

(1969) 12 KAR CK 0003

In the Karnataka High Court

Case No : Writ Petition No's. 5861 and 6584 of 1969

The Chitradurga District Co-operative Central Bank Ltd.,
Chitradurga and Another

APPELLANT

Vs

The State of Mysore and Others

RESPONDENT

Date of Decision : 12-12-1969

Acts Referred:

Mysore Co-operative Societies Act, 1948 — Section 121, 29 (1), 42, 44, 47

Citation : AIR 1971 Kar 37 : (1970) 1 MysLJ 328

Hon'ble Judges : Ahmed Ali Khan, J;A. Narayana Pai, J

Bench : Division Bench

Advocate : H.B. Datar, S. Udayashankar, R.M. Patil and V.H. Ron, for the Appellant; P.K. Shyamasundar, Government Advocate, for the Respondent

Judgement

A. Narayana Pai, J.—The petitioners in these two writ petitions are Co-operative Societies. In both the writ petitions, the challenge is to the exercise by the State Government of the power conferred upon it by Section 54 of the Mysore Co-operative Societies Act 1959, in respect of two Co-operative Societies. As the nature of the challenge and the arguments in support of it are same, the two petitions have been heard together.

2. The Society concerned in Writ Petition No. 5861 is the Chitradurga District Co-operative Central Bank Limited, which will hereinafter be referred to as the Bank. The Society concerned in Writ Petition No. 6584 of 1969 is the Mysore State Silk Handloom Weavers' Central Co-operative Society Limited, Bangalore, which will hereinafter be referred to as the Weavers' Society.

3. In the case of the Bank, Notification No. DPC. 99 CCB. 69 (I) dated 9th October, 1969 was published in the Mysore Gazette Extra-ordinary No. 478 on 9th October, 1-969. The text of the Notification is as follows:

"S. O. 2080.-- Whereas State aid amounting to not less than two lakhs of rupees is given to the Chitradurga District Co-operative Central Bank Ltd., Chitradurga,

in the form of subscription to the share capital of the said bank and guarantee to loans taken by the said bank;

And whereas the State Government is satisfied that it is necessary in public interest to exercise control over the conduct of business of the said bank and to modify the provisions of Section 29 of the Mysore Co-operative Societies Act 1959, and the Bye-laws of the said bank to enable the State Government to nominate eleven persons as its representatives on the Committee of Management of the said Bank including the President:

Now, therefore, in exercise of the powers conferred by Sections 54 and 121 of the Mysore Co-operative Societies Act, 1959 (Mysore Act 11 of 1959) and all other powers enabling it in this behalf, the Government of Mysore hereby directs-

(1) that the State Government shall have the right to nominate the person who shall hold the office of the President of the Committee of Management of the Chitradurga District Co-operative Central Bank Ltd., Chitradurga, and ten other persons as members of the Committee of Management, who shall be subject to the control of the Government;

(2) that the State Government shall have the right to determine by order, the salary and allowances payable by the said bank to the person nominated as President;

(3) that the Sub-section (1) of Section 29 of the Mysore Co-operative Societies Act, 1959 (Mysore Act 11 of 1959) shall apply to the Chitradurga District Co-operative Central Bank Ltd., Chitradurga, subject to the following modifications, namely:--

That for the words "have the right to nominate as its representatives not more than three persons or one-third of the total number of members of the Committee of the Co-operative Society, whichever is less" occurring in Sub-section (1) of Section 29, the words "have the right to nominate as its representatives eleven persons as members of the Committee of the Co-operative Society of whom one shall be the President" shall be substituted;

(4) (a) that the bye-laws of the Chitradurga District Co-operative Central Bank Ltd. Chitradurga, shall stand amended as follows:--

(1) .in Bye-law 20, for item (5) of Clause (a), the following item shall be substituted, namely:--

"(5) eleven Directors nominated by the State Government";

"(ii) in Bye-law 25, for the words "The members of the Board shall elect from among themselves a President and Vice-President", the words "the President shall be nominated by the State Government from among the Directors nominated by the State Government and the members of the Board shall elect from among themselves a Vice President" shall be substituted;

(iii) for Bye-law 30, the following bye-law shall be substituted, namely:

"30. There shall be an Executive Committee consisting of:--

1. The President
2. The Vice-President,
3. Three persons nominated by the President from among the Directors nominated by the State Government,
4. One Director elected by the Board."

"(b) that the other bye-laws of the said bank shall in so far as they are Inconsistent with the provisions of this order have no effect.

(No DPC 99 CCB 69 (1)) By order and in the name of the Governor of Mysore,

N. Narasimha Rau, Secretary to Government, Development, Housing, P. Raj and Co-operative Department." The same day, another Notification No. DPC. 99 CCB 69 (II) was published nominating eleven persons to the Board of Directors of the Bank.

4. The Bank filed Writ Petition No. 5861 of 1969 on 13th October, 1969. It was admitted on the following day and interim stay of the Notification was also granted.

5. In the case of the Weavers" Society, Notification No. DPC 129 CIM 69 dated 7th November, 1969 was published in the Mysore Gazette dated 15th November, 1969- The text of that Notification is as follows:

"Whereas State aid amounting to not less than two lakhs of rupees is given to Mysore State Silk Handloom Weavers" Central Co-operative Society Ltd., Bangalore, in the form of subscription to the share capital of the said society and guarantee to loans taken by the said society;

And whereas the State Government is satisfied that it is necessary in public interest to exercise control over the conduct of business of the said Society and to modify the provisions of Section 29 of the Mysore Co-operative Societies Act, 1959, and the bye-law of the said society to enable the State Government to nominate thirteen persons as its representatives on the Committee of Management of the said Society, including the President;

Now, therefore in exercise of the powers conferred by Sections 54 and 121 of the Mysore Co-operative Societies Act, 1959, (Mysore Act 11 of 1959) and all other powers enabling it in this behalf, the Government of Mysore hereby directs:--

(1) that the State Government shall have the right to nominate the person who shall hold the office of the President of the Committee of Management of the Mysore State Silk Handloom Weavers" Central Co-operative Society Ltd., Bangalore, and twelve other persons as members of the Committee of

Management, who shall be subject to the control of the Government;

(2) that the State Government shall have the right to determine by order the salary and allowances payable by the said Society to the person nominated as President;

(3) that Sub-section (1) of Section 29 of the Mysore Co-operative Societies Act, 1959 (Mysore Act 11 of 1959), shall apply to the Mysore State Silk Hand-loom Weavers" Central Co-operative Society Ltd., Bangalore, subject to the following modifications namely:--

That for the words "have the right to nominate as its representatives not more than three persons or one-third of the total number of members of the Committee of the Co-operative Society, whichever is less" occurring in Sub-section (1) of Section 29, the words "have the right to nominate as its representatives thirteen persons as members of the Committee of the Co-operative Society of whom one shall be the President" shall be substituted;

(4) (a) that the bye-laws of the Mysore State Silk Handloom Weavers" Central Co-operative Society Ltd., Bangalore, shall stand amended as follows:

(1) in bye-law 24-

(i) for Clause (a), the following clause shall be substituted, namely:--

"(a) The Management of the Society shall vest in a Board of Directors consisting of 25 persons of whom 13 shall be officers nominated by the State Government. The remaining 12 shall be representatives of the affiliated societies. The President shall be nominated by the State Government. The Board of Directors shall elect from among themselves a Vice-President."

(ii) in Clause (b), the words "President and" shall be omitted;

(2) for bye-law 28, the following bye-law shall be substituted:

"28. Executive Committee: Subject to the control of the Board of Directors, the entire administration of the Society shall vest in an Executive Committee consisting of:--

(1) the President,

(2) the Vice-President,

(3) the Joint Director of Industries and Commerce and Ex Office Joint Registrar of Industrial Co-operatives in Mysore, Bangalore.

(4) the Deputy Registrar of Co-operative Societies, Bangalore District, and

(5) one person elected by the Board of Directors from among the elected directors."

(b) that the other bye-laws of the Society shall in so far as they are inconsistent

with the provisions of this order have no effect.

By order and in the name of the Governor of Mysore,

Sd/- N. J. Gorepeerzade, 7-11-69, Deputy Secretary to Government, Dev., Housing, P. Raj and Co-operative Department."

As in the case of the Bank, another Notification No. DPC. 129 CIM-69(ii) dated 7th November, 1969 nominating 13 persons to the Board of Directors of the Society was published on the same day, i. e., 15th November, 1969.

6. The Society presented Writ Petition No. 6584 of 1969 on 15th November, 1969. It was admitted on 17th November, 1969 and interim stay of the Notification was also granted.

7. In both the Writ Petitions, the respondent-State Government took out applications to vacate the interim stay, Orders were made on those applications directing that the Writ Petitions themselves be posted for hearing during the first week of December, 1969.

8. The contentions raised in both these Writ Petitions are the following:--

(1) Sections 54 and 121 of the Mysore Co-operative Societies Act, 1959, are ultra vires and unconstitutional, the former because it vests the State Government with arbitrary power uncontrolled or unguided by any statement of principles or conditions, and the latter because it involves unconstitutional delegation to the Executive Government of essential legislative functions;

(2) The exercise of power u/s 54 is subject to judicial review and in the present cases, such review will disclose that the power has in fact been exercised arbitrarily;

(3) The power to nominate the President cannot be acquired by modification of Section 29 pursuant to Section 121 of the Act;

(4) In any event, Section 121 does not empower the Government to amend or modify the bye-laws of Societies and therefore, the notifications, to the extent they purport to modify or amend the bye-laws are invalid; and

(5) Because the power of modification u/s 121 can be effectively exercised only by an order actually published in the Official Gazette, any power pursuant to such modifications can rightly be exercised only by a subsequent notification, and not by a notification published simultaneously with the first named notification.

9. The first contention is covered by a Bench ruling of this Court in Venkata Naidu v. B. C. C. Stores (1967) 2 Mys LJ 256 : AIR 1967 Mys 203. In that decision, this Court has upheld the constitutional validity of both Sections 54 and 121 of the Act. It was pointed out therein that by virtue of the express provisions of Section 55, those of Sections 42 to 54 contained in Chapter VI of the Act are to have effect notwithstanding anything inconsistent therewith contained either

in the Act or in any other law for the time being in force, and also that the provisions of Section 29 limiting the power of the Government to nominate its representatives on the Managing Committee of any society are expressly made subject to any notification or order for the time being in force issued or made u/s 54 or 121.

In rejecting the contention that there has been any unconstitutional delegation of essential legislative functions u/s 121, this Court applied the principles stated by the Supreme Court in the case of *Delhi Laws Act In" re AIR 1951 SC 332*, as explained by Vivian Bose, J. in *Rajnarain Singh Vs. The Chairman, Patna Administration Committee, Patna and Another*, . Mr. Datar, however, contended that the said view may require reconsideration in view of the observations of the Supreme Court in the case of *Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others*, and in the case of *Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union*, .

We do not accept the contention. In the case of *Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others*, the legislative provision impugned therein was struck down on the ground that the power given to the State Government thereunder was uncontrolled by any criteria or standards or principles on which the power could be exercised -- Vide Paragraph 34 of the Judgment at page 568 of the Report.

In the case of *Jalan Trading Company*, the impugned section authorised the Government to determine for itself what the purposes of the Act are and to make provisions for the removal of doubts and difficulties which, their Lordships pointed out, clearly constituted a delegation of legislative power beyond the permissible limits. Such is not the case with Section 121 of the Co-operative Societies Act. As pointed out by the Bench of this Court in the case of *Venkata Naidu* already cited, the modification permitted by Section 121 does not involve any change in the legislative policy of the Act or any change in the essential character of the Act, but that it related to matters of detail or matters ancillary or incidental to one of the expressly stated purposes of the Act.

10. We see therefore no reason to depart from the said Bench ruling of this Court which is binding on us.

11. The first contention is therefore rejected.

12. Taking up the second contention for consideration, we shall first set out the full text of Section 54. It reads as follows:--

"Where State aid amounting to not less than two lakhs of rupees is given to any co-operative society, the State Government, if it is satisfied that it is necessary in public interest so to do, may by notification in the official Gazette take power to exercise such control over the conduct of business of such society as shall suffice

in the opinion of the State Government to safeguard the interests of the State."

The Section occurs in Chapter VI dealing with "State aid to Co-operative Societies" containing Sections 40 to 55. Section 40 places upon the Government the duty to encourage and promote co-operative movement. Section 41 empowers the Government to subscribe directly to the share capital of co-operative societies and Section 42 to provide funds to any society for the purchase of shares of another society. Sections 43 to 52 deal with connected matters. Section 53 sets out other forms of State aid, such as granting of loans, guaranteeing debentures issued by Societies, guaranteeing share-capital or dividends thereon of societies, guaranteeing loans and advances made to co-operative societies and other financial assistance in any other form including subsidies.

We have already stated that Section 55 gives the overriding effect to the provisions of Sections 42 to 54.

13. The language of Section 54 makes it perfectly clear that the power thereunder is to be exercised in public interest, and that the control over the conduct of business of the society should be such as is sufficient in the opinion of the State Government to safeguard the interests of the State. The context suggests that public interest mentioned in the section is the interest which the public undoubtedly have in safeguarding the interest of the State which, in the setting of Chapter VI, means the security or safety of aid given to the society from out of public funds.

14. Prima facie, therefore, the exercise of that power is dependent upon existence of circumstances which expose public funds placed in the hands of co-operative societies to the risk or danger of being lost or frittered away or diverted to purposes other than those for which they were made available to the society in the light of the policy of the statute set out in Section 40 and connected sections.

15. Mr. Shyamsundar on behalf of the Government Advocate, however, contends that both the question whether the necessary circumstances exist as well as the question whether and if so, what sort of control should be imposed on the conduct of business of any society in question are matters exclusively placed within the subjective satisfaction of the State Government and that therefore they are not subject to judicial review at all. He relies upon two rulings of the Supreme Court,--one in the case of Province of Bombay Vs. Kusaldas S. Advani and Others, , and the other in the case of Joseph Kuruvilla Vellukunnel Vs. The Reserve Bank of India and Others, .

16. This line of argument is controverted by Mr. Datar for the Bank. He relies on three rulings of the Supreme Court, viz., The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, : Rohtas Industries Vs. S.D. Agarwal and Others, ; and an unreported Judgment of the Supreme Court dated 2-9-1969 in Civil Appeals Nos. 488 and 489 of 1969 (since reported in Rampur

Distillery and Chemical Co. Ltd. and Another Vs. Company Law Board and Another, .

17. The particular provision considered by the Supreme Court in the case of Province of Bombay Vs. Kusaldas S. Advani and Others, was Section 3 of an Ordinance for requisition of lands which reads:--

"If, in the opinion of the Provincial Government, it is necessary or expedient to do so, the Provincial Government may by order in writing requisition any land for any public purpose."

The main question discussed in the case was whether the power conferred by the said provision of the Ordinance was a judicial or quasi-judicial power amenable to writ of certiorari, or a purely executive power. It was held that the decision of the Government about the public purpose is a fact which the Government has to ascertain or decide and that any such decision contained no judicial element in it. In that view, it was further held that the condition precedent to the exercise of the power of requisition is not the factual existence of any public purpose but the subjective opinion of the Government as to whether such a purpose exists. Finally it was held that on a proper construction of Section 3 of the Bombay Ordinance, there is no doubt that the said section left it to the Provincial Government to form its own opinion on the entire matter whether it was necessary or expedient to requisition any land for public purpose and to act upon that opinion.

18. The case in Joseph Kuruvilla Vellukunnel Vs. The Reserve Bank of India and Others, dealt with the constitutionality of Section 38 of the Banking Companies Act, according to which if in the opinion of the Reserve Bank the continuance of a banking company is prejudicial to the interests of its depositors, the Bank may make an application to wind up such company and that the Court shall thereupon make an order for the winding up of the company. The argument that it was unconstitutional because it excluded the discretion of the Court u/s 433 of the Companies Act was repelled on the ground that all that the Section did was to place within the competence of the Reserve Bank the decision on a particular issue and that the Reserve Bank was an institution which can be trusted to act reasonably.

19. In neither of these cases was the question of the type now posed before us raised or discussed. In both the cases there were dissenting judgments. But in the third case cited by Mr. Datar, the question whether judicial review exists in the case of sections like the one with which we are now concerned and if so, what the scope of such review should be, has been elaborately discussed.

20. In the case of The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, the section considered was Section 237 of the Companies Act which empowers the Central Government to appoint inspectors to investigate the affairs of the company if certain circumstances exist-The position in regard to judicial review is set out in paragraph 10 of the judgment which reads as

follows:--

"(10) Once it is conceded that the formation of an opinion by the Board is intended to be subjective--and if the provision is constitutional which in our view it is--the question would arise, what is that about which the Board is entitled to form an opinion? The opinion must necessarily concern the existence or non-existence of facts suggesting the things mentioned in the several sub-clauses of Clause (b). An examination of the section would show that Clause (b) thereof confers a discretion upon the Board to appoint an Inspector to investigate the affairs of a company. The words "in the opinion of" govern the words "there are circumstances suggesting" and not the words "may do so". The words "circumstances" and "suggesting" cannot be dissociated without making it impossible for the Board to form an "opinion" at all. The formation of an opinion must, therefore, be as to whether there are circumstances suggesting the existence of one or more of the matters in Sub-clauses (i) to (ii) and not about anything else. The opinion must of course not have been arrived at mala fide. To say that the opinion to be formed must be as to the necessity of making an investigation would be making a clear departure from the language in which Section 237(b) is couched. It is only after the formation of certain opinion by the Board that the stage for exercising the discretion conferred by the provision is reached. The discretion conferred to order an investigation is administrative and not judicial since its exercise one way or the other does not affect the rights of a company nor does it lead to any serious consequences as, for instance, hampering the business of the company. As has been pointed out by this Court in *Raja Narayanlal Bansilal Vs. Maneck Phiroz Mistry and Another*, the investigation undertaken under this provision is for ascertaining facts and is thus merely exploratory. The scope for judicial review of the action of the Board must therefore be strictly limited. Now, if it can be shown that the Board had in fact not formed an opinion its order could be successfully challenged. This is what was said by the Federal Court in AIR 1943 75 (Federal Court) and approved later by the Privy Council. Quite obviously there is a difference between not forming an opinion at all and forming an opinion upon grounds which if a Court could go into that question at all, could be regarded as inapt or insufficient or irrelevant. It is not disputed that a Court cannot go into the question of the aptness or sufficiency of the grounds upon which a subjective satisfaction of an authority is based. But, Mr. Setalvad says, since the grounds have in fact been disclosed in the affidavit of Mr. Dutt upon which his subjective satisfaction was based it is open to the Court to consider whether those grounds are relevant or are irrelevant because they are extraneous to the question as to existence or otherwise of any of the matters referred to in Sub-clauses (i) to (iii)."

Hidayatullah, J., who delivered the judgment in the case of *Joseph Kuruvilla Vellukunnel Vs. The Reserve Bank of India and Others*, depended upon by Mr. Shyam-sundar, also observed as follows in paragraph 27 of the judgment at page 309:--

"(27). These grounds limit the jurisdiction of the Central Government. No jurisdiction, outside the section which empowers the initiation of investigation, can be exercised. An action, not based on circumstances suggesting an inference of the enumerated kind will not be valid. In other words, the enumeration of the inferences which may be drawn from the circumstances postulates the absence of a general discretion to go on a fishing expedition to find evidence. No doubt, the formation of opinion is subjective but the existence of circumstances relevant to the inference as the sine qua non for action must be demonstrable. If the action is questioned on the ground that no circumstances leading to an inference of the kind contemplated by the section exist, the action might be exposed to interference unless the existence of the circumstances is made out. As my brother Shelat has put it trenchantly:

"It is not reasonable to say that the clause permitted the Government to say that it has formed the opinion on circumstances which it thinks exist....."

Since the existence of "circumstances" is a condition fundamental to the making of an opinion, the existence of the circumstances, if questioned, has to be proved at least prima facie. It is not sufficient to assert that the circumstances exist and give no clue to what they are because the circumstances must be such as to lead to conclusions of certain definiteness. The conclusions must relate to an intention to defraud, a fraudulent or unlawful purpose, fraud or misconduct or the withholding of information of a particular kind. We have to see whether the Chairman in his affidavit has shown the existence of circumstances leading to such tentative conclusions. If he has, his action cannot be questioned, because the inference is to be drawn subjectively and even if this Court would not have drawn a similar inference that fact would be irrelevant. But, if the circumstances pointed out are such that no inference of the kind stated in Section 237(b) can at all be drawn the action would be ultra vires the Act and void."

21. Shelat, J., with whom Hidayatullah, J. agreed, distinguished the judgment in the said case of *Joseph Kuruvilla Vellukunnel Vs. The Reserve Bank of India and Others*, of the judgment and pointed out that the basis of the previous decision was that the factual background for the opinion will not be one of suspicion and that the action will be based on concrete facts and proceeded to observe as follows:--

"Though the words used were "in the opinion of", the opinion, though exclusively of the Reserve Bank, was dependent on the determination by it of the aforesaid issue. Therefore, the words, "reason to believe" or "in the opinion of" do not always lead to the construction that the process of entertaining "reason to believe" or "the opinion" is an altogether- subjective process not lending itself even to a limited scrutiny by the Court that such "a reason to believe" or "opinion" was not formed on relevant facts or within the limits or as Lord Radcliffe and Lord Reid called the restraints of the statute as an alternative safeguard to rules of natural justice where the function is administrative."

22. In the case of Rohtas Industries Vs. S.D. Agarwal and Others, , there is a discussion of questions relating to Section 237 of the Companies Act and in that connection a discussion of the other decided cases. Ultimately, the Court stated its conclusion in the following terms:

"..... For the reasons stated earlier we agree with the conclusion reached by Hidayatullah and Shelat, JJ. in The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, , that the existence of circumstances suggesting that the company's business was being conducted as laid down in Sub-clause (1) or the persons mentioned in Sub-clause (2) were guilty of fraud or misfeasance or other misconduct towards the company or towards any of its members is a condition precedent for the Government to form the required opinion and if the existence of those conditions is challenged, the courts are entitled to examine whether those circumstances were existing when the order was made. In other words the existence of the circumstances in question is open to judicial review though the opinion formed by the Government is not amenable to review by the courts. As held earlier the required circumstances did not exist in this case." Having stated the law in these terms, their Lordships formulate the next question for consideration as follows at the beginning of paragraph 40:

"Next question is whether any reasonable authority much less expert body like the Central Government could have reasonably made the impugned order on the basis of the material before it."

Having examined the material and the circumstances the Court held that the opinion was not sustain able.

23. In the unreported decision of the Supreme Court in Civil Appeals Nos. 488 and 489 of 1969 = (Since reported in Rampur Distillery and Chemical Co. Ltd. and Another Vs. Company Law Board and Another, dealing with Section 326 of the Companies Act, the court stated the position of law as follows:--

"Investment of that power carries with it a duty to act judicially: i. e. to hold an enquiry in a manner consistent with rules of natural justice, to consider all relevant matters, to ignore irrelevant matters, and to reach a conclusion without bias, without predilection and without prejudice. The satisfaction contemplated by Section 326 must therefore, be the result of an objective appraisal of the relevant materials."

24. We have occasion to examine the meaning and effect of words such as "reason to believe" while discussing the constitutionality of the power of search and seizure u/s 132 of the Income Tax Act in the case of C. Venkata Reddy v. Income Tax Officer 9 Law Eep 262 : AIR 1969 Mys 118. After referring to the various cases, including the decision of the Supreme Court in Civil Appeal No. 562 of 1965 = (Since reported in S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore, which was then unreported, dealing with the meaning of the words "reason to believe" in Section 34 of the Income Tax Act of 1922, we summarised the position as follows: (Paragraph 85 of the judgment-page 296 of

the report).

"What the High Court has to examine in such a case would be whether there was in fact information in possession of the Commissioner and whether there is rational connection between the information and the belief entertained by him. As already explained by us, the information itself will have to be (of) a fairly reliable character -- whatever may be the source of it, -- because unless the information is of such a character, it cannot furnish a reasonable basis for entertaining the belief that any of the circumstances mentioned in the section exists. Secondly, the information must have relevant bearing on the formation of the belief and must not be extraneous or irrelevant to the purposes of the section. If the High Court is satisfied on these two matters, the adequacy or sufficiency of the meaning and effect of words such as "reason to believe" while discussing the grounds will not be a matter for the High Court to investigate."

25. The ultimate effect of all these decisions is that where power is conferred upon the State Government or any "such authority to be exercised in certain circumstances or on the basis of certain opinion the conferment of the power itself carries with it the duty to act reasonably so as to subserve the object with which the power is conferred and without exposing anyone to consequences which may be condemned as unjust or improper in the circumstances.

26. Now, in the case of Section 54 of the Mysore Co-operative Societies Act the object with which the power is conferred on the State Government is the necessity of safeguarding the interest of the State, which, as we have already pointed out, means the necessity of preventing public funds placed in the hands of co-operative societies from being lost or misapplied. Hence, there must first exist circumstances from which it appears or from which reasonable inference can be drawn that there is such a danger to public funds as described above. The opinion of the Government that it is necessary to impose control must also disclose a rational connection between the circumstances found by it to exist and the necessity of imposing control. This necessarily leads to the further proposition that the opinion to impose control must be based on circumstances which are relevant and must not have been influenced by or based upon irrelevant or extraneous considerations.

27. With a view to see whether such is the case in the matters now before us we have looked into the original files placed before us, because, the counter-affidavits filed on behalf of the State contained only the substance of the material stated in justification of the opinion entertained by the Government as to the necessity of imposing control.

28. In the case of the Bank, there are not only minutes or proceedings of State Level Review Committee at its meeting held on 18th July, 1969, presided over by the Minister for Cooperation and attended also by a senior officer of the Reserve Bank of India, but also a detailed report by the Registrar of Co-operative Societies. The circumstances and facts set out in these documents leave no room

in our opinion for any doubt that the situation was such that imposition of control was almost inevitable.

It is seen that the officer of the Reserve Bank considered the position of the Bank to be so bad that it would be undesirable if not impossible for the Reserve Bank to provide any further financial assistance to the Bank. The various short-comings and irregularities in the management of funds noticed and listed by the Registrar in his report also make it clear that if the Bank is permitted to function normally without special control being imposed u/s 54 of the Act large public funds would be in danger of being lost.

It is not disputed that the Government have not only subscribed over seven lakhs of rupees towards share capital of the Bank but also guaranteed loans to the Bank to the tune of over fifty-five lakhs. In these circumstances we are clearly of the opinion that there is no reason to doubt the existence of the circumstances relied upon by the Government before taking action, that the Government have applied their mind to the circumstances and that the opinion of the Government that control should be exercised is quite a reasonable one.

29. In the case of the Weavers Society there is a report of the special auditor deputed under orders of the Government in view of the reported unsatisfactory working of the Society and several complaints against some of its directors and officers. It is seen from the said report, which is very detailed, that there was a case of virtual embezzlement of funds. Even in the reply affidavit filed on behalf of the petitioner.

It is found stated that out of about twenty lakhs of rupees received from the Government and lent by the Society to subsidiary societies, as much as eleven lakhs is still uncollected and there is no denial of the fact set out in the counter-affidavit on behalf of the Government that the Society has not made any repayment towards the advances made by the Government.

The fact that the present Board of Directors was elected recently and that the said Board cannot be held responsible for the short-comings of the previous management is no answer because action u/s 54 is not intended to be punitive as against the management or any member of the Management but is motivated by the necessity of imposing control for safeguarding public funds placed in the hands of the Society.

30. In this case also we are satisfied that circumstances involving grave risk to the safety of public funds did exist that the Government had applied their mind to the said circumstances and that their opinion that imposition of control is necessary is quite a reasonable one.

31. The third contention that there is no power to nominate a person as President is sought to be supported on a ruling of this Court in S. D. Kampana Reddy v. State of Mysore (1966) 1 Mys LJ 243. Section 29 of the Act considered in the said judgment is the unamended section as it stood before the amendment

carried by Act 40 of 1964. By the said amendment the provisions of that section limiting Government's power to nominate members to the committee of management was expressly made subject to any notification or order issued or made u/s 54 or 121. Further this very question was considered by the subsequent Bench ruling in (1967) 2 Mys LJ 256 : AIR 1967 Mys 203. The court expressly holds that Section 29 can competently be modified u/s 121 so as to empower the Government to nominate the President also with a view to make the control u/s 54 effective.

32. This contention, therefore, also fails.

33. The fourth contention that there is no power u/s 121 to modify the bye-laws is based on the language of the section itself. The section reads as follows:

"121. Power to exempt societies.--The State Government may, by general or special order published in the official gazette, exempt any co-operative society or any class of societies from any of the provisions of this Act or may direct that such provisions shall apply to such societies or class of societies with such modifications as may be specified in the order."

On the language of the section there can be no doubt that the power of modification given is in respect of the provisions of the Statute itself and not in respect of the bye-laws. So far as the bye-laws are concerned there are separate provisions in the Statute (vide Sections 12 and 115) providing for their modification either by the society itself or by the Government on the recommendation of the Registrar. The rules made u/s 129 also provide for details of procedure for amendment of the bye-laws by the societies.

34. But this conclusion that bye-laws cannot be directly amended by acting u/s 121 is not sufficient to dispose of the matter now before us. It should be remembered that the power u/s 54 is power to control management of the affairs of the society. In normal circumstances constitution of management and the exercise of powers is provided for in the bye-laws. Section 2 (b) of the Act defines "committee" to be the governing body of a co-operative society, by whatever name called, to which the management of the affairs of the society is entrusted. Under R. 5, made u/s 129, enumerating the various matters which can be dealt with by bye-laws, one of the matters which may be provided for by the bye-laws is the powers and duties of the committee and officers.

As Section 54 provides for imposition of control on management and as the said provision is given overriding effect by Section 55, the control imposed u/s 54 will have effect notwithstanding anything that may be inconsistent therewith contained in the bye-laws. In other words when that power is taken legitimately and properly u/s 54 the provision made by the relevant notifications for the exercise of that power excludes the bye-laws to the extent they may be inconsistent therewith and will remain inoperative during the currency of the control imposed u/s 54.

35. That is also the view taken in Venkata Naidu's case (1967) 2 Mys LJ 256 : AIR 1967 Mys 203. In that case, however, the amendments dealt with were those consequential upon the very power taken, namely, the power to nominate additional members to the board or committee of management. There is no indication in the judgment whether there was any amendment of the bye-laws in the notification there considered which may be said to confer additional power and not a mere consequence of the power already taken.

36. In the notification with which we are concerned the power expressly taken in the earlier paragraphs is the power to nominate the President and certain number of members to the managing committee and the power to prescribe the salary and allowances of the nominated President. Then follow the modification of Section 29 to provide for the nomination of a larger number of persons than are permitted under section 29 as it stands in the Statute. Thereafter there are certain amendments which are clearly consequential upon that.

37. There is no power expressly taken with respect to the constitution or the variation or modification or the constitution of the executive committee. This matter is dealt with in bye-law No. 30 in the case of the Bank and bye-law No. 28 in the case of the Weavers' Society. The Government, instead of taking directly power u/s 54 to reconstitute the executive committee or to constitute it in any particular manner, merely purport to substitute a new bye-law in the place of bye-law No. 30 or 28 as the case may be. As the notifications stand what they purport to do is to amend these bye-laws. It cannot be said that the amendment is consequential upon a power specifically taken u/s 54 in earlier parts of the Notification. There is no alternative therefore but to hold that the amendment of bye-law No. 30 in the Notification applicable to the Bank, and the amendment of bye-law No. 28 in the case of the Weavers' Society, are incompetent and therefore, inoperative.

38. Lastly, there is the contention that because modifications u/s 121 come into force only upon publication of a notification to that effect in the Official Gazette, nomination of persons to the Board of Management pursuant to the same could not have been validly done by another notification published simultaneously with the first. We agree that for a modification u/s 121 to be effective, necessary notification must be published in the official gazette. But it does not follow therefrom that notification nominating persons by name or official designation to the committee pursuant to the power taken under the principal notification is ineffective for the reason that the second notification was published simultaneously with the first.

It is obvious that the first or the primary notification takes effect at the commencement of the day on which it is published. The subsidiary notification making nomination also takes effect at the same time. Hence when the power of nomination was exercised by the subsidiary notification, such power did exist because it had already come into existence by the publication of the first or the primary notifications.

39. A similar argument was addressed on the ground that action was attempted to be taken by the Government even before the publication of the notifications. In the case of the Bank we find that the publication was made by means of an extraordinary gazette on 9th October, 1969 itself. It is doubtful whether any action was taken prior to it. But in the case of the Weavers' Society, though the notification is dated 7-11 1969, it was published only on 15-11-1969. There may be some possibility of action being taken before 15th November. However, because of the orders of stay granted in both the writ petitions, whatever action the Government proposed to take was withdrawn and applications were made for vacating the stay. We did not vacate the stay but have heard the writ petitions themselves on merits. There is, therefore, no longer any room for complaint that action has been taken before actual publication. Action, if any, will have to be taken hereafter in the light of this order.

40. We, therefore, make an order in W. P. No. 5861 of 1969 quashing the impugned Notification No. DPC.99 CCB. 69(1) dated 9th October, 1969 only to the extent it substitutes new bye-law for the existing bye-law No. 30 of the Bank. In other respects the notification will stand.

41. We make a similar order in W. P. No. 6584 of 1969 quashing Notification No. DPC. 129 CIM 69, dated 7th November, 1969 only to the extent to which it purports to substitute new bye-law No. 28 for the existing bye-law No. 28 of the Weavers' Society. In other respects the notification will stand.

42. Subject as aforesaid, both the Writ Petitions are hereby dismissed.

43. In both the writ petitions, parties will bear their own costs.