

(1994) 05 KL CK 0013
In the High Court Of Kerala
Case No : O.P. No. 124 of 1990-M

V.V. Samuel and Another

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 25-05-1994

Acts Referred:

Citation : AIR 1995 Ker 126

Hon'ble Judges : T.V. Ramakrishnan, J

Bench : Single Bench

Advocate : V.N. Achutha Kurup, for the Appellant; Govt. Pleader and A.A. Mohammed Nazir, for the Respondent

Judgement

T.V. Ramakrishnan, J.—A somewhat important question arises for consideration in this Original Petition and it can be stated thus : Can the power conferred on the Registrar under Sub-sections (5) & (6) of Section 12 of the Kerala Co-operative Societies Act, 1969 (for short "the Act") be properly exercised for the purpose of amending the bye-laws in such a manner as to ensure effective control of the administration of the Society in the hands of Government officials as against elected members of the Society by incorporating a provision for appointment of Government officials as Ex-Officio members of the Managing Committee more than half in number on the ground that the Government has got a vital interest in the Society to be safeguarded and is interested in the better management of the Society ? The question has to be considered in the background that the general body of the Society has actually passed a resolution practically unanimously to amend the relevant bye-laws by providing for the constitution of a Managing Committee consisting of 11 members of which 8 are to be elected from the members of the Society and the remaining 3 to be nominated by the Government taking note of the substantial assistance provided by the State for the formation of the Society and the Registrar has refused to register such an amendment.

2. Facts relevant are thus : Petitioners are members of the 4th respondent-

Vechoochira Ex-servicemen Multipurpose Co-operative Colony Ltd. No. 3171, Vechoochira (for short "the Society"). The Society was actually formed as part of a scheme evolved by the erstwhile Travancore-Cochin Government to rehabilitate the Ex-Servicemen who served the Trav-Coch. Armed Forces and the Indian Army. An extent of 1500 acres of forest land was allotted for the purpose of establishing the colony in Vechoochira. Out of the total extent, 1200 acres were allotted to 300 Ex-Servicemen, 4 acres per head on condition that the allottees have to cultivate the land and settle down in the colony itself. As per the bye-laws of the Society membership is restricted to the allottees of the land subject to the condition that each member is entitled to name a person to be the member of the Society after his death. Clause No. 15 of the bye-laws as it existed at the time when the Society was formed provided for the constitution of a Managing Committee consisting of 11 members of which 5 is to be elected from and out of the general body of members of the Society and the remaining six to be nominated by the Government. The six nominees of the Government are indicated by the names of the post they occupy. It is relevant to note at this stage itself that the bye-laws of the Society were framed providing for nominated members to be in the Managing Committee before amendment of the provisions contained in Sections 28 and 31 of the Act by the Kerala Co-operative Societies (Amendment) Act, 1987.

3. At the time when the amending Act came into force, the petitioners and three other members were in the Managing Committee along with six nominated members. First petitioner was acting as the Honorary Secretary of the Society. When Sections 28 and 31 were amended deleting the provisions allowing nominated members to be in the Managing Committee of the Societies other than certain apex and central Societies as provided in the amended provisions contained in Section 31 of the Act, the Committee was superseded and in its place an Administrative Committee consisting of the members of the superseded Committee was appointed by the Registrar as per his order dated 21-4-1988. The term of the said Committee was for a period of 4 months from the date of taking charge. However, the term of the Committee was extended from time to time and thereafter election has not been conducted so far in the Society due to various reasons.

4. Even before Sections 26 and 31 of the Act were amended, a large majority of the members of the Society felt that Clause No. 15 of the bye-laws which provides for the Constitution of the Managing Committee has to be suitably amended providing for the constitution of a Committee in which elected members have majority vis-a-vis the Government officials who are to be nominated by the Government. Taking note of the sentiments of the members of the Society, the Managing Committee has appointed a subcommittee in 1982 for the purpose of suggesting suitable proposals for amending clause No. 15 of the bye-laws in accordance with the wishes of the members of the Society. The subcommittee after the due deliberations submitted a proposal to have a Managing Committee consisting of 8 elected members and 3 Government officials as

members nominated by the Government. By the time the sub-committee submitted its proposal, the Registrar of Societies has also suggested an amendment to Clause No. 15 of the bye-laws providing for the constitution of the Managing Committee by appointing six Government officials as Ex-Officio members and the remaining five to be elected by the general body of the Society. The general body of the Society in its meeting held on 24-2-1989 considered the proposals submitted by the sub-committee and the Registrar. After due deliberations the general body rejected the proposal submitted by the Registrar and accepted that of the sub-committee. The resolution passed by the general body amending Clause No. 15 by the general body was duly forwarded to the Registrar for registration u/s 12 of the Act: However, before registering the amendment the 5 elected members who were continuing in the Administrative Committee were replaced by 5 other members of the Society. Challenging the reconstitution of the Administrative Committee, pending registration of the amendment, the petitioners and another member of the Society filed O.P. No. 4149 of 1989 before this Court. This Court disposed of the O.P. by Ext. P1 judgment dated 10-6-1989 directing the third respondent-Joint Registrar, inter alia, to take necessary action to amend the bye-laws of the Society within two months from the date of judgment and to hold the election within three months thereafter. Even before the disposal of the O.P. the application for registration of the amendment submitted by the Society was rejected as per Ext. P2 order dated 8-6-1989 by the third respondent. The representation submitted by the petitioners and others against Ext. P2 before the Government was also rejected as per Ext. P3 order dated 8-11-1989 stating that the constitution of the Managing Committee should be as suggested by the Registrar in the best interest of the Society.

5. After the disposal of the O.P. apparently pursuant to the directions contained in Ext. P1, the Administrator has caused a meeting of the general body convened as per Ext. P4 notice to consider the amendment proposed by the 3rd respondent to the bye-laws in exercise of the powers conferred on him u/s 12(5) of the Act. The general body was accordingly convened on 4-10-1989. In the meeting the general body rejected the proposal submitted by the 3rd respondent as not acceptable to them. Thereafter Ext. P5 order has been passed by the third respondent amending Clause 15 of the bye-laws exercising power u/s 12(5) & (6) of the Act. Ext. P5 is stated to be an order passed after issuing notice to the Society, Circle Co-operative Union, Koshencherry and the District Cooperative Bank, Pathanamthitta catling upon each of them to submit their representations, if any, in the matter of amending the bye-laws as proposed. It is stated in Ext. P5 that the Administrator of the Society and the Circle Co-operative Union have not submitted any representation. The District Co-operative Bank, Pathanamthitta has expressed its agreement to have the bye-laws amended as proposed by the third respondent.

6. Petitioners have challenged the validity and sustainability of Exts. P2, P3 and P5 orders on several grounds. It has been argued that the impugned orders are

orders passed mala fide and without jurisdiction. Petitioners have inter alia contended that the conditions required to be fulfilled before exercising power u/s 12(5) of the Act have not been fulfilled in the instant case and as such exercise of power u/s 12(5) of the Act is totally illegal and without jurisdiction. Further it was submitted that the amendment of bye-law No. 15 brought into force as per Ext. P5 order is really against the waiding and spirit of the amended provisions contained in Sections 28 and 31 of the Act. The provisions in bye-law No. 15 as amended by Ext. P5 order goes against the democratic system of administration of the Societies by a Managing Committee constituted by majority of elected members as envisaged by the provisions of the Act and Rules. Clause No. 15 of the bye-laws as amended is clearly arbitrary and illegal.

7. First respondent-State has filed detailed counsel affidavit fully justifying the action of refusal to register the amendment passed by the Society and the registration of the amendment as proposed by the Registrar. It was submitted that taking note of the substantial assistance rendered by the Government in the formation and establishment of the Society and the continued interest shown by the Government in the administration of the Society it is in the best interest of the Society and its members to have clause No. 15 of the bye-laws amended in the form suggested by the Registrar. As a justification for amending clause No. 15 of the bye-laws in the manner indicated by the Registrar it was submitted thus :

"..... The scheme for the distribution of land was decided after a long discussion in the above matter by the Central and State Governments. In addition to the allotment of 4 acres of land 4 lakhs of Rupees was provided from the amalgamated fund as loan to the Society and 4.65 lakhs as grant to the Society. The entire amount accrued in the above manner was distributed among the members and for the development works in the allotted plots with a stipulation that the loan amount will have to be re-paid. Since the Government money is utilised for the development of the colony for which the Society was constituted, it was found that it is absolutely necessary to have a direct control of the Government in the Constitution of the Committee thereby the administrative control of the Society will rest with the Government. It is with that view the Constitution of the Committee is to be with six Government Officers and remaining 5 from the nominees of the Members of the Society...."

In answer to the contention that the amendment effected as per Ext. P5 order is arbitrary and illegal, it was pointed out that in other Societies also there are provisions enabling the Managing Committees to be constituted with Government officials more than half in number and that in the peculiar facts and circumstances of the case such a provision providing for constitution of Managing Committee with Government officials as Ex-Officie members more than half in number is fully justifiable.

8. Before dealing with the point arising for consideration, it is necessary to refer briefly to the scheme of administration of Societies as envisaged by the

provisions in the Act both before and after Sections 28 and 31 were amended in 1987. Chapter IV of the Act specifically deals with the management of Cooperative Societies. Section 27 of the Act specifically states that the final authority of a Society shall vest in the general body of its members subject to the provisions of the Act, Rules and the bye-laws. Proviso to Sub-section (1) of Section 27 makes it clear that nothing contained in Sub-section (1) shall affect the exercise by the committee or any officer of a society of any power conferred on such committee or such officer by the Act or the Rules or the bye-laws. Sub-section (1) of Section 28 directs the general body of a Society to constitute a committee in accordance with the bye-laws and entrust the management of the affairs of the Society to such committee. There are provisos two to Sub-section (1) of Section 28 of which the second proviso which was substituted by two other provisos by the amending Act is specially relevant in this case and it is thus :

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

The two new provisos added in the place of the above proviso by the amending Act of 1987 are thus :

Provided further that where the bye-laws so provide, the Government or the Registrar may nominate all or any of the members of the first committee, including the president or chairman, for a period not exceeding six months :

Provided also that any member nominated to the committee of a society and holding office at the commencement of the Kerala Co-operative Societies (Amendment) Act, 1987, shall,--

(a) if that committee is not the first committee, cease to hold such office at such commencement; and

(b) if that committee is the first committee wherein -

(i) such member has, either before or at such commencement, completed six months or more from the date of the nomination, cease to hold such office at such commencement: or

(ii) such member has not, at such commencement, completed six months from the date of the nomination, cease to hold such office on the expiration of six months from the date of the nomination."

Sections 29 and 30 deal with matters relating to holding of Annual General Body meetings and Special General Body meetings, nature of the business to be transacted in such meetings and the procedure to be followed in such meetings. Section 31 deals with the power of the Government or any authority authorised by them to nominate persons of its choice on the committee of a Society. The provisions in Section 31 as already indicated were also amended drastically and as such it is relevant to note the provisions of Section 31 before and after its

amendment by the amending Act, 1987.

"31 - Nominees of Government on committee of a Society. -

(1) Where the Government -

(a) have subscribed to the share capital of a society; or

(b) have assisted indirectly in the formation or augmentation of the share capital of a society as provided in Chapter VI; or

(c) have guaranteed the repayment of principal and payment of interest on debentures issued by a society; or

(d) have guaranteed the repayment of principal payment of interest on loans and advances to a Society, the Government or any authority specified by the Government in this behalf shall have the right to nominate not more than three persons or one-third of the total number of members of the committee of the society, whichever is less, to be members of the committee."

((2) and (3) omitted)

(before amendment)

"31. Nominees of Government on committee of an apex or a central society.-- (1) Where the Government. -

(a) have subscribed to the share capital of an apex or a central society; or

(b) have assisted indirectly in the formation or augmentation of the share capital of an apex or a central society; or

(c) have guaranteed the repayment of principal and payment of interest on debentures issued by an apex or a central society; or

(d) have guaranteed the repayment of principal and payment of interest on loans and advances to an apex or a central society; the Government or any authority specified by them in this behalf shall have the right to nominate not more than three persons or one-third of the total number of members of the committee of such apex or central society, which ever is less, to be members of the committee."

((2), (3) & (4) omitted)

(after amendment)

It is clear from the amended provisions contained in Section 31 that after amendment Government can have its nominees only on the committees of certain apex or central Societies in case the conditions mentioned in that Section are satisfied and not in the case of ordinary societies like the one on hand. In fact it was as a result of the amended provisions contained in the second proviso to Sections 28 and 31 that clause No. 15 of the bye-laws of the Society required

amendment.

9. Another provision which requires to be noted is Section 12 which deals with amendment of bye-laws of a society. In this connection Rules 9 and 10 of the Rules which prescribe the procedure for amendment of bye-laws and the manner in which the societies are called upon to make or amend the bye-laws are also relevant. Rule 9 specifically provides that every proposal for amendment to the bye-laws of a society shall be made only by a resolution passed by 2/3rd majority of the members present and voting. Such resolution shall be forwarded to the Registrar within one month from the date of the general body meeting at which such amendment was passed provided that the Registrar may condone the delay, if any, for sufficient causes. The Rule further states that no such resolution shall be valid unless intimation of the amendment proposed has been given to the members of the society either in person and obtained their full signature in token of having received the same or by post under certificate of posting. Rule 9 would indicate that the general body which is the final authority as far as the management of the society is concerned has the primary right to propose the amendment to the bye-laws following the procedure prescribed under the Act and Rules. Sub-section (1) of Section 12 states that amendment to any bye-law of a society shall not be valid unless such amendment has been registered under the Act. The provisions of Section 7 specifying the conditions to be satisfied before registration of the bye-laws of a society by the Registrar are mutatis mutandis made applicable to the registration of amendment to the bye-laws also. Various sub-section of Section 12 prescribe the procedure to be followed by the Registrar in the matter of registration of amendments to the bye-laws. Section 12(5) enables the Registrar to require the society to make amendment to its bye-laws as suggested by him within such time as may be specified in the order or within such further time as he may grant it he is satisfied that for the purpose of altering the area of operation of a registered society or for the purpose of improving the services rendered by it", an amendment of the bye-laws of a society is necessary and desirable. Section 12(5) also states that he may consult the financing bank to which the society is affiliated and the circle co-operative union before making the requisition. Sub-section (6) of Section 12 prescribes the procedure to be followed if such a requisition by the Registrar is not complied with. In such cases where the society fails to make the amendments as required or with such further changes as he may agree to, the Registrar may after giving the society an opportunity for making its representation register the amendment as required or agreed to by him and issue a copy of the amendment together with the certificate of registration signed and sealed by him and thereupon such amendment shall be binding on the society and its members. Rule 10 specifically provides the form in which the Registrar should forward his requisition u/s 12(5) of the Act and the notice calling for representation under Sub-section (4) of Section 12. Rule 10 also states that in such cases where the Registrar exercises his power under Sub-section (5) of Section 12, Rule 9 may not have any application.

10. The above provisions dealing with the management of the societies and the amendment of the bye-laws would fairly show that subject to the provisions of the Act, Rules and bye-laws the final authority as far as the management of the society is concerned is the general body of the society as stated in Section 27. The general body is to administer the affairs of the society through the Managing Committee constituted by it u/s 28 of the Act. Before amendment of the provisions in Section 28, the Government and the Registrar were having power to nominate all or any of the members of the Committee for such period as provided in the bye-laws. But after the amendment such power has been restricted to a power to nominate all or any of the members to the first Committee and that too for a period not more than six months. In the case of nominations already made the nominees would cease to hold office after expiry of a period of six months from the date of nomination. Similarly as a result of the amendment to Section 31, the power of nomination statutorily vested in the Government before amendment in the case of all societies has now been restricted only to apex and central societies and that too in cases Government satisfies any one of the conditions mentioned in Clauses (a) to (d) of Sub-section (1) of Section 31 of the Act. What is important to note is that even in the case of nominations u/s 31 the number of nominees cannot exceed 3 or 1/3rd of the total number of members of the Committee. This would clearly show that even in cases where the Government has substantial monetary interest to be safeguarded in the society the statutory right conferred is only to the extent of having its nominees to the extent of not more than 3 or 1/3rd of the total number of members of the Committee whichever is less so that the majority in such cases also is left in favour of the elected members keeping in tact the democratic set up of management of the societies envisaged by the Act in the Committees constituted by the general body u/s 28 of the Act. These changes brought in the relevant provisions of the Act would in my view clearly indicate the intention of the legislature to confer the entire power of administration of the ordinary societies to the elected members of the society subject to the provisions of the Act, Rules and bye-laws.

11. Normally as regards the amendment of the bye-laws, the primary authority entitled to amend the bye-laws is the general body. The resolutions passed by the general body in this regard will have legal efficacy only when the Registrar exercising power under the Act, registers the same in accordance with the provisions contained in Section 7 of the Act. Registrar may have power to refuse registration only in cases where amendment goes against the provisions contained in Section 7 of the Act. Sub-section (5) of Section 12, however, confers on the Registrar a plenary power to require the Society to amend its bye-laws as proposed by him in case the conditions mentioned in that sub-section are satisfied either cumulatively or severally. This Court while considering the scope and effect of the provisions contained in Section 12(5) and (6) of the Act has specifically indicated that the power or authority conferred by Sub-section (5) of Section 12 should be exercised strictly in accordance with the conditions and the

procedure prescribed in that sub-section (See *Janardhanan v. Joint Registrar* 1990 (1) Ker 530.

12. In the above decision this Court has stated thus explaining the nature and effect of the bye-laws of the Society.

"The bye-laws of a co-operative society are in the nature of Articles of Association of a company incorporated under the Companies Act, binding between the persons affected by them, though not having the force of a statute (*Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others*, . The bye-laws also constitute a contract between the co-operative society and its members in respect of their rights qua members (*Beattie v. Beattie Ltd.* (1983) 2 All ER 214), Any amendment to the bye-laws could therefore be effected only by the will of the general body of the society. This is recognised and accepted in Rule 9 by specifying that any such amendment can be made only by a resolution passed by two-third majority of the members present and voting, and that any such resolution shall not be valid unless intimation of the proposed amendment had been given to the members in the manner prescribed. The will of the general body is thus made sacrosanct in the matter of any amendment to the bye-laws of the society, and that has normally to prevail. The only exception, where an extraneous will, namely that of the Registrar, is imposed on the society, is that provided in Sub-sections (5) and (6) of Section 12.....".

13. In the light of the factual background and the effect of the statutory provisions indicated above 1 may now proceed to consider the sustainability of Ext.P2 order passed by the third respondent refusing registration of the amendment as passed by the general body and the legality of Ext.P5 order whereby the third respondent has registered the amendment to Clause 15 of the bye-laws as proposed by him on the instructions of the Registrar. As per Ext.P2 registration has been refused only for the reason that the amendment of the bye-laws providing for nomination of three members by the Government to the Managing Committee is contrary to the amended provisions of the Act. It is true that after the amendment of the provisions contained in Sections 28 and 31 a provision in the bye-laws providing for nominated members to be on the committee of an ordinary society except in the first committee may not be legal. In that view Ext.P2 order cannot be held to be totally illegal or unjustifiable. However, it is relevant to note that after rejecting the amendment, the third respondent has himself suggested an amendment providing for appointment of the nominees of the Government as Ex-Officio members of the Managing Committee. If such a provision can be validly made and the only objectionable aspect is that the provision conferred a power of nomination, the wording of the amendment passed by the general body could have been directed to be suitably modified so as to make a provision for appointing Government nominees as Ex-Officio members as proposed by the third respondent himself in this case. In the circumstances, instead of rejecting the amendment in its entirety the Society

could have been directed to change the wording of the amendment suitably. It is important to note that there is no case for the third respondent that while passing the amendment, the general body has not acted in accordance with the procedure followed in Rule 9 of the Rules or that the amendment is in any way contrary to the provisions of the Act and the Rules except to the extent of conferring a power of nomination of 3 members of the Government. Thus the difference in this regard between the two amendments was only a difference in form and not of substance and could have been got rectified easily if the objection for registration was only because the provision conferred a power of nomination of certain members of the committee in favour of the Government.

14. The power under Sub-section (5) of Section 12 as already explained can justifiably be exercised only for the two purposes mentioned in that sub-section. In that view the only relevant aspect to be considered in this case is whether the amendment proposed by the third respondent is one made after satisfying himself that for the purpose of improving the services rendered by the Society such an amendment is necessary or desirable. In other words, the question is whether the amendment suggested was for the purpose of improving the services rendered by the Society. In Ext.P5 the third respondent after referring to the various steps taken by the Government before and after formation of the Society for the benefit of its members has only stated that he was satisfied that the amendment is absolutely essential in the best interest of the Society. The reference to the fact of allotment of 1500 acres of land and the various financial and other aids provided by the Government would indicate at best only the financial involvement or interest which the Government is having in the Society. There is no statement in Ext.P5 which would indicate that the third respondent at the time when Ext.P5 order was issued, was satisfied that the amendment as proposed by him was necessary for the purpose of improvising the services rendered by it. There is not even an indication that services so far rendered by the Society was not satisfactory and required improvement and unless such an amendment is made the nature of the services rendered by the Society cannot be improved. There is no such case pleaded in the counter affidavit also. Even though Ext.P5 order is thus not helpful to ascertain the exact reason why the third respondent at the instance of the Registrar has proposed amendment to Clause No. 15 of the bye-laws in the manner contained in Ext.P5 order, it is fairly clear from the specific allegations in the counter affidavit that it was for the purpose of securing effective control of the administration of the Society with the Government officials that such an amendment was proposed by the Registrar. As such there is no necessity to proceed on the basis of any inferences or presumptions regarding the reason for the amendment and to consider the question on that basis. What is required is to consider whether the exercise of power under Sub-section (5) of Section 12 of the Act for the purpose stated in the counter affidavit is valid and sustainable in law.

15. Having due regard to the scheme of the provisions dealing with the management of the societies and taking note of the very restricted power

conferred on the Registrar u/s 12(5) of the Act, I find it extremely difficult to hold in this case that the third respondent has exercised his power u/s 12(5) of the Act bona fide and for reasons justifiable in law. The only reason stated for such exercise of power in the counter affidavit, is that "since the Government money is utilised for development of the colony for which the Society was constituted it was found that it is absolutely essential and necessary to have a direct control of the Government in the constitution of the committee thereby administration and control of the Society will rest with the Government. It is with that in view the constitution of the committee is to be with six Government officials and remaining 5 from the nominees of the members of the Society. "Whatever may be the extent of the interest financial or otherwise the Government is having in the Society, no provision in the Act and Rules empowers the Government or any other authority functioning under the Act to compel the Society to make such a bye-law for the specific purpose of giving the Government a direct control in the administration of the Society, at least after the 1987 amendments. As a result of the amendment even in the case of societies where the Government has substantial financial interest to be safeguarded the right to have its nominees on the committee of a society which was specifically conferred on the Government as per un-amended Sections 28 and 31 has been specifically taken away except in the case of apex and central societies and in the case of first committees of societies generally. This will show that whatever may be the position prior to the amendment, after the amendment in the case of ordinary societies even if the Government has substantial interest, the legislature in its wisdom has thought it fit not to confer on the Government any power to control the administration of the affairs by appointing its nominees with a view to safeguard its interest. The entire administrative responsibility is allowed to be, with the general body and the Managing Committee constituted by it in the case of ordinary societies irrespective of the question whether the Government has any interest in them or not subject of course to the provisions of the Act and Rules. The scheme so envisaged by the amended provisions in the Act and Rules cannot be allowed to be defeated except strictly in the manner if any provided under the Act and Rules. If that be so, the power conferred u/s 12(5) can if at all be exercised for the purpose of interfering with the democratic set up of administration of societies envisaged by the provisions of the Act, be exercised only for the two purposes mentioned in that Section and not for any other purposes however, laudable and desirable the purpose be. Whatever may be the extent of the interest which the Government is having in the Society, neither the Government nor any other authority functioning under the Act can suggest amendments in exercise of the powers conferred under Sub-section (5) of Section 12 of the Act for the purpose of conferring effective control of the administration of the Society on the officials of the Government with a view to safeguard the interest of the Government. In this case it is clear that the dominant, if not the sole, purpose of suggesting and approving the amendment as indicated by the Registrar was to have a Managing Committee constituted with Government officials having majority in the committee so as to ensure effective

control of the administration of the Society in the hands of the Government officials for the ultimate object of securing the interest of the Government. If the amendment registered and brought into effect as per Ext.P5 is allowed to stand it will amount to allowing an authority constituted by the Act to circumvent the effect of the amended provisions in Sections 28 and 31 of the Act and to interfere with the administrative set up of the societies as envisaged in those provisions in an impermissible manner. That cannot be allowed. In the circumstances, I would in this case hold that the power conferred u/s 12(5) was exercised by the third respondent mala fide in the sense that it was exercised for the purpose of achieving an object or purpose for which that power was not statutorily intended to be exercised. It can only be characterised as a colourable exercise of power totally unjustifiable in law. As such I would quash Ext.P5 as an order passed illegally and in mala fide exercise of power for a totally extraneous and illegal purpose.

16. Now since Ext.P5 has been quashed, the next question to be considered is about the proper reliefs to be granted to the petitioner in the facts and circumstances of the case. In this case, the general body has as early as on 24-2-1989 passed a resolution approving the amendment proposed by the sub-committee appointed for the purpose of suggesting amendment to Clause 15 of the bye-laws. The Society has forwarded the same to the Registrar for registration. That has been rejected as per Ext.P2 by the third respondent. The representation submitted against Ext.P2 has also been rejected as per Ext.P3 order. Though I have already found that Ext.P2 cannot be set aside as wholly illegal, I find that it is an order passed for a very technical reason which was curable and as such should not stand in the way of the third respondent being directed to reconsider his decision afresh if necessary after giving appropriate directions to the Society to modify the resolution so as to enable three of the Government officials to be or the committee of the Society as Ex-officio members and thus avoiding the only objection for refusing the registration. In the circumstances, I would direct the third respondent to reconsider the application for Registration of the amendment submitted by the general body of the Society on 20-3-1989 which was disposed of by Ext.P2 notwithstanding Ext. P2 order, if necessary, after directing the general body to amend the wording of the resolution passed by it suitably and to take a fresh decision in accordance with law Uninfluenced by his own earlier decision, the decision of the Government in Ext.P3 and the instructions stated to have been issued by the Registrar in the matter. If a modification of the resolution already passed by the general body is directed to be made so as to permit the nominees to be on the Board as Ex-officio members, all steps to convene a general body for that purpose is to be taken urgently so as to avoid all avoidable delays for the purpose of keeping the time schedule indicated below. As the election to the Society has not been conducted from 1988 onwards, it is necessary to direct the respondents to take urgent steps to implement the directions contained in this judgment and to conduct an election on the basis of the amended provisions of the bye-laws. As

such there will be a direction to the third respondent to pass final orders on the application submitted by the Society to register the amendment as early as possible, at any rate within a period of two months from the date of receipt of a copy of this judgment, in the light of the findings and directions contained in the judgment.

O.P. is thus disposed of in the manner indicated above. No costs.