
(2009) 09 AHC CK 0191
In the Allahabad High Court
Case No : Writ Petition No. 7679 (M/B) of 2009

Vijay Shanker Rai

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 02-09-2009

Acts Referred:

Monopolies and Restrictive Trade Practices Act, 1969 — Section 33, 33(1)

Citation : (2010) 4 AWC 3535

Hon'ble Judges : R.R. Awasthi, J; Pradeep Kant, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Pradeep Kant, J.—Heard Sri Raghvendra Kumar Singh, senior advocate, assisted by Sri Dharendra Singh, advocate for the petitioner, Sri Rakesh Bajpai for the Administrator as well as for the State and Dr. L. P. Misra for the newly impleaded respondent No. 6.

2. At the outset, it would be apposite to record that the respondents have been served with the notice of the writ petition and the respondent No. 4, the Administrator of the Zila Sahkari Sangh Limited, who is the District Assistant Registrar, Co-operative Societies, U. P., Ghazipur, has filed a counter-affidavit but rest of the respondents have stated that since only a legal question is involved, therefore, they will not file any counter-affidavit and the matter may be heard finally.

3. Dr. L. P. Misra appearing for the applicant who has been impleaded in the writ petition as respondent No. 6, also stated that the matter may be heard finally as he does not intend to file any counter-affidavit. The aforesaid applicant is a delegate of the District Co-operative Federation Ltd., Ghazipur from Sadhan Sahkari Samiti Ltd., Tajpur, district Ghazipur.

4. The Administrator in his counter-affidavit and also in the arguments, has defended his action of enrolling new members in the Society, and their status as

the validly enrolled members.

5. The names of these newly enrolled members have not been disclosed, nor published, as stated by Sri Raghvendra Singh, senior advocate, learned Counsel for the petitioner, which statement is not being rebutted by the Administrator and it being the admitted position that the Administrator has enrolled new members, we proceed to decide the controversy involved.

6. This petition raises only one legal question nonetheless of great importance and significance in context to the elections of Committee of Management of all the Co-operative Societies in the State of Uttar Pradesh, under the provisions of Uttar Pradesh Co-operative Societies Act, 1965 (hereinafter referred to as the Act), and the rules framed thereunder known as U. P. Co-operative Societies Rules, 1968, namely:

Whether the Administrator appointed u/s 29(5) of the Act has any authority or power to enrol new members in the Society?

The next question in this context is that even if the Administrator had the power to enrol members, can it be done on the eve of the elections.

7. The brief sequence of events, which led to the appointment of the Administrator in the present Society, which is a Central Society, would clear the issues and the grievance of the petitioner in challenging the action of the Administrator of enrolling members in the Co-operative Society.

8. Zila Sahkari Sangh Limited (hereinafter referred to as the Sangh) is a Central Co-operative Society under the provisions of the Act. The last election of the Committee of Management of the Sangh was held on 20/21.3.2001, wherein the petitioner was elected as Chairman of the Committee of Management of the Sangh.

9. The term of the Committee of Management of all the Co-operative Societies in U. P. including that of the Sangh was five years, which term could have come to an end sometime in March, 2010, but by amendment incorporated in the Act, by U. P. Act No. 46 of 2007, the term of the Committee of Management of the Co-operative Societies in the entire State was reduced to two years. Amendment was also made in Section 29 by reinserting the provision of appointment of Administrator, in Sub-clause (5).

10. Such abrupt reduction of the continuing existing term of the Committees of Management of all the Societies in the State, resulted into cessation of functioning of the duly elected Committees of Management and the appointment of Administrator in almost all the Co-operative Societies, of whatever category they were.

11. The Administrator was appointed on 6.9.2007.

Under the provisions of Sub-clause (7) of Section 29. initially the maximum period, during which the Administrator could function was six months but later

on, by making amendments in the aforesaid statutory provision, this period was extended to one year and thereafter to one year and six months. Despite the aforesaid period of one year and six months having lapsed, the Administrators are still continuing in Co-operative Societies, though there is no statutory sanction for the extended period but the State Government, in purported exercise of powers u/s 133 of the Act, which is the power to remove difficulties, has continued the Administrators, an action which is also under challenge in separate writ petitions.

12. Since the elections were not being held by the Registrar, various writ petitions were filed for issuing direction to the Registrar to hold elections, as the Administrators were functioning throughout, who could not have been allowed to function for indefinite period or for unreasonably long period. In various writ petitions, necessary directions were issued for holding the election for reconstituting the Committee of Management.

13. In the instant case, the dates of election of the Committee of Management were notified on 16.2.2009 fixing 10/11.7.2009 for holding elections. Soon thereafter, on 18.3.2009, the proposed election was cancelled and the dates were postponed to 14/15.9.2009.

14. After the dates of election were notified, the Administrator started enrolling members in the Sangh.

15. It is admitted case of the respondents, including the Administrator, respondent No. 4 and that of the respondent No. 6 that new members have been enrolled by the Administrator. The petitioner, who was the Chairman of the Committee of Management of the Sangh, when the term of the Committee of Management was reduced from five years to two years, and Administrator was appointed, challenges the aforesaid act of the Administrator of enrolling new members.

16. The respondents' case is that the Administrator/Committee of Administrators appointed under Sub- clause (5) of Section 29 of the Act, being the deemed Committee of Management is entitled to exercise all powers and functions of the Committee of Management which, in fact, is the Committee of Management, under the deeming provision of Sub- clause (6) and, therefore, has the power to enrol new members.

17. Sub-clause (5)(a) of Section 29 of the Act says that where, for any reason whatsoever, the election of the elected members of the Committee of Management has not taken place or could not take place before the expiry of the term of elected members, the Committee of Management shall notwithstanding anything to the contrary in any other provision of this Act or the Rules made thereunder, or the bye-laws of the Society, cease to exist on the expiry of such term, whereas Sub-clause (b) provides for consequential action if the elections have not been held for any reason whatsoever and the Committee of Management ceases to exist on the expiry of its term, which authorises the

Registrar on or as soon as on the expiry of such term, to appoint an Administrator or Committee of Administrators for the management of the affairs of the Society, until the reconstitution of the Committee of Management in accordance with the

18. provisions of the Act, the Rules and the bye-laws of the Society, giving power to the Registrar to change the Administrator or as the case may be, any member of the Committee or to appoint Committee in place of an Administrator or vice versa from time to time.

18. Sub-clause (c) says that where a Committee is appointed under Clause (b), it shall consist of a Chairman and such other members not exceeding eight as may be nominated by the Registrar out of which at least two shall be Government servants.

19. Sub-clause (6) of Section 29, which requires " special mention looking to the controversy involved, is being quoted below:

(6) The Administrator or the Committee appointed under Sub-section (5) shall, subject to any directions which the Registrar may from time to time give, have the powers to perform all or any of the functions of the Committee of Management or of any officer of the Society and shall be deemed for all purposes under this Act, the rule and the bye-laws of the Society to be the Committee of Management and the Chairman of such Committee shall, exercise the powers and perform the functions of the Chairman of the Committee of Management.

20. The aforesaid provisions enumerates, details and specifies the power of the Administrator or Committee of Administrators, conferring powers upon them to perform all or any of the functions of the Committee of Management or of any officer of the Society and also creates a deeming fiction by means of which, the Administrator or the Committee of Administrators shall be deemed for all purposes under the Act, Rules and the Bye-laws of the Society, to be the Committee of Management and Chairman of the Committee shall exercise the powers and perform functions of the Chairman of the Committee of Management.

21. Relying upon this deeming clause, respondents have urged that since the Administrator or the Committee of Administrators appointed u/s 29(5) is the deemed Committee of Management and the Chairman of this Committee as the Chairman of the Committee of Management, who have been conferred powers to perform all or any of the functions of the Committee of Management or of any officer of the Society, subject to any directions, which the Registrar may time to time give, the function of enrolling new members in the Society thus, cannot be said to be excluded from the sphere of the activities of the Administrator or Committee of Administrators, which function admittedly is the function of the Committee of Management, when it is in existence.

22. In support of the plea that the Administrator cannot enrol new members, the petitioner relied upon the Judgment in the case of K. Shantharaj and another Vs.

M.L. Nagaraja and others, , wherein the Apex Court while considering Sections 30 and 30A of the Karnataka Co-operative Societies Act, 1959, held that the Administrator or the Special Officer must conduct the elections with the members on the rolls and he has no power to enrol new members and conduct the election by including them also. The Court also observed that the power of Administrator to conduct the elections should be in accordance with the provisions of the Act, Rules and Bye- laws of the Society.

23. Reliance has also been placed upon the case of Jt. Registrar of Co-op. Societies Vs. T.A. Kuttappan and Others, wherein Section 32 Sub-clause (4)(1) (a) and (b) of the Kerala Co-operative Societies Act, 1969, were the subject-matter of consideration, wherein the Apex Court held that the powers of new committee or administrator(s) appointed by Registrar upon supersession of the Committee of Management, does not include the power to enrol new members. They are duty bound to conduct elections with the already registered members and only an elected Committee of Management is empowered to enrol new members, as a Co-operative Society is expected to carry out its activities in a democratic manner.

24. A Division Bench of this Court in Writ Petition No. 923 (M/B) of 2006, Desh Deepak Singh v. State of U.P. and Ors., decided on 13.2.2006, considering the aforesaid plea about the power of the Administrator to enrol new members, following the dictum of the Apex Court in the aforesaid case of Jt. Registrar of Co-operative Societies, Kerala (supra), observed that it is the settled law of this Court as well as Hon"ble the Supreme Court that the Administrator appointed u/s 29 of the U. P. Co-operative Society Act can only look after day today work of the Society and it has no authority to enrol new members and directed that the elections be held in accordance with law, wherein new members, so enrolled, would not be permitted to participate in the elections.

25. The argument of the respondents is that the aforesaid Division Bench Judgment of this Court is per incurium, as it does not take into consideration, the provisions of Section 29(6), which consists of a deeming clause and creates a deeming fiction, which, in effect, not only substitutes the Administrator or the Committee of Administrators in place of the elected Committee of Management, but treats them as a Committee of Management for the purpose under the Act, Rules and Bye-laws of the Society and confers power to perform the functions of the Committee of Management and that of the Chairman of the Committee of Administrators, is entitled to exercise powers and functions of the Chairman of the Committee of Management.

26. Argument is that the Administrator or the Committee of Administrators have the power to exercise and perform all functions, which the elected Committee of Management and elected Chairman could exercise under the Act, Rules and Bye-laws of the Society.

27. Further case is that once it is found that there is no distinction in regard to

the exercise of powers and functions, between Administrator/Committee of Administrators and the elected Committee of Management, it would be a superfluous plea that the Administrator/Committee of Administrators, so appointed, though would be entitled and empowered to discharge all other functions under the Act, Rules and Bye-laws of the Society but would not be allowed to exercise the powers to enrol new members.

28. It has been vehemently contended that the aforesaid provision has to be given its true, literal and simple meaning, as there is no ambiguity and if any effort is made to interpret the aforesaid provision, by giving a different meaning, it would be violence to the statutory provision and would amount to reading such words, which are not incorporated therein.

29. Relying upon the case of *G. Viswanathan Vs. The Hon'ble Speaker, Tamil Nadu Legislative Assembly, Madras* and another, the respondents submitted that a deeming provision is an admission of the non-existence of a fact which does not even exist. The Legislature is competent to enact a deeming provision for the purpose of assuming the existence of a fact which does even exist. It means that the Courts must assume that such a state of affairs exists as real, and should imagine as real the consequences and incidents which inevitably flow therefrom, and give effect to the same. The deeming provision may be intended to enlarge the meaning of a particular word or to include matters which otherwise may or may not fall within the main provision.

30. The Court further observed that the law laid down in this regard in *East End Dwellings Co. Ltd. Case, 1952 AC 109*, has been followed by this Court in a number of cases, beginning from *M. Venugopal Vs. The Divisional Manager, Life Insurance Corporation of India, Machilipatnam, Andhra Pradesh* and another, and ending with a recent decision of a three-Judges Bench in *M. Venugopal Vs. The Divisional Manager, Life Insurance Corporation of India, Machilipatnam, Andhra Pradesh* and another,

31. The Apex Court noticed the observations made by Hon'ble N. P. Singh, J., speaking for the Bench, who stated the law as under:

The effect of a deeming clause is well-known. Legislature can introduce a statutory fiction and Courts have to proceed on the assumption that such state of affairs exists on the relevant date. In this connection one is often reminded of what was said by Lord Asquith in the case of *East End Dwellings Co. Ltd. v. Finsbury Borough Council*, that when one is bidden to treat an imaginary state of affairs as real, he must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which inevitably have flowed from it- one must not permit his "imagination to boggle" when it comes to the inevitable corollaries of that state of affairs.

32. In this case, the Apex Court while considering the scope and effect of deeming provision in Explanation (a) to Clause 2(1) of Schedule X, held that in view of the Explanation to para 2(1) of the Tenth Schedule of the Constitution

even if a member is thrown out or expelled from the party, for the purposes of the Tenth Schedule he will not cease to be a member of the political party that had set him up as a candidate for the election. He will continue to belong to that political party even if he is treated as "unattached".

33. The interpretation aforesaid of the deeming provision was in context to the status of a member, who had contested the election on the ticket of a particular political party but later on, he was expelled from the political party and Speaker declared him unattached member in the Assembly.

34. The given facts of the aforesaid case, the status of such an expelled member, was to be treated to be in existence though in reality, he may not be a member any more of such political party.

35. For the same proposition, reference has been made to the case of M/s. Voltas Ltd. Bombay Vs. Union of India and others, in which the Apex Court was considering Section 33 of the Monopolies and Restrictive Trade Practices Act, 1969, as amended by Act No. 30 of 1984, wherein in Sub-section (1) of Section 33 a deeming clause had been introduced by the Parliament saying that every agreement falling within one or more of the categories mentioned in the said Sub-section (1) shall be deemed, for the purposes of the Act, to be an agreement relating to restrictive trade practices.

36. The Court observed that : "the effect of a statute containing a legal fiction is by now well-settled. The Legislature by a statute may create a legal fiction saying that something shall be deemed to have been done which in fact and truth has not been done, but even then Court has to give full effect to such statutory fiction after examining and ascertaining as to for what purpose and between what parties such statutory fiction has been resorted to."

37. In this context thus, it would be relevant to mention here that while interpreting the deeming clause in Section 29 Sub-clause (6), one has to ascertain as to for what purpose and between what parties, such statutory fiction has been resorted to.

38. The Court should, as far as possible, avoid a construction which will make the legislation futile but at the same time, a deeming provision should in law be carried to its logical end. [See State of Andhra Pradesh Vs. Vallabhapuram Ravi,

39. It has been reiterated in the case of N. Padmamma and Others Vs. S. Ramakrishna Reddy and Others, that the legal fiction as is well known must be given its full effect.

40. Emphasizing upon the deeming clause aforesaid, it has further been urged that the words used in the deeming clause have to be given their natural meaning, as it is a cardinal principle of construction of statute that when the language of statute is plain and unambiguous then Court must give effect to the words used in the statute and that it would not be open to the Court to adopt a hypothetical construction on the ground that such construction is more consistent

with the alleged object and the policy of the Act. It was emphasized further that while interpreting a statute, effort should be made to give effect to each and every word used by the Legislature. The Courts always presume that Legislature inserted every part of a statute for a purpose and the legislative intention is that every part of the statute should have effect. Where the language of the Act is clear and explicit, the Court must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the Legislature.

[See Promoters and Builders Association of Pune Vs. Pune Municipal Corporation and Others, ; Union of India (UOI) and Another Vs. Hansoli Devi and Others, Nathi Devi Vs. Radha Devi Gupta, and Dr Ganga Prasad Verma and Others Vs. State of Bihar and Others,

41. In the case of Grasim Industries Ltd. Vs. Collector of Customs, Bombay, it was held that : "no words or expression used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. Every provision and every word must be looked at generally and in the context in which it is used and not in isolation. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the Legislature. Wherever the language is clear the intention of the Legislature is to be gathered from the language used. While doing so, what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided".

42. The sum and substance of the aforesaid legal position as laid down by the Apex Court, is that the words used in the deeming clause have to be given their natural meaning and full effect, if there is no ambiguity and the language is plain and unambiguous. If the language of the Act is clear and explicit, the Court must give effect to it, whatever may be the consequences. No words or expression used in the Statute can be said to be redundant or superfluous.

43. While giving full effect to such statutory fiction, the Court has nonetheless to examine and ascertain as to for what purpose and between what parties, such statutory fiction has been resorted to.

44. The distinction which is being sought to be raised in the proposition of law laid down by the Apex Court in the case of K. Shantharaj (supra) and Jt. Registrar of Co-operative Societies (supra) is obviously based upon the language used in the provisions of the Karnataka Act, Kerala Act and U. P. Act. Also, distinction is being drawn on the ground that in the case of K. Shantharaj (supra) the Court was considering the provision of

45. supersession of the Committee of Management, where the Court found that the Administrator appointed u/s 30 and Special Officer appointed u/s 30A of the Karnataka Act would not be competent to enrol new members and likewise in the

case of *Jt. Registrar of Co-operative Societies (supra)*, again the matter of supersession was under consideration.

45. In both these cases, the Administrator was held to be duty bound to conduct the elections with the already enrolled members and that role of the Administrator was to bring the Co-operative Society back to the state of normalcy, whereas the case in hand deals with a situation where the Administrator has been appointed not in a proceeding of supersession but where the elections could not be conducted within the term of the Committee of Management and, therefore, the Administrator has been appointed u/s 29 Sub-clause (5).

46. In the Karnataka Act u/s 30 Sub-clause (2), the Administrator so appointed was authorized, subject to the control of the Registrar and such instructions as he may give from time to time, to exercise all or any of the functions of the Committee or of any officer of the Co-operative Society and take such action as he may consider necessary in the interest of the Society, whereas u/s 30A, the Special Officer was conferred power to exercise and perform all the powers and functions of the Committee of the Co-operative Society or any officer of the Co-operative Society and take all such actions as may be required in the interest of the Co-operative Society. Likewise u/s 32 Sub-clause (4) of the Kerala Act, the Administrator was having the power to exercise all or any of the functions of the Committee or of any officer of the Society, viz. the Chairman or any other office bearer of the Society, and take such action as may be required in the interests of the Society.

47. Distinction was sought to be drawn saying that u/s 30 Sub-clause (2), the Administrator could exercise all or any functions of the Committee or of any officer and that enrolment of new member was not a function but was a power under the bye-laws, whereas in the matter of Section 30A, he was given all the powers and functions of the Committee or of any officer of the Co-operative Society and he was also allowed to take any such action as he may consider necessary in the interest of the Society.

48. In the Kerala Act, as already observed, again the power was conferred upon the Administrator to exercise all or any of the functions of the Committee.

49. This distinction was considered by the Apex Court and the Court observed that on carefully analysing the provisions of the Act. it would be clear that the administrator or a Committee appointed while the Committee of Management of the Society is under supersession cannot have the power to enrol new members and such a question ought not to be decided merely by indulging in an exercise on semantics in ascertaining the meaning of the expression "have power to exercise all or any of the functions..." Whether an authority is discharging a function or exercising a power will have to be ascertained with reference to the nature of the function or the power discharged or exercised in the background of enactment.

50. The Court further observed that "what is necessary to bear in mind is the nature of function or power exercised and not the manner in which it is done. The Court took the view that the Administrator or a Special Officer can exercise powers and functions only as may be required in the interests of the Co-operative Society. In that context, it was stated that he should conduct elections as enjoined under law, that is, he is to conduct elections with the members as on the rolls and by necessary implication, he is not vested with power to enrol new members of the Society.

51. Their Lordships further observed that: "a Co-operative Society is expected to function in a democratic manner through an elected Committee of Management and that Committee of Management is empowered to enrol new members. Enrolment of new members would involve alteration of the composition of the Society itself and such a power should be exercised by an elected Committee rather than by an administrator or a Committee appointed by the Registrar while the Committee of Management is under supersession. The Court has taken the view, it did, bearing in mind these aspects, though not spelt out in the course of the Judgment. Even where the language of Section 30A of the Karnataka Act empowering a Special Officer to exercise and perform all the powers and functions of the Committee of Management of a Co-operative Society fell for consideration, this Court having expressed that view, we do not think, there is any need to explore the difference in the meaning of the expressions "have power to exercise all or any of the functions of the Committee" in the Act and "exercise all or any of the functions of the Committee " in the Karnataka Act as they are not different and are in substance one and the same and difference in language will assume no importance. What is of significance is that when the Committee of Management of the Co-operative Society commits any default or is negligent in the performance of the duties imposed under the Acts. Rules and the Bye-laws, which is prejudicial to the interest of the Society, the same is superseded and an administrator or a Committee is imposed thereon. The duty of such a committee or an administrator is to set right the default, if any, and to enable the Society to carry on its functions as enjoined by law. Thus, the role of an administrator or a committee appointed by the Registrar while the Committee of Management is under supersession, is, as pointed out by this Court, only to bring on an even keel a ship which is in doldrums."

52. Let us see the purpose and the circumstances, under which the Administrator is appointed u/s 29 Sub-clause (5). This also requires us to consider as to whether the principles laid down by the Apex Court in a matter where the provision of supersession of a Committee was under consideration, can be applied only when the Administrator has been appointed, u/s 35 of the U. P. Act, which speaks about the supersession or also when the Administrator/Committee of Administrators is appointed u/s 29(5), where the Committee is replaced for no fault of its own, but only because of the failure on the part of the Registrar himself, in falling to get the elections conducted within the term prescribed, or as in the instant case, the election could not be held because the term of the

existing Committee of Management was reduced from five years to two years by statutory amendment and for that reason, the Administrator was appointed.

53. Section 35 of the U. P. Act is a provision where the Registrar can appoint an Administrator or Committee of Administrators while undertaking proceedings for supersession, he can suspend the Committee of Management under Sub-clause (2) of Section 35.

54. Sub-clause (5) of Section 35 is more or less analogous to Clause (6) of Section 29. Sub-clause (5) of Section 35 says the Committee, administrator or administrators appointed under Sub-sections (3) and (4) shall, subject to any directions which the Registrar may from time to time give, have the power to exercise all or any of the functions of the Committee of Management or of any officer of the Society and shall be deemed for all purposes under the Act. the rules and the bye-laws of the Society to be the Committee of Management.

55. The power to appoint Administrator or Committee of Administrators u/s 35, arises because of the malfunctioning of the Society, and where it commits default persistently or is negligent in performance of duties imposed on it by the Act or the Rules or the Bye- laws of the Society. The obligation and responsibility of the Committee or an Administrator is to set right the default, if any, and to enable the Society to carry on its functions as enjoined by law, as observed by the Apex Court in the case of Jt. Registrar of Co-operative Societies (supra).

56. We are not required to give our views as to whether during the pendency of the supersession proceedings, the Administrator or Committee of Administrators, under the powers conferred upon them under Sub-section (5), where a deeming clause has been inserted, would be entitled to enrol new members, as the said provision is not in issue, but we do take into notice that the purpose of suspension during supersession of the elected Committee of Management authorizing the Administrator or Administrators to discharge the functions of the Committee of Management only is to confer power upon such authorities to discharge the functions of the Committee effectively, the main function, being to remove the defects, improve malfunctioning and restore normalcy.

57. Rule 407 of the U. P. Co-operative Societies Rules says that it shall be the duty of the Registrar to reconstitute the new Committee of Management in accordance with the provisions, of the Act, Rules and Bye-laws before the expiry of the term of elected Committee of Management of any Co-operative Society. Duty has been cast upon the Secretary or the Managing Director of the Society to inform four months prior to the date of expiry of the term of elected Committee of Management, to the District Assistant Registrar, Co-operative Society of the district in which the registered headquarters of the Society are situated or the officer authorised by the Registrar for the purpose for a class or classes of Societies, in writing about the date on which the term of the elected Committee of Management of the Society is to expire and he shall make request to determine the constituencies and for holding the elections.

58. Under Sub-clause 5(b) of Section 29, the Administrator or the Committee of Administrator is appointed for the management of the affairs of the Society, until reconstitution of Committee of Management in accordance with the Act, Rules and Bye-laws of the Society.

59. This appointment of the Administrator obviously has to be made only for a limited period, till the elections are held and new elected Committee of Management comes into power.

60. Sub-clause (7) of Section 29 makes it very clear that the Administrator or the Committee, as the case may be, appointed under Sub-section (5), shall as soon as may be, but not later than the expiry of six months (presently amended to one years and six months) from the date of appointment, arrange for reconstitution of the Committee of Management in accordance with the provisions of the Act, the rules and the bye-laws of the Society to take over the management of the Society from the Administrator or the Committee, as the case may be.

61. Under Sub-section (3) of Section 29. the election to reconstitute the Committee of Management of a Co-operative Society has to be completed in the prescribed, manner under the superintendence, control and direction of the Registrar at least 15 days before the expiry of the term of the Committee of Management and the members, and the members so elected shall replace the Committee of Management, whose term expires under Sub-section (2).

62. The necessity to appoint an Administrator under Sub-clause (5) of Section 29 arises when the elections are not held during the tenure of the existing elected Committee of Management, for any reason whatsoever, i.e., may be not because of any default on the part of the elected Committee of Management, but because of the inaction, deliberate or otherwise, on the part of the Registrar, and in that event the elected Committee ceases to exist after expiry of the term and in such a situation, to avoid any vacuum and for carrying on the functions of the Society smoothly and uninterruptedly, some arrangement has to be made and only for that purpose and with this sole object, statutory provision of appointing Administrator or Committee of Administrators, has been provided.

63. In the case in hand, it is not the case of the failure on the part of the elected Committee of Management or its Secretary or Managing Director to take steps in terms of Rule 407 aforesaid, that the election could not be held and Administrator has been appointed but it is the case of the reduction of the already existing term of the Committee of Management, that the Administrators have been appointed.

64. The Statute itself provided initially a maximum limit of six months, during which period, the Administrator was to arrange for reconstitution of the Committee of Management in accordance with the provisions of the Act. Rules and Bye-laws of the Society. Incidentally, for any good or bad reason, the term of the Administrator was enhanced by statutory amendments twice and it has been

made one year and six months. Amendments of this nature, cannot be made in routine manner, unless there are some good reasons for doing so, but the said issue is not before us, therefore, we do not address ourselves on this point.

65. The main responsibility, and legal duty and obligation, therefore, of the Administrator is to get the elected Committee of Management reconstituted.

66. In view of the ratio of the Judgment in the cases of *Jt. Registrar of Co-operative Societies and K. Shantharaj (supra)*, a Co-operative Society is expected to function in a democratic manner through an elected Committee of Management. The power to enrol members thus, vests with the elected Committee of Management.

67. The provisions of Sections 30 and 30A of the Karnataka Act and Section 32 Sub-clause (4) of the Kerala Act were considered by the Apex Court and the Court did opine that there was no difference when it is said that Special Officer is appointed to exercise and perform all the powers and functions of the Committee of Management or any officer of the Co-operative Society and not merely functions, as given in Section 30 or Section 32 Sub-clause (4) of the Kerala Act.

68. In Sub-clause (6) of Section 29 of the U. P. Act, what has been provided is that the Administrator or the Committee of Administrators, subject to any directions which the Registrar may from time-to-time give, shall have the powers to perform all or any of the functions of the Committee of Management or of any officer of the Society, which is the same phraseology used u/s 30A of the Karnataka Act.

69. Further provision in the U. P. Act is that for all purposes under the Act, Rules and Bye-laws of the Society, the Administrator/Committee of Administrators, shall be deemed to be the Committee of Management, and the Chairman of such Committee shall exercise the powers and perform the functions of the Chairman of the Committee of Management.

70. The Apex Court has ruled that the power to exercise all powers and functions of the Committee of Management by Special Officer or Administrator does not include the power to enrol new members.

71. In the Karnataka Act and Kerala Act, of course, deeming provision is not there, therefore, what is the effect of the deeming provision in the U. P. Act has to be considered.

72. Sub-clause (6) of Section 29 can be divided in two parts, viz. First part, where power has been conferred upon the Administrator/Committee of Administrators and the second part, in which deeming clause is mentioned. The first part provides and confers the authority upon the Administrator/Committee of Administrators to have the powers to perform all or any of the functions of the Committee of Management or of any officer of the Society. This phrase has already been interpreted by the Apex Court, as aforesaid and a clear meaning has been given to it, saying that the Administrator does not have any power to

enrol new members.

73. The deeming provision thereafter inserted in the U. P. Act will mean that the Administrator or Committee of Administrators for all purposes under the Act, Rules and Bye-laws of the Society, shall be deemed to be the Committee of Management but it does not say that this Committee or Administrator shall exercise all the powers of the Committee of Management, in the first part, it only being mentioned that the Administrator would have power to perform all or any of the functions of the Committee of Management.

74. So far the Chairman of this Committee is concerned he shall perform the functions of the Chairman of the Committee of Management.

75. The enrolment of new members is basically the function of the elected Committee of Management and not that of the Chairman, unless duly authorized by the Committee of Management.

76. Rule 38 of U. P. Co-operative Societies Rules, 1968, which deals with membership, in its Sub-clause (1)(a) says that subject to the provisions of Section 26A, every application for admission to the membership of a Co-operative Society shall be made to the Secretary and the Secretary shall place such application as soon as may be, before the authority competent under the bye-laws of the Society to take decision on the question of admission to the membership of the Society. Sub-clause (b) says that the competent authority shall consider the application for admission to the membership and take final decision either admitting or refusing to admit the applicant to the membership of the Society. The authority competent to enrol new members, is the Committee of Management under the bye-laws of the Society.

77. The aforesaid rule gives a discretion to the Committee of Management either to accept a person, who has applied for being enrolled as a member, to be a member or not and that it also authorizes the Committee of Management to nominate any officer of the Society to be the competent authority. The discretion to enrol a particular member in the Society, is the exclusive discretion of the Committee of Management, unless there are specific rules or any provision in the Act, to the contrary, giving power to the Administrator, to enrol new members. If the Administrator or Committee of Administrators, who are in office in place of the Committee of Management or so to say, like the Committee of Management, are allowed to enrol new members, that would alter the composition of the Society itself, wherein certain persons, as members, have joined voluntarily in exercise of their fundamental right of forming an association. The induction of such new members enrolled by the Administrator would change the basic structure/composition of the Society, that too without concurrence of the elected body.

78. The members who are enrolled by the Administrator, will be the members, in whose enrolment, the elected Committee of Management, had no role to play. The elected Committee of Management, which was previously existing, when the

Administrator was appointed and the subsequently elected Committee of Management, both will lose their statutory right to exercise their discretion in enrolling new members and the Administrator, who has been appointed only for the intermediary period, till the elections are held and new Committee of Management takes charge, would induct members in the Society though his function was only to carry out the day-to-day affairs of the Society and get the Committee of Management reconstituted. In other words, the appointment of Administrator being only a stop-gap arrangement, during which period, he cannot intermeddle with the electoral college for the election of Committee of Management, by inducting new members in the Society.

79. Explanation to Section 4 of the Act gives an inclusive definition of Co-operative principles and enumerates them as under:

Explanation. - Co-operative principles shall include:

- (a) advancement of economic interest of the members in accordance with public morals, decency and the relevant directive principles of State policy enunciated in the Constitution of India;
- (b) regulation and restriction of profit motive:
- (c) promotion of thrift, mutual aid and self-help:
- (d) voluntary membership; and
- (e) democratic constitution of the Society.

80. The two essential principles are voluntary membership and democratic constitution of the Society. Enrolment of new members by the Administrator will go also against the aforesaid principles.

81. Sub-clause (5)(c) of Section 29 prescribes that the Committee will consist of a Chairman and such other members not exceeding eight, which Committee is to be nominated by the Registrar, which necessarily, has to consist two Government servants. The Committee of Administrators thus, whenever is appointed by the Registrar, shall have at least two Government servants and the rest of the members may be from the general body but usually they are nominated, even though they are not members of the general body of the Society.

82. The validity of nominating such members, who are not the members of the general body of the Society in the Committee of Administrators, is a matter not to be considered in this writ petition, but even assuming that the rest of the members, apart from the Government officers, are the members of the general body, the said Committee of Administrators cannot be taken as elected Committee of Management. In a Committee where two Government officers are inseparable constituents, there cannot be any power or authority inherent in such a Committee, to enrol new members. The existence of two Government servants in the said Committee makes a clear distinction between the power of the elected Committee of Management in enrolling new members of the Society

and powers of such Committee of Administrators in respect of discharging the functions of Committee of Management of the Society which is for the purpose of looking after the affairs of the Society, on day-to-day basis. The Committee of Administrators, so appointed, will exercise power for manning the affairs of the Society for which purpose, it will be deemed to be the Committee of Management, but with this statutory constitution, it cannot exercise any power to enrol new members. The Government officers had no role in the matter of enrolment of new members nor the scheme of the Act does provide any such mechanism for enrolling new members in a voluntarily formed Co-operative Society, by the Administrator/Committee of Administrators.

83. In case a single Administrator is appointed, he is always a Government servant and obviously a Government servant cannot, under the deeming provision, exercise the power of enrolment of new members, which is the exclusive domain of the elected Committee of Management.

What is the purpose of appointment of an Administrator and in what context he has been appointed, would be relevant for finding out the true meaning, and the effect of the deeming clause, when it is read in consonance and in continuity with the first part of Sub-clause (6) of Section 29, read with Sub-clause (7).

84. The limited role of an Administrator appointed u/s 29 (5) is to manage the day-to-day affairs of the Society and to take immediate steps for reconstitution of the elected Committee of Management.

85. The Administrator is appointed only when the term of the elected Committee of Management comes to an end, and for want of elections, before the expiry of its term, new elected Committee of Management is not constituted within the time prescribed, for any reason whatsoever and he is to remain in office till a fresh Committee is constituted.

86. Thus, it is only for the period interregnum, i.e., from the date of the expiry of the term of the elected Committee of Management and till a new Committee is elected, the Administrator/Committee of Administrators can be appointed.

87. It is not the intention of the Legislature to give this power of enrolling members to such Administrator or Committee of Administrators, who is to remain there for the aforesaid limited statutory period, for carrying on the functions of the Society. This statutory period was only six months originally. It is a different matter that by virtue of statutory amendments this period has been extended from time to time.

88. The purpose of such appointment of the Administrator/Committee of Administrators is neither to disturb the democratic working nor the voluntary composition of the Society nor to usurp the powers of the elected Committee of Management, particularly in regard to its constitution and place it in the hands of Administrator/Committee of Administrators, rather the intention of the said provision is to restore the democratically elected Committee of Management, as

early as possible.

89. Sections 28 and 29 of the Act and the scheme contained therein is with respect to the management of the Societies, wherein final authority in Co-operative Society vests in the general body, subject to provisions of the Act and the Rules, as given in Section 28 of the Act.

90. Section 29 itself is a complete code, which takes care of the election and constitution of Committee of Management within the given time and before the expiry of the term of the existing Committee of Management. Under Sub-section (1) of Section 29, the management of every Co-operative Society shall vest in a Committee of Management constituted in accordance with the Act, the Rules and Bye-laws, which shall perform such duties, as may be conferred or imposed by the Act, Rules and the Bye-laws.

91. In the case of State of U.P. and another etc. Vs. C.O.D. Chheoki Employees" Co-op. Society Ltd. and others etc., the Supreme Court, while considering the rule regarding nominating the members of the weaker section in the Society, if they could not be elected, after holding that it is not a fundamental right to become a member, but it is only a statutory right, observed that : "once a Society has been registered, under the Act, the management of the Society through Section 29 and rules made thereunder, is regulated by duly elected members".

92. The words incorporated and the phraseology used in Sub-section (7) of Section 29 leave no ambiguity that the Administrator or the Committee has to get the elected Committee of Management reconstituted, within shortest possible time, which could be maximum period of six months, now amended to one year and six months.

93. The Administrator/Committee of Administrators, cannot be taken to be a Committee of Management elected under the Act, the Rules or the Bye-laws of the Society. The constitution of such Committee can only be, by holding the election as per the provisions of the Act, the Rules and the Bye-laws of the Society.

94. This clarifies and signifies that under the statutory provision, obligation rests upon the Administrator/Committee of Management and also on the Registrar, to get the elected Committee of Management constituted at the earliest and not to wait for the maximum period prescribed therein, and allow the Administrator to remain in office for the maximum period prescribed therein.

95. There can also not be any Justification or necessity for the Administrator to enrol new members during the short period of his stay in the Society, apart from the fact that his competence would also have to be tested on the ground that once the term of the elected Committee of Management has come to an end, the said Committee could not have enrolled any new member, even if it had remained in office thereafter, till such time the elections were held, therefore,

also there can be no occasion for the Administrator to enrol new member after the expiry of the term of the Committee of Management. If the elections were to be conducted and held during the subsistence of the elected Committee of Management, the Committee of Management under the rules, could have enrolled new members, but after the expiry of the term, the said Committee also could not have enrolled any new member and, therefore, the Administrator/Committee of Administrators, being the Committee of Management under the deeming clause, cannot enrol any new member. The elected Committee of Management u/s 29(5)(a) ceases to exist, after the expiry of its term, if fresh elections had not been held, for any reason whatsoever within the prescribed period of its term.

96. After the elected Committee of Management ceases to exist in terms of Sub-section (5)(a) of Section 29, the Administrator/Committee of Administrators, who steps in for carrying on the functions of the Society, till a new Committee is elected, and is deemed to be the Committee of Management, cannot exercise the power of enrolling new members, when the elected Committee itself could not have enrolled any new member after the expiry of its term.

97. The legislative intent, object and purpose of the aforesaid scheme is to ensure that every Co-operative Society is managed by an elected Committee of Management and that a Committee of Management, whose term has expired, is not allowed to continue beyond its term and for that very reason, on the expiry of the term, the existing Committee ceases to exist in terms of Section 29(5)(a) of the Act, and once the elected Committee ceases to exist and the Administrator/Committee of Administrators is appointed, they by virtue of a deeming fiction, are treated to be the Committee of Management and the Chairman of the Committee of Management respectively. This deeming fiction only brings a non-existing Committee of Management into existence, whose existence comes to an end, on the expiry of its term and there is also no new elected Committee, unless fresh elections are held, but this deeming clause would not enlarge the scope and authority of such Administrator or Committee of Administrators to enrol new members and to work as elected body.

98. 99. We are thus, of the considered opinion that the deeming clause in Sub-clause (6) of Section 29 does not enlarge the scope of powers and functions of the Administrator/Committee of Administrators, as against the one interpreted by the Supreme Court in the cases of *Jt. Registrar of Co-operative Societies and K. Shantharaj* (supra) and thus, would not empower the Administrator or Committee of Administrators, to enrol new members.

100. The new members, who have been enrolled by the Administrator have been enrolled by an authority, which inherently lacked jurisdiction and authority, to enrol them as member, therefore, they can neither be treated as the members of the Society, nor such enrolment would confer any right upon them, to be treated as "member".

100. The elections have to be conducted on the basis of the electoral roll, which existed on the date when the existing Committee of Management was replaced by the Administrator/Committee of Administrators. Of course, if there is any dispute amongst the existing members regarding their qualification or disqualification or eligibility to participate in the elections, that can be resolved, as per the rules, by the authority competent.

101. We also find that even otherwise, enrolment of new members on the eve of election, cannot be justified in any manner nor can be said to be reasonable and fair nor can be supported by any legal provision, apart from the finding aforesaid that the Administrator/Committee of Administrators, has no authority or power to enrol new member, at any point of time, during which they remain in office.

102. For the reasons aforesaid, the members enrolled by the Administrator/Committee of Administrators in the Co-operative Society cannot be taken or treated as validly enrolled members of the Society, nor they would get any right to participate or vote in the elections of the Committee of Management of the Society.

With the aforesaid direction, the writ petition is allowed.

No orders as to costs.