REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3047 OF 2015
(Arising from S.L.P. (C) No. 6237/2014)

Vipulbhai M. Chaudhary ... Appellant (s)

Versus

Gujarat Cooperative Milk Marketing Federation Limited and others ... Respondent (s)

WITH

CIVIL APPEAL NO. 3048 OF 2015
(Arising from S.L.P. (C) No. 3799/2014)

AND

CIVIL APPEAL NO. 3049 OF 2015
(Arising from S.L.P. (C) No. 5270/2014)

J U D G M E N T

KURIAN, J.:

Leave granted.

2. Whether in the absence of a specific provision on removal by no confidence in the Act, Rules or even Bye-laws of a Cooperative Society, the Chairperson/elected office bearer can be removed by a motion of no confidence, is the short but complex question.

3. Appellant was removed from the office of the Chairperson of the first respondent–cooperative society through a no confidence motion. Aggrieved, appellant filed a writ petition which was dismissed as per the impugned judgment and thus the appeal.

4. Shri Kapil Sibal, Shri H. Ahmedi and Shri Harin P. Raval, learned Senior Counsel led the arguments on behalf of the appellant. Shri Tushar Mehta, Additional Solicitor General, Dr. Rajeev Dhawan, Shri Ashok Desai and Shri V. Giri, learned Senior Counsel, Shri Sanjay R. Hegde and Shri B. S. Patel, learned Counsel, led the arguments on behalf of the respondents.

5. International Cooperative Alliance Statement on the Cooperative Identity was adopted in Manchester, United Kingdom on 23.09.1995. The 'cooperative' is defined as:

> "A co-operative is an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise."
>
> (Emphasis supplied)

6. The Statement also provides for 'values' on which cooperatives should model themselves, which reads as follows:

> "Co-operatives are based on the values of self-help, self-responsibility, democracy, equality, equity and

solidarity. In the tradition of their founders, co-operative members believe in the ethical values of honesty, openness, social responsibility and caring for others."

(Emphasis supplied)

7. The Statement further provides for 'seven cooperative principles' as guidelines by which the cooperatives put their values into practice. Following are the principles:

"**1st Principle: Voluntary and Open Membership**

Co-operatives are voluntary organizations, open to all persons able to use their services and willing to accept the responsibilities of membership, without gender, social, racial, political or religious discrimination.

2nd Principle: Democratic Member Control

Co-operatives are democratic organizations controlled by their members, who actively participate in setting their policies and making decisions. Men and women serving as elected representatives are accountable to the membership. In primary co-operatives members have equal voting rights (one member, one vote) and co-operatives at other levels are also organized in a democratic manner.

3rd Principle: Member Economic Participation

Members contribute equitably to, and democratically control, the capital of their co-operative. At least part of that capital is usually the common property of the co-operative. Members usually receive limited compensation, if any, on capital subscribed as a condition of membership. Members allocate surpluses for any or all of the following purposes:

developing their co-operative, possibly by setting up reserves, part of which at least would be indivisible; benefiting members in proportion to their transactions with the co-operative; and supporting other activities approved by the membership.

4th Principle: Autonomy and Independence

Co-operatives are autonomous, self-help organizations controlled by their members. If they enter to agreements with other organizations, including governments, or raise capital from external sources, they do so on terms that ensure democratic control by their members and maintain their co-operative autonomy.

5th Principle: Education, Training and Information

Co-operatives provide education and training for their members, elected representatives, managers, and employees so they can contribute effectively to the development of their co-operatives. They inform the general public – particularly young people and opinion leaders – about the nature and benefits of co-operation.

6th Principle: Co-operation among Co-operatives

Co-operatives serve their members most effectively and strengthen the co-operative movement by working together through local, national, regional and international structures.

7th Principle: Concern for Community

Co-operatives work for the sustainable development of their communities through policies approved by their members."

(Emphasis supplied)

8. The cooperative movement in India started at the beginning of the 20th century. Though the movements were also based on some of the values and principles stated above, it appears that the cooperatives in India did not have effective autonomy, democratic functioning and professional management. The National Policy on Cooperatives announced by the Department of Agriculture and Cooperation, Ministry of Agriculture, Government of India adopted in March, 2002, is wholly based on the definition, values and principles stated above. 97th Amendment to the Constitution of India, in fact, gave a constitutional frame to this policy.

9. Apart from providing for the right to form cooperative societies to be a fundamental right under Article 19 of the Constitution of India and insertion of Article 43B under the Directive Principles of State Policy on promotion of cooperative societies, the amendment also introduced a new Part IXB on Cooperative Societies. Reference to the Statement of Objects and Reasons of the amendment would give a clear picture as to the need to strengthen the democratic basis and provide for a constitutional status to the cooperative societies. Thus, one has to see the constitutional aspirations on the concept of cooperative societies after the 97th Amendment in the Constitution of India which came into effect on 12.01.2012.

“STATEMENT OF OBJECTS AND REASONS

The co-operative sector, over the years, has made significant contribution to various sectors of national economy and has achieved voluminous growth. However, it has shown weaknesses in safeguarding the interests of the members and fulfilment of objects for which these institutions were organised. There have been instances where elections have been postponed indefinitely and nominated office bearers or administrators remaining in-charge of these institutions for a long time. This reduces the accountability of the management of co-operative societies to their members. Inadequate professionalism in management in many of the co-operative institutions has led to poor services and low productivity. Co-operatives need to run on well established democratic principles and elections held on time and in a free and fair manner. Therefore, there is a need to initiate fundamental reforms to revitalize these institutions in order to ensure their contribution in the economic development of the country and to serve the interests of members and public at large and also to ensure their autonomy, democratic functioning and professional management.

2. The "co-operative societies" is a subject enumerated in Entry 32 of the State List of the Seventh Schedule of the Constitution and the State Legislatures have accordingly enacted legislations on co-operative societies. Within the framework of State Acts, growth of co-operatives on large scale was envisaged as part of the efforts for securing social and economic justice and equitable distribution of the fruits of development. It has, however, been experienced that in spite of considerable expansion of co-operatives, their performance in qualitative terms has not been up to the desired level. Considering the need for reforms in the Co-operative Societies Acts of the States, consultations with the State Governments have been held at several occasions and in the conferences of State Co-operative Ministers. A strong need has been felt for amending the Constitution so as to keep the co-

operatives free from unnecessary outside interferences and also to ensure their autonomous organisational set up and their democratic functioning.

3. The Central Government is committed to ensure that the co-operative societies in the country function in a democratic, professional, autonomous and economically sound manner. With a view to bring the necessary reforms, it is proposed to incorporate a new Part in the Constitution so as to provide for certain provisions covering the vital aspects of working of co-operative societies like democratic, autonomous and professional functioning. A new article is also proposed to be inserted in Part IV of the Constitution (Directive Principles of State Policy) for the States to endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of cooperative societies. The proposed new Part in the Constitution, *inter alia*, seeks to empower the Parliament in respect of multi-State co-operative societies and the State Legislatures in case of other co-operative societies to make appropriate law, laying down the following matters, namely:—

(*a*) provisions for incorporation, regulation and winding up of co-operative societies based on the principles of democratic member-control, member-economic participation and autonomous functioning;

(*b*) specifying the maximum number of directors of a co-operative society to be not exceeding twenty-one members;

(*c*) providing for a fixed term of five years from the date of election in respect of the elected members of the board and its office bearers;

(*d*) providing for a maximum time limit of six months during which a board of directors of co-operative society could be kept under supersession or suspension;

(*e*) providing for independent professional audit;

(*f*) providing for right of information to the members of the co-operative societies;

(*g*) empowering the State Governments to obtain periodic reports of activities and accounts of co-operative societies;

(*h*) providing for the reservation of one seat for the Scheduled Castes or the Scheduled Tribes and two seats for women on the board of every co-operative society, which have individuals as members from such categories;

(*i*) providing for offences relating to co-operative societies and penalties in respect of such offences.

4. It is expected that these provisions will not only ensure the autonomous and democratic functioning of co-operatives, but also ensure the accountability of management to the members and other stakeholders and shall provide for deterrence for violation of the provisions of the law.

5. The Bill seeks to achieve the above objectives."

(Emphasis supplied)

10. Article 43B of the Constitution of India provides for promotion of cooperative societies:

"43B. The State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies."

(Emphasis supplied)

11. Part IXB of the Constitution of India is titled as "The Cooperative Societies". A few provisions would be relevant for our consideration.

- Article 243ZH(b) defines "board":

"243ZH(*b*) "board" means the board of directors or the governing body of a co-operative society, by whatever name called, to which the direction and control of the management of the affairs of a society is entrusted to;"

(Emphasis supplied)

- Article 243ZH(c) defines "cooperative society":

"243ZH(*c*) "co-operative society" means a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State;"

- "Office bearer" is under Article 243ZH(e):

"243ZH(*e*) "office bearer" means a President, Vice-President, Chairperson, Vice-Chairperson, Secretary or Treasurer of a co-operative society and includes any other person to be elected by the board of any co-operative society;"

- Article 243ZJ provides for the number and term of members of the board and its office bearers:

"243ZJ. (1) The board shall consist of such number of directors as may be provided by the Legislature of a State, by law:

Provided that the maximum number of directors of a co-operative society shall not exceed twenty-one:

Provided further that the Legislature of a State shall, by law, provide for the reservation of one seat for the Scheduled Castes or the Scheduled Tribes and two seats for women on board of every co-operative

society consisting of individuals as members and having members from such class or category of persons.

(2) The term of office of elected members of the board and its office bearers shall be five years from the date of election and the term of office bearers shall be coterminous with the term of the board:

Provided that the board may fill a casual vacancy on the board by nomination out of the same class of members in respect of which the casual vacancy has arisen, if the term of office of the board is less than half of its original term.

(3) The Legislature of a State shall, by law, make provisions for co-option of persons to be members of the board having experience in the field of banking, management, finance or specialization in any other field relating to the objects and activities undertaken by the co-operative society as members of the board of such society:

Provided that the number of such co-opted members shall not exceed two in addition to twenty-one directors specified in the proviso to clause (1):

Provided further that such co-opted members shall not have the right to vote in any election of the co-operative society in their capacity as such member or to be eligible to be elected as office bearers of the board:

Provided also that the functional directors of a co-operative society shall also be the members of the board and such members shall be excluded for the purpose of counting the total number of directors specified in first proviso of clause (1).”

(Emphasis supplied)

- Article 243ZT provides for continuance of the existing

laws:

> "243ZT. Notwithstanding anything in this Part, any provision of any law relating to co-operative societies in force in a State immediately before the commencement of the Constitution (Ninety Seventh Amendment) Act, 2011, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is less.'."
>
> (Emphasis supplied)

12. Thus, by 12.01.2013, all laws on cooperative societies were bound to be restructured in consonance with the Ninety Seventh Amendment of the Constitution of India and, in any case, any provision in the Act or Rules or Bye-laws otherwise inconsistent with the Constitution will be inoperative thereafter. Articles 43B and 243ZT are mandates to all the States and the competent authorities to structure cooperative societies as conceived in the Constitution of India, if not already there. Therefore, we have to see whether the Act, Rules or Bye-laws contain any provision for democratic functioning.

13. The first legislation on cooperative movement in India was the Cooperative Credit Societies Act, 1904 and, thereafter, the cooperative societies emerged in India as State sponsored/promoted institutions. The main objective was only credit intended to relieve

the poor agriculturists from the clutches of moneylenders. The first urban cooperative credit society under the Act of 1904 was registered in Kanjivaram in erstwhile Madras province[1]. The traits of democracy were present in the very first legislation through the principle “one man, one vote”. Since the first legislation was limited to the credit societies, a new legislation was introduced 8 years later as “Cooperative Societies Act, 1912”. The restriction regarding registration limited to credit societies was taken away and any society established with the object of promoting the economic interests of its members in accordance with the cooperative principles, or a society established with the object of facilitating the operations of such a society, could be registered[2].

14. Under the Government of India Act of 1919 (Montague Chelmsford Reforms), cooperation became a provincial subject which gave a further impetus to the movement. This gave birth to several cooperative land mortgage banks. The first of its kind was registered in Punjab. Close to independence and thereafter, we see a radical change and increased growth in the cooperative movement. Activities were spread to all spheres of human endeavour, and thus

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[1] “Brief History of Urban Cooperatives” adapted from a paper by O.P. Sharma published on Reserve Bank of India website – www.rbi.org.in/scripts/briefhistory.aspx.

[2] The Co-operative Movement in India by Eleanor M. Hough, Fourth Edition, 1959

in 2002, National Policy on Cooperatives was announced.

15. The cooperative societies having been conferred a constitutional status by the Ninety Seventh Amendment, the whole concept of cooperatives has undergone a major change. In 1993, the local self-governments, viz., panchayats and municipalities were also given constitutional status under Parts IX and IXA of the Constitution of India by the 73rd and 74th Amendments. The Statement of Objects and Reasons would show that the Constitution wanted the local bodies to function as vibrant democratic units of self-government. After two decades, cooperative societies were given the constitutional status by including them under Part IXB. The main object for the said amendment was also to ensure “their autonomy, democratic functioning and professional management”.

16. The National Policy on Cooperatives announced in March 2002 has recognized democracy, equality, equity and solidarity as values of cooperatives. Cooperative society has been declared as a democratic institution. Democratic principles have all through been recognized as one of the cooperative principles though the constitutional affirmation of those principles came only in 2012.

17. The principle of representative democracy is the election of representatives by the people otherwise eligible to caste their vote

and the people thus elected, constituting the body for the management of an institution. Thus, in the case of cooperative societies, after the amendment in the Constitution, there has to be a Board of elected representatives, which may be called Board of Directors or Governing Body or a Managing Committee, etc., to which the members entrust the direction and control of the management of the affairs of the society. That representative body selects one among the elected representatives as its Chairman or any other office bearer, as the case may be. Selection is the act of carefully choosing someone as the most suitable to be the leader or office bearer. Thus, there is a lot of difference between election of delegates/representatives to constitute a body and selection of a person by the body from amongst the elected members to be the leader. It is to be borne in mind that the management and control of the society is entrusted to the representative body, viz., the Board of Directors and that the Chairperson elected by the Board of Directors is the Chairperson of the society and not of the Board of directors.

18. In **Bhanumati and others** **v.** **State of Uttar Pradesh through its Principal Secretary and others**[3], the cooperative principles governing democratic institutions have been discussed in detail; no doubt while dealing with the Panchayati Raj institutions.

[3] (2010) 12 SCC 1

However, the basic democratic principles governing both the institutions, enjoying the constitutional status, are the same and, therefore, it would be profitable to refer to the discussion on the principles. To quote:

> **"58.** These institutions must run on democratic principles. In democracy all persons heading public bodies can continue provided they enjoy the confidence of the persons who comprise such bodies. This is the essence of democratic republicanism. This explains why this provision of no-confidence motion was there in the Act of 1961 even prior to the Seventy-third Constitution Amendment and has been continued even thereafter. Similar provisions are there in different States in India.
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> **66.** Democracy demands accountability and transparency in the activities of the Chairperson especially in view of the important functions entrusted with the Chairperson in the running of Panchayati Raj institutions. Such duties can be discharged by the Chairperson only if he/she enjoys the continuous confidence of the majority members in the panchayat. So any statutory provision to demonstrate that the Chairperson has lost the confidence of the majority is conducive to public interest and adds strength to such bodies of self-governance. Such a statutory provision cannot be called either unreasonable or ultra vires Part IX of the Constitution."

19. In **Pratap Chandra Mehta v. State Bar Council of Madhya Pradesh and others**[4] and in **Usha Bharti v. State of Uttar Pradesh and others**[5], the concept of democratic principles

[4] (2011) 9 SCC 573
[5] (2014) 7 SCC 663

governing the democratic institutions have been discussed. In a democratic institution, confidence is the foundation on which the superstructure of democracy is built. The bedrock of democratic accountability rests on the confidence of the electorate. If the representative body does not have confidence in the office bearer whom they selected, democracy demands such officer to be removed in a democratic manner.

20. A cooperative society is registered on cooperative principles of democracy, equity, equality and solidarity. Democratic accountability, mutual trust, fairness, impartiality, unity or agreement of feeling among the delegates, cooperativeness, etc., are some of the cardinal dimensions of the cooperative principles. A body built on such principles cannot be led by a captain in whom the co-sailors have no confidence.

21. If a person has been selected to an office through democratic process, and when that person looses the confidence of the representatives who selected him, those representatives should necessarily have a democratic right to remove such an office bearer in whom they do not have confidence, in case those institutions are viewed under the Constitution/statues as democratic institutions.

22. In **Bhanumati** case (supra), at paragraph-67, this Court

elaborated on this principle:

> "**67.** Any head of a democratic institution must be prepared to face the test of confidence. Neither the democratically elected Prime Minister of the country nor the Chief Minister of a State is immune from such a test of confidence under the Rules of Procedure framed under Articles 118 and 208 of the Constitution. Both the Prime Minister of India and Chief Ministers of several States heading the Council of Ministers at the Centre and in several States respectively have to adhere to the principles of collective responsibilities to their respective houses in accordance with Articles 75(3) and 164(2) of the Constitution."

23. In **Pratap Chandra Mehta** case (supra), at paragraph-45, the principle has been discussed as follows:

> **"45.** In the instant case, the election process as contemplated under the relevant laws is that the members of a State Bar Council are elected by the electorate of advocates on the rolls of the State Bar Council from amongst the electorate itself. The elected members then elect a Chairman, a Vice-Chairman and the Treasurer of the State Bar Council as well as constitute various committees for carrying out different purposes under the provisions of the Advocates Act. In other words, the body which elects the Chairman or Vice-Chairman of a State Bar Council always consists of members elected to that Council. The democratic principles would require that a person who attains the position of a Chairman or Vice-Chairman, as the case may be, could be removed by the same electorate or smaller body which elected them to that position by taking recourse to a "no-confidence motion" and in accordance with the Rules. The body that elects a person to such a position would and ought to have the right to oust him/her from that post, in the event

> the majority members of the body do not support the said person at that time. Even if, for the sake of argument, it is taken that this may not be generally true, the provisions of Rule 122-A of the M.P. Rules make it clear, beyond doubt, that a "no-confidence motion" can be brought against the elected Chairman provided the conditions stated in the said Rules are satisfied."

24. In **Usha Bharti** case (supra) also, this Court eloquently held at paragraph-53 as follows:

> "**53.** In our opinion, the provision for removing an elected representative such as Panchayat Adhyaksha is of fundamental importance to ensure the democratic functioning of the Institution as well as to ensure the transparency and accountability in the functions performed by the elected representatives."

25. No doubt, in the cases referred to above, the respective Acts contained a provision regarding no confidence. What about a situation where there is no express provision regarding no confidence? Once the cooperative society is conferred a constitutional status, it should rise to the constitutional aspirations as a democratic institution. So, it is for the respective legislative bodies to ensure that there is democratic functioning. When the Constitution is eloquent, the laws made thereunder cannot be silent. If the statute is silent or imprecise on the requirements under the Constitution, it is for the court to read the constitutional mandate

into the provisions concerned and declare it accordingly. Article 243ZT has given a period of one year to frame/reframe the statues in consonance with Part IXB and thereafter, i.e., with effect from 12.01.2013, those provisions which are inconsistent with Part IXB, cease to operate.

26. Silence in Constitution and abeyance as well has been dealt extensively by Michael Foley in his celebrated work “The Silence of Constitutions”. To quote from the Preface:

> “Abeyances refer to those constitutional gaps which remain vacuous for positive and constructive purposes. They are not, in any sense, truces between two or more defined positions, but rather a set of implicit agreements to collude in keeping fundamental questions of political authority in a state of irresolution. Abeyances are, in effect, compulsive hedges against the possibility of that which is unresolved being exploited and given meanings almost guaranteed to generate profound division and disillusionment. Abeyances are important, therefore, because of their capacity to deter the formation of conflicting positions in just those areas where the potential for conflict is most acute. So central are these abeyances, together with the social temperament required to sustain them, that when they become the subject of heightened interest and subsequent conflict, they are not merely accompanied by an intense constitutional crisis, they are themselves the essence of that crisis.”

27. In Part II, Chapter Four, the author has also dealt with the

constitutional gaps and the arts of prerogative. To the extent relevant, it reads as follows (Page-82):

> "Gaps in a constitution should not be seen as simply empty space. They amount to a substantial plenum of strategic content and meaning vital to the preservation of a constitution. Such interstices accommodate the abeyances within which the sleeping giants of potentially acute political conflict are communally maintained in slumber. Despite the absence of any documentary or material form, these abeyances are real, and are an integral part of any constitution. What remains unwritten and indeterminate can be just as much responsible for the operational character and restraining quality of a constitution as its more tangible and codified components. …"

28. Where the Constitution has conceived a particular structure on certain institutions, the legislative bodies are bound to mould the statutes accordingly. Despite the constitutional mandate, if the legislative body concerned does not carry out the required structural changes in the statutes, then, it is the duty of the court to provide the statute with the meaning as per the Constitution. … "The job of the Supreme Court is not to expound the meaning of the constitution but to provide it with meaning"[6]. The reference obviously is to United States Supreme Court. As a general rule of interpretation, no doubt, nothing is to be added to or taken from a statute. However,

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[6] Walter Berns, 'Government by lawyers and judges', *Commentary*, June, 1987 at p.18.

when there are adequate grounds to justify an inference, it is the bounden duty of the court to do so. …"It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statue unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express"[7]. According to Lord Mersey in **Thompson (Pauper) v. Goold and Co.**[8]… "It is a strong thing to read into an Act or Parliament words, which are not there, and in the absence of clear necessity, it is wrong to do". In the case of cooperative societies, after the Ninety Seventh Amendment, it has become a clear or strong necessity to do the strong thing of reading into the legislation, the constitutional mandate of the cooperative societies to be governed as democratic institutions. … "The constitutional provisions have to be construed broadly and liberally having regard to the changed circumstances and the needs of time and polity"[9].

29. Article 243ZT of the Constitution requires the laws relating to cooperative societies in force in States prior to the commencement of the Amendment Act to be in tune with and in terms of the constitutional concept and set up of cooperative societies. In fact, a

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7 Maxwell on The Interpretation of Statues, Twelfth Edition, page-33.

8 [1910] A.C. 409.

9 Constitutional Bench decision in State of West Bengal and others v. Committee for Protection of Democratic Rights, West Bengal and others reported in [(2010) 3 SCC 571, Paragraph-45.

period of one year has been provided in the Constitution from the commencement of the amendment for the required amendment or repeal by the competent legislature or by the competent authority, of laws which are inconsistent with Part IXB. As a corollary, the Constitution enables the competent legislature or authority to suitably amend the existing provisions in their laws in tune with the constitutional mandate. Thereafter, in case there continues to be silence in the Act or Bye-laws, the court will have to read the constitutional requirements into the existing provisions. It is essentially a process of purposive construction of the available provisions as held by this Court in **Pratap Chandra Mehta** case (supra).

30. Bye-law 18.2 of the first respondent, pertaining to the office of the Chairperson of the Federation falling vacant before the expiry of his elected term, will have to be analysed in the light of the above principle. The provision reads as follows:

> "18.2. The Chairperson of the Federation will be elected by the Board for the Term of three years and he / she shall continue to hold his / her office till the new Chairperson is elected and takes over. He / she shall be honorary Chairperson. In case the elected Chairperson vacates his / her office before expiry of his / her term or due to any other reason the post of Chairman falls vacant, the Board shall elect the new Chairperson for the remaining term.
> The election of the Chairperson will take place

in the first Board meeting of the Federation after the expiry of the term of the elected Chairperson or when the Chairperson's post falls vacant. In his / her absence, the meeting shall elect its own Chairperson for that meeting from amongst the eligible members present. The Chairperson in such event shall exercise such power as may be delegated to him by the Board of Directors. The Managing Director of the Federation shall not be entitled to vote and contest the election for the post of Chairperson."

(Emphasis supplied)

31. Bye-law 23 deals with the powers of the Board of Directors:

> **"23. Powers and Functions of the Board**
>
> The entire administration, management and control of the Federation shall be vested in the Board of Directors. The Board of Directors shall have and exercise all such powers and enter into all such agreements made, all such arrangements, take all such proceeding and do all such acts and things as may be necessary or proper for the due management of the Federation and for carrying out objects for which the Federation is established and for securing and furthering its interest subject to the provisions of the Act or such act as shall hereafter take its place and to any rules which may be passed by the State Government in pursuance of the said Act and subject also to these Bye-Laws and / or any Bye-law which may be duly made by the Federation."

32. Thus, the entire administration, management and control of the Federation are vested in the Board of Directors as per the Bye-law. This is in terms of proviso to Section 73 of the Gujarat Cooperative Societies Act, 1961 (hereinafter referred to as "the

Act"). The Section reads as follows:

> "**Section 73 :- Final authority of society –** Subject to the provisions in this Act and the rules, the final authority of every society shall vest in the general body of the members in general meeting, summoned in such a manner as may be specified in the bye-laws:
>
> Provided that, where the bye-laws of a society provide for the election of delegates of such members, the final authority may vest in the delegates of such members elected in the prescribed manner, and assembled in general meeting."

33. The General Body of the first respondent-Federation, in terms of Bye-law 13.1 comprises of the following:

> "13.1 The General Meeting shall consist of the following:-
>
> (1) The Chairman of each of the affiliated Milk Unions enrolled as Ordinary Members;
> (2) The Registrar;
> (3) The Dairy Management Expert co-opted by the Board;
> (4) Managing Director of the Federation;
> (5) A nominee of the National Dairy Development Board as long as the loan / interest of the National Dairy Development Board have not been fully repaid by the Federation.
>
> The Chairman of the Board of Directors shall preside over the General Meeting. In case of his absence, the meeting shall elect a Chairman from among the members present."

34. The composition of the Board of Directors of the first

respondent-Federation is provided under Bye-law 18.1:

> "18.1 The Board will consist of the following:
>
> (i) Chairman of the affiliated milk unions enrolled as ordinary members;
> (ii) Registrar or his representative not below the rank of Joint Registrar [C.S.];
> (iii) One Dairy Management Expert to be co-opted by the Board;
> (iv) Managing Director of the Federation [ex-officio];
> (v) A nominee of the National Dairy Development Board as long as the loan / interest of the National Dairy Development Board have not been fully repaid by the Federation."

35. "Committee" is defined under Section 2(5) of the Act:

> "**Section 2(5) "committee"** means the Managing Committee or other governing body of a society to which the direction and control of the management of the affairs of a society is entrusted to."

36. "Officer" is defined under Section 2(14) of the Act:

> "**Section 2(14) "officer"** means a person elected or appointed by a society to any office of such society according to its bye-laws; and includes a chairman, vice-chairman, president, vice-president, managing director, manager, secretary, treasurer, member of the committee, and any other person elected or appointed under this Act, the rules or the bye-laws, to give directions in regard to the business of such society."

37. Section 4 of the Act provides for the registration of societies:

> "**Section 4- Societies which may be registered** – A society, which has as its object the promotion of the economic interests or general welfare of its members or of the public, in accordance with co-operative principles, or as society established with the object of facilitating the operations of any such society, may be registered under this Act:
>
> Provided that it shall not be registered if, in the opinion of the Registrar, it is economically unsound, or its registration may have an adverse effect upon any other society, or it is opposed to, or, its working is likely to be in contravention of public policy."

38. A conjoint reading of all the provisions under the Act and the Bye-laws of the Society would clearly show that the functional authority of the first respondent-Federation vests in the Board of Directors. The entire administration, management and control of the Federation is with the Board. Thus, the Board of Directors is bound to do all such acts and things as may be necessary for the proper management of the Federation. The Chairperson of the first respondent is elected by the Board for a term of three years and after the 97th Amendment to the Constitution, the term is five years. When the post of Chairperson falls vacant, the Board is bound to elect a new Chairperson for the remaining term. The post of Chairperson may fall vacant on account of variety of reasons like resignation, death or cessation of membership in the Board, operation of Section 76B of the Act, i.e., removal by the Registrar on account of persistent default or misconduct.

39. The removal by no confidence is not expressly provided in the Bye-laws. Neither is there any such provision in the Act or Rules. The only enabling provision is Bye-law 18.2 which mandates that in case the office of the Chairperson of the Federation falls vacant before the expiry of his term for any reason, the Board has to elect a new Chairperson for the remaining term.

40. Shri Kapil Sibal, learned Counsel appearing for the appellant, inviting reference to the doctrine of c*asus omissus* and placing reliance on the Full-Bench decision of the High Court of Kerala in **S. Lakshmanan, President, Thiruvilwamal Weavers Co-operative Society v. V.Velliankeri, Member of Board of Directors, Thiruvilwamala Weavers Co-operative Society Ltd. and others**[10] and the decisions of the other High Courts submits that no such power of removal of the Chairperson by no confidence can be read into the provisions of the Act, Rules or Bye-laws. To quote from **S. Lakshmanan** case (supra) :

> "16. The Committee is elected by following the procedure prescribed under the Act and the Rules and is guaranteed a tenure as prescribed in the Bye-laws, by virtue of Rule 39(1). It can only be removed by the procedure prescribed in the Act or the Rules or the Bye-laws. The only contingency under which the Committee may be removed before the end of its tenure is indicated in Section 33(1) of the Act. Section 33(1) of the Act envisages the passing of a

[10] AIR 2002 Kerala 325

no-confidence motion by the General Body which results in wholesale removal of the Committee. Barring this provision, there is no other provision by which an elected individual member of the Committee can be removed. We are, therefore, unable to accept the contention of the appellants that such a drastic power can be read into the Act, even where there are no provisions. ...”

41. In **Veeramachaneni Venkata Narayana v. The Deputy Registrar of Co-operative societies, Eluru, West Godavari District and others**[11], at paragraph-10, the view taken by the High Court of Andhra Pradesh, is as under:

> “10. ... As sufficient safeguards are provided in the event of an office-bearer of the committee not conducting himself properly or not discharging his duties as required of him under the provisions of the Act, the Rules and the bye-laws, the Legislature obviously did not intend to provide for the removal of an office-bearer of a committee by way of passing of ‘no-confidence’ motion against him.”

42. In **Hindurao Balwant Patil and another v. Krishnaro Pashuram Patil and others**[12], the High Court of Bombay took the view that:

> “10. ... The Act, Rules and the bye-laws do no confer any right upon the members of the Board of Directors to remove the Chairman and the Vice-Chairman by passing a mere vote of no confidence. Therefore it will not be proper to confer such a wider

[11] I.L.R. [1975] A.P. 242
[12] AIR 1982 Bombay 216

power upon the board of directors by taking recourse to the doctrine of implied or inherent power."

43. In **Jagdev Singh v. The Registrar, Co-operative Societies, Haryana and others**[13], the Full-Bench of High Court of Punjab and Haryana held as follows:

> "22. .... the answer to the question posed in the beginning of the judgment, is that in absence of any provision in the Punjab Co-operative Societies Act, 1961, Rules and the Bye-laws made thereunder (as also in the Haryana Cooperative Societies Act, 1984, Rules and the Bye-laws made thereunder) for moving a no-confidence in the President of a Managing Committee/ Chairman of a Board of Directors of a Co-operative Bank, it is not permissible to move such a motion, inasmuch as such a power cannot be inferred nor such a power is inherent in the members of the Managing Committee/Director of the Bank. The Office bearers can only be removed in accordance with Section 27 of the Act read with Rules 25 and 26 of the Rules. With respect we are unable to agree with the law laid down by the Division Bench in Haji Anwar Khan's case (AIR 1980 Punjab & Haryana 306) (supra) (which was a case under the Wakf Act), to our mind, does not lay down correct law."

44. It may be seen that all these decisions dealt with the pre-Ninety Seventh Amendment status of the cooperative societies. The amendment providing constitutional status to the societies has brought out radical changes in the concept of cooperative societies. Democratic functioning and autonomy have now become the core

[13] AIR 1991 P & H 149

constitutional values of a cooperative society. Such societies are to be registered only if they are founded on cooperative principles of democracy, equality, equity and solidarity.

45. We may also refer to another argument by Shri Sibal. That once the Act provides for a fixed term, the only mode of unsettling the term is as provided under the Act. In the instant case, it is Section 76B of the Act, which reads as follows:

> "**76B. Removal of officer.** - (1) If, in the opinion of the Registrar, any officer makes persistent default or is negligent in performance of the duties imposed on him by this Act or the rules or the bye-laws or does anything which is prejudicial to the interests of the Society or where he stands disqualified by or under this Act, the Registrar may, after giving the officer an opportunity of being heard, by order remove such officer and direct the Society to elect or appoint a person or a qualified member in the vacancy caused by such removal and the officer so elected or appointed shall hold office so long only as the officer in whose place he is elected or appointed would have held if the vacancy had not occurred.
>
> (2) The Registrar may, by order, direct that the officer so removed shall be disqualified to hold or to contest election for any office in the society from which he is removed and in any other society for a period not exceeding four years from the date of the order and such officer may stand disqualified accordingly."

46. The provision simply deals with removal for misconduct or persistent default/non-performance. A person with good conduct

may still not earn the confidence of the people who selected him to the office. The very concept of cooperation is to work jointly towards the same end. Unless there is cooperativeness among the elected cooperators who constitute the Governing Body for achieving the object for which the society is constituted and for which those representatives are elected by the members entrusting them with the management of affairs of the society, there will be total chaos. Cooperation among the cooperators is the essence of democratic functioning of a cooperative society. If there is no democracy in a cooperative society, it ceases to be a cooperative society as conceived by the Constitution of India under the Ninety Seventh Amendment.

47. There is no quarrel with the well-settled proposition that a right to elect is not a fundamental right nor a common law right; it is a statutory right, and any question relating to election has to be resorted within the four corners of the Act as held by this Court in **Jyoti Basu and others v. Debi Ghosal and others**[14]. To quote paragraph-8:

> **"8.** A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right

[14] (1982) 1 SCC 691

to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at common law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to common law and equity must remain strangers to election law unless statutorily embodied. A court has no right to resort to them on considerations of alleged policy because policy in such matters as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes, court is put in a strait-jacket. Thus the entire election process commencing from the issuance of the notification calling upon a constituency to elect a member or members right up to the final resolution of the dispute, if any, concerning the election is regulated by the Representation of the People Act, 1951, different stages of the process being dealt with by different provisions of the Act. There can be no election to Parliament or the State Legislature except as provided by the Representation of the People Act, 1951 and again, no such election may be questioned except in the manner provided by the Representation of the People Act. So the Representation of the People Act has been held to be a complete and self-contained code within which must be found any rights claimed in relation to an election or an election dispute. We are concerned with an election dispute. The question is who are parties to an election dispute and who may be impleaded as parties to an election petition. We have already referred to the scheme of the Act. We have noticed the necessity to rid ourselves of notions based on common law or equity. We see that we must seek an answer to the question within the four corners of the statute. What does the Act say**?"**

48. In the background of the constitutional mandate, the

question is not what the statute does say but what the statute must say. If the Act or the Rules or the Bye-laws do not say what they should say in terms of the Constitution, it is the duty of the court to read the constitutional spirit and concept into the Acts. … "In so far as in its Act Parliament does not convey its intention clearly, expressly and completely, it is taken to require the enforcement agencies who are charged with the duty of applying legislation to spell out the detail of its legal meaning. This may be done either- (a) by finding and declaring implications in the words used by the legislator, or (b) by regarding the breadth or other obscurity of the express language as conferring a delegated legislative power to elaborate its meaning in accordance with public policy (including legal policy) and the purpose of the legislation"[15].

49. The conventional view is that the legislature alone makes the law. But as Bennion puts it:

> "The truth is that courts are inescapably possessed of some degree of legislative power. Enacted legislation lays down rules in advance. The commands of Parliament are deliberate prospective commands. The very concept of enacted legislation postulates an authoritative interpreter who operates *ex post facto*. No such interpreter can avoid legislating in the course of exercising that function. It can be done by regarding the breadth or other obscurity of the express language as conferring a delegated legislative power to elaborate its meaning

[15] Bennion on Statutory Interpretation by Francis Bennion, 6th Edition, p.136.

in accordance with public policy (including legal policy)"[16].

50. According to Donaldson J.:

> "The duty of the courts is to ascertain and give effect to the will of Parliament as expressed in its enactments. In the performance of this duty the judges do not act as computers into which are fed the statues and the rules for the construction of statues and from whom issue forth the mathematically correct answer. The interpretation of statutes is a craft as much as a science and the judges, as craftsmen, select and apply to the appropriate rules as the tools of their trade. They are not legislators, but finishers, refiners and polishers of legislation which comes to them in a state requiring varying degrees of further processing."[17]

51. In the celebrated case of **Seaford Court Estates v. Asher**[18], Lord Denning has succinctly summarized the principle on the role of the court. To quote:

> "Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity... A judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of the Parliament, and he must do this not only from the language of the statue, but also from a consideration of the social conditions which gave rise to it and of the mischief

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16 Bennion on Statutory Interpretation by Francis Bennion, 6th Edition, p.137.
17 Corocraft Ltd v Pan American Airways Inc. [1968] 3 WLR 714 at 732.
18 [1949] 2 All ER 155

> which it was passed to remedy, and then he must supplement the written word so as to give "force and life" to the intention of the legislature. ... Put into homely metaphor it is this: A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

52. In **Rattan Chand Hira Chand v. Askar Nawaz Jung (Dead) by Lrs. and others**[19], this Court, at paragraph-17 of the judgment, has also dealt with the principles in following words:

> **"17.** ... The legislature often fails to keep pace with the changing needs and values nor is it realistic to expect that it will have provided for all contingencies and eventualities. It is, therefore, not only necessary but obligatory on the courts to step in to fill the lacuna. When courts perform this function undoubtedly they legislate judicially. But that is a kind of legislation which stands implicitly delegated to them to further the object of the legislation and to promote the goals of the society. Or to put it negatively, to prevent the frustration of the legislation or perversion of the goals and values of the society. So long as the courts keep themselves tethered to the ethos of the society and do not travel off its course, so long as they attempt to furnish the felt necessities of the time and do not refurbish them, their role in this respect has to be welcomed."

53. The cooperative society registered under the Central or the State Act is bound to function as a democratic institution and conduct its affairs based on democratic principles. Democratic

[19] (1991) 3 SCC 67

functioning on democratic principles is to be reflected in the respective Acts or Rules or Bye-laws both on the principle and procedure. If not, it is for the court to read the democratic principles into the Act or Rules or Bye-laws. If a procedure is prescribed in any Act or Rule or Bye-law regarding election of an office bearer by the Board, as defined under Article 243ZH(b) of the Constitution of India, and for removal thereof, by way of a motion of no confidence, the same procedure has to be followed. In case there is no express provision under the Act or Rules or Bye-laws for removal of an office bearer, such office bearer is liable to be removed in the event of loss of confidence by following the same procedure by which he was elected to office.

54. Now that this Court has declared the law regarding the democratic set up of a cooperative society and that it is permissible to remove an elected office bearer through motion of no confidence, and since in many States, the relevant statutes have not carried out the required statutory changes in terms of the constitutional mandate, we feel it just and necessary to lay down certain guidelines. However, we make it clear that these guidelines are open to be appropriately modified and given statutory shape by the competent legislature/authority. Having gone through the provisions regarding motion of no confidence in local self-governments, we find

that there is no uniformity with regard to the procedure and process regarding motion of no confidence. Some States provide for a protection of two years, some for one year and a few for six months, to the office bearers in office before moving a motion of no confidence. However, majority of the States provide for two years and a gap of another one year in case one motion of no confidence is defeated. Bihar Panchayat Raj Act, 2006 provides for a protection of two years and one year, Bihar Municipal Act, 2007 provides for a protection of two years and one year, Himachal Pradesh Panchayati Raj Act, 1994 provides for a protection of two years and two years, Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 provides for a protection of two and a half years, Madhya Pradesh Municipalities Act, 1961 provides for a protection of two years and one year, Manipur Panchayati Raj Act, 1994 provides for a protection of two years and one year, Orissa Panchayat Samiti Act, 1959 provides for a protection of two years, Orissa Grama Panchayats Act, 1964 provides for a protection of two years, Punjab Panchayati Raj Act, 1994 provides for a protection of two years, Rajasthan Panchayati Raj Act, 1994 provides for a protection of two years and one year, Rajasthan Municipalities Act, 2009 provides for a protection of two years and Uttar Pradesh Panchayati Raj Act, 1947, as followed by Uttarakhand, provides for a protection of two years

and one year. Having regard to the set up in local self-governments prevailing in many of the States as above, we direct that in the case of cooperative societies registered under any Central or State law, a motion of no confidence against an office bearer shall be moved only after two years of his assumption of office. In case the motion of no confidence is once defeated, a fresh motion shall not be introduced within another one year. A motion of no confidence shall be moved only in case there is a request from one-third of the elected members of the Board of Governors/Managing Committee of the cooperative society concerned. The motion of no confidence shall be carried in case the motion is supported by more than fifty per cent of the elected members present in the meeting.

55. Though for different reasons, we agree with the view taken by the High Court of Gujarat. The *contra* views expressed by the High Courts of Andhra Pradesh, Bombay, Kerala and Punjab and Haryana are no more good law in view of the Ninety Seventh Amendment to the Constitution of India.

56. The appeals are accordingly dismissed. There shall be no order as to costs.

.....J.
(ANIL R. DAVE)

.....J.
(KURIAN JOSEPH)

New Delhi;
March 19, 2015.