

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 8960 of 2015****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE K.M.THAKER****Sd/-**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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MAHEDEVBHAI VELJIBHAI CAHUDHARI....Petitioner(s)**Versus****STATE OF GUJARAT & 2....Respondent(s)**

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Appearance:**MR DIPEN DESAI, ADVOCATE for the Petitioner(s) No. 1****MS MANISHA L SHAH GOVERNMENT PLEADER for the Respondent(s) No. 1****NOTICE SERVED BY DS for the Respondent(s) No. 2 - 3**

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CORAM: HONOURABLE MR.JUSTICE K.M.THAKER

Date : 30/09/2015

CAV JUDGMENT

1. In present petition the petitioner has prayed, inter alia, that by appropriate writ the respondent No.3- custodian may be restrained from enrolling any new member in Mehsana District Central Co-operative Bank Limited (hereinafter referred to as the "bank"). It is also prayed that the respondent no.3- custodian may also be directed to "only take care of day to day affairs" of the bank.

2. So as to give exact nature and scope of the relief prayed for by the petitioner, the paragraph No. 6(B) and (C) are quoted herein below:-

"6(B) The Hon'ble Court be pleased to issue a writ of prohibition or writ in the nature of prohibition or any other appropriate writ, order or direction, restraining the respondent no.3 – Custodian to enroll any new member in the Mehsana District Central Co-operative Bank Limited.

(C) The Hon'ble Court be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ, order or direction, directing the respondent no.3 – Custodian to only take care of day to day affairs of the Mehsana District Central Co-operative Bank Limited and not take any policy decision."

3. The petitioner has mentioned factual background in light of which the petition is taken out.

3.1 According to the details mentioned in the petition, the

bank is “specified society” within meaning of Section 74(c) of the Gujarat Co-operative Societies Act, 1961 (hereinafter referred to as the “Act”).

3.2 In view of the provision under Chapter XIA the election for the bank has to be held in accordance with the provision under said Chapter read with Gujarat Specified Co-operative Societies Election to Committee Rules 1982.

4. The petitioner society has claimed that it is one of the members of the bank and as a member it is vitally interested in the affairs of the bank.

4.1 It is further claimed that according to the provision under the Act the tenure of the managing committee to hold the office is 3 years.

4.2 So far as the Bank is concerned, the term of the committee (which was last elected) expired on 1.4.2015. According to Section 145-C election of specified society should be held, as far as possible one month before the date on which the “term” is due to expire.

4.3 It is claimed that by order dated 19.12.2014 passed by

the Collector, Mehsana, Prant Officer came to be appointed as election officer to conduct the election of the bank. It is claimed that since any progress was not made in the matter of completing the procedure and formality for holding election the bank had addressed a letter dated 27.1.2015 requesting authority to take action for holding election in accordance with the provision under the Act. Subsequently the bank initiated certain litigation related to election for the Managing Committee (hereinafter referred to as the Committee) and filed a writ petition i.e. Special Civil Application No. 2355 of 2015 seeking direction to hold election at the earliest. Then the bank filed a petition being SCA No. 4959 of 2015 against delimitation. During the pendency of the petition Gujarat Co-operative Societies (Amendment) Act, 2015 came into force w.e.f. 10.4.2015. By the said Amendment Act Section 74(C)(2) and Section 74(D) are inserted by virtue of the said amendment. In view of the provision under Section 74(D) the government is required to appoint custodian in cases where election is not held and a new committee is not elected before the term of the

committee / board expires. In case of the Bank the term of the elected body expired on 1.4.2015. The petitioner has claimed that during pendency of the SCA No. 6065 of 2015 the respondent No.2 Registrar appointed respondent No.3 as custodian for the bank. The said appointment is made vide order dated 13.4.2015 (i.e. after expiry of the term of the elected body) and the custodian has taken charge on and from 15.4.2015.

4.4 The petitioner has also mentioned that though request to suspend the order of appointment of custodian, the said request was however declined by the Court. Against the order declining to stay the operation of the order dated 13.4.2015, the bank preferred Letters Patent Appeal No. 831 of 2015. Honourable Division Bench restrained the custodian from functioning and issue certain further directions vide order dated 23/24-4-2015. The said order by Honourable Division Bench was carried before Honourable Apex Court by Special Leave Petition (c) No. 13829 of 2015.

4.5 Upon hearing the parties Honourable Apex Court

passed interim order directing that the custodian shall continue to operate function. Therefore, the custodian has again taken over the charge. In this background the petitioner has taken out present petition.

4.6 It comes out from the petition that the petitioner apprehends that the custodian may enrol new members in the bank. On the premise of such apprehension and on strength of the contention that the custodian does not have any authority in law to enrol new members the petitioner has taken out present petition and prayed for above quoted relief.

5. I have heard learned Counsel at length and also considered the material on record.

6. Mr. Desai, learned advocate for the petitioner submitted inter alia that plain reading of Section 74(CC) and 74(D) makes it clear that the custodian has no authority in law to enrol new members in a society where appointment of the custodian is made under Section 74(CC) and Section 74(D) of the Act. Mr. Desai, learned advocate for the petitioner submitted that a custodian,

once appointed in exercise of power under Section 74(D) has to work for holding election and the tertiary of his function is restricted to (i) complete the process for holding election; and (ii) to undertake and carry out day to day activities and business of the society and the custodian has no authority in law to enrol new members. Mr. Desai, learned advocate for the petitioner submitted that the authority to enrol new members vests in the board of directors and that therefore custodian appointed on expiry of the term of the board of directors would have no authority to enrol new members. So as to support and justify his submissions Mr. Desai, learned advocate for the petitioner relied on the decision in case of K. Shantharaj & another vs. M.L. Nagaraj & others (1997 [6] SCC 37) and the decision in case of Jt. Registrar of Co-operative Societies, Kerala vs. T.A. Kuttappan and other (2000 [6] SCC 127).

7. The petition and submissions by Mr. Desai, learned advocate for the petitioner are opposed by Ms. Shah, learned Government Pleader. Ms. Shah, learned Government Pleader raised objection against locus of the

petitioner and submitted that the chairman of the society i.e. the petitioner has no locus standi to pray for the relief such as the relief which is prayed for in present petition. Ms. Shah, learned Government Pleader relied on the provision under Section 2(7) and Section 22 and Section 24 of the Act and submitted that custodian is authorized to enrol new members and the petitioner cannot ask for order which would restrain the custodian from performing statutory function. She also submitted that the petition which is taken out merely on apprehension is not maintainable and does not deserve to be entertained. The learned Government Pleader further submitted that the persons / societies who would be affected if the relief prayed for by the petitioner is granted are not impleaded as respondent in the petition and therefore the petition is not maintainable and does not deserve to be entertained. Ms. Shah, learned Government Pleader also submitted that if the applicant seeking enrollment as member of bank fulfills all requirements then the bank cannot refuse the application and therefore also the relief prayed for by the petitioner does not deserve to be granted. Ms. Shah,

learned Government Pleader submitted that alternative statutory remedy against the decision granting or refusing membership is available and that therefore the petition does not deserve to be entertained. Ms. Shah, learned Government Pleader submitted that in light of the facts of the case and provisions under the Act the decisions relied on by the petitioner are not applicable. Ms. Shah, learned Government Pleader submitted that new members will not have any right to cast vote for one year and therefore there is no basis for the relief prayed for in the petition. Learned Government Pleader relied on the decision dated 24.3.2014 by full bench in Letters Patent Appeal No. 497 of 1997. Ms. Shah, learned Government Pleader submitted that the petition may not be entertained.

8. So as to appreciate rival contentions it would be necessary to keep in focus relevant provisions i.e. Section 74(CC) Section 74(D). It would be appropriate to also take into account Section 22, 24, 27, 74(C), 74(CC), 74(D) and 145(C) of the Act. The relevant part of said provisions are quoted below:-

“22. Person who may become member.-

(1) Subject to the provisions of Section 25, no person shall be

admitted as a member of a society except the following, that is to say-

- (a) an individual, who is competent to contract under the Indian Contract Act, 1872 (IX of 1872);
- (b) a firm, company, (or any other body corporate constituted under any law for the time being the force) or a society registered under the Societies Registration Act, 1860 (XXI of 1860);
- (c) a society registered, or deemed to be registered, under this Act;
- (d) the State Government;
- (e) a local authority;
- (f) a public trust registered or deemed to have registered under Bombay Public Trusts Act, 1850 (Bom. XXIX of 1950);
- (g) a group of the individuals eligible under clause (a), whether incorporated or not and whether established or not by or under any law:

Provided that.....

Provided further that

(2) Every person seeking admission as a member of a society, if duly qualified for membership of such society under the provisions of this Act, the rules and the bye-laws of the society, may make an application to the society for membership. The society shall take decision on the application and shall communicate the decision within a period of three months from the date of the receipt of the application.

(2A)

(3)

(4).....

(5)

24. Open membership:-

(1) No society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefor under the provisions of this Act, the rules and bye-laws of such society.

(2) Where the society does not communicate any decision to a person within a period of three months from the date of receipt by the society of his application for admission, such person shall be deemed to have become the member of such society on the expiry of the aforesaid period of three months.

(3) Where a person is refused admission as a member of a society, the decision together with the reasons therefor shall be communicated in writing to such person by the society within three months from the date of receipt by the society of the application for admission made by such person.

(4)

(5)

(6)

(7) Nothing in this section shall apply to a society belonging to a class notified under sub-section (2) of section 22.

27. Right to vote

(1) No person shall exercise the rights of a member of a society, until he has made such payment to the society in respect of membership, or acquired such interest in the society, as may be prescribed by the rules, or the bye-laws of such society.

(2)

(3) No person shall exercise the right to vote at an election of a members of a committee in a financial year unless he is a member of the society for the whole of the financial year preceding the financial year in which the election is being held
Provided that no member society of a federal society shall exercise the right to vote at an election of a member of a committee unless such society has its last accounts audited in class A, B or C.

(4) Nothing in sub-section (3) shall apply to the first election of a committee to be held immediately after the registration of a society.

74-C. Provision for conduct of elections committees and officers of certain societies and term of office of members of committees.-

(1) The election of the members of the committees and the officers by the committees, of the societies of the categories mentioned below shall be subject to the provisions of Chapter XIA and shall be conducted in the manner laid down by or under that Chapter:-

(i)

(ii)

(iii)

(iv) (a)

(b)

(v)

(vi)

(vi-a).....

(vi-b)

(vii)

(2)(i) The term of the elected members of the managing committee shall be five years from the date of election.

(ii) The term of office bearers of the managing committee shall be two and a half years from the date of election.

(iii) The managing committee shall fill up a casual vacancy within a period of sixty days from the date of such vacancy

(iv) The elected members of the managing committee and its office bearers shall cease to hold the office on the date of

expiry of their term.

(v) Notwithstanding anything contained in clause (ii), the office bearers of managing committee who have completed two and a half years on the date of the commencement of the Gujarat Co-operative Societies (Amendment) Act, 2015, shall continue to be such office – bearers for the remainder term.

(vi) Nothing in clause (i) shall be applicable to the managing committee existing on the date of coming into force of the Gujarat Co-operative Societies (Amendment) Act, 2015.

(vii)

(3) Notwithstanding anything in the bye-laws of any such society, the committee of management shall be elected by a general body of member of the society and all other committees authorised by or under the bye-laws may be constituted by electing or appointing persons from among the persons who are members of the committee of management, and all such committee shall be sub-committees of the committee of management, and shall be subordinate to it :

Provided that it shall be lawful for the State Government.

(a)

(b)

(4) The election of the Managing Committee shall be conducted before the expiry of its term so as to ensure that the newly elected members of the Managing committee assumes office immediately on the expiry of the term of office of the members of the outgoing Managing Committee.

74-CC. Election of Societies other than specified societies.-

(1) The election of the Committee and of the office bearers of the societies other than the specified societies as referred to in section 74C shall be conducted by such authority as the State Government may, by notification in the *official gazette*, notify.

(2) The authority appointed under sub-section (1) shall hold the election as per the rules as may be prescribed.

(3) The election of the Managing Committee shall be conducted before the expiry of its term so as to ensure that the newly elected members of the Managing Committee assumes office immediately on the expiry of the term of office of the members of the outgoing Managing Committee.

74-D. Appointment of Custodian in certain circumstances.-

(1) Where in respect of any society including a society existing immediately before the commencement of the Gujarat Co-operative Societies (Amendment) Ordinance, 1982 (1 of 1982) a new committee of management is, for any reason whatsoever, not elected [before] the expiry of the term of office of members of a committee of management of such society, (not being a committee referred to in Section 80-A) [or

having been elected not functioning] the Registrar may by an order in writing, appoint a person or a committee of persons to be the custodian of the society until a new committee of management is elected or, as the case may be, starts functioning.

[(1-A). The Registrar shall hold election of such society within a period of two months and the committee shall be constituted before the expiration of that period]

(2) The custodian so appointed shall, subject to the control of the Registrar and to such instructions as he may from time to time give, have powers to exercise all or any of the functions of the committee, and take all such actions as may be required in the interest of the society.

(3) All acts done or purported to be done by the custodian during the period when the affairs of the society are carried on by the custodian, shall be binding on the new committee or management.

145 (C) Time when election to be held.- Every election shall be held as far as possible one month before the date on which the term of office of the members is due to expire."

9. Before proceeding further and before taking up the principal contention raised by the petitioner it is appropriate to address and deal with certain objections raised by the learned government pleader.

(A) Ms. Shah, learned GP contended that the societies who have submitted applications for being enrolled as member are not impleaded as party respondents and therefore the petition is not maintainable.

The said objection cannot be sustained.

It is not in dispute that the custodian has not passed any order in respect of the applications by any society for

being enrolled as a member with the bank. It is not even the case of the respondents that the applications by the societies have been considered and granted by the custodian and yet such person / societies are not impleaded as party respondent. So long as the applications are pending for consideration and decision, the applicants cannot be said to be necessary party in a petition which claims that the power to decide applications seeking membership is with the committee and not conferred to the custodian. The persons / societies who have merely submitted application which are awaiting consideration and are yet not allowed nor rejected cannot be said or considered necessary and / or affected party and that therefore their non-impleadment does not render the petition unsustainable at this stage.

Even if the relief prayed for by the petitioner is granted then also the right of the applicant to get their applications considered by the competent authority / body will not be affected, inasmuch as such applications will be considered by the committee who will enter the office after election is held. Therefore, also the said contention is

not sustainable and does not deserve to be accepted and the petition cannot be rejected on such ground.

(B) Besides this, learned GP also submitted that the petitioner has no locus to prefer petition and pray for such relief. It is not in dispute that the petition is taken out by the society, through its Chairman, who is member of the bank. As a member of the bank the petitioner society enjoys right to vote and depute representative of the class of shareholders / members to which it belongs. The members / shareholders of the bank have right to raise objection through its representatives, against entry / enrollment of any member which according to existing members, does not conform to the object and the interest of the society. Any member or shareholder of the society can be said to be concerned about and / or interested in the functions, affairs and conduct of the society and that therefore locus of the petitioner to file a petition and seek relief / direction which, according to it, is necessary for protecting and safeguarding interest of the bank, cannot be denied to a member / shareholder. Therefore, the contention challenging locus of the petitioner cannot be

sustained.

(C) The respondents have raised another contention viz. according to sub-section (3) of section 27 the person / society who is enrolled as member cannot exercise the right to vote at an election unless he is member of the society for the whole of the financial year preceding the financial year which election is held and that therefore the petitioner's allegation and apprehension that the custodian will enrol members with a view to change the electorate and change or tilt the balance so as to influence the election are baseless since the persons enrolled by the custodian will not be entitled to vote at the forthcoming election and that therefore there is no justification for the relief prayed for. The limited aspect or issue which arises for and would be relevant for, examination in present petition is related to the extent of the authority or power conferred to the custodian by virtue of section 74-D.

Thus, when the question about the extent of the power or authority of a custodian is raised and is under consideration, the aspects as to whether the members

who are enrolled by the custodian will have right or opportunity to vote in the forthcoming election or not and whether the petitioner's apprehension are justified or unjustified is not, and cannot be, the point of focus for deciding maintainability of the petition and / or the relief prayed for in present petition.

(D) The submission by learned Government Pleader that the bank cannot refuse application if the applicant fulfills all requirement cannot be accepted in view of the fact that the said section 24 itself provides that for sufficient cause admission to membership by a person / society which otherwise fulfills the requirements can be rejected for sufficient cause.

On this count and in this context it is relevant to proceed on the well settled principles and premise that any citizen does not have fundamental right to become the member of the co-operative society. Such right is governed by the provision of the statute. This aspect was clarified and emphasized in the case of State of U.P. vs. C.O.D. Chheoki Employees' Co-operative Societies Ltd. (1997 [3] SCC 681) wherein Hon'ble Apex Court observed,

inter alia, that:-

"Thus, it is settled law that no citizen has a fundamental right under Article 19(1) (c) to become a member of a Cooperative Society. His right is governed by the provisions of the statute. So, the right to become or to continue being a member of the society is a statutory right. On fulfillment of the qualifications prescribed to become a member and for being a member of the society and on admission, he becomes a member. His being a member of the society is subject to the operation of the Act, rules and bye-laws applicable from time to time. A member of the society has no independent right qua the society and it is the society that is entitled to represent as the corporate aggregate. No individual member is entitled to assail the constitutionality of the provisions of the Act, rules and the bye-laws as he has his right under the Act, rules, and the bye-laws and is subject to its operation. The stream cannot rise higher than the source."

It is also pertinent that Hon'ble Apex Court, in case of Zoroastrian Co-operative Housing Society Ltd. Vs. District Registrar Co-operative Societies (AIR 2005 SC 2305) observed, inter alia, that:-

"Section 24 of the Act, no doubt, speaks of open membership, but Section 24(1) makes it clear that, that open membership is the membership of a person duly qualified therefor under the provisions of the Act, the Rules and the bye-laws of the Society. In other words, Section 24(1) does not contemplate an open membership de hors the bye-laws of the Society."

Thus, open membership contemplated under Section 24 does not mean that an individual or a co-operative society (i.e. those whose reference is made under clause(a) to clause (g) of Sub-section (1) of Section 22 of the Act) can claim membership de-hors the bye-laws of the society. Actually, the said Section 24 of the Act itself

provides that for sufficient cause membership can be refused.

In view of its composition – which would consist representatives from all classes and categories of the members of the society the managing committee /Board of Directors would be most competent and best suited and equipped to take proper decision in such matters. Therefore, by virtue of the bye-laws of the society, the power to consider and decide the application and to take decision as to whether membership should be granted or refused is conferred on, and vests with, the managing committee / board of directors. Such decision is supposed to be and required to be taken after considering various aspects including the objects of the society, interest of the society, details mentioned by the applicant etc.

Even according to the bye-laws these aspects can be considered by the managing committee i.e. elected representatives of the members of the society.

At this stage it is relevant to also note that according to Section 73 of the Act the final authority of every society vests in general body of members and where the bye-laws

of the society provide for election of delegates the final authority would vest in delegates of such members “elected in the prescribed manner in general meeting”. The section 74-D does not confer on the custodian the power to exercise such final authority of the society which by virtue of bye-laws of the society, is delegated to, and thereby vests in, the managing committee. There is nothing in the said provision which indicates conferment of such authority in favour of the custodian.

In this context it would be appropriate to also refer to the instances or illustrations (in which cases membership can be declined by the society on sufficient, just and reasonable ground e.g. prejudicial to the interest of the society) considered and cited by the larger bench in the decision dated 24.3.2014 in Letters Patent Appeal No. 497 of 1997. The larger bench has observed, in the said decision that:-

“3.1.....In our opinion, a society can, on valid ground, refuse membership, where the new membership will be prejudicial to the interest of the society. For example, if in spite of having the requisite qualification based on the bye-laws of the society, a person who is guilty of an offence involving moral turpitude applies for admission, the society can be justified in refusing to admit such a person as a member on the ground of protection of the existing members of the society. Similarly, if it appears from the bio-data supplied by the prospective member that the income of such person is so meagre that he will not be able

even to pay the monthly maintenance amount payable by the members of the society or future maintenance, the society, to avoid unpleasant situation and impediment in smooth running of the society, may decide to refuse admission. The aforesaid examples are illustrative and not exhaustive. However, the ground of refusal must be a reasonable one justifying the rejection of new membership."

Thus, for sufficient cause membership can be refused by the committee / society and the contention that the relief prayed for by the petitioner does not deserve to be granted because the bank cannot refuse admission of membership to any applicant if he fulfills all requirements, cannot be sustained.

(E) Learned GP then submitted that the petition seeking to restrain custodian from performing statutory function is not maintainable. The said objection by learned Government Pleader overlooks the fact that the fundamental contention raised in this petition by the petitioner is that the law does not confer any power to the custodian to enrol new member in the co-operative society where he is appointed in exercise of powers conferred under Section 74(D).

A petition which is preferred raising question about extent of power which custodian can exercise pursuant to

his appointment under Section 74-D cannot be thrown out on the ground that the petition seeks to restrain the custodian from performing his duty. Differently put, the petition does not seek to restrain the custodian from performing his duty but the petition seeks direction that the custodian should not act beyond the extent of power conferred on him under the Act. A petition which seeks such declaration and direction cannot be thrown out at threshold. The Court, in such cases, would not refuse to examine as to whether the custodian is acting within the boundary of the authority conferred on him by the Act or he is transgressing the boundary and acting beyond his authority. Therefore, the contention is not sustainable and the petition does not deserve to be thrown out on such premise.

(F) The learned government pleader then referred to the provisions under section 24 and submitted if the society fails to communicate its decision within period of 3 months then the applicant is deemed to have become member of the society and that therefore when a custodian is appointed he cannot refuse to consider and decide the

application seeking membership by the person / society who is duly qualified as per the bye-laws of the society and provisions under the Act.

The said contention is not sustainable.

The question as to whether the custodian is conferred the power of managing committee viz. to appoint new members in the society or not has to be and can be decided in light of the provision under which he is appointed. It is pertinent that the fountain head of the power to appoint custodian is section 74-D and it is on the strength of said provision that the Registrar derives power to appoint custodian when term of existing committee expires before election is held. It is the said provision which prescribes the functions to be performed by the custodian. Therefore, the issue as to whether the custodian can appoint new members in the society can be and must be examined in light of said provision which prescribes boundary of his functions and duties and not on basis of different provision, the object and scope and field of cooperation of which is altogether different. Moreover, when Section 24 introduces deeming fiction then any

question or occasion or need for any other authority e.g. custodian to consider and decide applications seeking membership inasmuch as in view of the deeming fiction if the eventuality contemplated under said section 24 arises then the consequences prescribed under said section 24 of the Act would follow in accordance with law and section 24 of the Act and if the facts so demand and there will not be any need for any other authority to exercise the power of the managing committee and to decide such applications. In this petition the issue as to whether the time limit prescribed under Section 24 and the deeming fiction imbedded in said provision will apply and will operate even during the period when the body (which is supposed to act within specified time) is not in existence and has not arise. Hence the said issue and said aspect are not examined in present case.

Suffice it to say that so far as the applications seeking membership submitted to the bank are concerned, they will fall or will be categorized in two groups or categories viz. one group or category will be of the applications in respect of which the specified period

expired before the tenure of the committee came to an end and second group or category will be of the applications in respect of which the period specified under the section had not expired before the committee's tenure came to an end and / or the applications which have been submitted after the committee's tenure expired. In such cases the consequence in accordance with law will arise and the provision will play its own role in accordance with law.

10. Now so far as contention raised by the petitioner is concerned, in effect and in substance the petitioner's singular contention is that the custodian who is appointed on expiry of the term of the committee does not have authority in law to enrol new members.

10.1 For examining the said controversy it is necessary to turn to Sections 74 (CC) and 74(D) of the Act which are inserted by virtue of amendment Act No. 12 of 2015 and the said provisions have come into force w.e.f. 10.4.2015. Clause (i) of sub-section (2) of Section 74-C prescribes that the term of the elected members of the managing

committee of the class of the society covered under Section 74(c)(1) shall be 5 years from the date of election. Whereas clause (ii) of sub-section (2) of Section 74-C prescribes that the term of the office bearers of the managing committee shall be 2 ½ years from the date of election. Clause (iv) of sub-section (2) of Section 74-C provides, that the elected members of the managing committee and its office bearers shall cease to hold the office on the date of expiry of their term. Section 145-C under Chapter-XI provides, that in respect categories of societies specified in Section 74-C, election shall be held, as far as possible, one month before the date on which the term of office of the members is due to expire. Section 74-D of the Act provides that in respect of any society if, for any reason, election of the committee is not held before expiry of the term of the office of members of the committee and new committee is not elected then Government shall appoint a custodian who shall arrange to hold election of such society within one year and the committee shall be constituted before expiration of that period. Sub-section (3) of Section 74-D provides, that

subject to the control of Registrar the custodian shall have the power to exercise all or any of the functions of the committee and take all such actions as may be required in the interest of the society.

10.2 On conjoint reading of the above mentioned provisions the situation which emerges is that as soon as the term of the committee / elected members of the committee or office bearers of the committee expires, the members / office bearers of the committee shall cease to hold the office and office will automatically fall vacant. Therefore it would be necessary that election of the society is conducted and the members of the committee or office bearers are elected before the term of the body expires.

10.3 So as to ensure that the elections are held before the term of the committee holding the office expires, necessary and appropriate obligations are imposed by virtue of sections 74(C)(2)(ii) and Section 74(C)(2)(iv) and Section 145(C). From conjoint reading of the said provision the intention of legislature; viz. the elections for the

managing committee must be held and completed before the date on which the term of the existing body / members is to expire, emerges very clearly. It becomes clear that the focus is on timely election.

10.4 However, care for other eventualities is also taken inasmuch as provision is made to take care of a situation where, for any compelling reason and circumstance, election could not be held. It is provided that if, for any reason, the election is not held and new committee is not elected before expiry of the term of the committee / its members or office bearers then such situation will invite appointment of custodian.

10.5 In such eventuality also i.e. when custodian is appointed the legislature has given prime importance to the need for holding election and the custodian is entrusted with primary function and duty of expeditiously completing the process of election. It is prescribed that the custodian appointed on occurrence of such event, shall hold election within one year. The legislature, being aware about the interregnum, has also provided that in

the interregnum the custodian can exercise all “functions” of the committee.

11. The question which is raised by the petitioner is about the extent of the authority which the custodian appointed under Section 74-D can exercise or perform. It is claimed by the petitioners that according to erstwhile provision the committee / board would continue in office, even after expiry of the term until new committee is elected and enters the office. However, now said position is discontinued in view of the amendment in the provision and now the members of committee / board have to vacate the office immediately on expiry of the term.

11.1 In present case the term of the committee / board expired on 1.4.2015. Therefore, from the said date the directors ceased to hold office. It is not in dispute that before / the term of the committee / board expired (on 1.4.2015) election for the committee was not conducted and completed. In this view of the matter provision under Section 74(D) got attracted. Therefore, by order dated 13.4.2015 the custodian came to be appointed. The

petitioner claims that now the custodian proposes to enrol new members and has taken steps for the said purpose.

12. If new members are enrolled, it may affect the composition and fabric of the society.

12.1 In a co-operative society its members are vital organ of the society. The formation and constitution of a co-operative society is by the members and for the members and based on the philosophy and principles of co-operation. The co-operative society is formed with and for specific object and its members strive to achieve the object. If any member who does not believe in, or is not sincere and honest to, the object of the society then the functioning and operations of the society might be affected and overall atmosphere amongst the members may be disturbed. This would be more true in cases of societies formed by Adivassis, fishermen's co-operative society, Schedule Tribes members, weaver's co-operative society, Housing co-operative societies etc.

12.2 Therefore, the decision as to who would be eligible and entitled to be member of the society and whose

request may be accepted – granted and which request should be rejected would be very important and sensitive issue for the society because enrollment of members without having regard to the diverse relevant aspects from the perspective of the society and its interest may affect entire fabric or canvass of the society and hurt its interest. Hence, such decision is required to be and ought to be taken carefully and consciously and in democratic manner by the members through their elected or nominated representatives in the managing committee.

12.3 The function of the society and its management has to run in democratic manner and in consonance with, as well as for advancing and serving, the objects of the society. Therefore, the bye-laws of a society would, ordinarily, confer the power to take decision to enrol new member/s or to decline membership to any applicant, on the democratically elected committee / board of the society.

12.4 It is pertinent that the composition of the committee / board of particular society depends on the classes and

categories of members. The committee / board of the society is constituted in such manner which would represent all classes of members of that particular society. If there are 5 classes or categories of member in a society then the composition of the committee / board would be such in which each of the said 5 classes or categories of members will get representation in the committee/ board and such committee / board would be constituted by process of election.

12.5 Such democratically elected committee / board which represents all classes of members would be clothed with the “power” to take decisions on matters – subjects affecting the society and its interests. Having regard to this aspect the matter related to enrollment of members is ordinarily entrusted to and the power is conferred to the committee / Board of Directors. This aspect emphasizes the requirement that the decision as to the enrollment of the members should be taken by its democratically elected body which would comprise representative from all classes or categories of members.

12.6 In present case according to the bye-laws of the society the management of the bank is devolved on the board of directors (managing committee) comprising minimum 17 and maximum 19 members / directors and the power to decide the requests - applications for membership with the society is conferred to the committee / board.

12.7 The clause 32(1) and (1-B) of the bye-laws provide that the directors of the board (managing committee) shall be nominated from each class / category of members. According to clause 8 of its bye-laws the bank has 3 categories of members viz. (a) individual member (b) institutional member and (i.e. registered co-operative society) and (c) nominee member.

12.8 The clause 35 of its bye-laws of the petitioner prescribes “duties” and “powers” of board of directors (managing committee). Sub-clause (1) of said clause 35 prescribes that it is within the “power” of the board of directors of the petitioner to decide application for membership of the bank. According to the bye-laws of the

bank the act of considering and deciding the application for enrollment as member is treated and considered as “power” and such “power” is conferred to the board / committee.

13. It is relevant to note that in most cases, if not all, even in cases where the custodian is a committee of 2 or 3 or more members, the “custodian” would be outsider/s. In such situation, if the provision is construed to mean that the custodian is conferred the “power” to enrol new members then it would translate into a situation whereby an outsider would impose his will and his decision on the society.

14. Such situation whereby a person who is not a representative of the members of the society would impose his choice and decision (even if a committee is appointed as custodian, it would still be outsider's choice and decision) on the society, would be contrary to and against the basic concept, principles, object and philosophy of the co-operative societies i.e. the ideas on which co-operative societies are formed and function.

14.1 Furthermore, to allow an outsider, who is appointed / nominated by the Registrar - and is not elected by the members (and may himself not be even a member) of the society to take decision with regard to important subject viz. membership in the society (i.e. as to whether a particular person / society / association may be enrolled as member or not) and that too without taking into account the views and opinion of the members of the society or of the representatives of member of the society, would be contrary to the object of the society and also its bye-laws as well as basic democratic principles.

14.2 Therefore it would not be appropriate to let a custodian i.e. an outsider take decisions related to the membership of the society which would affect the fabric and composition and structure, and probably even affairs and activities, of the society. For this reason also the submission by the respondents cannot be accepted.

14.3 Having regard to this aspect and by acknowledging important requirement that the decision about enrollment of members must be taken only by duly elected body (i.e.

committee or board of the directors) the legislature seems to have consciously not conferred “powers” of the committee, to the custodian.

14.4 If the submission by the respondent is accepted then it would mean, rather it would result into a situation whereby the custodian, by his decision as to membership in the society, can bind the committee and the society and create almost irreversible situation by imposing some members whose membership may not be in overall interest of the society or may not be convenient to its day to day and regular functioning or its objects and such situation cannot be altered by the committee and / or society without entering into litigation by seeking order from the appellate authority.]

14.5 This does not appear to be the intention of the legislature and Section 74-D of the Act does not reflect such intention and there is nothing in said provision to indicate such intention or that such power is conferred to the “custodian”

14.6 So as to take care of or so as to avoid such conflicting

situation, the legislature has conferred “power” or authority on the custodian to only “exercise the functions” and not the power of the managing committee. The authority to take decision with regard to enrolling new members is “power” of the committee. The said power is supposed to be exercised keeping in focus the object and interest of the society. This can be ensured by an elected committee which comprises duly elected representatives of members from different classes and categories of members of the society. In this view of the matter it is not possible to accept the submissions for the respondent that custodian has authority to enrol the members.

15. It is relevant to note that the legislature has prescribed that the custodian shall exercise all or any of the “functions” of the committee and the legislature has also emphasized, by virtue of subsection (2) of section 74(D), that the custodian shall arrange to hold election of such society.

15.1 This is to ensure the requirement of completing the election as contemplated by Sections 74(C)(2)(ii) and

74(c)(2)(iv) and 145(C) of the Act.

15.2 The authority to discharge the “functions” of the committee is granted as a stop-gap arrangement and with a view to ensuring that day to day activities and functions of the society are carried out normally and in smooth manner.

15.3 However, the “authority” (of the custodian) is not extended to exercising “powers” of the managing committee in respect of matters touching the society's composition and / or objects and its policy and / or its interest which would have long lasting effect on the society.

15.4 There is another reason in light of which it becomes clear that there is nothing in Section 74-D to indicate that the custodian is conferred with the authority to exercise exclusive power of the managing committee (viz. to decide applications seeking membership) inasmuch as if it is assumed that such authority in the hands of custodian is conferred to the custodian then it would not only allow the custodian to impose his choice and decisions on the

society and thereby affect its fabric and composition but it would also create anomalous situation.

15.5 In this context it is relevant to note that according to the scheme of the Act, the decision by the managing committee to grant or refuse applications seeking admission to the membership is appealable and according to provision under Section 24(4) the appeal would lie before the Registrar.

15.6 Therefore, a situation would arise as a result of which the Registrar will decide the appeal against decision of his own nominee and that too when the custodian's action and decision are subject to his (i.e. the Registrar's) Supervision. It appears that so as to avoid such situation and having regard to the provisions under the Act and the scheme of the Act according to which appeal or revision against the orders / decisions by the Registrar or his nominees or Board of Nominees would be lie before Tribunal or the State Government the legislature has consciously not conferred the authority to exercise “power” of the managing committee to enrol members, to

the custodian otherwise challenge against his decision would lie before the Registrar.

16. Besides this, sub-section (3) of Section 74-D does not confer authority in favour of the custodian to enrol new members. There is nothing in the provision which indicates conferment of such authority in favour of the custodian. Sub-section (2) of Section 74-D clarifies that the principal duty and obligation of the custodian and main purpose for appointment of custodian is to ensure that the procedure for holding election is initiated and completed expeditiously and within the term of the custodian.

16.1 There is nothing in the provision which, indicates that the legislature intended to confer to the custodian the “powers” of the committee including the power to enrol the members. According to Section 74-D, so far as main function and obligation of the custodian is concerned, the emphasis is on completing the process of election of such society. This is the principal function, duty and obligation of the custodian.

17. In this view of the matter the claim of the respondent that the custodian is authorized and competent to, and has power to, enrol new members in a society where he is appointed under Section 74-D of the Act is not sustainable and cannot be accepted and the objection and contention by the petitioner that the custodian appointed under Section 74-D of the Act does not have such power and is not competent and empowered to enrol new members during his term, is required to be accepted.

18. In this context it is also relevant that when subsection (2) of Section 74(D) is read it emerges that the custodian is clothed with the “power” to exercise all or any of the “functions” of the committee”. Thus, according to section 74-D (2) the custodian has the authority to perform – discharge all or any of the “functions” of the committee. It is pertinent that a subtle but vital feature emerges from the said section viz. the custodian is conferred with the “power” to exercise the “function” of the committee and not the authority to exercise all or any of the “power” of the committee.

19. The distinction between “power” of the committee of the society and “functions” of the committee of the society is examined and very succinctly clarified by Hon'ble Apex Court in the decision in case of K. Shantharaj vs. M.L. Nagraj and thereafter in the case of Jt. Registrar Co-operative Societies Kerala (supra).

19.1 A similar issue arose for consideration before Hon'ble Apex Court in case of K. Shantharaj vs. M.L. Nagraj (1997 [6] SCC 37). In the said decision Apex Court examined the provisions under Section 30 and 30-A of Karnataka Co-operative Societies Act 1959. In light of the said provisions Hon'ble Apex Court held that the administrator appointed by the Registrar has no power to enrol new members, though he has power to organize election process in accordance with the provisions of the Act.

20. The learned Government Pleader would, however, contended that in the facts of the case and in light of the provision under Gujarat Co-operative Societies Act, the said decision is not relevant.

21. So as to appreciate the fact that the decision by Hon'ble Apex Court in the said case is relevant and is also applicable in present case, it would be appropriate to take into account Section 30 and 30-A of Karnataka Co-operative Societies Act 1959 in light of which said decision by Apex Court is rendered. The said Section 30 and Section 30-A of Karnataka Co-operative Societies Act 1959 which were examined by Hon'ble Apex Court read thus:-

"30. Supersession of Committee: (1) If, in the opinion of the Registrar -

(a) the committee of a co-operative society persistently makes default or is negligent in the performance of the duties imposed on it by this Act or the rules or the bye-laws or commits any Act which is prejudicial to the interest of the society or its members or is otherwise not functioning properly; or

(b) a co-operative society is not functioning in accordance with the provisions of this Act, the rules or bye-laws or any order or direction issued by the State Government or the Registrar, the Registrar may, after giving the committee an opportunity to state its objections, if any, order in writing remove the said committee, and appoint an administrator to manage the affairs of the society for such period, not exceeding one year, as may be specified by the Registrar.

(2) The administrator so appointed shall subject to the control of the Registrar and such instructions as he may give from time to time, exercise all or any of any officer of the co-operative society and take such action as he may consider necessary in the interest of the society.

(3) The administrator shall, before the expiry of his term of office arrange for the constitution of a new committee after holding the election in accordance with this Act, the rules and the bye laws of the co-operative society; Provided that in such an election no member of the Committee removed under sub-section (1) shall, notwithstanding anything

contained in this Act, the rules or the bye- laws, be eligible for being elected as a member of the committee, for a period of four years from the date of supersession of the committee under the said sub-section. Provided that in such an election no member of the Committee elected in accordance with this sub-section is also superseded within a period of one year from the date of its election, such supersession may extend to a period not exceeding three years.

30A Appointment of Special officer: (1) Where the State Government on a report made to it by the Registrar or otherwise, is satisfied that any cooperative society is not functioning in accordance with the provisions of this Act or the rules made thereunder or its bye-laws or any order, direction circular issued by the State Government or the Registrar it may, notwithstanding anything in this Act, by order, appoint a Special Officer for such co-operative society for such period not exceeding two years:

Provided that the State Government may, if it considers it necessary extend the said period of two years by such further period not exceeding one year.

(3) The Special Officer subject to the control of the State Government and the Registrar, exercise and perform all the powers and functions of the committee of the co-operative society and take all such actions as may be required in the interest of the co-operative society."

21.1 After considering said provision Hon'ble Apex Court observed in the said decision that:-

"5. It would be clear from the language of these provisions that the Administrator or special officer, subject to control of any of the functions of the society as per law. He should conduct elections as is enjoined thereunder. In other words, he is to conduct election with the members as on the roles and by necessary implication, he is not vested with power to enroll new members of the Society.

21.2 It is pertinent that it was contended before Hon'ble Apex Court that since the administrator has power to conduct election by necessary implication he would also

have power to update the electoral list by either enrolling new member or substituting legal representative of the members in accordance with the bye-laws. However, after considering the provisions under the Karnataka Co-operative Societies Act, 1959 Hon'ble Apex Court rejected the contention and observed, inter alia, that:-

“we find that there is no force in the contention. The power of administrator given under the statute to conduct election should be confined within the parameters set under the relevant provisions of the Act, Rules and Bye-laws.”

21.3 Hon'ble Apex Court also confirmed the observation by Division Bench of Karnataka High Court to the effect that administrator has no power to enrol new members but he has power to organize election process in accordance with the provisions of the Act.

21.4 On plain reading of the provisions under Section 30(2) of Karnataka Co-operative Societies Act 1959 (which fell for consideration before Hon'ble Apex Court) it emerges that the said provision i.e. Section 30(2) employ the words “the administrator so appointed shall.....exercise all or any of the functions of the committee..... and take such action as he may consider necessary in the interest of the society.” (emphasis

supplied)

21.5 Therefore, it would be appropriate to consider the provision under Gujarat Co-operative Societies Act, in juxtaposition with the said provision. Relevant part of Sub-section (2) of Section 74-D of Gujarat Co-operative Societies Act reads thus:-

“Custodian so appointed shall..... have powers to exercise all or any of the functions of the committee... and take all such actions as may be required in the interest of the society”

21.6 The provisions under the Karnataka Act and the provision under the Gujarat Act are similar and the observation by Hon'ble Apex Court are relevant and applicable in respect of the provision under Gujarat Act as well.

21.7 The learned Government Pleader submitted that in Sub-section (2) of Section 74-D under Gujarat Act the expression used is “have power to exercise” and she emphasized the word “power” used in Gujarat Act. However, it is overlooked that the “power” which is conferred on the custodian is to exercise (i.e. perform or discharge) “all or any function” of the committee and not

to exercise all or any of the “powers” of the committee.

21.8 In this context it would be appropriate to again turn to the provision under sub-section (3) of Section 30-A of Karnataka Act. The relevant portion reads thus:-

“The Special officer..... and perform all the powers and functions of the committee.... and take such actions as may be required in the interest of co-operative society.”

21.9 It is noticed from the said provision that it employs, like in Gujarat Act, the words “all the powers of functions of the committee”

21.10 It was, after considering both the provisions i.e. Section 30 as well as Section 30-A of Karnataka Act, that Hon’ble Apex Court observed and held, inter alia, that:-

“In view of the language of the provision the administrator or special officer can take such action as is necessary and that he should conduct election with the members of the rolls but he is not vested with the power to enroll new members of the society.”

(emphasis supplied)

21.11 Therefore, the submission by learned Government Pleader cannot be accepted.

21.12 It is pertinent that in the decision by the Division Bench of Karnataka High Court, (which was under consideration before Hon’ble Apex Court in the cited case)

the Division Bench of Karnataka High Court had taken into account the provisions under Section 33(2) of Kerala Co-operative Societies Act. The difference which was noticed by Division Bench of Karnataka High Court was to the effect that under Kerala Act the administrator “has power to exercise all or any of the function of the committee” whereas in the Karnataka Act the administrator can “exercise all or any of the functions” of the committee and having noticed the said difference the Division Bench of Karnataka High Court held that the administrator or special officer under Karnataka Act has no power to enrol members. In its decision the Division Bench of Karnataka High Court had, while examining the provisions of Kerala Co-operative Societies Act observed, inter alia, that:-

"Accordingly, he is not entitled to enroll new members. But it has to be noted that the wording of Section 33(2) of the Kerala Co- operative [Societies Act](#) is slightly different from the wording of [Section 30](#) of the Act. In the Kerala Act, the Administrator of the functions of the committee. Moreover, as stated earlier, the difference in the authority vested in an Administrator and a Special Officer, as is made in Karnataka Act is not considered in the Kerala decision. the difference in the authority vested in an Administrator and a Special officer in the Karnataka Act, is very significant which is absent in the Kerala Act. In that view of the matter, the dictum laid down by the Division bench of Kerala High Court, cannot have any application while determining the comparative authority of an administrator and Special officer appointed under Section 30 and 30A of the Karnataka Act respectively."

21.13 The earlier quoted observations and the decision by Apex Court in above mentioned decision in case of K. Santharaj (supra) are rendered after considering the aforesaid aspects. Besides this, the provision of Kerala Co-operative Societies Act which was taken into consideration (i.e. Section 32(4) of Kerala Act) is for purpose of comparative examination and ready reference, quoted below :-

“Section 32(4) of the Act

The Committee or administrator or administrators so appointed shall, subject to the control of the Registrar and to such instructions as he may be from time to time give, have power to exercise all or any of the functions of the committee or of any officer the society and take such action as may be required in the interest of the society.

22. At this stage it is relevant to mention that similar issue which arose in light of the provisions under Kerala Co-operative Societies Act also fell for consideration before Hon'ble Apex Court after the Apex Court considered the issue in light of the provisions under Karnataka Act, in the above referred decision in case of K. Shantharaj (supra).

22.1 The issue in light of the provisions under Kerala Act came up for consideration before Hon'ble Apex Court in case of Joint Registrar of Co-operative Societies, Kerala vs.

T.A. Kuttappan (2000[6] SCC 127). In the said subsequent decision in case of Joint Registrar (supra), Apex Court also considered previous decision in case of K. Shantharaj (supra).

22.2 The Apex Court, after considering the provisions under Karnataka Co-operative Societies Act as well as Kerala Co-operative Societies Act, observed, inter alia, that on careful analysis of the said provisions it becomes clear that the administrator appointed by the committee of the society cannot have the power to enrol new members and such issue ought not to be decided merely by indulging in an exercise on semantics in ascertaining the meaning of the expression have “power to exercise all or any of the functions”.

22.3 In the said subsequent decision in case of Joint Registrar of Co-operative Societies, Kerala (supra) Hon'ble Apex Court further observed that whether the authority is discharging “function” or exercising “power” will have to be ascertained with reference to the nature of the function or the power discharged or exercised and what is

necessary to be kept in mind is nature of function or power exercised by the custodian and not the manner in which it is done.

22.4 Referring to the provision under Section 30-A of Karnataka Act which empower the Special Officer to exercise and perform all the power and function of committee of the society, Hon'ble Apex Court observed and clarified that having considered the provision and expressed the view in case of K. Shantaraj (supra) there was no need to explore the difference in the meaning of the expressions "have power to exercise all or any of the functions of the committee" and "exercise all or any of the functions of the society". Hon'ble Apex Court further clarified that the said expressions are not different and are in substance one and the same and difference in language will assume no importance.

22.5 In this context it would be relevant at this stage to take into account the observations by Hon'ble Apex Court in the said subsequent decision in case of Joint Registrar of Co-operative Societies, Kerala (supra). In the said decision,

Hon'ble Apex Court observed that:-

"1. It was contended before the Court that the earlier decision in *George v. Joint Registrar*, 1985 Ker LT 836, is no longer good law in the light of the decision of this Court in *K. Shantharaj v. M. L. Nagaraj*, (1997) 6 SCC 37 : (1997 AIR SCW 2938 : AIR 1997 SC 2925). The Full Bench of the High Court, after referring to the earlier decision of the High Court and the decision of this Court in *K. Shantharaj's* (supra) held that the admission of a member is not mere 'function' of the Committee, but is a 'power' of the Committee to admit members or not as provided in Bye Laws of the Society. The Committee can exercise only certain functions and not any powers and, therefore, the administrator or a Committee appointed as aforesaid has no power to enrol new members. This order is in challenge in these appeals.

3. The question whether an administrator appointed during supersession of a Committee of Management of a Co-operative Society can enrol new members is no longer *res integra*. When an identical question came up before this Court for consideration in *K. Shantharaj's* case (1997 AIR SCW 2938 : AIR 1997 SC 2925) (supra), this Court held that from the language of Sections 30 (which is similar to Section 32(4) of the Act) and 30-A of the Karnataka Co-operative Societies Act, 1959, it would be clear that the administrator, subject to control of Registrar exercise all or any of the functions of the society, and the Special Officer subject to control of the State Government and the Registrar exercise and perform all the powers and functions of the committee of the society and in the interest of the society can take such action as is necessary for proper functioning of the society as per law. He should conduct elections as is enjoined thereunder, that is, he is to conduct election with the members as on the rolls and by necessary implication, he is not vested with power to enrol new members of the society. In the light of this clear enunciation of law the view taken by the High Court appears to be correct.

4. However, the learned Addl. Solicitor General appearing for the appellants, submitted that there is difference in language between the provisions of the Karnataka Co-operative Societies Act and the Act which was, in fact, noticed by the Karnataka High Court and, therefore, submitted that the decision in *K. Shantharaj's* case (1997 AIR SCW 2938 : AIR 1997 SC 2925) (supra) is not applicable to the facts of this case. For the purpose of appreciation of this submission, it is necessary to set out the relevant provisions of the Karnataka Act and the Kerala Act :

.....

7.If we carefully analyse the provisions of the Act, it would be clear that the administrator or a Committee appointed while the Committee of Management of the Society is under supersession cannot have the power to enrol new members and such a question ought not to be decided merely by indulging in an exercise on semantics in ascertaining the meaning of the expression have "power to exercise all or any of the function...". Whether an authority is discharging a function or exercising a power will have to be ascertained with reference to the nature of the function or the power discharged or exercised in the background of the enactment. Often we do express that functions are discharged or powers exercised or vice versa depending upon the context of the duty or power enjoined under the law if the two expressions are inter-changeable.What is necessary to bear in mind is that nature of function or power exercised and not the manner in which it is done. Indeed this Court, while considering the provisions of Section 30-A of the Karnataka Act, which enabled a Special Officer appointed to exercise and perform all the powers and functions of the Committee of Management or any officer of the Co-operative Society (and not merely functions), to the view that the administrator or a special officer can exercise powers and functions only as may be required to the interests of the Co-operative Society. In that context, it was stated that he should conduct elections as enjoined under law, that is, he is to conduct elections with the members as on the rolls and by necessary implication, he is not vested with power to enrol new members of the society.We may add that a Co-operative Society is expected to function in a democratic manner through an elected Committee of Management and that Committee of Management is empowered to enrol new members. Enrolment of new members would involve alteration of the composition of the society itself and such a power should be exercised by an elected Committee rather than by an administrator or a Committee appointed by the Registrar while the Committee of Management is under supersession. This Court has taken the view, it did, bearing in mind these aspects, though not spelt out in the course of the judgment.Even where the language of Section 30-A of the Karnataka Act empowered a special officer to exercise and perform all the powers and functions of Committee of Management of a Co-operative Society fell for consideration, this Court having expressed that view, we do not think, there is any need to explore the difference in the meaning of the expressions "have power to exercise all or any of the functions of the Committee" in the Act and "exercise all or any of the functions of the Committee" in the Karnataka Act as they are not different and are in substance one and the same and difference in language will assume no importance. What is of significance is that when the Committee of

Management of the Co-operative Society commits any default or is negligent in the performance of the duties imposed under the Acts, rules and the bye-laws, which is prejudicial to the interest of the society, the same is superseded and an administrator or a Committee is imposed thereon. The duty of such a Committee or an administrator is to set right to default, if any, and to enable the society to carry on its functions as enjoined by law. Thus, the role of an administrator or a Committee appointed by the Registrar while the Committee of Management is under supersession, is, as pointed out by this Court, only to bring on an even keel a ship which was in doldrums. If that is the objective and is borne in mind, the interpretation of these provisions will not be difficult". (emphasis supplied)

22.6 In view of the facts of the case and rival submissions it would be appropriate to note from the above quoted observations by Apex Court, that in the said decision in case of Joint Registrar (supra) it is observed, inter alia that:-

"Even where the language of Section 30-A of the Karnataka Act empowered a special officer to exercise and perform all the powers and functions of Committee of Management of a Co-operative Society fell for consideration, this Court having expressed that view, we do not think, there is any need to explore the difference in the meaning of the expressions "have power to exercise all or any of the functions of the Committee" in the Act and "exercise all or any of the functions of the Committee" in the Karnataka Act as they are not different and are in substance one and the same and difference in language will assume no importance."

22.7 Having observed thus, Hon'ble Apex Court further clarified that the view taken in the decision in case of K.Shantharaj (supra) in light of the provisions under Karnataka Act, so far as question about the custodian's power to enrol new members is concerned, is relevant and

applicable in case of provisions under Kerala Act as well.

On this count, Apex Court observed, inter alia, that:-

“8. Thus, we are of the view that this Court in K. Shantharaj's case (1997 AIR SCW 2938 : AIR 1997 SC 2925) (supra) took the view that an administrator or a special officer in the Karnataka Act is not vested with the power to enrol new members of the Co-operative Society in this context. While reiterating that view in regard to the Kerala Act, we afford further reasons to support the said view and dismiss these appeals, though for reasons different from those expressed by the High Court. However, in the circumstances of the case, there shall be no orders as to costs.”

22.8 The view expressed by this Court in present decision with regard to the provisions under Section 74-D(3) of the Act is supported and fortified by above quoted observations by Apex Court in case of K. Shantharaj (supra) which are further emphasized by Apex Court in subsequent decision in case of Jt. Registrar (supra).

23. In view of the foregoing discussion and in light of the observations by Apex Court it becomes clear that the power to decide applications seeking membership with a society has to be exercised in democratic manner by democratically elected body representing the members of the society and their views and the said power must be exercised in accordance with the bye-laws of the society and for the purpose of advancing object and interest of

the society. It also becomes clear that the decision and action of enrolling new members alters the composition of a society, and that therefore it is always appropriate and just that the power to decide the application seeking enrollment of member is decided by the duly elected body / committee comprising representatives of members from all classes / categories and constituted in democratic manner, and not by any outsider i.e. a person / committee of persons in name and style of “custodian” appointed by the Registrar.

24. In light of the above discussions and for the foregoing reasons the petitioner's contention against the custodian's proposed action of considering and deciding requests / applications seeking membership with the society is required to be accepted and is accordingly accepted. To that extent the petition deserves to be accepted and granted. Consequently, to the said extent this petition is accepted and granted. The custodian appointed under Section 74-D in the petitioner bank is restrained and prohibited from enrolling new members in the petitioner bank.

With the aforesaid clarifications the petition is allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent.

Orders accordingly.

Suresh*

Sd/-
(K.M.THAKER, J.)