

# GUJARAT HIGH COURT

Rasiklal Patel

Vs.

Kailasgauri Ramanlal Mehta

Spl. C.A. No. 452 of 1968 and Spl. C.A. No. 1188 of 1969

(P.N. Bhagwati, C.J. and D.A. Desai, J.)

23.09.1970

## JUDGMENT

### **P.N. Bhagwati, C.J.**

1. These two petitions raise an interesting question of law as to the Constitutional validity of sees. 96 to 102 of the Gujarat Co-operative Societies Act, 1961. Special Civil Application No. 452/68 arises out of a dispute between a Cooperative Society and its members while Special C.A. No. 1188/69 arises out of a dispute between a Cooperate Society and a non member. Since different considerations may apply in determining the constitutional validity of sees. 96 to 102 according as the dispute is between a Co-operative Society and a member or between a Co-operative Society and a non-member, it is necessary to notice separately the facts of each petition.

2. Re : Special Civil Application No. 452/68 : The second respondent Society is a Co-operative Society registered under the Bombay Co-operative Societies Act, 1925 and deemed to be registered under the Gujarat Cooperative Societies Act, 1961. The petitioners are members of the second respondent Society and they claim to be allottees of plots Nos. 9A and 9B are subdivisions of original Plot No. 9. This claim is disputed by the first respondent. Her case is that she is a member of the second respondent Society and the whole of Plot No. 9 has been allotted to her. It appears that the second respondent Society did not agree with the claim put forward by the first respondent and the first respondent, therefore, 'made an application to the Registrar of Co-operative Societies hereinafter referred to as "the Registrar") referring the dispute for adjudication under Section 96 of the Gujarat Co-operative Societies Act, 1961. The petitioners and the second respondent Society were joined as respondents and a declaration was sought that the first respondent was a member of the second respondent Society and Plot No. 9 was allotted to her and consequently allotment of plots Nos. 9A and 9B in favour of the petitioners was invalid. The Registrar referred the dispute to his nominee for adjudication and the nominee by an award dated the April 1966 upheld the claim of the first respondent and granted the reliefs

claimed by her. The petitioners preferred an appeal to the Co-operative Tribunal and so did the second respondent Society but both the appeals were unsuccessful and were dismissed by an order dated 21st October 1967. The petitioners thereupon preferred Special Civil Application No. 452 of 1968 challenging the validity of the original as well as appellate decision on various grounds.

3. Re : Special Civil Application No. 1188/69 : The second respondent Society is a Co-operative Society registered under the Bombay Co-operative Societies Act, 1925 and deemed to be registered under the Gujarat Cooperative Societies Act, 1961. The petitioner was admittedly at no material time an existing or past member of the second respondent Society. A certain dispute arose between the petitioner and the second respondent Society out of a contract Resulting from acceptance of the petitioner's bid for purchase of a lot of timber. The second respondent Society alleged that the petitioner had taken delivery of the timber purchased by him but had failed to pay the full purchase price and a sum of Rs. 1,978-19 ps. still remained to be paid by him. The second respondent Society accordingly by an application made to the Registrar referred the dispute arising out of non-payment of this amount for adjudication under Section 96. The claim as originally formulated was made against the petitioner's son since the contract was transferred to the son's name at the instance of the petitioner but realising that the real party liable for the dues was not the son but the petitioner himself, the second respondent Society applied to the Registrar for amending its claim and the amendment being allowed, the claim as finally referred to the nominee by the Registrar was a claim against the petitioner. The nominee by his award dated 21st July 1967 upheld the claim and directed the petitioner to pay to the second respondent Society a sum of Rs. 1,978-19 ps. with interest thereon at the rate of 9 per cent per annum from 30th November 1964. The petitioner being aggrieved by the award preferred an appeal but the Co-operative Tribunal by an order dated 31st December 1968 rejected the appeal. Hence Special Civil Application No. 1188 of 1969 at the instance of the petitioner.

4. Though several grounds are taken in the petitions it is not necessary to refer to them for the purpose of this judgment since only one ground which is common to both the petitions has been argued before us and if this ground is well-founded, it becomes unnecessary to consider the other grounds. That ground relates to the constitutional validity of secs. 96 to 102 of the Gujarat Co-operative Societies Act, 1961. These sections which occur under the heading "Procedure for Deciding Disputes" provide a special machinery for adjudication of disputes touching the constitution, management or business of a Co-operative Society. Section 96 which is the main section in this group lays down what disputes and between which parties shall be liable to be dealt with according to this special machinery. It is an important section and considerable part of the argument turned upon its true interpretation and, therefore, it would be desirable to set it out in extension. It reads, omitting portions immaterial:

"96. (1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, management or business of a society shall be referred in the prescribed form either by any of the parties to the dispute, or by a federal society to which the society is affiliated, or by a creditor of the

society, to the Registrar, if the parties thereto are from amongst the following:

(a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or the Liquidator of the society;

(b) a member, past member or a person claiming through a member, past member or a deceased member of a society, or a society which is a member of the society;

(c) a person, other than a member of the society, who has been granted a loan by the society, or with whom the society has or had transactions under the provisions of Section 46, and any person claiming through such a person;

(d) a surety of a member, past member or a deceased member, or a person other than a member who has been granted a loan by the society under Section 46, whether such a surety is or is not a member of the society;

(e) any other society, or the Liquidator of such a society.

(2) When any question arises whether for the purposes of Sub-section (1) a matter referred to for decision is a dispute or not, the question shall be considered by the Registrar, whose decision shall be final.

.....

.....

Explanation II: For the purposes of this section, the expression 'agent' includes in the case of a housing society, an architect, engineer or contractor engaged by the society."

Section 97 provides special periods of limitation for disputes referred to the Registrar under Section 96 according as the disputes belong to one category or the other and then follow Section 98 and 99 which set out the detailed machinery for adjudication of such disputes. The material portions of Section 98 and 99 enact the following provisions:

"98.(1) If the Registrar is satisfied that any member, referred to him is a dispute, within the meaning of Section 96 the Registrar shall, subject to the rules, decide the dispute himself, or refer it for disposal to a nominee, or a board of nominees, appointed by the Registrar:

.....

(2) Where any dispute is referred under Sub-section (1) for decision to the Registrar's nominee or board of nominees, the Registrar may at any time, for reasons to be recorded in writing withdraw such dispute from his nominee, or board of nominees, and may decide the dispute himself, or refer it again for decision to any other nominee, or board of nominees, appointed by him.

(3) Notwithstanding any thing contained in Section 96, the Registrar may, if he thinks fit, suspend proceedings in regard to any dispute, if the question at issue between a society and a claimant or between different claimants, is one involving complicated question of law or fact, until the question has been tried by a regular suit instituted by one of the

parties or by the society. If any such suit is not instituted within two months from the Registrar's order suspending proceedings, the Registrar shall take action as is provided in Sub-section (1).

99. (1) The Registrar, or his nominee or board of nominees, hearing a dispute under Section 98 shall hear the dispute in the manner prescribed, and shall have power to summon and enforce attendance of witnesses including the parties interested or any of them and to compel them to give evidence, and to compel the production of documents by the same means and as far as possible in the same manner as provided in the case of a Civil Court by the Code of Civil Procedure, 1908.

(2) Except where a dispute involves complicated question of law or fact, no legal practitioner in his capacity as a legal practitioner or as a person holding a power of attorney shall be permitted to appear on behalf of any party at the hearing of a dispute.

....."

Section 100 provides for levy of attachment before award and Section 101 says that when a dispute is referred to the Registrar for his decision, he or his nominee or board of nominees may, after giving a reasonable opportunity to the parties to the dispute to be heard, make an award on the dispute. Section 102 confers a right of appeal on a party aggrieved by any decision of the Registrar or his nominee or board of nominees under Section 101 or an order passed under Section 100 and provides that such party may within two months from the date of the decision or order, appeal to the Co-operative Tribunal. These sections thus lay down a complete self-contained Code for adjudication of disputes touching the constitution, management or business of a Co-operative Society and, as is evident from the non-obstante clause at the commencement of Section 96 and the express enactment of Section 167, the machinery provided in this Code is obligatory and it excludes the jurisdiction of Civil Courts to adjudicate upon such disputes. The question is whether these sections satisfy the constitutional guarantee embodied in Articles 14 and 19(1)(f).

5. The detailed grounds on which the constitutional validity of Section 96 to 102 is challenged may now be stated:

(A) The impugned provisions are violative of the equal protection clause contained in Article 14 inasmuch as they make unjust discrimination between litigants having disputes with co-operative societies and others litigants: whereas the ordinary procedure for adjudication of disputes by Civil Courts according to the Code of Civil Procedure is available to other litigants, the benefit of such procedure is denied to litigants having disputes with Co-operative Societies and a special procedure is provided for them which is less advantageous than the ordinary procedure: this discrimination made between litigants having disputes with co-operative societies and other litigants is not based on any intelligible differentia having rational relation to the object of the legislation.

(B) The impugned provisions in so far as they provide a special procedure for non

members having disputes with Co-operative Societies are in any event violative of Article 14 inasmuch as all non-members though similarly situate as regards the subject matter of the legislation are not uniformly treated: non-members who are creditors of a Co-operative Society or who have disputes arising out of investment of its funds made by a Co-operative Society under the provisions of Section 71 or who have transactions with a Co-operative Society which are not "transactions under the provisions of Section 46" are left out from the scope and ambit of the impugned provisions : there is no intelligible differentia distinguishing one class of non-members from the other and in any event if there is any differentia, it has no rational relation with the object sought to be achieved by the impugned provisions.

(C) The impugned provisions are violative of Article 19(1)(f) inasmuch as the machinery for adjudication of disputes provided in the impugned provisions is unreasonable:

(D) Section 98 Sub-section (3) confers unguided and unfettered power on the Registrar to suspend proceedings in regard to any dispute until the question has been tried by a regular suit instituted by one of the parties or by the Society; there is no policy or principle laid down by the Legislature to guide or control the exercise of this power: the power is therefore, discriminatory and must be struck down as offending Article 14.

We shall proceed to examine these grounds in the order in which we have set them out above.

6. Re: Grounds (A) and (B): These two grounds may be conveniently taken up together as they involve a question; of violation of the constitutional guarantee enshrined in Article 14. To determine the validity of these grounds it is necessary first to arrive at a proper interpretation of the impugned provisions and to ascertain what is the true nature and scope of the special machinery for adjudication provided in the impugned provisions. To begin With: what are the kinds of disputes to which the special machinery applies? Section 96(1) gives the answer by reference to the two essential elements of a dispute, namely, subject matter and parties. It says that the dispute must be one touching the constitution, management or business of a co-operative Society. What is the "depute touching the business of a Co-operative Society" came up for consideration before the Supreme Court in *D.M. Cooperative Bank v. Dalichand*<sup>1</sup>, of Course the question there arose in relation to the Maharashtra Co-operative Societies Act, 1961 but Section 91(1) of that Act is almost in the same terms as our Section 96(1) arid the interpretation placed by the Supreme Court on an identical expression in that section must equally apply in relation to the present section. The Supreme Court pointed out in that case that one of the principal questions which arose for decision before them on the interpretation of Section 91(1) was : "What is the meaning of the expression 'touching the business of the society?'" and proceeded to answer it by saying "In this Sub-section", namely Section 91 Sub-section (1), "the word 'business' has been used in a narrower sense and it means the actual trading or commercial or other similar business activity of the society which the society is authorised to enter into under the Act and the Rules and its bye-laws. The nature of business, which a society does, is to be ascertained from the objects of the society". But, "it is difficult to subscribe the proposition that whatever the society

does or is necessarily required to do for the purpose of carrying out its objects can be said to be part of its business. We however, agree that the word 'touching' is very wide and would include any matter which relates to or concerns the business of a society, but we are doubtful whether the word 'affects' should also be used in defining the scope of the word 'touching'. One other limitation on the word 'dispute' may also be placed and that is that the word 'dispute' covers only those disputes which are capable of being resolved by the Registrar or his nominee". That is so far as the limitation in regard to subject matter goes. Now with regard to parties, Section 96(1) sets out in Clauses (a) to (e) who may be parties to the disputes which are to be resolved according to the special procedure. Clause (a) refers inter alia to "any committee, any past committee, any past or present officer, any past or present agent, any past or present servant", Clause (b) refers to a member, past member or a person claiming through a member, past member or a deceased member of a society. A similar clause in Section 91(1) of the Maharashtra Co-operative Societies Act, 1961, came to be construed by the Supreme Court in the same case to which we have already

<sup>1</sup> AIR 1969 SC 1320

referred, namely, *D.M. Cooperative Bank v. Dalichand* {supra} and the Supreme Court pointed out in paragraph 25 of the judgment at page 1326: "It seems to us that before a person can be said to claim through a member, the claim should arise through a transaction or dealing which the member entered into with the Society as a member. If a member entered into a transaction with the Society not as a member but as a stranger, then he must be covered, if at all, by the provisions of Section 91(1)(a) or (c). But once it is held that the original transaction was entered into by the member with the Society as a member then any person who claims rights or title through that member must come within the provisions of Section 91(1)(b)". We may read in this paragraph Section 96(1)(a), (b) and (c) of our Act for Section 91(1)(a), (b) and (c) of the Maharashtra Act. Then there is Clause (c) which says that a party to the dispute may be a person other than a member of the Society, who has been granted a loan by the society, or with whom the Society has or had transactions under the provisions of Section 46. This clause requires to be interpreted but in fact much of the argument before us turned on the true interpretation of this clause for, as will be seen later, it has a considerable bearing on the constitutional validity of the impugned provisions. We shall examine this clause a little closely but before we do so we may complete reference to the other clauses. Clause (d) refers to a surety whether he be a member of the society or not and Clause (e) contemplates any other society, or the Liquidator of such a society. Explanation II says that for the purposes of Section 96, the expression 'agent' includes in the case of a housing Society, an architect, engineer or contractor engaged by the Society. The parties to the dispute must fall within any of the categories set out in Clauses (a) to (e) read with Explanation II. Then the special machinery for adjudication would be attracted and it would displace the ordinary machinery of adjudication by civil Courts.

7. Turning once again to Section 96(1), Clause (c) consists of two parts. The first part speaks of a person, other than a member of the Society, who has been granted a loan by the Society: The second part refers to a person other than a member of the society with whom the society has or

had transactions under the provisions of Section 46. To understand the full meaning and implications of this provision it is necessary to refer to a group of sections which provides for imposition of restrictions on transactions which may be entered into by a society. Section 44 is one such section belonging to the group and it says:

"44. A Society shall receive deposits and loans from members and other persons, only to such extent, and under such conditions, as may be prescribed, or specified by the by-laws of the Society."

Rule 24 of the Gujarat Co-operative Societies Rules, 1965 prescribes restrictions subject to which loans and deposits may be received by a Society. Section 45 imposes restrictions on making of loans by a Society. It reads as follows:

"45. (1) No society shall make a loan to any person other than a member, or on the security of its own shares, or on the security of any person who is not a member :

Provided that, with the special sanction of the Registrar, a society may make loans to another society.

(2) Notwithstanding anything contained in Sub-section (1) a society may make a loan to a depositor on the security of his deposit.

Then comes Section 46 which is referred to in Section 96(1) Clause (c):

"Save as is provided in this Act, the transaction of a society with persons other than members, shall be subject to such restrictions, if any, as may be prescribed."

It was common ground between the parties that no restrictions have been prescribed under this section. The last section which requires to be noted in this group is Section 71 which reads:

"71. (1) A society may invest, or deposit its funds-

(a) in a Central Bank, or the State Co-operative Bank,

(b) in the State Bank of India;

(c) in the Postal Savings Bank,

(d) in any of the securities specified in the Section 20 of the Indian Trusts Act, 1882,

(e) in shares, or security bonds, or debentures, issued by any other society with limited liability, or

(f) in any co-operative bank or in any banking company approved for this purpose by the Registrar, and on such conditions as the Registrar may from time to time impose,

(g) in any other mode permitted by the rules, or by general or special order of the State Government.

....."

Rules 29 and 30 permit certain other additional modes in which the funds of a Society may be

invested and one of such modes is purchase or leasing of lands or buildings and construction of buildings. Now according to Section 45 a loan can be granted by a Society to a non-member only if he is a depositor and then too, not without insisting on security of his deposit. If loan has been granted to such a member, he would fall within the first part of Section 91(1) Clause (c); the first part may also include a member who has been granted a loan by a Society otherwise than in his capacity as a member. Vide the above-quoted judgment of the Supreme Court in *D.M. Co-op. Bank v. Dalichand* (supra). The construction of the first part does not present any difficulty. But the question is : what is the true meaning of the expression "transactions under the provisions of Section 46". Does it mean transactions referred to or contemplated in Section 46 or is it intended to refer only to transactions in respect of which restrictions are prescribed by rules and which are entered into subject to such restrictions? The question is one of difficulty but if we do not depart from the plain grammatical meaning of the words used, we can arrive at a proper and satisfactory meaning.

8. Now one primary consideration which requires to be borne in mind in dealing with this question is that the special procedure for adjudication of disputes provided in the impugned sections is not intended to be applicable in respect of every transaction of a non-member with a Society. Only certain specified categories of non-members are mentioned in Clauses (c), (d) and (e) of Section 96(1) disputes with whom are liable to be resolved in accordance with the special procedure set out in the impugned provisions : the rest would be governed by the ordinary procedure. If the intention of the Legislature were that disputes arising out of all transactions with non-members should be subject to the special procedure, the Legislature need not have categorized non-members into different classes with reference to the nature of the transactions entered into by them and specified different categories of non-members in Clauses (c), (d) and (e) of Section 96(1) : it would have been sufficient to state in one clause that the dispute may be between a Society and a person other than a member of the Society without any limitative words. It is, therefore, apparent that some transactions with non-members are outside the scope of the special procedure. The question is what are those transactions? The answer depends to some extent on the interpretation we place on the expression "transactions under the provisions of Section 46" in Section 96(1) Clause (c).

9. The construction suggested on behalf of the State was that this expression connotes all transactions referred to or contemplated in Section 46. Every transaction of a Society with a non-member in respect of which transactions can be prescribed under Section 46 would, on this construction, be within the scope and ambit of Clause (c) of Section 96(1). But this construction ignores the plain natural meaning of the proposition "under". It seeks to equate the proposition "under" with the adjectival phrase "referred to" or "contemplated in". That is contrary to the plain dictates of grammar and language. If it was the intention of the Legislature to include within Clause (c) non-members having transactions with the society of the kind referred to in Section 46, there was nothing easier for the Legislature than to use appropriate words such as "referred to in Section 46" or "in respect of which restrictions can be prescribed under Section 46" which

would clearly and adequately convey its intention but the Legislature instead deliberately and advisedly used a different phraseology quite inappropriate to express such intention. Moreover, it may also be noted that this construction, if accepted, would render Clauses (c), (d) and (e) as also Explanation II redundant and superfluous. To appreciate the force of this criticism, it is necessary first to ascertain what are the transactions referred to in Section 46 or, in other words, what are the transactions in respect of which restrictions can be prescribed under Section 46. The marginal note to Section 46 which reads "Restrictions on other transactions with non-members" might seem to suggest that the transactions which can be subjected to restrictions under that section are transactions other than those referred to in sees. 44, 45 and 71. But this interpretation does not appear to be borne out by the language of Section 46 nor is it in consonance with Section 96(1) Clause (d). Section 46 on its plain terms is wide enough to cover all transactions of a Society with non-members. There are no restrictive words limiting the transactions to those not dealt with in sees. 44, 45 and 71. It is no doubt true that Section 46 opens with the words "Save as is provided in this Act" but these words do not qualify "the transactions" : they do not subtract anything from the width and amplitude of the plain unrestricted words "the transactions" which would include all transactions. They merely qualify the general rule enunciated in the section, namely, that all transactions of Society with non-members shall be subject to such restrictions as may be prescribed by rules, by saying that if there is any provision in the Act which provides differently, such provision shall prevail and the general rule enacted in the section shall give way. If there is any conflict between the general rule enacted in the Section and any other provision of the Act, such conflict shall be resolved by assigning victory to the latter. That is the true function and effect of these words. It is, therefore, clear that the transactions referred to or contemplated in Section 46 are not limited to transactions other than those dealt with in sees. 44, 45 and 71 but include all transactions. If it were not so, how can we explain the words "a person other than a member who has been granted a loan by the society under Section 96(1) Clause (d)? The transaction of loan to a non-member is dealt with in Section 45 and, therefore, if the construction contended for on behalf of the Revenue were right, every such transaction would manifestly be outside the scope and ambit of Section 46; then how can there be a transaction of loan to a non-member under Section 46. The words "under Section 46" in Section 96(1) Clause (d) would be rendered completely meaningless if such a construction were accepted. These words can have meaning and content only if the transaction of loan to a non-member which is dealt with in Section 45 can also be regulated under Section 46. This postulates that all transactions, even those which are dealt with in sees. 44, 45 and 71, are within the scope and ambit of the regulatory power conferred under Section 46. But if that be so, it is difficult to imagine why the Legislature should have used the words "transactions under the provisions of Section 46" in Section 96(1) Clause (c) unless the Legislature intended to convey by these words a meaning different from "referred to or contemplated in Section 46". If the words "transactions under the provisions of Section 46" mean simply "transaction referred to or contemplated in Section 46", it would be wholly unnecessary to have these words since all transactions are referred to or contemplated in Section 46 and these words do not, therefore, add anything more : in fact these words would be rendered totally superfluous. So also the first part of Clause (c), Clauses (d) and (e) and

Explanation II would be rendered futile and redundant, for the words "transactions under the provisions of Section 46" in Clause (c) would comprise all transactions and consequently every non-member having any transaction with the Society would be covered by that provision. Such a construction which imputes to the Legislature tautology or superfluity in the use of language must, as far as possible, be avoided. It is a well-settled rule of interpretation that the Courts should always prefer a construction which will give some meaning and effect to the words used by the Legislature rather than that which will give none. The rule was enunciated by Viscount Simon in *Hill v. William Hill (Park Lane) Ltd*<sup>2</sup>. in these words : "When the Legislature enacts a particular phrase in a statute, the presumption is that it is saying something which has not been said immediately before. The rule that a meaning should, if possible, be given to every word in the statute implies that, unless there is good reason to the contrary, the words add something which has not been said immediately before". The words "transactions under the provisions of Section 46" cannot, therefore, be interpreted to mean "transactions referred to or contemplated in Section 46".

10. But then what do the words "transactions under the provisions of Section 46" mean? One meaning could have been that they refer to transactions entered into pursuant to a power conferred under Section 46. That is one of the modes of usage of the word "under". But Section 46 does not confer any power on a Society to enter into transactions with non-members. That power is given by Section 37. Section 46 merely provides that the State Government may prescribe restrictions subject to which transactions may be entered into by a Society. It is, therefore, not possible to read the words "transactions under the provisions of Section 46" in that sense. Let us then see what is the sense in which these words can be properly construed. The word "under" has various meanings in the English language. We find the following meanings at page 1400 of the Concise Oxford Dictionary : "In the position or act of supporting or sustaining, subjected to, undergoing, liable to, on condition of, subject to, governed or controlled or bound by, in accordance with. ". Out of these, the meanings relevant for our purpose are "subject to" or "in accordance with".

When a transaction is entered into "subject to" or "in accordance with" the restrictions

<sup>2</sup>(1949) A.C. 530

prescribed under Section 46, it would be a legitimate and correct use of English language to say that it is a transaction "under the provisions of Section 46". Such a transaction would be in compliance with the requirement of Section 46 and it would, therefore, be a transaction "under the provisions of Section 46". That is the only way in which the word "under" can be construed in the context of a restrictive provision like Section 46. In fact one of the meanings of the word "under" given in Webster's Dictionary is "suffering restriction, restraint or control by". Where, therefore, a transaction complies with the restriction or restraint imposed under Section 46, it is a transaction "under the provisions of Section 46". It is no doubt true that the State Government is not bound to prescribe restrictions under Section 46. The words "if any" indicate that the State Government may or may not prescribe restrictions according as it thinks fit. But that does not in any way affect the construction of the words "transactions under the provisions of Section 46". If

no restrictions are prescribed under Section 46, the question of complying with Section 46 would not arise and in such a case, Section 46 not having any applicability at all the transaction cannot be said to be a transaction under Section 46. But if there are restrictions prescribed under Section 46, the injunction of Section 46 would have to be complied with and the transaction would have to be effected subject to those restrictions; such a transaction would be a transaction in compliance with the requirement of Section 46, or in other words, a transaction under the provisions of Section 46.

11. This meaning becomes amply clear if we look once again at the language of Section 96(1) Clause (d). That clause refers to "a person other than a member who has been granted a loan by the Society under Section 46" These words would make sense only if they are construed to mean that the loan should have been granted by the Society to a non-member subject to the restrictions imposed by Section 46. If there is no restrictions prescribed under Section 46 and, therefore, the loan granted by the Society to a non-member does not have to comply with such restrictions, it cannot be said to be a loan granted by the Society to the non-member under Section 46. The correct construction of the words "transactions under the provisions of Section 46" therefore is that they refer only to those transactions in respect of which restrictions have been prescribed under Section 46 and which are entered into subject to those restrictions. This is the only meaning which can be given to the words "transactions under the provisions of Section 46" consistently with the scheme and context of the relevant provisions. This meaning not only accords with grammar and language but also harmonises the different provisions and gives full meaning and effect to each of them. We may note that a Division Bench of the Bombay High Court has also taken the same view in *Dharamchand v Kopargaon T.K. G.&P. Society Ltd*<sup>3</sup>.

12. It will be seen from this discussion that parties who may have a dispute with a Society are broadly divided into two categories : (1) members, officers and servants and (2) non-members including agents. So far as the first category is concerned, all members, officers and servants past as well as present are included and there is no differentiation amongst them. But the position is not the same in regard to the second category. Only certain specified classes of non-members are included and others are left to be governed by the ordinary procedure. Those who are left out of the group are : (i) non-members who have given loans to or made deposits with the society; (ii) non-members who have disputes arising out of investment of its funds by the Society under Section 71 read with Rules 29

<sup>3</sup> AIR 1967 Bom 124

and 30; and (iii) non-members who have transactions with the Society in respect of which no restrictions are prescribed under Section 46. Even if the construction of Section 96(1) Clause (c) contended for on behalf of the State were correct and the words "transactions under the provisions of Section 46" were construed to mean transactions other than those dealt with in Sections 44, 45 and 71, non-members specified in categories (i) and (ii) would still be outside the group. The result is that differentiation is made amongst non-members in regard to the machinery for adjudication of disputes touching the business of the Society. The special machinery for

adjudication set out in the impugned sections is prescribed only for certain specified categories of non-members; non-members falling within any of the aforesaid three categories (i), (ii) and (iii) are outside and they are not governed by the special machinery; their disputes are to be tried according to the ordinary procedure for adjudication by Civil Courts according to the Code of Civil Procedure.

13. Now when any of the parties to the dispute refers it to the Registrar for adjudication, the first question that arises before the Registrar is whether it is a dispute covered by Section 96 Sub-section (1) for it is only if it is such a dispute that it can be adjudicated according to the special machinery. Section 96 Sub-section (2) empowers the Registrar to decide this question and provides that his decision shall be final. This finality is, however, only for the purpose of ordinary appeal or revision : it does not exclude the special power legislatively conferred on the State Government under Section 155. Vide the decision of the Supreme Court in *Everest Apartments Co-operative Housing Society Ltd, v. State of Maharashtra*<sup>4</sup> If the Registrar is satisfied that any matter referred to him is a dispute within the meaning of Section 96 Sub-section (1), he is required to follow either of the two courses. He may either decide the dispute himself or refer it for disposal to a nominee or a board of nominees appointed by him. Vide Section 98 Sub-section (1). The proviso to the Sub-section gives effect to the principle that no one who is interested in a dispute shall be appointed to decide it. Section 98 Sub-section (2) gives power to the Registrar to withdraw a dispute pending before a nominee or board of nominees and either to decide it himself or to refer it again to another nominee or board of nominees but for exercise of this power of withdrawal, he is required to give reasons in writing and his decision is revisable under Section 155.

14. Section 98 Sub-section (3) provides that the Registrar may, if he thinks fit, suspend proceedings in regard to any dispute, if the question at issue between a society and a claimant or between different claimants, is one involving complicated questions of law or fact, until the question has been tried by a regular suit instituted by one of the parties or by the society. The power under this sub-section is obviously intended to be exercised when the dispute involves a complicated question of law or fact which is of such a nature that in the opinion of the Registrar it would be desirable to have it decided by a Civil Court rather than by himself or by a nominee. The words "if he thinks fit" no doubt vest a discretion in the Registrar but this discretion is necessary in the very scheme of things. The Legislature did not intend that in every case where there is a complicated question of law or fact the parties should be allowed to go to a Court of law. That would frustrate the whole object of providing the special machinery. But at the same time there might be certain types of questions which having regard to their nature, importance or complexity, are such that in the interests of justice it would be better to have them tried by a Court of law rather than by the Registrar or his nominee. It was to provide for such types of questions that the legislature enacted Section 98 Sub-section (3). Now infinitely various

<sup>4</sup> AIR 1966 S.C. 1449

are the kinds of questions which may arise for decision and no two questions would be alike and it was, therefore, impossible for the Legislature to lay down any clear-cut principle or formula

defining with sufficient clearness and precision, what types of questions shall be allowed to be determined by a Court of law. In these circumstances the only thing the Legislature could do was to confer power on the Registrar to suspend proceedings leaving the parties to go to a Court of law in fit cases. It was in this sense that the Legislature used the words "if he thinks fit." These words do not confer an unguided and unfettered discretion on the Registrar. The Registrar cannot act arbitrarily or capriciously under the guise of these words. The Registrar will have to apply his mind whether the, question at issue between the parties, which of course must necessarily be a complicated question of law or fact, is of such a nature that the interests of justice require that it should be allowed to be agitated before a Court of law rather than before the special forum provided under the Act. The discretion which has to be exercised by the Registrar is to be guided by this consideration, and if the Registrar errs, there is a machinery to set him right. The State Government can in exercise of its power under Section 155 revise the order of the Registrar.

15. While dealing with Section 98 Sub-section (3) a difficulty was pointed out in the course of the arguments that the power of suspending the proceedings until the question at issue is decided in a civil suit would be illusory, since it can always be set at naught by the claimant before the Registrar refusing to file a suit within the prescribed time. To take an example, suppose the opponent applies to the Registrar for suspending the proceedings and an order is made by the Registrar under Section 98 Sub-section (3). A suit would then have to be filed within a period of two months from the date of the order. But the suit can only be filed by the claimant. The opponent cannot file a suit for a negative declaration. Now the claimant may refuse to file the suit and in that event, on the expiration of the period of two months, the proceedings would be resumed before the Registrar and the order made by the Registrar under Section 98 Sub-section (3) at the instance of the opponent would be frustrated. This difficulty though prime facie quite impressive, is really without substance. It is only where the question arises between a society and a claimant or between different claimants that the power can be exercised under Section 98 Sub-section (3). If the power is exercised at the instance of the claimant, there is no difficulty : he can always avail of the opportunity by filing a suit as a claimant. If on the other hand the power is exercised at the instance of the Society, the Society may file a suit if it is possible to do so having regard to the nature of the dispute. If it is not possible, the Society would have to depend on the claimant filing a suit but the special procedure having been designed for the benefit of the Society, the Society can have no legitimate grievance if the claimant does not file a suit and the special procedure has to be followed.

16. The procedure for hearing the dispute by the Registrar or his nominee is laid down in Section 99 Sub-section (1). That Sub-section provides that the Registrar, or his nominee shall hear the dispute in the manner prescribed. Rule 41 prescribes the manner by saying that the adjudicating authority shall record a brief note in English or in Gujarati language of the evidence of the parties and witnesses who attend and upon the evidence so recorded and upon consideration of any documentary evidence produced by either side, a decision shall be given in accordance with justice, equity and good conscience and it shall be reduced to writing. One of the arguments before us was that this rule enjoins the adjudicating authority to decide according to "justice,

equity and good conscience" and not according to law and, therefore, the adjudicating authority would be entitled to ignore the law if it thought necessary to do so in order to comply with what it was to be the requirement of "justice, equity and good conscience". This would introduce a most uncertain element in the decision of disputes, since "justice, equity and good conscience" is a nebulous concept and like equity in England, it is bound to vary with the foot of the nominee. We do not think this apprehension is well-founded. It is based on a too literal interpretation of Rule 41 without taking into account the source of the power under which the rule is made. Section 99 Sub-section (1) under which the rule is made merely authorizes the rule-making authority to prescribe the manner of hearing the dispute. It does not empower the making of a rule prescribing what law shall govern the decision of the dispute. The dispute must of course be decided according to the law of the land but what shall be the procedure of hearing of the dispute is to be prescribed by rules. Rule 41 must, therefore, be interpreted as a rule prescribing the manner of hearing of the dispute and if it is so interpreted, it is clear that when it says that a decision shall be given in accordance with justice, equity and good conscience, it does not mean that the dispute shall be decided otherwise than in accordance with the law of the land or that the law of the land shall be ignored in adjudicating upon the rights and liabilities of the parties but what it means is that the procedure of hearing of the dispute shall be in accordance with justice, equity and good conscience. If the other view contended for on behalf of the petitioners were accepted, Rule 41 would be ultra vires Section 99 Sub-section (1) and that is a construction which we should be most disinclined to accept. No element of uncertainty is, therefore, introduced in the decision of disputes by the provision made in Rule 22241. Section 99 Sub-section (2) also deals with one more aspect of the procedure of hearing of the dispute, namely, legal representation. It says that except where the dispute involves complicated questions of law or fact, no legal practitioner shall be permitted to appear on behalf of any party at the hearing of the dispute. It completely bars the appearance of legal practitioner unless the dispute involves a complicated question of law or fact in which case a legal practitioner may be permitted to appear.

17. It is apparent from this analysis of the impugned provisions that the special procedure provided in these sections is much less advantageous than the ordinary procedure of adjudication by Civil Courts according to the Code of Civil Procedure. In the first place, under the special procedure, the dispute would be decided by the Registrar or his nominee who would not ordinarily be an experienced judicial officer and may not even be a competent lawyer. Secondly, there would be no right of appeal to a Court of law : the right of appeal would only be to the Co-operative Tribunal. Thirdly, there would be no right of second appeal even on a question of law. Fourthly, the elaborate safeguards provided by the procedural provisions of the Code of Civil Procedure would be absent. Fifthly, instead of full record of the evidence, there would be only brief notes of evidence. And lastly, legal representation would not be available to the parties unless the dispute involves complicated question of law or fact. The parties to whom the special procedure is made applicable may legitimately inquire: what is this discrimination being made against us and why should our disputes with the Society be adjudicated according to a special procedure which has not the same advantages as the ordinary procedure applicable to other

litigants? If no rational justification can be given in answer to this question, the special procedure would be clearly violative of the equal protection clause contained in Article 14.

18. It is now well-settled that the principle underlying the guarantee in Article 14 is not that the same rules of law must be applicable to all persons or the same remedies should be available to them, irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike: there should be no discrimination between one person and another if as regards the subject matter of the legislation, their position is substantially the same. The Legislature has, however, power of making special laws to attain particular ends and for that purpose it may select or classify persons and things upon which such laws are to operate. But the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of Article 14. To get out of its reach it must appear that not only a classification has been made but also that it is one based upon a reasonable ground on some difference which bears a just and proper relation to the attempted classification and is not a mere arbitrary selection. The classification to be valid and permissible must satisfy a double test: it must be founded on an intelligible differentia which distinguishes those who are grouped together from others and that differentia must have a rational relation to the object sought to be achieved by the statute. Where, therefore, an enactment is challenged on the ground of discrimination, we must apply this double test: if the test is satisfied, the classification cannot be held to be violative of Article 14.

19. Now the object of the impugned sections clearly is to provide a special machinery for adjudication of disputes touching the constitution, management or business of a society with a view to speedy determination of such disputes without any unnecessary waste of time, energy and money which would necessarily be involved under the ordinary procedure of a civil suit. A co-operative Society is a form of organization in which persons voluntarily come together for promotion of their economic interests in accordance with co-operative principles. "Co-operation," as pointed out by C.R. Fay, is "an association for the purpose of joint trading among the weak and conducted always in an unselfish spirit on such terms that all who are prepared to assume the duties of membership may share its rewards in proportion to the degree in which they make use of their association". It is essentially an association of persons of limited means and, as indicated in the preamble to the Bombay Co-operative Societies Act, 1925, its object is inter alia "promotion of thrift, self-help and mutual aid among agriculturists and other persons with common economic needs." It is based on the principle of equality and avoids selfish exclusiveness by recognizing that its membership should be open to all who want to join it. The voting power in a co-operative form of organization is not in proportion to the shareholding as in the case of a joint-stock Company but each member is given one vote so as to ensure equal participation in management by all, irrespective of their wealth. Co-operation also seeks to eliminate the middle man by bringing producers and consumers closer to each other through the process of integration and aims at preventing the exploitation of the weaker sections of the community by the stronger ones. It stands for distributive justice to all who contribute to the earning of wealth including the consumers. It is a form of organization which avoids the evils of

capitalism and yet assures the human dignity of the individual. That is why it has been accorded a preferred place in our socio-economic set up. The Legislature enacting, a law in regard to it might, therefore, well consider it desirable that a special machinery should be provided for adjudication of disputes touching the constitution, management or business of a co-operative Society which would be much simpler and speedier and much less expensive than the ordinary remedy of adjudication by a Civil Court. It was with that end in view that the Legislature enacted the impugned sections. The object of providing the special machinery by the impugned sections is to bring about speedy settlement of disputes, to lessen cost of litigation and to secure dispensation of justice unhampered by technical rules of procedure so that co-operative Societies do not get involved in long drawn out protracted litigation which would consume their time, energy and resources. This object having regard to the nature and character of the co-operative form of organization, the principles on which it is founded and the objects it is intended to serve, would fully justify application of the special procedure to resolution of disputes touching the constitution, management or business of a society, Now, as already discussed above, parties having disputes touching the constitution, management or business of a society are divisible into two distinct classes. Members, officers and servants from one class. They possess common properties and characteristics in that they are all directly and intimately connected with the constitution or management of the society. The application of the special procedure to them does not, therefore, involve any discrimination, violative of the equality clause. The provision of special machinery for adjudication of their disputes by a domestic forum is justified having regard to the above stated object of the impugned provisions.

20. So also, for the same reasons, the special procedure would be justified in its application to the other class, namely, non-members who, unlike members, officers and servants, are outsiders qua the Society but, unfortunately for the State, the classification made by the Legislature in regard to non-members suffers from a serious infirmity and that infirmity invalidates the classification. The special procedure is not made applicable to the entire class of non-members. Within the class itself a discrimination has been made by the Legislature. The Legislature has picked out certain categories of non-members for the special procedure leaving the rest to be governed by the ordinary procedure. There is no intelligible differentia distinguishing non-members grouped together for the applicability of the special procedure from those left out of the group and even if some differentia can be discovered, it has no rational relation or nexus with the object of the impugned provisions. There is no rational basis on which defecation has been made by the Legislature between some categories of non-members and others for applying the special procedure. The object of providing the special procedure being to bring about speedy determination of disputes at lesser cost unhampered by the technical rules of procedure so that Co-operative Societies may not get involved in long drawn out protracted litigation consuming needlessly their time, energy and resources, it is difficult to see how any differentiation can be made between one category of non-members and another in the matter of application of the special procedure. If speedy determination of disputes at lesser cost unfettered by technical rules of procedure is necessary in case of dispute with one category of non-members, it would be

equally necessary in case of dispute with another category of non-members. There is nothing uncommon in properties or characteristics between one category of non-members and another : both have common properties and common characteristics so far as the object of providing the special procedure is concerned and, therefore, require equal treatment in the matter of application of the special procedure. Take for example the category of non-members who have given loans to the Society. They are not included within the purview of the impugned provisions and are governed by the ordinary procedure. But non-members who have given loans to the Society are not required to follow the special procedure, there is no valid reason why non-members to whom loans have been granted by the Society should be treated differently and the special procedure should be applied to them. To sustain the validity of the legislation, we tried to think of every conceivable reason which might have weighed with the Legislature in making this differentiation but we could not find any nor was the learned advocate appearing on behalf of the State able to suggest one. If the reason for application of the special procedure is that there should be speedy determination of disputes at lesser cost unfettered by technical rules of procedure so as to save co-operative societies from being involved in long drawn out litigation, such reason would be equally applicable whether the non-member is a debtor or a creditor of the society. The achievement of the object of the legislation would require in both cases that special procedure should be applied in the determination of the dispute. It can hardly be suggested that speedy and less expensive remedy of special procedure is necessary where the Society is a creditor of a non-member but where the Society is a debtor of a non-member, such speedy and less expensive remedy need not be provided and the non-member may be left to his ordinary remedy involving the society in long drawn out and protracted litigation. There cannot be one procedure where the Society is a creditor of a non-member and seeks to recover its dues from the non-member and another where the Society is a debtor of a non-member and the non-member seeks to recover his dues from the Society. That would be discrimination in the most vicious and abominable form and it would be wholly unjustified from the point of view of the object of providing the special procedure. It will, therefore, be seen that there is no intelligible classification of non-members for the application of the special procedure. Different categories of non-members described in Clauses (c), (d) and (e) and by the words "any past or present agent" and "deceased agent" in Clause (a) of Section 96(1) and Explanation II are herded together arbitrarily. They do not possess any common properties or characteristics which distinguish them from other non-members left out of the group. Discrimination in the matter of application of the special procedure in regard to non-members is thus writ large on the face of the impugned provisions and it is not possible to justify this discrimination on any reasonable principle of classification. The impugned provisions must, therefore, incur our condemnation in so far as they apply the special procedure only to certain specified categories of non-members described in Clauses (c), (d) and (e) and by the words "any past or present agent" and "deceased agent" in Clause (a) of Section 96(1) and Explanation II.

21. We are, therefore, of the view that Clause (a) without the words "any past or present agent" and "deceased agent" and Clause (b) of Section 96(1) are not violative of Article 14 of the

Constitution but Clauses (c), (d) and (e) and the words "any past or present agent" and "deceased agent" in Clause (a) of Section 96(1) along with Explanation II which make the special procedure set out in the impugned provisions applicable only to certain specified categories of non-members are ultra vires and void as offending Article 14.

22. Re. Ground (C): The impugned sections prescribe a special machinery for adjudication of disputes touching the constitution, management or business of a Society and such disputes may well involve determination of rights to property. If, therefore, the machinery of adjudication provided in the impugned sections is unreasonable, it would amount to an unreasonable restriction on the fundamental right to hold property under Article 19(1)(f). It is now well-settled that the question whether the restrictions imposed by a legislative enactment upon the fundamental right guaranteed under Article 19(1)(f) are reasonable within the meaning of Article 19(5) depends as much upon the procedural portion of the law as the substantive part of it. Vide *N.B. Khare v. The State of Delhi*<sup>5</sup> *State of Madras v. F.G. Rao*<sup>6</sup> and *Kantilal Babulal & Bros. v. K.C. Patel*<sup>7</sup>, It, therefore, becomes necessary to examine whether the special machinery of adjudication provided in the impugned sections is reasonable.

23. There were in the main three grounds on which it was contended on behalf of the petitioners that the special machinery of adjudication provided in the impugned sections is unreasonable. The first ground was that the special machinery which provides for arbitration by the Registrar or his nominee is a poor substitute for the ordinary machinery of determination by a Civil Court. The petitioners also urged, and this was the second ground, that no minimum qualification is prescribed for the Registrar or his nominee under any provision of the Act nor is it stipulated in any provision of the Act that the Registrar or his nominee should be a person with legal training and the basic requirement of a fair trial, namely, that it should be by an experienced Court is, therefore, not satisfied. The last ground was that Section 99 Sub-section (2) denies legal representation to the parties unless the dispute involves complicated questions of law or fact and this provision denying access to legal aid also detracts from the reasonableness of the special machinery. These grounds require to be considered only in relation to disputes with members since so far as non-members are concerned, we have already held that the impugned provisions are violative of Article 14. But even so, what we observe in regard to the first two grounds would apply equally in relation to disputes with non-members.

24. So far as the first ground is concerned, it is no doubt true that the special machinery prescribed by the impugned sections provides for determination of the dispute by the Registrar or his nominee in accordance with the procedure set out in the impugned provisions read with Rule 41 instead of by a Civil Court according to the Code of Civil Procedure, but that is no reason why the special machinery should be condemned as unreasonable. We have grown up in a system of administration of justice where Civil Courts have been the primary authorities entrusted with the task of determination of disputes and, therefore, whenever a special machinery is devised by the Legislature entrusting the power of determination of disputes to another

authority set up by the Legislature in substitution of Courts of law, our minds which are conditioned by the historical existence of Courts of law and which have, therefore, acquired a certain predilection for the prevailing system of administration of justice by Courts of law, react adversely against the establishment of such an authority. We must, therefore, cast aside our predilection for the existing system of administration of justice which has prevailed over a long period of time and examine the special machinery set up by the Legislature objectively and dispassionately without any pre-conceived notion or prejudice against it. If we approach the problem from this point of view, we do not think there is anything per se unreasonable in the provision of special machinery for adjudication of disputes by the Registrar or his nominee so long as the basic essentials of a fair trial are present. Merely because this special machinery displaces the ordinary machinery of a civil suit, it does not mean that it is unreasonable.

25. Turning to the second ground, the petitioners are right when they contend that no

<sup>5</sup>(1950) S.C.R. 519

<sup>7</sup> AIR 1968 SC 445

<sup>6</sup>(1952) S.C.R. 597

minimum qualification for the Registrar or his nominee is prescribed in any provision of the Act nor does any provision of the Act require that the Registrar or his nominee should be possessed of legal training. But that in our view does not introduce any element of unreasonableness in the special machinery provided by the impugned sections. The Registrar is the highest officer contemplated by the Act and large administrative and quasi-judicial functions are entrusted to him under various provisions of the Act. The State Government would, therefore, naturally be careful to see that the Registrar is a senior experienced officer competent to discharge the functions and duties entrusted to him under the Act. The Registrar would in the circumstances be a highly responsible officer fully conscious of his manifold responsibilities under the Act. Now when a dispute is referred to him by any of the parties for decision, he would naturally as a responsible officer first consider whether he is competent to decide the dispute. It is possible that he may be a lawyer or he may have acquired sufficient legal training in which event he may think that he can competently decide the dispute referred to him. But if he has no legal training, he would naturally find out a nominee who is fit and competent to decide the dispute and refer the dispute to him for decision. Now it is true that no minimum qualifications are prescribed for a nominee and, therefore, theoretically the nominee may be any person even without legal training. But it must be remembered that there are innumerable kinds of disputes, which may come for decision before the Registrar. Some disputes may be so simple that they do not require any particular knowledge of law and might best be decided by experienced co-operators or commercial men. Then again there might be some disputes such as those relating to building or construction work, which can be more competently decided by architects or engineers than by lawyers. Some other disputes may come before him who involves questions of law but these questions may be fairly simple and it might be possible to have them decided by lawyers who are doing reasonably well in the profession. Then there might also be certain disputes, which involve complicated or difficult questions of law or fact and in those cases, it may be necessary

to have good senior experienced lawyers as nominees. The choice of the nominee must, therefore, necessarily depend on the nature of the dispute which comes before the Registrar and it would not be possible in the very nature of things to prescribe any rigid or definite qualifications which must be possessed by a person before he can be appointed a nominee. The discretion must be left with the Registrar to choose a proper nominee having regard to the nature of the dispute before him. The Registrar must exercise his discretion fairly and with a sense of responsibility so that there should be a fit and competent nominee appointed to decide the dispute. It is true that sometimes cases have come to our notice where we have found that lawyers without much experience or having little or no practice at all are appointed by the Registrar as nominees to decide disputes and this has led to an uneasy feeling in the minds of the litigating public that appointments of nominees are sometimes made on extraneous considerations or at any rate without giving due and proper thought to the question. But in such cases where the discretion is exercised unfairly, unreasonably or perversely, the arms of the Court are sufficiently long to reach the Registrar and to strike down any improper appointment made by him. As a matter of fact we are told that now a policy has been adopted by the State Government to appoint a board of nominees consisting of retired Judges to decide disputes referred to the Registrar. This is a very healthy step taken by the State Government and we have no doubt that it will go a long way towards restoring the confidence of the public in the fairness, efficiency and purity of administration of justice under the special procedure provided by the impugned sections which by reason of ill-considered appointments of nominees in the past was badly shaken. The absence of prescription of minimum qualification to be possessed by a nominee does not in the circumstances have the effect of making the machinery of adjudication unreasonable.

26. The last ground also does not in our opinion introduce any element of unreasonableness in the machinery of adjudication so far as disputes with members, officers and servants of the society are concerned. Members, officers and servants are connected with the constitution or management of the Society and for adjudication of disputes which they may have inter se or with the Society touching the constitution, management or "business of the Society, a domestic forum is provided by the Legislature so that the objects of co-operation may be advanced and disputes may be resolved without acrimony or bitterness in an informal manner by the Registrar or his nominee who would be expected to be familiar with co-operative principles. The denial of legal representation before such a domestic forum cannot be regarded as unreasonable provision particularly when a safeguard is provided that if the question before the domestic forum is a complicated question of law or fact, the parties shall be permitted to have legal representation. Vide *Pett v. Greyhound Racing Association Ltd*<sup>8</sup>, and *N. Kalindi v. T Locomotive and Engineering Co*<sup>9</sup>. We may however point out that different consideration would apply where non-members are parties to the dispute : non-members being outsiders qua the society, the principle that legal representation may be excluded before a domestic forum would not apply and the provision denying legal representation would be liable to be challenged as unreasonable. But in the view taken by us that the impugned provisions in so far as they prescribe the special machinery of adjudication for certain specified categories of non-members are null and void, it is not necessary to express any final opinion upon this point.

27. **Re : Ground (D):** While analysing the provisions of Section 98 Sub-section (3), we have already pointed out that the power conferred on the Registrar under that sub-section to suspend proceedings in regard to a dispute until the question at issue between the parties is tried in a regular suit is not an unfettered or unguided power despite the words "if he thinks fit". The exercise of this power is conditioned by the requirement that the question at issue between the parties must be a complicated question of law and fact and it is implicit in the nature of the power and the scheme of the provision that even where the question is a complicated question of law or fact, the power cannot be exercised unless it is a fit case for exercise of the power meaning thereby that, having regard to its nature, importance and complexity, the question must be of such a nature that the interests of justice require that it should be allowed to be agitated before a Court of law rather than before the Registrar or his nominee under the special machinery provided by the Act. It is, therefore, not possible to condemn this power as discriminatory or violative of Article 14.

28. The result, therefore, is that since Clause (a) without the words "past or present agent" and "deceased agent" and Clause (b) of Section 96(1) are valid, Special Civil Application No. 452 of 1968 where the dispute is between a Society and a member will have to be heard on the other points raised in the petition. The dispute in Special Civil Application

<sup>8</sup>(No.2), (1969) 2 W.L.R. 1228

<sup>9</sup> A.I.R. 1960 S.C. 914

No. 1188 of 1969 is between a Society and a non-member and, therefore, we allow that petition and make the rule absolute by declaring that Clauses (c), (d) and (e) and the words "any past or present agent" and "deceased agent" in Clause (a) of Section 96(1) as also Explanation II at the end of Section 96 are violative of Article 14 of the Constitution and are, therefore, null and void and we also issue a writ of certiorari quashing and setting aside the award dated 21st July 1967 made by the Nominee and the appellate order dated 31st December 1968 passed by the Co-operative Tribunal. The respondents in this petition will pay the costs of the petition to the petitioners.

Rule made absolute.