Daman Singh and Others

Vs

State of Punjab and Others

Civil Appeals Nos. 206, 2861, 250, 320, 1607, 3548, 379, 769, 1280 of 1979 and 1476-1483 of 1985

(CJI Y. V. Chandrachud, D. A. Desai, O. Chinnappa Reddy, E. S. Venkataramiah, Ranganath Misra JJ)

04.04.1985

JUDGMENT

O. CHINNAPPA REDDY, J. -

1. The opinion of the High Courts appears to be unanimous on the question of the validity of the relevant provisions of the Cooperative Societies Acts in force in their respective States providing for the compulsory amalgamation of cooperative societies. The full Benches of the High Courts of Andhra Pradesh, Karnataka, Punjab and Haryana and Division Bench of the Patna High Court (Seethapathi Nageswara Rao v. Govt. of A.P., AIR 1978 AP 121 (FB) : (1978) 1 Andh WR 209 : 1977 Audh LT 700; H. Puttappa v. State of Karnataka, AIR 1978 Kant 148 (FB) : (1978) 1 KLJ 302; Amerheri Coop. Agricultural Service Society v. State of Haryana, 1976 Punj LJ 302 (FB) : AIR 1976 P&H 345; Harakh Bhagat v. Asstt. Registrar, Coop. Societies, AIR 1968 Pat 211 : ILR 46 Pat 1068. There is also an excllent discussion by Vaidya, J. in ILR 1972 AP 1140) have upheld the validity of such provisions. But litigants, particularly those who are in a position to command funds are rarely deterred by such unanimity of judicial opinion. So, several Cooperative Societies of Punjab have chosen to prefer appeals to this Court questioning the vires of Section 13 (8) of the Punjab Cooperative Societies Act which provides for the compulsory amalgamation of cooperative societies if it is necessary in the interests of the cooperative societies. The questions raised are simple and straight and are capable of but single (sic simple), straightforward answers. Unfortunately a large number of appeals have piled up in this Court on these questions and we are told that a larger number of writ petitions said to involve these or similar questions are pending in the various High Courts in the country awaiting the decision of this Court. We earnestly hope that this decision will put an end to this branch of the litigation and will serve to push forward the cooperative movement. We think it is needless to refer to the nature and history of the cooperative movement except to say that the promotion of the cooperative movement is one of the Directive Principles of State Policy (see Article 43 of the Constitution). As usual in these and such cases, the counter-affidavits, where they have been filed, leave much to be desired and are least helpful. But, as pointed out by us often enough, the vires of legislation is not to be decided on the basis of affidavits of underlings of the executive who can hardly be described as authorised to speak for the legislature. But even from the meager material available to us from the record, it is obvious that the provisions relating to amalgamation of cooperative societies in different State enactments were introduced pursuant to a policy decision arrived at an All Indian Conference. This is evident from the circumstance that these provisions were enacted by the various State legislatures roughly at about the same time. A reference to the policy decision at an All India Conference may be found in the Full Bench Judgments of the Andhra Pradesh and Karnataka High Courts. It is necessary to say

more on this aspect of the case.

2. The Punjab Cooperative Societies Act, 1961 which replaced the earlier Act was enacted, so it is stated in the Statement of Objects and Reasons. "In pursuance of the policy of the Government of India to simplify cooperative law and procedure in order to remove all bottlenecks in the way of development of cooperative movement in the country". in is further stated in the Statement of Objects and Reasons,

The important provisions, such as relating to change of liability, amalgamation of societies, splitting up of societies, settlement of disputes and winding up of societies, etc. were found to be of a dilatory and complicated nature, and, therefore, creating problems in the day-to-day working of the cooperative societies. Special care has, therefore, been taken to cut out all unnecessary delays particularly in societies and the provisions to this effect have been simplified. Another approach influencing a change is to make a cooperative law comprehensive. Moreover consistent with our national policy to promote the organisation and growth of the cooperative societies in the various fields of economic activity, more difficult and complicated forms of cooperative society are to spring up as compared to Cooperative Credit Societies ....

> Section 2(c) defines "cooperative society" as meaning "a society registered or deemed to be registered under this Act". Chapter II (Sections 3 to 14) deals with registration of cooperative societies. In particular Section 8 prescribes the conditions prerequisite it registration and authorises the Registrar to register a society and its by-laws if he is satisfied that the conditions are fulfilled. Section 13 provides for the amalgamation, transfer of assets and liabilities and division of cooperative societies. While Section 13(2) provides for voluntary amalgamation, Section 13(8) provides for compulsory compulsory amalgamation if the Registrar is satisfied that it is necessary in the interests of the cooperative societies. Section 13(9)(a) requires the Registrar to send a copy of the proposed order to the societies concerned and the creditors and Section 13(9)(b) requires the Registrar to consider the objections received from the societies concerned or from any member or creditor of such societies. Section 13(11) gives to the member or creditor who has objected to the proposed order under sub-section (9) the option of withdrawing his share, deposits or loans as the case may be on an application to be made to the society to which his share, deposits or loans stand allocated by virtue of the order under sub-section (8) within a period of 30 days from the date of such order. It is the vires of these provisions, that is in question in these appeals and it will be useful to extract at this juncture, sub-sections (8), (9), (10) and (11) of Section 13 of the Punjab Cooperative Societies Act.

They are as follows :

#13(1) * * * (2) * * * (3) * * * (4) * * * (5) * * * (6) * * * (7) * * *##

> (8) Where the Registrar is satisfied that it is necessary in the interest of the cooperative society or cooperative societies that -
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> (i) any cooperative society be divided to form two or more cooperative societies; or
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> (ii) one or more cooperative societies be amalgamated with any other cooperative

society; or

(iii) two or more cooperative societies be amalgamated to form a new cooperative society, then, notwithstanding anything hereinbefore contained, the Registrar may, after consulting the financing institution, if any, provide for -

(a) the division of that cooperative society into two or more cooperative societies; or

(b) the amalgamation of the society or societies -

(i) with any other cooperative society, or

(ii) to form a new cooperative society, with such constitution including representation on the committee, property rights, interests, liabilities, duties and obligations, as may be specified in the order.

(9) No order shall be made under sub-section (8), unless -

(a) a copy of the proposed order has been sent under certificate of posting to the society or societies concerned and the creditors;

(b) the Registrar has considered the objections received from the society or societies concerned or form any member or creditor of such society or societies within such period, being not less than fifteen days from the date of posting of the proposed order, as may be specified by the Registrar in this behalf in the proposed order.

(10) The Registrar may, after considering the objections referred to in sub-section (9), make such modification in the proposed order as he may deem fit and the order may contain such incidental, consequential and supplies provisions as the Registrar may deem necessary to give effect to the same.

(11) A member or creditor who had objected to the proposed order under sub-section (9), shall have the option of withdrawing his share, deposits or loans as the case may be, on an application which shall be made to the society to which his share, deposit or loan stands allocated by virtue of the order under sub-section (8), within a period of thirty days of the date of such order.

#(12) * * *##

Chapter V of the Act deals with privileges of cooperative societies and in particular Section 30 states,

The registration of cooperative society shall render it a body corporate by the name under which it is registered having perpetual succession and common seal, and with power to hold property, enter into contract, institute and defend suits and other legal proceedings and to do all things necessary for the purpose for which it is constituted.

3. The foremost submission of Shri. M. K. Ramamurthi, learned counsel for the petitioners was that any law providing for the amalgamation of cooperative society directly contravenes Article 19(1)(c) which guarantees to all citizens the right to form associations or unions. According to Shri

Ramamurthi, the right of a citizen to form a society or to be a member of a certain cooperative society is interfered with if the society of which he has become a member is amalgamated with another society consisting of members with whom he may not be willing to be associated. Article 31-A(1)(c) furnishes a complete answer to this submission. It provides that no law providing for the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations shall be deemed to be void on the ground that it is inconsistent or takes away or abridges any of the rights conferred by Article 14 or Article 19. Shri Ramamurthi attempted to cross the stile by arguing that cooperative societies were not corporations within the meaning of that expression in Article 31-A(1)(c). According to him, the Constitution discloses a scheme which separates cooperative societies from corporations, and 'never the twain shall meet'. To substantiate his submission, he invited our attention to Entries 43 and 44 of List I and Entry 32 of List II of the Seventh Schedule to the Constitution. He also read out to us the Statement of Objects and Reasons and the Joint Select Committee's Report relating to the Constitution (Fourth Amendment) Act, 1955 by which clause (c) of Article 31-A(1) was introduced. His submission was that the legislative intent was merely to render legislation providing for amalgamation of companies and statutory corporations alone immune to challenge on the ground of conflict with the fundamental rights guaranteed by Articles 14 and 19. According to him the protection afforded by Article 31-A(1)(c) was not available and was never intended to be made available to cooperative societies, since the expression 'corporations' did not comprehend cooperative societies in it expanse.

4. We are unable to find any justification for giving such a limited or narrow interpretation to the expression 'corporations' occurring in Article 31-A(1)(c). On the other hand, we think that the very requirement of public interest or proper management of the corporation mentioned in Article 31-A(1)(c) requires the expression to be given a broad interpretation since there can be no higher interest than the public interest. We do not however desire to quibble with rules of construction since we propose to examine what a 'corporation' means and comprehends ordinarily and in the scheme of the Constitution.

5. What is a corporation ? In Halsbury's Laws of England, Fourth Edition, Volume 9, Paragraph 1201, it is said,

A corporation may be defined as a body of persons (in the case of a corporation aggregate) or an office (in the case of a corporation sole) which is recognised by the law as having a personality which is distinct from the separate personalities of the members of the body or the personality of the individual holder for the time being of the office in question.

A corporation aggregate has been defined in paragraph 1204 as,

> [A] collection of individuals united into one body under a special denomination, having perpetual succession under an artificial form, and vested by the policy of the law with the capacity of acting in several respects as an individual, particularly of taking and granting property, of contracting obligations and of suing and being sued, of enjoying privileges and immunities in common and of exercising a variety of political rights, more or less extensive, according to the design of its institution, or the powers conferred upon it, either at the time of its creation or at any subsequent period of its existence.

This Court in the Board of Trustees, Ayurvedic and Unani Tibia College, Delhi v. State of Delhi (1962 Supp 1 SCR 156 : AIR 1962 SC 458) was required to answer the question whether the Board

of trustees which was originally registered under the Societies Registration Act, 1860 and a new Board of trustees which was incorporated by an Act of the legislature called the Tibbia College Act, 1952 by which the old Board was dissolved and a new Board constituted were corporations. The Court held that the old Board was not but the new Board was. Posing the question what is a corporation, the Court answered it with the statements Laws of England already extracted by us and added,

A corporation aggregate has therefore only one capacity, namely, its corporate capacity. A corporation aggregate may be a trading corporation or a non-trading corporation. The usual examples of a trading corporation are (1) charter companies, (2) companies incorporated by special Acts of parliament, (3) companies registered under the Companies Act, etc. Non-trading corporations are illustrated by (1) municipal corporations, (2) district boards, (3) benevolent institutions, (4) universities etc. An essential element in the legal conception of a corporation is that its identity is continuous, that is that the original member or members and his or their successors are one. In law the individual corporators, or members, of which it is composed are something wholly different from the corporation itsel; for a corporation is a legal persona just as much as an individual. Thus, it has been held that a name is essential to a corporation; that a corporation aggregate can, as a general rule, only act or express its will by deed under its common seal; that at the present day in England a corporation is created by one or other of the two methods, namely, by Royal Charter of incorporation from the Crown or by the authority of Parliament that is to say, by or by virtue of statute. There is authority of long standing for saying that the essence of a corporation consists in (1) lawful authority of incorporation, (2) the persons to be incorporated, (3) a name by which the persons are incorporated, (4) a place, and (5) words sufficient in law to show incorporation. No particular words are necessary for the creation of a corporation; any expression showing an intention to incorporate will be sufficient.

The Court then noticed the various provisions of the Societies Registration Act, 1860 which according to them contained no sufficient words to indicate an intention to incorporate but on the contrary contained provisions showing that there was an absence of such intention. Therefore, they observed, "We have, therefore, come to the conclusion that the provisions aforesaid do not establish the main essential characteristic of a corporation aggregate, namely, that of an intention to incorporate the society". Considering next the question whether the new Board was a corporation, the Court had no difficulty in answering the question with reference to sub-section (2) of Section 3 which stated that the Board shall be a body corporate having perpetual succession and common seal and shall by the said name sue and be sued. The Court observed, "Sub-section (2) of Section 3 says in express terms that the new Board constituted under the impugned Act is given a corporate status; in other words, the new Board is a corporation in the full sense of the term".

6. We have already extracted Section 30 of the Punjab Act which confers on every registered cooperative society the status of a body corporate having perpetual succession and a common seal, with power to hold property, enter into contracts, institute and defined suits and other legal proceedings and to do all things necessary for the purposes for which it is constituted. There cannot, therefore, be the slightest doubt that a cooperative society is a corporation as commonly understood. Does the scheme of the Constitution make any difference ? We apprehend not.

7. Entry 43 of List I of the Seventh Schedule is as follows :

> 43. Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including cooperative societies.

Entry 44 of the same list is as follow :

> 44. Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities.

Entry 32 of List II is as follows :

> 32. Incorporations, regulations and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; cooperative societies.

According to Mr Ramamurthi the express exclusion of cooperative societies in Entry 43 of List I and the express inclusion of cooperative societies in Entry 32 of List II separately and apart from but along with corporations other than those specified in List I and universities, clearly indicated that the constitutional scheme was designed to treat cooperative societies as institutions distinct from corporations. On the other hand one would think that the very mention of cooperative societies both in Entry 43 of List I and Entry 32 of List II along with other corporations gave an indication that the Constitution makers were of the view that cooperative societies were of the same genus as other corporations and all were corporations. In fact the very express exclusion of cooperative societies from Entry 43 of List I is indicative of the view that but for such exclusion, cooperative societies would be comprehended within the meaning of expression "corporations".

8. The Statement of Objects and Reasons of the Constitution (Fourth Amendment) Act and the Report of the Joint Select Committee relating thereto do not carry Mr Ramamurthi's argument any further. The Statement of Objects and Reasons says, in relation to Article 31-A(1)(c),

The reforms in company law now under contemplation like the progressive elimination of the managing agency system, provision for the compulsory amalgamation of two or more companies in the national interest, the transfer of an undertaking from one company to another, etc., require to be placed above challenge.

The Report of the Joint Select Committee, insofar as it is relevant, says,

In sub-clauses (c) and (d), the word "corporations" has been substituted for the word "companies" in order to cover statutory corporations as well as companies.

According to Mr Ramamurthi, the Statement of Objects and Reasons and the Report of the Joint Select Committee show that initially it was proposed to give protection to legislation pertaining to amalgamation of companies only but later it was thought fit to extend the protection to statutory corporations also and therefore the expression "corporation" was substituted in the Act in the place of the expression "companies" which had been mentioned in the Bill. There is no substance in this submission. It was obviously thought by the Parliament that the protection should not be confined to companies only but should extend to all corporations which would naturally include statutory corporations. The more generic expression "corporations" was used so that all companies, statutory corporations and the like may be brought in. There is no indication that notwithstanding the use of the generic expressions "corporations" the expression was intended to exclude corporations other than companies and statutory corporations. Parliament apparently chose the broader expression not with a view to limit the protection of the legislation relating to amalgamation to any class of corporations but with a view to protect legislation pertaining to amalgamation of all classes of corporations.

9. The answer to the principal question raised by Shri Ramamurthi appears to us to be so plain as to merit no further discussion. We must however notice here Damyanti Naranga v. Union of India ((1971) 3 SCR 840 : (1971) 1 SCC 678) on which reliance was placed by the learned counsel on the basis that Article 31-A(1)(c) did not afford any protection to Section 13(8), (9) etc. That case has no application whatever to the situation before us. It was a case where an unregistered society was by statute converted into a registered society which bore no resemblance whatever to the original society. New members could be admitted in large numbers so as to reduce the original members to an insignificant minority. The composition of the society itself was transformed by the Act and the voluntary nature of the association of the members who formed the original society was totally destroyed. The Act was, therefore, struck down by the Court as contravening the fundamental right guaranteed by Article 19(1)(f). In the cases before us we are concerned with cooperative societies which from the inception are governed by statute. They are created by the statute, they are controlled by statute and so, there can be no objection to statutory interference with their composition on the ground of contravention of the individual right of freedom of association.

10. The Second submission of the learned counsel was that Section 13(8) of the Punjab Cooperative Societies Act provided for amalgamation of cooperative societies if the Register was satisfied that it was necessary to do so in the interest of the cooperative societies whereas the Constitutional protection was available only if the legislation was in the public interest or in order to secure the proper management of any of the corporation. According to the learned counsel the protection of Article 31-A(1)(c) was, therefore, not available to Section 13(8) of the Punjab Cooperative Societies Act as the interest of cooperative society may not necessarily be in the public interest or for the proper management of the society. This submission is no more than a play with words. The very philosophy and concept of the cooperative movement is impregnated with the public interest and the amalgamation of cooperative societies when such amalgamation is in the interest of the cooperative societies is certainly in the public interest or can only be to secure the proper management of the societies. The argument of the learned counsel is an attempt at hair-splitting and is rejected.

11. The next submission of the learned counsel was that Section 13(8), (9) and (10) did not make express provision for the issue of notice to the members of the concerned cooperative societies and were, therefore violative of the principles of natural justice. He argued that in the absence of any provision, the rules of natural justice may be read into the provisions and notice to the members of the affected societies was imperative. Otherwise, he argued, members of one society would be formed against their will and without being heard to associate themselves with members of another society. We have no hesitation in rejecting this submission also. Once a person become a member of a cooperative society, he loses his individually qua the society and he has no independent rights except those given to him by the statute and the by-laws. He must act and speak through the society or rather, the society alone can act and speak for him qua rights or duties of the society as a body. So if the statute which authorises compulsory amalgamation of cooperative societies provides for notice to the societies concerned, the requirement of natural justice is fully satisfied. The notice to the society will be deemed as notice to all its members. That is why Section 13(9)(a) provides for the issue of notice to the societies and not to individual members. Section 13(9)(b), however, provides the members also with an opportunity to be heard if they desire to be heard. Notice to individual members of a cooperative society, in our opinion, is opposed to the very status of a cooperative society as a body corporate and before, unnecessary. We do not consider it necessary to further provide the matter except to point out that a member who objects to the proposed amalgamation within the prescribed time is given, by Section 31(11), the option to walk out, as it were, by withdrawing his share, deposits or loans as the case may be.

12. Another submission of the learned counsel was that the notification authorising the Assistance Registrar of cooperative societies to exercise all the powers of Registrar under the Act could enable the Assistant Registrar to perform only such functions as the Registrar was authorised to perform under the Act as on the date of the notification. The Assistant Registrar would not be entitled to exercise the power entrusted to the Registrar by amendment of the Act subsequent to the date of the notification, unless a fresh notification was issued. We do not think that a fresh notification would probably be necessary where the Assistant Registrar was authorised to perform certain specified functions only of the Registrar was authorised to perform certain specified functions only of the Registrar. That is not claimed to be the situation here.

13. The final submission of Shri Ramamurthi was that several other questions were raised in the writ petition before the High Court but they were not considered. We attach no significance to this submission. It is not unusual for parties and counsel to raise innumerable grounds in the petitions and memoranda of appeal etc., but, later, confine themselves, in the course of argument to a few only of those grounds, obviously because the rest of the grounds are considered even by them to be untenable. No party or counsel is thereafter entitled to make a grievance that the grounds not argued were not considered. If indeed any ground which was argued was not considered it should be open to the party aggrieved to draw the attention of the court making the order to it by filing a proper application for review or clarification. The time of the superior courts is not to be wasted in enquiring into the question whether a certain ground to which no reference is found in the judgment of the subordinate court was argued before that court or not ?

14. Shri Arvind Kumar, learned counsel for one of the appellants very airily made a submission that Article 31-A(1)(c) introduced by the Constitution (Fourth Amendment) Act and Section 13 (8) of the Punjab Cooperative Societies Act offended the basic structure of the Constitution as they affected the dignity of the human being and were therefore void. We find ourselves unable to appreciate how the dignity of a human being can even remotely be said to be affected by the amalgamation of a cooperative society of which an individual is a member with another cooperative society. We expect counsel appearing in this Court, particularly when they appear before the Constitution Bench, to avoid advancing such totally unsustainable propositions. The time of this Court is public time and as the mountainous arrears show the time is becoming increasingly dear and precious. We can only appeal to counsel to carefully examine with a greater sense of responsibility the submissions which they propose to make before actually advancing them in court. All the appeals are dismissed with costs which we quantity each at Rs. 2500 in each appeal.

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