
(1989) 08 PAT CK 0020

In the Patna High Court

Case No : Civil Writ Jurn. Case No's. 8249, 8364, 8455 and 8690 of 1988

Sheetal Prasad Gupta and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 16-08-1989

Acts Referred:

Constitution of India, 1950 — Article 19(1), 19(6), 213, 226, 245

Citation : AIR 1990 Patna 64 : (1990) 38 BLJR 989 : (1990) 1 PLJR 133

Hon'ble Judges : Uday Sinha, J;S. Shamsul Hasan, J;Binodanand Singh, J

Bench : Full Bench

Advocate : Govind Das, S.B. Upadhyaya, M.P. Jha, Arun Kumar Singh III, Devendra Prasad Sharma, R.A.P. Singh, Satyendra Kumar Sinha, A. Bose, S.P. Gupta, N.N. Mukherji and Kaushal Lumar, for the Appellant; R.B. Mahto, General, P.K. Shahi, Mukesh Kumar Sinha, Mahesh Prasad and Rajeshwar Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Uday Sinha, J.—These are four writ applications challenging the vires of Bihar Co-operative Societies (Amendment) Ordinance No. 17 of 1988 and the Bihar Cooperative Societies (Amendment) Second Ordinance No. 24 of 1989. While the writ applications were pending disposal, Bihar Co-operative Societies (Amendment) Second Ordinance, 1989 (Bihar Ordinance No. 24 of 1989) was promulgated. The applications were accordingly amended. The petitioners now challenge the vires of both the Ordinances. The second Ordinance was promulgated with slight variation from the earlier one. A Bill has now been tabled in the Bihar Legislature for the enactment of the Ordinance into an Act. The only prayer of the petitioners in the four writ applications is to declare the Ordinances invalid and ultra vires the Constitution on various counts. There is no other prayer. Learned counsel for the petitioners has addressed us in regard to the action taken or apprehended to be taken by the State under the Act as well although there is no such prayer in the petitions. I have considered them out of consideration for Mr. Govind Das, learned Counsel for the petitioners. I shall have

the occasion to set out in detail the submissions urged on behalf of the petitioners rather long -- winded and consider how far they stand the test of judicial scrutiny.

2. These cases have kicked up lot of dust in the judicial firmament of this land of Bharat. The cases visited the Supreme Court even before the hearing could commence in this High Court. After the matter went to Supreme Court, the Judges constituting the Special Bench directed that the matter be heard by a different Bench. Thereafter a fresh Special Bench was constituted. When the cases were listed before the re-constituted Bench, two of my brothers S. Ali Ahmad and B.P. Sinha, JJ., expressed their embarrassment in hearing the cases. The Bench was thereafter once again re-constituted and it is now before us.

3. Petitioner Nos. 1, 2 and 4 in C.W.J.C. No. 8249 of 1988 were Secretary, Joint Secretary and Honorary Secretary respectively of Purnea, Nawadah and Arrah District Central Co-operative Bank Limited respectively. Petitioner No. 3 Tapeswar Singh was the Chairman of the Board of Directors of the Bihar State Co-operative Marketing Union Limited, Patna (hereinafter to be called Biscomaun in short). Petitioner No. 5 Prabhunath Singh was the Director of the Bihar State Land Development Bank, Patna. The two petitioners in C.W.J.C. No. 8455 of 1988 were the Chairman, State Co-operative Bank and Chairman, Central Co-operative Bank, Muzaffarpur respectively. The sole petitioner in C.W.J.C. No. 8364 of 1988 was the Joint Secretary of Patliputra Central Co-operative Bank Limited, Patna. He was also representative of Kurji Primary Agriculture Credit Co-operative Society Limited to the Patliputra Central Co-operative Bank Limited. Patna and the sole petitioner in C.W.J.C. No. 8690 of 1988 was the Secretary of People's Co-operative House Construction Society Limited, Kankarbagh Colony Patna.

4. The points agitated on behalf of the petitioners in each of the four writ applications cover common ground. Mr. Govind Das, learned Counsel for the petitioners has conceded to this effect. It is, therefore, only apt that all the four writ applications should have been heard and disposed of together. This judgment will govern all the four, writ applications.

5. All the petitioners were bigwigs in the co-operative field of this State. The State Government had a feeling that the bigwigs in the co-operative field in the State were responsible for the frustration of the co-operative activities in the State and that the so-called co-operators were misusing the cooperative societies for their personal gain. The State Government, therefore, superseded the co-operative societies of which the petitioners were the office bearers by order dated 30-7-1988 in terms of Section 41(6) of the Bihar and Orissa Co-operative Societies Act, 1935 (hereinafter to be called the Act). The suppressions were challenged in several writ applications, namely, C.W.J.C. Nos. 6180 of 1988, 6170 of 1988 and 6653 of 1988. Those applications were admitted and 2-11-1988 was fixed for the final hearing of those writ applications. In the meantime, the Administrator of Biscomaun was directed by this Court to take steps to prepare electoral roll for the election of the managing committee. Before

the writ applications could come up for hearing, the State Government amended the Act by the Ordinances aforementioned. The Ordinances knocked the bottom of the petitioners' empire. The Ordinances having been passed, the petitioners lost interest in the aforesaid writ applications by which the supersessions had been challenged. The attack was thereafter directed towards the Amendment Ordinances.

6. The amending Ordinance contains 8 sections. It enacted Sections 13-A, 14 and amended Sections 41, 52 and 57 of the Act. The gravamen of the attack is to the amending Sections 3, 4, 6 and 7. The Preamble to the Ordinance reads as follows:--

"Whereas with a view to place the co-operative societies financially on sound footing, it is necessary to make provision for State aid to co-operative societies in various forms such as investment in share capital, loans, subsidies and guarantees of the repayment of the principal and interest;

And, whereas, the State Government has invested a large sum in purchase of shares of co-operative societies and whereas the liability of the members of the societies is limited by shares in such co-operative societies capital must have a say in the management.

And, therefore, in order to place the cooperative societies on sound footing and to protect the share capital of the State and to have better financial management and control, it is necessary to amend the co-operative law.

Whereas the Legislature of the State of Bihar is not in Session;

And, whereas, the Governor of Bihar is satisfied that circumstances exist which render it necessary for him to take immediate action to amend the Bihar and Orissa Cooperative Societies Act, 1935 (Bihar and Orissa Act VI of 1935), in the manner hereinafter appearing."

7. In order to appreciate the rival contentions, it is necessary to look at the offending provisions. Section 13(A) enacted by Section 3 of the amending Ordinance reads as follows :--

"13(A) Promotion of Co-operative movement by Government -

(1) It shall be the duty of the State Government to encourage and promote the co-operative movement in the State and to take such steps in this direction as may be necessary;

(2) Without prejudice to the generality of the provisions contained in Sub-section (1) the State Government may -

(a) with a view to aid the growth of a registered society in general or of any class of registered societies subscribe directly to the share capital of a registered society;

(b) assist indirectly in the formation and augmentation of the share capital of a

registered society;

(c) give loans or make advances to a registered society or guarantee repayment of principal and payment of interest on debentures issued by a registered society or guarantee repayment of principal and payment of interest on loans or advances to a registered society.

Section 14, Sub-sections (1) and (2) have remained as they stood originally. Subsections (3) and (4) have been introduced by the amending Section 4. They read as follows:--

"(3) An Officer of the State Government if deputed to a registered society either as a Managing Director, Executive Officer or in similar position shall be the Chief Executive thereof and subject to general direction and control of the Managing Committee, shall have the following powers and functions:--

(i) to have general control over the administration of the registered society.

(ii) to convene meetings of the Managing Committee;

(iii) to receive all moneys and securities on behalf of the registered society and to make arrangement for the proper maintenance and custody of cash balances and other properties of the registered society;

(iv) to endorse and transfer promissory notes, Government and other securities and to endorse, sign and negotiate cheques and other negotiable instruments on behalf of the registered society;

(v) to be responsible for the general conduct, supervision and management of the day-to-day business and affairs of the registered society;

(vi) to sign all deposits, receipts and operate the accounts of the registered society with Banks;

(vii) to sign all bonds and agreements on behalf of the registered society;

(viii) to determine the powers, duties and responsibilities of the employees of the registered society;

(ix) to appoint, promote, transfer, punish, suspend, remove or dismiss, any paid employee of the registered Society except to the extent of the powers vested in the Managing Committee under the bye-laws of the registered Society.

(x) to institute, conduct, defend, compound or to withdraw any suit or other legal proceedings for or against the registered society and also to compound and allow time for payment or satisfaction of any claims;

(xi) to delegate all or any of the powers to an employee or employees of the registered society, subject to his control and supervision;

(4) Notwithstanding anything contained in any provisions of this Act, the rules framed thereunder or the bye-laws of any registered society where the State

Government has -

- (a) subscribed directly to the share capital of a registered society; or
- (b) assisted indirectly in the formation or augmentation of the share, capital of a registered society; or
- (c) given loans or made advances to a registered society or guaranteed the repayment of principal, and payment of interest on debentures issued by a registered society or guaranteed the repayment of principal and payment of interest on loans or advances to a registered society;

In that case the State Government shall have the right to nominate on the Managing Committee of such registered society, not more than two persons, one of whom shall be a Government servant, but the said Government servant shall have no right to vote in the election of the office bearers of the registered society:

Provided that notwithstanding the foregoing provisions contained in Sub-section (4) (a), (b) and (c)-

(i) Where the share of the State Government in the share capital of such registered society exceeds thirty per cent but does not exceed fifty per cent, the State Government shall have the right to nominate up to one-third of the total number of the members of the Managing Committee including the Chairman, and such right once accrued shall continue until the share of the State Government in the share capital of the registered society goes down to less than twenty five per cent;

(ii) Where the share of the State Government in the share capital of such registered society exceeds fifty per cent, but it is less than sixty per cent of the total share capital of the registered society, the State Government shall have the right to nominate such number of members of the Managing Committee including the Chairman, as is nearest to one-half of the total, and such right once accrued shall continue until the share of the State Government in the share capital of the registered society goes down to less than forty per cent;

(iii) Where the share of the State Government in the share capital of such registered society exceeds sixty per cent, the State Government shall have the right to nominate up to two-thirds of the total number of members of the Managing Committee including the Chairman and such right once accrued shall continue until the share of the State Government in the share capital of the registered society goes down to less than fifty five per cent;

Provided that notwithstanding anything contained in Provisos (i), (ii) and (iii) of subsection (4) the State Government shall not nominate Chairman and other members of the Managing Committee if the share capital subscribed to by the State Government in a registered society is less than fifteen lakhs of rupees:

Provided further that the State Government shall nominate members of the Managing Committee including the Chairman as far as possible from amongst

persons (i) having interest in co-operative movement; or (ii) having knowledge and experience of organising or managing co-operative societies; or (iii) having experience of general administration; or (iv) is the member of such registered society; or (v) is or was associated with the administration and implementation of the Bihar and Orissa Act VI, 1935."

The original Sub-sections (3) and (4) have now become Sub-sections (9) and (10).

8. The leading submissions were advanced by Mr. Govind Das. When the case was taken up for hearing, he stated that he represented all the petitioners in all the four writ applications. When he concluded his submission, however, Mr. Ajoyendu Bose stated that he represented the petitioners of C.W.J.C. Nos. 8690 and 8364 of 1988 and that Mr. Govind Das had not been instructed to represent them. Without going into technicalities and with a view to avoiding un-pleasant scenes in Court, we permitted Mr. Bose to advance his submissions. His submissions, however, were, in substance, no different from those advanced by Mr. Govind Das.

9. Mr. Govind Das, learned counsel for the petitioners, urged the following points:--

(i) The Ordinance lacks legislative competency under Entry 32 List II of the 7th Schedule of the Constitution inasmuch as the provisions of the Ordinance, particularly the provisions of Sections 3, 4, 5 and 6 of the Ordinance, are not with respect to co-operative societies, based on the recognised principle of co-operation which has been statutorily recognised in Section 7 of the Act but is destructive of the three cardinal principles of co-operation, namely, (a) the right of voluntary and autonomous association, (b) right to democratic control and self management and (c) right to equality in managing the affairs of society irrespective of the money power.

(ii) The provisions of the Ordinance are colourable pieces of legislation inasmuch as they have converted the co-operative society into State-owned and controlled Corporations and/or instrumentality or agency of the State and has sought to regulate the provisions of Sections 13(A), 14(3), 14(4) and 14(5) and in pith and substance, it is a legislation with respect to "regulation of Corporation" which is the subject matter of Entry 43 of List I of the Seventh Schedule of the Constitution.

(iii) The provisions of Section 13(A) are violative of Article 19(1)(c) of the Constitution inasmuch as it strikes at the powers of the members of the Association to keep out persons with whom they do not want to associate. The said provision is not saved by Article 19(1)(c) of the Constitution.

(iv) The Ordinance, particularly the provisions of Section 14(4) infringes Article 19(1)(g) of the Constitution.

(v) The provision of the Ordinance Section 14(8) being unjust and unreasonable

are violative of Article 14 of the Constitution.

(vi) The provisions of second proviso to proviso (iii) (sic) of Section 14(4) of the Ordinance, in so far as it enumerates the four categories excluding the persons from amongst whom the members of the Executive Committee including the Chairman are to be nominated by the State Government, have no nexus or concern with the particular society which they intend to manage and who were not accountable to the members of the society violates "co-operative principles" of self management and is not a provision with respect to co-operative society, and is not in the interest of co-operative movement. It is thus not a law commensurate with the Preamble which specifies that the Ordinances were being enacted with a view to placing the co-operative societies on financially sound footing.

(vii) The provisions of Section 14(3) of the Ordinance are unreasonable restraints on the power of co-operative societies as it vests pervasive and wide sweeping power of management including the power of sub-delegation in the Officers of the State Government deputed to the Society. The provisions of Section 14(2) of the Ordinance being the dominant provision, Section 14(3) should give way to it as a subordinate provision.

(viii) The classification of society based on subscription of the State Government is unreasonable and there is no nexus for such classification with the avowed objects of the Ordinance. It thus violates Article 14 of the Constitution.

(ix) The provisions of Section 7 adding Clause (f) to Section 52 of the parent Act is Unfair, unjust, unreasonable and violative of Article 14 of the Constitution. It is also violative of Article 14 for the reason that it violates the principles of audi alteram partem inasmuch as Certificate may be issued without adjudication of any claim.

(x) The provisions of the Ordinances are vitiated as mala fide, inasmuch as the circumstances that have been stated in the Ordinance to have existed which had rendered necessary for the Governor to take immediate action are not the circumstances for which the Ordinance had been promulgated on 24-10-1988. Point No. XI mentioned in the written submission advanced by Mr. Govind Das covers the same ground.

(xi) The Ordinance has been promulgated to serve perverse political ends of the Chief Minister and, therefore, it was vitiated by mala fide.

(xii) The repeal of Section 41(6) of the parent Act was the result of political vendetta promulgated to serve the political purposes of the Chief Minister to penalise the petitioner for their hostile political activities.

Same ground is covered by point No. XIV of the written submission of Mr. Das.

(xiii) The entire Ordinance is beyond the ambit and scope of the Ordinance making power under Article 213 of the Constitution and mala fide and ultra vires

the Constitution.

(xiv) The Ordinance has deprived the petitioners of their property without the authority of any valid order. They are, therefore, violative of Article 300-A of the Constitution. It is violative of Article 300-A of the Constitution also for the reason that the petitioners have been deprived of management of two movable and immovable properties without any provision for compensation. The provisions of the Ordinances are, therefore, invalid and un-constitutional. This submission is covered by points Nos. XV to XVIII mentioned in the written submissions of Mr. Das.

(xv) The entire purpose of the Ordinance is colourable and is a patent fraud on the Constitution; inasmuch as the State Government has not produced any material to enable the court to come to the conclusion that all societies where the State Government has invested more than 15 lacs are not managing the society properly or that the share capital of the State Government in such societies are ipso facto in perilor.

The above are almost faithful enumeration of the points urged at the Bar and mentioned in the notes of written submission. Some of the propositions advanced by Mr. Das overlapped one another. I have tried to put them together under common headings.

10. The first submission urged on behalf, of the petitioners relates to legislative competency to promulgate the Ordinances. In this connection our attention was drawn to item 43 of List I and item 32 of List II of the Seventh Schedule to the Constitution of India. Item 43 in List I reads as follows :--

"Incorporation, regulation and winding up of trading corporations, including Banking, Insurance and any Financial Corporations but not including co-operative societies."

Item 32 of List II reads as under:--

"Incorporation, regulation and winding up of Corporations, other than those specified in List I, and Universities; unincorporated trading, literary, scientific, religious and other societies and associations; Co-operative Societies."

11. The question that falls for consideration is whether the Ordinances are law relating to co-operative societies. Mr. Govind Das did not challenge any part of the vires of the original Bihar & Orissa Co-operative Societies Act, 1935. The Ordinances aim at amending the said Act. It reads as under:--

"An Ordinance to amend the Bihar and Orissa Co-operative Societies Act, 1935."

The Preamble has been quoted earlier in paragraph 6 of this judgment. It would be noticed that the object of the Act is to place co-operative societies financially on sound footing, and to have better financial management and control of the co-operative societies. The preamble clearly shows that the Ordinances seek to enact law relating to cooperative societies. Section 13(A) of the Ordinance lays

down that the duty of the State Government is to encourage and promote co-operative movement in the State. With that end in view, certain steps have been contemplated. How the objective contained in the Preamble is to be subserved is to be found in Sections 13(a), 14(3) and 14(4) of the Ordinance. Section 14(3) of the Ordinance provides the powers and obligations of the Managing Director/ Executive Officers of a registered society i.e. registered co-operative societies. The modality in achieving the objective may be irksome or unpalatable to the petitioners but there can be no doubt that the endeavour is to put co-operative societies on a sound footing by regulating the functioning of co-operative societies. In fact, learned counsel for the petitioners were candid in conceding that they had no quarrel with the provisions of Sub-section (1) of Section 13(A) of the Ordinance which lays down that "it shall be the duty of the State Government to encourage and promote the co-operative movement in the State and to take such steps in this direction as may be necessary." The rest of the provisions in Section 13(A) "and the provisions in Section 14(3) and 14(4) of the Ordinance are nothing but steps in aid of that objective by toning up administration, by supervision and proper management of the day-to-day business and affairs of a cooperative society, signing bonds and agreements on behalf of a registered society etc. Can there be, therefore, any doubt that Section 13(A) and 14(3) of the Act have direct nexus with co-operative movement and are completely consistent with the Bihar and Orissa Co-operative Societies Act, 1935? In my view, not. The amendments", in my view, in the context of the parent Act are not square pegs in a round hole. Whether the objectives of the Ordinance will be fulfilled by the modality indicated in Section 13(A) and Section 14, the future alone can show but it is manifest that the objective is to put Cooperative Societies on sound footing. There are provisions for nomination of members of the Managing Committee of a co-operative society including the Chairman thereof. That also has direct nexus with the object spelt out in the Preamble. In my view, therefore, I have not the least hesitation in holding that the Ordinances represent laws in relation to cooperative societies and are covered by Item No. 32 of List II of the Seventh Schedule to the Constitution.

12. The items in the Seventh Schedule are only fields of legislation and should be given wide and liberal interpretation to sustain a law. In the case of *Navinchandra Mafatlal Vs. The Commissioner of Income Tax, Bombay City*, S.R. Das, J., as he then was, observed as follows:--

"It should be remembered that the question before us relates to the correct interpretation of a word appearing in a Constitution Act which, as has been said, must not be construed in any narrow and pedantic sense." Gwyer, C.J., in -- AIR 1939 1 (Federal Court) observed at pp. 4-5 that the rules which apply to the interpretation of other statutes apply equally to the interpretation of a constitutional enactment subject to this reservation that their application is of necessity conditioned by the subject matter of the enactment itself. It should be remembered that the problem before us is to construe a word appearing in Entry

54 which is a head of legislative power.

As pointed out by Gwyer C.J., in -- AIR 1941 16 (Federal Court) , none of the items in the Lists is to be read in a narrow or restricted sense and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it. It is, therefore, clear and it is acknowledged by Chief Justice Chagla that in construing an entry in a List conferring legislative powers the widest possible construction according to their ordinary meaning must be put upon the words used therein."

In the case of *The Assistant Commissioner of Urban Land Tax and Others Vs. The Buckingham and Carnatic Co. Ltd., etc.*, when the question arose whether Madras Urban Land Tax Act, 1962 fell within the ambit of Entry 49 of List II as opposed to Entries 86 and 87 of List I, Ramaswamy, J., observed (at p. 175):

"The legislative entries must be given a large and liberal interpretation, the reason being that the allocation of the subjects to the lists is not by way of scientific or logical definition but by way of mere simplex enumeration of broad categories."

The proposition is so well established that I do not consider it necessary to multiply decisions of the Privy Council or Supreme Court in this behalf.

13. Having held that the Ordinances are laws in relation to co-operative societies falling within the ambit of item No. 32 of List II, it follows from the wordings of item No. 43 of List I that the law cannot be said to be a law in relation to incorporation, regulation and winding up of trading corporations including Banking, Insurance and Financial Corporations. Once it is held, as it must be, that the Ordinance is a law in relation to co-operative societies, it is protected by the expression "but not including co-operative societies." in item 43 of List I. It would, therefore, be idle to contend that by virtue of the amending Ordinance, co-operative societies have become State owned Corporations, and, therefore, they were laws relating to incorporation, regulation, and winding up of trading Corporations.

Learned counsel for the petitioners contended that on account of the sweeping powers to control the management of cooperative societies in which the State Government had considerable financial strain, the co-operative societies have been rendered Corporations. The amendments, therefore, related to incorporation, regulation and winding up of trading Corporations and not in relation to co-operative societies. This submission is untenable for two reasons. That must be held to be so, firstly for the reason that the expression "Corporations" mentioned in item 43 has not been used in the sense of Corporations under the Indian Companies Act. It has been used in a loose dictionary sense and in that sense a cooperative society is also a corporation. The submission is untenable secondly for the reason that the amendment is clearly related to management and efficiency of cooperative societies. I have already held earlier that the Ordinances are clearly, without doubt, in relation to

co-operative societies. The word "Corporations" under Item 43 in List I cannot be used in a restricted sense. In the case of Daman Singh and Others Vs. State of Punjab and Others, , a five Judge Bench laid down categorically that a co-operative society also is a Corporation in the following words (para 6):--

"We have already extracted Section 30 of the Punjab Act which confers on every registered co-operative society the status of a body corporate having perpetual succession and a common seal, with power to hold property, enter into contracts, institute and defend suit and other legal proceedings and to do all things necessary for the purposes for which it is constituted. There cannot, therefore, be the slightest doubt that a co-operative society is a Corporation as commonly understood. Does the scheme of the Constitution make any difference? We apprehend not."

14. Mr. Das for the petitioners contended that in order to appreciate whether the cooperative societies now after the amendment by the Ordinances are co-operative societies simple or they are State owned Corporations, we must draw upon the theory of pith and substance and judged from that test, it must be held that co-operative societies after the amendments are no more co-operative societies but are State owned Corporations. The legislation, therefore, falls within item 43 of List I of the Seventh Schedule to the Constitution. I regret, it is not at all necessary to draw upon the doctrine of pith and substance. The reference to the case of Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938 (AIR 1989 FC 1 (R)) is entirely misconceived. That was a case in which the subject to legislation was so intermingled that it was not very clear whether the legislation was in relation to Sales Tax or it was in relation to levy, of excise duty. Therefore, aid of the doctrine of pith and substance was taken. In this case, it is absolutely clear as day light that the legislation is in regard to co-operative societies.

15. The submission of Mr. Das is that the provisions of the Ordinance fell within the ambit of item 43 of List I as the amendments completely annihilate the basic concept of cooperation and, therefore, they were not law in relation to co-operative societies. The submission tersely put is, that if the concept of co-operation itself is annihilated by the amendment, the amendment can be anything but a law relating to co-operative societies. We have, therefore, to see whether the amendments are annihilative of basic cooperative concepts.

16. Mr. Das for the petitioners contended that the cardinal principles of cooperation were (a) the right to voluntary and autonomous association, (b) right to democratic control and self management and (c) right to equality in managing the affairs of society irrespective of the money power. It cannot be doubted that those are principles underlying the co-operative movements. That is the golden thread running through co-operative society as observed by Sandhawalia, J., in a Division Bench decision of this Court in the case of Harendra Narain Banker v. Bihar State Co-operative Marketing Union Limited 1985 Pat LJR 1078 : 1985 Lab IC 1807 in relation to Biscomaun itself, of which petitioners in

C.W.J.C. No. 8249 of 1988 claim to be the Directors and members. This, however, does not imply that the members or the Board that control the management, are free to act Ad Lib without regard to the interest of the members and the co-operative societies in general. I cannot conceive that Mr. Govind Das was thinking of a Laissez Faire society where every person should be left to do as he liked. The days of Laissez Faire are no more. That State cannot shirk its obligation of protecting the general cause of the people at large. That must form the beacon light for co-operative societies. In any view of the matter, the State as shareholder cannot be denied the right to protect its interest. Finance must have a say. The three objectives enumerated above and claimed by Mr. Das must be modulated by the State Government in the general interest of the people including co-operative societies. It may well be that the provisions may be annihilative of the opportunities available to the suckers in the co-operative firmament depriving the society of the benefits being showered by the State for increasing the general well-being of people at large. The well being of the co-operative societies is bound to affect the well-being of the people in general. It would be in the larger interest to see that the co-operative movement proceeds on proper rails and that it is not monopolised and cornered by a few persons through machination, muscle power or money power. The amendments enable the State Government to take particular actions in order to see that co-operative societies work on proper lines so that the general well-being is advanced and the finances of the State are safeguarded. The finance provided by the State exchequer are funds provided by the people at large; The people, therefore, must reasonably expect the State Government to exercise proper control over the co-operative societies in which the State Government has sunk funds either in the form of share capital or loan or bonds or guarantees. I have failed to find anything in the Ordinances annihilative of the general cooperative principles.

17. The submission that the amendments are annihilative of the concept of co-operation is fallacious from its very foundation. There can be no fixed connotation in regard to co-operative societies. The concept of cooperation as enshrined in the parent Act is a concept derived from the statute and not from the Constitution. The picture that has emerged by the Statute can always be altered by statute by the law making body. It cannot be contended that the framework of the cooperative societies is a basic structure of the Constitution and is, therefore, unalterable by the State legislature. If the fundamentals of co-operative laws are derived from State legislation, it cannot be doubted for a moment that the State legislature has the jurisdiction to alter the nomenclature of the co-operative societies. The history of cooperative legislation itself shows that there is no fixed connotation of co-operative societies. It is well known that initially a cooperative society was formed on the basis of co-operation of individuals. The next step was the concept of incorporation of co-operative societies. That brought in the State. With the State having come in the picture, the concept relating to charge of liability was introduced. With the power of the legislature to make laws came the provision of liability of the members. Initially,

the liability of members was unlimited. Then came the concept of liability limited by shares. Co-operative Societies Act now recognises limited liability co-operative societies as well as unlimited liability co-operative societies. Section 7 of the Co-operative societies Act provided that a society may be registered under the Act with or without limited liability. Where the liability is limited by shares, the Co-operative Societies Act, 1912 contemplated more than one vote by members holding more than one share. Promotion of co-operative societies has now been included in the directive principles of the Constitution. The States have been enjoined to act in a manner so as to promote the concept of co-operation. It would thus be seen that there is no fixed concept in regard to the co-operative societies. The concept has been changing from time to time. The concept of co-operation in this country is distinct from what it is in U.S.S.R. The methodology of controlling and regulating co-operative societies in different countries present different patterns. In that view of the matter, one cannot justifiably contend that there are fixed notions guiding co-operative societies. I should not, however, be misunderstood to contend that the democratic principles may be completely waived or done away within the matter of functions of Co-operative societies. All that I mean to convey is that control and guidance in the matter of management of co-operative is not a new concept in relation to co-operative societies. It is, therefore, unsound at the threshold to contend that the amendments are annihilative of the concept of co-operative societies. This submission is basically fallacious.

18. The regulatory measures were there even before the impugned Ordinances were enacted. The endeavour to moderate or regulate is to be found in Section 41 of the Act itself. In Chapter III of the parent Act itself are to be found some of the restrictions, which may be imposed in regard to the functioning of the co-operative societies. Section 15 places restriction on borrowings by a registered society. Section 16 places a ban on registered society advancing loan except with the general or special sanction of the Registrar, Co-operative Societies. Section 20 of the Act empowers the Registrar to prohibit any society or class of societies from making any contribution. Section 41 of the Act provides for supersession of Managing Committee by the Registrar or by the State Government. In the face of these provisions, can it be contended for a moment that the Act permits functioning of the members Ad Lib? In my view not. The right of Voluntary and autonomous association or the right to democratic control and self management or the right to equality in managing the affairs of Society has not been annihilated by the Ordinances. They have only been placed within chartered channels consistent with public interest. There were certain regulatory provisions even before the promulgation of the Ordinances. The Ordinance is only an extension/elaboration, of the said regulatory measures which existed in the parent Act from before. The Biscomaun, the Bihar State Land Development Bank, Bihar State Co-operative Banks and some other co-operative societies had Managing Directors deputed by the State Government from before. The provision of Section 14(3) of the Ordinance providing that an Officer deputed to a

registered society as Managing Director or Executive Officer or in similar position shall be the Chief Executive Officer, was to be found in the bye laws of each of the co-operative societies. Bye law 42 of Biscomaun reads as under:--

"The Managing Director shall be responsible for the general administration of the Union subject to the general order and special directions of the Board of Directors and Working Committee."

The same idea has been incorporated in the amended Section 14(3) of the Ordinance. The duties of a Managing Director/Executive Officer mentioned in Section 14(3) of the Ordinance are no wider or drastic than bye law 43 of Biscomaun as may be evident from the following:--

Section 14(3) of the Ordinance reads as under :? Bye Law 43 of Biscomaun reads as under :?

i)

to have general control over the administration of the registered Society

43. The duties of the Managing Director shall be;

(1) to summon all meetings.

ii)

to convene meetings of the Managing Committee;

(2)

to ensure accurate recording of the proceedings of such meetings in the minute book.

iii)

to receive all moneys and securities on behalf of the registered society and to make arrangement for the proper maintenance and custody of cash balances and other properties of the registered society;

(3)

to receive payments and make disbursements on behalf of the Union subject to the general and special order of the Board of Directors on this behalf from time to time.

iv)

to endorse and transfer promissory notes, Government and other securities and to endorse, sign and negotiate cheques and other negotiable instruments on behalf of the registered society;

(4)

to ensure that all accounts and registers, vouchers, balance sheets and other

documents required for the transaction! Of the business of the Union are maintained properly with the assistance of the staff;

v)

to be responsible for the general conduct, supervision and management of the day-to-day business and affairs of the registered society;

(5)

to conduct correspondence on behalf; of the Union;

vi)

to sign all deposits receipts and operate the accounts of the registered society with Banks;

(6)

to see that the audit memo is placed before the Board of Directors for consideration and to take further steps in regard to rectification report to the Auditor in time;

vii)

to sign all bonds and agreements on behalf of the registered society;

(7)

to guide, supervise and control the work of the salaried staff of the Union and to do all other work which may be entrusted to him by the Board;

viii)

to determine the powers, duties and responsibilities of the employees of the registered society;

(8)

To appoint, suspend, punish or dismiss any salaried staff of the Union and to prescribe and assign duties to them subject to the Rules of Business framed by the Board with the approval of Registrar, Co-op. Societies, Bihar.

ix)

to appoint, promote, transfer, punish, suspend, remove or dismiss any paid employee of the registered society except to the extent of the powers vested in the Managing Committee under the bye-laws of the registered society;

(9)

to appoint, suspend, fine, punish or dismiss any salaried staff of the Union falling in the category of clerical and sub-ordinate staff subject to the approval of the Board except in case of suspension and fine;

x)

to institute, conduct, defend, compound or to withdraw any suit or other legal proceedings for or against the registered society and also to compound and allow time for payment or satisfaction of any claim;

(10)

to delegate any of the above powers with the permission of the Board to any Officer(s) of the Union.

xi)

to delegate all or any of the powers to an employee or employees of the registered society, subject to his control and supervision."

(11)

to anticipate Board's decision in matters that cannot wait for a Board's meeting without prejudice to the interest of the Union; provided that in all such matters the Chairman's approval, if possible, shall be taken and all matters decided by the Managing Director in anticipation of Board's approval shall be brought before the next meeting of the Board for confirmation."

It is, therefore, idle to contend that the amending Ordinances are annihilative of the general co-operative principles. The submission that the amendments have reduced the co-operative societies to State Corporations was advanced to support the submission that the amendments are of the nature of item 43 of List I. In my considered opinion, the amendments are not annihilative of the basic co-operative principles. For that reason, the Ordinances are not laws in relation to incorporation, regulation and winding up of trading corporations mentioned in item 43 of List I of the Seventh Schedule to the Constitution.

19. My considered conclusion, therefore, is that the Ordinances do not lack legislative competency. They are clearly enactments falling within item 32 of List II of the Seventh Schedule to the Constitution. They do not fall within item 43 of List I. Competence-wise they are valid pieces of legislation. That disposes of point Nos. (i) and (ii) urged by Mr. Govind Das and Mr. Bose.

20. Point No. (vi) :-- At this stage it would be convenient to dispose of point No. (vi) urged by Mr. Govind Das. It has been urged that the amendments by the Ordinances have no nexus with the Preamble to the Ordinances. I have already held that the amendments are in relation to co-operative societies and for putting them financially on sound footing. It cannot, therefore, be contended that the provisions of Section 14(4) of the Ordinance are not in accordance with the Preamble to the Ordinances or that they are not law for the purpose of placing co-operative societies financially on sound footing.

21. This submission was advanced on the footing that while the Preamble to the Ordinances showed that the amendments had been introduced for the purpose of

placing cooperative societies financially on sound footing, the Chief Minister in public statement stated that the amendments had been introduced to root out corruption in co-operative societies. It was stated that the public statement of the Chief Minister shows that the objective was entirely different from the objectives mentioned in the Preamble. I regret, I have failed to appreciate this submission. If there is corruption in the management of co-operative societies, it is bound to affect the soundness of co-operative societies financially. The finances are bound to be squandered or cornered. What may be payable to co-operative societies may find their way into private pockets. That may destabilise co-operative societies financially. By removal of corruption, therefore, the co-operative societies may be placed on financially sound footing. The objectives of sound financial management are not in contradistinction to removal of corruption. The submission, therefore, that the real objective was something else and not the financial stability is devoid of substance. The financial involvement of the State in co-operative societies is massive. The involvement of share holders is limited. That is a dangerous situation. That is why co-operative societies have not become viable. In that view of the matter, there is no clash between the public statement of the Chief Minister and the objectives mentioned in the Preamble.

Further, whether the amendment is in consonance with the Preamble or not has to be judged from the provisions of the Statute itself. It cannot be judged with reference to political public statements. A politician may have various reasons of his own for making particular statement in public. They have to cater to public whims. A court of law, therefore, is not concerned with public statement which are for consumption of politicians and people at large; rather we are concerned with the statute itself to find out whether the amendments have any nexus with the objectives of the Ordinance. Judged by those standards, it is manifest that there is no clash between the avowed and the real objectives. The amendments, therefore, cannot be said to be pieces of colourable legislation. That disposes of part of point No. (vi).

22. Other part of point No. (vi) relates to second proviso to proviso (iii) of Section 14(4) of the Ordinance which empowers the State Government to nominate the members of the Executive Committee including the Chairman. The State Government has been empowered to nominate on the Managing Committee. Where the share of the State Government in the share capital of a registered society exceeds thirty per cent but does not exceed fifty per cent, the State Government will have the right to nominate upto one-third of the total number of the members of the Managing Committee including the Chairman. Where the share of the State Government exceeds fifty per cent, but is less than sixty per cent of the total share capital, the State Government will have the right to nominate as is nearest to one-half of the total number of members of the Managing Committee including the Chairman. This right will subsist until the percentage of share of the State Government in the share-capital goes down to 40 per cent. Where the share of the State Government in the share capital of a

registered society exceeds sixty per cent, the State Government will have the right to nominate upto two-thirds of the total number of members of the Managing Committee including the Chairman. That right shall continue until the share of the State Government in the share capital goes down to less than fifty five per cent. Section 14(4) of the Ordinance also provides that notwithstanding anything contained in provisos (i), (ii) and (iii) of Sub-section (4), the State Government shall not nominate Chairman and other members of the Managing Committee if the share capital subscribed to by the State Government in a registered society is less than fifteen lakhs of rupees. The above provisions have been enacted for guarding the financial contribution of the State Government so that the persons of limited or almost no stake do not assume control of the large volume of finances flowing from the State Government to the co-operative societies. It is well known that finance never proceeds without strings. At least the financier is bound to take steps for guarding his interest. It has been stated in the Preamble that where the liability of the members of co-operative society is limited by shares, the capital must have a say in the management. I fail to find any baseness in this objective. A financial institution advancing loans always places its own representative on the borrowing society or Companies. The Life Insurance Corporation of India is always represented on the Board of Directors of Company to which it advances loans. The right of members of the co-operative society to manage cannot extend to forestalling the financier from protecting its interest. The financier entering the Board of Management is not a bull in a China shop but is a guardian angel or protector of its interest.

23. The Ordinances have laid down the criteria for nominating members on the Managing Committee. The third proviso to Section 14(4) of the Ordinance lays down that the State Government shall nominate members of the Managing Committee including the Chairman as far as possible from amongst the persons (i) having interest in co-operative movements, (ii) having knowledge and experience of organising or managing cooperative societies or (iii) having experience of general administration; or (iv) is the member of such registered society; or (v) is or was associated with the administration and implementation of the Bihar and Orissa Act VI, 1935. Can it be contended for a moment that these categories are foreign to the objectives of sound management of co-operative societies? In my view not. The State Government could have clothed itself with the power to nominate only the persons associated with administration and implementation of the Co-operative Societies Act covered by Clause (v). That would mean power to nominate beurocrats but the power has not been vested only to that category of persons. Those who have been associated with the co-operative movements and have genuine interest in promotion of the co-operative movement are likely to protect the financial interest of the State Government as also to enhance the interest of co-operatives and farmers in general. The stand, therefore, in point No. (vi) that the exclusion of persons from amongst whom the members of the Executive Committee including the chairman are to be nominated by the State Government have no nexus or concern with a

particular society is manifestly unsound. The categories mentioned for nomination are based on sound footing. It is well known that there is rot in the present situation in Bihar in regard to the co-operative societies. Persons who have been at the helm of affairs have been more concerned about enriching themselves rather than attending to the well being of the share holders and farmers. The State Government lacks the power of taking effective measures to stem that rot. That has called for amendments clothing the State Government with the power to control the management. It is obvious that Sections 13(A) and 14 of the Act are provisions in the interest of society for their better management. They are, therefore, in public interest.

24. The whole matter relating to the vires of the law clothing the State Government with the power to nominate Chairman and Directors of Managing Committee/Board of Directors must be rounded up with a reference to a Full Bench decision of Allahabad High Court in which exactly identical question had fallen for consideration. That was judgment rendered by Allahabad High Court in Civil Misc. Writ Petition No. 7632 of 1971 disposed of on 16-5-1973. The question falling for consideration before the Full Bench of Allahabad High Court was "whether the U.P. Legislature was competent to enact legislation providing for the nomination or appointment by the Government of the Chairman and/or members of the Committees of Management of co-operative societies. The Full Bench, presided over by G. C. Mathur, Hari Swarup and K.N. Seth, JJ. unanimously held as follows:--

"i) the impugned legislation is clearly in respect of "co-operative societies" and is directly covered by Entry 32 of List II. It cannot be seriously urged that the legislation is in respect of Societies which are not "Cooperative Societies" as contemplated by Entry 32, but have by some artificial definition being treated as such. The impugned legislation deals directly and squarely with societies which are admittedly co-operative societies."

ii) Having considered all these materials we do not think that it establishes that the expression "Co-operative Societies" had acquired any such fixed meaning or connotation as is contended for by the petitioners. The concept of co-operative society was not a static concept, it kept on developing.

iii) It thus appears that the idea of nomination of Chairman and member of the Committee of Management of a co-operative society was in existence even under the 1912 Act. It, therefore, cannot be accepted that the expression "Co-operative Societies" in Entry 32 List II was used in the fixed sense contended for by the petitioners. That being so, it was open to the State Legislature to legislate on all or any of the aspects of co-operative societies including the management thereof."

The aforesaid judgment has not been reported anywhere but copy of certified copy thereof has been produced by the learned Advocate General in Court. The said copy has been placed on the record. Excerpts from that judgment have been

referred and quoted in the case of *Jalaun Producers' Co-operative Union Limited, Jalaun (Orai) v. State of U.P.* 1979 A LJ 244 at paragraph 7. Mr. Das, learned counsel for the petitioners did not object to the citations of the Full Bench judgment. I am in complete agreement with the views of the Full Bench of Allahabad High Court, quoted above.

25. Point No. (iii) :-- The submission is that since Section 13(A) of the Ordinance empowers the State Government to subscribe directly to the share capital of the registered society or to assist indirectly in the formation and augmentation of the share capital of the registered society, it constituted an infringement of Article 19(1)(c) of the Constitution. This submission is on the supposition that it strikes at the powers of the members of the Association to keep out persons with whom they do not want to associate. Article 19(1)(c) of the Constitution confers upon every citizen the right to form association. The provisions of the amending Ordinances do not strike at the root of individuals to form association. In fact, the right of the members of the cooperative society to form association has not been touched at all. The petitioners will continue to be the members of the co-operative society at all times. The co-operative societies have not been dissolved nor have the amending Ordinances conferred power on the State Government or the Legislature to dissolve any co-operative societies. The challenge to Section 13A is based on ground that Section 13 strikes at the power of the members of the association to keep out persons with whom they do not want to associate. Whatever may be the ambit of power u/s 41(6) of the Act, the co-operative societies will continue to exist in all their glory. The petitioners cannot object with any amount of justification if more funds flow into the cooperative societies either as loan or as share capital. The right to association, therefore, has not been affected at all nor there is any apprehension that the right to association is likely to be whittled down. The supposition however, that the power of the members of a co-operative society to keep out persons with whom they do not want to associate is included in the right to form association is fallacious. The rights of members flow from the statute, namely, the Bihar and Orissa Cooperative Societies Act. What can be conferred by a statute can also be taken away by statute. It is only the constitutional right which cannot be taken away by statute but there can be no restriction on the power of the legislature to strike down any statutory right. In my view, therefore, the provisions of Section 13(A) are not violative of Article 19(1)(c) of the Constitution.

Learned counsel for the petitioners contended that the infringement of Article 19(1)(c) of the Constitution was not reasonable and was thus not saved by Article 19(6) of the Constitution. This submission has only got to be stated to be rejected. I have already discussed earlier that there is a public purpose behind the amendment. The amendments are in public interest. They are meant to stem the rot in the co-operative movement which are eating at their vitals. The amendments are, therefore, obviously reasonable. The State Government as the guardian of the people's interest to save public funds must have the right to save the capital or the finance in the co-operative society. It cannot, therefore,

be said that the power to nominate Chairman/Managing Director of the Society or the power to subscribe directly or indirectly to the share capital is not reasonable. They are simply protected by Article 19(6) of the Constitution.

26. Further the provisions of Section 13 of the Act are only enabling provisions. They empower the State Government to take steps for promoting the co-operative movement. The petitioners cannot justifiably contend that if the co-operative societies with which they are concerned is sinking into the mire, the State Government can have no power to prevent its death. If the funds of the State are not in any jeopardy, the State Government may not exercise the power vested in it u/s 13(A) of the Ordinance. In my view, therefore, for these reasons as well the provisions of Section 13(A) do not infringe Article 19(1)(c) of the Constitution.

27. Learned Advocate General was justified in placing reliance upon the case of Daman Singh and Others Vs. State of Punjab and Others, in which Chinnappa Reddy, J., in paragraph 9 observed that the co-operative societies which are created by statute and controlled by the statute, there can be no objection to statutory interference with their composition on the ground of contravention of the individual right of freedom of association." Any further discussion on this aspect of the matter will be futile and un-warranted. The question of infringement of Article 19(1)(c) of the Constitution does not arise.

28. Point No.(iv) :-- Do the provisions of Section 14(4) of the Ordinance infringe Article 19(1)(g) of the Constitution? Regret-ably not. The contents of Section 14(4) of the Ordinance are only a follow up of the provisions of Section 13(A). The provisions of Section 13(A) of the Ordinance are exactly in pari materia with that of Section 34 of the U. P. Co-operative Societies Act. The argument that the provisions in relation to nomination of Directors, Chairman etc. infringe Article 19(1) (g) and (f) of the Constitution was rejected by the Allahabad High Court in the case of Jalam Producers" Co-operative Union Limited 1979 All LJ 244) (supra) at paragraph 10. The amendments do not take away the right of the co-operative societies to carry on trade. In fact, the imposition contemplated is for the purpose of better exercise of the right of trade by co-operative societies.

29. Point No. (v) :-- I am unable to appreciate any unjustness or unreasonableness in the provisions of Section 14(8) of the Ordinance. Such provisions are not unknown in the legislative firmament. The President of U.S.A. can hold Office only for two terms. No one has ever doubted the validity of such a provision. If such a provision can be made in the Constitution, I fail to see any substance in the attack on the provisions of Section 14(8) of the Ordinance which places embargo upon the eligibility of election or nomination as office bearers of the Managing Committee, if he has been an office bearer of that Managing Committee for two consecutive terms. This provision must be justified for the reason that if a person is permitted to continue to be on the managing committee Ad Lib, his vested interest may create a piquant situation for the members and danger to public funds which the State may have invested either

as share capital or as loan or by guarantee of debentures. The law that a person who had held office as member of the Managing Committee for six years would not have the right to fresh election and nomination to the Managing Committee was challenged in the case of Mathura Prasad Singh and Others Vs. The State of Bihar and Others, . K.B.N. Singh, J., as he then was, observed as follows at paragraph 27:--

"The Government being satisfied that the real power in the Co-operative societies was being monopolised by the office bearers they should not be allowed to continue in office for more than six years, the Ordinance has obviously been made with a purpose to make the co-operative societies broad based and democratise the institutions rather than to allow them to be monopolised by a few persons which means the very negation of the beneficial measures contemplated by the Act, I am, therefore, satisfied that there is rational basis for making a distinction between the ordinary members and the office bearers of the managing committee of the registered societies for achieving the objects for which co-operative laws have been enacted, and the Ordinance does not suffer from the vice of discrimination so as to be violative of Article 14 of the Constitution."

That concludes point No. (v) urged by Mr. Govind Das. I would only like to state here that persons who have held office as office bearers are debarred from holding office as office bearers either by election or nomination only in that particular society. It does not debar a person from being elected or nominated to the managing committee of any other co-operative society. The petitioners can, therefore, keep on jumping from one society to another.

30. Point No. (vii) :-- Learned counsel for the petitioners submitted that the provisions of Section 14(3) of the Ordinance were unreasonable restraints upon the powers of the co-operative society as it vests pervasive and wide sweeping power of management, I have already discussed earlier that the restraints are in public interest and are not vulnerable to any serious challenge. In paragraph 10 of the counter affidavit on behalf of the State it has been stated that the share capital of the State Government in Biscomaun is 99.70 per cent of the entire share capital. In the Bihar state Co-operative Bank 40 per cent of the share capital is of the State Government. In some co-operative societies 90 per cent and above of the share capital is of the State Government. Since the contribution of the State Government to the co-operative societies, likely to be affected is massive, there is no reason why the State should not have the right to put in its own nominees on the managing committee. The assertions in paragraph 10 of the counter affidavit have not been denied. In fact, the State Government on the request of concerned co-operative societies has increasingly been providing financial assistance by subscribing to their share capital or by giving loan or providing guarantee for re-payment of the principal interest and debentures. The State Government has not forced itself by subscribing to the share capital. The societies themselves have requested the State Government in this behalf. In

paragraph 11 of the counter affidavit it has been stated that the State Government is the major share holder in the Bank having invested 2.29 crores of rupees out of the total subscribed share capital of 5.72 crores. This is on the basis of the situation prevailing on 30-6-1987. Besides this the State Government has made further contribution of rupees two crores during the year 1987-88 towards share capital of the Bank. The loan provided to the State Co-operative Bank is rupees 16 crores as on 30-6-1987. The share holding of the State Government in Biscomaun is of the value of Rs. 16.55 crores. Only O. 16 crore has been subscribed by individual share holders. In other apex co-operative societies like Land Development Bank etc., the participation of the State Government is to the tune of about 50 per cent besides loan advanced, subsidy etc. That being the financial holding of the State, the managing committees were being controlled by the persons who had very little stake. In 1985, the Biscomaun had almost become bankrupt and the dues of the creditors on 30-6-1985 stood at Rs. 85.92 crores. The person controlling Biscomaun having brought Biscomaun to that situation approached the State Government for rehabilitation and the State Government came out with a liberal aid and arranged payment of Rs. 35.75 crores through Commercial Banks. In paragraph 13 of the Counter affidavit, it has been stated that the apex co-operative societies continued to mismanage the affairs of the society. Financial discipline was lacking. It had, therefore, become necessary to have better financial management and control to protect the public funds and to place co-operative societies under better management so that public funds invested in the society is protected and the co-operative societies may run on sound footing. A catalogue of the mismanagement by the erstwhile managing committee has been furnished in paragraph 15 of the counter affidavit. They bring out in clear perspective the occasion or necessity of the State Government placing its nominees on the managing committee.

31. Having taken advantage of the subscription of the State Government in the share capital and of the loan and other financial accommodation, it does not lie in the mouth of the petitioners to say that powers vested in the State Government by the Ordinances are unreasonable restraints upon the co-operative societies. The mismanagement by the petitioners is writ large. There was, therefore, ample occasion for the State Government to assume the power that it has through the Ordinances. Learned counsel for the petitioners also contended that Section 14(2) of the Ordinance being the dominant provision, Section 14(3) should give way to it as a subordinate provision. I am unable to find any clash between the provisions of Section 14(2) and those of Section 14(3) of the Ordinance. There cannot be any difficulty in reconciling the two. Section 14 relates to the manner in which managing committee of a registered society is to be constituted. Subsection (2) thereof provides that the managing committee in such area as the State Government may by general or special order, at least two seats shall be reserved for the members of the Scheduled Caste or Scheduled Tribe and three seats for small or marginal farmers. Such members can certainly be

accommodated in terms of Section 14(3) of the Act. Point No. (vii) must, therefore, be squarely rejected.

32. Point No. (viii) :-- It was submitted that the classification of societies based on subscription of the State Government was unreasonable, having no nexus with the avowed objects of the Ordinances. This submission is manifestly untenable. One of the objectives for introducing the amendment was to protect the share capital. The nomination by the State Government on the managing committee must be in proportion to its financial involvement i.e. where the share capital of the State Government in any society is less than 15 lakhs, the State Government has not been vested with the power to nominate Chairman or members of the managing committee. Where the involvement is higher, the power to impose larger number of Directors cannot be challenged. In fact, if the co-operative societies had not been divided into different categories, the provisions of Section 14(4) would have been open to serious challenge as being arbitrary but since the representation of the State Government has been graded on the basis of financial involvement, there is a clear nexus between the classification and the avowed objectives. It does not, therefore, violate Article 14 of the Constitution. Such a challenge was rejected by Allahabad High Court also in the case of Jalaun Producers Co-operative Union Limited 1979 A LJ 244) (Supra) at paragraph 6. The provisions of Section 14(3) of the Act is almost in pari materia with that of Section 4 of the U. P. Co-operative Societies Act. The Division Bench of Allahabad High Court observed thus while rejecting the attack on the ground of infringement of Article 14 of the Constitution of India :--

"Then we come to the main argument advanced before us by Shri G.C. Bhattacharaya, learned counsel for the petitioners. According to. Shri Bhattacharya, Section 34 is violative of Art. 14 of the Constitution inasmuch as it does not provide any guidelines and because the State Government has got arbitrary and unlimited powers and further these provisions are against the object which the Act seeks to secure. It was emphasised that there was no rational nexus between the power given to the State Government and the object which the Act seeks to achieve. We are unable to agree with these submissions."

I am in respectful agreement with Allahabad decision in this behalf. There is reasonable basis for the classification of co-operative societies for the purpose of nominating members on the managing committee. Point No. (viii), therefore, is rejected accordingly.

33. Point No. (ix) :-- Section 52 of the Act contains five clauses (a) to (e). By Section 7 of the amending Ordinance, another Clause (f) has been added which reads as follows :--

"(f) As an amount due from a member, past member or the nominee, heir or legal representative of the deceased member of a primary co-operative credit society."

Section 52 of the parent Act provides for recovery of sums due. It lays down

categories of dues which may be recovered as public demand. Clause (f) introduces another category of dues which may be realised as public demand. No serious objection can be raised to such a provision. In fact, the Public Demand Recovery Act has itself been suitably amended to include Bank dues as public demand. If the dues of nationalised Bank can be recovered through certificate proceeding, I fail to appreciate why law cannot be made providing for realisation of dues from the members through the certificate proceeding. Confronted with this situation Mr. Das toned down and contended that all that he was advancing was that no sum can be realised as Public Demand unless there has been an adjudication after giving opportunity to the members to substantiate their stand. This is understandable but Clause (f) does not lay down that the dues may be realised without any adjudication. Section 48 of the Act provides for adjudication of disputes. Any sum due from a member, past member which certainly constituted dispute, that Section provides for adjudication of disputes. It is only after a claim has been adjudicated, that a requisition can issue to realise the sum adjudicated through Certificate proceeding. In my view, no serious objection can be raised to the vires of Section 7 of the amending Ordinance Introducing Clause (f) in Section 52 of the Act. It is neither unfair, nor unjust nor unreasonable by any statutory imagination nor it violates Article 14 of the Constitution. The basic submission of Mr. Das, learned counsel for the petitioners is fallacious. This submission is also rejected accordingly. Even if it was contemplated that the requisite for realisation of the amount as a certificate demand is issued without any prior adjudication, in that situation the requisitionist would have to justify its claim before the Certificate Officer. The Certificate Officer would be obliged to consider and decide whether the certificate demand had any justification. In my view, m therefore, there can be no serious challenge to the inclusion of Clause (f) to Section 52 of the parent Act.

34. Point Nos. (x) and (xi) :-- Point Nos. (x) and (xi) may be taken up together. The Ordinance has been promulgated to place cooperative societies on a sound footing. This is not a perverse approach. Undoubtedly the Chief Minister may gain in stature if he succeeds by the process of amendments in putting co-operative societies on sound footing. The Chief Minister would be entitled to qudos of the people if he succeeds in this behalf by checking corruption and saving public funds. That was the occasion for promulgating the Ordinance. Similar challenge was thrown on the propriety of issuance of an ordinance in the case of Mathura Prasad Singh and Others Vs. The State of Bihar and Others, . The observation of K.B.N. Singh, J., at paragraphs 17, 18 and 19 is a complete answer to the submission of Mr. Govind Das. Point Nos. (x) and (xi) urged on behalf of the petitioners are devoid of any substance and are rejected accordingly.

35. Point No. (xii) :-- :Learned counsel for the petitioners contended that repeal of Section 41(6) of the Act was the result of political vendetta inasmuch as it was promulgated to serve the political purposes of the Chief Minister to penalise the petitioners for their hostile political activities. Section 41(6) of the Act empowered the State Government to dissolve the managing committee of a

cooperative society if it was in the interest of the society or of the co-operative movement or in order to prevent any apprehended mismanagement of the society. According to the learned counsel for the petitioners, this could not be effected without calling upon the managing committee to show cause against the alleged omissions and commissions of members of the managing committee to get over that difficulty. Section 41(6) itself was repealed. This according to the learned counsel for the petitioners was a mala fide purpose. I am unable to see any mala fide. The Ordinance is squarely to off set the activities of the petitioners or the persons controlling the co-operative society which have brought the society to a sad state of affair. In view of Sub-section (5) of Section 14 of the Act, Section 41(6) had become redundant. Section 14(5) of the Ordinance reads as follows:--

"Notwithstanding anything contained in any provisions of this Act, rules made thereunder and the bye-laws of the society, the existing Managing Committee of a registered society in respect of which the State Government has power to nominate Chairman and other members of the Managing Committee in accordance with proviso (i), (ii) and (iii) of Sub-section (4) shall cease to exist from the date of promulgation of this Ordinance and its management shall vest in the State Government. The State Government shall appoint an Administrator for the management of the affairs of such registered society till elections are held in accordance with the , provisions of this Act."

36. This is a sweeping power which is warranted for considering the stake of the State Government and considering the performance of the members of the managing committee. I am unable to find any fault in deleting Section 41(6) of the Act.

37. At this stage, I may dispose of one side issue agitated at the Bar on behalf of the petitioners. It has been contended that in terms of Section 6 of the amending Ordinance, Sub-section (2) of Section 41 of the Act, the managing committee has only been suspended and after the suspension, if the managing committee is not superseded the managing committee shall be reinstated. Reliance was placed upon Section 41 (2) of the Act which reads as follows :--

"(2) Where the Registrar while proceeding to take action under Sub-section (1) is of opinion that suspension of the Managing Committee is necessary in the interest of the registered society, he may suspend the Managing Committee which shall thereupon cease to function, and make such arrangement as he thinks proper for the management of the affairs of the registered society till the proceedings under Sub-section (1) are completed.

Provided that notwithstanding the provisions of Sub-section (2), the period of suspension shall not exceed six months from the date of order;

Provided further that the Registrar, in special circumstances by recording reasons in writing and with prior approval of the State Government shall extend the period of suspension for a further period of six months over and above the period

prescribed in the first proviso.

Provided further also that notwithstanding the repeal of Sub-sections (6) and (8) it shall not effect the previous operation of subsections (6) and (8) so repealed or anything duly done thereunder or affect any right, privilege, obligation or liability, acquired, accrued or incurred under the said subsections so repealed and the dissolution of the Managing Committee under the repealed Sub-section (6) shall be deemed to be suspension under Sub-section (2) of Section 41.

Provided further also that if the Managing Committee so suspended is not superseded it shall be reinstated but the period for which it has remained suspended shall count towards its term."

This provision was enacted after the supersession of original Section 41(6) of the Act. This was necessitated because the managing committee of every co-operative society may not be visited with the consequence mentioned in Section 14(5) of the Act. There are 25,000 co-operative societies in this State. In the counter affidavit of the State it has been stated that of the large number of co-operative societies, only about 100 or less registered co-operative societies, are likely to be affected by the provisions of Section 13(A) and 14 of the Act. For other societies, the power of the Registrar to suspend the managing committee has been retained by Section 41(2) of the Act, quoted above. The period of suspension shall not exceed six months unless the Registrar, in special circumstances by a recorded order and the prior approval of the State Government may extend the period of suspension. The next proviso lays down the consequences of the order of suspension. The suspension order shall not affect the previous operation of subsections (6) and (8) so repealed or anything duly done. The suspension may result in supersession of the co-operative societies or it may result in the suspension being lifted. If the suspension is lifted, the erstwhile managing committee will assume charge again.

38. On the basis of the 3rd proviso to Section 41(2) Mr. Das for the petitioners contended that originally before the Ordinances came into being, the Societies with which the petitioners were associated had been suspended in terms of Section 41(6) of the Act so that after suspension if the managing committee is not superseded, they must be permitted to take charge of the managing committee. The submission is fallacious.

39. Section 14(5) of the Act is a pervasive power. In terms thereof the State Government is not obliged to hold any enquiry and to supersede in terms of Section 41(2) of the Act. The managing committee ceases to exist from the date of promulgation of this Ordinance and its management vests in the State Government. The question of handing back the co-operative societies to the petitioners in terms of the proviso to Section 41(2) of the Act does not arise. The non-obstante clause in Section 14(5) of the Act sets at naught the provisions of Section 41(2) of the Act so far as the present effected societies are concerned. I should, however, add at this place that this stand of Mr. Das was unwarranted

because there is no such prayer in the application to be emphasised once again. The petitioners have prayed only for testing the vires of the Ordinances and for declaring them as ultra vires. It is difficult, however, to restrain Senior Counsel especially out side lawyers. I have, therefore, considered and rejected this submission.

40. Point No. (xiii) :-- Learned counsel for the petitioners contended that the entire Ordinance was beyond the scope and ambit of the Ordinance making power under Article 213 of the Constitution. I fail to see any substance in this submission. So long as Article 213 of the Constitution exist, the question of exceeding the ambit and scope of Ordinance making power does not arise. The decision of the Governor on the aid and advice of the Council of Ministers is the last word on this subject. The satisfaction of the Governor is not to be placed on the anvil of any objective test. The Ordinance making power is clothed with all the attributes of an act of the Legislature and it is not permissible to strike down the Ordinance on the ground of non-application of mind or mala fide or that the prevailing circumstance did not warrant issue of Ordinance. Venkataramiah, J., as he then was, in the case of T. Venkata Reddy and Others Vs. State of Andhra Pradesh, laid down the law on the subject in the following terms ;--

"It is a settled rule of constitutional law that the question whether a statute is constitutional or not is always a question of power of the legislature concerned. Dependent upon the subject matter of the statute, the manner in which it is accomplished and the mode of enacting it. While the courts can declare a statute unconstitutional when it transgresses constitutional limits, they are precluded from inquiring into the propriety of the exercise of the legislative power. It has to be assumed that the legislative discretion is properly exercised the motives of the legislature in passing a statute is beyond the scrutiny of Courts. Nor can the courts examine whether the legislature had applied its mind to the provisions of a statute before passing it. The propriety, expediency and necessity of a legislative act are for the determination of the legislative authority and are not for determination by the Courts. An Ordinance passed either under Article 123 or under Article 213 of the Constitution stands on the same footing. When the Constitution says that the Ordinance making power is legislative power and an Ordinance shall have the same force as an Act, an ordinance should be clothed with all the attributes of an Act of legislature carrying with it all its incidents, immunities and limitations under the Constitution. It cannot be treated as an executive action or an administrative decision."

The decision of a Full Bench of this Court in the case of Lalit Narayan Mishra v. State of Bihar AIR 1987 Pat 53 at paragraph 35 also negated a similar contention urged in this behalf.

41. I have discussed earlier that the State of affairs in the affected co-operative societies was such that the situation called for an emergent action. The Legislature was not in session and, therefore, the Government had no other alternative but to exercise power conferred under Article 213 of the Constitution.

The submission in regard to the power of the State Government urged on behalf of the petitioners must be squarely rejected.

42. Point No. (xiv) :-- The submission urged on behalf of the petitioners is that the Ordinances were ultra vires Article 300-A of the Constitution as the petitioners have been deprived of managing the movable and immovable properties without any provision of compensation. There is no substance in this submission and it must be rejected. The societies not having been wound up, they continue to exist very much. There was, therefore, no nationalisation of the co-operative societies. The petitioners continue to be the share holders of the co-operative societies. Their properties are, therefore, intact. There can, therefore, be no question of paying compensation. The right to hold property is no more a fundamental right. Learned counsel for the petitioners, therefore, fell upon Article 300-A of the Constitution. The movable properties were of the societies and not of the petitioners. They shall continue to be the properties of the society. Thus, there has been no deprivation of the properties. In *Raja Birakishore Vs. The State of Orissa*, , the Supreme Court held that a right of superintendence of property was not property. In *Kakinada Annadana Samajam, Vs. Commissioner of Hindu Religious and Charitable Endowments, Hyderabad and Others*, , the Supreme Court held that a bare right to manage an institution did not constitute property. In my view, therefore, there has been no deprivation of any property of the petitioners. The petitioners are not entitled to compensation for the deprivation of right of management of societies.

43. Point No. (xv):-- Point No. (xv) urged on behalf of the petitioners is more a slogan than a question of law. Every aspect of the matter has been discussed earlier, by no means can the action of the State Government in promulgating the Ordinance be dubbed as colourable exercise of powers or fraud on the Constitution. The State Government was amply justified in forming the conclusion that societies where the State Government has invested more than 15 lacs were not being managed properly, This submission also must fail and is rejected accordingly.

44. The above is complete consideration of the submission urged by Mr. Govind Das.

45. Mr. Ajoyendu Bose, learned counsel appearing in C.W.J.C. No. 8364 of 1988 submitted that the provisions of Sections 13(A) and 14 of the Act were violative of Article 14 of the Constitution inasmuch as management of some co-operative societies have vested in the State but others have been left un-touched, I regret, there is no substance in this submissions. The Ordinances vest graded power, depending upon the financial involvement of the State, That has direct nexus with the object of putting co-operative societies on sound footing and for saving Government involvement in different grades of co-operative societies which have been specified for taking action. The different class of co-operative societies which are likely to be affected creates reasonable classification. The attack to the amending Ordinances is, therefore, devoid of any substance and must be

rejected.

46. Mr. Bose also contended that the submission of co-operative societies in terms of Section 41(2) of the Act contravenes the rules of natural justice and, therefore, invalid. The question of suspension of the concerned cooperative societies is now a matter of history in respect of co-operative societies of which petitioners were members/Directors/Chairman etc. After the enactment of Section 14(5) of the Act, the question of suspension does not arise. The management now vests in the State Government.

47. Before concluding this judgment, it is necessary to take note of one submission urged on behalf of the petitioners although it does not find place in the written submission. Mr. Das for the petitioners contended that the State of Bihar is not shareholder in any cooperative societies. He places reliance on paragraphs 3 to 7 of the supplementary affidavit. There are plenty of materials on the record produced by the petitioners themselves to show that the State Government is share holder in the co-operative societies with which the petitioners are associated. In paragraph 7 of the writ application it has been stated that the State Government continue to invest in the societies by contributing towards share capital of the societies. In paragraph 3 it has been stated that in comparison to the share capital worth rupees 19 crores invested by the Government of Bihar to the Society i.e. BISCOMAUN has properly nearly worth rupees 75 crores and that in the event of winding up the share capital of the Government is fully protected. In paragraphs 9 and 29 of C.W.J.C. No. 8249 of 1988 also there is statement by the petitioners themselves in regard to the share capital of the State. In view of these, the statement in the supplementary affidavit, rather belated, that the State Government held no share in any of the Society cannot be accepted.

48. My conclusions, therefore, are that the Ordinances were within the legislative competence of the State Government. They do not infringe Article 19(1)(c) or 19(1)(g) of the Constitution. The provision to control the co-operative societies by nominating Directors or members of the Managing Committee is not arbitrary or unreasonable. The Ordinances are not colourable pieces of legislation. There is no conflict between the avowed objectives and the real objectives of the Ordinances. The Ordinances are not mala fide.

49. After six days of the hearing when Mr. Govind Das was almost concluding his argument and about to assume his seat, an affidavit was filed by him sworn by Narendra Kumar, petitioner in C.W.J.C. No. 8455 of 1988 making some assertions of facts. Since the affidavit had been filed too late and the Matter could not be adjourned to enable learned Advocate General to file reply to the counter affidavit, we have not taken into account the affidavit filed on behalf of Narendra Kumar. the filing of an affidavit at that stage is against the Patna High Court Rules. It is not done in this Court. 50. For all the reasons stated above, I find no merit in these applications. Bihar Ordinances Nos. 17 of 1988 and 24 of 1989 are valid pieces of legislation. These four writ applications to declare them ultra vires

must fail and are dismissed accordingly with costs. Hearing fees Rs. 500/- (Rupees five hundred) payable by each of the petitioners to the State Government.

S. Shamsul Hasan, J.

51. I agree.

Binodanand Singh, J.

52. I agree.