

(1986) 05 BOM CK 0003
In the Bombay High Court
Case No : L.P. Appeal No's. 24 and 25 of 1986

Shantilal Amolakchand Burad

APPELLANT

Vs

Vijay Ramji Pawar

RESPONDENT

Date of Decision : 03-05-1986

Acts Referred:

COMPANIES ACT, 1956 — Section 283, 284
Constitution of India, 1950 — Article 19

Citation : (1986) 88 BOMLR 535 : (1986) MhLj 713

Hon'ble Judges : V.S. Kotwal, J; R.A. Jahagirdar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.A. Jahagirdar, J.—These two Letters Patent appeals seek to challenge the Judgment Reported in [1986] Mah. L.J. 314 given by a learned single Judge of this Court in writ petition No. 4266 of 1985. Necessarily few facts leading to the said writ petition ought to be mentioned. For the sake of convenience, the parties as described in letters patent appeal No. 24 of 1986 are referred to in this judgment.

2. The 9th respondent, namely the Girna Sahakari Sakhar Kaikhana Limited, is a specified co-operative society within the meaning of Section 73G of the Maharashtra Co-operative Societies Act, 1960, hereinafter referred to as the "said Act" or "the Act". Respondents Nos. 1 to 8 were the petitioners in the writ petition. Respondent No. 10 was respondent No. 2 in the writ petition. Respondent No. 2 had called a general body meeting of the society to consider a resolution expressing no confidence in the managing committee of the society purporting to be a resolution under bye-law No, 34(c) of the bye-laws applicable to the society. Respondents Nos. 1 to 8 challenged the action of respondent No. 10 by contending that the general body had in law no authority to consider or to pass a resolution expressing lack of confidence in the managing committee despite the provision contained in bye-law 34(c). With this contention they raised

a dispute u/s 91 of the said Act in the Co-operative Court at Nashik. The contention of respondents Nos. 1 to 8 was that u/s 73G of the Act the members of the managing committee elected at the same time in a general body meeting cannot be removed before the lapse of five years after they are elected. The managing committee of the society was elected on November 9, 1984 and, therefore, the members of the said committee were, under the provisions of Section 73G of the Act, entitled to continue for a period of five years and the managing committee could not be removed from office by the passing of a resolution provided for in bye-law No. 34(c). The said bye-law itself was ultra vires of the provisions of the Act and in particular of Section 73G of the Act.

3. Bye-law No. 34(c), which is in Marathi, would, on a fair translation, read as follows: -

Resolution proposing vote of no confidence against Board of Directors can be brought either at an ordinary general meeting or special general meeting convened specifically with such item on the Agenda. Such resolution can be passed by members entitled to vote by a simple majority from amongst the entire members. After such a resolution is passed a new Board of Directors can be elected.

4. In the dispute which respondents Nos. 1 to 8 raised in the Co-operative Court at Nashik, numbered as ABN Case No. 806 of 1985, an application for interim injunction restraining respondent No. 10 from proceeding with the meeting was made. That application was dismissed by the Co-operative Court by its order dated October 3, 1985. A revision application, being revision application No. 108 of 1985, was preferred by respondents Nos. 1 to 8 to the Appellate Court at Bombay which, by its judgment and order dated October 4, 1985, dismissed the same.

5. Against the order passed by the two authorities below, respondents Nos. 1 to 8 preferred the abovementioned writ petition. The learned single Judge of this Court by his judgment and order dated February 25, 1986 allowed the writ petition substantially in the sense that he held that bye-law No. 34(c) providing for the removal of the managing committee was inconsistent with Section 73G(2) of the Act and therefore it was void. However, the learned single Judge held that respondent No. 10 (who was respondent No. 2 in the writ petition) and other members of the general body may discuss and vote upon the motion of no confidence tabled against the Board of Directors. He also held that if the resolution expressing lack of confidence in the managing committee was carried, the said resolution was not capable of execution.

6. The appellants in letters patent appeal No. 24 of 1986 had been allowed to be joined, by an order passed by the learned single Judge, as respondents in the writ petition inasmuch as they also being members of the society were bound to be affected by any decision given in the writ petition. Aggrieved by the judgment of the learned single Judge they have preferred letters patent appeal No. 24 of

1986. Letters patent appeal No. 25 of 1986 has been preferred by respondent No. 10 who was, as already mentioned above, respondent No. 2 in the writ petition.

7. Before considering the challenge made by the appellants to the judgment of the learned single Judge it is necessary to notice the relevant provisions of law. Section 73G of the Act provides for the conduct of elections to committees and of officers of certain societies and term of office of members of such committees. The "certain societies" are the ones mentioned in the said section. They are called "specified societies". Section 73G, as it stands today, provides that the election of the members of the committees and the officers of the committees of the specified societies shall be subject to the provisions of Chapter XI-A and shall be conducted in the manner laid down by or under that Chapter. Sub-section (2) of Section 73G is in the following terms: -

When the election of all the members of the committee of any such society is held at the same time, the members elected on the committee at such general election shall hold office for a period of five years from the date on which the first meeting is held and shall continue in office until immediately before the first meeting of the members of the new committee.

Section 73G and Chapter XI-A of the Act, therefore, necessarily apply only to the specified societies. But there are other provisions which are not wholly inapplicable to the specified societies especially if they are not inconsistent with what is provided in Section 73G and Chapter XI-A of the Act. Section 72 states that the final authority of every society shall vest in the general body of members in general meeting summoned in such a manner as may be specified in the bye-laws. Section 73 specifically lays down that the management of every society shall vest in a committee constituted in accordance with the Act, the rules and the bye-laws which shall exercise such powers and perform such duties as may be conferred or imposed respectively by the Act, the rules and the bye-laws.

8. Section 165 of the Act provides that the State Government may make rules for the conduct and regulation of the business of such society or class of societies and for carrying out the purpose of the Act. Without prejudice to the generality of the said power, the State Government may, under sub-section (2) of Section 165, make rules, among other things, prescribing the matters in respect of which a society may make or the Registrar may direct a society to make bye-laws and the procedure to be followed in making, altering and abrogating bye-laws and the conditions to be satisfied prior to such making, alteration or abrogation, and to provide for the removal and appointment of the committee or its members and other officers and for the appointment of administrator u/s 78 and prescribe procedure at meeting of the committee and for the powers to be exercised and the duties to be performed by the committee, administrator and other officers. Section 73 itself does not lay down what should be the term of office of the managing committee of societies other than specified societies. Section 73G(2),

as already noticed above, provides for a period of five years as the tenure of the office of the members of the managing committees of specified societies.

9. In exercise of the powers conferred upon it by Section 165 of the Act, the State Government has framed rules, Rule 8 of the said Rules states that the Registrar may require a society to make bye-laws in respect of, among other things, the mode of appointment either by election or otherwise and removal of members of the committee and other officer, if any, their duties and powers and also for the mode of appointment and removal of committee and its powers and duties. This means the rule does not provide for the mode of appointment and removal of the members of the committee or the mode of appointment and removal of the committee and its powers and duties. This has been left to be done by the bye-laws required to be made by the society. Sub-rule (2) of Rule 8 empowers the society to make bye-laws for the various matters mentioned in that sub-rule. These matters do not include the mode of appointment either of the members of the committee or of the committee and their or its powers and duties.

10. One provision to which reference was made in the course of the arguments before us may be referred to at this stage itself and that is Section 35 of the Act. It deals with expulsion of members which can be brought about by a resolution passed by a majority of not less than three-fourths of the members entitled to vote at a general meeting held for the purpose. Rules 28 and 29 provide for the manner in which the power vested in a society u/s 35 of the Act has to be exercised. Section 35 of the Act must, therefore, be read with Rules 28 and 29 of the Rules.

11. As already mentioned above, the society in the present case is a specified society and Chapter XI-A of the Act governs the election of the managing committee of such a society. Section 144A states that except Section 144-Y, the said Chapter shall apply to elections to the committees of the specified societies. In exercise of the powers conferred by Sub-section (2) of Section 144-F, Sub-section (4) of Section 144-T, Sub-section {1) of Section 165 of the Act and in exercise of all enabling powers, the Government of Maharashtra has made rules called the "Maharashtra Specified Co-operative Societies Elections to Committees Rules, 1971", hereinafter referred to as the "specified societies Rules". It is specifically provided therein that these rules shall apply to the election to the committees of the specified societies. In these rules admittedly no tenure has been fixed for the managing committee which is elected u/s 73G(2) of the Act. It has already been mentioned that the tenure of the members of the managing committee elected u/s 73G(2) of the Act is for five years.

12. So far we have considered the main features of the Act and the Rules which are relevant for the disposal of these appeals. Notice must now be taken of the provisions relating to bye-laws. Section 2(5) of the Act defines "bye-laws" to mean bye-laws registered under the Act and for the time being in force and includes registered amendments of such bye-laws. Section 8 of the Act requires

that for the purpose of registration of a society an application should be made; to the Registrar and, should be accompanied by four copies of the proposed bye-laws of the society. Section 9 provides that if the Registrar is satisfied that a proposed society has complied with the provisions of the Act and the rules, and that its proposed bye-laws are not contrary to the Act or to the rules, he may register the society and its bye-laws. This necessarily means that the bye-laws of the society must be consistent with the provisions of the Act and the rules made thereunder. It is also provided that any amendment of the bye-laws of a society must be registered before it can be regarded as valid (see Section 13). Section 14 of the Act invests the Registrar with the power to direct an amendment of the bye-laws of the society if it appears to him necessary or desirable in the interests of the society. If, however, the society fails to make the amendment as required by the Registrar within the specified time, the Registrar himself shall register such amendment. With effect from such registration of the amendment the bye-law shall be deemed to have been amended accordingly.

13. From what has been stated above it is clear that the bye-laws of the societies, which are a necessary part of the entire range of provisions governing the working of the societies, must be consistent with the provisions of the Act and of the rules. If in the initial stage the bye-laws are not so consistent, the Registrar may refuse to register the society; if thereafter an amendment is to be made that amendment will not be valid unless it is registered by the Registrar and the Registrar cannot register the same if the amendment is contrary to the provisions of the Act or of the rules. Except in the case where the society refuses to amend a bye-law (s. 14) as required by the Registrar, the power of making the bye-laws vests in the society and, therefore, in the general body of the society. The bye-laws themselves are not made or amended by any statutory authority under the Act, except in a case arising u/s 14 of the Act. In one sense, therefore, the bye-laws are not statutory having not been made by an authority created by the statute; in another sense they are statutory because they are required to be made in accordance with the provisions of the Act and cannot be made in a manner which would bring them in conflict with the provisions of the Act or of the rules.

14. Some debate took place before us on the nature and scope of the bye-laws framed under the Act. Reference was made to a judgment of the Supreme Court in *Babaji Kondaji Garad Vs. Nasik Merchants Co-operative Bank Ltd., Nasik and Others*, wherein it was pointed out that bye-law of a co-operative society can at best have the status of an Article of Association of a company governed by the Companies Act, 1956 and cannot be held to be law or to have the force of law. The bye-laws were neither statutory in character nor they have statutory flavour so as to be raised to the status of law. It was further pointed out that if there was conflict between the statute and the subordinate legislation, the statute prevails over the subordinate legislation and the bye-law. The law laid down by the Supreme Court in *Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others*, was reaffirmed in *B.K. Garad's case*. The Co-

operative Central Bank's case had held that the bye-laws of a co-operative society framed in pursuance of the provision of the relevant Act could not be held to be law or to have the force of law.

15. One must, therefore, proceed on the basis that the bye-laws, which are framed by the society itself, could not be regarded as statutory despite the fact that they are framed or amended pursuant to the provisions contained in the Act. On the authority of B.K. Garad it can also be stated that though the bye-laws are framed pursuant to the provisions of the Act if they are inconsistent in any manner with the provisions of the Act itself, they must necessarily give way to the latter. This does not, of course, mean that the bye-laws have no value at all. In all those matters which are not covered by the provisions of the Act or of the rules, the bye-laws being rules adopted by the members of a society for the functioning of the society will naturally hold the field. However, if the bye-laws or any of them are inconsistent with the provisions of the Act or of the rules made under the Act, they will cease to be valid and be of no effect. On all matters covered by the provisions of the Act, the Act must necessarily prevail; rules validly made pursuant to the provisions contained in Section 165 of the Act will also necessarily prevail; both the provisions of the Act and of the rules will also necessarily prevail over the bye-laws. Only in the field not occupied by the Act or the rules, the bye-laws may have effect.

16. In the hierarchy of the provisions governing the functioning of the societies under the Act, the Act must necessarily come first having dominance over the rules and the bye-laws. Rules validly made and in so far as they are not inconsistent with the provisions of the Act occupy the second place. Bye-laws validly made and not contrary to the provisions of the Act and of the rules will, therefore, occupy the third and the last place. In case of inconsistency, the parent provision must necessarily prevail. In other words, rules inconsistent with the Act will be invalid to the extent of the inconsistency; bye-laws inconsistent with the Act or the rules will be invalid to the extent of the inconsistency. Once this nature of the Act, the rules and the bye-laws is firmly understood, it is easier to examine the rival contentions advanced before us.

17. The learned single Judge held that in view of the provisions contained in Section 73G of the Act providing for a five year tenure of the members of the managing committee of a specified co-operative society, bye-law Nos. 34(c) providing for the reduction of that tenure by passing a vote of no confidence was inconsistent with the statutory provision and therefore was void. It has been urged before us oft behalf of the appellants that there is no inconsistency at all between Section 73G(2) of the Act and the impugned bye-law. This argument can be easily disposed of by merely noticing the relevant provisions. Section 73G(2) specifically states that when the election of all the members of the committee of any specified society is held at the same time, the members elected on the committee at such general election shall hold office for a period of five years. Bye-law 34(c), on the other hand, provides for the removal of the

managing committee as a whole by the mere passing of a resolution of- no confidence by a simple majority. In other words, bye-law 34(c) clearly envisages a situation where the term of office of the members of the committee as provided for u/s 73G(2) can be reduced. The conflict between the two provisions, therefore, is patent and we have no hesitation in rejecting the argument that there is no conflict between the two provisions.

18. Mr. A.H. Desai, the learned advocate appearing for the appellants, has made a general survey of the Act and the rules and has contended that the bye-laws themselves have been made pursuant to a rule which in turn has been framed pursuant to the power vested in the State Government u/s 165 of the Act, We have already noticed earlier in this judgment the relevant provisions. According to Mr. Desai, if the Act provides for the making of a rule and if the rule itself permits the making of a bye-law, which has been done in the instant case, providing for the mode of appointment and removal of members the committee, then the said bye-law having been made pursuant to the Act and the rules cannot be said to be invalid. This is especially so, says Mr. Desai, in the light of the language used in Section 73 of the Act. This provision states that the management of every society shall vest in a committee constituted in accordance with the Act, the rules and the bye-laws. The said committee is required to exercise such powers and perform such duties as may be conferred or imposed by the Act, the rules and the bye-laws. In other words, there is permission granted by Section 73 of the Act read with the rules made under the Act to provide for the removal of the members of the managing committee. If, therefore, bye-law 34(c) provides for the removal of the managing committee, it cannot be said that the said bye-law is inconsistent with the provisions contained in Section 73G(2) of the Act.

19. To our mind this argument overlooks the respective positions of the provisions of the Act, the rules and the bye-laws. To say that anything done in accordance with Section 73 of the Act, though it is not in accordance with Section 73C(2) of the Act, is not inconsistent with the latter provision is to misunderstand the nature of the respective provisions. It has already been noted by us that Section 73 itself does not fix the tenure of office of the members of the managing committee of a society. In such a case naturally the bye-laws may provide for such tenure. If, however, Section 73 had mentioned that the tenure of the office of the members of the managing committee shall be for a particular period in addition to mentioning that the managing committee shall be governed by the provisions of the Act, the rules and the bye-laws made thereunder, a bye-law reducing the period of tenure of the members of the managing committee would necessarily be invalid because that would be inconsistent with the period of tenure that might have been fixed u/s 73 of the Act. If this is so, we do not see how a period of tenure provided by another section of the same Act can be reduced by a bye-law though made under the provisions of the Act. The bye-law has to be consistent with the provisions of the Act which provisions necessarily include Section 73G(2). It cannot be accepted that a bye-law which is consistent

with the provisions of Section 73 of the Act will prevail even if it is inconsistent with Section 73G of the Act.

20. Section 73G(2) applies to specified societies. It is a special provision as distinguished from Section 73, which is a general provision being applicable to societies other than specified societies. In the matter of the tenure of the members of the managing committee of a specified society Section 73G(2) must necessarily prevail over Section 73. To put in other words Section 73 cannot control the scope and ambit of Section 73G(2). Since Section 73G(2), which can be regarded as the parent statute in so far as specified societies are concerned, contains a provision, which is in peremptory language, any rule, if there is one, or any bye-law which is inconsistent with the provisions contained in Section 73G(2) of the Act must give way.

21. It has been argued by Mr. Desai that Section 72 of the Act is the repository of all the powers of a co-operative society. Under the said provision the general body of the members of the society have overriding powers over the actions of the managing committee of the society. If this is so and if the general body of the members of the society have adopted bye-law 34(c) then the action provided for in that bye-law can be taken notwithstanding the provisions contained in Section 73 or for that matter Section 73G(2) of the Act. In support of this contention, reliance has been placed by him on A-I Co-operative Housing Society Limited Vs. Laxminarayan Goel, . The facts of that case disclosed that there was a bye-law, being bye-law No. 50, which provided that the management of the business of the society shall be vested in the committee who in addition to the powers and authorities by the rules and the bye-laws or otherwise expressly conferred upon them may exercise all such powers and do all such acts and things as may be exercised or done by the society and were not by the bye-laws or by the statute expressly directed or required to be to be done by the society in general meeting. However, the said power of the managing committee was subject nevertheless to the provisions of the Act, the Rules and the bye-laws made by the society from; time to time. The question before the Court in that case was whether in a litigation between a cooperative society and third parties, the members of the said society can be allowed to appear apart from the managing committee of the society itself. The general body of the society had taken a decision, which was not in accordance with the wishes of the managing committee of the society. The general body of the society passed a resolution authorising some of its members to represent the society in its name in the litigation. In view of bye-law 50 referred to above, the question arose as to whether this could be done. The Division Bench held that it could be done because having regard to the provisions of Sections 72 and 73 of the Act and bye-law No. 50 of the Society, the Society had ample powers by majority to direct the committee to carry out its directions and if the committee refused to do so the general body can come to the Court and obtain relief. The following observations to be found on page 618 of the report have been relied upon by Mr. Desai: -

Even if, therefore, by the bye-laws some power is vested in the managing committee that power is, of course, subject to the provisions of Section 72 and it cannot be affected by any power vested in the managing committee. The general body of the Society is not entitled to abdicate its powers of control over the managing committee. We have no doubt that so far as the Co-operative Societies constituted under the Maharashtra Cooperative Societies Act, 1960, are concerned, the general body has overriding powers over the actions of the managing committee,...

Mr. Desai in fact argued that the general body of the society enjoys absolute sovereignty in the governance of the affairs of the society and, therefore, if it seeks to pass a vote of no confidence in the managing committee it is well within its power.

22. In the first place, we do not think that the proposition emerging from A-I Co-operative Housing Society's case (supra) is relevant to the determination of the question before us. We are also of the opinion that the decision in that case does not lay down a proposition that even if a bye-law is inconsistent with the provisions of the Act or of the rules, that bye-law can continue to be in the field or action can be taken under the said bye-law. In the case before the Division Bench the question of inconsistency between the bye-law or the rules or the bye-laws made thereunder had not arisen and therefore had not been answered. In the instant case the action is being proposed to be taken under the authority of a bye-law which, however, we find is inconsistent with the provision in the Act itself. Since on the authority of the Supreme Court* and on the authority of the law of interpretation of the subordinate legislation, if the bye-laws can be regarded as legislation vis-a-vis the parent statute, the bye-law if it is inconsistent with the parent statute must be held to be invalid. Reference has already been made by us to the observations of the Supreme Court in B.K. Garad's case (supra) and they are to the effect that a bye-law cannot be allowed to be inconsistent with the provisions of the statute.

23. It has been urged that there are other provisions in the Act itself which reduce the tenure of office of the members of the managing committee as provided for u/s 73G(2). For example, it has been pointed out that u/s 78 the Registrar of the Co-operative Societies has been invested with the powers to remove the committee and to remove a member of the committee. This power is, of course, exercisable only subject to the conditions mentioned in Section 78 of the Act. If, therefore, one provision of the Act can reduce the tenure of the office of the members of the managing committee of a specified society in derogation of what is mentioned in Section 73G(2) of the Act, there is no reason why a bye-law made pursuant to the provisions of the same Act cannot be allowed to do the same. This argument is also, in our opinion, misplaced. In the first place, it ignores the subordinate nature of a bye-law as compared to the Act and the rules and the requirement that the bye-laws must necessarily be consistent with the provisions of the Act and of the rules. Mr. Paranjpe appearing

for the supporting respondent invited us not to read any inconsistency between Section 73G(2) of the Act and the relevant bye-law but to see the bye-law as a provision supplemental to what is contained in Section 73G(?) of the Act. He urged that if what is contained in Section 78 of the Act cannot be regarded as inconsistent with what is contained in Section 73G(2) of the Act, bye-law 34(c) also should not be regarded as inconsistent with Section 73G(2) of the Act.

24. The comparison is inappropriate. As far as a subordinate provision such as the bye-law is concerned, it has got to be consistent with the parent statute. It is incorrect to say, as Mr. Paranjpe has sought to suggest, that there is inconsistency between Section 73G(2) and Section 78 of the Act. Both these sections are parts of the same statute and cannot be regarded as inconsistent with each other. The apparent inconsistency, if any, has got to be harmoniously resolved so that both the provisions must stand together. When both these provisions form parts of the same statute, one must necessarily be read subject to what is contained in the other. Once this is done the apparent inconsistency is automatically resolved. To follow any other rule of construction would require the Court to do an absurd thing, namely to "hold one provision invalid being contrary to another provision. By no rule of interpretation of statute such a thing can ever be done.

25. Indeed, the conflict between the two provisions in the instant case is merely apparent and not real at all. Even assuming that the conflict is real, the principle of harmonious construction comes into play. That principle is that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that effect can be given to both. It follows from this that a construction which would render one provision wholly nugatory must be rejected and a construction which gives effect to both the provisions should be accepted. This was the principle enunciated by the Supreme Court in *Sri Venkataramana Devaru and Others Vs. The State of Mysore and Others*, . For the same reason we reject the argument that Section 35 of the Act providing for expulsion of members, which would necessarily result in that member ceasing to be a member of the managing committee, is inconsistent with the provisions of Section 73G(2) of the Act.

26. An argument has also been advanced by taking recourse to Sub-rule (11) of" Rule 60 of the Co-operative Societies Rules. The said sub-rule is in the following terms: -

No resolution regarding expulsion of a member of the society, removal of a member of the committee or amendment of bye-laws shall be brought forward in any general meeting, unless due notice thereof is given in accordance with the provisions of the Act, these rules and the bye-laws of the society.

It is urged that since the rule, which should be regarded as having been validly made, provides for the removal of a member of the committee,; a bye-law which is consistent with the said rule must be held to be consistent with the Act and the

rules made thereunder. The fact that provision has been made in the rules for removal of a member of the committee should support the view that a bye-law for such removal can be validly made. Tins argument is wholly unacceptable. It should not be forgotten that the rule on which reliance has been placed is a rule made pursuant to Section 165 read with Section 73 of the Act. If, however, in respect of a particular class of societies it is provided, as it has been provided in Section 73G(2) of the Act, that the members of the managing committee shall enjoy a tenure of five years, then this rule obviously has no application. It should be deemed to have application to those societies to which Section 73G of the Act is not applicable. In respect of those societies bye-laws can be framed as provided in Rule 8 itself for the mode of appointment and removal of the members of the committee. Indeed, even if a rule had been framed for the removal of the members of the managing committee governed by the provisions of Section 73G before the expiry of the term of five years as mentioned in that section, that rule could have been held to be inconsistent with the parent provision and of no effect. If this is so of the rule,, the fate of the bye-law would be still worse.

27. The argument based upon Rule 58 read with Section 144-E of the Act is easily disposed of by pointing out that the Act itself provides for the framing of a rule under which a person shall, on incurring the disqualification mentioned, cease to be a member of the managing committee. It is a part of the general scheme of the Act itself. Therefore the said rule cannot be said to be inconsistent with the provisions of Section 73G(2) of the Act. It has been, however, urged that the passing of a no confidence motion as provided for in bye-law 34(c) should itself be regarded as the incurring of a disqualification as mentioned in Section 144-E(e) of the Act. It is urged that a person should be deemed to be disqualified by the passing of such a resolution because the bye-law under which the resolution is passed is one under the provision of the Act. It is not possible for us to accept the argument that the passing of a no confidence motion amounts to the disqualification of a member of the managing committee. Normally disqualification is incurred by a person on account of his having done something. The argument is partly based upon the provisions contained in Sections 283 and" 284 of the Companies Act, Section 284 provides that a company may, by ordinary resolution, remove a director before the expiry of his period of office. u/s 283 of the said Act, the office of a director is vacated if he incurs disqualifications. Among the disqualifications mentioned is the passing of a resolution u/s 284 of the Act. Reading Sections 283 and 284 of the Companies Act together it is easy to see that by legal fiction itself created u/s 283 the passing of a resolution u/s 284 is regarded as a disqualification. It is not possible to extend the meaning of disqualification as mentioned in Section 283 of the Companies Act to the provisions contained in the Co-operative Societies Act, especially in Section 144-E of the said Act.

28. Both the parties before us have relied upon a judgment of this Court in Hindurao Balwant Patil and Another Vs. Krishnaro Pashuram Patil and Others, in

support of their respective contentions. One must necessarily notice the facts involved and the questions that arose in that case before finding out whether the reliance placed upon this judgment is justified.

In Hindurao's case, the Board of Directors sought to pass a vote of no confidence against the Chairman and the Vice-Chairman, The society in that case was also a specified society. The tenure of the Chairman and the Vice-Chairman is not fixed at all under any provision of the Act governing the specified societies. This Court found that there was also no bye-law providing for the passing of a vote of no confidence against the Chairman and the Vice-Chairman. Therefore this Court addressed itself to the following question : -

Whether in the absence of any provision in the Act, rules or the bye-laws of the Society, managing committee can pass a resolution of no confidence against the Chairman and Vice-Chairman before expiry of their term?

The question was answered in the negative. It was also held that if there were such a bye-law or other valid provision, the vote of no confidence could legitimately be passed. The question of inconsistency between the bye-law and the parent legislation arising on the facts of the present case did not arise at all in Hindurao's case. This should show that the reliance placed upon the judgment in Hindurao's case by both the parties is totally misplaced.

29. Mr. Paranjpe, however, placed reliance upon this judgment in support of a different argument. He contended that if we interpret Section 73G(2) as a provision overriding the rules and the bye-laws, it would be ultra vires of the Constitution inasmuch as it infringes the right guaranteed under Article 19(1)(c) of the Constitution. The same argument had been advanced in Hindurao's case and had been repelled on the ground that the relevant provision imposed a reasonable restriction on the right guaranteed under Article 19(1)(c) of the Constitution. The denial of the right of the managing committee to remove the Chairman and the Vice-chairman was, therefore, held to be not in contravention of Article 19(1)(c).

30. Mr. Paranjpe, however, relied upon the the following observations to be found in the judgment in Hindurao's case (at pp. 223, 224, para 13): -

The posts of Chairman and Vice Chairman are creation of the statute. It's election and power and duties are circumscribed or conditioned by the provisions of the Act, rules, and bye-laws. The bye-laws lay down a code of conduct or self-discipline adopted by the Society. Therefore, it cannot be said that only because the members themselves have chosen not to make any provisions for passing a vote of no confidence or have resolved by framing bye-laws that the Chairman and the Vice-Chairman shall continue in office for a specified term subject to the other provisions of the Act, rules or the bye-laws it cannot be said that the fundamental right guaranteed under Article 19(1)(c) is being violated in any way. The provisions of the Act, rules and the bye-laws are regulatory in nature and amount to reasonable restrictions in the interest of the society as well as general

public.

According to Mr. Paranjps, but for the- fact that bye-laws could legitimately provide for regulating the tenure of the office of the Chairman and the Vice-Chairman, the Division Bench would have held that there would have been an infringement of the right under Article 19(1)(c) of the Constitution. It is difficult to accept this contention, This Court was considering the overall scheme of the Act, rules and of course the bye-laws while considering the nature of the restrictions and while holding that they are regulatory in character and therefore imposed reasonable restriction. A careful reading of the judgment does not persuade us to hold that the absence of bye-laws conferring a right upon the managing committee or for that matter upon the members of the society to remove the office-bearers would render the legislation invalid being violative of Article 19(1)(c) of the Constitution. Indeed, the Division Bench in that case has pointed out that in the Act itself and the rules made thereunder there are several provisions which provide for the removal of the office-bearers subject to certain conditions. Similarly in the case before us the provisions contained in, for example, Section 78 of the Act, provide for the removal of the managing committee or the members of the committee. Apart from this, we are of the opinion that the legislature has thought it fit to treat the specified cooperative societies as a class. While doing so if it has provided that such societies should have managing committees of a fixed tenure so that such committees can discharge their functions effectively, it cannot be said that such a provision made by the legislature imposes any unreasonable restriction upon the right, if any, conferred by Article 19(1)(c) of the Constitution. All the other provisions for the removal of the members of the managing committee which were noticed by this Court in Hindurao's case remain.

31. Mr. Desai referred to the legislative history of the provisions relating to specified societies for the purpose of persuading us to hold that Section 73G(2) does not provide for a fixed tenure of five years but at the most provides for an outer limit of the tenure of office of the members of the managing committee. Sections 73A to 73G of the Act were introduced by Maharashtra Act XXVII of 1969. Section 73G as was originally inserted in the Act consisted of five sub-sections. The first sub-section provided that the election of the members of the committees of the societies of the categories specified in that sub-section shall be conducted as laid down in the succeeding sub-sections. Sub-sections (2) and (3) provided for the manner in which the election of the committee was to be held. Sub-section (4) empowered the State Government to make rules generally to provide for or to regulate the matters in respect of elections to committees of the specified societies.

32. Sub-section (5) of Section 73G as originally enacted was in the following terms: -

When the election of all the members of a committee of any such society is held at the same time, the members elected on the committee at such general

election shall hold office for a period of three years from the date on which the first meeting is held and shall continue in office until immediately before the first meeting of the members of the new committee.

Subsequently, by Maharashtra Act No. XXVII of 1971, Sub-sections (2) to (4) of Section 73G were deleted and the subject-matter contained in those provisions were taken care of by the provisions of Chapter XI-A introduced by the same Act. Sub-section (3) of Section 73G, as originally enacted, became Sub-section (2) of Section 73G as a result of Maharashtra Act No. XXVII of 1971. Still later, by Maharashtra Act No. XIV of 1975, the words "three years" in Sub-section (2) of Section 73G were substituted by the words "five years". That is the current state of law.

33. Mr. Desai's argument is that the provision contained in Section 73G(2) of the Act has remained practically the same except for the substitution of "five years" for "three years" since the insertion of the said sub-section in the said Act. It must be presumed that the legislature was aware that there were provisions under the rules for the removal of the members of the managing committee. If this is so, then the omission of the legislature to mention "notwithstanding anything contained in the other provisions of the Act, rules or of the bye-laws" must give rise to the presumption that the legislature did not intend to confer upon the members of the managing committee of specified societies uninterrupted tenure of five years. The argument is that the legislature could not have intended to change the law without changing the rules or without being aware of the provisions in the rules. The argument does not appeal to us because the interpretation of a section of the Act cannot be controlled by what is provided for in the rules. Secondly, we have already interpreted the rule relating to the removal of the members of the managing committee as being inapplicable to the managing committees of the specified societies.

34. If we are free to refer to the Objects and Reasons for the provisions contained in Section 73G(2) of the Act we may even observe that the legislature did intend that the members of the managing committees of specified societies should enjoy uninterrupted tenure of five years subject, of course, to the other provisions in the Act. For example, in the Statement of Objects and Reasons accompanying the Bill which resulted in the passing of Maharashtra Act No. XXVII of 1969 it is stated:

It is also proposed to hold elections triennially in such institutions.

In the Statement of Objects and Reasons accompanying the Bill which resulted in Maharashtra Act No. XIV of 1975 it has been stated as follows: -

Section 73G is being amended, with a view to providing for holding of elections to the committees of specified societies at an interval of 5 years, instead of at an interval of 3 years. This is considered necessary to avoid expenditure on holding of such elections at shorter intervals and with a view to giving enough time for the ejected representatives for improving the .affairs of their institutions.

35. Our attention has also been invited to the opening parts of Sub-sections (2) and (3) of Section V. Sub-section (3) opens with the words "Notwithstanding anything in the bye-laws of any such society, only the committee of management shall be elected by a general body of members..." In the absence of such opening words in Sub-section (2), it has been urged, we should hold that the language of the said provision does not prohibit the making of a bye-law under which a vote of no confidence can be passed with the object of removing the managing committee of the specified societies. We have already rejected this argument. Bye-law inconsistent with Sub-section (2) cannot be allowed to stand. One must also notice, in the light of the interpretation of the parent Act and the subordinate legislation like the rules and the bye-laws, that Sub-section (2) does not provide that, subject to the provisions that may be made in the rules or the bye-laws of the society the members elected on the committee shall hold the office for a period of five years. If that had been done, then obviously there would have been no conflict at all and the exercise of the interpretation of the said provision would not have been necessary.

36. A careful consideration of all the provisions of the Co-operative Societies Act including the provisions relating to the rule-making power and the provisions relating to the making of bye-laws, considering the respective positions of the Act, the rules and the bye-laws, and considering the peremptory language of Section 73G of the Act, we are of the opinion that bye-law No. 34(c) of the society is directly in conflict with what is contained in Section 73G(2) of the Act and is, therefore, invalid. The judgment of the learned single Judge in so far as this question is concerned is affirmed. We are not quite sure whether the judgment of the learned single Judge permitting the holding of a meeting for the purpose of passing a resolution without its consequent effect is correct or not. Since, however, that part of the judgment has not been challenged by the respondents, we do not proceed to examine it at all. In passing, it may be stated that considering the fact that Section 73G of the Act deals with what are regarded as an important class of societies, it is conceivable that the legislature did intend that the members of the managing committees of such societies should enjoy a reasonably long tenure of office without being hampered by the passing phases of the moods of the members of the society who for no other reason than the alleged loss of confidence seek to impeach them.

37. In the result, both the appeals are dismissed.

38. There will, however, be no order as to costs.