



IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 30<sup>th</sup> DAY OF APRIL 2014

PRESENT

**THE HON'BLE MR.D.H.WAGHELA, CHIEF JUSTICE**

**AND**

**THE HON'BLE MR. JUSTICE DILIP B BHOSALE**

**AND**

**THE HON'BLE MRS. JUSTICE B V NAGARATHNA**

**W.A.NO.734/2014 C/W W.A.NOS.780-784/2014,  
W.A.NOS.792-796/2014, W.A.NOS.797-806/2014,  
W.A.NOS.808-815/2014, W.A.NO.851/2014,  
W.A.NO.866/2014 (CS – EL/M)**

**IN W.A.NO.734/2014**

**BETWEEN**

1. THE HASSAN CO-OPERATIVE  
MILK PRODUCERS SOCIETIES UNION LIMITED  
INDUSTRIAL ESTATE, B.M. ROAD  
HASSAN 573201  
REP. BY ITS PRESIDENT  
SRI H.D. REVANNA  
SRI. H.D. DEVEGOWDA  
AGE 56 YEARS
2. SRI S.L. DHARMEGOWDA  
S/O S.R. LAKSHMAYA  
DIRECTOR, HASSAN MILK UNION  
AGED ABOUT 54 YEARS  
PRESIDENT, BILEKALLU MILK PRODUCERS  
CO-OPERATIVE SOCIETY  
UDDEBORANAHALLI, POST LAKYA HOBLI  
CHICKMAGALUR-577101

3. SRI N.C. NARAYANGOWDA  
S/O PATEL CHANNEGOWDA  
DIRECTOR, HASSAN MILK UNION  
AGED ABOUT 63 YEARS  
PRESIDENT NAYAKARAHALLI MILK  
PRODUCERS COOPERATIVE SOCIETY  
CHANNKESHAHA SAW MILL  
KATTAYA POST HOBLI  
HASSAN-573123
4. SRI H.S. HAYARAM  
S/O SHAKUNIGOWDA  
DIRECTOR, HASSAN MILK UNION  
AGED ABOUT 57 YEARS  
HULA HALLI  
MILK PRODUCERS UNION  
KANAGHUR POST, KASABA HOBLI  
ALUR TALUK-573213
5. SRI C.N. BALAKRISHNA  
S/O NANJAPPA  
DIRECTOR, HASSAN MILK UNION  
AGED ABOUT 45 YEARS  
PRESIDENT, A CHOLENAAHALLI MILK  
PRODUCERS UNION  
KASABA HOBLI  
CHANRAYAPATNA-573117
6. SRI K. SATISH  
S/O KESHAVGOWDA  
DIRECTOR, HASSAN MILK UNION  
AGED ABOUT 47 YEARS  
PRESIDENT, HONAVAHALLI MILK  
PRODUCERS UNION  
HONAVAHALLI POST, KASABA HOBLI  
ARKALGUD-573103
7. SRI K.M. CHANDRAHAS  
S/O MANJEGOWDA  
DIRECTOR, HASSAN MILK UNION  
AGED ABOUT 60 YEARS  
PRESIDENT, SHANKADAKOPALU  
MILK PRODUCERS UNION

C/O JAVEREGOWDA, EW 3/473  
BEHIND P & T COLONY  
SHANKARIPURAM, ADUVALLI LAYOUT  
HASSAN-577101

8. SRI G.R. RAMCHANDREGOWDA  
S/O RANGEGOWDA  
DIRECTOR HASSAN MILK UNION  
AGED ABOUT 50 YEARS  
PRESIDENT, GANGUR MILK PRODUCERS UNION  
SANNENAHALLI POST  
HALEBID HOBLI  
BELUR-580011
9. SRI S.G. RAMAPPA  
S/O GANGANNA  
DIRECTOR, HASSAN MILK UNION  
AGED ABOUT 70 YEARS  
PRESIDENT, SHETTIHALLI MILK PRODUCERS UNION  
K. BIDARE POST, SINGATGERE HOBLI  
KADUR-577548
10. SRI NAGARAJU  
S/O SHETTEYGOWDA  
DIRECTOR, HASSAN MILK UNION  
AGED ABOUT 50 YEARS  
PRESIDENT, DODDABIKENAHALLI  
MILK PRODUCERS UNION  
KITANE POST, KATAYYA HOBLI  
HASSAN-577001
11. SRI H.C. CHANNEGOWDA  
S/O CHANNEGOWDA  
DIRECTOR HASSAN MILK UNION  
AGED ABOUT 50 YEARS  
PRESIDENT, HANUMANTANEGOWDANA  
MILK PRODUCERS UNION  
ATTAVAR POST, DUDDA HOBLI  
HASSAN-577001
12. SRI K.T. ARUN KUMAR  
S/O V. TIMMAPPA  
DIRECTOR, HASSAN MILK UNION

AGED ABOUT 63 YEARS  
 PRESIDENT KADUMANGALORE MILK  
 PRODUCERS UNION, KADUMANGALORE POST  
 SOMAWARPET-571203

13. SRI K.M. MAHESHWARAPPA  
 S/O MALAPPA  
 DIRECTOR, HASSAN MILK UNION  
 AGED ABOUT 43 YEARS  
 PRESIDENT, GEDLAHALLI MILK  
 PRODUCERS UNION  
 GEDLAHALLI POST, KASABA HOBLI  
 KADUR-577548

14. SMT. RATNAMMA  
 W/O EREGOWDA  
 DIRECTOR, HASSAN MILK UNION  
 AGED ABOUT 65 YEARS  
 PRESIDENT, GANNIKADA MILK  
 PRODUCERS UNION  
 SINGAPUR POST  
 KASABA HOBLI  
 HOLENARSIPUR-573211

... APPELLANTS

(BY SRI JAYAKUMAR S PATIL, SR. ADV., A/W SRI VARUN  
 KUMAR, ADV., FOR M/S JAYAKUMAR S PATIL ASSOCIATES)

AND

1. STATE OF KARNATAKA  
 DEPARTMENT OF CO-OPERATIVE SOCIETIES  
 REP. BY ITS SECRETARY  
 M.S. BUILDING  
 BANGALORE 560001
2. THE STATE CO-OPERATIVE SOCIETIES  
 ELECTION COMMISSION  
 KARNATAKA STATE HOUSING BUILDING  
 NO.3, 2ND FLOOR, KARIAPPA ROAD  
 BASAVANGUDI, (OPP: KRISHNA RAO PARK)  
 BANGALORE 560004

3. THE REGISTRAR OF COOPERATIVE SOCIETIES  
ALI ASKER ROAD  
BANGALORE 560052
  4. THE JOINT REGISTRAR  
COOPERATIVE SOCIETIES, MYSORE-570001
  5. THE DEPUTY REGISTRAR  
CO-OPERATIVE SOCIETIES  
HASSAN 573201
  6. THE DEPUTY COMMISSIONER  
HASSAN DISTRICT  
HASSAN 573201
- ... RESPONDENTS
- (BY PROF RAVIVARMA KUMAR, AG, A/W SRI A S PONNANNA,  
PRL GOVT ADVOCATE FOR R1, R3-6, SRI M KESHAVAREDDY,  
ADV., FOR R2)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA  
HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED  
IN THE WRIT PETITION 10005/2014 DATED 6/3/14.

**IN W.A.NOS.780-784/2014**

**BETWEEN**

1. SRI R.M MANJUNATH GOWDA  
S/O SRI RAMAPPA GOWDA  
AGED ABOUT 53 YEARS  
PRESIDENT, SHIMOGA  
DCC BANK  
KARUKUCHCHI, SRIGERE POST  
SHIMOGA DISTRICT
2. SRI N H SREEPAD RAO  
S/O SRI DEVAPPA  
AGED ABOUT 46 YEARS  
DIRECTOR, SHIMOGA DCC BANK  
NISRANI POST  
SORABA TALUK, SHIMOGA DISTRICT
3. SRI M B CHANNAVEERAPPA

S/O SRI BASAVANYAPPA  
 AGED ABOUT 48 YEARS  
 DIRECTOR, SHIMOGA  
 DCC BANK, SHIKARIPUR TOWN

4. SRI K P DUGGEPPA GOWDA  
 S/O SRI PUTTE GOWDA  
 AGED ABOUT 50 YEARS  
 DIRECTOR, SHIMOGA DCC BANK  
 UMBLEBYLU POST  
 SHIMOGA DISTRICT

5. SRI J P YOGEEESH  
 S/O SRI G S PUTTAIAH GOWDA  
 AGED ABOUT 42 YEARS  
 HUNASEKATTE POST  
 BHADRAVATHI TALUK

... APPELLANTS

(BY SRI JAYAKUMAR S PATIL, SR. ADV., A/W SRI VARUN J  
 PATIL & A MAHAMMED TAHIR, ADVS., FOR M/S. JAYAKUMAR S  
 PATIL ASSOCIATES)

AND

1. STATE OF KARNATAKA  
 DEPARTMENT OF CO-OPERATIVE SOCIETIES  
 REPRESENTED BY ITS SECRETARY  
 M S BUILDING  
 BANGALORE 560001
2. THE SHIMOGA DCC BANK  
 BALARAJ URS ROAD  
 SHIMOGA 577 201  
 REPRESENTED BY ITS  
 MANAGING DIRECTOR
3. THE STATE CO-OPERATIVE SOCIETIES  
 ELECTION COMMISSION  
 KARNATAKA STATE HOUSING BUILDING  
 NO.3, 2ND FLOOR, KARIAPPA ROAD  
 BASAVANAGUDI, (OPPOSITE KRISHNA RAO PARK)  
 BANGALORE 560 004

4. THE REGISTRAR OF CO-OPERATIVE SOCIETIES  
ALI ASKER ROAD, BANGALORE 560052
  5. THE JOINT REGISTRAR CO-OPERATIVE SOCIETIES  
BANGALORE
  6. THE DEPUTY REGISTRAR OF CO-OPERATIVE SOCIETIES  
SHIMOGA
  7. THE DEPUTY COMMISSIONER  
SHIMOGA DISTRICT  
SHIMOGA
- ... RESPONDENTS

(BY PROF RAVIVARMA KUMAR, AG, A/W SRI A S PONNANNA,  
PRL. GOVT. ADV., FOR R1, 4-7;  
SRI DAYANAND S PATIL, ADV., FOR R-2;  
SRI M KESHA REDDY, ADV., FOR R-3)

THESE WRIT APPEALS FILED U/S 4 OF THE KARNATAKA  
HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED  
IN THE WRIT PETITION 10888/2014 & 12132-135/2014 DATED  
6/3/14.

**IN W.A.NOS.792-796/2014**

**BETWEEN**

1. SRI.K.L.JAGADESHWAR  
S/O LATE K G LOKESHWARAPPA  
AGED ABOUT 47 YEARS  
HUNCHENAHALLI- POST/ AT  
SHIMOGA - TQ/DIST
2. SRI JAYARAM (GONDI)  
S/O KALLEGOWDA  
AGED ABOUT 46 YEARS  
R/AT GONDI VILLAGE  
HIRIYUR-POST, BHADRAVATHI TALUK  
SHIMOGA - DIST
3. SRI T A CHANDRASHEKHARA  
S/O ANANTHAIAH

AGED ABOUT 55 YEARS  
R/AT TUMBARAMANE  
KATTEHAKKALU POST  
THIRTHAHALLI TALUK  
SHIMOGA DIST

4. SRI H SHIVAKUMAR  
S/O H HALLAPPA GOWDA  
AGED ABOUT 54 YEARS  
HARATHAL - AT & POST  
HOSANAGARA TALUK  
SHIMOGA DIST

5. SRI T SHIVASHANKAR  
S/O T ESWARAPPA  
AGED ABOUT 50 YEARS  
HIREJAMBUR - AT/POST  
SHIKARIPUR TALUK  
SHIMOGA DIST

... APPELLANTS

(BY SRI JAYAKUMAR S PATIL, SR. ADV., FOR SRI DAYANAND S  
PATIL & SRI M RAVINDRANATH, ADVS.,)

AND

1. THE STATE OF KARNATAKA  
DEPARTMENT OF CO-OPERATIVE SOCIETIES  
REPRESENTED BY ITS SECRETARY  
M S BUILDING, BANGALORE-560001
2. THE STATE CO-OPERATIVE SOCIETIES  
ELECTION COMMISSION  
BY ITS COMMISSIONER  
KARNATAKA STATE HOUSING BUILDING  
NO.3, 2ND FLOOR, KARIAPPA ROAD  
BASAVANGUDI( OPPOSITE KRISHNA RAO PARK)  
BANGALORE-560004
3. THE REGISTRAR OF CO-OPERATIVE SOCIETIES  
ALI ASKER ROAD, BANGALORE-560001
4. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES  
MYSORE-570001



5. THE DEPUTY REGISTRAR CO-OPERATIVE SOCIETIES  
SHIMOGA-57 7201
6. THE DEPUTY COMMISSIONER  
SHIMOGA DISTRICT  
SHIMOGA-57 7201
7. THE SHIMOGA CO-OPERATIVE MILK  
PRODUCERS SOCIETIES UNION LTD  
SHIMOGA-577201  
REPRESENTED BY ITS  
MANAGING DIRECTOR ... RESPONDENTS

(BY PROF RAVIVARMA KUMAR, AG, A/W SRI A S PONNANNA,  
PRL. GA FOR R1, 3-6;  
SRI M KESHAVA REDDY FOR R-2;  
SRI RAMACHANDRA R NAIK, ADV., FOR R-7)

THESE WRIT APPEALS FILED U/S 4 OF THE KARNATAKA  
HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED  
IN THE WRIT PETITION 11109-113/2014 DATED 07-03-2014.

**IN W.A.NOS.797-806/2014**

**BETWEEN**

1. SRI M.A. RAMESH  
PRESIDENT KODAGU  
DCC BANK  
S/O LATE AIYAMMA  
AGED ABOUT 64 YEARS  
BELLUMADU VILLAGE AND POST  
SOUTH KODAGU, PIN:572013
2. SRI BHARATH KUMAR  
VICE-PRESIDENT  
S/O BELLIAPPA  
AGED 50 YEARS  
SHUNTI VILLAGE  
GOWDAHALLI POST  
SOMWARPET, KODAGU  
PIN:572012

3. SRI B K CHINAPPA  
S/O LATE KALAPPA  
AGED ABOUT 69 YEARS  
C/O MALNAD AGENCY  
GUDUGALE POST  
SOMAWARPET, KODAGU  
PIN:572012
4. SRI M B DEVAIAH  
S/O LATE KALAPPA  
AGED ABOUT 64 YEARS  
KOLAKERI NIDUGANE  
VILLAGE AND POST  
MADIKERI TALUK  
KODAGU DISTRICT  
PIN:572012
5. SRI T A KISHORE KUMAR  
S/O LATE ACHAIAH  
AGED ABOUT 52 YEAR,  
BETAGERI VILLAGE AND POST,  
MADIKERI  
KODAGU DISTRICT  
PIN:571201
6. SRI A.S SHANTUAPPAIAH  
S/O LATE SOMAIAH  
AGED ABOUT 67 YEARS  
NELLIKAD ESTATE  
POLLIBETA POST  
SOUTH KODAGU  
PIN-571202
7. SRI A S KUSHALAPPA  
S/O LATE SUBBIAH  
AGED BOUT 62 YEARS  
BIRUGA VILLAGE AND POST  
SOUTH KODAGU, MADIKERI  
PIN:571201

8. SMT PREMA SOMAIAH  
W/O SOMAIAH  
AGED ABOUT 62 YEARS  
DODDA PULIKOTU VILLAGE  
BELLAMAVATI POST  
MADIKERI TALUK, KODAGU  
PIN:571201
9. SRI.K.S.SUBBIAH  
S/O LATE SOMAIAH  
AGED ABOUT 73 YEARS  
ARAPATTU  
VILLAGE AND POST  
MADIKERI TALUK, KODAGU  
PIN:571201
10. SRI BINNU GEORGE JOSEPH  
S/O GEORGE JOSEPH  
AGED ABOUT 50 YEARS  
COLLEGE ROAD  
MADIKERI, KODAGU  
PIN:571201

... APPELLANTS

(BY SRI JAYAKUMAR S PATIL, SR. ADV., A/W SRI VARUN J PATIL & SRI A MAHAMMED TAHIR, ADVS., FOR M/S JAYAKUMAR S PATIL ASSTS.)

AND

1. STATE OF KARNATAKA  
DEPARTMENT OF CO-OPERATIVE SOCIETIES  
REPRESENTED BY ITS SECRETARY  
M.S.BUILDING  
BANGALORE-560001
2. THE KODAGU DCC BANK  
MYSORE MAKIKERI MAIN ROAD  
NEAR TOWN HALL, CHICKPET, STUART HILL  
MADIKERI, KARNATAKA 571201  
REPRESENTED BY ITS SECRETARY
3. THE STATE CO-OPERATIVE SOCIETIES  
ELECTION COMMISSION

KARNATAKA STATE HOUSING BUILDING,  
NO.3, 2ND FLOOR, KARIAPPA ROAD  
BASAVANGUDI, (OPPOSITE KRISHNA RAO PARK)  
BANGLAORE-560004

4. THE REGISTRAR OF CO-OPERATIVE SOCIETIES  
ALI ASKER ROAD, BANGALORE 560052
  5. THE JOINT REGISTRAR  
CO-OPERATIVE SOCIETIES  
MYSORE-570001
  6. THE DEPUTY REGISTRAR OF CO-OPERATIVE SOCIETIES  
KODAGU-571231
  7. THE DEPUTY COMMISSIONER  
KODAGU DISTRICT  
KODAGU-571231
- ... RESPONDENTS

(BY PROF RAVIVARMA KUMAR, AG, A/W SRI A S PONNANNA,  
PRL. GA FOR R1 & 4-7;  
SRI DEVIPRASAD SHETTY, ADV., FOR R-2;  
SRI M KESHAVAREDDY, ADV., FOR R3)

THESE WRIT APPEALS FILED U/S 4 OF THE KARNATAKA  
HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED  
IN THE WRIT PETITION 11641-645/14 & 11721-725/14 DATED  
7/3/14.

**IN W.A.NOS.808-815/2014**

**BETWEEN**

1. SRI C MANJUNATH  
S/O M SANJEVAIAH  
AGED ABOUT 56 YEARS  
PRESIDENT, BANGALORE MILK UNION  
DODDAHULLURU, DASARAHALLI POST  
HOSKOTE TALUK  
BANGALORE RURAL DISTRICT  
PINCODE: 562114

2. SRI D S JAYANNA  
S/O M.SANJEEVAIAH  
AGED ABOUT 45 YEARS  
DIRECTOR, BANGALORE MILK UNION  
DIBBURU, KAKOLU POST  
HESARAGHATTA HOBLI  
BANGALORE NORTH  
PINCODE-560089
3. SRI M G THIMMARAJU  
S/O SRI GIRIYAPPA  
AGED ABOUT 58 YEARS  
DIRECTOR, BANGALORE MILK UNION  
MARAGONDANAHALLI VILLAGE  
KAMBAL POST, SOMPURA HOBLI  
NELAMANGALA TALUK  
BANGALORE RURAL DISTRICT  
PINCODE-562123
4. SRI NARASIMHA MURTHY  
S/O LATE KEMPAGOLAIAH  
AGED ABOUT 63 YEARS  
DIRECTOR, BANGALORE MILK UNION  
AGALAKOTE VILLAGE, KASABA HOBLI  
MAGADI TALUK, RAMANAGARA DISTRICT  
PIN CODE: 562120
5. SRI S LINGESH KUMAR  
S/O SHIVLING MALLIKARJUNA  
AGED ABOUT 59 YEARS  
DIRECTOR, BANGALORE MILK UNION  
6TH CROSS, KANAKA NAGARA  
SATHANUR RAOD, CHANNAPATNA TOWN  
RAMANAGARA DISTRICT  
PINCODE-571501
6. SRI.M.MUNISUBBAIAH  
S/O MADAPPA  
AGED ABOUT 65 YEARS  
DIRECTOR, BANGALORE MILK UNION  
HUSKUR VILLAGE, BIDARAHALLI HOBLI  
VIRGONAGARA POST,  
BANGALORE EAST TALUK

BANGALORE URBAN DISTRICT  
PINCODE:560049

7. SRI HANUMANTHEGOWDA  
S/O LATE NANJAPPA  
AGED ABOUT 53 YEARS  
DIRECTOR, BANGALORE MILK UNION  
KODIHALLI VILLAGE, BONAGATTA POST  
KASABA HOBLI, DODDABALLAPURA TALUK,\  
BANGALORE RURAL DISTRICT  
PINCODE-561203
8. SRI MAHESH CHANDRA  
S/O RAJANNA  
AGED ABOUT 64 YEARS  
DIRECTOR, BANGALORE MILK UNION  
RAVUGODLU VILLAGE, BOLARA POST  
UTTARAHALLI HOBLI, KANKAPURA MAIN ROAD  
BANGALORE SOUTH TALUK  
BANGALORE URBAN DISTRICT  
PINCODE-560082

... APPELLANTS

(BY SRI JAYAKUMAR S PATIL, SR. ADV., A/W SRI MAHAMMED  
TAHIR & SRI M RAVINDRANATH, ADVS., FOR M/S JAYAKUMAR S  
PATIL ASSOCIATES)

AND

1. STATE OF KARNATAKA  
DEPARTMENT OF CO-OPERATIVE SOCIETIES  
M.S.BUILDING, BANGALORE-560 001  
REPRESENTED BY ITS SECRETARY
2. THE BANGALORE RURAL & RAMANAGARA  
DISTRICT CO-OPERATIVE MILK UNION  
BANGALORE DIARY  
DR.M.H.MARIGOWDA ROAD  
DHARMARAM COLLEGE POST  
BANGALORE-560029
3. THE STATE CO-OPERATIVE SOCIETIES  
ELECTION COMMISSION

KARNATAKA STATE HOUSING BUILDING  
NO.3, 2ND FLOOR, KARIAPPA ROAD  
BASAVANAGUDI (OPP KRISHNA RAO PARK)  
BANGALORE-560004

4. THE REGISTRAR OF CO-OPERATIVE SOCIETIES  
ALI ASKER ROAD, BANGALORE-560052
5. THE JOINT REGISTRAR CO-OPERATIVE SOCIETIES  
BANGALORE-560001
6. THE DEPUTY REGISTRAR CO-OPERATIVE SOCIETIES  
BANGALORE-560001.
7. THE DEPUTY COMMISSIONER  
BANGALORE DISTRICT  
BANGALORE-560001 ... RESPONDENTS

(BY PROF RAVIVARMA KUMAR, AG, A/W SRI A S PONNANNA,  
PRL. GA FOR R1, 4-7;  
M.S KUMAR & KUMAR ADVOCATES FOR R-2;  
SRI M KESHAHA REDDY, ADV., FOR R-3)

THESE WRIT APPEALS FILED U/S 4 OF THE KARNATAKA  
HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED  
IN THE WRIT PETITION 10963/2014 & 12125-12131/2014  
DATED 06/03/2014.

**IN W.A.NO.851/2014**

**BETWEEN**

1. SOUTH CANARA DISTRICT CENTRAL  
CO-OPERATIVE BANK LTD.,  
SADASHIVA SAHAKARA SADANA  
KODIALBAIL, MANGALORE  
DAKSHINA KANNADA DISTRICT-575003  
REP.BY ITS MANAGING DIRECTOR ... APPELLANT

(BY SRI K CHANDRASHEKAR ACHAR, ADV.,)

AND

1. THE ELECTION COMMISSIONER  
FOR CO-OPERATION  
THE CO-OPERATIVE ELECTION  
COMMISSIONER OFFICE  
KARNATAKA STATE CO-OPERATIVE  
HOUSING FEDERATION BUILDING  
NO.3, 2ND FLOOR, KARIYAPPA ROAD  
BASAVANAGUDI  
BANGALORE-560004
2. THE STATE OF KARNATAKA  
DEPARTMENT OF CO-OPERATION  
REP.BY UNDER SECRETARY  
6TH FLOOR, MULTISTORIED BUILDING  
DR.AMBEDKAR VEEDHI  
BANGALORE-560001
3. SRI KISHAN HEGDE KOLKEBAIL  
S/O K R HEGDE  
AGED ABOUT 46 YEARS  
R/AT NO.4, ZEN GARDEN, AJJARKADU  
UDUPI TALUK AND DISTRICT-576101 ... RESPONDENTS

(BY SRI M KESHAVA REDDY, ADV., FOR R1,  
PROF RAVIVARMA KUMAR, AG, A/W SRI A S PONNANNA, PRL.  
GA FOR R2;  
SRI S K ACHARYA, ADV., FOR R3)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA  
HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED  
IN THE WRIT PETITION 83/14 DATED 6/3/14.

**IN W.A.NO.866/2014**

BETWEEN

SRI KISHAN HEGDE KOLKEBAIL  
S/O K.R. HEGDE  
AGED ABOUT 46 YEARS



R/AT NO.4, ZEN GARDEN  
AJJARKADU  
UDUPI TALUK AND DISTRICT 576101 ... APPELLANT

(BY SRI S K ACHARYA, ADV.,)

AND

1. THE ELECTION COMMISSIONER FOR CO-OPERATION  
THE CO-OPERATIVE ELECTION COMMISSIONER OFFICE  
KARNATAKA STATE CO-OPERATIVE  
HOUSING FEDERATION BUILDING  
NO.3, 2ND FLOOR, KARIYAPPA ROAD  
BASAVANAGUDI, BANGALORE 560004
2. SOUTH CANARA DISTRICT CENTRAL  
CO-OPERATIVE BANK LTD,  
SADASHIVA SAHAKARA SADANA KODIALBAIL  
MANGALORE, DAKSHINA KANNADA DISTRICT 575003  
REP. BY ITS MANAGING DIRECTOR
3. THE STATE OF KARNATAKA  
DEPARTMENT OF CO-OPERATION  
REP. BY UNDER SECRETARY  
6TH FLOOR, MULTISTORIED BUILDING  
DR. AMBEDKAR VEEDHI  
BANGALORE 560001 ... RESPONDENTS

(BY SRI M KESHAVA REDDY, ADV., FOR R1;  
SRI K CHANDRASHEKAR ACHARYA FOR R-2,  
PROF RAVIVARMA KUMAR, AG, A/W SRI A S PONNANNA, PRL.  
GA FOR R3)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA  
HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED  
IN THE WRIT PETITION 83/14 DATED 6/3/14.

THE JUDGMENT IN THESE APPEALS HAVING BEEN  
RESERVED ON 21.04.2014 AND IT BEING LISTED FOR  
PRONOUNCEMENT TODAY, THE COURT PRONOUNCED THE  
FOLLOWING:

**JUDGMENT: (DILIP B BHOSALE J.)**

The order of reference dated 20<sup>th</sup> March 2014, which has occasioned the constitution of this Full Bench, has been passed by a Division Bench, in Hassan Co-operative Milk Producers Societies Union Limited and others vs. State of Karnataka and Others, W.A.No.734/2014 in Writ Petition No.10005/2014. The Division Bench in this case, having disagreed with the view taken by another Division Bench of this Court in Shankarappa Mallappa Kelageri and others vs. The Co-operative Election Commission, Karnataka State and others, W.A.Nos.100076-80 & 100081-83/2014, formulated the following questions which consequently required determination by the Full Bench:

“i) Whether Section-28-A(4) of the Karnataka Cooperative Societies Act, 1959, as substituted by the amended Act dated 11.02.2013, is prospective or retrospective in nature?

ii) When the elections are to be conducted to a cooperative society by the second respondent – State Cooperative Societies Election Commission – and for any reason if the Election Commission fails to conduct the elections within the stipulated

time, whether an Administrator can be appointed automatically under Section 28-A(5) of the Act? and

iii) Whether Section-28-A(4) is ultra vires?"

2. The appellant-Hassan Co-operative Milk Producers Societies Union Ltd., which is a 'Federal Society' as defined by Section 2(e-4) of the Karnataka Cooperative Societies Act, 1959 (for short "**the Act**"), shall be hereinafter referred to as '**Hassan Milk Union** for short. The judgment dated 31-01-2014, in Shankarappa Mallappa Kelagiri, vs. The Co-operative Election Commissioner, Karnataka in W.A.Nos.100076-80 & 100081-83/2014, shall be hereinafter referred to as the judgment in '**S.M.Kelagiri**'.

3. Learned counsel appearing for the parties are ad idem that the third question formulated by the Division Bench does not arise for our consideration since none of the appellants/petitioners in this group of appeals challenged the validity of Section 28-A(4) of the Act.

4. In **S M Kelagiri**, the Division Bench, was considering the question whether the term of committee, which was elected on 12-6-2009 for five co-operative years would stand extended in view of the amendment of Section 28-A of the Act, in particular, sub-section (4) thereof, by the amending Act No.3 of 2013, whereby the words "five co-operative years" were substituted by the words "five years from the date of election". The Division Bench, in this case, has taken a view that it is a case of substitution which cannot be given effect to mechanically from the date of the statute itself. Then the Division Bench proceeded to observe that "even if the legislature amends the existing provision in a statute by way of substitution and the substituted provision comes into effect from the date of the Act, it is not an invariable rule". It was further observed that "in certain situations, the Court having regard to the purport and object sought to be achieved by the legislature may construe the word 'substitution' as an amendment having a prospective effect. If the amendment expressly states that the substituted provision

shall come into force from the date of the amendment coming into force, the said provision is prospective in nature. Then, there is no scope for interpretation whether the said amendment is prospective or retrospective. The legislature had made its intentions clear by such express words, which is to be followed by the Courts. However, if such an express provision is not there in the amendment, it does not necessarily mean that it has to be retrospective in nature". The Division Bench then proceeded to observe that "to decide whether such an amendment in the absence of express words is prospective or retrospective in nature, the Court can look into the scheme of the amendment, the object sought to be achieved, the mischief sought to be prevented and they, by interpretative process, can declare whether the said amendment is prospective or retrospective". Having so observed, the Division Bench refused to grant interim order as prayed for in the writ petition holding that their (Committee/Board) term came to an end on 31<sup>st</sup> March 2014.

5. The Division Bench in **Hassan Milk Union** independently considered the provisions contained in Section 28-A(4) of the Act and so also the judgment in **S M Kelagiri** to take a divergent view on the question decided by the Division Bench in that case. In the order of reference dated 20.03.2014, in this appeal, the Division Bench observed that “when a provision of law has been amended by way of a substitution, it relates back to the date of the Act unless otherwise specifically stated.” It was further observed that “it is well within the wisdom of the legislature to bring about the amendment by way of an addition, deletion, insertion etc. It has, however, chosen that the present amendment should be a substitution and not otherwise. It has deliberately not assigned date of substitution since a substitution, always relates back to the date of enactment unless otherwise specified. This is the will of the legislature and this is what they intended the law to be. The substitution is clear and unambiguous. Therefore the substitution will extend the term of office upto a period of five years from the date of the election”.

In short, the Division Bench in Hassan Milk Union, held that the amended provisions contained in sub-section (4) of Section 28-A would have retrospective effect. The Division Bench also considered the provisions contained in Section 28-A(5) and observed that "election to the Federal Society has to be conducted only by the State Co-operative Societies Election Commission (for short "Election Commission") and if for any reason the Election Commission fails to conduct election, the appellant cannot be blamed for the default committed by them for not conducting the election within the stipulated time. The intention of the legislature is to see that the Co-operative sector shall be run and maintained by the elected representatives elected from amongst shareholders. On account of the default committed by the Government, the Administrator cannot be appointed to the first appellant-Federal Society". Having so observed, the Division Bench, as aforementioned, framed the questions with a request to the Hon'ble Chief Justice for constitution of a larger Bench

and restrained the respondents-State from appointing an Administrator.

6. This group of writ appeals arise from the order dated 6<sup>th</sup> March 2014 passed by learned single Judge disposing of several writ petitions filed by individual members of the committees/boards as well as by the Hassan Milk Union. Challenge in all the writ petitions and the prayers made therein being similar, the petitions were disposed of by the common order. The learned Judge dismissed all the writ petitions in terms of the judgment of the Division Bench in S M Kelageri case.

6.1. In order to understand and to deal with the referred questions we would like to state in brief the background facts in Writ Appeal No.734/2014 arising from the order of the learned single Judge dated 6<sup>th</sup> March 2014 in Writ Petition No.10005/2014. Hassan Milk Union and 13 members of its Managing Committee, in this writ petition, impugned the communication dated 29-1-2014 issued by the State Government addressed to the Election Commission,



informing that in respect of such of the Managing Committees of the Societies whose term comes to end by 31-3-2014, the election could be held to elect the new managing Committee after the expiry of the present term (five co-operative years) but, until the elections are held, an Administrator could be appointed to enable him to conduct the elections, and therefore, there was no need to resort to removal of difficulty clause as suggested by the Election Commission.

6.2. The Managing Committee of Hassan Milk Union was elected on 1-7-2009 for a period of five co-operative years as contemplated by Section 28-A(4) of the Act, i.e. till the end of 31-3-2014. Even before expiry of their term on 31-3-2014, an amendment vide the amending Act No.3/2013 was introduced whereby, the words 'five co-operative' years, as occurred in sub-section (4) of Section 28-A of the Act, were substituted by the words "five years from the date of election". In this view of the matter, Hassan Milk Union and members of its Managing

Committee approached this Court by way of writ petition, apprehending the appointment of an Administrator in view of the communication dated 29-1-2014.

6.3. Writ Appeal Nos.792-796/2014, though technically arise from the order dated 7<sup>th</sup> March 2014, by this order, the writ petitions were disposed of in terms of the order dated 6<sup>th</sup> March, 2014, in S M Kelageri. Thus, in effect, all the writ petitions, from which the present writ appeals arise, have been disposed of in terms of the judgment of the Division Bench in S M Kelageri case.

7. We have heard learned counsel for the parties in extenso and with their assistance gone through the orders passed in 'Hassan Milk Union' and in 'S M Kelageri' and so also, the judgments relied upon by them in support of their submissions.

7.1. Mr. Jayakumar S Patil, learned Senior Counsel appearing on behalf of the appellants at the outset invited our attention to the provisions contained in Sections 28-A,

28-B, 29-A and 39-A of the Act and so also to the amending Act No.3 of 2013 and submitted that when the old provisions have been substituted by new provisions, the inference is that the legislature intended the substituted provisions to have retrospective operation. He submitted that it is the amended provisions that have to be applied and not the old provisions which have ceased to exist. He submitted that substitution combines repeal and fresh enactment. The substitution therefore has the effect of just deleting the old provision and making the new provision operative right from inception. He then submitted that the process of substitution consists of two steps as observed by the Supreme Court: first, the old provision is made to cease to exist and, next, the new provision is brought into existence in its place. In view thereof, the election of next Managing Committee are being conducted in accordance with the amended provisions and that being so, as contemplated by the amended sub-sections (4) and (5) of Section 28-A of the Act, the existing Managing Committee, would continue till

their term of five years is completed from the date of their election and so also till the new Managing Committee is elected and takes over. In support of his submission, he invited our attention to sub-section (5) of Section 28-A of the Act and so also Section 28-B (2) which, he submitted, clearly provide that the existing managing Committee shall be deemed to have vacated their office on the last day of the time limits specified in Section 39-A. In short, he submitted that under any circumstance, an Administrator cannot be appointed, if the new committee is not constituted under Section 29-A, on the date of expiry of the term of office of the committee or if the elections are not held within the time limits specified in Section 39-A. Next, he submitted that it is the cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. He submitted that in view of the scheme of the provisions contained in the amended Sections 28-A, 28-B, 29-A and 39-A of the Act, and the provisions of the Constitution introduced by way of 97<sup>th</sup>

amendment, it is clear that the legislature, intended to give retrospective effect to these provisions. In support, Mr. Patil placed reliance upon the judgments of the Supreme Court in Zile Singh v. State of Haryana and others, **AIR 2004 SC 5100**; Government of India and others v. Indian Tobacco Association, **(2005) 7 SCC 396**; and Shamrao Parulekar and others v. District Magistrate, Thana Bombay and others, **AIR 1952 SC 324**.

7.2. Mr.A.S.Ponanna, Prl. Govt. Advocate appearing on behalf of respondents-1 and 3 to 6, on the other hand, submitted that when substitution takes place, unless the amending Act specifically indicates that it is retrospective, it cannot be presumed or implied that such substitution would be retrospective and as such, it is to be necessarily held as prospective. He invited our attention to the notification issued by the State in exercise of its power under Section 1(2) of the amending Act No.3 of 2013, appointing the date on which the amending Act was brought into force i.e. 11-2-2013, and contended that

substituted provision would be applicable from the appointed date and in view thereof, the submissions advanced on behalf of the appellants deserves to be rejected outright. In support of his contention, he invited our attention to the judgment of the Supreme Court in Sham Sunder and others vs. Ram Kumar and another, **(2001) 8 SCC 24**. Based on this judgment he submitted that the amending Act No.3 of 2013 is presumed to be prospective in operation since there is nothing in the Act to indicate that it was made retrospective, either expressly or by necessary intendment or implication and that there is no such indication in the amending Act No.3 of 2013. He submitted, by amendment new rights are created and therefore, it should be construed to be prospective in operation unless otherwise provided, either expressly or by necessary implication.

8. Before we look into the relevant provisions and advert to the submissions advanced by learned counsel for the parties, it would be advantageous to refer to the

judgments relied upon by learned counsel for the parties in support of their contentions.

8.1. The Supreme Court in **Zile Singh** (supra) was dealing with Haryana Municipal (Amendment) Act, 1994 (Act No.3 of 1994) whereby, Section 13A in Chapter III of the Principal Act was inserted. Section 13A provided disqualification for being chosen as and for being a member of Municipality if he has more than two living children provided that a person having more than two children on or after expiry of one year of the commencement of the amendment Act, shall not be deemed to be disqualified. In this backdrop, the Supreme Court stated the principles of construction and interpretation of the provisions introduced/substituted by way of amendment. Paragraph 13 and 15 are relevant for our purpose, which read thus:

**"13. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of**

**the statute is to affect vested rights or to impose new burdens or to impair existing obligations.** Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is deemed to be prospective only 'nova constitutio futuris formam imponere debet non praeteritis' – a new law ought to regulate what is to follow not the past. (See: Principles of Statutory Interpretation by Justice G.P.Singh, Ninth Edition, 2004 at p.438). **It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication** especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole (ibid, p.440).

15. Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (Statute Law, Seventh Edition), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. **If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the Courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the Courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the Statute retrospectivity.** Four factors are suggested as



relevant: (i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated (p.388). The rule against retrospectivity does not extend to protect from the effect of a repeal a privilege which did not amount to accrued right (p.392)

(emphasis supplied)

8.2. In **Indian Tobacco Association**, (supra) the question that fell for the consideration of the Supreme Court was as to what would be the effect of subsequent notification, 'substituting' the list of places specified in the original notification. The Supreme Court in this judgment in paragraphs-15 and 16 considered the word substitute and observed thus :

"15. The word "substitute" ordinarily would mean "to put (one) in place of another", or "to replace". In Black's Law Dictionary, 5<sup>th</sup> Edn., at p.1281, the word "substitute" has been defined to mean "to put in the place of another person or thing", or "to exchange". In Collins English Dictionary, the word "substitute" has been defined to mean "to serve or cause to serve in place of another person or thing"; "to replace (an atom or group in a molecule) with (another atom or group)"; or "a person or thing that serves in place of another, such as a player in a game who takes the place of an injured colleague".

16. **By reason of the aforementioned amendment no substantive right has been taken away** nor any penal consequence has been imposed. Only an obvious mistake was sought to be removed thereby."

(emphasis supplied)

8.3. It would be relevant to notice the following observations made by the Supreme court in *Zile Singh* (supra), while dealing with the amendment by way of substitution in paragraph 25 of the judgment:

"....Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision (see Principles of Statutory Interpretation, *ibid.*, p.565).....In *West U.P.Sugar Mills Assn.* case a three-Judge Bench of this Court held that the State Government by substituting the new rule in place of the old one never intended to keep alive the old rule. Having regard to the totality of the circumstances centering around the issue the Court held that the substitution had the effect of just deleting the old rule and making the new rule operative....."

8.4. In ***Sham Rao V Parulekar***, (supra) the Preventive Detention Act 1950 was due to expire on the first of April 1951, but in that order, an amending Act was passed which, among other things prolonged its life to the

first of April 1952. The order of detention in the case before the Supreme Court was passed under the Act of 1950 as amended by Act of 1951. According to the above decision of the Supreme Court the detention would have expired on the first of April 1952 when the Act of 1950 as amended in 1951 would itself have expired. But fresh Act was passed in 1952, namely, the Preventive Detention (Amendment) Act, 1952. The effect of this Act was to prolong the life of the Act of 1950 for a further six months, namely, till the 1<sup>st</sup> of October 1952. In this backdrop, the question that fell for consideration of the Supreme court was whether that Act also prolonged the detention and whether it had the 'vires' to do so. The following observation made by the Supreme Court, while dealing with the question, in paragraph-7 are relevant for our purpose:

"The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity) as if the altered words had been

written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all.

8.5. In **Sham Sundar**, (supra) the question that fell for the consideration of the Supreme Court was, what was the effect of substituted Section 15 introduced by Haryana Amendment Act 1995, in the parent Act i.e. the Punjab Pre-emption Act, as applicable to the State of Haryana whereby, the right of a co-sharer to pre-empt a sale had been taken away during the pendency of an appeal filed against a judgment of the High court affirming the decree passed by the trial Court in a pre-emption suit. The Supreme court in this case considered the effect of substituted Section 15 introduced by Amendment Act 1995 on the substantive rights of the parties and after considering the judgments in *Hitendra Vishnu Thakur v. State of Maharashtra*, (1994) 4 SCC 602; *Garikapati Veeraya v. N.Subbaiah Choudhry*, AIR 1957 SC 540; *Dayawati v. Inderjit*, AIR 1966 SC 1423 and

K.S. Paripoornam v. State of Kerala, (1994) 5 SCC 593, in paragraph 28 observed thus :

“From the aforesaid decisions the legal position that emerges is that when a repeal of an enactment is followed by a fresh legislation, such legislation does not affect the substantive rights of the parties on the date of the suit or adjudication of the suit unless such a legislation is retrospective and a court of appeal cannot take into consideration a new law brought into existence after the judgment appealed from has been rendered because the rights of the parties in an appeal are determined under the law in force on the date of the suit. However, the position in law would be different in the matters which relate to procedural law but so far as substantive rights of parties are concerned they remain unaffected by the amendment in the enactment. We are, therefore, of the view that where a repeal of provisions of an enactment is followed by fresh legislation by an amending Act, such legislation is prospective in operation and does not affect substantive or vested rights of the parties unless made retrospective either expressly or by necessary intendment.....”

9. It is in this backdrop, we now proceed to have a glance at the relevant provisions of the Act as they stand before and after the amending Act No.3 of 2013.

9.1. Sub-section (4) and sub-section (5) of Section 28-A are relevant for our purpose. Sub-section (4) as it stood before the amending Act No.3 of 2013 read thus:

“(4) Subject to the provisions of Section 29A and 39A, the term of office of the members of the committee shall be **five Co-operative years** and they shall be deemed to have vacated office as such members of the committee on the date of completion of the said term.”

(emphasis supplied)

The proviso and explanation to this sub-section are not relevant for our purpose.

9.2. Sub-section (5) of Section 28A as it stood before its amendment by amending Act No.3 of 2013 read thus:

“(5) If the new committee is not constituted under Section 29A on the date of expiry of the term of office of the Committee, the Registrar or any other officer within whose jurisdiction the society is situated, and who is authorised by the Registrar shall be deemed to have assumed charge as Administrator and he shall for all purposes function as such Committee of management. The Administrator shall, subject to the control of the Registrar, exercise all the powers and perform all the functions of the Committee of the Co-operative Society or any

office bearer of the co-operative society and take all such actions as may be required, in the interest of the co-operative society.

Provided that the Registrar shall appoint an administrator to a Co-operative Society or each of the Co-operative Societies formed after amalgamation or reorganization or division in accordance with Section 14 for a period of three months and the administrator so appointed shall arrange for holding elections to a Committee of such Co-operative Society or Societies as the case may be."

9.3. From bare perusal of sub-section (4), it is clear that subject to the provisions of Section 29-A and 39-A, the term of office of the members of the Committee was "five co-operative years" and they were deemed to have vacated office as such members of the Committee on the date of completion of said term. Sub-section (5) provided if the new committee was not constituted under Section 29-A, on the date of expiry of the term of the out-going committee, the Registrar or any other officer, authorised by the Registrar was deemed to have assumed charge as Administrator. In short, sub-section (4) and sub-section (5) provided that under any circumstances, the outgoing

committee would not continue on expiry of "five co-operative years".

9.4. Section 28-A was amended by Act No.6/2010 with effect from 30-03-2010. By this amendment, the words "term of office of the committee" in sub-section (5) of Section 28-A were substituted by the words "term of office of the committee or if the elections are not held within the time limits specified in Section 39-A". Sub-section (4) was not amended and it remained the same.

9.5. Section 28-A was once again amended by the amending Act No.3 of 2013 whereby, the word "committee", not only in this provision but wherever it occurred in the Act was substituted by the word "board". Insofar as sub-section (4) is concerned, the words **"five co-operative years"** were substituted by the words **"five years from the date of election"**. Insofar as sub-section (5) is concerned, it remained the same.



9.6. By the amending Act No.3 of 2013, the legislature made the term of elected board five years from the date of election. In sub-section (5) of Section 28-A, by the amending Act No.6 of 2010, one more contingency/situation was inserted, whereby, the Registrar was conferred with the power to appoint an administrator if the elections are not held within the time limits specified in Section 39-A, in addition to the situation, if the new Board is not constituted under Section 29-A, on the date of expiry of the term of office of the Board.

10. That takes us to consider Section 29-A of the Act. This provision deals with the commencement of term of office. It would be relevant to reproduce Section 29-A as it stood prior to the amendment Act No.3 of 2013, which reads thus:

"Section 29-A: Commencement of Term of Office: (1) The term of office of the elected members of the committee shall commence on the date on which the majority of the elected members of the committee assume office or the term of the out going committee expires, whichever is later.

(2) Notwithstanding anything contained in this Act or the rules or the bye-laws of a co-operative society, the committee shall be deemed to be duly constituted when, the majority of the elected members of the committee are available to function as members of the committee after the election.

(3) The committee deemed to be constituted under sub-section (2) shall be competent to exercise all the powers and perform all the functions of the committee of the co-operative society."

10.1. This Section was amended by Act No.6/2010 with effect from 30-03-2010. By this amendment, the words, "The term of office of the elected members of the committee" in sub-section (1) were substituted by the words "The term of office of the members of the committee". The amendment by Act No.6/2010, for our purpose, is insignificant.

10.2. Section 29-A was then amended by the amending Act No.3 of 2013, by which, only the word 'committee' occurring at all places in this provision was substituted by the word 'board'.

10.3. Thus, the amendments made from time to time, insofar as Section 29-A is concerned, for our purpose, are insignificant. Under this provision, the term of office of the members of the Board commences on the date on which the majority of the elected members of the board assume office or the term of the outgoing board expires, *whichever is later*. In other words it means, if the election is held before expiry of the term of the office of board as contemplated under Section 28-A(4) of the Act, the newly elected members of the board shall assume office on expiry of the term of the outgoing board and not before that.

11. Next we would like to consider the provisions contained in 39-A of the Act. Before its amendment by Act No.6 of 2010, it did not specify the time limits, as provided after this amendment. By the amending Act No.6 of 2010, sub-section (2) as it stood prior to 03-11-2009 was substituted by sub-section (2), whereunder, time limits

were specified for conducting general election of the members of the committee in respect of primary societies, secondary societies, federal societies and apex societies. The amended sub-section (2) only is relevant for our purpose.

11.1. Again, by the amending Act No.3 of 2013, Section 39-A was amended with effect from 11.2.2013. By this amendment, no significant changes were made, insofar as these appeals are concerned. The amended provision specified time limits for the elections of Boards of societies of all categories and further provided that the incumbent boards of all such co-operative societies shall continue to be in their respective offices till the conduct of the elections, as provided therein. Further, it provided that the Election Commissioner should start the preparatory work for the conduct of elections during the last six months prior to the expiry of the term of office of the board and till the elections are conducted the incumbent board shall continue in their respective office.

12. Section 28-B, in particular, sub-section (2) thereof is also relevant to know the intendment of the legislature. Sub-section (2) prior to its amendment by the Amending Act No.3 of 2013 and after the amendment remained the same except the substitution of the word 'committee' by the word 'board'. Under this provision, the members of the board who failed to make arrangements for election within the time limits specified in Section 39-A, shall be deemed to have vacated their office on the last day of the time limit so specified and such members shall not be eligible for election as members of the Board for a period of five years from the expiry of their term.

13. Sub-section (4) of Section 28-A provides five years term of office from the date of election of the members of the committee, subject to provisions of Section 29A and 39-A, and on expiry of the term, the members of the committee shall be deemed to have vacated office as such members on the date of completion

of the said term. Under Section 39-A, the Election Commissioner is obliged to start the preparatory work for the conduct of the elections during the last six months prior to the expiry of the term of office of the board of the co-operative society and till the elections are conducted the incumbent board shall continue in their respective office. Similarly under sub-section (2) of Section 28-B, the election of a board shall be conducted before expiry of the term of the board so as to ensure that the newly elected members of the board assume office immediately on the expiry of the term of office of the members of the outgoing board. If for any reason, the elections are not held before expiry of the term, the consequences, as provided for under sub-sections (4) and (5) of Section 28-A and sub-section(2) of Section 28-B shall follow.

14. It is not in dispute and there cannot be any cavil that the election of members of the board shall now (after the amending Act No.3 of 2013 was brought into force on 11.2.2013) be conducted as per the amending

Act No.3 of 2013. Sub-section(5) of Section 28A provides that if a new committee is not constituted under Section 29-A, on the date of expiry of the term of the office of the board, or if the elections are not held within the time limits specified under Section 39-A, the consequences provided therein shall follow, viz., deeming effect of Section 28(4), Section 29-B(2) and appointment of an administrator under Section 28-A(5) of the Act. We hold that the amended provisions, introduced by way of substitution by the amending Act No.3 of 2013, would operate retrospectively and as a result thereof, members of the existing boards/committees would continue till expiry of the term of five years from the date of their elections, and since the said term has not yet expired, they shall continue till the elections are held within the time limits specified in Section 39-A of the Act or till the newly elected board assume office or the term of outgoing board expires, whichever is later. We make it clear, that we are not considering a situation, where the term of the elected Board, as provided for under sub-section (4) of

Section 28-A, once gets over whether such board would also continue till the elections are held within the time limits specified under Section 39-A of the Act. Such contingency/situation, has not arisen in the present cases apart from the fact that none of the appellants/petitioners made such prayer in the writ petitions. Thus, if the amended sub-section (4) of Section 28-A is held to be retrospective in operation, the term of the boards/committees in all these appeals would stand extended till expiry of the period of five years from the date of their election and they shall continue till the time limits specified in Section 39-A of the Act to hold elections get over.

15. In this backdrop, before we proceed to consider whether substituted provisions, vide Act No.3 of 2013, would operate retrospectively, we would also like to have close look at the provisions inserted in the Constitution of India, by the Constitution (Ninety-seventh Amendment) Act, 2011 (for short "**the Act of 2011**"), which deal with



co-operative societies. We, however, make it clear that we are making reference to the Act of 2011, for a limited purpose to find out whether by necessary implication, the legislature intended the substituted provisions to have a retrospective operation.

15.1. Article 243ZJ speaks of the number and term of members of board and its office bearers. 'Board' is defined under clause (b) of Article 243ZH to mean 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; Clause (2) of Article 243ZJ states that the term of office of elected members of the board and office-bearers shall be five years from the date of election and the term of office-bearers shall be co-terminus with the term of the board. Article 243ZK deals with election of members of board, which reads thus:

**"243ZK. Election of members of board.-** (1) Notwithstanding anything contained in any law made by the Legislature

of a State, the election of a board shall be conducted before the expiry of the term of the board so as to ensure that the newly elected members of the board assume office immediately on the expiry of the office of members of the outgoing board.

(2) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to a co-operative society shall vest in such an authority or body, as may be provided by the Legislature of a State, by law:

Provided that the Legislature of a State may, by law, provide for the procedure and guidelines for the conduct of such election."

15.2. Article 243ZT speaks of continuance of existing laws in the following terms:-

**"243ZT. Continuance of existing laws.-** 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."

15.3. On a conjoint reading of the aforesaid Articles, it is clear that the term of office of the elected members of

the board and its office bearers is prescribed as five years from the date of election and the term of the office bearers is co-terminus with the term of the board. The election of a board has to be conducted before the expiry of the term of the board so as to ensure that the newly elected members of the board assume office immediately on the expiry of the office of members of the outgoing board. The prescription of the term of office of the elected members of the board of a Co-operative Society may vary from State to State. Therefore, Article 243ZT has provided a *non obstante* clause stating that any prescription contrary to clause (2) of Article 243 ZJ shall continue to be in force till the period it is amended or repealed by a competent Legislature or until expiration of one year from the date of commencement of the constitutional amendment, whichever is less.

15.4. Thus, having regard to the mandate of Article 243ZT, the provisions of the Act were amended, particularly with regard to the term of office as stated in

Section 28-A of the Act. It is also significant to note that initially, the term of office was five years from the date of election. By an amendment brought about in the year 2004, the term of office was prescribed as five co-operative years. The term 'Co-operative year' was defined in Section 2(t) of the Act to mean the year commencing from the first day of April. In view of the constitutional mandate contained in Article 243ZT, an amendment was made to the Act by virtue of the amending Act No.3 of 2013 with 11<sup>th</sup> February 2013 as the date for enforcement of the provisions of the Act which was within one year from the date of commencement of the constitutional amendment, which was 15.02.2012. Therefore, in order to prescribe the term of office of the board of the Co-operative Society in consonance with the constitutional prescription, sub-section (4) of Section 28-A was amended to the effect that the term of office of the Board would be five years from the date of election.

16. The Act was introduced in 1959 to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies in the State of Karnataka. The object of the Act is to provide good and efficient management of co-operative societies through the elected members of the board. Election as members of the board, is not a substantive right of the members and it is only a right of being a member of the Managing Committee for the term specified under the Act.

17. As to the effect of the amending Act No.3/2013, the language will have to be examined to find out the intendment of the legislature. Every statute is prima facie prospective unless it is expressly or by necessary implications or intendment made to have retrospective operation. This rule, however, is applicable where the object of the statute is to affect vested rights or to impose new burden or to impair existing obligations. As observed by the Supreme Court in *Zile Singh* (supra), unless there

are words in the statute sufficient to show the intention of the legislature to affect the existing rights, it is deemed to be prospective. It is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. As observed by the Supreme Court, in the absence of a retrospective operation having been expressly given, it is necessary to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the statute retrospectivity.

18. The retrospectivity is liable to be decided on a few touchstones such as the words used must expressly provide or clearly imply retrospective operation and the retrospectivity must be reasonable and not excessive or harsh. (See *National Agricultural Co-operative Marketing Federation of India Limited vs. Union of India* ((2003) 5 SCC 23). Thus, the absence of a provision expressly giving retrospective operation to the legislation is not

determinative of its prospectivity or retrospectivity. The other factors will have to be seen to find out whether the amendment was necessarily intended to have retrospective effect and if one can unhesitatingly conclude in favour of retrospectivity there is no reason why the Court should hesitate in giving the Act or the relevant provision that operation unless prevented from doing so by any mandate contained in law or an established principle of interpretation of statute. We do not find any such mandate in the amending Act No.3 of 2013.

19. The amendments, by amending Act No.3 of 2013, were introduced by the State legislature, as observed earlier, to bring it in tune with the 97<sup>th</sup> amendment to the Constitution of India. On perusal of the amended provisions, more particularly, sub-section (5) of Section 28-A read with sub-section (2) of Section 28-B and Section 39-A of the Act and so also the provisions of the Act of 2011, (97<sup>th</sup> Amendment to the Constitution), it is clear that by necessary

implication/intendment, as it appears from the language employed therein, the legislature intended to give retrospective effect to these provisions.

20. Thus, having regard to the language employed in the Amending Act No.3 of 2013 and the Act of 2011 (97<sup>th</sup> Amendment to the Constitution) we are satisfied that by necessary implication/intendment the amended provision would operate retrospectively and as a result thereof, term of all the boards shall stand extended till expiry of the period of five years from the date of their election.

21. We would also like to examine the effect of amendment by way of substitution and to find out whether amendment by Act No.3 of 2013, by way of substitution would have retrospective operation. It is true that substitution of a provision results in repeal of the earlier provision and its replacement by the new provision. When the legislature amends the old provision by way of



substitution it intends to keep alive the old provision. The Supreme Court in *Zile Singh* (supra) while dealing with such situation observed that having regard to the totality of the circumstances centered around the issue the Court can hold that the substitution has the effect of just deleting the old provision and making the new provision operative. The Supreme Court in *State of Rajasthan vs. Mangilal Pindwal*, **AIR 1969 SC 2181** upheld the legislative practice of an amendment by substitution being incorporated in the text of a statute which had ceased to exist and held the substitution would have the effect of a amending operation of law during the period in which it was in force. Similarly, in *Koteswar Vittal Kamath v. K.Rangappa Baliga*, **AIR 1969 SC 504**, the three Judge Bench of the Supreme Court emphasized the distinction between supersession of rule and substitution of a rule and held that the process of substitution consists of two steps: first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place. Thus, what emerges from the aforesaid judgments of the Supreme

Court is that an amendment which has the effect of substitution of a provision has the effect of replacing the old provision by the substituted provision and in the absence of repugnancy, inconsistency and absurdity, must be construed as if it has been incorporated in the Act right from abinitio. In other words, an amendment by way of substitution has retrospective operation.

22. The State Government, in the present case, by substituting new provisions of the Act in the place of old one, in our opinion, did not intend to keep alive the old provisions, otherwise, it would have made its intention clear in the amending Act No.3 of 2013. Having regard to the totality of the circumstances centering around the issue, we have no hesitation to hold that substitution, by the amending Act No.3 of 2013, had the effect of just deleting the old provisions and making the new provisions operative as if the same were in existence from inception. It is well settled that the process of substitution consists of two steps, first, the old Rule is made to cease to exist

and, next, new rule is brought into existence in its place. Having regard to this principle, we find that all the substituted provisions introduced by way of Amending Act No.3 of 2013, have retrospective operation. Thus, the rule against retrospectivity is not applicable when an amendment is made to a provision by way of substitution. Considering that the elected members of the Managing Committee do not have any substantive/vested right and their term is governed by the provisions, in particular, the amended Sub-section (4) of Section 28-A of the Act, shall continue till the expiry of the period of five years from the date of their election. We do not agree with the view taken by the Division Bench in S M Kelageri.

23. The judgment of the Supreme Court in Shyam Sunder, in our opinion, is of no avail to the respondents since the elected members of the board do not have any substantive/vested right in continuing as members of the board or to make any grievance even about curtailment of

their right to continue as such. Their term is governed by the provisions of the Act.

24. We, accordingly in answer to the first question referred to the Full Bench hold that Section 28-A(4) of the Act is retrospective in nature and that an administrator cannot be appointed under Section 28-A(5) of the Act, till expiry of the period of five years from the date of their election as contemplated by sub-section (4) of Section 28-A of the Act.

25. Insofar as the second question is concerned, in our opinion, in the facts and circumstances of the case, prayers made in the writ petitions by the appellants and so also our opinion on the first question, it does not arise for our consideration. We say so, because it would not be necessary for this Court to consider the situation where the elections are not conducted even till after expiry of the term of five years from the date of election as per the amended provisions of the Act. Apart from that, it is not in

dispute that the Election Commissioner has already started preparatory work to conduct elections, as contemplated by Section 39-A of the Act, and that the elections are slotted to be conducted in the last week of May, 2014 and the newly elected boards shall assume charge on expiry of the period of five years from the date of elections of the existing boards. This Bench has so recorded in order dated 21.4.2014.

26. The Board of Hassan Milk Union was elected on 1<sup>st</sup> July 2009 and their term as per the amended provisions contained in Sub-section (4) of Section 28-A of the Act would come to an end on 30<sup>th</sup> June 2014. It is mandatory to hold elections within the time limits specified under Section 39-A of the Act. In this view of the matter, the second question as formulated by the Division Bench while making reference to the Full Bench need not be answered and suffice it to say that till the elections are conducted and charge is handed over to the newly elected board, the existing members of the board shall continue to hold

office. We have not entered into a question whether the Registrar or any other officer within whose jurisdiction the society is situated, and who is authorised by the Registrar can take charge as administrator on expiry of term of office of the members of the board, as provided for under sub-section (4) of Section 28-A viz., of five years from the date of election. Since none of the appellants/petitioners raised such issue or made any prayer to that effect, we are of the opinion that the second question as formulated need not be answered. It could be considered in an appropriate matter. Similarly, the third question, as observed earlier, does not require our answer as its validity was not a subject matter of debate before this Bench. In this view of the matter the order dated 21-4-2014 passed by us shall continue to operate with the modification that the existing elected boards of the societies shall continue to hold office till expiry of the period of five years from the date of their elections.

27. We shall finally conclude thus:

- i) Sub-section (4) of Section 28-A of the Act has retrospective operation.
- ii) The members of the existing boards shall continue to hold office till expiry of the period of five years from the date of their election and no administrator can be appointed till then.

The Reference is answered accordingly.

28. After answering the reference, it would have been more appropriate to direct the Registry to place all the writ appeals before appropriate Bench for their disposal, in light of the opinion expressed in this judgment. However, in view of the ensuing summer vacation which is starting from 5<sup>th</sup> May 2014 and holidays prior thereto and considering that the appeals pertain to the elections of co-operative societies, we deem it appropriate to dispose of the writ appeals by the following order :

The order of the learned single Judge dated 6<sup>th</sup> March 2014 disposing of the writ petitions from which

these appeals arise is set-aside. The elected boards of the societies shall continue to hold office till expiry of the period of five years from the date of their elections and till then, no administrator shall be appointed and the elected board shall take charge only on expiry of the term of office of the members of the board. In view thereof, the communication dated 29.01.2014, impugned in the writ petitions is rendered ineffective. The writ appeals are accordingly disposed of in terms of the opinion expressed by us in this judgment.

Sd/-  
CHIEF JUSTICE

Sd/-  
JUDGE

Sd/-  
JUDGE

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