

ANDHRA PRADESH HIGH COURT

S. Nageswara Rao

Vs.

Govt. of A.P

W.P. Nos. 1688 etc. of 1977

(S. Obul Reddi, C.J., Alladi Kuppuswami, Ramachandra Raju, Jeevan Reddy and Amareswari, JJ.)

07.10.1977

JUDGMENT

S. Obul Reddi, C.J.

1. In this batch of writ petitions, the constitutional validity of Section 15-A of the Andhra Pradesh Co-operative Societies Act, as inserted by Act 6 of 1977, is questioned on the ground that the said section is *ultra vires* Articles 14, 19 and 31 of the Constitution of India. As the question involved is common to all the petitions, we may refer to the facts stated by the petitioners in W. P. Nos. 1892, 1929, 1732, 2025 and 2316 of 1977.

2. In W. P. No. 1892 of 1977, the petitioner is Sri Chodeswaraswami Co-operative Credit Society, Sanipalli lanka in Amalapuram taluk, East Godavari district, represented by its President, Bobba Janakiramiah. The respondents are (1) Government of Andhra Pradesh, represented by its Secretary, Food and Agriculture Department (2) The District Collector, East Godavari District and (3) the Divisional Co-operative Officer, Amalapuram, East Godavari district. The petitioner-society was registered in the year 1946 and the area of operation of the society is Sanapalli lanka village and its hamlet Moolapalem. The population of the said village is about 6,500. The Ayacut of the village is about 2,096 acres. The society consists of 250 members. The sanctioned limit of the credit which the society can disburse to its members is Rs. 2,22,708. By the end of June, 1977. the society was in a position to extend credit facilities, to its members in about Rs. 1,24,000. The credit facilities provided by the society to its members so far came to Rs. 1,00,000. The Andhra Pradesh Legislature enacted Act 6 of 1977 substituting the impugned Section 15-A of the Andhra Pradesh Co-operative Societies Act (hereinafter referred to as the Act). Invoking the powers under Section 15-A conferred upon the Registrar, the Divisional Co-operative Officer (3rd respondent) issued a notice to the petitioner-society dated 17-5-1977 proposing the merger of Nondukudur Co-operative Credit Society in the petitioner-Society and called for objections or suggestions, if any, within seven days from the date of receipt of the notice. The petitioner-society submitted a reply dated 22-5-1977 to the 3rd respondent stating that it would not be in the interests of the petitioner- society, which is a viable one, to merge it with the Kondukudur society. Ignoring the objections raised by the petitioner-

society, the 3rd respondent directed the merger of the petitioner-society with the Kondukudur society and the same was published in the District Gazette of East Godavari dated 30-5- 1977. The petitioner then submitted a representation to the Collector, East Godavari, protesting against the said merger with no result. According to the petitioner, the provisions of Section 15-A and G.O.Ms. No. 45, Food and Agriculture (Co-op. IV) Department dated 25-1-1977 and G.O.Ms. No. 155, Food and Agriculture (Co-op. IV) Department dated 11-3-77 confer arbitrary powers on the 'Registrar' i.e., the 3rd respondent and are *ultra vires* the provisions of Articles 14 and 19 of the Constitution.

3. W. P. No. 1929 of 1977 is filed by the President, Muramanda Co-operative Rural Bank Ltd., and the Directors of the Rural Bank. Their case is that they were elected to the Managing Committee at a General Body meeting of the Bank convened for the purpose of electing the Managing Committee of the said bank for the period 11-6-75 to 10-6-1978 and were managing the affairs of the bank since then. There are no complaints against the management and as such they are entitled to continue as members of the Managing Committee till 10-6-1978. The third respondent, in exercise of his powers conferred upon him under Section 15-A (2) of the Act, issued proceedings dated 24-5-77 declaring the petitioner-bank as a viable bank. According to them the mere declaration that the bank is viable society under Section 15-A of the Act does not vest the 3rd respondent with the jurisdiction to appoint a person-in-charge to manage the affairs of the bank. By such a declaration, the managing committee of the bank ceases to exist only when some other known viable society or bank is merged or amalgamated with the bank. The official notification published by the 3rd respondent in the District Gazette, Special Supplement, dated 27th May, 1977, indicates that no other society was merged with the petitioner-bank. The third respondent appointed the 4th respondent as the person-in-charge to manage the affairs of the bank and it is said that the person-in-charge has assumed charge on 8-6-1977, the date on which this Court granted stay of the operation of the order dated 4-5-1977 superseding the Managing Committee.

4. Writ Petition No. 1732 of 1977 is filed by the President of the Multipurpose Co-operative Society, Alampally, Vikarabad taluk, Hyderabad district, and nine others some of whom are members of the Board of Directors (Managing Committee) who were elected in accordance with the provisions of the Act on 28-9-1975 for a term of three years and two others who were members of the society, who have share capital. The Divisional Co-operative Officer, Vikarabad the 5th respondent, published a notice under Section 15-A in the Hyderabad District Gazette dated 7-4-1977 intimating that the petitioner- society was one of the viable societies and, therefore proposed to merge the petitioner-society with some other non-viable societies viz., (1) Anantsagar, (2) Gangaram and (3) Giritpalli. The said three societies are apparently indebted to various financial institutions and are not properly managed. The grievance of the petitioners is that no notice of the draft publication was served on the petitioner-society or its members and they did not even have the knowledge about the publication. They came to know on enquiry that, by the publication in the District Gazette dated 12-5-1977, the Divisional Co-operative Officer had passed final orders amalgamating the said three societies with the petitioner-society and that the headquarters of the petitioner-society should be shifted to Vikarabad. By the said notification, the Board of Directors of the society was also dissolved. An appeal was filed before the Collector which is still pending. According to them, the economic viability cannot be a ground for merging the weak societies thus affecting the working of a healthy society. Such an object and action pursuant to it is against the spirit of the co-operative movement and will put a premium on

inefficient and un-economic societies and deter persons from having efficient societies. It is also alleged that the notice and the final order published do not even show that the Divisional Co-operative Officer had conducted any enquiry or had any material before him which led him to form an opinion that some societies are viable and some are not viable. As no individual notices were issued, it was necessary that the material on which the conclusions were based should be published in the Gazette and made available to the concerned societies, so that objections could be filed and a challenge could be made to the provisional conclusions arrived at in the notice. The absence of any material before the Divisional Co-operative Officer vitiated the entire action taken by him.

5. In W. P. No. 2025 of 1977, the petitioner is the Makavaripalem Large Sized Co-operative Society Ltd., represented by the President. This society has a strength of about 2,300 members and has been functioning as potentially viable society catering to the needs of its members with a wide area of operation. In 1975, proceedings were initiated under Section 15 of the Act VII of 1964 to amalgamate Peddipalem Multipurpose Co-operative Society with the petitioner- society on the ground of its being an un-economical and non-viable unit and to subserve the co-operative spirit. That amalgamation was effected and registered on 30-7-1975. The petitioner-society thereafter after amended its bye-laws and representation for the merged society on the committee was also provided for. The enlarged society elected its members to the Managing Committee and their term is to expire on 30-9-1977. By resolution dated 25-6- 1977, the Central Bank, Vizianagaram, the financing bank, transferred the share capital of the merged Peddipalem M.P.C.S. Ltd., to the petitioner- society. The members of the merged society became the members of the petitioner-society and enjoyed the benefits all these years. According to the petitioners, the notice issued under the impugned provisions of Section 15-A intimating the merger of Peddipalem M.P.C.S. Ltd., with the petitioner-society is unwarranted and that the merger or amalgamation precisely for the reasons contained in Section 15-A of Act 6 of 1977 was a bygone affair. Therefore, any consequential proceedings under Section 15-A, which are in the offing, would be clearly illegal. The notice dated 1-5-1977 issued by the respondent, the Divisional Co-operative Officer, Yellamanchili, Visakhapatnam district, is attacked as being wholly illegal and without jurisdiction.

6. W. P. No. 2316 of 1977 is filed by the President of the Kodurupadu Service Co-operative Credit Society, Amalapuram taluk, East Godavari District. This society has 395 members and according to the petitioner, it is one of the best co-operative societies and one of the most efficient co-operative societies. In recognition of this fact, the Government contributed a share capital of Rs. 10,000 in its R. C. No. 113752/76 dated 18-4-1977. This society supplies fertilisers and pesticides to its members. It owns a tiller and gives it on rent to its members. The tiller was purchased out of the loan sanctioned by Konaseema Co-operative Central Bank Ltd., to which the society is affiliated. In 1974-75, the said co-operative society gave loans to a tune of Rs. 2,20,264 and in 1975-76 to a tune of Rs. 2,42,843. These loans consisted of short term agricultural operation loan of Rs. 1,65,543 and a revolving credit loan of Rs. 77,300. The grievance is that the 3rd respondent published in the District Gazette on 30-5-1977 a notification categorising this society as a non-viable society and proposing to merge it with Gudala Co-operative Credit Society. The petitioner-society filed objections stating that the categorisation is illegal and opposed to norms of law. The powers conferred under Section 15-A of the Act on the Registrar are of a far-reaching consequence. The so-called guidelines issued under Section 15-A by and under G.O.Ms, No. 155 completely absolve the Divisional Cotoperative Officer from the

facts and circumstances to enable him to act in an arbitrary fashion. In these and other batch of petitions, Section 15-A of the Act and G.O.Ms. Nos. 45 and 155 are assailed on the ground that they are *ultra vires* the provisions of Articles 14, 19 and 31 of the Constitution.

7. A common counter-affidavit is filed by the Assistant Secretary to Government, Food and Agriculture Department, on behalf of the respondents to this batch of writ petitions. It is denied that, in the Act, as amended, by Act 6 of 1977, there are two sets of provisions for amalgamation and liquidation of societies and that the earlier provisions provide a number of safeguards. It is also denied that no guidelines are provided under Section 15-A and it enables the Registrar to pick and choose between societies for exercising the powers under the impugned provisions, thus resulting in discrimination. According to the respondents, Section 15 only provides for division or amalgamation of the societies, if, in the opinion of the Registrar, it is necessary in the interests of the societies concerned or of the co-operative movement. That provision is generic in nature while the impugned Section 15-A contemplates amalgamation, merger or liquidation of a society, as the case may be, for the purpose of implementing the 'viability programme'. The reasons for introducing this Section 15-A by Act No. 6 of 1977 according to the respondents, are that there are large number of primary Agricultural Credit Societies in the State, majority of which are either dormant or not functioning properly. The agriculturist members by the area of operation of the dormant and non- viable societies are not able to avail of the agricultural credit provided by the Reserve Bank of India, through Co-operative Central Banks as these dormant and non-viable societies are not eligible for the loans required by the members due to their unsatisfactory functioning. These societies were proving to be bottle-necks in the free flow of agricultural credit from the Reserve Bank of India to the agriculturists. This aspect has been engaging the attention of the Reserve Bank of India and also the Government at the Centre and the States for considerable time. To obviate this difficulty, it was decided that the viability programme should be introduced with a view to make the primary Agricultural Credit Societies viable to meet the vast expansion of credit to support the intensive agricultural programme and also to enable them to take up marketing, distribution and other activities.

8. The Rural Survey Committee first emphasized the need for organising viable societies. Later, the Committee, in its report in 1960, stated that the main aims of future endeavour should be the promotion of viable units of co- operative service and business. In the opinion of the committee, a viable unit is one which might be expected within a reasonable time to render the more important of the services expected of credit societies both adequately and 'to as much as number of producers as possible without depending upon financial assistance from Government except for a limited period'. Then a conference of the State Ministers of Co-operation was held in 1964 and it was agreed at the Conference that the minimum criteria of viability should be (1) to appoint a full time paid Secretary, (2) to set up a regular office in building owned or hired, (3) to contribute to statutory and other reserves on the scales considered necessary, and (4) to pay a reasonable dividend. The Reserve Bank of India, in the year 1972, appointed a Study Team on over-dues of the Co- operative Credit Institutions and the Study Team recommended, in its report, that the State Governments should take urgent steps for revising norms of viability of primary agricultural credit societies, so that efforts are concentrated in increasing the credit business to at least two lakhs of rupees for a society and follow-up action is initiated to ensure reorganisation at the primary stage on the basis of the norm of potential business of Rs. 2 lakhs for a society and that was to be completed by the end of the Fifth Five-Year Plan. The viability programme is an All India Programme and its implementation is to be completed in two phases.

The first phase consists of conducting survey of existing primary agricultural credit societies and the second phase consists of amalgamation or merger of non-viable societies with viable societies. In Andhra Pradesh, the survey was first conducted in 1965 and then attempts were made to form viable societies. Very little progress was made in implementing the programme " because of the resistance from societies to amalgamation" . Therefore, the Government issued Ordinance No. 6 of 1976 and introduced Section 15-A to expedite the implementation of the National Programme of streamlining and making the co-operative credit structure viable. That Ordinance was replaced by the Andhra Pradesh Co-operative Societies Laws (Amendment) Act, 1976. Subsequently, on the basis of the recommendation of the Reserve Bank of India, the impugned Section 15-A was introduced by Act No. 6 of 1977 in substitution of the earlier Section 15-A. The respondents deny all the allegations in regard to the impugned provisions being violative of the fundamental rights under Articles 14, 19 and 31 of the Constitution. According to the respondents, the allegation that the procedure laid down under Section 15-A is drastic and onerous and that Section 15 of the Act provides for a number of safeguards is unfounded, as there is no substantial or qualitative difference between the procedure under Section 15-A and Section 15. Under Section 15-A, the procedure of issuing notice to the General Body, the Managing Committee and the creditors of the respective societies is dispensed with and instead, provision is made for the issue of a general notice by publication in the District Gazette with a view to facilitate expeditious implementation of the viability programme. Under Section 15-A (2), power is conferred upon the Registrar to make an order only after considering the objections or suggestions received by him with respect to his proposal either for merger or amalgamation or liquidation. An appeal is provided against the order of Registrar to take away the alleged sting of arbitrariness, if any, in the action of the Registrar. Even as regards the liquidation of the society, it is averred by the respondents that the procedure laid down under Sections 65 and 66 of the Act is applicable to societies liquidated under Section 15-A as Section 15-A specifically provides that the society to be liquidated shall be deemed to have been directed to be wound up under Section 64. The rights of members to withdraw their membership from viable societies in accordance with law are not taken away. It is left open to a member to withdraw his membership from the viable or potentially viable society in accordance with the provisions of law in this regard. Even as regards the creditors, the only creditor is the Cooperative Central Bank, which channels the loans provided by the Reserve Bank of India through the Andhra Pradesh State Co-operative Bank. Therefore, that allegation has no basis. Even as regards the guidelines, it is the case of the respondents that, apart from Section 15-A providing guidelines, the impugned G.Os. provide elaborate guidelines in clear terms. In short, the respondents maintain that the impugned Section 15-A is not open to attack either under Articles 14, 19 or 31 of the Constitution.

9. In order to examine whether Section 15-A violates the constitutional rights of the societies or the members of the societies, it is necessary to read Section 15 in juxtaposition with the impugned Section 15-A:

" Section 15. Power to direct division or amalgamation: (1) Where in the opinion of the Registrar, any division or amalgamation of the societies is necessary in the interests of societies or of the Co-operative movement, the Registrar shall, after consulting the financing bank to which such societies are indebted, call it, for any of the following purposes, upon the committee of such societies By notice in writing taining such

particulars As may be pre conscribed and within such time as may be specified in the notice, to so divide or amalgamate, as the case may be. (2) If, within the time specified in the notice referred to in sub section (1)The societies fail to comply with direction Of the Registrar, he shall, after giving an opportunity in the manner prescribed, to the general body the committee of such societies and the creditors thereof, to make their representation if any, by order notified in The Andhra Pradesh Gazette, direct the division or amalgamation, as the case may be, and issue the necessary certificate of registration. "

Section 15-A. (1) Notwithstanding anything in this Act or the rules made thereunder or the by-laws of the societies concerned if the Registrar is of the opinion that it its necessary to amalgamate or merge any society with any other such society or to liquidate namely: -

- (a) for ensuring economic viability of any or all the societies concerned; or
- (b) for avoiding overlapping or conflict of jurisdictions of societies in any area; or
- (c) for securing proper management of any society; or
- (d) in the interest of the co-operative movement in general and of co- operative credit structure in particular in the State taken as a whole or

(3) The order referred to in Sub-section (2) shall contain the particulars of constitution authorities property, rights and interests, liabilities duties and obligations Of the societies or society concerned. (4) Every member or creditor of The societies to be divided or amalga mated, who has objected to such division or amalgamation within the period specified shall be entitled to receive, On the issue of the order of division or amalgamation his share or interest or the amounts due to him.(5) On the issue of an order under eub-sec. (2) the provisions of Section 14 shall apply to the societies so divided Or amalgamated, as if they were divided Or amalgamated under Sections 12 and 13. (e) for any other reason in the public interest, he may identify the viable and the potentially viable societies which may be retained and the non-viable societies which may be merged or amalgamated or liquidated, as the case may be. and may, by a notice to Be published in the district gazette, specify the area of operation of each such viable or potentially viable society to be retained and each such non- viable society or societies to be liquidated or to be merged or amalgamated with any viable or potentially viable society indicated in the said notice and invite objections or suggestions from the societies or any members, depositors, creditors, employees or other persons concerned with the affairs of each such society to be received within fifteen days from the date of publication of the notice in the district gazette.

Explanation : For the purposes of this section, the term 'Registrar' means the person on whom the powers of the Registrar under this section are conferred under clause (n) of Section 2.

(2) The Registrar may, after having considered the matter in the light of any suggestions or objections which may be received by him within the period specified in sub section (1) and after making, if necessary such modification in the proposal as he may deem fit make an order and publish it in the district gazette.

- (3) On making such order:- (i) the liability of viable society or potentially viable society shall become limited;
- (ii) every non-viable society whether of unlimited or limited liability existing in the area of operation of viable society or potentially viable society shall be deemed to have merged with such societies as a limited liability society, unless it has been ordered to be liquidated;
- (iii) the registration of such merged society shall stand cancelled whereupon such society shall cease to exist as corporate body;
- (iv) the assets of such merged society shall stand transferred to and vest in, and all liabilities thereof shall devolve on, the viable society or potentially viable society with which it is merged;
- (v) every member of such merged society shall be deemed to be a member of the viable society and shall have all the rights, privileges and liabilities of the members of the viable society or of the potentially viable society, as the case may be, unless he withdraws his membership from the viable society or the potentially viable society in accordance with law;
- (vi) the committee of the viable society or the potentially viable society and the committee of the non-viable society merged therein shall stand dissolved, and thereupon, the Registrar shall nominate a committee or appoint a person or persons, wherever necessary to manage the affairs of the viable society or potentially viable society for a period not exceeding six months and he may, with the previous approval of the Government, extend such period beyond six months, so however, that the aggregate period including the extension shall not exceed one year;
- (vii) notwithstanding anything in this Act or in any other law, or in any contract, award or any other instrument for the time being in force, the provisions of the order of the Registrar under sub section (2) shall be binding on all societies and their members, depositors, creditors, employees and other persons having any rights, assets or liabilities in relation to all or any of the concerned societies; and
- (viii) the society to be liquidated shall be deemed to have been directed to be wound up under sub section (1) of Section 64.
- (4) The Registrar may, at any time before the expiration of the period specified in Clause (vi) of sub section (3), arrange for the calling of a general meeting for the election of a new committee in such manner as may be prescribed for every such viable society or potentially viable society.
- (5) Any person aggrieved by the order made and published under sub section (2) may file an appeal, within fifteen days from the date of publication of the order, to such authority as may be specified by the Government by an order made in this behalf and the appellate order passed under this sub-section shall be final :
- Provided that no order adversely affecting any person shall be passed under this sub-section unless such person has been given an opportunity of making his representation.
- (6) Notwithstanding anything in Section 77, no revision shall lie against any order passed

under this section.

(7) Notwithstanding anything in the T. P. Act, 1882 or the Registration Act, 1908, an order issued under this section shall be sufficient conveyance to transfer the assets and liabilities of the society or societies covered by an order passed under sub section (2) of this section.

(8) No suit or legal proceeding shall be instituted or maintained or continued in any civil Court in respect of any order made under this section."

10. The challenge to Section 15-A under Article 14 of the Constitution is directed by the counsel appearing for the petitioners on the following grounds:

(1) that Section 15-A covers the same field or operates on the same field as Sections 15 and 64 and as the impugned section provides a more drastic and summary procedure than the one prescribed in the other sections, it is void.

(2) Section 15-A vests unguided and uncanalised power in the Registrar in determining viable or non-viable societies and their consequent merger or liquidation so as to pick and choose the societies and therefore the impugned provision is arbitrary and inherently discriminatory.

(3) Section 15-A is also violative of Article 14 even without comparing it with Section 15, as it confers on an inferior officer wide powers in determining the potentially viable or otherwise of an agricultural credit society.

11. It may be noticed at the outset that the scope and ambit of Section 15 is different from the scope and: ambit of Section 15-A. Section 15 contemplates division or amalgamation of the societies. In the first place, it is significant to bear in mind that Section 15-A nowhere speaks of division of co-operative societies. The expression 'amalgamation' used in Section 15 is used with reference to two or more societies being amalgamated with the previous approval of the Registrar and by resolution of the society to decide to amalgamate and form a new society. The amalgamation referred to in Section 12 or Section 15 is voluntary where two or more societies pass a resolution and decide to amalgamate and form a new society. The question of forming a new society voluntarily by passing the resolutions with the previous approval of the Registrar is not contemplated under Section 15-A. As a consequence of amalgamation under Section 15, a new society comes into existence. Under Section 15-A though the expression 'amalgamation' is used in addition to the expression 'merger', amalgamation in effect means merger. The expression 'amalgamation' occurring in Section 15-A has to be understood in the context in which it has been used therein. No new society comes into existence as a result of merger or amalgamation of one or two more societies under Section 15-A. The meaning of the word 'amalgamation' has to be understood in the context of merger of non-viable societies with potentially viable or viable societies. The effect and result of such merger or amalgamation is only that non-viable society disappears but viable or potentially viable society remains in its form and it does not give rise to a new society being formed or coming into existence as a result thereof. Section 15-A has to be read as a whole to understand the scheme of the provision and when read as a whole, it is clear that the provision only deals with merger and liquidation and not with amalgamation as contemplated by Sections 12 to 14 and referred to in Section 15. So far as Section 64, which

deals with liquidation, is concerned, *prima facie* it may appear that there is overlapping. At this stage, we may refer to Section 64 (2) (c), which is relevant for the purposes of discussion;

" The Registrar may, of his own motion, and after giving the society an opportunity of making its representation, if any, make an order directing the winding up of a society where in the opinion of the Registrar, the society is conducting its affairs in a manner detrimental to the interests of its members or the promotion of the object for which it has been registered."

12. Section 15-A (1) (e) deals with identifying the viable and the potentially viable societies which may be retained and the non-viable societies which may be merged or liquidated, as the case may be. The Registrar cannot proceed to liquidate a society under Section 15-A (1) (e) unless he is able to identify that that particular society is non-viable, in which event, depending upon the facts of each case, it will be open to him to merge it with a viable society or a potentially viable society or liquidate it. He has to bear in mind the purposes referred to in clauses (a) to (e) of sub section (1) of Section 15-A before he could take action either to merge or liquidate a society as the case may be: whereas under Section 64 (1), he has to hold an enquiry as provided in Section 51 or in Section 52. Section 64 (2) empowers the Registrar of his own motion and after giving the society an opportunity of making its representation, to make an order directing the winding up of a society. The power vested in him under clause (c) of sub section (2) of Section 64 covers a totally different field, that is to say, where the society is conducting its affairs in a manner detrimental to the interests of the members or the promotion of the object for which it has been registered. For liquidation under clause (c) of Section 64 (2), the question of identifying a non-viable society does not arise. Even if a society were a viable society, tout the affairs are conducted in a manner detrimental to the interests of its members or promotion of the object for which it has been registered, then the Registrar could direct liquidation. It is thus seen that, on a closer scrutiny of Section 64 (2) (c) and Section 15-A (1) (e), they do not really operate in the same field. The object and purpose of the two provisions has therefore to be seen in the context in which they occur. The question therefore if whether the special procedure for liquidation under Section 15-A is discriminatory. The learned counsel for the petitioners relied upon Anwarali Sarkar's case AIR 1952 Supreme Court 75 where per majority the Supreme Court held that Section 5 (1) of the West Bengal Special Courts Act was void. But it should be remembered that in *Kathi Raning v State of Saurashtra*, AIR 1952 Supreme Court 123, the same Bench of the Supreme Court upheld Section 11 of the Saurashtra Ordinance under which the State Government is expected to select only such offences or class of offences or class of cases for being tried by the Special Court in accordance with the special procedure. But under Section 9, the use of the Special Procedure must necessarily be confined to only disturbed areas or those areas where adoption of public safety measures is necessary. Chief Justice Patanjali Sastri, dealing with the scope of Article 14, observed (at p. 126):

" But the position under Article 14 is different. Equal protection claims under that Article are examined with the presumption that the State action is reasonable and justified. This presumption of constitutionally stems from the wide power of classification which the legislature must of necessity, possess in making laws operating differently as regards different groups of persons in order to give effect to its policies. The power of the State to

regulate criminal trials by constituting different Courts with different procedures according to the needs of different parts of its territory is an essential part of its police power. Though the differing procedures might involve disparity in the treatment of the persons tried under them, such disparity is not by itself sufficient to outweigh the presumption and establish discrimination unless the degree of disparity goes beyond what the reason for its existence demands as, for instance, when it amounts to a denial of a fair and impartial trial."

13. The counter-affidavit filed on behalf of the respondents, as already noticed, would show the circumstances under which Section 15-A has been introduced. In *Qasim Razvi v. State of Hyderabad*¹, the case of Syed Qasim Razvi was referred to the Special Tribunal. There the question was that the special procedure was prejudicial to him as compared with the procedure applicable to the trial of crimes generally. Per majority it was held that there was no discrimination. But subsequently Das, C. J. in *Basheshar Nath v. Commr. of Income-tax, Delhi and Rajasthan*², observed that " the observation made in the majority judgment (in Qasim Razvi's case) should not be extended taut must be kept strictly confined to the special facts of that case." The established principle is that where two procedures are prescribed by law and one of the two is harsher or more onerous than the other, the harsher procedure cannot be justified unless it is based on a reasonable classification either made by the law itself or made by the executive in the exercise of its discretion in the light of the policy or object of the Act. We do not see anything more onerous or harsher in the procedure prescribed under Section 15-A (1) in regard to the liquidation of a society. That apart, as already noticed, they do not operate in the same field though they may seemingly appear to overlap. The fact that the two procedures are prescribed does not necessarily follow that there is discrimination nor that the power is vested in a particular authority to pick and choose in an arbitrary manner.

14. In *Northern India Caterers (Pvt.) Ltd. v. State of Punjab*³, the contention that the impugned Section 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959 was violative of Article 14 of the Constitution on the ground that the procedure prescribed was more prejudicial than the ordinary procedure of an ejection suit and the Government could arbitrarily adopt one of the two procedures was upheld by majority. Bachawat, J. who dissented, observed that Article 14 did not require a " fanatical approach" to the problems of equality before the law. The view of Bachawat J. ultimately prevailed in the case of *M. Chagganlal v. Greater Bombay Municipality*⁴, Alagiriswami, J., who spoke for the majority, after a review of the earlier cases, expressed the opinion that, when there are two provisions in the Act, they cannot be struck down on the fanciful theory that power would be exercised in such an unrealistic fashion. As pointed out by the learned Judge, one has got to take into account normal human behaviour and not behaviour which is abnormal. It is not every fancied possibility of discrimination but the real risk of discrimination that we must take into account. The learned Judge also made it clear that, if there is discrimination in actual practice, the Supreme Court is not powerless. As has

¹ AIR 1953 SC 156

³ AIR 1967 SC 1581

² AIR 1959 SC 149

⁴ AIR 1974 SC 2009

been pointed out by Bhagwati J., in a separate but concurring judgment in the same case at page 2040, there is no magic formula by which it can be said that one procedure is substantially more drastic and onerous than the other. It does not follow that merely because one procedure provides the forum of a civil Court while the other provides the forum of an Administrative Tribunal, the

latter is necessarily more drastic and onerous than the former. As has been further pointed out, the two procedures would have to be compared objectively and dispassionately without any predilection or prejudice to determine whether one is really and substantially more drastic and prejudicial than the other. We see nothing really and substantially more drastic and prejudicial to the society or its members in the procedure adopted under Section 15-A (1) (e).

15. The next ground of attack is that the expressions 'viable' and 'potentially viable' are very vague and no guidelines have been prescribed for identifying a viable, potentially viable and non-viable societies and therefore Section 15-A confers arbitrary and unguided power on an officer of the lowest rank of the Co-operative Department to distinguish viable from non-viable to pick and choose as he likes. It is also the contention of the petitioners that the words 'in the public interest' are equally vague and confer unfettered and unguided power on the Divisional Co-operative Officer to pick and choose any society as viable or non-viable.

16. A similar argument was advanced before the Supreme Court in *Jyoti Pershad v. Union Territory of Delhi*⁵, that Section 19 of the Slum Areas (Improvement and Clearance) Act is obnoxious to the equal protection of laws guaranteed by Article 14 of the Constitution. That argument was repelled by the Supreme Court by observing that, though Section 19 of the Act does not in terms lay down any rules for the guidance to the competent authority in the use of his discretion under Section 19 (1) of the Act, there is enough guidance in the Act which can be gathered from the policy and purpose of the Act as set out in the preamble and in the operative provisions of the Act. Where no such guidance is expressed in the statutory provision conferring the power, no question of violation of Article 14 could arise, unless it be that the rules themselves or the policy indicated lay down different rules to be applied to persons or things similarly situated. The learned Judges further observed that even where such is not the case, there might be a transgression by the authority of the limits laid down or an abuse of power, but the actual order would be set aside in appropriate proceedings not so much on the ground of violation of Article 14, but as really being beyond its power. The guidelines can also be obtained in the light of the surrounding circumstances which necessitated the legislation, taken in conjunction with well known facts of which the Court might take judicial notice or of which it is apprised by evidence before it in the form of affidavits. The same view was again reiterated by the Supreme Court in *P. J. Irani v. State of Madras*⁶, In that case, it was contended that Section 13 of the Madras Buildings (Lease and Rent Control) Act conferred an unguided and arbitrary power on Government to discriminate between one building and another and choose at their will and pleasure particular buildings which would be subject to the provisions of the Act and others which would not be so subject, the tenants in the latter being deprived of the protection conferred on other tenants similarly situated. Upholding the constitutional validity of Section 13, the learned Judges observed (at p. 1737) :

⁵ AIR 1961 SC 1602

⁶ AIR 1961 SC 1731

" Though the enactment thus conferred these rights on tenants, it was possible that the statutory protection could either have caused great hardship to a landlord or was the subject (if abuse by the tenant himself. It was not possible for the statute itself to contemplate every such contingency and make specific provision therefore in the enactment. It was for this reason that a power of exemption in general terms was conferred on the State Government which however could be used not for the purpose of

discriminating between tenant and tenant, but in order to further the policy and purpose of the Act which was, in the context of the present case, to prevent unreasonable eviction of tenants."

17. In so upholding the constitutional validity of Section 13, the learned Judges referred to the clause numbered (v) in the analysis of the decision on Article 14 by Das, C. J., in *Ram Krishna Dalmia v. S. R. Tendolkar*⁷, " A statute may not make a classification of the persons or things to whom their provisions are intended to apply and leave it to the discretion of the Government to select or classify the persons or things for applying those provisions according to the policy or the principle laid down by the statute itself for guidance of the exercise of discretion by the Government in the matter of such selection or classification. If the Government in making the selection or classification does not proceed on or follow such policy or principle, the executive action but not the statute should be condemned as unconstitutional."

18. Another case, which is directly in point is *Inder Singh v. State of Rajasthan*⁸, The validity of Section 15 of the Rajasthan (Protection of Tenants) Ordinance, 1949 was impugned on the ground that that section offended Article 14 of the Constitution. That argument was repelled in these terms:

" It is argued that that section does not lay down the principles on which exemption could be granted, and that the decision of the matter is left to the unfettered and uncanalised discretion of the Government, and is therefore repugnant to Article 14. It is true that that section does not itself indicate the grounds on which exemption could be granted, but the preamble to the Ordinance sets out with sufficient clearness the policy of the Legislature; and as that governs Section 15 of the Ordinance, the decision of the Government thereunder cannot be said to be unguided."

19. The Statement of Objects and Reasons or the enactment of the Amendment Act 6 of 1977, by which the impugned Section 15-A was introduced, sets out that Section 15-A has been introduced to identify viable, potentially viable and non-viable societies and to merge the non-viable societies along with their assets and liabilities with viable or potentially viable societies, as the case may be, and in order to ensure uniformity and effective implementation of the viability programme, it was considered necessary to suitably amend the earlier Section 15-A so as to provide for amalgamation, merger or liquidation of societies. The merger of non-viable societies with viable societies and liquidation of non-viable societies is taken in the larger interests of the cooperative societies and production of agricultural produce by providing better credit facilities.

⁷ AIR 1958 SC538 at p. 549

⁸ AIR 1957 SC 510 at pp. 516, 517

20. The expressions 'viable' and 'non-viable' and 'potentially viable' are words of definite import and content. They are clearest in terms. We get it from the papers placed before us by the Government that the Department of Agricultural Credit of the Reserve Bank of India had addressed letters to the Secretaries to the State Governments (Co-operation Department) on the

re- organization of Primary Agricultural Credit Societies and the area covered by the re-organized societies. The State Governments were asked to take immediate action. In this letter, the Reserve Bank pointed out that no uniform pattern was being followed for deciding the area appropriate for the reorganized societies to be viable. The basis for re-organization in some of the States was the Revenue or Administrative Decisions and not so much the business potential necessary for viability. The Reserve Bank, before recommending the norms for merger of non-viable societies with re-organized societies had convened a meeting, which was attended by representatives of the Government of India, representatives of the State Governments, representatives of the Commercial Banks and the officers of the Reserve Bank of India. At that meeting, the Reserve Bank formulated the norms, which are practically embodied in the two impugned G.Os. The guidelines formulated by the Reserve Bank for re-organisation of Primary Agricultural Credit Societies in so far as the area of operations and credit potential are concerned are the following;

- " (i) For the purpose of viability, account should be taken of the short-term agricultural credit business only. The other business viz., medium term, long-term agricultural credit and consumption credit should be taken as additional potential.
- (ii) Normally, a gross cropped area of 2,000 hectares (5000 acres) whether irrigated or not, might be taken as adequate to provide a minimum short-term credit potential of Rs. 2 lakhs for the reorganized society.
- (iii) In cases where more than 2000 hectares were to be covered, the area of operation of the reorganized society should be confined to a radius of 10 kms. only, excepting in hilly or tribal or desert areas, so however that the jurisdiction of a society did not cut across village boundaries.
- (iv) Where a village was big and had more than 2000 hectares in its jurisdiction or a potential of more than Rs. 2 lakhs short-term credit business there should not be more than one society.
- (v) If the area proposed was less than 2,000 hectares, a detailed exercise with reference to actual scales of finance might have to be done to ensure a minimum short-term credit business of Rs. 2 lakhs on the assumption that the society would be able to meet only about 40 per cent of the potential calculated on the above basis.
- (vi) If one administrative unit like gram panchayat or patwar circle did not have in its jurisdiction 2000 hectares of gross cropped area, two or more such administrative units might be covered by the reorganized society wholly in which case the territorial limit of 10 kms radius might not be applied. Preferably, in such cases, Farmers Service Societies of the smaller model might be organised instead of a viable primary agricultural credit society. However, the society should not be again re-organized if on a subsequent date the area of the Gram Panchayat was altered.
- (vii) Where a society had already attained a short-term loan business of Rs. 2 lakhs, it might not be normally disturbed, but could not be made the nucleus of a farmers service society a LAMPS or a reorganised society.
- (viii) Arrangements might be made for setting up a Cadre Fund at the State level to meet the cost of paid secretaries, managers of reorganised societies, so that the deficits in the

societies in the economically backward areas, hilly and semi arid region etc., could be met from the additional income from the business in the more affluent societies having each a credit business of well over Rs. 2 lakhs. Contributions to the State Cadre Fund might be made by the Central Co-operative Banks at 0.25 per cent of the loans borrowed by them from the Apex Bank and by primary agricultural credit societies at 1.75 per cent of the loans obtained from Central Banks. The deficit, if any, still remaining, at least initially, might be met by the State Government. The commercial banks financing the reorganised societies might recover from them at 1.75 per cent of the loans advanced and contribute at 2 per cent to the State Cadre Fund unless they are prepared to meet the deficit in the cost of secretaries/managers of such societies, wholly by themselves. (The scheme of the State Level Cadre Fund introduced in Maharashtra may be referred to in this context).

(ix) Once the area is decided, the good working societies might be merged with the nucleus society selected for retention and the non-viable ones liquidated. The guidelines in this regard are contained in our letter No. ACD-Plan 5118/PR.55-55(L) 75/76 dated 28th May, 1976 issued separately.

21. It is pursuant to the recommendation made by the Reserve Bank that Section 15-A has been enacted giving new orientation to the policy of the Government in the matter of providing agricultural credit through Primary Agricultural Credit Societies. In *Vellukunnel v. Reserve Bank of India*⁹, the validity of Section 38 (1) and (3) of the Banking Companies Act, which provided for a special procedure for winding up came up for consideration. Repelling the attack that the provisions were void as being violative of Articles 14 and 19 of the Constitution, the Supreme Court observed that the Reserve Bank was the sole judge to decide whether the affairs of a banking company are being so conducted as to be prejudicial to the interests of the depositors and the Court has no option but to pass an order winding up the banking company, when the application is made by the Reserve Bank. The learned Judges of the Supreme Court held that the provisions were neither discriminatory nor unreasonable and could not be declared void under Articles 14 and 19 of the Constitution. They further held that, since the provisions were manifestly in the public interest, they could not also be declared *ultra vires* under Article 301 because they were protected by Article 302 of the Constitution. It would be relevant to bear in mind that there may be occasions and situations in which the Legislature may, with reason, think that the determination of an issue may be left to an expert executive like the Reserve Bank rather than to Courts without incurring the penalty of having the law declared void. The law thus made is justified on the ground of expediency arising from the respective opportunities for action. Section 15-A is a piece of social legislation introduced at the instance of the Reserve Bank of India, which adumbrates its policy evolved by it at a meeting convened by it of the representatives of the State Governments and the Government of India. The co-operative societies should be treated as a class by themselves, the ideal of which being selfless service to its members

⁹ AIR 1962 SC 1371

and through its members to the society at large. In order to streamline co-operative ventures and to implement the National programme of making the co-operative credit structure viable, Section 15-A has been introduced by the Legislature. It is in the interests of the co-operative movement and the public generally and therefore reasonable protection should be extended to the implementation of the scheme of Section 15-A. Viable or non-viable societies are identified so

that the funds made available to the societies are not frittered away.

22. The Bombay High Court, in *C. P. Khanna v. V K. Kalghatgi*¹⁰, upheld the validity of the impugned provisions of the Maharashtra Co-operative Societies Act in that case on the ground that the provision made for compulsory arbitration in matters connected with the business of the societies between the society and its members or its office-bearers etc., or the society and a stranger is not unreasonable. It was observed that there was nexus between the object to be achieved in the making of classification and the provisions made.

23. Another argument advanced, relying upon the decision in *Harak Chand v. Union of India*¹¹, is that the expression 'in public interest' occurring in clause (e) of Section 15-A (1) is vague and therefore it will lead to exercise of arbitrary power by the Registrar. *The Supreme Court in Harakchand v. Union of India*¹², was considering the constitutional validity of several sections of the Gold Control Act, 1969. Dealing with the validity of Section 27 of that Act, which relates to licensing of dealings, the learned Judges of the Supreme Court upheld the attack on its constitutional validity that the conditions imposed by sub section (6) of Section 27 for the grant or renewal of licences are uncertain, vague and unintelligible and consequently wide and unfettered power was conferred upon the statutory authorities in the matter of grant or renewal of licence. The expressions 'suitability of the applicant' in Section 27 (6) (e) and 'public interest' in Section 27 (6) (g) were held as not providing any objective standard or norm or guidance. In that view, it was held that the said provisions impose unreasonable restrictions on the fundamental right of the petitioner to carry on business and are constitutionally invalid. But the words 'in public interest' used in Section 15-A (1) (e) have to be understood in the light of the object and scheme of the Act and the policy laid down by the Reserve Bank. The words 'for any other reason in the public interest' are only with reference to identifying viable and potentially viable societies in the light of the object and scheme of the Act and the policy laid down by the Reserve Bank as adumbrated in the impugned G.Os. When so construed, the Harakchand's case, AIR 1970 Supreme Court 1453 is distinguishable. The expression 'public interest' in the context of the scheme of Section 15-A would take in general interest of the community as opposed to the particular interest of individuals who are directly concerned with the societies. Similar view was expressed by the Supreme Court while construing the words 'public purpose' in *Somawanti v. State of Punjab*¹³, Having regard to the policy underlying the object sought to be achieved, the contention that the expression 'for any other reason in the public interest' will lead to arbitrary exercise of power has to be negated.

24. The next attack is on the two G.Os., G.O.Ms. No. 45 and G.O.Ms. No. 155. According to the learned counsel appearing for the petitioners, there is no statutory

¹⁰ AIR 1970 Bom 201

¹² AIR 1970 SC 1453

¹¹ AIR 1970 SC 1453

¹³ AIR 1963 SC 151

authority to interfere with the limited discretion to be exercised by the Registrar when acting under Section 15-A. The learned Advocate General has fairly stated that the guidelines are not issued under the provisions of the Act nor under Section 15-A. There is nothing in the G.Os., which precludes the Government from issuing proper guidelines. These guidelines contained in the impugned G.O.Ms. No. 155 are nothing but instructions which the Reserve Bank had issued to the State Governments for purposes of identifying viable and non-viable societies. The G.Os., are issued so that the Registrar may not act in an arbitrary or whimsical manner in identifying viable, potentially viable or non-viable societies. It is to exclude any arbitrariness on the part of

the Registrar that the Government has issued the two G.Os., embodying the guidelines issued by the Reserve Bank. The Reserve Bank which controls the entire banking system in the country, is the most competent authority to lay down the guidelines and those guidelines are adopted by the Government in the form of G.O.Ms. No. 155 for the proper enforcement of the policy underlying Section 15-A. It cannot be said that the instructions contained in the G.O.Ms. No. 155 amount to interference with the discretion or the power exercisable by the Registrar and there is nothing in the said G.O., even remotely to suggest that the Registrar is asked to water down the norms or standards set out therein in accordance with the Reserve Bank Policy and directions. The G.Os. are only of general application defining and illustrating the meaning of the expression 'viable and non-viable' in the light of the criteria laid down by the Reserve Bank. The Registrar is not being asked to decide a particular case in a particular manner. Apart from the norms prescribed as general guidelines, there are no fetters on the exercise of his discretion. We can understand the complaint of the petitioners, if the Government had issued instructions to the Registrar in respect of any particular society to decide the question of viability or non-viability or to merge or liquidate a particular society in the manner desired by the Government. The Government can always, in exercise of its executive power, lay down general guidelines or norms which do not interfere with the judicial discretion of a quasi-judicial authority. The guidelines provided in G.O.Ms. No. 155 do not in any way impinge upon the statutory functions exercisable by the Registrar under the impugned Section 15-A. The decision of the Reserve Bank to reorganize the co-operative institutions is a momentous one and State had only given effect by having Section 15-A enacted. Section 15-A, which has been inserted on the opinion of the Reserve Bank cannot be said to be either discriminatory or unreasonable so as to offend Article 14 or 19 of the Constitution. Therefore, the contention that, under the impugned section, the Registrar can pick and choose between societies while exercising his powers thus resulting in discrimination is ill-founded and untenable.

25. The next ground of attack is that the merger, amalgamation or liquidation of the society envisaged under Section 15-A (1) affects the rights of the members of the society under Article 19 (1) (c), (g) and (f) of the Constitution. According to the learned counsel, the forcible dumping of the members of the non-viable societies, when such societies are merged with viable societies, violates the rights of the members of the viable society. Their argument is developed in this manner. A viable society is one formed voluntarily by members of that society. It is a voluntary association. When association is formed voluntarily, it is for them to decide whether they would admit other members of non-viable societies. Members who formed a society which became a viable society cannot be forced to take any members from non-viable society against their will. Relying upon the decisions in *Dwarakadas Shrinivas v. Sholapur Spinning and Weaving Co*¹⁴, *R. C. Cooper v. Union of India*¹⁵, and *Bennett Coleman and Co. v. Union of India*¹⁶, it has been contended by the learned counsel for the petitioners that the rights of individual share holders are being interfered with by taking over the management of the society. According to them, when a non-viable society is merged with a viable society, the share value in a viable society would drop down and that way it would affect their fundamental rights not only under Article 19 (1) (g) but also under Article 19 (1) (f) and Article 31 of the Constitution. We find absolutely no merit in this contention.

26. *State of Madras v. V. G. Row*¹⁷, is the leading case on the question of right to form an association under Article 19 (1) (c). The test of reasonableness has been succinctly stated by

Patanjali Sastry, C. J. in that case. The right to form an association, it is the argument of the learned counsel for the petitioner can only be abridged or curtailed in accordance with the requirements of Article 19 (4) and it is not the case of the Government that the law is made in the interests of the sovereignty and integrity of India or public order or morality.

27. The Supreme Court in *All India Bank Employees Association v. National Industrial Tribunal*¹⁸, construed the scope of Article 19 (1) (c) and after a review of the earlier case, *Express Newspapers (Pvt.) Ltd. v. Union of India*¹⁹, held that a right to form unions guaranteed by sub-clause (c) of Clause (1) of Article 19 does not carry with it a fundamental right in the union so formed to achieve every object for which it was formed. Even a very liberal interpretation of sub-Clause (c) of Clause (1) of Article 19 cannot lead to the conclusion that the trade unions have a guaranteed right to an effective collective bargaining or to strike, either as part of collective bargaining or otherwise. In *M/s. Raghubar Dayal v. Union of India*²⁰, the Supreme Court observed:

" An application for the recognition of the association for the purpose of functioning under the enactment is a voluntary act on the part of the association and if the statute imposes conditions subject to which alone recognition could be accorded or continued, it is a little difficult to see how the freedom to form the association is affected unless, of course, that freedom implies or involves a guaranteed right to recognition also."

28. In *D. A. V. College, Jullundur v. State of Punjab*²¹, an Association of Arya Samaj is contended that their compulsory affiliation to the Guru Nanak University affected the aims and objects of the Association and therefore the freedom to form associations guaranteed by Article 19 (1) (c) was violated. The Supreme Court repelled that argument having regard to the view it expressed in *All India Bank Employees' case*, AIR 1962 Supreme Court 171 and *Raghubar Dayal's case*, AIR 1962 Supreme Court 263. The learned counsel for the petitioners relied upon the decision in *Damyanti v. Union of India*²², That was a case where the Supreme Court held that the Hindi Sahitya Sammelan Act, 1962 violated Article 19 (1) (c) of the Constitution. The Hindi Sahitya Sammelan Act did not merely regulate the administration of the affairs of the original society, but it also altered the composition of

¹⁴ AIR 1954 SC 119

¹⁶ AIR 1973 SC 106

¹⁸ AIR 1962 SC 171

¹⁵ AIR 1970 SC 564

¹⁷ AIR 1952 SC 196

¹⁹ AIR 1958 SC 578

²⁰ AIR 1962 SC 263

²² AIR 1971 SC 966

²¹ AIR 1971 SC 1737

the society itself. The result of this change in composition was that the members, who voluntarily formed the Association were then compelled to act in that Association with other members who have been imposed as members by the Act and in whose admission to membership they had no say. Such alteration in the composition of the Association itself clearly interferes with the right to continue to function as members of the Association which was voluntarily formed by the original founders. The Act, therefore, violated the right of the original members of the society to form an association guaranteed under Article 19 (1) (c). Article 19 (4), on the face of it, cannot be called in aid to claim validity for the Act.

29. The facts of that case are different. The Hindi Sahitya Sammelan was a society registered under the Societies Registration Act, 1860 with the principal object of developing and promoting the propagation of Hindi. The Sammelan's bye-laws provided for three classes of members, and

for constituting a governing body, a working committee and several other committees. It had its own properties. The U. P. Legislature passed the U. P. Hindi Sahitya Sammelan Act, 1956, under which a statutory body was created called the 'Hindi Sahitya Sammelan'. The High Court declared that Act void on the ground that it terminated the existence of the original Sammelan, and thus violated the right of members of the original Sammelan to form associations guaranteed by Article 19 (1) (c). Then the Parliament enacted the Hindi Sahitya Sammelan Act, 1972 which declared the original Sammelan to be an institution of national importance and vested its property in a new Sammelan which was constituted a body corporate. All the existing members of the original Sammelan were made members of the new Sammelan, but many outsiders were also made members by the Act. The rules framed under the Act prescribed qualifications for enrolling new members, who could be admitted without the voluntary consent of the original members of the Sammelan. The facts here are different. The right to form an association is not denied. Once an association is registered in accordance with the provisions of the Act, the Society has to function within the scheme and framework of the rules and bye-laws. The registration of a society is not a matter of right. Section 4 of the Act provides that a society which has, as its main object, the promotion of the economic interests of its members in accordance with the co-operative principles, or a society established with the object of facilitating the operation of such a society, may be registered under the Act. Section 5 (2) provides that the liability of the Government, a financing bank or a federal society having shares in a society, whether with limited or unlimited liability, shall be limited to the share capital subscribed by the Government, such financing bank or federal society, as the case may be. Under Section 7, the Registrar registers a society only when the application made by a person conforms to the requirements laid down by the Act and the rules made thereunder and when the objects of the society seeking registration are in accordance with Section 4. There is the further condition that such society is likely to be economically sound and that its registration may not have an adverse effect on the development of the Co-operative movement. Where the Registrar is not so satisfied, under sub section (2) of Section 7, he shall communicate by registered post the order of refusal together with the reasons therefor to such of the applicants and within such time as may be prescribed. So, when a society is registered under Section 7, it has to be economically sound and should not have an adverse effect on the development of the co-operative movement. It is for that reason that the viable and non-viable societies are identified for the liquidation or merger as the case may be. Merger, therefore, does not affect the right to form an association. But when once an association is formed and registered in accordance with the conditions laid down under the Act, what is regulated is the business activity of the society and not the right of the members to form an association.

30. There is thus a material difference between individuals claiming a right to form an association and the right of members of a co-operative society who formed an association to carry on business or trade under the provisions of the Act. It will be impossible to achieve the purpose and object of the society viz., promotion of the economic interests of its members in accordance with the co-operative principles and to make it economically sound, unless its commercial or business activities are properly regulated or controlled. The merger or liquidation contemplated under Section 15-A is only for the purpose of achieving the underlying object of forming a co-operative society. In substance and in effect, the provision relating to merger or liquidation is a reasonable restriction imposed on the business activity of the cooperative society regulating its trade or business activity. It is only for regulating the limited purpose of the business activity that Section 15-A (1) may affect the composition of the members when there is

a merger or amalgamation. It is a reasonable restriction which conforms to clause (6) of Article 19. This restriction may incidentally appear to touch upon the right to form an association under Article 19 (1) (c). When Section 15-A (1) is examined in the above context, it would only establish that the rights of the members to form an association under Article 19 (1) (c) are not affected and what is affected is the business activity of the society as such and not individual rights of members of the society. In the view taken by us, we are supported by the decision of the Patna High Court in *Harakh Bhagat v. Asst. Registrar Cooperative Societies*²³, The impact on the rights of individual is only incidental and minimal only to the extent necessary for effectuating the restrictions on business activity in the public interest. It is to be remembered that option is given to an unwilling member under Section 15-A (3) (v) to withdraw his membership and that is a circumstance which goes to show that the rights of an individual to form an association is to come out of an association are not infringed. It is also significant that members of the co-operative societies do not have an unrestricted right to object to anyone becoming a member of the registered society. Section 19 of the Act prescribes the eligibility for membership. Section 21 prescribes disqualifications for membership of a society. Section 76 (2) provides for an appeal by any person or society aggrieved by any decision under Section 6 or refusal to register a society under Section 7. When Sections 19, 21 and 76 are read together, it would show that members of a society registered under the Act do not possess an unqualified right to choose their associations. If a particular association refuses to admit any person eligible for membership of that society, he would be entitled to get admitted to that society in the event of his appeal being allowed under Section 76 (2). It is thus manifest that the right of the members to choose their own associations is not an unqualified right under the provisions of the Act. There are societies which have membership ranging from tens to thousands and even more. Therefore, the challenge on the ground that the rights of the members of the society to form an association under Article 19 (1) (c) are affected is devoid of merit. Therefore, the impugned provision does not require to be justified under clause (4) of Article 19. It is next to be seen whether clause (g) of Article 19 (1), which is the relevant clause is attracted. We have already referred to the policy of the Reserve Bank which led to the insertion of Section 15-A. Clause (6) of Article 19 lays down that nothing in sub- clause (g) of clause (1) shall affect the operation of any existing law in so far as it imposes, or

²³ AIR 1968 Pat 211

prevents the State from making any law imposing in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause. While considering the reasonableness of any law, one of the relevant factors to be taken into consideration is whether the State has to take swift decisions to meet the extraordinary situations. When swift action is necessary all that is necessary for the Court to enquire is whether the law provides reasonable safeguards by conferring right of appeal or judicial review.

31. The Supreme Court in *Collector of Customs v. Sampathu Chetty*²⁴, upheld the validity of Section 178-A of the Sea Customs Act. Testing its constitutional validity on the touch-stone of reasonableness, the Supreme Court observed (at p. 316 pt. A. LN);

" The test for ascertaining the 'reasonableness' postulated of the restrictions in clauses (2) to (6) of Article 19 should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the

restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict."

32. Having regard to the deleterious effects of widespread smuggling in commodities like gold and the need to eradicate smuggling, it was held that the restrictions imposed by the penal provision were reasonable having nexus with the object sought to be achieved by the law. In other words, the situation required the introduction of Section 178-A which placed the burden upon the person, from whose possession the goods were recovered, to show that the goods, which were reasonably believed to be smuggled were not really so. Reasonable restrictions would be necessary to secure the efficiency and enforcement of valid law. In *Manohar Lal v. State of Punjab*²⁵, the Punjab Trade Employees Act was questioned and its validity was upheld on the ground that the legislation is in effect the exercise of social control over the manner in which business should be carried on regulated in the interests of the health and welfare not merely of those employed in it but of all those engaged in it. The restriction imposed by the term of Section 7 (1) is with a view to secure this purpose and would, therefore, be clearly saved by Article 19 (6) of the Constitution even in its application to the shops entirely conducted by the owner and his family.

33. It cannot be assumed that the Registrar would exercise his powers improperly and without applying his mind to all relevant considerations. That apart, there is a provision for appeal. The agricultural co-operative credit societies have been registered and there is a large membership and they play a very important role in the economic life of the society particularly on the agricultural side. It would appear that recently there is a mushroom growth of these societies and many of them have been functioning in an inefficient manner defeating the very object of the formation of a society. The credit structure of the societies had almost collapsed and the Reserve Bank has been calling for an overhaul of these societies with a view to bring about financial discipline, uniformity, and order both

²⁴ AIR 1962 SC 316

²⁵ AIR 1961 SC 418

in the matter of structuring and functioning of these societies. The position of the Reserve Bank in the economy of the country, is something unique and its opinion is entitled to highest consideration and regard (see *Palai Bank's case* (AIR 1962 Supreme Court 1371)). It is this extraordinary situation which had created a sort of economic chaos that led to introduction of Section 15-A. It called for swift remedial steps and the lines of reorganization and restructuring were indicated by the Reserve Bank itself. It is in this context of the situation obtaining in the agricultural credit societies which brooked no delay that this measure had to be enacted. As pointed out by Patanjali Sastri, C. J., in *V. G. Row's case* AIR 1952 Supreme Court 196 no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed the extent and urgency of the evil sought to be remedied thereby the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. If the law presumably hits the evil where it is most felt it is not to be overthrown because there are other instances to which it might have been applied equally well, so far as the court can see. It is for the Legislature to judge, unless the case is very clear. As stated by Holmes, J., in *Bain Peanut Co. v. Pinson*²⁶, " We must remember that the machinery of Government would not work if it were not allowed a little play in its joints" .

34. A reference has been made by the learned counsel upon the time prescribed for filing objections. Fifteen days' notice, according to the learned counsel, is not sufficient for, to convene a meeting of general body of the society, thirty days' time is required. As we have already pointed out, the evil to be remedied required swift and immediate action. Viewed in that light, the fifteen days' time prescribed in the section itself for filing objections cannot be said to impose any restriction on the rights of the society or any undue hardship. Nothing prevents the general body of the society being convened within thirty days by the Managing Committee to discuss any urgent matter. Therefore, the harshness of fifteen days' notice prescribed for filing objections is remedied by providing a statutory appeal. It will be open to the members of the general body to raise such objections as may be available to them at the stage of appeal and there is no reason to think that the appellate authority will not consider all the objections raised by them. It is also complained that there is no power in the Registrar to extend the time for submitting objections and the 15 days' notice prescribed by Section 15-A (1) virtually amounts to giving no opportunity whatsoever to the affected party i.e. the society. The opportunity afforded, it is argued, is only illusory and the objective satisfaction which the Registrar is expected to reach is reduced in practice to subjective satisfaction.

35. Another comment is that Section 15-A does not provide for individual notices to the members of the society or to society or managing committee before action is taken for amalgamation or liquidation and the general notice provided by publication in the Gazette hardly satisfies the requirements of principles of natural justice. It is for the Legislature to decide the mode of publication. The District Gazette is an official Gazette and is published under the authority of the Board of Revenue as per its Standing Orders. B.S.O. 193 in Chapter XVII says that " a monthly official gazette will be published in each district. Detailed rules regarding its printing and issue will be found in the Printing Manual."

²⁶(1930) 282 US 499

36. The Reserve Bank thought it necessary to take a very firm view in reorganizing the primary agricultural credit societies. The reorganization desired by the Reserve Bank involved liquidation of many existing non-viable primary agricultural credit societies or their merger with viable societies. It also suggested the procedure for dealing with bad debts of non-viable societies either merged or liquidated. For purposes of merger or liquidation, the Reserve Bank, in its letter dated 28-5-1976, suggested to the State Governments the following classification of societies. (1) a society whose estimated bad debts (as per the latest available audit report) exceeded its own funds i.e., share capital plus all reserves; (2) a society which has been dormant for over three years; and (3) a society which has been classified as 'D' in the latest available audit report. The Reserve Bank also suggested that the State Co-operative Societies Acts must immediately be amended so as to provide for compulsory merger, amalgamation or liquidation and vesting the Registrar with adequate powers with a view to expedite the process of reorganization. Section 15-A is the result of a model section prepared by the Reserve Bank in consultation with its legal department and communicated to the State Governments. This information we get from the letter of the Reserve Bank dated 28-5-1976 marked 'immediate' to the Secretaries to the State Governments (Cooperation). It is, therefore, manifest that, if Section 15-A provides only 15 days' time, it is so provided to remedy the evils that have crept into the societies calling for swift and immediate action thus saving them from extinction altogether. We, therefore, hold that 15 days' time provided by Gazette publication is a reasonable restriction under Article 19 (6) of the Constitution.

37. Rules of natural justice cannot be elevated to the position of fundamental rights. Their aim is to secure justice or to prevent miscarriage of justice. They only require an opportunity of being heard. They can operate only in areas not covered by any law validly made. They do not supplant the law but supplement it. If a statutory provision can be read consistently with the principles of natural justice, the Courts should do so. Notice is published in the District Gazette, so that everyone connected with the society as member of the society and those not connected with the society i.e., the general public, could also make representations. The District Gazette is sent to all the Government offices in the district including all Co-operative Officers and we are told by the Government Pleader that they are available for sale to the public. We are therefore, unable to say that the publication of the notice in the District Gazette is not consistent with the rules of natural justice.

38. The next question that has to be considered regarding publication of notice is whether it contains the necessary particulars so as to enable the societies and their members to make effective representation. Section 15-A only refers to the publication of notice, but it does not speak of what particulars the notice should contain. The notice must also contain particulars or reasons either for the proposal to declare a particular society as a non-viable society and whether it is proposed to be merged or liquidated. If the particulars are not published in the notice, it would be difficult for the societies to make effective representation. It should enable an affected party to rebut the reasons or grounds mentioned in the notice. The notice no doubt refers to the impugned G.Os., which lay down the guidelines. But the G.Os. are not enclosed to the notice nor are those guidelines published in the notice. We are therefore of the opinion that the notice published should be one which should afford a reasonable opportunity to the affected persons to make effective representations. Since the notices in all these cases are bald notices and no reasons are given nor the guidelines indicated nor the G.Os. enclosed, we are of the opinion that, to this extent the notices published are not consistent with the principles of natural justice. The notices are therefore defective and thus violative of the principles of natural justice. The fact that the notices are defective will not affect the constitutional validity of Section 15-A, which provides for publication of notice in the District Gazette.

39. Another common contention raised by the learned counsel was that Section 15-A confers uncontrolled and arbitrary power on an officer of the lowest rank in the Co-operative Department viz., Divisional Co-operative Officer, to determine the viability or otherwise of an agricultural credit society. It should be remembered that the expression 'Registrar' in Section 2 (n) means the Registrar of Co-operative Societies appointed under Section 3 (1) and includes any other person on whom all or any of the powers of the Registrar under the Act are conferred. Section 3 empowers the Government to appoint for purposes of the Act as many other persons as it thinks fit to exercise, under the general superintendence of the Registrar, such powers of the Registrar under the Act as the Government may from time to time confer on him. The powers of the Registrar for purposes of Section 15-A are conferred upon the Divisional Co-operative Officer. It is important to note that, against an order made under Section 15 of the Act, an aggrieved party has no right of appeal. Section 76, which provides for appeals, does not provide for appeals against orders made under Section 15. Only a revision is provided to the Registrar under Section 77 against orders made under Section 15; whereas a party aggrieved by an order made under Section 15-A is entitled to prefer an appeal to an authority specified by the Government and the Government has named the District Collector as the appellate authority. As has already been

noticed, criteria have been laid down in G.O.Ms. No. 155 to guide the discretion of the Divisional Co-operative Officer and if he errs, there is a provision for hearing appeals. The sting, if any, is taken away by making a provision under Section 15-A (5) for appeal against any order or decision of a Divisional Co-operative Officer.

40. The counsel appearing for the petitioners in W. P. No. 1902 of 1977 and W. P. No. 1959 of 1977 sought to advance a very extreme argument that Article 21 of the Constitution also is attracted. There is absolutely no merit in this contention. This Article has no application to corporate bodies and applies only to the case of a person. Article 21 only deals with protection of life and personal liberty. The liquidation of a society i.e., a corporate body, cannot be equated to 'deprivation of life or personal liberty'.

41. In the view taken by us, viz., upholding the constitutional validity of Section 15-A we are not inclined to go into the other question argued at length viz., whether Article 31-A (1) (c) is attracted or not to co-operative societies.

42. The result of these writ petitions is, the constitutional validity of the impugned Section 15-A is upheld. The impugned notice in each case is quashed. It will however be open to the respondents to issue fresh notices to the petitioners in the light of the observations made by us in this judgment. The writ petitions are accordingly disposed of. No costs. Advocate's fee Rs. 200 in each.

43. There shall be status quo as on this day as regards the societies concerned in this batch of writ petitions. The respondent shall publish fresh notices in respect of the societies concerned in this batch of writ petitions within six weeks from today in the light of the observations made by us. Within one month from the date of the receipt of the representations or objections from the above said societies or others interested, a decision shall be taken by the Divisional Co-operative Officer concerned. These directions will cease to have effect after the expiry of the time prescribed by us above for giving the decision by the Divisional Co-operative Officer.

44. Mr. Choudary on behalf of all the petitioners in this batch of writ petitions made an oral application under Articles 132 and 133 of the Constitution for leave to appeal to the Supreme Court. We are unable to say that the cases decided by us involve substantial questions of law of general importance which, in our opinion require to be decided by the Supreme Court. We are also unable to certify that any substantial question of law as to the interpretation of the Constitution arises in these cases. Leave is, therefore, refused.
Order accordingly.