*, the Hon''ble Supreme Court has held that the Court must always remember that

invalidating a statute is a grave step, and must therefore be taken in very rare and exceptional circumstances. The Hon''ble Supreme Court further added while performing their duties, the Judges must take care not to intrude upon the domain of the other branches of Government. Full and free play must be permitted to that wide margin of considerations which address themselves only to the practical judgment of a legislative body. Legislation could be held unconstitutional only when those who have the right to make laws have not merely made a mistake (in the sense of apparently breaching a constitutional provision) but have made a very clear one, so clear that it is not open to rational question. The judicial veto is to be exercised only in cases that leave no room for reasonable doubt. This rule recognizes that, having regard to the great, complex ever-unfolding exigencies of Government, much of which will seem unconstitutional to one man, or body of men, may reasonably not seem so to another; that the Constitution often admits of different interpretations; that there is often a range of choice and judgment; that in such case the Constitution does not impose upon the legislature any one specific opinion, but leaves open this range of choice; and that whatever choice is not clearly in violation of a constitutional provision is valid even if the Court thinks it unwise or undesirable. The Hon''ble Supreme Court in the said case quoted Prof. Thayer and held that a Court can declare a statute to be unconstitutional not merely because it is possible to hold this view, but only when that is the only possible view not open to rational question. In other words, the Court can declare a statute to be unconstitutional only when there can be no manner of doubt that it is flagrantly unconstitutional, and there is no way of avoiding such decision. The philosophy behind this view is that there is broad separation of powers under the Constitution, and the three organs of the State the legislature, the executive and the judiciary, must respect each other and must not ordinarily encroach into each other''s domain. Also the judiciary must realize that the legislature is a democratically elected body which expresses the will of the people, and in a democracy this will is not to be lightly frustrated or obstructed. At paragraph-44 the Hon''ble Supreme Court further held that if two views are possible, one making the statute constitutional and the other making it unconstitutional, the former view must always be preferred. Also the Court must take very effort to uphold the constitutional validity of a statute, even if that requires giving a strained construction or narrowing down its scope. Also it is none of the concern of the Court whether the legislation in its opinion is wise or unwise.

In *State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc.*, the Hon''ble Supreme Court held that the power of Parliament or for that matter, the State Legislatures is restricted in two ways. A law made by the Parliament or the Legislature can be struck down by Courts on two grounds and two grounds alone, viz., lack of legislative competence and violation of any of the fundamental rights guaranteed in Part-III of the Constitution or of any other constitutional provision. There is no third ground. In other words, if an enactment is challenged as violative of Article 14, it can be struck down only if it

is found that it is violative of the equality clause/equal protection clause enshrined therein. No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or other the constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that Court thinks it unjustified. The Parliament and the Legislature composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The Court cannot sit in judgment over their wisdom.

Similar view has been expressed in *Greater Bombay Co-op. Bank Ltd. Vs. United Yarn Tex. Pvt. Ltd. and Others*, The Hon"ble Supreme Court in that case has held that the constitutional validity of an Act can be challenged only on two grounds, viz., lack of legislative competence and violation of any of the Fundamental Rights guaranteed in Part III of the Constitution or of any other constitutional provision. 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 aforementioned two grounds. In the said case, the Hon"ble Supreme Court quoting *State of Bihar and others, etc. etc. Vs. Bihar Distillery Ltd., etc.*, held 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. 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.

In *Udai Singh Dagar and Others Vs. Union of India (UOI) and Others*, , the Hon"ble Supreme Court has held that the validity of a statute would ordinarily be tested keeping in view the social conditions as were existing on the date of coming into force thereof. It is one thing to say that a law causes hardship to a section of the people but it is another thing to say that the same would be unconstitutional. It may be that with the passage of time, a statute which was intra vires on the date of coming into force of the Act may be considered to be ultra vires. However, for that there should be sufficient materials which are either brought on record or of which the court can take judicial notice. The difficulty would arise where the materials brought on record may provide for divergent views. In such a situation, the court will not ordinarily exercise its power of judicial review over legislation. The facts on the basis whereof the Legislature of a State or the Parliament had chosen to rely upon should be the guiding factor. The Legislature can have several choices or options to deal with a matter, and courts cannot say which choice or option should have been preferred.

20. In applying these principles to the present case, we find that the proposal of proportionate representation of the weaker section of the people in the committee constituted for management of the Co-operative Societies may look unreasonable to some people, but in this regard though there are two views

possible, the view which is in favour of the constitutional validity of the Act has to be adopted by the Court. It is well established that in this case, the two grounds on which constitutional validity can be challenged, i.e. lack of legislative competence and violation of any of the Fundamental Rights provided in Part III or any other constitutional provision are singularly lacking. This brings us to the submission that the legislature has abdicated its legislative power to the executive by delegating the authority to frame rules for the purpose of creating Electoral College. Some of the counsel called it excessive delegation and, therefore, argued that the Act should be declared as invalid.

21. It is argued that the expression "as may be prescribed" appearing in the amended Section 28-A of sub-section (1) clause (ii) has left the executive with a unbridled and uncanalized power to frame the rules regarding the constitution of the Electoral College that would elect the members of the committee to manage different Central and Apex Co-operative Societies. Our attention was drawn to Section 134 (1) of the Act which vests the power with the State Government to make rules to carry out the purpose of the Act. Sub-section (2) of Section 134 of the Act prescribes that all rules made under this Section shall as soon as they are made be laid before the State Legislature for a period of fourteen days which may be comprised in one or more sessions and shall be subject to such modifications as the Legislature may make therein during the said period. This provision has been heavily relied upon by the State to counter the argument that there has been excessive delegation of legislative power. It is submitted that though the legislature has delegated the power to prescribe Electoral College and its constituents etc. there are provisions within the Act itself to control that power.

Such question has been considered by the constitutional Bench of the Supreme Court decision in *Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi*, . At paragraph-17, the Hon"ble Supreme Court held that in the context of modern conditions and the variety and complexity of the situations which present themselves for solution, it is not possible for the Legislature to envisage in detail every possibility and make provision for them. The Legislature, therefore, is forced to leave the authorities created by it an ample discretion limited, however, by the guidance afforded by the Act. This is the ratio of delegated legislation, and is a process which has come to stay and which one may be permitted to observe is not without its advantages. So long, therefore, as the legislature indicates, in the operative provisions of the statute with certainly, the policy and purpose of the enactment, the mere fact that the legislation is skeletal, or the fact that a discretion is left to those entrusted with administering the law, affords no basis either for the contention that there has been an excessive delegation of legislative power as to amount to an abdication of its functions, or that the discretion vested is uncanalised and unguided as to amount a carte blanche to discriminate. The second is that if the power or discretion has been conferred in a manner which is legal and constitutional, the fact that parliament could possibly have made more detailed provisions, could obviously not be a ground for invalidating the law.

Thus, it is clear that the Hon''ble Supreme Court has held that if the statute itself in the operative provisions has with certainty provided for the policy and the purpose of enactment, the mere fact that the legislation is skeletal, the delegated power of legislation cannot be called uncanalised and unguided.

22. In the present case the amendment has made it ample clear that there should be voluntarism of association for which the deemed memberships have been deleted. Secondly, there is principle of proportional representation of the weaker sections. The principal Act also provides for the Co-operative principles in Schedule II of the Act. These are the guidelines with certainties within which the executive has to work while prescribing the mode of constitution of the Electoral College. Therefore though there has been a delegation of the legislative function by the legislature on the executive, it cannot be held that it is unbridled, or uncanalized, or unguided.

23. As far as Section 134 of the Act is concerned, similar provision has been examined by the Supreme Court in *The Quarry Owners Association Vs. The State of Bihar and Others*, wherein at paragraph-45 the Hon''ble Supreme Court has held that Parliament through its wisdom, apart from the above brought the concerned amendment also to keep a check on the exercise of power by the State Government as delegate. The question is whether mere laying of rules and notifications before the legislature can be construed as a check on the State Government's power. The Hon''ble Supreme Court went on to add that where any document, rule or notification requires placement before any House or when placed, the said House inherently gets the jurisdiction over the same, each member of the House, subject to its procedure, gets the right to discuss the same, they may put questions to the Ministry concerned. Irrespective of the fact that such rules or notifications may not be under the purview of its modification, such members may seek explanation from such Ministry of their inaction, arbitrariness, transgressing limits of their statutory orbits on any such other matter. Short of modification power it has a right even to condemn the Ministry. The Supreme Court thereafter held that no doubt, in the case where the house is entrusted with power to annul, modify or approve any rule, it plays a positive role and has full control over it, but even where the matter is merely placed before any House, its positive control over the executive makes even mere laying to play a very vital and forceful role which keeps a check over the State Government concerned.

24. In the case at hand, the situation is still better in the sense that not only the rule has to be placed before the legislature as soon as they are made, but also the legislature has the power to modify the rules. Therefore, it cannot be said that delegation of legislative power to the executive has resulted in abdication of the powers of the legislative assembly and, therefore, should be declared invalid.

25. Viewed in a different angle, it is seen that the power has been delegated to the executive itself, who is responsible for bringing in the Amendment Act to the floor of the legislation. In a similar matter the Supreme Court in *Arun Tewari and*

others v. Zila Mansavi Shikshak Sangh and others; AIR 1998 SC 331 has held that the power to frame these criteria and procedure is not delegated to any subordinate authority. The very authority which framed the original Rules is delegated the power to frame special rules prescribing criteria and procedure in specific circumstances in consultation with the General administration Department. The fact that the power of delegation is to be exercised by the State Government itself is a safeguard against the abuse of this power of delegation.

26. Similar view has been taken in Quarry Owners' Association (supra), the Hon'ble Supreme Court has held that in a Parliamentary democracy every act of the State Government is accountable to its people through State Legislature which itself is an additional factor which keeps the State Government under check not to act arbitrarily or unreasonably. When a policy is clearly laid down in a statute with reference to the minor minerals with main object under the Act being for its conservation and development, coupled with various other provisions to the Act guiding it, checking it and controlling it then how such delegation could be said to be unbridled. Delegation coupled with a policy direction is good.

27. Thus, in view of the aforesaid discussion, we come to the conclusion that there has been no excessive delegation giving unbridled, uncanalized and unguided power on the executive, and therefore, Amendment Act cannot be declared invalid. Thus, we come to the conclusion that there has been no such excessive delegation of power.

28. This brings us to the residual question whether the provisions of the Amendment Act dissolving all the existing committees of the Co-operative Societies and vesting the same on opposite party no.2 has to be termed as unconstitutional because of it violating the rights of the elected members to continue. It is contended that as per the provisions of the Act, the elected office bearers were to continue for four years and by this Act the bodies have been dissolved and thereby their rights have been infringed. From the discussions in the preceding paragraph, it is clear that only when a fundamental right is breached an Act can be said to be unconstitutional. The Act cannot be held to be invalid on the ground that it breaches the right of a class of person or individuals which has been conferred by a statute. In the afore quoted case of State of Kerala Vs. Peoples Union (supra), the Hon'ble Supreme Court has held that it is trite that a right conferred by a statute can also be taken away by another. The principle is the stream cannot rise higher than the source.

29. Similar amendment was made in the year 2001 which led to the dissolution of elected committees of Co-operative Societies. The provision was challenged as unconstitutional in Gurupada Nanda and Others Vs. State of Orissa and Others, . A division Bench of this Court has upheld the constitutional validity of such an Act by holding thus:

Dissolution of the elected committees of management prior to expiry of their term by the impugned amendment cannot be construed as undemocratic and

unconstitutional as the members of such committees were elected to their respective offices and were holding such offices by virtue of the provisions of the Act. Their term or tenure can be cut short by the provisions of the Act as well. Dissolution was the only choice left with the law makers for immediately providing representation to the weaker sections in the Managing Committees of Co-operative Societies. Therefore, it cannot be said that the amended clauses (g) (i) and (g) (ii) of Section 28(2) of the Act are ultra vires. There has been no violation of any provisions of the Act or the Constitution by bringing about the amendment in question. The amendment was passed by the State Legislature and was assented to by the Governor.

The Division Bench has relied upon an earlier reported case, i.e. Pradip Kumar Moharathi V. State of Orissa; 84 (1997) CLT 135. Since on two earlier occasions, this Court has held similar provisions to be constitutionally valid, we follow the same by adopting the principle of judicial discipline. We do not find any reason for differing with the earlier view taken by this Court.

30. Lastly it has been contended by the learned counsel for the petitioners that the action of opposite party no.2 appointing various persons as President, Vice-President and Members of the Managing Committee in hot haste on 24.9.2011 on the day the Amendment Act came into force is without application of mind and without following the proper procedure. Learned counsel for the opposite parties, in this regard, submits that the bill was passed on 27.8.2011 which was pending before the Governor of Orissa till 22nd September for his assent. It is further stated that the Registrar being a responsible officer having the assistance of subordinate officers throughout the State, was required to meet an emergent situation of managing the Societies and as such the action of the Registrar in notifying the committee immediately after the publication of the notification cannot be termed to have been done in hot haste without application of mind as the Registrar was to get himself ready for management for such huge number of Societies immediately after coming into force of the Act. Hence he took a prompt and emergent action in constituting the Committees, otherwise it would have been difficult to manage all the Societies resulting in complete breaking down of the administrative functioning of the Societies.

31. It is noted here that during course of hearing one file was produced before the Court which relates to the nomination of the President, Vice-President and other Members of the Committee of the Urban Co-operative Bank Ltd., Cuttack. It was noticed that no noting from the sub-ordinate staff, namely, Deputy Registrar-in-charge of that area suggesting the name of the private opposite parties was there. Simply the office put up a note which was acted upon by the Registrar. In other words, there was completely lack of any kind of exercise which would have indicated that there was an application of mind for nominating the President, Vice-President and other Members of Co-operative Societies. It is stated at the bar, similar is the situation in respect of nomination of President, Vice-President and other Members of the other Co-operative Societies also.

32. It is well settled that the Court cannot sit in judgment over an action of the administration of the executive. The scope of judicial review is limited to three grounds; (i) unreasonableness, which can more appropriately be called irrationality, (ii) illegality and (iii) procedural impropriety. Only on these three grounds an executive action can be struck down by the Court. An examination of the case in hand reveals that when the legislature passed a law dissolving various Committees of all the Co-operative Societies of the State and vested the management thereof on the Registrar or any Committee nominated by him. It was further specified in the Act, namely, sub-clause (ii) of Clause (g) of sub-section (2) of Section 28 that the Registrar was to manage the Society himself or to nominate a Committee from amongst the Members of the Society, or a member society affiliated to it or a Society affiliated to such members society, as far as practicable representing the Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women to manage the affairs of the Society and take all or any policy decision including admission of members in relation to the Society till the Committee is constituted in accordance with the provisions of this Act.

33. It is neither the case of the opposite parties nor any materials has been produced before this Court to show that he has taken care to constitute such a Committees with respect to every Co-operative Society, for which he has nominated, any person representing Scheduled Castes, Scheduled Tribes, Other Backward Classes and Women. It appears that he has mechanically passed orders in almost all cases. Out of this bunch in all the cases the Registrar has nominated persons, who have become unsuccessful in the last election except the case of the Orissa State Co-operative Bank Ltd., which is the only case where opposite party no.2 has nominated the elected President. No reason has been assigned why the opposite party no.2 has not taken into consideration the names of those persons, who were elected in the last election and were continuing as such. This defies all reasons and, therefore, the order passed by opposite party no.2 is tainted with mala fide and is irrational. Therefore, it has to be struck down by this Court.

34. Therefore, in striking down nominations made by O.P.No.2 in all these cases, this Court orders that the Committee elected last shall officiate as office bearers and Directors of the Co-operative Societies. They shall continue to function as care taker Committee till the next election, but their power shall be restricted in the sense that they cannot take any major policy decision, but can induct new Members, without prior approval of the Registrar. It is further directed that the State Government shall promulgate the rules defining the Electoral College within a period of three months from today and place the same before the Assembly in its next sitting and hold the elections of all the Co-operative Societies within a period of six months from today.

35. These writ petitions are allowed in part with the above observations. The Amendment Act is held to be intra vires but the action of opposite party no.2 by nominating the committees of the Co-operative Societies which are the subject

matter of these writ petitions are declared to be unsustainable and the Notifications dated 24th September, 2011 are quashed. No costs.