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CO-OPERATIVE LAW*K Elumalai**

I INTRODUCTION

THE CASES decided by courts during this survey period have fallen under the broad areas covering co-operative governance, co-operative management, settlement of disputes and liquidation of co-operative societies, *etc.* Co-operative Societies have acquired separate legal status and entity *vis-à-vis*, other entities such as public or private bodies/undertaking, *etc.* in India like elsewhere in other parts of the world. The fundamental difference between the principles governing co-operatives and other forms of economic enterprises and the steps taken by the Government of India is to ensure democratization and professionalization of management in co-operatives, *etc.* have been elaborately discussed in the previous survey.¹ There is a general perception among all the stake holders that co-operatives are generally not professionally governed, *vis-à-vis*, other forms of economic enterprises. Though, the said perception is true to a larger extent, there are exceptions such as AMUL (Anand Milk Union Ltd.), IFFCO (Indian Farmers Fertilizer Co-operatives), KRIBHCO (Krishak Bharati Co-operative Ltd.), a few good working State Co-operative Banks, Urban Co-operative Banks and other co-operatives, of course, less in number which are not only professionally managed well but also earned a distinctive brand name and earn surplus regularly as well. However, majority of remaining co-operative institutions are either managed improperly or unprofessionally or in several cases unlawfully. This survey shall concentrate on such co-operative institutions falling under this category and also cover couple of cases concerning conduct of elections in co-operative institutions.

II PROVISIONS RELATING TO APPOINTMENT OF REGISTRAR OR HIS SUBORDINATES

In *Satya Pal Anand v. State of M.P.* case,² the question involved was whether it becomes imperative to appoint a Registrar of Co-operative Societies (RCS) by the government with legal and/ or judicial background as per the scheme of Act?

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1 K. Elumalai, XLIX *ASIL* 391-395(2013).

2 2015(9) SCALE 297.

The petitioner has challenged the validity of section 3 of Madhya Pradesh State Co-operative Societies Act, 1960 (MPCS Act, 1960) before the high court to the extent it permits the state government to appoint the RCS as well as other officers in the hierarchy even without having any education in law. They also challenged the proviso to section 77(3) (b) and section 77(6) of the MPCS Act, 1960 which provide for the appointment of persons not having any education in law though discharging the judicial functions, as violative of article 14 and 21 of the constitution of India.

The respondents (Government of Madhya Pradesh) on the other hand, contested the petition on the ground that the petitioner had not approached the high court with clean hands and had suppressed the fact that he was a chronic litigant whose various cases were pending before co-operative court and he has personal interest in the matter. The state further submitted that the RCS and other officers down in the hierarchy function under the supervision of Madhya Pradesh State Co-operative Tribunal and the chairman of the said co-operative tribunal is a judicial officer. Both the said authorities function under the overall superintendence of the high court under article 227 of the constitution of India. In several other enactments, the administrative officers perform such quasi judicial functions.

After considering the rival claims made by both the parties, the high court dismissed the writ petition, hence, an appeal was filed before Supreme Court. The apex court made an earnest attempt to analyse scheme of the MPSC Act, 1960 and classified the nature of powers conferred upon various authorities under the MPCS Act, 1960.

The first issue taken for consideration is whether it becomes imperative to appoint a registrar with legal and or judicial backdrop keeping in view the scheme of the Act. The contention made by the petitioner is that the very nature and significance of functions discharged by RCS or his nominee would manifest that knowledge of law and practice is essential to effectively carryout these functions in as much as such presiding officer is supposed to be conversant with the provisions of CPC, Evidence, IPC & Cr PC. The functions to be discharged are such that the authority discharging such function is to be classified as court as held in the case of *Thakur Jugal Kishore v. Sitamarhi Central Co-operative Bank*.³ The second contention of the petitioner, relying on the decision of High Court of Bombay in *Maharashtra Co-operative Courts Bar Association v. State of Maharashtra*⁴ is that the state government should not be given right to appoint any person as registrar. The petitioner has referred to several cases⁵ in support of his claim.

The apex court, after careful examination of the rival claims made the following observations

3 AIR 1967 SC 1494.

4 1990 Mh LJ1064.

5 *Union of India v. R. Gandhi president Madras Bar Association* (2010) 11 SCC II; *State of Gujarat v. Gujarat Revenue Tribunal Bar Association* (2012) 10 SCC 353; *Namit Sharma v. Union of India* (2013) 1 SCC 745.

Most of the powers conferred upon the RCS are purely administrative in nature.⁶ The Registrar is also vested with some quasi judicial powers.

The petitioner did not plead for taking away the judicial function of registrar and assigned to some other authority, instead, pleaded for appointment of a person with legal background as RCS so as to enable him to decide the dispute between the parties more effectively as any person with no legal/judicial background is incapable of deciding those cases.

On the contrary, if a person with legal background is appointed to any of these posts, then his appointment can be challenged on the ground that such person though would be fit to discharge the quasi judicial functions, but totally unfit to discharge other administrative duties which are the primary day to day duties attached to the said office.

The section 77 (3) (a) and section 77 (3) (b) prescribed the qualifications for the appointment of the chairman and members of co-operative tribunal.

It is clear from the above provisions that when a Tribunal is constituted with all the trappings of a court as in the case of the said Tribunal, there is no fault with the section 3 of the MPCS Act, 1960 empowering the government to appoint persons as RCS and other officers below in the hierarchy. Accordingly, the challenge to the *vires* of section 3 of the MPCS Act, 1960 is rejected thereby upholding the judgment of the High Court.

With regard to challenge to section 77 (3) (b) of the MPCS Act, 1960, there is no reason to hold the said provisions unconstitutional, as the Tribunal consists of the chairman with judicial background and one of the two Members is to be chosen from the co-operative department at the level of joint RCS as the administrative member and other may be a judicial member though such nomenclature is not specifically assigned.

Section 77(6) of the MPCS Act, 1960 confers power upon the state government to terminate the appointment of a Chairman or a Member of the Tribunal, if in the opinion of state government, such Chairman or Member, as the case may be, is unable or unfit to perform the duties attached to the concerned office. The said opinion has to be based on objective considerations/materials on record. Further, as the state government is the appointing authority, the power to remove has to be necessarily vested upon the appointing authority. This decision of the government is further subjected to judicial review.

In view of the above, there is no reason to hold such a provision as unconstitutional, accordingly, the said plea was also rejected.

6 Administrative powers conferred upon the RCS under MP Co-operative Societies Act., 1960. S.8 & 9: power to register the co-operative society; s.10: power to classify the society; s.11 & 12: power with regard to amendment of bye-laws; s.18: power to order to direct cancellation of registration; s. 18A: power to order for deregistration; s.19A: power to declare a person ineligible for Membership; s.49D: power to issue direction to the co-operative society to make regulations; s.53: power to order supersession of the committee.

The apex court, further observed that such judicial powers are given even to the election commission under the Representation of People Act, 1951 and the above position/stand taken was made clear in the *Indian National Congress- I v. Institute of Social Welfare*.⁷

With regard to the appointment of the chairman and the members of the tribunal, the apex court emphasized the need that the respondent state is duty bound to keep in mind and follow the mandate of the constitution bench judgment of the apex court in *R. Gandhi*,⁸ thus, for the appointment of the chairman and members of the tribunal, the selection to these posts should preferably be made by the Public Service Commission in consultation with the high court. Accordingly, the Special Leave Petition (SLP) was dismissed.

III OVER RIDING EFFECT OF STATE LAWS

The question involved in *Rajkot District Co-Operative Bank Ltd. v. State of Gujarat*⁹ is about the supremacy of bye-laws either framed or adapted by the concerned co-operative societies or rules framed by the state under the same Act passed by the legislature. The main difference between the two, *inter-alia*, are that while the former is framed or adapted by the concerned co-operative society, hence, the same may vary from one co-operative society to another, whereas, the later is framed by the state and applicable equally to all the co-operative societies registered under the relevant Act. In this the rules framed under Gujarat Co-operative Societies Act, 1961 (GCS) was brought into question.

The apex court referred to a high court decision wherein the constitutional validity of the amended provisions was challenged before the High Court of Gujarat in 1984.¹⁰ The division bench of high court in the said case declared sections 17(A), 24, 51(2), 69 and proviso to section 74 as *ultra vires* the Constitution of India. However, the provisions of section 74A to section 74D, section 76A & B, section 80A and section 80(2) were upheld. Nevertheless, the provisions of section 74(C) and other provisions in relation to the conduct of election including chapter XI A and rules, remained in the statute book. Therefore, legal position remained as per original Act even after the amendment made in the year 1982. In other words, the election in co-operative societies other than specified societies is required to be held as per bye-laws, whereas the same in the case of specified societies are required to be held as per chapter XI A *i.e.*, through district collector.

A legal question for interpretation to rule 3-A (8) and the validity of bye-laws clause no. 35 (1) (A) arose in the case of *Antakampa Milk Producers Co-operative Society v. Sabar Kantha Milk Producers Union Ltd.*,¹¹ wherein the high court held as under:

7 2002 (5) SCC 685.

8 *Union of India v. R Gandhi, President Madras Bar Association* (2010) 11 SCC 11.

9 (2010) II LLJ 788 Guj.

10 *Amreli District Co-operative Sale and Purchase Union Ltd. v. State of Gujarat* (1984) 2 GLR 1244.

11 (2004) 1 GLR 310.

- (a) Section 74(C) (3) of the Act has an overriding effect on any other bye-laws of such society.
- (b) The bye-laws were not in conformity with Rule 3-A (8) of the rules and the bye-laws can operate to the extent of seven representative to be elected from 7 separate constituencies of a specified Co-operative Society i.e. held that Rule 3-A (8) of Rules are valid to that extent only.

Meanwhile, a division bench of the high court in *Shri Sadwadar Seva Sahakari Mandali Ltd. v. State of Gujarat*¹² on the same subject held that the object and intendment of the said rules and the field of operation of the said two provisions are different in as much as the former deals with constituencies bifurcated on the territorial/zone basis.

In *Banas Kantha District Co-operative Milk Producers Union Ltd. v. State of Gujarat*¹³ the division bench held that rule 3(a) (8) of the rules is neither in conflict with any of the provisions of the act nor was it held to be bad in law for want of authority of delegated legislation. Hence, rule 3-A (8) of the rules was held to be legal and valid.

The main contention raised by the appellant before the apex court relying on a case¹⁴ was that the finding and reasons recorded while answering the above questions of law by the full bench are not only erroneous but also suffers from error in law. In this case it was held that the Act provides for amendment of the bye-laws without allowing the co-operative societies to get their bye-laws amended as per procedure laid under the provisions of the Act, hence, the judgment is liable to be set aside. The state government on the other hand, justified the findings and reasons given by the full bench.

After careful examination of issues raised by rival parties, the apex court made the following observations and rulings.

- (i) The bye-laws of any Co-operative Society framed under the provisions of the Co-operative Societies Act have to be in conformity with the provisions of the Act and Rules, hence, cannot be permitted to prevail over statutory Rule 3-A (8) & (9) of the rules.
- (ii) Rules are also regarded as laws under Art. 13(2) of the constitution of India.
- (iii) The laws enacted by the state legislature and the rules framed by the appropriate government cannot run parallel with the principles of the constitution of India and the statutory objects

12 (2010) 3 GLR 2154.

13 *Banas Kantha District Co-operative Milk producers Union Ltd. v. State of Gujarat* (2012) 2 GLR 1522.

14 *Ziley Singh v. Registrar Cane Co-operative Societies Lucknow* (1972) 1 SCC 719.

of the Co-operative Societies Act cannot be disregarded as it would defeat the purpose of Art. 243 ZK of the constitution of India, inserted by the 97th constitutional amendment.

- (iv) The apex court has also referred to few other cases¹⁵ and ruled that the well recognized position in law is that purity in the electoral process and the conduct of the elected representatives cannot be isolated from the constitutional requirements.
- (v) "...The sub-rule (8) & (9) of Rule 3A are applicable to the appellant society/ies as the area of operation is more than one village and, therefore, the Orders passed by the District Collector for the delimitation of the constituency/ies cannot be said to be illegal."
- (vi) There won't be proper representation of voters to their respective specified societies for electing representatives of their area which would materially affect the result of the election and the impugned provisions and rules are legally justifiable.
- (vii) For the reasons specified above, no relief can be granted in favour of the appellant Co-operative Societies by setting aside the election notification. The state government its officers could not give effect to the provisions of Co-operative Societies Act and Rules.
- (viii) The state and its officers have not implemented the rules without valid reasons even after the litigation was concluded.
- (ix) The Members of specified Co-operative Societies have a right to elect their true representatives to represent them as Management Committee Members.

The apex court finally directed that the impugned provisions and rules must be implemented forthwith without further delay and submit the compliance report within eight weeks.

IV DUTY OF THE CO-OPERATIVE LIQUIDATOR TO SELL THE PUBLIC PROPERTY

In *State of Assam v. Susrita Holdings Pvt. Ltd.*,¹⁶ a notice inviting tenders for the sale of Chincoorie Tea Estate owned by Cachar Tea Farming and Industrial Co-operative Society (CTFICS) and was issued by the liquidator of the said society

15 *Keshavananda Bharati v. State of Kerala* (1973) 4 SCC 225; *Kuldip Nayar* (2006) 7 SCC 1; *Kihoto Hollohan v. Zachillhu* reported in 1992 supp (2) SCC 651; *Rameshwar Prasad (vi) v. Union of India* (2006) 2 SCC 1; *Mohinder Singh Gill v. Chief Election Commissioner* (1978) 1 SCC 405.

16 AIR 2014 SC 2307.

owing to its dissolution, of course, without obtaining the prior approval of government as required under relevant instructions issued in respect of alienation of tea garden land from time to time. In response to the above, only two tender bids were received. The respondent made a bid for Rs. 1.11 crore and another party made a bid for Rs. 1.05 crore. The tender process was cancelled by the said liquidator on the plea that the price quoted by the parties for 9000 bighas of land is not at all justifiable. The respondent approached the high court with prayer, *inter alia*, to restrain the said order from cancelling the tendering process and initiation of further tender process and pass the award in their favour as the respondent was the sole valid bidder.

The high court restrained the official liquidator from initiating fresh process for the disposal of the land involved. The order further clarified that it shall not be a bar to issue the order in favour of the respondent.

In furtherance to the said high court order, the official liquidator issued notice on in a local daily 'The Assam Tribunal' declaring that the tender process had been cancelled. The respondent, thereafter, filed another writ petition before high court impugning the said notice issued in the local daily. The high court, accordingly, directed that the said notice shall not be given effect till the returnable date. The respondent filed another writ petition challenging the cancellation order by the liquidator. Meanwhile, the JRCS forwarded a report to the RCS by issuing letter to the respondent. The DRCS who cancelled the sale of tea garden was transferred by that time. The successor of DRCS sought permission/approval of the RCS based on the high court order. Thereafter, the RCS permitted the liquidator to dispose of the property of the respondent society. The DRCS issued an award letter to the respondent with a requirement to make an initial deposit of 25 per cent of the total bid initially within a week of issuance and the remaining 75 per cent was to be paid at the time of execution of sale deed, however, subject to the withdrawal of writ petition by the respondent. The liquidator approached the sub-registrar (registration) for registration of sale deed who demanded permission/approval from revenue department for registration of sale deed. The sale deed could not be executed in favour of respondent for want of approval/permission from the Revenue Department.

In view of the above, the Secretary Co-operation, Government of Assam directed the Revenue officials to refrain from registering the sale deed in respect of the property in question without clearance from the co-operation department. The respondent aggrieved by the above filed another writ petition seeking a direction for the execution of the sale deed in its favour. The high court, on this score, held that there is no question of taking further approval from the government owing to the fact that the amount has already been paid by the respondent, accordingly, directed the DRCS to follow up the execution of sale deed for registration. The sale deed, however, did not get registered, hence, contempt case was initiated by the respondent. A review petition filed by the appellant was dismissed by the high court on February 2, 2011. Based on a letter seeking approval/permission of the government; the chief minister of the state observed that there are various discrepancies in the proposal forwarded to him, the legal remembrance of the state observed that since loss of huge amount of public money to the tune of

several crores is involved in the matter, the government was advised to prefer an appeal before the division bench in wider public interest along with petition for condonation of delay. The high court rejected the application for condonation of delay on the ground that the time lag between February 02, 2011 and November 22, 2011 has not at all been convincingly explained.

In the light of above facts, the appellants preferred an appeal before the apex court. The Supreme Court based on the verdict given by the high court on the one hand and the grounds on which the present appeal has been preferred on the other, expressed the opinion that the high court has erred in dismissing the appeal on the ground of delay as the appeal requires to be heard of merit. The appellant contended that the delay was due to unavoidable government procedure involved. The apex court referred to its own earlier decision¹⁷ wherein it was held that with regard to sufficient cause for purposes of section 5 of the Limitation Act, 1963, it is sufficient to say that governmental decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making. Further, the apex court observed that the malfunctioning of the state government regarding the unpardonable lackadaisical attitude towards pursuing matter in the court of law cannot be the reason for loss of public property which involves public money and causes loss to the public exchequer. The apex court, hence, declared it as a fit case to exercise its discretionary power to condone the delay in filing the writ in the interest of public at large. The apex court has also drawn a bottom line that this case should not set a precedent to justify inordinate delays on the part of state government to file appeals.

With regard to the issue of legal status of cancellation of the tender process in relation to the property in question in view of the discrepancies crept in the process of transfer of the land in favour of respondent, the apex court observed as under:¹⁸

- (i) There was no justification for the appellants to sell the property at an extremely low price without any effort of issuing eviction notice to the alleged encroachers to evict them by following the due process of law.
- (ii) The land concerned involved significant amount of public money valued at Rs. 4.25 crores by the official valuer, hence, it was the responsibility of the concerned authority to ensure to sell the land at a minimum cost of Rs. 4.25 crores or above instead of its attempt to sell the same at a lower price merely on the pretext that no one would come up to purchase the land at the valuers price of Rs.1.11 crores.
- (iii) In view of the above, the grant of relief in favour of respondent by High Court is wholly untenable in law.

17 *G. Ramegowda, Major v. Special Land Acquisition Officer, Bangalore* (1988) 2 SCC 142.

18 *Supra* note 16 at para 29.

With regard to the procedure to be followed while selling the property, the apex court referred to two of its own cases¹⁹ and observed that though the former case referred was over ruled in the later case, the principle of Public Trust Doctrine referred in former case shall be applied to factual situation at hand as the public interest has adversely been affected in this case. The apex court has also laid down the reasonableness and fairness in action to be adhered by the state and its instrumentalities to pass the test of article 14 and reiterated the same by referring to three judge bench decisions in the case of *Ramana Dayaram Shetty v. International Airport Authority of India*,²⁰ *M/s Kasturi Lal Lakshmi Reddy v. State of Jammu and Kashmir*²¹ and *Akhil Bharatiya Upbhokta Congress v. State of Madhya Pradesh*.²² Finally apex court held that the liquidator and the concerned authority did not take any step to improve the condition of land and sell it at reasonable and standard price prevalent at the time of sale of the property in question and also the tender process initiated by the appellants is not legal and is liable to be set aside.

V POWER OF THE HIGH COURT TO APPLY THE PROVISIONS OF THE INDIAN LIMITATION ACT, 1963

The short and simple question involved in the *Sulthan Bathery Co-operative Agricultural and Rural Development Bank Ltd. v. Jayaprakash P.R.*,²³ is whether the order passed by a single judge of a high court that the limitation period would start only from the date of judgment could be regarded as without jurisdiction particularly when the statute (Kerala Co-operative Societies Act, (KCS) 1969) prohibited a co-operative arbitration court from entertaining a dispute in relation to an election to the board of directors of a co-operative society unless it is referred to it within one month from the date of the election.

The appellant in this case contended that as per section 69 (3) of the KCS Act, 1969 no dispute arising in connection with the election to the board of management or an officer of the society shall be entertained by the co-operative arbitration court unless it is referred to it within one month from the date of the election. In view of the above, it was argued that when the statute prohibited a co-operative court from entertaining a dispute in relation to an election to the board of directors of a co-operative society unless it is referred to it within one month from the date of election which, otherwise meant that the provisions of the Indian Limitation Act, 1963 are inapplicable in such proceedings. The single judge, hence, acted without jurisdiction in ordering that, the limitation period would start only from the date of judgment. In support of this contention, the appellant made a

19 *Mahesh Chandra v. Regal Manager, UPFC* (1993) 2 SCC 279; *Haryana Financial Corporation v. Jagadamba Oil Mills* (2002) 3 SCC 496.

20 (1979) 3 SCC 489.

21 (1980) 4 SCC 1.

22 (2011) 5 SCC 29.

23 AIR 2014 Ker 150.

reference to a decision of the apex court²⁴ wherein it was held that the benefits conferred under the Limitation Act, 1963 cannot be called in aid to supplement the provisions of the Central Excise Act. The respondents, on the contrary, justified the order passed by the single judge of the high court.

High Court of Kerala made the following observations :

- (i) It is true that section 69(3) of the KCS Act, 1969 prohibits the co-operative arbitration court from entertaining disputes concerning election to the board of directors of a co-operative society unless the election dispute is referred to it within one month from the date of the election.
- (ii) But, the writ petitions were filed soon after the election notification was published and the proceedings pursuant to the notification were stayed by the high court.
- (iii) Though the stay was vacated, the high court clarified that the results of the election would be subject to the result of the writ petition.
- (iv) Though the election results were declared and the board of directors assumed office, the uncertainty created on account of the order passed by the high court continued until the writ petitions were disposed off with the findings made by the single judge that it would be appropriate to relegate the petitioners to pursue the statutory remedy available under s.69 of the KCS Act, 1969.
- (v) By this time, the remedy provided under section 69 (to file a dispute within a month) had become time barred and could not have been availed.
- (vi) In view of the above, the single judge directed that the period of limitation provided under section 69 of the KCS Act, 1969 would start to run from the date of judgment.
- (vii) With regard to the contention that the said direction is beyond the powers of this court is concerned, it will always be the endeavour of high court to ensure that the writ issued is not a futile one, hence, it is well within the powers of the high court exercising jurisdiction under article 226 of the Constitution of India to pass such orders.
- (viii) Further, the competence of the High Court to pass such Orders has been upheld by the apex court itself in its judgment in *Grindlays Bank Ltd. case*.²⁵

24 *Commissioner of Customs and Central Excise v. Hongo India Pvt. Ltd.* (2009) 5 SSC 7917.

25 *Grindlays Bank Ltd. v. Income Tax Officer, Calcutta*, AIR 1980 SC 656.

In view of the above observations, the high court did not find any illegality in the directions issued by the single judge of the high court.

VI SANCTION OF A PUBLIC SERVANT ON DEPUTATION TO A CO-OPERATIVE SOCIETY

The case of *Chandan Kumar Basu v. State of Bihar*²⁶ has raised one important as well as interesting issue *i.e.*, whether a person belonging of Indian Administration Service (IAS) by virtue of which he becomes a public servant particularly for the purpose of obtaining prior sanction from the government for prosecution, shall enjoy such privilege (if regarded so) even when he is posted to manage the affairs of a Co-operative institution funded either partly or fully by the government.

The facts giving rise to this subject matter are that Chandan Kumar Basu a member of IAS was sent on deputation to serve as an Administrator-cum-Managing Director of the Bihar State Housing Co-operative Federation Ltd. registered under the Bihar Co-operative Societies Act, 1935. Based on several complaints received against the appellant several FIRs were registered under various sections of Indian Penal Code (IPC) *i.e.*, sections 409/420/467/468/471/34/120-B. Charge sheets were filed before the competent court on completion of investigation in all cases. Based on this, the competent court took cognizance of the alleged offences against the appellant and passed appropriate orders. Aggrieved by the said order, the appellant challenged the same primarily on the ground that the said orders (of arrest) were without jurisdiction and incompetent in law in as much as sanction for prosecution of the appellant under section 197 of Code of Criminal Procedure (Cr PC) was not obtained or granted prior to the date of taking cognizance.

The revision applications filed by appellant were dismissed by sessions court and high court, hence, the matter came up on appeal before the apex court. The main contention raised by the appellant before the apex court was that grant of sanction under section 197 of Cr PC is a *sine qua non* for his prosecution for the alleged offences. The State of Bihar, on the contrary, vehemently contended that the appellant is not a public servant within the meaning of section 21 of IPC, and none of the offences alleged can be attributed to the acts that arise out of or have any proximity with discharge of official duties by the appellant so as to require sanction for his prosecution.

The apex court observed that there are three mandatory requirements under section 197(1). The accused should be a public servant; he can be removed from the post by or with the sanction either of the Central or the state government as the case may be and the act giving rise to the alleged offence had been committed by the public servant in the actual or purported discharge of his official duties. The apex court referred to its own decision in *S. S. Dhanoa v. MCD*²⁷ in a similar case involving an IAS officer serving on deputation in a co-operative society wherein it was held that the “the word ‘corporation’ appearing in clause 12(b) of section

26 *Chandan Kumar Basu v. State of Bihar* (2014)13 SCC 70.

27 (1981) 3 SCC 431.

21 IPC meant for corporations established by a statute and would have no application to a Co-operative Society". Accordingly, the apex court, based on records made available, came to the conclusion that the Bihar Housing Co-operative Federation is a Co-operative Society.²⁸

The apex court by referring to its yet another earlier decisions²⁹ held that the question of sanction under section 197 of the Cr P C can be raised at any time after cognizance had been taken and may have to be determined at different stages of the proceedings/trial. The apex court finally held there is no scope or occasion to interfere with the orders passed by the high court.

VII OVERBURDENING OF HIGHER COURTS WITH COOPERATIVE CASES

The apex court in *Haryana Dairy Development Co-operative Federation Limited v. Jagdish Lal*,³⁰ involving a state level co-operative institution, expressed its anguish/unhappiness over the burdening of courts with cases involving meagre amount and petty matters at times the litigation cost spent by government and its departments are hundred times more than the amount involved, despite providing clear provisions under section 102 of CPC that money recovery suit involving less than Rs. 25,000/- shall not be entertained in second appeal. This is all the more prevalent in Co-operative institutions as in the present case. In this case, the petitioner Haryana Dairy Development Co-operative Federation (hereinafter referred as HDDCF) has approached the apex court for necessary relief involving a paltry sum of Rs. 8724/- payable to an employee as reimbursement of his medical claim. The HDDCF treated this litigation as luxury and must have spent the amount more than the total amount involved, observed the apex court.

The apex court has expressed its unhappiness over the time of the court being taken for days together by petty matters as ruled in a constitution bench judgment in *Sukhdev Singh* case.³¹

The apex court had also referred to its own decision in the case of *Kadra Pahadiya v. State of Bihar*³² wherein it was held that "if the load of such petty cases is taken out of the regular courts, those courts would have time to deal with more serious crimes rather than have their time consumed by such petty cases". The apex court had also referred to similar observations made by The Law Commission in its 155th report that "It hardly needs mention that in many such cases money spent on litigation is far in excess of the stakes involved, besides wasting valuable time and energy of the concerned parties as well as courts".

28 *Satwant Singh v. State of Punjab* (1992) 3 SSC 89; *Harihar Prasad v. State of Bihar* (1972) 3 SCC 89; *Prakash Singh Badal v. State of Punjab* (2007) 1 SCC 1.

29 *Matajog Dobey v. HC Bhari*, AIR 1956 SC 44; *P.K. Pradhan v. State of Sikkim* (2001) 6 SCC 704.

30 (2014) 5 SCC 101.

31 AIR 1975 SC 1331.

32 AIR 1997 SC 3750.

In view of the above, the apex court issued a direction to the effect that the expenses of the litigation shall be incurred by the Managing Director of HDDCF personally who has signed affidavit in support of the petition and it shall not be taken from the federation.

VIII EFFECT OF MERGER/AMALGAMATION OF A CO-OPERATIVE INSTITUTION

The apex court in *Panchraj Tiwari v. MP State Electricity Board*³³ was confronted with a short question whether at the time of or after the integration/merger/amalgamation of co-operative societies/institutions *i.e.*, Rural Electricity Co-operative Society, Rewa (RECS), is it permissible to have a complete denial of promotion for ever in the integrated service of such co-operative or other institutions such as Madhya Pradesh State Electricity Board (MPSEB), in this case.

The appellant in this case, joined as junior engineer in RECS in the year 1986. The state government took a policy decision in the year 1995 to dissolve all such co-operative societies and merge the same with MPSEB. Accordingly, the managing committee of the RECS was superseded in the year 1995 and a superintending engineer of MPSEB was appointed as an officer-in-charge and finally, the RECS were completely merged with MPSEB *w.e.f.* March 15, 2015. However, prior to the actual date of merger, the appellant claimed promotion on the basis of a circular issued wherein it was provided that a graduate junior engineer having satisfactory four years of regular service can be considered for promotion to the post of assistant engineer after imparting appropriate training.

The board of directors of the said co-operative society passed a resolution for his promotion as assistant engineer. By that time, the steps for dissolution of the said co-operative society had already started. The board of directors was dissolved in May, 1985 and a superintending engineer of MPSEB was appointed as officer in-charge.

A perusal of the principles of absorption of employees although shows that the employees of RECS have been absorbed by the MPSEB, in reality the said employees have been allowed to retain several facilities as employed at RECS such as protection of pay scale, designation and age of superannuation, pension and gratuity, *etc.* The apex court observed that the integration/merger of services means creation of a homogeneous service by the merger of service personnel belonging to different services, hence, the following principle of equivalence, is to be followed while absorbing the employees, to the extent possible. In the instant case, the undisputed factual and legal position is that there is no absorption of the employees of the RECS with MPSEB. Since it is not specifically provided as to the position of such employees in the integrated service, it is a settled equitable principle that such employees are placed as junior to the junior most officer of the category concerned in the MPSEB on the date of absorption.

33 (2014) 5 SCC 101.

Since the board of governors had already been dissolved and since it had been decided to absorb the employees of the co-operative society in the board (MPSEB), there was no point in following the process of selection in terms of regulations of the co-operative society (RECS). Accordingly, the rejection was challenged before the high court.

A single judge dismissed the writ petition of the ground that writ against a co-operative society was not maintainable. This view taken by the single judge is incorrect as in several cases involving co-operative societies; several high courts and the apex court have entertained as well as admitted writs against co-operative Societies as they also come under the definition of state under article 12.³⁴ The writ however, was admitted in the appeal by making MPSEB as a party. The high court, on appeal took the stand that the principles of integration cast no obligation on the electricity board to give promotion to the appellant *i.e.*, the obligation on the part of MPSEB was only to absorb the appellant by protecting the designation and pay scale. It otherwise meant that the appellant was absorbed as a junior engineer; hence, he should continue forever as junior engineer till retirement.

In this context, the Supreme Court observed that the courts will not interfere with the decision and principles of integration unless it is shown that they are arbitrary, unreasonable or unfair.³⁵ Also in a few other cases³⁶ the apex court held that on equitable considerations, it is always open to the authorities concerned to lay down the principles with regard to the fixation of seniority. However, in this case equivalence has been decided since designation and pay scale was protected. Once a service gets merged with another service, the employee concerned has a right to get positioned appropriately in the merged service, which is the plain meaning of absorption. In this case, there is complete denial of promotion forever which cannot be comprehended under article 14 and 16 of the Constitution of India. Chances of promotion are not conditions of service, but negation of even the chance of promotion certainly amounts to variation in the conditions of service attracting infraction of article 14 and 16 of the constitution of the India. No employee has a right to a particular position in the seniority list but all employees have a right to seniority since the same forms the basis of promotion”.

IX WITHDRAWAL OF VOLUNTARY RETIREMENT APPLICATION BY AN EMPLOYEE

In *M.D. Orissa State Housing Welfare Coop. Sty. Ltd. v. Satyanarayan Pattnaik*³⁷ the question was whether an employee working in a co-operative society,

34 *UP State Co-operative Land Development Bank Ltd. v. Chandra Bhan Dubey* (1999)1SCC741; *Gopal v. Sikar Central Co-operative Bank*, 1998 CTJ 645 Raj; *Harden Lal Jat v. Alwar Sahakari Bhumi Vikas Bank Ltd.* 1991 CTJ 163 Raj; *K.V. Pandu Ranga Rao v. Karnataka Dairy Development Corporation*, 1994 CTJ 684 SC.

35 *R. S. Makashi v. I.M. Menon* (1982) 1 SCC 379.

36 *S.S. Bola v. B.D.S. Sardana* (1997) 8 SSC 522 and *Prafulla Kumar Das v. State of Orissa* (2003) 11 SCC 614.

37 (2014) 3 SCC 218.

after submitting his application for voluntary retirement under voluntary retirement scheme (VRS) could be allowed to withdraw the said request at a later stage. The brief facts of this case are that the appellant working as the Managing Director (MD) of Orissa State Housing Welfare Co-operative Society had submitted an application for voluntary retirement under a scheme floated by the employer. Before the final decision could be communicated in this regard by the employer, the concerned employee made a request for withdrawal of the said application, but the employer co-operative society did not accept the application for the withdrawal with the result the concerned employee was made to retire from the active service. Aggrieved by the said order, the employee filed a petition before the high court with the plea that although the employer had accepted his application for voluntary retirement, the same was not communicated to him and before such communication is made, the employee wanted to withdraw the application submitted for voluntary retirement.

The high court after careful examination of the case directed the employer co-operative society that the concerned employee should be taken in service within two months with full back wages. On an appeal preferred by the employer, the apex court modified the order passed by the high court to the extent to pay only 20 percent of the back wages from the date when the respondent ceased to discharge his duties till the date he is reinstated in the service as against the full back wages ordered by the high court. The employer was directed to reinstate the aggrieved employee in service within two weeks.

X CONTINUATION OF INQUIRY PROCEEDING AFTER SUPERANNUATION

The limited issue involved in *Dev Prakash Tewari v. U.P. Co-operative Institutional Service Board, Lucknow*³⁸ in respect of the UP Co-operative Institutional Service Board (UPCISB) is whether the inquiry proceedings initiated while in effective service could be continued even after superannuation?. In this case a disciplinary proceeding was initiated by the respondent UPCISB against the appellant as per rule 85 of the Uttar Pradesh Co-operative Employees Service Regulations, 1975 by serving a charge-sheet and after inquiry he was dismissed from service. The said order, on appeal was quashed by the high court on the ground that the inquiry was not conducted in accordance with the procedure stipulated in the said regulation as the appellant was not given any opportunity to cross examine the witness, leading to violation of the principles of natural justice. The order for reinstatement passed by the high court, however, had given liberty and freedom to the respondents to conduct a fresh inquiry as per the regulations.

A fresh inquiry, after reinstatement as per high court order, was initiated and during the pendency of this inquiry, the appellant reached the age of superannuation and retired from service on March 31, 2009. The appellant, aggrieved by the continuance of disciplinary proceedings even after retirement, challenged the same

38 *Dev Prakash Tewari v. U.P. Co-operative Institutional Service Board, Lucknow* (2014) 7 SCC 260.

before the high court which ruled that there is no scope or ground to interfere with the disciplinary proceeding, however, directed the UPCISB to complete the same within four months.

The appellant, not satisfied with the rulings of high court, approached the apex court by way of an appeal with the contention that the disciplinary proceeding was not completed for more than three years and in the absence of any specific provision in the regulations for continuation of the said proceedings even after retirement, the respondents could not continue the disciplinary proceedings after the superannuation by referring to an apex court decision³⁹ in favour of the said contention raised.

The respondent co-operative board, on the contrary, inter-alia, justified the high court order on the ground that the right of the employer to hold a fresh inquiry cannot be denied on the ground that the employee has since retired from service by citing a case decided by the apex court in favour of their contention.⁴⁰

Based on the above analysis and observations, the apex court held that the UP Co-operative Board had no legal authority to make any deduction in the retiral benefits of the appellant and also there is neither provision for conducting a disciplinary enquiry after retirement nor any provision to make deduction from retiral benefits in the event of misconduct is established. No authority vested in the respondents for continuing the disciplinary proceeding even for the purpose of imposing any reduction in the retiral benefits payable to the appellant employee. In the absence of such an authority, the enquiry had lapsed and the appellant was entitled to get full retiral benefits and as the inquiry had been lapsed, the appellant should get the balance of emoluments payable to him.

XI BACK DOOR ENTRY INTO THE SERVICES OF CO-OPERATIVE INSTITUTIONS

The engagement of personnel in co-operative institutions by way of back door entry is a telling example in this case *The Manager (Factory) Maharashtra State Co-operative Marketing Federation Ltd. v. Suresh S/O Dadarao Gadge*.⁴¹ The respondent Suresh was appointed as a peon on daily wage basis, of course, without following the normal practice and procedure on July 01, 1994 perhaps as back door entry and discontinued from service *w.e.f.* March 4, 1986 due to closure of the unit in which he was working. He was also not paid retrenchment compensation. The said termination order was challenged before the labour court which passed as an award in favour of the respondent with a direction to reinstate in service, of course, with continuity of service, of course, without back wages.

This award was affirmed by the high court and the matter reached the apex court which observed that the respondent ought not to have been reinstated in service as he was not in regular service and no other person junior to the respondent had been continued at the unit where the respondent was working and which stand

39 *Bhagirathi Jena v. Board of Directors* (1999) 3 SCC 666.

40 *UP Co-operative Federation v. LP Rai* (2007) 7 SCC 81.

41 (2015)4 SCC 542.

closed down. Also the respondent working on daily wage basis was not continued on daily wage basis but he was also not given retrenchment compensation. The reinstatement order is not just and proper for the reasons that the respondent had worked for a year and half on daily wage basis; the appointment made was irregular and the unit in which the respondent was working stand closed down at the relevant time.

XII EFFECT OF DECISION OF MAJORITY MEMBERS OF COOPERATIVE SOCIETY

In *J.N. Chaudhary v. State of Haryana*,⁴² the management committee was removed as well as suspended and the appeal preferred against was dismissed by deputy registrar of co-operative societies (DRCS).

Based on the lengthy facts and cumbersome facts involved in this case, one could infer that the housing co-operative society from the stage of very formation itself has started facing serious problems with regard to conduct of elections to the management committee whose primary responsibility, *inter-alia*, is aimed to manage the affairs of the housing co-operative society in the overall interest of its own members. There were series of elections conducted due to supersession of several management committees constituted through an electoral process, of course, based on complaints received from rival parties.

From the facts on record one could infer that one group of minority members wanted to sell the land acquired by the society much below the market price, whereas majority group opposed such move vehemently and managed to sell the land belonging to society through the process of auction at a reasonable price of Rs. 4.94 crore.

The above sale was challenged before the single judge of the high court who in turn upheld the said auction by, *inter-alia*, by holding that the auction sale was conducted after due permission granted by the RCS under the supervision of sales committee and after giving advertisement and fixing the minimum price of land per acre. The letters patent appeal filed before the divisional bench of high court was rejected by upholding the decision of the single judge of the high court. The minority petitioner /appellants feeling aggrieved by the decision of the said divisional bench has filed two appeals by way of SLP. The Supreme Court observed that,⁴³ the Members of Co-operative Society had clearly opted a wrong forum by filing a writ petition in the High Court. The petitioner should have approached the civil court of competent jurisdiction where it would have had the opportunity to adduce evidence and prove all allegations of under valuation. It would not be just and proper to interfere with the judgment Orders passed by the single judge and division bench of high court holding that the auction sale which was in pursuance to the resolution passed by the general body of the society could be faulted on the ground of allegations leveled on the basis of assumption and speculation of handful

42 2014(5) SCALE 666.

43 *Id.*, para 32-39.

Members of Co-operative Society asserted under a writ jurisdiction. Accordingly, both the appeals were dismissed.

XIII DUTIES OF THE CO-OPERATIVE SOCIETIES/ COMPETENT AUTHORITY IN THE INTEREST OF THE GENUINE MEMBERS

In *Pratima Chowdhury v. Kalpana Mukherjee*,⁴⁴ one person has become a member of Orchestra Co-operative Housing Society Ltd. and secured a flat for a consideration of Rs 4 lakhs in addition to allocating one covered garage space. The said person submitted her resignation from the membership of society and also submitted an application for the transfer of the said flat to another person (Pratima Chowdhary, (PC) petitioner in this case) subject to the consent of the society and approval of DRCS for consideration of Rs 4 lakhs which was approved by the society as well as DRCS subsequently.

A dispute was raised before the co-operative arbitrator who had framed several issues of facts and laws (not discussed here, however, the original case may be referred, if considered necessary). After careful consideration of the issues of facts and laws raised, the arbitrator passed the following award:

- a) The agreement between the Plaintiff and Defendant no. 1 is invalid, void and incomplete and
- b) The relevant resolution of the Managing Committee of the society wherein the transfer of flat in the name of respondent approved was quashed.
- c) The society was directed to ensure and conform that the plaintiff gets the possession of flat no. 5D with garage space with immediate effect and issue share certificate in her name immediately and
- d) Any other action if any taken by any authority on and after 13.11.92 affecting the Membership of the Plaintiff in any manner whatever is also quashed.

The KM and the society dissatisfied with the said award preferred separate appeals. The co-operative tribunal observed that the relationship between the parties had an essential hearing to an effective determination of the controversy, accordingly expressed the view that the entire approach of arbitrator is erroneous, as the arbitrator had treated petitioner a *pardanashin lady*.

Dissatisfied again with the order passed by the co-operative tribunal, an appeal was preferred before the high court challenging various aspects of the matter. After careful examination of the facts and issues raised therein, the high court principally accepted the views expressed by the co-operative tribunal and dismissed the challenges raised. Again the petitioner challenged the common order passed by the co-operative tribunal and high court before the apex court.

44 (2014) 4 SCC 196.

The arbitrator had acted in accordance with law, hence, the exclusion from consideration, of the factual position asserted by petitioner in her rejoinder, by the co-operative tribunal and the high court was wholly unjustified. The factual narration by petitioner could not be excluded from consideration while adjudicating upon the rival claims between petitioner and KM. The decision of high court in this regard is set aside.

XIV CONCLUSION

The cases covering various aspects and dimensions on co-operative law came before higher courts during the year 2014 have touched upon, *inter-alia*, the legislative competence, judicial interference into the realm of legislative function and executive actions often transgressing into well established legislative, judicial and executive principles and practices. The cases decided by and large, reinforced and re-established the earlier judicial decisions as well as the interpretations of various legislative provisions including laws passed by the legislature, rules framed by the executive and bye-laws framed or adopted by the co-operative democratic bodies such as general body and management committees.

The said cases have also exposed several glaring practices followed by co-operatives but not in conformity with the existing legislative framework. Such practices, *inter-alia*, includes failure to discharge official duties by the co-operative statutory authority *i.e.*, the liquidator to fetch reasonable and fair market value while disposing of the property belonging to co-operative, continuance of departmental inquiry in co-operatives even after attainment of superannuation, back door entry into co-operative services, exertion of pressure by minority co-operative members against the lawful demands and actions of majority members, the failure of statutory co-operative body and authorities to take all relevant facts into consideration while determining the rights and interest of general members of co-operatives and last but not the least, the attempt made by a civil servant to take shelter under the umbrella of co-operative so as to escape from the clutches of criminal investigation agencies. The higher court during the review period of the survey, however, have made serious and sincere attempts to send a strong message to the co-operative institutions that the courts will not hesitate to interfere in their administrative, judicial and quasi-judicial domain if they failed to follow the principles governing the rule of law *dictum*.