
(1991) 09 AP CK 0001

In the Andhra Pradesh High Court

Case No : W.Ps. No's. 5931, 6814, 7500, 9230 and 9539 of 1991

Toguru Sudhakar Reddy

APPELLANT

Vs

The Govt. of A.P. and others

RESPONDENT

Date of Decision : 16-09-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(1), 15(3), 15(4)

Citation : AIR 1992 AP 19 : (1991) 3 ALT 173

Hon'ble Judges : M.N. Rao, J;Eswara Prasad, J

Bench : Division Bench

Advocate : M.V. Ramana Reddy, V.S. Vidyasagar, K. Ramashnatha Reddy, D.V. Bhadram, A. Vishnuvardhan Reddy and M. Ravindra Nath Reddy, for the Appellant; Advocate-General and Govt. Pleader for Co-operation, for the Respondent

Judgement

M.N. Rao, J.

1. As all the writ petitions are interconnected, they are disposed of by this common judgment.
2. By these writ petitions the constitutionality of the Andhra Pradesh Co-operative Societies (Amendment) Act 10 of 1971 and Rule 22(C) issued in G.O.Ms. No. 220, Food and Agriculture, dated 20th March, 1991 and Rule 22(A) (3)(a) issued in G.O.Ms. No. 224, Food and Agriculture, dated 20th March, 1991, are challenged.
3. In the year 1987 elections were held to the Managing Committees of the Co-operative Societies in the State. The term of office of the managing committees at that time was five years. By an Ordinance issued on 30th June, 1990, the term of the managing committees was reduced to three years, as a consequence of which, almost all the managing committees ceased to exist. In order to fill the void, the Government issued various orders appointing Officers as persons-in-charge. Challenging the same, a batch of writ petitions, W.Ps. Nos. 8783 of 1990

and batch, was filed in this Court. By the judgment dated 18th September, 1990, a Division Bench of this Court upheld the Ordinance, but quashed the various G.Os. by which Officers were appointed as persons-in-charge. Act 13 of 1990 was passed by the Legislature of Andhra Pradesh replacing the Ordinance. Challenging the Act 13 of 1990 on the ground that it had effect of overruling the aforesaid Division Bench judgment, Writ Petition No. 1076 of 1990 was filed in the Hon'ble Supreme Court and the same was disposed of with a direction to the Government to hold elections before December, 1990; the State Government also represented before the Hon'ble Supreme Court that they would hold elections to the managing committees of all co-operative societies. Questioning the Act 13 of 1990, Writ Petitions Nos. 17035 of 1990 and 28 of 1991 were filed in this Court and the same are now pending.

4. Chapter-IV of the Andhra Pradesh Cooperative Societies Act, 1964 comprising Ss. 30, 60, 54 before the heading "Management of Societies". S. 31 deals with Constitution of Committees. By the impugned Act 10 of 1991, a third proviso was added to S.31(l)(a) which reads:

"5. In S. 31 of the Principal Act.....

(i) in sub-section (1), in Cl. (a), after the second proviso, the following proviso shall be added, namely :--

"provided also that two women members shall be nominated by the Registrar to the Committee of such class of societies and in such manner as may be prescribed from among the women members of the general body of such societies, such nominated women members shall, notwithstanding anything contained in this Act, have the right to vote and otherwise to take part in the proceedings of the meetings of the Committee.

(ii) Sub-section (5) shall be omitted."

By Cl. (ii) of the Amendment Act, sub-sec. (5) of S.31(l)(a) was omitted. Originally, this provision was introduced by Ordinance 5 of 1991 dated 5th March, 1991 and the same was replaced by Act 10 of 1991. As a consequence of insertion of the third proviso to sub-sec. (1)(a) of S. 31, Rule 22-C was made by the State Government in G.O.Ms. No. 220, Food and Agriculture, dated 20th March, 1991 in exercise of their powers conferred by sub-sec. (1) of S. 130 of the Andhra Pradesh Cooperative Societies Act, 1964, which reads :

"22-C(1) Two women members shall be nominated by the Registrar to the following classes of societies, namely :--

- a) Primary Agricultural Co-operative Societies (including large size Co-operative Societies and Rural Banks);
- b) Weavers Co-operative Societies;
- c) Milk Co-operative Societies.

(2) No woman shall be nominated as a member of the Society unless she.....

a) is the member of the society;

b) is qualified in accordance with the provisions of the Act to be a member of the Committee;

c) holds land in the area of operation of the society, in case of nomination to Primary Agricultural Co-operative Societies, Large Size Co-operative Societies and Rural Banks.

(3) In addition to the qualifications specified in Cls. (a) and (b) of sub-rule (2), in the case of activity based societies, Weavers, Oilseeds Growers, and Milk Co-operative Societies, the women members to be nominated as members of the Committee shall be those who take part in the activities of the Societies as prescribed in the bye-laws :--

Provided that in the case of other societies also, preference shall be given to the women members who participate in the activities of Societies, for being nominated as members of the Committee."

5. On the same day, Rule 22-A(3)(a) was substituted by the following Rule :

"22-A(3)(a) In the case of Primary Agricultural Credit Societies including Large Sized Co-op. Credit Societies, Rural Banks and Farmers Service Co-op. Societies, the electoral roll shall be divided into as many parts as there are members to be elected and each such part shall be a constituency and where any members remain after such division, they shall be added to the last part. Members in each such constituency shall elect one member to the Committee :

Provided that where there are no members belonging to Scheduled Castes or Scheduled Tribes or Backward Classes in the Society and there is a consequent reduction in the number of members to be elected. The electoral roll shall be divided only into as many parts as there are members to be elected after such reduction in the number and the seat or seats intended for the aforesaid castes, tribes or classes shall be filled in the manner specified in sub-rule (6) of Rule 22-A".

6. Sri M. V. Ramana Reddy, who advanced leading arguments, has submitted that the insertion of third proviso to S.31(1)(a) is arbitrary. Art. 15(3) of the Constitution does not empower nomination of women in the manner done by the impugned proviso and, therefore, it is violative of Art. 15(1). If the third proviso to S. 31(1)(a) is to be struck down, the consequential R. 22-C(1) also must go as being arbitrary. Rule 22-A(3)(a) issued in G.O.Ms. No. 224, Food and Agriculture, dated 20th March, 1991 is outside the purview of the third proviso to S. 31(1)(a) and as it cannot stand independently, it must be quashed. Finally he contended that nomination of women to the managing committees is in the nature of reservation and as a consequence of the amendment to S. 31(1)(a), together with the nominated women members, the total number of reserved seats on the

Managing Committee would exceed 50% and, therefore, the same is arbitrary being violative of Art. 14. The general submission made by the learned counsel is that providing by legislation for nomination of members to the managing committees destroys the very basic concept of co-operative movement and, therefore, the impugned provisions must be struck down. Factionalism being rampant in the co-operative movement, the Government, with a view to retaining their hold over the societies brought in this legislation which will inevitably result in the faction supported by the ruling party retaining majority in every managing committee.

7. Shri Bhadram, learned counsel for the petitioners in W.Ps. Nos. 6814 and 7500 of 91, supplementing the arguments advanced by Shri Ramana Reddy, has contended that in the neighbouring States of Tamil Nadu, Kerala and Karnataka, although reservations are provided in favour of women, but the method of filling the posts is only election but not nomination and this was advisedly resorted to by those States as nomination is opposed to the basic idea underlying the cooperative movement.

8. In opposition to these submissions, the learned Advocate-General has contended that election is not the only norm upon which the Co-operative Societies Act rests; there are several provisions in the Act dealing with nomination of members to the managing committees of co-operative societies. There are certain types of co-operative societies --A. P. Backward Classes Finance Corporation, Scheduled Tribes Finance Corporation and Co-operative Sugar Factories -- the managing committees of which predominantly comprise nominated members. Right to form a co-operative society not being a guaranteed fundamental right, but only governed by the statute, the constitutionality of the impugned provisions cannot be successfully challenged. Only such rights which are specifically conferred by the statute, the members are entitled to exercise. In our country no appreciable progress was made by women in all fields and this is more conspicuous in the field of co-operation. Primary Agricultural Co-operative Societies and Milk Producers Co-operative Societies functioning in rural areas where women by reason of illiteracy and social backwardness coupled with the customs and restrictions imposed by the tradition-bound society are not in a position to participate in the elections to the managing committees of co-operative societies. It is the policy of the State to encourage women to participate in the co-operative movement and the Legislature felt that the best way to achieve this objective is to provide for nomination of women to the managing committees. It is a known fact that women have not reached the stage to compete in the elections and the Legislature thought that to safeguard the interests of women and to involve them into a greater measure in co-operative movement, appropriate provision should be made in the statute. Sufficient care was taken to provide for proper guidelines in the rules in order to avoid arbitrariness; the Registrar by Rule 22-C0) is empowered to nominate the women members to Primary Agricultural Co-operative Societies, weavers' Co-operative Societies and Milk Producers Co-operative Societies. Unless a woman is

already a member of the society and qualified in accordance with the provisions of the Act for membership of the managing committee, she is not eligible for nomination. Scope for misuse of the power of nomination is eliminated by conferring that power on the Registrar, who in the exercise of the power will not allow extraneous considerations to come into play and, therefore, there is no basis for any apprehension that the impugned legislation is a contrivance to achieve artificial majority in the managing committees.

9. Before considering the contentions raised by the counsel for both sides, we think it proper to advert briefly to the genesis of the co-operative movement.

10. Co-operative movement was born in the West Industrial Revolution had brought about untold misery to vast segments of the society; the existing social structure was shattered and as capitalism gained its stronghold, poverty increased enormously. To combat the evils of capitalism and restore the faith of the people to improve their lot by collective organisation, co-operative movement as a new philosophy was conceived. It was an answer to the injustice of capitalism and a defensive bullwork against exploitation of the weak by the economically powerful sections. Neither the Indian Co-operative Societies Act, 1912 nor the Andhra Pradesh Co-operative Societies Act, 1964 define the expression "co-operation". It is, therefore, necessary to refer to text book writers and experts in the field of co-operation as to what is meant by co-operation.

11. The famous British Political Philosopher John Stuart Mill expressed the view :

"Co-operation is the noblest ideal. It transforms human life from a conflict of classes struggling for opposite interests to a friendly rivalry in the pursuit of the common good of all." (See Dr. B. S. Mathur, Co-operation in India, p. 2.) -

Co-operation is an economic organisation with a social content. He defined co-operation as :

"a form of organisation wherein persons voluntarily associate together as human-beings on a basis of equality for the promotion of the economic interests of themselves."

12. According to V. L. Mehta, a renowned co-operator, co-operation is :

"a vast movement which promotes voluntary associations of individuals having common needs to combine towards the achievement of common economic ends." [Ibid, PP. 7-8]

13. How co-operative societies fostered self-reliance and contributed towards material advancement was graphically described by David A. Morse, a former Director General of the International Labour Organisation :

"Co-operatives have helped rationalize distribution patterns, increase purchasing power, promote consumer protections, narrow the housing gap. They have contributed to the modernization of small-scale production in agriculture, fisheries, handicrafts and industry. They have made improved quality and greater

volume of production and have led to more efficient marketing of increased output. They have stimulated productive capital formation among large number of individuals. In a wider sense, co-operative growth has thus become an effective stimulant to economic growth." [Ibid p. 11]

Co-operatives are the most important type of voluntary organization prevailing throughout the world. In our country 98% of the villages and 62% of the total rural population are covered by co-operative movement.

14. The locus standi of the petitioners in these writ petitions is that being members of the concerned co-operative societies their right to seek election for membership of the managing committee and thereafter to the office of President was adversely affected because of the changes brought about by the impugned legislation in the composition of and the method of election to the managing committees.

15. We shall deal first with the general submission made by the learned counsel for the petitioners that the method of nomination is destructive of the basic objective of the co-operative movement. An incidental specific contention which slides into the larger submission is that members of the committee shall be elected by the general body alone; in other words, there is no place on the committee for any nominated member.

16. In the judicial review of the constitutionality of a statute two aspects assume relevance : (1) whether the law-making body . has legislative competence to pass the impugned law; and (2) whether the impugned law is in breach of the fundamntal rights or any other provisions of the Behram Khurshed Pesikaka Vs. The State of Bombay, ; Bhikaji Narain Dhakras and Others Vs. The State of Madhya Pradesh and Another, ; M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another, . With reference to general or abastract notions no judicial review of legislative action is permissible. This is a basic and well settled legal principle. The only ground which is seemingly a general one based upon which a provision in a statute can be quashed is that it is contrary to the basic objective of the statute. Every enactment has certain purposes to serve and objectives to achieve. If any provision of an enactment is irreconcilably at variance with the objective the statute seeks to achieve, it can be struck down on the ground that it cannot subvert or destroy the ratio legis. In the light of the above, the contention advanced by Shri Ramana Reddy has to be tested.

17. The Andhra Pradesh Co-operative Societies Act, 1964 was enacted to consolidate and amend the law relating to the cooperative societies in the State of Andhra Pradesh. By S. 132 of the Act certain enactments in force in the Andhra and Telangana regions of the State of Andhra Pradesh. The Antthra Pradesh (Andhra Area) Co-operative Societies Act, 1932, the Andhra Pradesh (Andhra Area) Co-operative Land Mortgage Act, 1934 and the Andhra Pradesh (Telangana Area) Co-operative Societies Act, 1952 were repealed. By S.2(b) "Committee" is defined "as the governing body of a society to which the

management of the society is entrusted." "General Body" is defined by Cl. (g) as meaning "all the members of the society." "Registrar" is defined by Cl. (n) as the "Registrar of Co-operative Societies appointed under S. 3(1) and includes any other person on whom all or any of the powers of the Registrar under this Act are conferred." "Society" is defined by Cl.(p) as a "Cooperative society registered or deemed to be registered under the Act." S.4(1) lays down that a society which has, as its main object, the promotion of the economic interests of its members in accordance with the co-operative principles, or a society established with the object of facilitating the operation of such a society, may be registered under this Act. Sub-sec. (2) confers power on the Registrar and obligates every society to function subject to the directions issued by the Registrar in the interest of the co-operative movement or the public interest or in order to prevent the affairs of the society from being conducted in a manner detrimental to the interest of the members or of the depositors or creditors thereof. S.6 deals with application for provisional registration of a society. S.7(1) confers power on the Registrar to provisionally register a society and its bye-laws if the application conforms to requirements laid down in Cls. (a) to (d) of that subsection. If the Registrar is not satisfied, he is obligated by sub-section.(2) to communicate by registered post the order of refusal together with the reasons thereof to the applicants within the prescribed time. Sub-section (4) says that the members of the committee shall submit to the Registrar an application for final registration of the society. Sub-section (5) specifies the documents that should accompany an application. If the prescribed conditions are satisfied, the Registrar is empowered by subsection (6) to register the society and its bye-laws. If he is not so satisfied he is required to communicate by registered post the order of refusal together with the reasons to the applicants. Sub-section (7) says that after the society is registered by the Registrar under sub-sec. (6), a committee be constituted in accordance with the rules or bye-laws. By S. 9 every registered society becomes a body corporate by the name under which it is registered and it will have a perpetual succession and a common seal. It acquires legal personality of its own. S. 15 confers power on Registrar to direct division or amalgamation of societies in the interests of the societies or of the co-operative movement. S. 15-A says that for ensuring economic viability for avoiding overlapping or conflict of jurisdictions or for securing proper management of any society or in the interest of co-operative movement or for any other reason in the public interest, the Registrar may amalgamate or merge any society with any other society or divide and restrict or transfer the area of operation of a society or to liquidate a society. The procedure to be followed when that power is exercised also is laid down in that section. S. 16 deals with amendment of bye-laws of a society. Sub-sec.(1) lays down that no amendment of any bye-laws of a society is valid unless the amendment has been registered under the Act. Every proposal for such amendment is required to be forwarded to the Registrar who if satisfied that the proposed amendment fulfils the conditions specified in sub-sec. (1) of S. 7 will register the amendment (sub-sec. (2)). The registered amendment shall be forwarded by the Registrar to the society with a certificate signed and sealed by him and that certificate shall be

the conclusive evidence that the amendment has been duly registered (sub-sec. (3)). Sub-sec. (4) imposes a duty on the Registrar to communicate by registered post the order of refusal together with reasons in case he is not satisfied with the proposal for amendment.

Sub-sec. (5) confers power on the Registrar to compel a society to make any amendment which in the opinion of the Registrar is in the interest of the society or of the co-operative movement. What are the requirements to be eligible for membership are laid down in S. 19. The disqualifications for membership of a society are specified in S.21. S.21-A specifies the disqualifications for membership of the managing committee. S.21-C which was omitted by Act 10 of 1991 restricted the term of office of the Committee President for two consecutive terms only. Cl. (3) of Explanation to 21-C clarifies that the "committee" means "an elected committee." S. 23 deals with the power of general body to expel a member who acted adversely to the interests of the society. S. 25 deals with the right to vote and a manner of its exercise. By sub-sec. (2) nominated members of the Committee also have a right to vote while participating in the affairs of the society. The proviso to sub-sec. (2) lays down that the nominated members shall not participate in or vote at any election. The proviso to sub-sec. (4) also makes the position clear; it forbids a Government officer from either participating in or voting at any election. Chapter IV comprising Ss. 30 to 34 deals with management of societies. S. 30 bears the heading "Ultimate authority of a society." Sub-sec. (1)(a) says that subject to the provisions of the Act, Rules and the Bye-laws, the ultimate authority of a society shall vest in the general body. S. 31 confers power on the general body of a society to constitute a committee in accordance with the Bye-laws and entrust the management of the society to such committee.

18. From the above conspectus of the relevant provisions of the Co-operative Societies Act it is fairly clear that election is not the sole foundation on which the superstructure of a society rests. Before a body comes into being as a Co-operative Society it must have as its main objective the promotion of economic interests of its members in accordance with the co-operative principles, (S. 4).

19. The Act does not lay down what are the co-operative principles. Eversince the cooperative movement was born, organisation sprung up in different countries to improve the economic lot of the people through cooperative principles. Depending upon the nature of the organisation the principles varied in different countries. It is not possible to embark upon an enquiry into this aspect; no arguments have been advanced before us on this general aspect. According to an Indian author :

"By the co-operative principles are understood a set of rules which govern the life and the activity of the co-operative organizations. Actually they make the co-operative economy what it is an economy of the people, by the people and for the people. It is by the application of its own principles that the cooperative economy is distinct from the capitalist economy the economy of capital, by

capital and for capital and from the communist economy -- the economy of State, by the State and for the State." [B. S. Mathur, Op. cit., p. 16]

20. The same author after observing that there is no unanimity as to what the co-operative principles are and even in the interpretation or application of the commonly recognised co-operative principles there is considerable diversity, summarised the views expressed in 1966 by the Commission appointed by the International Co-operative Alliance :

(1) The membership of a co-operative society should be voluntary; (2) The society is a democratic society members enjoy equal rights of voting (one member one vote) with a right to participate in the decision affecting the society. The administration of the society should be by persons elected or appointed in a manner agreed to by members and accountable to them; (3) Share capital should only receive a strictly limited rate of interest; (4) Surplus or savings, if any, arising out of the operations of the society should be distributed to the members in such a manner as will avoid one member gaining at the expense of other; (5) All co-operative societies should make provision for the education of their members, officers, and employees in the principles and techniques of co-operation; (6) All co-operative organizations, in order to serve the interests of their members in the best possible manner should extend active cooperation in every practical manner with cooperatives at local, national and international levels. [Ibid 20]

These general principles only provide basic guidelines for starting a co-operative society. How it should be started, in what manner it should be started, the method of organising it, the manner of administering it, the degree of accountability and the extent of control over its affairs are all matters governed by the statute. When a question arises as to whether a particular principle comes into play in the administration of the affairs of a society, the only course open to the Court is to examine the provisions of the statute to discern whether that particular principle is incorporated in the statute either affirmatively or by necessary implication. If the answer is in the negative, the Court must rule without embarking upon an academic exercise, that the society is not governed by the alleged cooperative principle. None of the co-operative principles discernible from the provisions of the Act lays down that the committee which manages the affairs of a society shall consist of only persons elected by the general body. The power of the general body to constitute a committee is not absolute; sub-sec. (1)(a) of S. 31 imposes an important restriction viz., the Constitution of the committee by the general body shall be "in accordance with the Bye-laws" of the society. Bye-laws means by Cl. (a) of S. 2, the registered bye-laws for the time being in force. At the time of the original registration it is incumbent on the part of the applicants to submit to the Registrar the proposed bye-laws of the society and those Bye-laws shall not be contrary to the provisions of the Act and the Rules, (Ss. 6(2)(a) and 7(1)(d)). The general body's power to amend the bye-laws are not unlimited. Unless an amendment of

any bye-law is registered by the Registrar under sub-sec. (2) of S. 16 and a certificate to that effect is issued under sub-sec. (3).no amendment of any bye-law shall be valid. The Registrar is made the final arbiter to decide what type of bye-laws a society should have. Sub-section (5) of S. 16 confers this power on the Registrar. If the Registrar is of the opinion that it is necessary or desirable in the interests of a society or of the cooperative movement to amend the bye-laws of the society he may call upon the society to make an amendment proposed by him within the specified time. If the society refuses to comply with that direction, the Registrar is empowered, after giving the society an opportunity of making its representation, to register the amendment and forward to the society a copy of the amendment together with a certificate signed by him and that certificate shall be conclusive evidence that the amendment has been duly registered. Therefore, if the Registrar is of the opinion that the bye-laws of a co-operative society should provide that certain percentage of members to the managing committee shall be chosen by nomination and the rest by election, the general body cannot resist that move. There is no co-operative principle discernible from the provisions of the Act laying down the proposition that the general body shall choose the members to the managing committee only by election.

21. Co-operative society being a creature of the statute -- A.P, Co-operative Societies Act, 1964 -- no limb of the society can claim any power or assert any jurisdiction not provided under the Act, Rules or the Bye-laws. No member of a society as a fundamental right to seek election to the managing committee; that right is circumscribed by the statute. Right to seek election, it is settled law, is not a fundamental right but a statutory right [vide *Jumuna Prasad Mukhariya and Others Vs. Lachhi Ram and Others*, . A Full Bench of this Court in *Kaamareddy Suryanarayana and Another Vs. The District Co-operative Officer-cum-Election Officer, The West Godavari Co-operative Sugars Ltd. and Others*, ruled :

".....the right to form a co-operative society under a Co-operative Societies Act is not a fundamental right. It is a right given under the Act subject to its provisions and the Rules framed thereunder."

In *Daman Singh and Others Vs. State of Punjab and Others*, it was held :

".....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 apprehended not."

It was also rule in the above case :

".....Once a person becomes a member of a co-operative society, he loses his individuality qua the society and he has no independent rights except those given to him by the statute and the bye-laws. He must act and speak through the society or rather, the society alone can act and speak for him qua rights or duties of the society as a body."

Sub-section (1)(a) of S. 30 makes the position very explicit. It says :

"Subject to the provisions of this Act, the rules and the bye-laws, the ultimate authority of a society shall vest in the general body."

Sub-section (1)(a) of S. 31 says :

"The general body of a society shall constitute a committee in accordance with the bye-laws and entrust the management of the affairs of the society to such committee."

It will be observed that the power of the general body to constitute a committee under sub-sec. (1)(a) of S.31 is subject to the restrictions laid down in sub-sec. (1)(a) of S. 30. In other words, the power of the general body to constitute a committee shall be in accordance with the provisions of the act, the rules and the bye-laws. There is no warrant for the presumption that the words "shall constitute a committee" necessarily mean that the committee shall be constituted by election. In P. Ramanatha Aiyar's The Law Lexicon, 1987 Edition at p. 231 the word "constitute" is described as meaning :

"To Constitute, Appoint, Depute; The act of choosing some person or persons for an office is comprehended under all these terms; constitute is a more solemn act than appoint, and this than depute : to constitute is the act of a body; to appoint and depute, either of a body or an individual : a community constitutes any one their leader; a monarch appoints his ministers; an assembly deposes some of its members. To constitute implies the act of making as well as choosing; the office as well as the person is new....."

Election is not the only meaning of the word "constitute". It is an accepted principle of interpretation that words take their meaning in the context in which they occur. The legislative intendment in the present context is clear and unambiguous. The second proviso to S. 31(1) clearly says that :

"where the bye-laws so provide, the Government or the Registrar may nominate all or any of the members of the committee for such period as may be specified therein."

The composition of the Committee and the method of choosing its members depends upon the provisions of the Act, the Rules and the Bye-laws.

22. Sub-sec. (5) of S.31, before the impugned Act 10 of 1991 came into force, provided that the President of every Primary Co-operative Society shall be elected by the members of the "general body from among themselves in the manner prescribed. The President so elected shall be an ex-officio member of the Managing Committee. This sub-sec. (5) was omitted by sub-sec. (2) of S. 5 of the impugned Act. The contention advanced by the learned counsel for the petitioners is that as the election is the very foundation of the co-operative movement, the Legislature in its wisdom provided that the President shall be elected by the members of the general body. Omission of such a salutary provision would be destructive of the basic principles of co-operative movement. For reasons already stated, while discussing the question whether election is the

foundation on which the superstructure of co-operative movement was built, we reject this contention. When the Legislature has power to provide for election of the President by the members of the general body and when election is not the sole basis on which the office-bearers come into being under the provisions of the Act, it is futile to contend that omission of sub-sec. (5) of S.31 by sub-sec. (2) of S. 5 of the impugned Act, is in any manner unconstitutional.

23. Shri Ramana Reddy seeks to draw support to his submissions from certain precedents.

24. In *Ramakrishna Reddy v. Ragr. Coop. Societies* (1966) 1 A LT 184, a Division Bench of this Court had considered the question whether Bye-law 12 of Ramachandrapuram Co-operative Central Bank was repugnant to the Act and Rules. Jagan-mohan Reddy, J. (as he then was) speaking for the Bench while referring to the scheme of the Act, the constitution and the management of co-operative societies observed :

"Sec. 2(g) defines "general body" in relation to any society as meaning all the members of the society, and section 2(h) defines "General meeting" as meaning a meeting of the general body of a society, so that the constitution of the committee under S.31, if read with the definition of "general body" and "general meeting", would indicate without doubt that that committee has to be constituted by all the members of the society in a general meeting, as called u/S. 32."

The learned counsel laid great emphasis on the above observations and contended that all the members of the general body necessarily have to elect the members of the committee. This contention is untenable. The very next sentence in the above decision reads :

"It is also clear from sub-sec. (3) of S. 31 that the manner of election of the members of the committee shall be in accordance with the rules, which, in this case, is rule 22, which prescribes the procedure regarding the conduct of elections to the committees of societies."

At another place, the Division Bench observed while dealing with the provisions of S. 30 :

"Similarly, the provision in sub-sec. (2)(1) of S. 30 empowers all the members of the general body to elect the members of the committee, which can only mean all the members of the society electing all the members of the committee."

The above observations cannot be understood as laying down the proposition that only by the method of election the general body has to choose the member of the Committee. Such a construction is contrary to the specific language of sub-sec. (2) of S. 30 which reads :

"30. Ultimate authority of a society:--

(1) XX XX XX XX XX XX XX XX (2) Subject to the other provisions of this Act the following matters shall be dealt with by the general body :--

(i) election and removal of members of the committee;

(ii) to (xii) xx xx xx xx xx xx xx xx xx xx"

The powers of the general body as enumerated in els. (i) to (xii) of sub-sec. (2) are subject to the other provision of the Act. If the other provision of the Act imposes any restrictions on the method and manner of election of members of the managing committee, the general body cannot act contrary to those restrictions. This position has been accepted by the Division Bench when it ruled :

"Unless there is a specific prohibition in the statute itself, restricting or limiting the power of the general body, in which it has placed the supreme authority of the society, we will not be justified in inferring, implying or surmising a far-reaching restriction of that kind from merely the items of information which the notice for the general body is to contain."

In Sivaramaiah Choudary v. Guntur Dt. C.C. Bank (1966) 2 An WR 382 the scope of Ss. 2(b), (g) (h), 30(2), 31 and 32 (2) of the Act and Bye-law 12-A of the Guntur District Cooperative Central Bank fell for consideration. After referring to the definitions of "committee", "general body" and "general meeting" as contained in S. 2 and the language of Ss. 31 and 32 the Division Bench held :

"Reading the above provisions together, it becomes clear that the Act contemplates the existence of one general body and the election and removal of the members of the governing body of the society has to be by the general body."

At another place after referring to the provisions of Ss. 30 and 31 it was observed :

"Having regard to the definition of "general body" the provisions of S. 30(1), which say that the ultimate authority of the society vests in the general body, and the election and removal of the members of the committee has to be dealt with by that body as provided in cl. (2)(i) of S. 30, and in view of the fact that as S.31 contemplates only one general body, this provision in by-law 12-A that the directors shall be elected by the general body of the respective region, does offend the said provisions of the Act."

The above observations relate to the interpretation of the language of Ss. 30, 31 and 32 as they stood then. When there is no provision in the Act for more than one general body, a bye-law cannot bring into being more than one general body was the view taken by the Division Bench. The question whether election was the only method provided in the Act for choosing members of the committee by the general body did not arise for consideration before the Division Bench. Then does the election process completed under the provisions of the U.P. Co-operative Societies Act fell for consideration before the Supreme Court. In Ram Pyare Chaudhary and Another Vs. State of Uttar Pradesh and Others, . While dealing with the question the Supreme Court made certain general observations about the co-operative societies providing a training ground for parliamentary democracy and the sacrosanct nature of election process :

"Further, the elections to panchayats, cooperative societies and smaller local bodies provide an apotheosis or a training ground for success of our larger experiment of parliamentary democracy. Election process is sacrosanct."

Exemption of certain categories of co-operative societies from the provisions of S. 31 and R. 22 of the rules was considered by K. Ramaswamy, J. (as he then was) in *Muzti Co-op. Association v. State of A.P.* (1986) 2 A LT 695. The learned judge while considering the question of depriving the elected committees of their powers, observed :

"As stated earlier, democracy is the very essence of the co-operation for the reason that the co-operation would be failing if the principles of democratic control are not observed. The common economic need of the society is equal to all its members. Therefore, the will of the majority has to prevail in the working of the society. To achieve that end, the society shall be under the democratic control of its members. The management must rest in the members themselves and there should be no external interference except to the extent needed. The officers of the State are to guide with the expert and administrative guidance and counsel of the proper functioning of the society. Needless interference may prove detrimental to the working of the Co-operative Societies and the purpose for which they have been formed. The essential characteristic of a democratic form of Government is the governance of the people, by the people and for the people. Freedom of franchise is the valuable right which must not be destroyed or delayed and the working of the democratic machinery ought not to be suspended or unlawfully interfered with. The basic features of a democracy is that the sovereign power resides in the people as a whole and is exercised through the elected representatives. A democratic ideal will be delusive if a Government can stall its functioning of a society by delaying elections or not calling upon the general body to elect the members of the Committee. In such a contingency the democratic functioning remains suspended and all this has happened because of the remissness of the executive. When the elected representative is not entrusted with the right to manage his own affairs, the acts or omissions of the executive remains unrepresented, the wishes, the opinions and the interests of the electorate become mute and voiceless. The effective prevention of the democratic process by not conducting election is not a trite or a negligible omission. It cannot be lost sight of as trifling peccadillo or a mere trivial, or minutiae too trumpery to call for serious notice. The members of the society are entitled to the judgment, intelligent working out of their affairs, experience in that regard and guidance and counsel from their elected representatives. By not conducting the elections the executive is depriving the members of the society of their free will in the common pursuit and services of their elected representatives....."

What is the scope and extent of the functioning of a co-operative society was explained by the learned judge :

"Though the Co-operative Societies are homogeneous and autonomous bodies

within the frame-work of its bye-laws, they are not absolute in their terms in realisation of their common pursuits; and the interests and pursuit of individual member is subservient to the interests of the members as a body, by the common undertakings. They are bound by the provisions of the Act, Rules and the Bye-Laws."

It is clear that from the above two cases, Shri Ramana Reddy cannot derive any support. S.21-C, which was in force until it was omitted by Act 10 of 1991 by cl. (3) to the explanation clearly laid down :

"The Committee means an elected Committee."

Section 21-C related to restriction on consecutive holding of offices of member and President. The constitutionality of S. 21-C came up for consideration before a Full Bench in Kaamareddy Suryanarayana and Another Vs. The District Co-operative Officer-cum-Election Officer, The West Godavari Co-operative Sugars Ltd. and Others, . The contention that "Committee" meant only an elected committee was rejected by the Full Bench.

"The expression "committee" will take in both an elected committee and a nominated committee. If the legislature intended by the expression "committee" used there as meaning only an elected committee, they would have said so clearly."

We, therefore, hold that it is open to the Legislature to provide for nomination of members to the managing committees, and all the members of the committees need not necessarily be elected by the general body.

25. We find little merit in the submission made on behalf of the petitioners that with a view to capturing the co-operative societies in the State, the impugned legislation was brought in by the ruling party. No motives or bad-faith can be attributed to the legislature. K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa, and K. Nagaraj and Others Vs. State of Andhra Pradesh and Another, .

26. The extent of the powers to be exercised and the functions to be discharged by the societies spring from the statute, but not traceable to any guaranteed fundamental right in the Constitution when there is no legally enforceable co-operative principle that the management of a society shall be carried on by a restrictive representative body solely consisting of persons elected by the general body, we are unable to comprehend how the impugned provision providing for nomination of two women to the managing committees of co-operative societies suffers from the vice of arbitrariness forbidden by Art. 14 of the Constitution. Whether co-operative societies would function more effectively if they were managed by committees comprising solely elected members is a question outside the purview of judicial review. It pertains to the realm of policy and it is neither permissible for this court nor does it have the requisite expertise to examine that question.

27. Whether nomination of women to the managing committees of co-operative

societies is outside the purview of clause (3) of Art. 15 of the Constitution as contended by the petitioners? The Constitution makers were fully aware of the fact that in the Indian society woman was subjugated and, therefore, took care to incorporate in the Constitution not only guarantees ensuring equality of woman with man but also conferred upon the State, power to make special provision for women and children. Article 15(1) contains general provision relating to non-discrimination. It injuncts the State not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Clause (3) of Art. 15 enables the State, notwithstanding the prohibition of discrimination, to make special provision for women and children. Clause (3) has an overriding effect vis-a-vis the other provisions of Art. 15. In *Dattatraya Motiram More Vs. State of Bombay*, , certain provision of the Bombay Municipal Boroughs Act, 1925, pursuant to which four out of thirty five elected seats for the Jalgaon Municipality were reserved in favour of women, was unsuccessfully questioned. Chagla, C. J., speaking for the Division Bench observed (at pp. 313 and 314 of AIR):

"It is said that even today women are more backward than men. It is the duty of the State to raise the position of women to that of men. It is rightly urged that it would be very difficult for women to be elected if there was no reservation in their favour, and Govern- ment may well take the view that women are very necessary in local authorities because the point of view of women must be placed before the councillors before they decide any question affecting the Municipality."

28. The impugned law was sustained on the basis of Art. 15(3) by the learned Chief Justice observing (at p. 314 of AIR) :

"The proper way to construe Art. 15(3) in our opinion, is that whereas under Art. 15(1) discrimination in favour of men only on the ground of sex is not permissible, by reason of Art. 15(3) discrimination in favour of women is permissible, and when the State does discriminate in favour of women, it does not offend against Art. 15(1). Therefore, as a result of the operation of Art. 15(1) and Art. 15(3) the State may discriminate in favour of women against men, but it may not discriminate in favour of men against women. In this particular case, even if in making special provision for women by giving them reserved seats the State has discriminated against men, by reason of Art. 15(3) the Constitution has permitted the State to do so even though the provision may result in discrimination only on the ground of sex. Therefore, in our opinion, the legislation, we are considering does not offend against Art. 15(1) by reason of Art. 15(3)."

29. Realising the difficulty in assailing the impugned legislation on the ground of Art. 15(1), Shri Ramana Reddy has contended that if the objective was to safeguard the interests of women that could be achieved by providing for election instead of nomination. We are not inclined to agree. When the Constitution permits the State to make special provision for women, in what manner the interests of women should be safeguarded is not a matter for judicial

scrutiny. The impugned third proviso to Section 31(1)(a) empowers the Registrar to nominate to the committees of prescribed classes of societies two women from among the women members of the general body of such societies. The nominated members shall have right to vote and take part in the proceedings of the meetings of the committee. The consequential Rule 22-C(I) provides that two women members shall be nominated by the Registrar to the classes of societies specified therein. Unless a woman is already a member of the society and qualified to be a member of the managing committee, she cannot be nominated by the Registrar as a member of the managing committee. The power to nominate is conferred on the Registrar and the choice is confined only to the women members of the society. In our country, although co-operative movement gained immense popularity, the societies continue to be dominated by men. In rural areas illiteracy is rampant and women are very reluctant to participate in the co-operative movement. Even if they are admitted as members of co-operative societies, they are not in position to contest for any elective office. Election even if confined to women inevitably engenders bitterness. Presumably realising all these difficulties, the legislature thought that conferring power on the Registrar to nominate two women members of the general body to the managing committee would ensure participation of women in co-operative movement more effectively. This policy of the legislature, in our opinion, cannot be faulted. In this context it is apposite to refer to certain realistic averments in the counter-affidavit filed on behalf of the State Government :

"This amendment was introduced to give representation to the women in the managing committee of the societies. It is submitted that the National Convention on involvement of women in co-operative movement had suggested that 1/3rd of the seats be reserved to the women in the management committee of the societies. Even though there are women members in the societies, they are not coming forward to contest elections to the societies, which invariably involve serious campaigning on the basis of factional and political consideration. In order to encourage women to take active part in the management of the affairs of the society, the Act has been amended to provide for representation of women by nomination in the first instance..... The total number of membership in the society is stated to be 826. Out of these 826 members there are only 29 women members as affirmed by the petitioners. The managing committee of the society consists of 11 members. Barring a few exclusive societies managed by women like the Mahila Co-operative Super Bazars, the participation of women in the affairs of the co-operative societies in Andhra Pradesh has been minimal. There are very few women members who have contested elections at the village level to gain entry into the managing committee of the societies, and influence the decision making process of the committee. Appointment of women to the managing committee was therefore considered necessary to give proper representation to women to ensure that the benefits which accrue to the members of the cooperative societies are not cornered by the male members to the exclusion of the women members."

30. Whether the number of reserved seats in the managing committees should not exceed 50%? According to the learned counsel for the petitioners if the reservation exceeds 50% it is unconstitutional and they seek support to this contention from certain decisions of the Supreme Court which dealt with the question of reservations under Arts. 15(4) and 16(4) of the Constitution. In our view, the analogy of the decisional law pertaining to Arts. 15(4) and 16(4) to the present controversy is inappropriate. The safeguards in the form of protective measures engrafted in Arts. 15(4) and 16(4) in favour of Scheduled Castes, Scheduled Tribes and socially and educationally backward classes should not exceed more than 50 per cent of the total posts or seats open for selection or admission was the view expressed by the Supreme Court in *M.R. Balaji and Others Vs. State of Mysore*, . reservations in excess of 50% of the total would subvert the principle of merit and consequently violate the guaranteed fundamental rights under Arts. 15(1) and 16(1) is the legal position which has been reiterated in several rulings subsequent to Balaji's case. The principle of law enunciated in deciding the ambit and scope of the fundamental rights and the extent to which exceptions could be legally carved out has no relevance in deciding the legality of the structure and composition of a co-operative society for the self evident reason as already stated supra that right to form a society is not a fundamental right.

31. In paragraph 12 of the counter-affidavit it was stated that 50% of the seats in the managing committee have been reserved in favour of Scheduled Castes, Scheduled Tribes and Backward Classes and as the number of women members in the society is minimal, it was thought fit to provide nomination of women members. This averment no doubt gives the impression that the Government was of the view that reservation in excess of 50% may perhaps be not legally permissible. With reference to the notions entertained by the Government, the legality of a standing provision cannot be decided; the court must consider the question from all legal perspectives before pronouncing its verdict, A co-operative society being a creature of the statute, its composition will have to be in accordance with what the statute lays down. When the right to form a co-operative society is not a fundamental right the notions entertained by the Government as to the legality of composition of a managing committee of a co-operative society can never be decisive of the matter. In fact, the second proviso to Section 31 does not impose any restriction on the power of the Government or the Registrar to nominate all or any member of the committee if the by-laws so provide. Clause (b) of sub-section (1) of Section 31 says that in respect of the committees of societies other than those formed exclusively for persons belonging to Scheduled Castes, Scheduled Tribes or Backward Classes, as may be notified by the Government such number of seats as may be specified in the notification shall be reserved for the members of the weaker sections. The proviso to clause (b) says that in respect of Primary Agricultural Co-operative Credit Society and certain other societies mentioned therein.

"not more than one-half of the total number of seats to be filled by elected

members on the committee thereof shall be reserved to be filled by members of the Scheduled Castes, Scheduled Tribes and Backward Classes in the proportion of 2 : 1 : 2."

32. The limitation of 50% incorporated in this proviso is referable to the seats to be filled by elected members. In the computation of that number, seats earmarked for nomination purposes cannot be taken into account. In respect of the Primary Agricultural Co-operative Societies, one of the classes of societies with which we are concerned in these writ petitions, the managing committee consists of 13 members. Out of these 13, two women are to be nominated. Out of the remaining 11 seats 5 are reserved -- two in favour of the Scheduled Castes, 1 in favour of Scheduled Tribe and 2 in favour of backward Classes -- thus leaving six seats unreserved. Out of 11 seats to be filled by elected members if 5 seats are reserved, it cannot be said that the prohibition contained in the second proviso is breached.

33. We, therefore, reject the contention advanced on behalf of the petitioners in this behalf.

34. The most strenuously advanced argument of Sri Ramana Reddy relates to the legality of the third proviso to clause (a) of sub-section (1) of Section 31 inserted by the impugned Act providing for nomination of two women members to the committees of the prescribed societies. The argument runs along these lines: The impugned third proviso to clause (a) of sub-section (1) of Section 31 nullifies the effect of the main enacting provision contained in clause (a), which is in the following terms :

"The general body of a society shall constitute a committee in accordance with the bye-laws and entrust the management of the affairs of the society to such committee."

A proviso cannot nullify the main enacting clause and, if it does it must be struck down. The main enacting provision provides for election of members of the committee by the general body in accordance with the bye-laws. When the committee is statutorily conceived to come into existence by virtue of the main enacting provision, there cannot be a proviso in the nature of exception to such an enacting provision by providing for nomination of members to the managing committee. As nomination is antithetical to election, the proviso cannot survive and, therefore, it should go.

35. Resort to provisos in legislative enactments is beset with many difficulties. Several experts have expressed their un-happiness at the use of provisos in legislative drafting. According to George Code. :

"It is most desirable that the use of provisos should be kept within some reasonable bounds. It is indeed a question whether there is ever a real necessity for a proviso."(4)

E. A. Driedger said : (5)

"Notwithstanding its frequency or antiquity, the proviso is hardly more than a legal incantation. The best that can be said for it is that it is an all-purpose conjunction, invented by lawyers but not known to or understood by grammarians."

G. C. Thornton, an outstanding authority on Legislative Drafting, expressed the view : (6)

"Historically, the phrase "provided that" is a relic of the past when each enactment in a statute commenced with words of enactment.... Legal usage itself recognises differing grades of propriety for the proviso. In the first place, lawyers have accepted as correct and proper usage, a proviso which follows an enactment of general application and makes special provision inconsistent with that enactment for a particular case.... Frequently the purpose of a proviso is to exclude a special case from the operation of the general proviso without making further provision for that special case..... If the draftsman were concerned to communicate law only to lawyers, the use of lawyer's jargon would be acceptable. The draftsman, however, has a wider purposes in that the legislation he drafts should communicate effectively with all those members of society affected by the law, not only those who are familiar with practices whereby lawyers are wont to deviate from common speech. It is basic that legislation should not deviate from common speech patterns unless such a course is made necessary by special circumstances. The uses which lawyers make of the proviso never make this necessary and it is suggested therefore that all use of the proviso form be abandoned."

36. Before referring to the decisional law as to how a proviso should be construed, we are inclined to refer to the views of certain well-known authors. How a proviso should be constructed according to Craies : (7)

"The effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the proceeding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it; and such a proviso cannot be construed as enlarging the scope of an enactment when it can be fairly and properly construed without attributing to it that effect."

The learned author extracted the following view of Lush J in *Mullins v. Treasurer of Survey* (1880) 5 Q.B.D. 170, 173 :

"When one finds a proviso to a section, the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso."

What is the legal position if the proviso is repugnant to the main Act was considered by Craies :

"It sometimes happens that there is a repugnancy between the enacting clauses and the provisos and saving clauses. The question then arises, how is the Act, taken as a whole, to be construed? The generally accepted rule with regard to

the construction of a proviso in an Act which is repugnant to the purview of the Act is that laid down in *Att. Gen. v. Chelsea Waterworks* (1731) Fitzg. 195, namely, "that where the proviso of an Act of parliament is directly repugnant to the purview, the proviso shall stand and be a repeal of the purview, as it speaks the last intention of the makers." According to Maxwell :

"Difficulties sometimes arise in construing provisos. It will, however, generally be found that inconsistencies can be avoided by applying the general rule that the words of a proviso are not to be taken "absolutely in their strict liberal sense," but that a proviso is "of necessity.....limited in its operation to the ambit of the section which it qualifies." And, so far as that section itself is concerned, the proviso again receives a restricted construction; where the section confers powers, "it would be contrary to the ordinary operation of a proviso to give it an effect which would cut down those powers beyond what compliance with the proviso renders necessary. If, however, the language of the proviso makes it plain that it was intended to have an operation more extensive than that of the provision which it immediately follows, it must be given such wider effect. If a proviso cannot reasonably be construed otherwise than as contradicting the main enactment, then the proviso will prevail on the principle that "it speaks the last intention of the makers."(12th Edn. p. 189)

If there are two provisos in a section and if one of them is repugnant to the other, the one which is later in point of time prevails is the view taken by the Privy Council in *King v. Dominion Engineering Co.*AIR 1947 PC 94., which accords with the views expressed by Craies and Maxwell.

37. What is the effect of a proviso was the subject matter of plethora of judicial decisions. The Supreme Court speaking through Fazal Ali J. in *S. Sundaram Pillai and Others Vs. `R. Pattabiraman and Others*, held :

"The well established rule of interpretation of a proviso is that a proviso may have three separate functions. Normally, a proviso is meant to be an exception to something within the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. In other words, a proviso cannot be torn apart from the main enactment nor can it be used to nullify or set at naught the real object of the main enactment."

After reviewing the entire case law, the learned Judge summed up the legal position :

"To sum up, a proviso may serve four different purposes :

- (1) qualifying or excepting certain provisions from the main enactment;
- (2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable;
- (3) it may be so embedded in the Act itself as to become an integral part of the

enactment and thus acquire the tenor and colour of the substantive enactment itself; and

(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."

In *The Commissioner of Income Tax, Mysore, Travancore-cochin and Coorg, Bangalore Vs. The Indo Mercantile Bank Limited*, the Supreme Court held(atp.717of AIR):

"The proper function of a proviso is that it qualifier the generality of the main enactment by providing an exception and taking out as it were from the main enactment, a portion which, but for the proviso would fall within the main enactment. Ordinarily it is foreign to the proper function of a proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment."

Sometimes a proviso may be construed as an independent provision. In *State of Rajasthan Vs. Leela Jain*, Section 4(1) of the Rajasthan City Municipal Appeals (Regulation) Act, 1950 fell for consideration before the Supreme Court. An order passed by the president of the Municipal Council was set aside by the State Government in purported exercise of their jurisdiction under the proviso to sub-section (1) of Section 4. Section 4(1) reads as follows (at p. 1298 of AIR) :

"4. Second municipal appeals and revisions :

(1) Notwithstanding anything contained in any municipal law, no municipal appeal shall lie from any order passed in appeal u/s 3. Provided that the Government may, of its own motion or on the application of a Municipal Authority or of an aggrieved person's call for the record of any case for the purpose of satisfying itself as to the correctness, legality or, expediency of any order passed by a Commissioner or a Municipal authority and may pass such orders therein as the Government may consider fit and reasonable.

(2) Any municipal appeal from orders made in appeal by any officer or authority other than a Municipal authority, pending at the commencement of this Act, shall be transferred to the Government and be disposed of in accordance with the proviso to sub-section (1).

(3) The provisions of sub-section (4) of Section 3 shall mutatis mutandis apply also to appeals and applications under this section."

The High Court expressed the view that the Government had no jurisdiction to interfere under the proviso to section 4 with any order passed in appeal by the Municipality. That view was negated by the Supreme Court observing *State of Rajasthan Vs. Leela Jain*, :

"The primary purpose of the proviso now under consideration is, it is apparent, to provide a substitute or an alternative remedy to that which is prohibited by the main part of Section 4(1). There is therefore no question of the proviso carrying

out any portion out of the area covered by the main part and leaving the other part unaffected. What we have stated earlier should suffice to establish that the proviso now before us is really to a proviso in the accepted sense but an independent legislative provision by which to a remedy which is prohibited by the main part of the section, an alternative is provided. It is further obvious to us that the proviso is not coextensive with but covers a field wider than the main part of Section 4(1)."

The view expressed in *State of Rajasthan Vs. Leela Jain*, was cited with approval in *Hiralal Rattanlal Vs. State of U.P. and Another etc. etc.*, . In the latest decision of the Supreme Court in *U.P. State Road Transport Corporation and another Vs. Mohd. Ismail and others*, , interpreting the proviso to Regulation 17 (3) of the U.P. State Road Transport Corporation, the Supreme Court held that sometimes a proviso in effect becomes a substantive provision. Regulations 17(2) and 17(3) of the U.P. State Road Transport Corporation read as follows :

"17 (2) A person appointed to the post of driver, will be required to undergo medical test, particularly vision test, every year or at such intervals as may be prescribed by the General Manager from time to time.

(3) The service of a person who fails to pass the fitness test, referred to in the sub-regulation (2), may be dispensed with; Provided that the persons, whose services are so dispensed with may, in the discretion of the Corporation, be offered alternative job."

Interpreting the proviso to Regulation 17(3), the Supreme Court observed *U.P. State Road Transport Corporation and another Vs. Mohd. Ismail and others*, :

"The proviso with which are concerned in Regulation 17(3) does not carve out an exception from the general rule contained in the first branch. It is an independent and substantial provision providing discretion to the corporation to offer an alternative job to the retrenched driver. This offer is to be made after the exercise of power under the first branch Regulation 17(3). There is, therefore, no doubt that the second branch of Regulation 17(3) is a substantial provision and not in the nature of a proviso to first branch thereof.

We have not come across any ruling to the effect that if the proviso is contrary to the enacting clause, it must be struck down. As already noticed *supra*, the use of provisos in legislative drafting leads to several avoidable complications. What could be otherwise achieved without any difficulty, sometimes because of the fallibility of the draftsman, was made more complicated by insertion of provisos, but the Court has to interpret the same following the well accepted canons of interpretation. Section 31(1)(a), as it stands now, reads as follows :

"31 (1)(a) The general body of a society shall constitute a committee in accordance with the bye-laws and entrust the management of the affairs of the society to such committee :

Provided that in the case of a society registered after the commencement of this

Act the persons who have signed the application for the registration of the society may appoint a committee to conduct the affairs of the society for a period of one year from the date of provisional registration or for such further period ordinarily not exceeding six months as the Registrar may consider necessary; but the committee appointed under this proviso shall cease to function as soon as committee has been constituted in accordance with the bye-laws;

Provided further that where the bye-laws so provide, the Government or the Registrar may nominate all or any of the members of the committee for such period as may be specified therein.

(New proviso inserted by Act 10 of 1991.)

Provided also that two women members shall be nominated by the Registrar to the Committee of such class of societies and in such manner as may be prescribed from among the women members of the general body of such societies. Such nominated Women members shall, notwithstanding anything contained in this Act, have the right to vote and otherwise to take part in the proceedings of the meetings of the Committee."

38. It will be observed that the main enacting provision speaks of the general body's power to constitute a committee in accordance with the bye-laws and entrust the management of the affairs of the society to such committee. The first proviso is not relevant for our present controversy, since it relates to appointment of a committee for a period of one year from the date of provisional registration or for such further period as the Registrar may consider necessary. The second proviso lays down that where the bye-laws so provide, the Government or the Registrar may nominate all or any of the members of the committee for such period as may be specified therein. If the bye-laws of a society are silent, the Government or the Registrar cannot resort to nomination of members of the committee under the second proviso. The first and second provisos are not in conflict with what is laid down in the enacting provision. Exceptions carved out by the first and second provisos must necessarily accord with what is provided in the bye-laws of the concerned society. But when we come to the impugned third proviso, there is a marked departure. It confers power on the Registrar to nominate two women members to the managing committees of the prescribed societies. The power of nomination is not covered by the enacting clause; nor does the third proviso speak of power of nomination in accordance with the bye-laws. The third proviso is, therefore, no doubt at variance with what is contemplated by the enacting clause. On this basis, we are not inclined to set aside the proviso. As already stated by us, we have not come across any ruling in which a proviso at variance with the enacting clause was struck down.

39. We consider the impugned third proviso as an independent provision since it dispenses with resort to bye-laws for the purpose of nomination of women members. The express language employed in the proviso cannot be ignored by

us. The impugned third proviso ought to have been inserted by the draftsman as an independent provision and that would have avoided the present controversy. We have already referred to the views of the celebrated authors -- Craies and Maxwell -- on judicial decisions laying down that if the proviso is repugnant to the main enactment, it shall still stand. The decisional law referred to above lays down that a proviso sometimes has to be construed as an independent provision, (Vide : 1 Craies. 2. Maxwell. 3. U.P. State Road Transport Corporation and another Vs. Mohd. Ismail and others, and 4. State of Rajasthan Vs. Leela Jain, . A proviso sometimes can have the effect of substantially altering the main section as noticed in Hiralal Rattanlal Vs. State of U.P. and Another etc. etc., .

40. Another important aspect that must be noticed is that the impugned proviso being later in point of time to the enacting clause, it shall prevail. (See Craies on Statute Law, 1963 Edition at page 217). In King v. Dominion Engineering Company (AIR 1947 PC 94) (supra) the Privy Council considered the scope of Section 86(1) of the Special War Revenue Act, which is in the following terms :

"Where the point of time which the legislature has selected as in general the time for imposing, levying and Collecting the sales tax is the time of the delivery of the goods to the purchaser, the liability for the tax is not made dependent on the price being paid, for the goods may be delivered on credit and the purchaser may default in payment. Where price of the machine to be manufactured by the vendor was to be paid by instalments and the machine was to be delivered to the purchaser only on payment of all the instalments and on default by the purchaser in paying one of the instalments the vendor stopped manufacture of the machine which was never delivered to the purchaser the liability for tax on the instalments paid or to be paid does not arise at all under the general rules."

The second proviso it was found by the Privy Council qualified the main enactment and that it was repugnant to the first proviso. On the question which of the two provisos should prevail, Lord Macmillan speaking for the Privy Council observed (at p. 95 of AIR) ;

"If proviso 2 is repugnant in any way to proviso 1, it must prevail for it stands last in the enactment and so to quote Lord Tenterden C.J., "speaks the last intention of the makers" (1831) 2B Ad 818).

The legal principle stated by Craies found expression in the judgment of the Privy Council. The same is the fact situation in the present case. The impugned proviso being later in point of time, shall prevail although it is in conflict with the main enacting clause. The very fact that it is in conflict with the enacting clause makes it an independent provision despite its description as "proviso" by the draftsman. When the impugned proviso is legally sustainable, the consequential Rule 22C(1) is not afflicted with any legal infirmity and, therefore, we have no hesitation, to sustain its legality.

41. We shall now come to the question of the legality of Rule 22-A(3) (a) issued in G. O. Ms. No. 224 dated 20th March, 1991. The impugned rule, which is

already extracted supra, deals with division of electoral roll. It seeks to divide the electoral roll with reference to constituencies which comprise the territorial jurisdiction of the societies specified therein. The contention advanced on behalf of the petitioners is that the division of electoral roll in the manner sought to be done by the impugned Rule 22-A(3)(a) is directly in conflict with the provisions of Section 31(4)(a) and, therefore, it must be struck down. Another contention advanced is that when members of co-operative societies are spread over in different areas, it is not possible from a practical point of view to divide the electoral roll as per the constituencies.

42. We are not inclined to accept these submissions. Section 31(4)(a) says :

"For the purpose of electing members to its committee, a society may provide in its bye-laws, for the division of the area of operation of a society into territorial constituencies, or of the membership of the society into electoral groups on any other basis, for the member or proportion of members who may be elected to represent each such territorial constituency or electoral group on the committee, and for the matter of election of such representatives."

The contention which at first sight appears to be attractive is that unless provision is made in the bye-laws of the concerned society, the electoral roll should not be divided with reference to constituencies. On a close examination, we do not find any merit in this argument. The impugned rule was brought in as a substitute for the former one which provided for election of members of the committee by all the voters. The impugned rule accords with the statutory position as contained in Section 31 (2) (1-A) which is in the following terms :

"Notwithstanding anything in this Act or in the bye-laws of the societies referred to in Clause (b) of sub-section (1), the Government may, for the purpose of effective implementation of the reservation specified in clause (b) by rules made in this behalf, provide for the constitution of, and election to, the committees of such societies and all other matters relating thereto, including the division of constituencies, allocation of seats and the choice of persons belonging to weaker sections of the society as members of the committee of any central society from amongst the members of the committees of the societies affiliated to such central society, by the members of the central society in cases where no such person is a member of the general body of such central society."

Clause (b) of sub-section (1) of S.31 reads as follows :

"On the committee of such society or class of societies other than the societies formed exclusively for the persons belonging to the Scheduled Castes, Scheduled Tribes or Backward Classes as may be notified by the Govt. such number of seats as may be specified by them shall be reserved for the members of the Weaker Section."

The above provision confers power on the Government to notify the number of seats that may be reserved in favour of members of the Weaker Section in

respect of the committees of societies other than the societies formed exclusively for the persons belonging to the Scheduled Castes, Scheduled Tribes and Backward Classes. All societies other than the societies, the members of which exclusively belong to the Scheduled Castes, Scheduled Tribes and Backward Classes, are comprehended by Section 31 (1)(b) for purposes of classification in order to provide reservation. Power to constitute committees and division of constituencies is conferred on the Government by Section 31(2)(1-A). In respect of committees not covered by the notification issued u/s 31(l)(b), which automatically go outside the purview of the rule framed pursuant to the power conferred u/s 21 (2)(1-A) the Constitution of committees shall be in the manner indicated in the bye-laws of the societies. This conclusion clearly emerges from a reading of Rule 22-A(l) and (2) which reads as follows :

"22-A(1) : The constitution of the Committee of the societies notified under clause (b) of sub-section (1) of Section 31 or specified in the proviso thereunder shall be as indicated in the table.

Table omitted.

(2) The constitution of the committees of all other societies shall be in the manner indicated in the bye-laws of the respective societies subject to any notifications issued by the Government under Clause (b) of subsection (1) of Section 31 of the Act."

43. Sri D. V. Bhadram, learned counsel appearing for some of the petitioners, has advanced the contention that if the electoral rolls are divided on the basis of the territorial constituencies, it is very difficult for societies to function effectively. For obvious reasons, we cannot go into this question; the effectiveness or otherwise of the functioning of the society is outside the purview of judicial review in this batch of cases.

44. To sum up our conclusions are:

1) Act No. 10 of 1991 is a valid legislative measure designed to protect and promote the interests of women and ensure their participation more effectively in a greater measure in the Co-operative movement. Article 15(3) of the Constitution fully protects the impugned Act from challenges based on Articles 14 and 15(1). The consequential rule 22-C(l) issued in G.O.Ms. No. 220 dated 20-3-91 is also valid.

2) Right to form a Co-operative Society being only a statutory right and not a guaranteed fundamental right, no one can successfully invoke the aid of any assumed co-operative principle for challenging the validity of any law with respect to Co-operative Societies. The operation and application of co-operative principles must be within the four corners of the law no co-operative principle if in conflict with any provision of the statute, rule or bye-law can hold the field.

3) Election is not the exclusive norm or basic principle governing the functioning of Co-operative Societies. The structure of the societies, the composition of the

managing committees and how the seats thereof have to be filled are all matters governed by the statute, rules and bye-laws. If law provides nomination also as one of the modes of filling the seats of managing committees, it cannot be faulted.

4) The outer limit of 50% applicable to reservation of seats in educational institutions and posts in public services under Articles 15(4), 16(4) of the Constitution bears no analogy in judging the constitutionality of a law relating to composition and method of filling the seats of managing committees of Co-operative Societies.

5) The powers of the general body of a Cooperative Society are circumscribed by the provisions of the Act, rules and bye-laws. It has no inherent right to act in any manner it likes.

6) If a proviso is in conflict with the enacting provision it cannot be struck down, but must be construed as an independent provision.

7) If there are two or more provisos (to a section or sub-section or clause) and if one is in conflict with the rest, the proviso which is last in point of time shall prevail.

8) Division of electoral rolls of Co-operative Societies on the basis of territorial constituencies as envisaged in Rule 22-A(3)(2) of the Co-operative Rules issued in G.O.Ms. No. 224 dated 20-3-91 is valid. All Co-operative Societies other than those for the members of the Scheduled Caste/Scheduled Tribe/Backward Class are comprehended by Section 31(l)(b) and the source of power to constitute committees and division of constituencies in respect of such societies being S. 31(2) (1-A), the impugned Rule 22-A(3)(a) does not travel beyond the provisions of the statute and, therefore, it is intra vires.

45. For the foregoing reasons, all the writ petitions fail and they are accordingly dismissed. No costs.

46. Advocate's fee Rs. 350/-in eachcase.

47. Petitions dismissed.