
(1988) 02 PAT CK 0026

In the Patna High Court

Case No : C.W.J.C. No's. 5614 of 1986 and 461 of 1987

Vijay Kumar Mishra and Brij Bihar Kuwar and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 24-02-1988

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1989) 37 BLJR 420 : (1989) PLJR 846

Hon'ble Judges : S. Shamsul Hasan, J; Phani Bhushan Prasad, J

Bench : Division Bench

Judgement

S. Shamsul Hasan, J.—These two applications under Articles 226 and 227 of the Constitution of India, though of different hue, have their colour now mixed on the forensic canvass because to some extent one affects the other. Both these applications arise out of governmental action in the working of the Bihar State Housing Co-operative Federation Limited (hereinafter referred to as "the Federation") of which petitioner in C.W.J.C. No. 5614 of 1986 is the Chairman and petitioners in C.W.J.C. No. 461 of 1986 are the members. This Federation is a society within the meaning of Section 2(b) of the Bihar and Orissa Co-operative Societies Act, 1935 (hereinafter referred to as "the Act") and in common co-operative parlance is known as an apex society and in an affiliating society within the meaning of Rule 2(ii) of the Bihar Co-operative Societies Rules, 1959 (hereinafter referred to as "the Rules") having some societies as its members which come within the definition of Section 2(ggg) of the Act and are primary societies. According to Clause 30 of the Bye laws of the Federation, each affiliated or primary society is represented by a single nominee of the society known as delegate which constitute the General Body of the Federation.

2. Broadly speaking, the object of the Federation is to assist in the development of house building activities through primary co-operative societies by grant of loans or by its own construction. Basically, therefore, the activities of the Federation is promotional. A detailed description of the objective of the

Federation has been set out in Clause 3 of the bye-laws.

3. It is now beneficial to describe the assailed Annexures. In the former application (C.W.J.C. No. 5614 of 1986) Annexure 13 is impugned which is a report of the Registrar (Respondent No. 5) sent to the Government and the penetrating affect of Annexure 13 caused the birth of Annexure 14, a notification by which the Federation has been superseded. In the latter writ application (C.W.J.C. No. 461 of 1986). Annexure 6 is assailed which is the letter of the Registrar (Respondent No. 3 in C.W. J.C. No. 461 of 1986) certifying the compulsory amendment to the bye-laws of the Federation purported to have been made u/s 25 of the Act and Annexure 9 of C.W.J.C. No. 461 of 1987 and Annexure 19/A of C.W.J.C. No. 5614 of 1986 are the orders of the appellate authority, the Chief Minister, passed in an appeal preferred by the petitioner against Annexure 6.

4. The events that led to the impugned action may now be chronologically stated. By Annexure 4 of C.W.J.C. No. 5614 of 1986, a letter dated 28.10.1985 issued by the Managing Director of the Federation to the Registrar, 15.11.1986 was the date fixed for the annual general meeting of the Federation. A copy of the agenda of the meeting was also enclosed with this letter (Annexure 4) in which the election of the office bearer was on the card as item Nos. 5 and 6. On 13.11.1986 by Annexure 6 (C.W.J.C. No. 5614 of 1986) communication was received from the Registrar suggesting the amendments to the bye-laws and by Annexure 5, it was directed that item Nos. 5 and 6 of the agenda, that is, election of the office bearer of the Federation be postponed till the amendments are duly approved by the General Body. On 14.11.1986, the amendment to the bye-laws was approved by the Board of Directors in fanatic exercise of the power and thereafter communicated to the Registrar and the amendment was registered by the Registrar all on the same day. 4.12.1986 was the date fixed by the Registrar in his communication dated 13.11.1986 (Annexure 6 of C.W.J.C. No. 5614 of 1986) to hold a special general meeting for the purpose of considering the amendment. On 29.11.1986, a report was sent to the Government (Annexure 13 of C.W.J.C. No. 5614 of 1986) and then the impugned notification as contained in Annexure 14 to supersede the Federation was issued.

5. Another set of relevant dates are as follows :-On 25.12.1983 (vide Annexure 21) the amendment was suggested by one of the members of the general body Sri Rajo Singh. On this date, a sub-committee was formed to examine the amendment and submit a report to the General Body and to take necessary steps in the matter. It is said that the amendment effected by the Registrar was really the culmination of the steps taken in 1983 as a continued process. On 15.8.1985 (Annexure 17) some amendments were approved but the amendment to Clauses 30 and 31 were sent to the Board of Directors for consideration of the Board of Directors that would be elected on 15.11.1986.

6. For convenience, the relevant provisions of the Act, Rules and bye-laws may be set out at one place :-

2. Definitions.-In this Act, unless there is anything repugnant in the subject or context-

* * * * * (b) "Co-operative Federation" means a registered society the main object of which is to co-ordinate and facilitate the activities of other registered societies and to foster the growth of the co-operative movement;

* * * * * (ggg) "primary society" is a society of which no member is a registered society;

25. Amendment of the bye-laws of a registered society.-(1) No amendment of the bye-laws of the registered society shall be valid until the amendment has been registered under this Act.

(2) If the Registrar is satisfied that an amendment of the bye-laws is not contrary to the Act or to the rules, he may register the amendment.

(3) When the Registrar registers an amendment of the bye-laws of a registered society, he shall issue to the society a copy of the amendment certified by him, which shall be conclusive evidence that the amendment has been duly registered.

26. Power of Registrar to direct amendment of the bye-laws of a registered society.-(1) If it appears to the Registrar that an amendment of the bye-laws of a registered society is necessary or desirable in the interest of such society, he may, by order in writing to be issued to the society, by registered post, require the society to make the amendment within such time as he may specify in such order.

(2) If any society fails to make any such amendment within the time specified, the Registrar may, after giving the society an opportunity of being heard, register such amendment, and issue to the society by registered post a copy of the amendment, certified by him, which shall be conclusive evidence that the amendment has been duly registered, and such amendment shall be binding on the members of such society.

(3) An appeal shall lie to the State Government from any order of the Registrar passed under Sub-section (2) within two months from the date of the issue of such order. The order of the State Government on appeal and, subject to the result of such appeal, if any, the decision of the Registrar shall be final.

41. Supersession of managing committee.-(1) If in the opinion of the Registrar, the managing committee of any registered society is mismanaging the affairs of the society, he may, by order in writing after giving the managing committee an opportunity to state its objections, if any, dissolve [for any period not exceeding six months] the managing committee and order that all or any of its members shall be disqualified from being elected to the managing committee of the society for a period to be specified in the order not exceeding three years :

Provided that the Registrar (at his own instance) may from time to time extend the period specified in such order for further periods not exceeding one year at a

time, and not exceeding in the aggregate, two years :

(Provided also that the Registrar, in special circumstances by recording reasons and with the prior approval of the State Government, shall extend the period of supersession for a further period of seven years over and above the period prescribed in the first proviso) :

(Provided further that where the State Government deems it so expedient, it may, at- its own instance extend the period of such supersession by order in writing.) -

Every order of the Registrar under this sub-section shall state the reasons for which it is made and shall be communicated by registered post to the registered society concerned.

[(2) When a managing committee is dissolved under Sub-section (1), the Registrar shall appoint person or persons on such remuneration, if any, as he may fix, to carry on the business of the society and such person or persons shall, subject to any direction issued by the Registrar from time to time, exercise all the powers and perform all the duties which may under this Act, the rules and the bye-laws, be exercised or performed by the managing committee or any officer of the society :

[Provided that where the Registrar has superseded the managing committee at his own instance or has, with the prior approval of the State Government, extended the period of supersession beyond two years or, where the State Government finds it expedient, at its own instance, to extend the period of supersession beyond two years or where the managing committee of a society is deemed to have been superseded automatically under the provisions of the said Act, the State Government, if it deems fit, may nominate a managing committee for a period of six months, may reconstitute the same, and may also extend the term of such nominated managing committee upto the maximum period, prescribed for supersession but such extension shall not be done for more than six months at a time. In this nominated managing committee there will be seven persons residents of the area of operation of the society and who shall be competent for the same. Such nominated managing committee shall exercise all the powers of the managing committee u/s 14 of the said Act in accordance with direction issued by the Registrar from time to time with the approval of the State Government.]

(3) The Registrar shall, within such period from the date of the order under Sub-section (1) as may be prescribed by the rules, require such person or persons to call a general meeting of the society at such time and place at the headquarters of the society and to require the society to elect a fresh managing committee and to take into consideration such matters, as he may direct, and any meeting convened under this sub-section shall have all the powers of a general meeting convened under the bye-laws of the society.]

(4) Nothing in this section shall be deemed to affect the powers of the Registrar to order the winding up of a society u/s 42 or to cancel the registration of the society under Sub-section (8) of Section 44.

(5) An appeal shall lie from an order of the Registrar under Sub-section (1) to the State Government on application made by any member of the managing committee within three months from the date of communication of the order to the registered society concerned. The order of the State Government on appeal, and subject to the result of such appeal, if any, the order of the Registrar, shall be final.

(6) If on receipt of a report from the Registrar the State Government is of opinion that immediate dissolution of the managing committee of a co-operative society is essential in the interest of such society or of the co-operative movement in general or in order to prevent any apprehended mismanagement of society, then notwithstanding anything to the contrary contained in any other provision of this Act or any rule or bye laws made thereunder, the State Government may without giving to such Committee any notice by notification in the official Gazette, dissolve such managing committee, the members of which including the Chairman and other office-bearers thereof shall forthwith vacate their offices, and the State Government, shall appoint one or more Administrators to manage the affairs of such society for such period not exceeding six months at a time as may be specified in the order and may also by like order extend the period, so, however, that the total period of dissolution shall not exceed five years.

RULES

2. Definitions.-In these rules unless there is anything repugnant in the subject or context-

* * * * * (ii) "affiliating society" means a registered society of which another registered society is a member; and "affiliated society" means a registered society which is a member of an affiliating society;

* * * * * 15. Bye-laws of societies.-(1) A registered society shall subject to the provisions of the Act and these rules, made bye-laws in respect of the following among other matters, namely :-

(a) the area of its operation;

(b) the objects of the society and the ways and means of carrying out those objects;

(c) the purpose to which its funds are applicable, the manner in which capital may be raised, and the custody and investment of its funds;

(d) the qualification for admission to membership, the continuance of such membership and the condition of cessation of or expulsion from membership;

(e) the rights and liabilities of members, and the consequences of default in payment of any sum due by a member to the society;

(f) the mode of holding general meetings of the managing committee or any other committee of the society and the powers and duties which may be exercised and performed by such committee;

(g) the mode of appointment, suspension and removal of the members of the managing committee and of the officers of the society, and the duties and powers of the committee and officers; and

(h) the authorisation of any officer or officers of the society to sign documents on its behalf.

(2) If the objects of the society include the creation of funds to be lent to members, the society shall also make bye-laws in respect of-

(a) the purposes for which and the security on which loans may be granted;

(b) the maximum liability which the society may incur;

(c) the maximum limit of loan which may be advanced to a member;

(d) the terms and conditions shall to which loans may be granted and extension of time for re-payment;

(e) the maximum rate of interest of lending; and

(f) the disposal of profits and the maximum dividend payable on paid-up share capital.

(3) In case of a registered society having as its objects the purchase, sale, production or distribution of commodities and such other objects, the society may make bye-laws in respect of the mode of conducting the business of purchase, sale and stock-taking.

(4) A registered society may make bye-laws in respect of any other matter incidental to the management of its affairs.

16. Amendment of bye-laws.-A registered society may by a resolution adopted by a majority of two-thirds of its members present at a general meeting of which due notice has been given to the members, amend its bye-laws.

17. (1) An application for the registration of an amendment to the bye-laws shall be made within three months from the date of the general meeting at which the resolution in respect of the amendment was adopted; to the Registrar in Form VI and shall be accompanied by three certified copies of the resolution.

(2) On registration of the amendment, the Registrar shall retain one copy in his office, and issue a copy certified by him to the society concerned and another copy similarly certified to the affiliating society, if any, in Form VII.

(3) If the Registrar refuses to register an amendment, he shall send a copy of the order of refusal giving reasons thereof to the society concerned.

18. When the Registrar registers an amendment to the bye-laws of a registered society under Sub-section (2) of Section 26, he shall issue by registered post a copy thereof certified by him to the society concerned and the affiliating society, if any, in Form VIII.

19. The registered name of a society shall not be changed except by an amendment of its bye-laws and the Registrar may require the changed name to be such as he may direct.

GENERAL MEETING

20. General meeting.-The General meeting of a registered society shall be of three kinds, viz., annual or ordinary, extra-ordinary and special-

(1) The managing committee of a registered society shall within six months of the close of the co-operative year, conveyance the annual general meeting at which all items of business as prescribed in the bye-laws of the society shall be transacted :

Provided that if the audit report is not ready, the consideration of it by the general meeting and the disposal of profits shall be held over till an extra-ordinary general meeting is convened for the said purpose or till the next annual general meeting.

(2) An extra-ordinary general meeting may be convened at any time by the managing committee or on the requisition of one third of the members of the registered society and in the latter case the Secretary shall call the extra-ordinary general meeting within a month from the date of receipt of the requisition.

(3) Notwithstanding anything contained in the bye-laws of a registered society as to the mode summoning general meetings and the object time and place of such meetings, the Registrar or any person authorised by him in that behalf may-

(a) at any time, direct the summoning of a special general meeting of the society in such manner and at such time and place as he may fix, and

(b) specify what matters shall be considered at such meeting.

(4) It shall be incumbent on the Secretary to convene a special general meeting within twenty one days of the receipt of the order of the Registrar or the person authorised by him, falling which the Registrar or the said person may summon the meeting himself after notice to the members of a fortnight or as provided in the bye-laws of the society and such meeting shall have all the powers of a special general meeting convened according to the laws of the society.

SUPERSESSION (DISSOLUTION)

7. Section 41 of the Act, as it appears, empowers the Registrar and, on the recommendation of the Registrar, the State Government, to dissolve a Managing Committee and follow up steps are, thereafter, provided. In these applications, the procedure provided under Sub-sections (1) to (5) of Section 41 does not apply since Annexure 14 has been issued by the State Government on the basis of the report made by the Registrar as contained in Annexure 13 under Sub-section (6) of Section 41 of the Act. Two situations are envisaged in which the State Government becomes endowed with the powers to effect the dissolution of a Managing Committee of a Co-operative Society-(i) when the State Government feels that the dissolution of the managing committee of a Co-operative Society is essential in the interest of the co-operative movement as a whole and the society in particular, and (ii) when the State Government apprehends any mismanagement of the society.

It has now to be examined whether the grounds stated in Annexure 14 of the C.W.J.C. No. 5614 of 1986 for dissolving Board of Directors of the society come within the ambit of the two situations spelt out above. Examining Annexure 14, it appears that the two grounds have compelled the State Government to act in the manner done. The grounds stated are that the management of the Federation has disappeared-the Hindi word used in the notification is "Lupt"-and it has ceased to exist (as the Hindi words used-"Astitawa Nahi Rah Gaya Hai" show) and the situation will worsen if the Board of Directors of the Federation is not dissolved with immediate effect. The basis for arriving at this conclusion was the report (Annexure 13 to C.W.J.C. 5614/86) of the Registrar. It now becomes necessary to state the reasons which compelled the Registrar to recommend the dissolution of the Board of Directors to the State Government. From Annexure 13, it is apparent that no legal validity was attached to the proceeding of the Annual General meeting held on 15-11-1986 because the General Body of the Society did not follow the directions of the Registrar in regard to the amendment of the bye-laws and then there was complete chaos, confusion and pandemonium in the meeting itself. From this, the Registrar came to the conclusion that the election claimed to have been held by the society on 15-11-1986 was entirely invalid. The Registrar came to this conclusion after giving a narration of the events that occurred before 15-11-1986 in regard to the amendment of the Bye-laws and then what followed in the Annual General Meeting when it was announced by the Managing Director that the Registrar has directed the Annual General meeting to refrain from taking up item Nos. 5 and 6 relating to the election of the Chairman and the members of the Board of Directors till the amendment was considered by the Special Annual General meeting to be held on 4-12-1986 vide Annexures 6 and 5 (C.W.J.C. 5614/86). It may be useful to cite the relevant part of the report of the Registrar which is at page 107 of the brief of the former application contained in Annexure 13.

* * * * * From the above it is clear that:

(1) They failed to inform the delegates that the Board of Directors in their

meeting dated 14-11-1986 had accepted the proposed amendments to the bye-laws, had made certain suggestion to the Registrar, Co-operative Societies according to which the time schedule to organise the elections as per the amended bye-laws could be completed by 28-12-1986 on which day the election to the office of Chairman and Board of Directors of the Federation could be held in a special meeting to be convened for that purpose.

(2) They failed to inform the meeting that the Registrar, Cooperative Societies accepted the recommendations of the Board of Directors in toto and with that to ensure that the time schedule could be followed strictly to obviate any danger of supersession which would be automatic if the election was not held before 31-12-1986. The Registrar, Co-operative Societies amended the bye-laws as per Section 26(1) of the Act on 14-11-1986 itself and communicated the same (pages 36-22/C). Further, the Registrar, Cooperative Societies accepted the time schedule fixed by the Board of Directors and communicated approval to the Federation on 14-11-1986 itself (P. 38/C).

(3) In the Board of Directors meeting on 14-11-1986 both the Chairman and the Managing Directors were present when the Board unanimously decided to accept the proposals relating to amendment of bye-laws the Board unanimously decided to withdraw agenda item 5 and (illegible) relating to elections on 15-11-1986 in the previously scheduled A. G. meeting, the Board unanimously decided to suggest a time schedule for elections as per the amended bye-laws so that the election to the office of Chairman and Board of Directors could be completed after observing the formalities and procedures as per the amended bye-laws before 31-12-1986. These facts were not brought to the notice or attention of the delegates on 15-11-1986.

(4) Subsequently, the Managing Director has failed to inform the delegates about the resolution adopted in the A. G. meeting of 1983, wherein the A. G. meeting had decided to amend their bye-laws and had directed the Board of Directors to get the necessary amendments made. The Board of Directors constituted a Committee for this purpose and in the meeting of the Board of Directors held on 14-11-1986, the recommendations of this committee were also accepted while accepting the proposals of amendments of the bye-laws (para 5 on page 30/C). The Chairman too had the fullest knowledge of this and yet it appears that no information to this effect was given to the delegates in this meeting.

(5) In spite of specific directions given by the Registrar, Cooperative Societies and by the Board of Directors of the Federation, there was failure to implement the same in the manner expected since no protest at the conduct of affairs going on amidst the chaos, confusion and slogan shouting was recorded.

(6) The Chairman failed to maintain order and decorum in the meeting. The Managing Director, the Observer and the Government delegate all report that there was complete pandemonium and some of the delegates were determined to defy the directions of the Registrar, Co-operative Societies.

From the above it is clear that no transaction of the meeting dated 15-11-1986 is valid and the so-called election at the said meeting had no legal sanction. Any person claiming to have been elected as the Chairman or the members of the Board of Directors can function only at the cost of violation of the rules and the bye-laws. Thus, there is no society constituted in the eyes of law functioning.

Under the circumstances, the State Government may like to take action u/s 41(6) of the Act and dissolves the M.C. ...

One thing is patent from the above report. There is absolutely no allegation whatsoever against the Board of Directors except to the extent that the Chairman of the society could not exercise proper control in the Annual General meeting of 15-11-1986 and whatever happened on 15-11-1986 was at the initiation of the members of the General Body. This report does not in any way and form set out the reasons stated in Annexure 14 that the Board of Director is not in existence. In the light of the above facts and the law, it has to be examined first-whether the grounds for dissolution come within the four corners of Sub-section (6) of the Section 41 of the Act and whether, if they do so, there is any justification on facts.

8. Taking up the first question forest, I have no hesitation in holding that the two grounds stated in Section 41(6) of the Act clearly visualise a situation in which the Board of Directors is in existence and its continuance is detrimental to the society itself and the co-operative movement or mismanagement of the society is apprehended. But they do not envisage a situation in which the Board of Directors has disappeared completely or has lost its existence. The worsening of the situation as stated in Annexure 14, also stems from the disappearance of the society and is, therefore, equally untenable. I have, therefore, no hesitation in holding that the grounds stated in Annexure 14 are not covered by the situations under which Section 41(6) of the Act empowers the State Government to dissolve the Board of Directors of the Society. A Board of Directors was very much in existence-be it the Board which came into power in 1983 or the one that claims to have come into power on 15-11-1986. Therefore, the ground ex facie is without substance. Further, the report, as I have said above, assails the conduct of the General Body and not the Board of Directors. On facts also, the reasonings are without justification-firstly, it is not stated whether the Board of Directors that was elected in 1983 was to continue till 31-12-1986 or the Board of Directors which came into existence, consequent upon the election claimed to have been held on 15-11-1986 was dissolved. The situation is blistfully vague. During his submission, however, the learned Advocate General submitted that the Board of Directors which came into existence in 1983 and was to exist till 31-12-1986 was dissolved and that was done because its working was obstructed by the Board of Directors that came into existence on 15-11-1986. Proceeding on the basis of this submission, it has to be examined whether this Board of Directors disappeared and became non-existent on 29-11-1986 as stated in Annexure 14 to C.W.J.C. 5614/86 when the order of dissolution was passed. The

aforesaid Board of Directors could only disappear if the Registrar and the Government conceded the coming into existence of a new Board of Directors on 15-11-1986. If this situation is accepted, then the aforesaid Board of Directors of 1983-86 was continuing in existence and could not be described as nonexistent. Therefore, the reason for dissolving the Board of Directors was entirely redundant. If no Board of Directors came into existence on 15-11-1986 as claimed by the State, the claim to which I shall avert to later, then ex facie the Board of Directors which came into existence in 1983 was very much in existence and had not disappeared and there was no apprehension of the worsening of the situation. This inference of mine receives sustenance from the affidavit filed on 26-8-1987 by the interveners Respondents Rajo Singh and Tapeswar Singh which is at page 457 of the brief of C.W.J.C 5614/86. These affidavits have been ordered to be treated as counter affidavits. It is stated in paragraph 1 of this affidavit that the Board of Directors elected in 1983 remained in existence till it was dissolved on 29-11-1986. It may be stated that these intervenors are supporting the action of the State Government in issuing Annexure 14 and dissolving the Board of Directors. It is also interesting to state here that by and large the members of the Board of Directors of 1983-88 and those of the Board of Directors which is said to have come into existence on 15-11-1986 are the same persons. This also, in my view, renders the submission of the learned Advocate General that the elected body of 15-11-1986 was obstructing the functioning of the body elected in 1983 unacceptable. Another interesting aspect of the matter is that, at no time any allegation was made against the Board of Directors elected in 1983 or prior to the meeting of the General Body on 15-11-1986 or even in the meeting of 15-11-1986. If there was any violation of the directions and rules and laws, which I am quite sure was not the case, the sole responsibility rested with the General Body of the society and if the election of 15-11-1986 was invalid as stated by the Registrar, then there could be no ground for dissolving the Board of Directors that came into existence in 1983 and was to continue till 31-12-1986. This brings me to a possible submission to be made later on though not made in this Court that the Board of Directors elected on 15-11-1986 was dissolved. The only ground of attack on the election of the Board of Directors was that it was held in disregard of the directions of the Registrar and the amendments in the Bye-laws approved and registered by him, and it was held on the basis of the bye-laws prior to the amendment and, therefore, it was fit to be dissolved. That is the only invalidity as it appears from the report and the order of the appellate authority for issuing Annexure 14. This ground will be dealt with in detail when I am dealing with the validity or otherwise of the amendment in the bye-laws. But for the present, it is enough to say that no election of a Board of Directors can be set aside except by filing an election petition u/s 48 of the Act. Until that is done, the election held by the Annual General meeting shall remain valid. The ipse dixit of the authority that the election is invalid in law would not warrant the dissolution of an elected body. The learned Advocate General further submitted that an act that is invalid in law is entirely void and cannot have the sanctity of law and can be of non utility

whatsoever for any purposes and since the election of 15-11-1986 was void ab initio because of it not being held in accordance with the amended bye-laws, it remained a non-starter and cannot be allowed to function and, therefore, the Government took a decision of dissolving the 1983-86 body to facilitate the proper administration of the society. To buttress this stand, several decisions were referred to by the learned Advocate General but none of these decisions related to the elections that were claimed to be void ab initio. Disputes arising out of elections are entirely different from the general rung of things and are given distinctive treatment by the Supreme Court of India. It is now well settled that no election can be said to be void ab initio merely on the suo motu assessment of a party or the Government. Validity of an election-legal or factual has to be decided in the election petition. The Government or the appellate authority cannot arrogate to itself the authority to declare an election void even if according to it correct procedure was not followed and it cannot then proceed to effectively destroy the result of the election by resorting to dissolution of the Board of Directors. I, therefore, hold first, that the Registrar in his report was not justified in declaring as invalid the entire proceeding of the meeting including the election held on 15-11-1986 and the appellate authority was also not justified in holding that the election was invalid and I further hold that these two grounds or the grounds mentioned in Annexure 14 do not authorise the Government to dissolve the Board of Directors of a society.

9. It is now necessary to examine whether the supersession would be justified because as held by the appellate authority and submitted by the learned Advocate General, the election of 15-11-1986 was ipso facto void because it was without following the procedures caused by the amendment to the bye-laws which was registered by the Registrar. Validity of the election appears to have been made the sheet anchor of the action of the Government. In my view, this attitude is based on a complete misconception of law. An election can only be invalidated in an election petition filed u/s 48 of the Act. That having not been done, no authority even the Government can proceed on the assumption that an election is ipso facto ab initio void. I would have found no difficulty in demonstrating that the election was validly held but if I venture to decide this matter, I will be committing the same mistake of which I am a critical now, that is, abrogating to this Court the powers of an election tribunal u/s 48 of the Act. The State was entirely unjustified in adopting this ground for superseding the Federation.

10. I, therefore, in conclusion hold that Annexure 14 has no basis in law and is entirely untenable and thus is fit to be quashed which I do accordingly. I also hold that the election held on 15-11-1986 will be deemed to be a valid election since it has not been set aside in a properly constituted election petition u/s 48 of the Act.

Amendments to the bye-laws and its enforcement

11. The two sections of the Act and the relevant rules relating to the right to

amend the bye-laws have been set out above. The examination of the validity of the amendment arises firstly because it has been specifically challenged in C.W.J.C. No. 5614 of 1986 and also because the non-enforcement of the amended bye-laws before the election of the Board of Directors on 15-11-1986 has been used and appears to be the real reason for the dissolution of the Board of Directors. Section 25 of the Act sets out the manner in which an amendment to the bye-laws becomes effective. Validity is endowed to an amendment made by the society itself only after the amendment has been registered by the society and a certificate to that effect issued by the Registrar. Rule 16 of the Rules prescribes the procedure for a registered society to follow while making an amendment. It prescribes firstly that an amendment can be made only in a general meeting and that too by a majority of 2/3rd of its members after notice has been issued in regard to the proposed amendment to its members. Rule 17 prescribes that amendment so made should be sent to the Registrar for registration within three months of the passing of the resolution. The registration of the amendment by the Registrar of thereafter, vide Rule 18 has to be sent through a registered post. Rules 20, 21 etc. lay down the procedure for calling a general meeting. In other words, therefore, any amendment purported to have been made u/s 25 of the Act has to follow a particular procedure and pattern and any deviation from that procedure would render such an amendment ipso facto invalid. Section 26 of the Act relates to an amendment to the bye-laws at the instance of the Registrar. This can be invoked if the Registrar feels that such an amendment is necessary or desirable in the interest of the society. It prescribes the procedure which have to be followed for effecting such an amendment. The Registrar after making such amendment has to send the same to the society for its consideration by the general body within the specified period by registered post. If the society fails to respond to the direction of the Registrar within the period specified by him, the Registrar is entitled to register the amendment after giving an opportunity to the society of being heard, by a registered notice. This presupposes that the opportunity of hearing will be given by issuing a notice to the society. The right of appeal has been granted to the society against such amendment within the specified period. The decision of the Registrar registering the amendment shall be final and become operative and binding subject, of course, to the result of the appeal.

12. First, it has to be examined whether the proposed amendment is in consonance with the Act and the Rules and secondly, whether the procedures adopted by the Registrar is in accordance with law. It will be now useful to quote Clauses 30 and 31 of the bye-laws-both prior to the amendment and after the amendment as set out in the enclosure to Annexure 9 of C.W.J.C. No. 5614 of 1986 (beginning at page 91 of the brief) :-

Clause 30 (prior to amendment)

30. General meeting.-(a) The General Body of the Federation shall consist of the following members :-

(i) One delegate representing each affiliated primary House Construction Co-operative Society.

(ii) One delegate representing State Government. Each Primary Housing Co-operative Society being a member of the Federation shall send a delegate for representation in the general meeting of the Federation. For the delegates of society the certified copy of the relevant resolution of the general meeting shall be the instrument of appointment. A delegate ceasing to be a member of his society shall also cease to be its delegate. Every delegate shall hold office till his successor has been appointed provided that it shall be competent for the society at any time to remove its delegate and appoint another. It will be obligatory on the part of the member society to keep the Federation informed of such changes about its delegates. If the credentials of delegate are questioned, the matter shall be decided by the president of the meeting.

(b) The Board shall maintain a list of member on the roll of the Federation who are qualified to vote in the general body meeting of the Federation and shall bring such list up-to-date at the close of the preceding Co-operative year. It shall be the duty of the Managing Director to supply the copies of the list of delegates to such members who desire to have it on payment of such fees as may be prescribed by the Board.

(After the amendment)

"General meeting.-(a) The supreme authority of the Federation shall be vested in the General Meeting.

(b) The General Meeting shall be of three kinds :

(i) Ordinary or annual;

(ii) Extra Ordinary; and

(iii) Special.

(c) (i) Ordinary General Meeting shall be convened at least once in every year by the Board of Directors within six months from the close of the Co-operative year. In case the statutory audit report containing the balance sheet duly certified by the auditor has not been published before the date fixed for the Annual Ordinary General Meeting, as provided in these bye-laws except the disposal of profit, shall be transacted at the meeting. The disposal of profit and the Audit Report may be considered at an extra-ordinary general meeting to be held for the purpose or at the next ordinary general meeting.

(ii) An Extra Ordinary General Meeting may be called at any time by the Board or on receipt of a requisition signed by six members of the Board or one-third members of the Federation within one month after the date of receipt of such requisition.

(iii) A special General Meeting shall be called at the requisition of the Registrar,

Co-operative Societies or any other officer authorised by him at such time and place at the head quarters of the Federation as specified in such requisition. It shall be incumbent on the Managing Director to convene a Special General Meeting within twenty-one days of receipt of the order of Registrar or of the Officer authorised by him. If the Managing Director fails to call such meeting, the Registrar or the Officer authorised by him may summon the members before fifteen days and such meeting shall have all the powers of a general meeting convened according to the bye-laws of the Federation.

The following among other business shall be transacted in the meeting of the General Body :

- (i) Consider the annual report from the Board of Directors and review the work done during the year by the Federation,
 - (ii) Consider the programme and the activities for the ensuing year.
 - (iii) Consider statement of accounts, audit reports and its rectification report.
 - (iv) Consider location of profits.
 - (v) Consider and fix the maximum borrowing limits for the ensuing year.
 - (vi) Consider reports that may be prescribed by the Registrar or the State Government.
 - (vii) Consider the proposal/proposals for amendments to the bye-laws, if any.
 - (viii) Consider an appeal preferred by a member against any decision of the Board.
 - (ix) Consider expulsion of a member.
 - (x) Elect Chairman and members of the Board.
 - (xi) Sanction honorarium to the members of the Board, travelling and other allowances to the members of the Board subject to the approval of the Registrar, Co-operative Societies.
 - (xii) Consider regarding payment of Bonus/Ex-gratia and honorarium to the paid employees of the Federation as per law in force.
 - (xiii) Consider any other matter with the permission of the Chairman.
- (e) The minutes of the proceeding of General Meeting shall be recorded in a Book to be kept for the purpose with the Managing Director and the minutes shall be signed by the President. The copy of the minutes of general meeting shall be circulated to all its members within a fortnight after the General Meeting by the Managing Director.

Clause 31 (prior to amendment)

31. General Body,-The ultimate authority in all matters relating to the

administration of Federation shall vest in the General Body consisting of one representative of the State Government and one delegate elected by the General Body of each Primary Housing Co-operative Society affiliated to the Federation as on 30th June, preceding. Subject to the provision of the Act, Rules and Bye-laws it shall be competent for the General Body to take all steps that may be necessary in the interest of the Federation.

The General Meeting of the Federation shall be of 3 (three kinds) :-

- (a) Ordinary General Meeting;
- (b) Extra Ordinary General Meeting; and
- (c) Special General Meeting.

An ordinary General Meeting shall be convened at least once in every year by the Managing Director within six months from the close of the Co-operative Year. In case the statutory audit report containing the balance sheet fully certified by the auditor has not been published before the date fixed for the Annual Ordinary General Meeting, all the items of the business of Ordinary General Meeting, as provided in these bye-laws, except the disposal of profit, shall be translated at the meeting. The disposal of profit and the Audit Report may be considered at an extra ordinary, general meeting to be held for the purpose or at the next ordinary general meeting.

An Extra Ordinary General Meeting may be called at any time by the Board or on receipt of a requisition signed by six members of the Board or one third members of the Federation within one month after the date of receipt of such requisition.

A Special General Meeting shall be called at the requisition of the Registrar, Co-operative Societies or any other officer authorised by him at such time and place at the head quarters of the Federation as specified in such requisition. It shall be incumbent on the Managing Director to convene a Special General Meeting within twenty one days of receipt of the order of Registrar or of the officer authorised by him. If the Managing Director fails to call such meeting, the Registrar or the Officer authorised by him may summon the meeting himself after giving notice to the members before fifteen days and such meeting shall have all the powers of a general meeting convened according to the bye-laws of the Federation.

The following among other business shall be transacted in meeting of the General Body :

- (i) Consider the annual report from the Board of Directors and review the work done during the year by the Federation.
- (ii) Consider the programme and the activities for the ensuing year.
- (iii) Consider statement of accounts, audit reports and its rectification report.
- (iv) Consider allocation of profits.

- (v) Consider and fix the maximum borrowing limit for the ensuing year.
- (vi) Consider reports that may be prescribed by the Registrar or the State Government.
- (vii) Consider the proposal/proposals for amendments to bye-laws, if any.
- (viii) Consider an appeal preferred by a member against any decision of the Board.
- (ix) Consider expulsion of a member.
- (x) Elect Chairman and Members of the Board.
- (xi) Sanction honorarium to the members of the Board, travelling and other allowances to the members of the Board subject to the approval of the Registrar, Co-operative Societies.
- (xii) Consider regarding payment of Bonus/Ex Gratia and honorarium to the paid employees of the Federation as per law in force.
- (xiii) Consider any other matter with the permission of the Chairman.

31. (b) The minutes of proceeding of general meeting shall be recorded in a Book to be kept for the purpose with the Managing Director and the minutes shall be signed by the President. The copy of the minutes of general meeting shall be circulated to all its members within a fortnight after the general meeting by the Managing Director."

(After the amendment)

31. General Body.-(a) Every delegate to the General Meeting shall have one vote and shall be entitled to vote at the General Meeting unless the delegate himself or the society which he represents, is disqualified under the rules of these bye-laws provided that no delegate shall have more than one vote.

(b) (i) Delegates to the General Meeting of the Federation shall be elected districtwise from the affiliated Primary House Construction Co-operative Society in the district.

(ii) Each of the affiliated Primary House Construction Co-operative Society in the district shall be entitled to send one representative each duly authorised by a resolution of the A. C. Meeting or its Managing Committee, and each representative shall have the right to exercise one vote only to elect the delegates from the district to the General Meeting of the Federation. A representative who ceased to be a member of his society shall also cease to be its representative. Every representative shall hold office till his successor has been appointed, provided that it shall be competent for the society at any time to remove its representative and appoint another. It will be obligatory on the part of the member society to keep the Federation informed of such changes about its representatives,

(iii) From each district, the representatives of the affiliated Primary House Construction Co-operative Society in the district shall elect by and from among themselves delegates to the General Meeting of the Federation at the rate of one delegate for every 3 (three) affiliated Primary House Construction Co-operative Society or part thereof subject to a maximum of 10 (ten) per district.

Provided that out of the delegates to be elected from the representatives of the affiliated Primary House Construction Co-operative Society in the district at least one shall be from Scheduled Caste or Scheduled Tribe, if representative of that category is available from the affiliated Primary House Construction Co-operative Society of the district.

Provided further that if in a district there are less than 3 (three) affiliated Primary House Construction Co-operative Society then from among their representatives only one delegate will be elected for being sent to the General Meeting of the Federation. (For fractions the number will be rounded off to the nearest 3 (three) when determine the number of delegates to be elected from each district.

(c) Only those Primary House Construction Co-operative Society affiliated to the Federation as on 30th June of the proceeding year will be allowed to send representative to the Preliminary General Meeting and their representative if elected a delegate will then participate in the General Meeting of the Federation.

(d) The State Government, which is a share-holder, may appoint one delegate to the General Meeting of the Federation.

(e) For electing the delegates to the General Meeting of Federation, there shall be in each district of the State, a Preliminary General Meeting, and not less than 15 days notice will be given to each affiliated Primary House Construction Co-operative Society in the district to send their representative to such Preliminary General Meeting.

(f) If due to one reason or the other holding of election in one or more districts if not possible the Annual General Meeting shall not be withheld or invalidated on, that account provided that the number of voters eligible to vote in such district or districts does not exceed one third of the total voters eligible to vote at that Annual General Meeting.

(Amendment in other clauses are consequential in) nature

13. In regard to the first point, it was submitted that the amendments are without any justification in law as they are in violation of the provisions of the Act. In nutshell, the submission was that if Sections 2(b), 2(ggg) and 28 of the Act and Rules 2(ii) and 20 of the Rules are examined in depth, it will be discovered that the amendments are not only violative of Section 28 of the Act but also they destroy the very basic structure of the Co-operative Society, that is, "one member one vote" concept. It was also submitted on the basis of analysis of these sections that the amendments should be struck down on this ground alone. Further, it was argued that by Clause 31 of the Bye-Laws, as it

stood originally, each affiliated society was granted one vote in accordance with the Act and the Rules set out above. In this system, the first step would be to elect one representative from each primary/affiliated society representing each affiliated society who, in turn, elect within the district the delegates to the general meeting at the rate of one delegate for every 10 societies or a part thereto subject to a maximum of 10 per district. In other words, it was submitted, the right of a primary society beyond the delegates becomes effaced by this procedure. Learned counsel drew attention to the provisions of Section 28(1) of the Act which runs thus :-

28. Votes of members.-(1) Subject to the provisions of Sub-section (2), each member of a registered society shall have one vote only as a member in the affairs of the society, provided that in the case of an equality of votes, the Chairman shall have a casting vote.

Relying on the aforesaid provision of the section, it was argued that every member of a society shall have one vote as a member of an affiliated society. In other words, each affiliated society of an affiliating society or federation will have one vote because undoubtedly by using the word member of a society, it not only embraces the individual but also the affiliated societies as members.

14. Now reverting to the aforesaid amendment, it was then argued that by the aforesaid amendment, the legal constitution of the general body is negated by bringing into being an electoral college of delegates thus affecting detrimentally the right of those societies whose members fail to find a place in the electoral college of the delegates, a situation not envisaged in the Act or the Rules itself.

15. Lastly, it was submitted by the learned Advocate General that the amendment has been introduced to break the monopoly created by the concentration of a large number of primary societies in three districts of north Bihar and Patna, leaving other districts of Bihar by comparison inadequately represented. Without deciding this issue, I would like to express my view on this submission of the learned Advocate General who he did not spell out as to whose monopoly was intended to be destroyed. Was it a monopoly of an individual or of the Board of Directors or of affiliated or primary society of a particular area ?

16. However, for the purpose of this application and what I have proposed to hold in regard to the procedure adopted in effecting the amendment, I am of the view that it is really not necessary to give any express finding or decision on these submissions. If these amendments or similar amendments are intended to be reiterated in future, I feel, that the authority doing so will keep in mind the aforesaid submissions arising out of the provisions of the Acts and the Rules above.

17. The aforesaid analysis is entirely superficial and stated in a nutshell, the step taken at various stages was that in the year 1983, a proposal for amending the bye-laws was made at the annual general meeting. This had been sent to the sub-committee for examination. In 1985, by Annexure 17, the sub-committee

did not approve the amendment and recommended that in view of the fact that the amendments are violative of the rules and the Act, they be considered by the Board of Directors which will come into existence after new election. This has been a procedure u/s 25 of the Act. The matter rested there, In 1986, the Registrar initiated the amendment procedure u/s 26 of the Act and on the basis of the communication of the Board of Directors dated 1441-1986 of the acceptance of the amendment, registered it as a compulsory registration u/s 26(2) of the Act. This has been briefly the procedure claimed to be followed. In other words, the procedure adopted can only be described in one word as "hybrid".

18. The procedure for amendment commenced in 1983 u/s 25 of the Act and remained in hibernation till 1986 when the Registrar resorted to the procedure prescribed u/s 26(1) of the Act and finally proceeding u/s 26(2) of the Act without the matter being dealt with one way or the other by the General Body, as directed by the Registrar himself, and as required by Section 26 of the Act, the Registrar acted entirely u/s 26 of the Act and does claim to have registered the amendment u/s 25 of the Act. The hollowness of the stand of the State is apparent from the facts on the record,

19. It now becomes necessary to examine what happened in 1983. The relevant document is the proceeding of the meeting of the Board of Directors dated 25-12-1983 (Annexure 21). Item No. 6 of this proceeding relates to the proposal for amending the bye-laws tabled by Sri Rajo Singh as said above. The General Body authorised the Board of Directors to take a decision in this regard by referring the matter to a sub-committee. As I read this resolution, it only means that the General Body authorised the Board of Directors to get the matter examined by a subcommittee and submit its recommendation to the General Body. The words "Nideshak Mandal Ko Adhikrit Kiya Gaya. . . ." mean that the Board of Directors was authorised to take a decision in the matter after obtaining the report from the sub-committee which should examine the matter in detail and submit the report for the approval of the General Body. It was submitted by the learned Advocate General that by this resolution the power to approve the amendment had been delegated to the Board of Directors. Had the above sentence "Nideshak Mandal Ko Adhikrit Kiya Gaya. . . ." only been there, perhaps this interpretation would have been valid. But it is not so because the other sentences following thereafter viz. ""aur yeh nidesh diya gaya ki is hetu nideshak mandal ek committee gathit kwegi, jo upvidhi mein sansodhan ke sam-bandh mein apni anushansa degi" cannot mean anything else than the examination of the matter by the sub-committee for ultimate approval of the General Body. Delegation should be unambiguous and complete. This is also apparent from what happened in 1985. It should not be forgotten that the entire proposal of Sri Rajo Singh was sent for scrutiny by the Board of Directors which included the amendments of several clauses of the bye-laws. It is how to be examined as to what transpires on the basis of the events in between 1983 and 1986.

20. Annexure 17 is the report and recommendation of the sub-committee set up to consider the amendments of the bye-laws of the Federation. All the amendments suggested by Sri Rajo Singh were considered and the opinion of the sub-committee was recorded. In relation to amendment of Clause 31 of the bye-laws, however, the sub-committee decided that in view of the impending election of the Board of Directors, this amendment should be left to be considered afresh by the new Board of Directors. The sub-committee further recorded its opinion that- the suggested amendment would be against the basic principles of the cooperative movement. In contradistinction to similar apex society where districtwise representation is provided in the Federation, if this is introduced, it will destroy the principle of equality so essential for the cooperative movement. It further recommended that for this electorate should be formed on the basis of equality. It, however, recommended that this matter should be kept for examination of the new Board of Directors which is expected to come into existence in near future. In regard to amendment in Clause 4(a) of the Bye-Laws, the sub-committee" submitted its report on 12-8-1985 that the amount of share-capital should be enhanced from 5 crore to 25 crore. It also submitted its report in regard to amendment in Clause 5(3) of the Bye-Laws recommending no amendment in this clause.

The suggested amendment in Clause 31 of the Bye-laws, therefore, did not get the approval of the sub-committee and apparently valid legal objections were raised. A significant part of the decision of the sub-committee is that it recommended the matter to be placed before the new Board of Directors for further action thus denying the consideration of these amendments by the Board of Directors whose tenure of existence was to expire on 31-12-1986, that is, then the existing Board of Directors. While these state of affairs was in existence, the Registrar proceed to act u/s 26(1) of the Act. The communication of the Registrar u/s 26(1) of the Act was sent on 13-11-1986 vide Annexure 6 of C.W.J.C. No. 5614 of 1986. In this communication, the Registrar, after suggesting the amendments, had also directed the Board of Directors to hold a Special General meeting on 4-12-1986 for approval of the amendment by the General Body. This was followed by a covering letter of the same date (13-11-1986) vide Annexure 5 to C.W.J.C. 5614 of 1986 by which it was directed to adhere to the instructions and to postpone the election of the office bearers under item Nos. 5 and 6 of the agenda of the meeting to be held on 15-12-1986 till the amendments are approved by the General Body, One wonders, under what provision of law did the Registrar acquires authority to issue Annexure 2 of C.W.J.C. No. 5641 of 1986. Nothing was shown to me nor my attention was drawn to anything either in the Act or Rules to justify the direction of stay of election. In fact, it was conceded by the Respondents that the Registrar did not possess such power. The matter was then considered on 14-11-1986 by the Board of Directors. Without rescinding the decision of the earlier sub-committee, a fresh sub-committee was immediately formed to examine the amendments and a report was given by it and the amendment was approved, the same being communicated to the

Registrar on the same day. The Registrar acting u/s 26(2) of the Act, and thus ignoring to the procedure u/s 25 of the Act, issued Annexure 9 of C.W. J.C. No. 5614 of 1986 in violation of his own instructions directing the consideration of the amendment by the General Body on 4-12-1986. It cannot, therefore, be argued that the Registrar really registered the amendment approved by the Board of Directors acting u/s 25 of the Act. No such order is available on the record. The submission of continuity is utterly without foundation and now is a creation of forensic brain wave. Interestingly, however, the date of communication by the Registrar of the registration of the amendment is a controversial issue between the parties. According to the petitioner, the communication was received after the Annual General Meeting of 15-11-1986 but according to the Respondents, it was received on 14-11-1986 itself. Two circumstances emerge from this. Firstly, an examination of the receipt of communication (Annexure R/4 in C.W.J.C. No. 5614/86) sent by the Registrar to the Managing Director of the Federation which was retained by the person serving the communication as a receipt of its delivery and which delivery has been acknowledged by the recipient of the communication shows that 14-11-1986 has been deleted and in its place 15-11-1986 at 10.30 p.m. has been stated and initiated. Further, from the communication of the Registrar vide memo no. 15849 dated 17-11-1986, a copy of which has been appended to Annexure 13 of C.W.J.C. No. 5614 of 1986 at page 114, it appears that the Registrar till 17-11-1986 was not aware of what had transpired in the meeting of the General Body held, in 1983 in relation to the amendments to the Bye-Laws. The relevant portion of the communication runs thus :

GOVERNMENT OF BIHAR, CO-OPERATIVE SOCIETIES NO. 15849

From Shri P.P. Sharma, Registrar, Co-operative Societies, Bihar, Patna. To The Managing Director, Bihar State Housing Co-operative Federation, "Lalit Bhawan", Bailey Road, Patna.

Dated Patna, the 17th November, 1986

Subject: Annual General Meeting of the Federation held on 15-11-1986.

Sir,

You are aware that vide your letter No. MDC/86-87-48 dated the 14th November, 1986 you had informed this office that the Board of Directors has accepted the proposed amendments to the bye-laws and had further stated that the committee of the Board constituted for this purpose has also recommended the acceptance of the same. From this I gather that even earlier the Board had constituted a committee to go into the matter of amendments to the bye-laws relating to the election and I understand that this Board's committee had been constituted on the basis of some resolution passed during the last A. G. meeting of the Federation in 1983. Kindly confirm whether this is so and also inform me of the names of the members of the committee constituted by the Boards.

It also appears from the contents of this communication that while the Registrar was making certain inquiries from the observer in regard to the registration of the amendments he does not, however, state anything about having registered the amendment. This now brings me to another circumstances on which stress was laid by the learned Advocate General that since the annual general body was aware of the registration of the amendment to the bye-laws, the election held under the unamended bye-laws was invalid ab initio and the body so elected had no legal basis to continue in the office. I have already indicated above that it is very doubtful whether the annual general body was aware of the so-called registration of the amendments claimed to have been done on 14-11-1986 and communicated to the Board of Directors the same day. It appears to be doubtful whether the amendment was at all registered on 14-11-1986 itself.

If the co-operative movement in this State is to foster and develop on the right lines, the real step would be to organise the basic functioning of the co-operative societies in order to attain the real objective for which it is created and in the manner that in the sine qua non of the concept of the co-operation.

21. The learned Advocate General submitted in this connection that the proceeding of the meeting dated 15-11-1986 indicates that the general body was aware of the amendment on 15-11-1986. Subsequently, the submission was altered slightly and it was stated that an inference can be drawn from the contents of the proceeding of the meeting of the annual General Body held on 15-11-1986. I have examined the proceeding of the meeting at length and its decision and I feel it difficult to accept the submission that an inference should be drawn that the General Body was aware of the amendment on 15-11-1986. It cannot, therefore, be argued that the annual General Body ignored the registration of the Bye-laws. Another aspect of the matter, which in my view is of vital consideration, is that the Registrar himself had directed a special general meeting to be held on 4-12-1986 to consider the suggested amendment of the Registrar and had directed to stay the fresh election of the Board of Directors. The Annual General meeting apparently defied the order of stay and proceeded to hold the election. It cannot be imagined that they were also aware of the fact that amendment had already been registered when they had been directed to consider the amendment by 4-12-1986. In any event, the General Body of a society is the supreme arbiter of everything that happened in the society. It was their right that was being effected and curtailed. Their registration, therefore, was entirely formal because the Registrar had really imposed an amendment without it being approved by them and without following the procedure u/s 26(2). I have, therefore, no hesitation in holding, in the light of the discussions made above, that the amendments were not registered on 14-11-1986 as suggested by the Respondents and the annual general body was fully competent to ignore the direction to stay the election and proceed to hold the election. I further hold that it was the general body alone which could consider the amendment that a society may make u/s 25 of the Act and there was no specific delegation of authority to the Board of Directors to adopt the amendment and

the amendment could not be considered after the recommendation of the sub-committee by the Board of Directors whose term was about to expire by forming a fresh sub-committee and getting a favourable report without rescinding the decision of the earlier sub-committee seeking fresh mandate from the general body. I further hold that the Registrar while directing the Board of Directors to amend the bye-laws and by registering the bye-laws recommended, by the Board of Directors did not follow the procedure laid down under the law and in fact, as I have stated above, the steps taken by the Registrar were entirely of invalid conception. At this stage, I am tempted to say a few words about the exercise of power by a Registrar u/s 26(2) of the Act by which the Registrar can force a society to accept the amendment. It should not be forgotten that a co-operative movement in its very nature contemplates the administration of a society by its members according to its free will but within the ambit of law. The Registrar, therefore, while enjoying the plenary powers u/s 26(2) of the Act should always be extremely circumspect in forcing a society to accept a clause in the bye-law which the member of the society sitting together do not approve and which affects their right detrimentally unless, of course, the society's bye-laws are completely contrary to the provisions of the Act and the Rules and are detrimental to the co-operative movement. In the instant case, the amendment really amounted to curtailing the right of the members of a society which, I have no hesitation in holding, should not have been registered by the Registrar or suggested by him u/s 26 of the Act. The vires of this clause also appears to be suspect but it is not necessary to go into this matter in the instant applications. This adjudication should await another opportunity.

22. In the light of what I have stated above, the order of the appellate authority as contained in Annexure 9 of C.W.J.C. No. 461 of 1987 cannot be sustained for the aforesaid reasonings and discussions. It is, accordingly, quashed. Annexure 9 of C.W.J.C. No. 461 of 1987 and Annexure 19/A of C.W.J.C. No. 5614 of 1986 are the decisions of the appellate authority. The points relied upon by the appellate authority are basically entirely the submissions made by the State in these two applications. Applying the reasonings given above, therefore, the decisions contained in Annexure 9 (in C.W.J.C. No. 461 of 1987) and Annexure 19/A (in C.W.J.C. No. 5614 of 1986) are entirely untenable.

23. Petitions have also been filed by the intervenors seeking intervention in these applications. These petitions were allowed and it was agreed between the parties that these petitions should be treated as counter-affidavit on behalf of the intervenors. They have supported the petitioners in these two writ applications and the State, as the case may be, and their counsel have adopted the submissions made on behalf of the petitioners and the State respectively in support of their intervention. No detailed submission was made by any individual intervenor. On the day the case was listed for judgment Mr. Kamlapati Singh appearing for the intervenors, who support the State action, prayed that delivery of judgment may be postponed to enable him, on behalf of his party, to file certain documents. In an unprecedented step we postponed the judgment. In the

meantime a petition was filed on behalf of petitioner Vijoy Kumar Mishra opposing filing of any documents. Subsequently on the date fixed for the filing of documents a note of argument was submitted by Shri Kamlapati Singh on behalf of his client stating that in view of the opposition to the filing of the documents he is refraining from doing so, but would like to make some submissions which he has set out in paragraph 6 of the notes of argument. Inter alia, he submitted that since the Chairman and members of the Board of Directors elected in 1983 have in any event ceased to remain in existence on 31-12-1986, and since the Board of Directors, which claim to have come into existence on 15-11-1986, could not legally assume power in the light of the submissions made by the Advocate-General in regard to the legal disabilities surrounding that election, neither of these two bodies, even if the applications were allowed, could be put back into the Office. I have nothing to say in regard to the body expired on 31-12-1986, but, in view of what I have said above in relation to the election held on 15-11-1986, which I have held, in absence of a decision in an election dispute, cannot be described as body without legal sanction, the submission has no substance. Therefore, the result of this application affects the fate of the intervenors also. This application have to succeed because of legal and procedural error pointed out above, which compelled me to hold that the election on 15-11-1986 was wrongly invalidated and the ground on which supersession was done was untenable in law. The action, which may be described as bona fide, has become of doubtful legal validity due to misobservance and non-observance of appropriate procedure possibly because of such legal advice.

24. In the result, both the writ applications (C.W.J.C. No. 461 of 1986 and C.W.J.C. No. 461 of 1987) are allowed. Let a writ of certiorari be issued quashing Annexures 13 and 14 and 19/A of C.W.J.C. No. 5614/86 and Annexures 6 and 9 of C.W.J.C. No. 461 of 1987. There shall, however, be no order as to costs.

Phani Bhushan Prasad, J.

25. I agree.