

(1999) 09 AP CK 0036

Andhra Pradesh High Court

Case No: Writ Petition No. 14636 of 1999

APDDC Staff and Workers Union
and others

APPELLANT

Vs

Government of A.P. and others

RESPONDENT

Date of Decision: Sept. 28, 1999

Acts Referred:

- Companies Act, 1956 - Section 19
- Constitution of India, 1950 - Article 14, 226, 245

Citation: AIR 2000 AP 76 : (1999) 6 ALD 357

Hon'ble Judges: B.S.A. Swamy, J

Bench: Single Bench

Advocate: Mr. Vedula Venkata Ramana, for the Appellant; Government Pleaders, for AH and Fisheries, GAD and Co-op and Mr. K. Rajeswar Rao, Mr. M. Ravindranath Reddy, Mr. P.B. Vijaya Kumar, S.V.S. Prasad and Mr. Kowturu Vinaya Kumar, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. The petitioners 3 in number, are the trade unions consisting of staff and workers of the A.P. Dairy Development Co-operative Federation-4th respondent herein filed this writ petition questioning the conversion of Vijaya Visakha District Co-operative Milk Producers Union Limited as a Vijaya Visakha Milk Producers Mutually Aided Co-operative Union Limited under A.P. Mutually Aided Co-operative Societies Act, 1995 (Act 30 of 1995) on various grounds by impleading the Principal Secretary, Animal Husbandary and Fisheries Department, Secretariat, Hyderabad. Registrar of Co-operative Societies, A.P., Hyderabad (hereinafter referred to as RCS, A.P. Dairy Development Co-operative Federation (hereinafter referred to as federation), District Co-operative Officer, Visakhapatnam and Vijaya Visakha District Co-operative Milk Producers Union Limited which stood converted as Vijaya Visakha Milk Producers Mutually Aided Co-operative Union Limited as respondents 1, 3, 4, 5, 6

and 7 respectively.

2. This Court while admitting the writ petition by order dated 16-7-1999 suspended the incorporation of the 7th respondent in WP MP No. 17948 of 1999 under APMACS Act, 1995 for a period of one month. Thereafter, the 7th respondent file WV MP No.1938 of 1999 seeking vacation of the interim suspension granted by this Court on 16-7-1999. Having heard the arguments on both sides, by order dated 13-8-1999 interim suspension was extended until further orders. Thereafter, one U. Suribabu, claiming to be a resident of Yelluppi village, Subbavaram Mandal, Visakhapatnam District filed WP MP No.19088 of 1999 on 23-7-1999 seeking to implead himself as 8th respondent in the above writ petition claiming to be the group leader of the persons supplying milk at village milk collection centre. On 21-8-1999 three Milk Producers Co-operative Societies in Pendurthi Mandal, Visakhapatnam District filed WP MP No.20095 of 1999 seeking permission of the Court to get themselves impleaded as respondents 9 to 11 in the above writ petition. Having heard the arguments of the Counsel for the petitioners in both the WPMPs, I am inclined to order both the WPMPs. The official respondents 1, 3, 4 as well as proposed respondents 8 to 11 supported the case of the petitioners in the writ petition and taken the stand that conversion of 7th respondent as mutually Aided Co-operative Union is illegal and the incorporation certificate issued by the 5th respondent has to be cancelled. At the outset, I would like to observe that" this Court witnessed for the first time that the official respondents have taken a stand against their subordinate and in fact the 3rd respondent-RCS has gone one step further and initiated disciplinary proceedings against the 5th respondent i.e., District Co-operative Officer, Visakhapatnam by contending that the said officer incorporated the 7th respondent Union in gross violation of the provisions of MACS Act as well as norms issued by the 3rd respondent and even without referring the matter to the Functional Registrar/Milk Commissioner and thereby mis-used the statutory powers conferred on him. With the result, the 5th respondent i.e., District Co-operative Officer, Visakhapatnam was forced to engage a Counsel of his own to defend his action.

3. In sum and substance, the main grievance of these respondents as seen from their pleadings is that if the 7th respondent is allowed to convert itself as a Mutually Aided Co-operative Union by opting out of the provisions of the A.P. Co-operative Societies Act the three tier structure approved by the Government of A.P. in G.O. Ms. No.551 dated 10-12-1980 on the basis of Anand Pattern for procurement effected and the activities of the 4th respondent federation will get disintegrated. The three tier structure contemplated under the above G.O., is that there shall be a primary milk producers Co-operative society at the village level, District milk producers Co-operative union at the district level and federation at the State level. To give effect to the above policy of the Government, the fourth respondent federation was set-up in G.O. Ms. No.551 dated 10-12-1980 in place of existing A.P. Dairy Development Corporation and transferred its assets and liabilities on lease on

payment of rent of Rs.1,000/- per annum. They did not dispute the fact that a society registered under the provisions of A.P. Co-operative Societies Act, if it wishes to convert itself can convert into Co-operative society under the Act, But, their objection is that the procedure prescribed under the Act as well as norms issued by the 3rd respondent were not complied with by the 5th respondent before registering the society under the new Act and as such the registration is ab initio void for non-compliance of the procedure contemplated under the Act. Before advertng to the contentions raised by the petitioners as well as official respondents, it is useful to extract the objects and reasons in enacting APMACS Act, 1995 (Act 30 of 1995). The Legislature having realised that the Co-operative Societies registered under the Act 7 of 1964 due to increased State participation in financing and management of the Co-operative Societies lead to an unfortunate situation where the Co-operative societies themselves, by and large, have started to perceive themselves not as member controlled, member sensitive business, guided by the universally accepted principles of co-operation, but as channels for Government subsidies and largesse and thereby sound and sustainable Co-operative business, accountability, responsibility and self-reliance have taken a back seat enacted the present enactment to confer more autonomy on the Co-operative Societies and to remove the state control by permitting formation of voluntary Co-operative Societies by excluding State control and make the Co-operative movement more vibrant, in the State. While making this Legislation sufficient care was taken by the Legislature to enable the Societies registered under Act 7 of 1964 to become Co-operative Societies registered under this Act by making suitable provisions therefore in the new Act. The relevant provisions of Act 30 of 1995 are extracted herein:

Section 2(e) : "Co-operative Society" means a Mutually Aided Co-operative Society registered u/s 4 whose Bye-laws prohibit from raising share capital from the Government, a Co-operative Society registered u/s 7 of the Andhra Pradesh Cooperative Societies Act, 1964, if it amends its Bye-laws where necessary to reconstitute its capital base and in respect of other relevant aspects to be in accordance with this Act, and returns to the Government its share capital, if any, and either enters into a Memorandum of Understanding with the Government for any outstanding loans due to, or guarantees given by the Government or returns to the Government of such assistance and further gets itself registered u/s 4 as a Co-operative Society under this Act."

Section 2(g) ; "Co-operative Tribunal" means the Tribunal or Tribunals constituted u/s 32".

Section 2(k) : ""Federation" means a mutually aided Co-operative society registered u/s 4 whose members are mutually aided Co-operative societies."

Section 2(r) : "Registrar" means the Registrar of Mutually Aided Co-operative Societies appointed u/s 4 of this Act, and includes any other person on whom all or

any of the powers of the Registrar under this Act are conferred."

4. While Section 3 deals with the Co-operative principles and Bye-laws of the Societies to be incorporated under the new Act, Section 4 deals with registration. Section 4 is extracted hereunder:

4. Registration :--(1) Where not less than ten individuals each being a member of a different family intend to form a Co-operative Society, or two or more Co-operative societies registered under this section wish to form into a federation, or a society registered u/s 7 of the Andhra Pradesh Co-operative Societies Act, 1964 intends to convert itself into a Co-operative society under this Act, they shall frame Bye-laws for this purpose in accordance with Section 3 in the first instance.

(2) Thereafter an application for registration shall be submitted to the Registrar by hand or by registered post.

(3) Every such application shall be accompanied by,--

(a) the original and one copy of the Bye-laws of the proposed Co-operative society as adopted by the individuals or delegates of Co-operative Societies who wish to form into a Co-operative Society under this Act or by the general body of a society registered under the Andhra Pradesh Cooperative Societies Act, 1964 which wishes to convert itself into a Cooperative society under this Act;

(b) a list of names of individuals or Cooperatives who wish to form into a Co-operative society under this Act or of the members of the committee of the society registered under the Andhra Pradesh Co-operative Societies Act, 1964 which intends to convert itself into a Co-operative society under this Act with their addresses, occupations and their financial commitments to the proposed Co-operative Society;

(c) a true copy of the minutes of the meeting at which the Bye-laws were adopted, duly signed by atleast a majority of individuals or delegates present at the meeting where the Bye-laws were adopted, or by a majority of the members of the committee of the Co-operative concerned where a society registered under the Andhra Pradesh Cooperative Societies Act, 1964, intends to convert itself into a Co-operative under this Act;

(d) registration fee amounting to one percent of the total authorised share capital by whatever name called subject to a minimum of one hundred rupees and a maximum of ten thousand rupees; and

(e) in the case of a society registered u/s 7 of the Andhra Pradesh Co-operative Societies Act, 1964 and wishing to convert itself into a Cooperative society under this Act, evidence to show that the society is not in possession of any share capital from Government, and evidence also to show that the society is not in receipt of any Government loans for guarantees at the time of applying for registration as a

Co-operative society under this Act, or that it has entered into a memorandum of understanding with the Government for any such outstanding loans or guarantees.

(4) The Registrar shall, if he is satisfied that:

(a) the application is in conformity with the requirements of this Act;

(b) the proposed Bye-laws are not contrary to the provisions of this Act; and

(c) the name of the proposed Co-operative society is not the same as that of a Co-operative society already registered under this section, or the same as that used by a class of societies already registered u/s 7 of the Andhra Pradesh Co-operative Societies Act, 1964-

register the Co-operative Society and also its Bye-laws and communicate by registered post a certificate of registration and the original of the registered Bye-laws signed and sealed by him, within a period of sixty days from the date of submission of application, to the chief promoter mentioned in the application.

(5) if the conditions laid down in subsection (4) are not fulfilled, the Registrar shall communicate by registered post the order of refusal together with the reasons therefor, within sixty days from the date of submission of application, to the chief promoter.

(6) There shall be appointed Registrar Mutually aided Co-operative Societies for the State and as many other officers as the Government think fit for the purpose of this Act.

Section 32 - Constitution of Tribunals reads as under:

(1) The Government may, for the purpose of this Act, by notification constitute as many Tribunals as may be necessary for such area or areas as may be specified in the notification.

(2) The provisions of Section 75 of the Andhra Pradesh Co-operative Societies Act, 1964 shall, mutatis mutandis apply for the constitution of Co-operative Tribunals under this section.

Section 40 - Dissolution by Tribunal reads as under:

(1) The Registrar or an interested person may, after giving the Co-operative Society ninety days notice of the proposed application, apply to the Tribunal for an order dissolving the Co-operative Society, where he has reasonable cause to believe that the Co-operative Society has no right to be or to continue to be recognised as a Co-operative Society, because it-

(a) obtained its registration by fraud or mistake;

(b) is serving illegal purpose;

(c) has wilfully, after notice by the Registrar, violated any of the provisions of this Act or its Bye-laws;

(d) is no longer operating in accordance with principles of Co-operation and the provisions of this Act;

(e) has not commenced business within two years of the date of registration; or

(f) has not carried on business for the past two consecutive years.

(2) Where an interested person applies in pursuance of this section, he shall give the Registrar notice of his application and the Registrar is entitled to appear and be heard in person or by Counsel.

(3) Where the Tribunal receives an application in pursuance of this section it may, after giving a reasonable opportunity to the Co-operative Society to state its case, order that the Co-operative Society be dissolved or liquidated and dissolved under the supervision of the Registrar.

(4) Where the Registrar receives an order made in pursuance of subsection (3), he shall-

(a) where the order is to dissolve the Cooperative Society, issue a certificate of dissolution; or

(b) where the order is to liquidate and dissolve the Co-operative Society under the supervision of the Registrar, publish a notice in a news paper published or distributed in the district in which the registered office of the Co-operative Society is situated.

6. From the above provisions it is seen that u/s 2(d) a Co-operative Society registered under Act 7 of 1964 if it amends its Bye-laws where necessary to reconstitute its capital base and in respect of other relevant aspects to be in accordance with this Act, and returns to the Government its share capital, if any, and either enters into a Memorandum of Understanding with the Government for any outstanding loans due to, or guarantees given by the Government or returns to the Government of such assistance it is entitled to get itself registered as a Co-operative Society u/s 4 of the new Act. u/s 4(e) the said society should show the evidence that the society is not in possession of any share capital from the Government and evidence also to show that the society is not in receipt of any Government loans or guarantees at the time of applying for registration as a Co-operative Society under the Act or that it has entered into a memorandum of understanding with the Government for any such outstanding loans or guarantees. u/s 40 of the Act any interested person may move the Co-operative Tribunal constituted u/s 32 of the Act for dissolution of a Co-operative Society after giving notice to the Society if the registration is obtained by fraud or mistake.

7. In the light of the above legal position, the following questions are framed for adjudication on the basis of the pleadings and arguments advance by the parties in this writ petition:

- (1) Whether the petitioners are having locus standi to file this writ petition.
- (2) Whether any illegalities or irregularities have taken place in conversion of the 6th respondent to 7th respondent union under APMACS Act and whether the same will result in the invalidation of the registration of the Society.
- (3) Whether the petitioners can approach this Court straight away under Article 226 of the Constitution of India without availing the efficacious and alternative remedy provided under the statute.

8. Before advertng to these contentions I may also state that though the petitioners questioned the vires of Act 30 of 1995, the Counsel did not advance arguments on this aspect. But, from the pleadings it is seen that the case of the petitioners is that the law relating to incorporation and management of Cooperative Societies is covered by the Constitution of India in List II - Slate List at Serial No.32 and when the Legislative power is exercised by enacting A.P. Cooperative Societies Act, 1964, the Legislature is not competent to enact another law on the same subject i.e., Act 30 of 1995 and the same is ultra vires of the powers of the State Legislature. The issue raised by the petitioners is squarely covered by a decision of the Constitution Bench of the Supreme Court in [Polaki Motors and Others Vs. State of Orissa and Others](#), . In that judgment their Lordships of the Supreme Court while considering the validity of Orissa Additional Sales Tax (Amendment and Validation) Act, 1973), whereunder additional tax on gross turnover and at multi-points, dehors the scheme of single point sales tax on taxable turnover under Orissa Sales Tax Act, 1947 observed that "both the levies come under the same topic of taxes on the sale or purchase of goods under Entry 54 List II. Instead of levying the tax under one enactment the State has chosen to levy the same under two different enactments". Their Lordships further observed that "enactment of a statute on topic covered by an entry of a legislative list does not lake away legislative competence to enact another statute on a different aspect covered by the same entry by the Legislature of a State in exercise of its powers under Article 245 of the Constitution of India." In the tight of the judgment perhaps having realised the difficulty in substantiating this contention the Counsel did not press this issue during the course of the arguments. Following the above judgment, I hold that Act 30 of 1995 is intra vires of the powers of the State Legislature and accordingly this contention of the petitioners is rejected.

9. Coming to the locus standi it is not in dispute that workers and staff working in 7th respondent Union are not members of any of these unions. On the other hand, Visakha Co-operative Dairy Employees Union a recognised trade union of the employees of the 7th respondent Union gave a letter to the Chairman of the 7th respondent expressing no objection for conversion of the 6th respondent union into

7th respondent union. The petitioners contend that they are interested in continuance of the present set up of three tier system regarding procurement, distribution and sale of milk and its bye-products in the State. It is also their case that the 7th respondent union by virtue of its incorporation under the new Act is trying to appropriate the public funds of the State Government and the federation by retaining the plant and machinery and infrastructure in various milk chilling centres and that the 7th respondent is resorting to appropriation of public money. Hence, they filed this writ petition for safeguarding public funds and from that point of view they have locus standi to maintain this writ petition. In support of their contention, the petitioners relied on a judgment of the Supreme Court in [Janata Dal Vs. H.S. Chowdhary and Others](#), . In that judgment their Lordships of the Supreme Court held that "in case of public interest litigation the strict rule of locus standi applicable to private litigation is relaxed and a broad rule is evolved which gives the right of locus standi to any member of the public acting bona fide and having sufficient interest in instituting an action for redressal of public wrong or public injury, but who is not a mere busy body or a meddlesome interloper; since the dominant object of PIL is to ensure observance of the provisions of the constitution and the law which can be best achieved to advance the cause of community or disadvantageous groups and individuals or public interest by permitting any person, having no personal gain or private motivation or any other oblique consideration but acting bona fide and having sufficient interest in maintaining an action for judicial redress for public injury to put the judicial machinery in motion like actio popularis of Roman Law whereby any citizen could bring such an action in respect of public delict". Now in the light of the principles enunciated by the Supreme Court, it has to be seen whether the petitioners brought this action for redressal of public wrong or public injury and whether the petitioners unions acted bona fide and having sufficient interest in maintaining this action of this writ petition is filed to advance the cause for others.

10. Firstly, it is seen that in the year 1997 the Guntur District Milk Producers Co-operative Union converted itself as Guntur District Milk Producers Mutually Aided Co-operative Union under the provisions of the new Act with registration No.AMC/GNT/DCO/97/28 dated 1-2-1997. At that time neither the petitioners nor the official respondents raised any objection for its conversion and the reason given now for filing this writ petition is that if the 7th respondent union is incorporated under the new provisions of the new Act, the fourth respondent federation gets disintegrated. In fact, when the 7th respondent approached the 4th respondent seeking permission for its conversion under New Act, the Managing Director of the 4th respondent federation raised objections by his letter dated 1-11-1998 and the 3rd respondent in his proceedings in Re. No.86733/98-M ACS., dated 19-4-1999 having rejected the objections raised by the 4th respondent federation directed the District Registrar to arrange for registration and conversion of 6th respondent union under APMACS Act, 1995. But, now the Registrar has taken contra stand in the

counter as well as in the additional counter. In the counter affidavit dated 16-8-1999 and additional counter affidavit dated 4-9-1999 it is his case that his office issued proceedings dated 19-4-1999 without his knowledge and he initiated departmental action against the erring officials. He also stated that the 5th respondent happened to be Registrar, Visakhapatnam under the new Act by virtue of the notification issued by the Government u/s 4(6) of the Act 30 of 1995, the RCS has no say in the matter and the 5th respondent has to take the decision on his own without reference to the communication issued for his office on 19-4-1999. He also stated that the 5th respondent without reference to the communication dated 18-4-1999 raised as many as 19 objections to the proposal of the 6th respondent-Society for conversion and thereafter registered the Society under the new act even though the Society failed to comply with the objections. Hence, the action of the 5th respondent is illegal. I have gone through carefully the affidavit filed in support of the writ petition and the counters filed by the official respondents and I find except making complaint that the 7th respondent union is in possession of Government properties like plant, machinery and buildings worth Rs.5.00 crores and the 7th respondent did not obtain permission of the Government which has given guarantee for the loan availed by the 6th respondent Society from 4th respondent federation, I do not find any other objection worth the name to invalidate the action of the 5th respondent. In fact, after conversion, the fourth respondent in his reference APDDCF:MD:99 dated 15-7-1999 addressed a letter to the Managing Director of the 7th respondent union wherein having taken note of the conversion of 6th respondent union into 7th respondent union observed that the 7th respondent union ceased to be an affiliated member of the APDDCF, thereby disqualifying it from the use of the "Vijaya" brand in sale of liquid milk and products unless specifically permitted by him. For giving permission he requested the 7th respondent union to enter into MOU if it wishes to continue the brand name and pending completion of the formalities for MOU requested the union to remit the franchise fee at the rate of 1% of the MRP for sale of liquid milk in sachets with effect from 8-7-1999. Thereafter, by his letter No.4013/G.M.(F&A)/98 dated 12-7-1999 addressed to the third respondent with a request to abrogate forthwith the registration of the 7th respondent union under the new Act as the same is being irregular. By another letter dated 17-7-1999 to 3rd respondent he complained that without referring the matter to the functional registrar/ milk commissioner, the 5th respondent registered the society in gross violation of the provisions of the Act and the norms prescribed therein and requested him to take disciplinary action against the 5th respondent. By another letter dated 14-7-1999 the Managing Director of the fourth respondent federation requested the third respondent to issue instructions to the respondent No.5 not to resort to registration of the 7th respondent union under the provisions of the new Act without referring the matter to him who is the milk commissioner and functional registrar under provisions of Act 7 of 1964 pending delegation of powers under the new Act to him as a functional registrar. The third respondent in his turn by his letter dated instructed the 5th respondent not to entertain the registration of the

society under the new Act without getting proper clearance from the functional registrar i.e., Managing Director of the 4th respondent Corporation and he seemed to have called for a report whether the required pre-conditions for the said conversion have been followed by the 7th respondent union or not. From the above narration of facts, it is seen that the Managing Director of the 4th respondent federation knew pretty well that by 12-7-1999 when he addressed a letter to the third respondent that the 6th respondent union got converted into 7th respondent union under the provisions of the new Act and the same was incorporated by the 5th respondent on 8-7-1999. But, this officer seemed to have taken the issue as a prestigious one and went on addressing letters to the first respondent as well as to the third respondent to take action against the 5th respondent to cancel the registration so on and so forth. But, at the same time of conversion of Sangam Dairy no objection was taken whatsoever by any of the official respondents. But now in the case of the 7th respondent union the third respondent having given instructions on 19-4-1999 to the 5th respondent to arrange for registration of the conversion of the 6th respondent into 7th respondent union under the provisions of the new Act has gone to the extent of blaming his subordinates perhaps at the instance of the 4th respondent. Likewise, the first respondent also has taken the stand that the registration is illegal and the Government is awaiting report to take further action in the matter. From the above it is seen that while the fourth respondent is pressurising the other official respondents for cancellation of the registration of the 7th respondent union at one berth, he encouraged the trade unions functioning under his control to file this writ petition though a very effective and efficacious alternative remedy is available for him to canvass the validity of the registration under the provisions of the new Act and also getting the counters filed by the official respondents supporting the case of the petitioners union conclusively establishes that the petitioners herein resorted to proxy war on behalf of the Managing Director of the 4th respondent corporation though they have no locus standi in this case and though their interests are not affected in any way. The other plea that they filed this writ petition to safeguard the public funds also cannot hold water for the reasons that I am going to record on the issues that cropped up for adjudication in this writ petition. Hence, I have no manner of doubt in holding that the petitioners are trying to convert the private litigation of the Managing Director of the 4th respondent federation into a public interest litigation by raising the above pleas and as neither any public interest is involved nor any public injury is caused due to conversion of the 7th respondent union, I hold that they have no locus standi to file this writ petition.

11. The next question to be considered is whether any illegalities or irregularities have taken place at the time of the conversion of the 6th respondent union under the provisions of Act 30 of 1995. If so their effect on the validity of the registration. As stated supra the main objection raised by the petitioners as well as the official respondents in this case is that on the date of incorporation of the 7th respondent

union an amount of Rs.3,97,70,034/- availed by the 7th respondent union from Indian Dairy Corporation/National Dairy Development Board under Operation Flood-II programme for which the State Government stood guarantee on 17-2-1985 remained unpaid. The respondent union also did not return the Government properties worth Rs.5.00 crores that are being enjoyed by the union before its conversion. Hence, the conversion of the union under the provisions of the new Act is illegal. As far as the guarantees given by the Government for the loan availed by the respondent union is concerned in G.O. Ms. No.55I dated 10-12-1980 with a view to establish 3 tier system on the lines of Anand pattern for procurement, distribution and sale of milk the Government having brought into existence the 4th respondent federation, transferred the assets and liabilities of the A.P. Dairy Development Corporation, the predecessor in interest on a token loan of Rs.1,000/- per annum and also agreed to give guarantee for the repayment of the financial assistance to be provided by the Indian Dairy Corporation to the federation which was later on converted as National Dairy Development Board (hereinafter referred as NDDB) under Operation Flood-II Programme together with interest. Thereafter under loan agreement dated 30-4-1992 the 4th respondent federation seemed to have borrowed a sum of Rs.376.85 lakhs from NDDB towards part finance for implementation of Operation Flood-II Programme and the Government seemed to have given guarantee for repayment of the said amount. Thereafter, the borrower i.e., 4th respondent federation made a proposal to NDDB to lend an amount of Rs.247.97 lakhs to the 6th respondent for the aforesaid purpose out of the loan availed by it under the main loan agreement and the NDDB seemed to have agreed for the proposal. Thereafter an agreement was entered into between NDDB, 4th respondent federation and 6th respondent union for release of the said amount to it. As per the agreement terms and conditions of the agreement 4th respondent entered into with NDDB, shall form part and parcel of the agreement including rate of interest and repayment of loan and the parties will be governed by the rights and obligations contained in the said main loan agreement. This also specifies the rights and obligations to be fulfilled by the borrower in terms of the main loan agreement and shall also to be carried out and fulfilled by the borrower and the sub-loanee jointly and severally. From this it is seen that though the Government seemed to have given guarantee to NDDB for the loan availed by the federation, from the Tripartite agreement entered into between the parties on 2-3-1993, it cannot be said that the Government has given any guarantee for discharging of the loan availed by the 6th respondent union to NDDB directly. Perhaps the petitioners and the official respondents are harping upon the words appearing in the agreement "the parties hereby will be governed by the rights and obligations contained in the said loan agreement". The 6th respondent union having decided to convert itself as the society under the new Act seemed to have approached NDDB by its letter dated 1-7-1999 for reduction of Government guarantee to the extent of financial assistance made available to it by the 4th respondent federation and to issue no objection certificate for its conversion. Having considered the request for the 6th

respondent union, the NDDB in its letter SR:MS;AP:VISAKHA:7715 dated 13-10-1998 informed the union that it has no objection for conversion of the union under the new Act. After receiving no objection certificate from NDDB, the 6th respondent union was incorporated under the provisions of the new Act on 8-7-1999. After the writ petition was filed, perhaps on legal advice by its letter dated 10-8-1999 repaid total outstanding loan to NDDB duly enclosing a demand draft bearing No.340604 dated 10-8-1999 drawn on Laxmi Vilas Bank payable at Anand for Rs.3,97,70,000/- and requested the NDDB to issue no due certificate in its favour duly discharging the Government guarantee if any, given by the Government of A.P. By its letter dated 11-8-1999 the NDDB informed the Secretary, Food and Agriculture Department, Government of A.P. that it has already given its consent for conversion by its letter dated 13-10-1998. It is useful to extract the last para of the letter dated 11-8-1999 which is as under:

"Since we have already communicated out no objection for registering the Visakha Milk Union under the A.P. Mutually Aided Co-operative Societies Act, 1995, meaning thereby, a decision in principle was taken by the NDDB to reduce the Government guarantee in respect of the loans released to the Visakha Milk Union. The necessary steps in this regard are being taken by NDDB and Visakha Milk Union."

12. On 30-8-1999 when the matter came up for hearing, the Counsel for the 7th respondent brought to my notice that his client cleared the loan. In those circumstances, while directing the 7th respondent to produce a letter from NDDB with regard to the receipt of the Demand Draft sent by it, I directed the Counsel for respondents 1, 3 and 4 to get instructions on the letter of NDDB dated 11-8-1999. On the same day i.e., on 30-8-1999 the 4th respondent federation addressed a letter to the General Manager, NDDB stating that under tripartite agreement dated 2-9-1993 an amount of Rs.3.977 crores is outstanding for repayment by the 6th respondent union and any variation in the liability or revocation of the guarantee should be with the express consent of the Borrower (APDDFC). Hence, the NDDB is requested to ensure that express consent of federation is obtained before Government guarantee in this matter is revoked. It is useful to extract para No.2 and penultimate para of the letter dated 30-8-1999 which is hereunder:

"In this connection, any variation in the liability or revocation of the guarantee should be with the express consent of the Borrower (APDDCF). Moreover, this issue is germane to the subject-matter of writ petition No.14636 of 1999 pertaining to registration of Visakha Milk Union under APMACS Act, which is subjudice.

In the penultimate para it is stated "As already stated, I request you to ensure that the express consent of APDDCF is obtained before the Government guarantee in this matter is revoked, as the matter is subjudice.

13. From these two paragraphs, it is seen that the 4th respondent tries to threaten the NDDB that if the DD sent by the 7th respondent union is encashed by it without

obtaining express consent of APDDCF it amounts to sub judice. Having received reply from NDDDB on 1-9-1999 acknowledging the receipt of DD the 4th respondent again addressed a letter to the NDDDB to inform the date of encashment of the demand draft sent by the respondent union. In reply to the said letter, the NDDDB in its letter dated 3-9-1999 informed the 4th respondent that the 7th respondent paid the amount by way of demand draft dated 10-8-1999. The letter also stated "As regards the relaxation of Government guarantee, please refer to our letter No.FPS:AP:7474 dated 11-8-1999, copy attached for your ready reference." Once again the 4th respondent addressed a letter to the NDDDB on 3-9-1999 stating that mere receipt of DD does not amount to payment unless it is encashed and requested NDDDB to specifically inform them about the date of encashment of the DD. The NDDDB in its letter dated 6th September, 1999 informed the 4th respondent that the DD sent by the 7th respondent has been duly encashed.

14. From the above narration of the facts, it is seen that the 6th respondent union having taken a decision to get itself converted as a society under the new Act, approached the NDDDB seeking its permission for conversion and for reduction of the Government guarantee to the extent of the financial assistance availed by it, by its letter dated 1-7-1998 and the NDDDB in its letter dated 13-10-1998 communicated its no objection for conversion of the 6th respondent union to 7th respondent union much in advance before actual conversion took place on 8-7-1999. But, the respondents 1, 3 and 4 started contending that without obtaining their prior permission the NDDDB cannot give its consent for conversion of 6th respondent union to 7th respondent-Union. I have seen the file relating to the conversion of "Sangam" dairy. The NDDDB in its letter SR:MSG:11321 dated 14-11-1996 has given no objection for getting the Sangam dairy converted under the provisions of the Act and thereafter the Sangam Dairy has been incorporated under the provisions of the new Act. In fact, the third respondent in his letter dated 19-4-1999 having taken note of the no objection certificate given by NDDDB, directed the 5th respondent to arrange for registration of conversion of 6th respondent union. As per the provisions of the new act a society registered u/s 7 of the Andhra Pradesh Co-operative Societies Act, 1964, if it wishes to convert itself it should show the evidence that it is not in receipt of any Government loans or guarantees at the time applying for registration. Though the NDDDB made the legal position clear by its letter dated 11-8-1999 stating that it is prepared to reduce the Government guarantee in respect of the loans released to 6th respondent union, I do not know what objections these official respondents can have. At any rate, when the entire loan amount was repaid on 10-8-1999, the question of subsistence of the guarantee given by the Government does not arise. But, the case of the respondents is that on the date of conversion i.e., on 8-7-1999 the guarantee given by the State Government for the loan availed by the 6th respondent is subsisting and the very registration of the society is null and void as it is running counter to the provisions of the Act. I cannot, accede to the contention for the simple reason that 6th

respondent union by its letter dated 1-7-1999 sought permission of the NDDDB for its conversion and also for reduction of the Government guarantee to the extent of financial assistance availed by it and the NDDDB by its letter dated 13-10-1998 accepted the same. On the basis of the no objection issued by the NDDDB the 6th respondent union was converted to 7th respondent union under the provisions of the new Act. From the letter of NDDDB dated 11-8-1999 the position is further made clear that while giving no objection for the conversion of the 6th respondent it has taken a decision to reduce the Government guarantee to the extent of the loan availed by 6th respondent union. Nextly, it is useful to extract clause 1.10 of the letter of the 3rd respondent dated 23-4-1996 which is as under:

"a copy of the memorandum of agreement between the Co-operative society and the Government of financial institutions in case of loans outstanding or guarantee ("in this matter, loan or guarantee to a federation even for the purpose of on-lending to the constituents of that federation may not be treated as loan or guarantee to the constituents, unless there is a specific mention of such a condition in the original agreement")."

15. From this it is evident that a loan or guarantee given by the Government to a federation for the purpose of on-lending to its constituents may not be treated as a loan or guarantee to the constituents, unless there is a specific union of such a condition in the original agreement. The tripartite agreement dated 2-3-1993 do not contain any such clause as observed supra. Hence it is to be held that the guarantee given by the Government for the loan availed by the 4th respondent cannot be treated as guarantee for the loan availed by the 6th respondent union from 4th respondent. Even assuming without admitting that the guarantee given by the Government is to be treated as a guarantee for the loan availed by 6th respondent, the same is not in force by virtue of the no-objection certificate dated 13-10-1998 given by NDDDB. Thirdly, even if it is in force on the date of registration, the respondents are estopped from raising any objection having permitted the conversion of the Sangam Dairy in similar circumstances. The stand taken by the Official respondents resulted in hostile discrimination against the 7th respondent union. Further the 3rd respondent having given letter dated 19-4-1999 directing the 5th respondent to arrange for registration of the conversion duly taking note of the no-objection certificate given by NDDDB now takes a contrary stand without any basis whatsoever and the stand taken by the 3rd respondent also runs counter to his earlier stand at the time of conversion of Sangam Dairy and these actions are in clear violation of Article 14 of the Constitution of India. Further I hold at the worst it may be a procedural irregularity and it cannot effect the very conversion of the 6th respondent union to 7th respondent union. Lastly, when the entire amount was cleared by the 7th respondent union, the official respondents should not raise any objection. But, from the letters addressed by the 4th respondent in this regard to NDDDB shows his animosity against the 7th respondent and at this instance the official respondents have taken these untenable pleas contrary to their own

instructions referred supra. For the above reasons, I reject the contention of the respondents on this Court.

16. Coming to the assets held by the 7th respondent, it is seen that a society registered u/s 7 of the Andhra Pradesh Co-operative Societies Act, 1964 if it wishes to convert itself into society under the provisions of the new Act evidence has to be shown that it is not in receipt of any Government loan or that it has entered into a memorandum of understanding with the Government for such outstanding. In my opinion, from the above, it is seen that no evidence need be shown with regard to return of the assets to the Government, if any, in its possession at the time of applying for registration. Assuming for a moment that the society has to either return the assets or enter into a memorandum of understanding with regard to the assets that are in possession of the 7th respondent union, the circumstances under which the assets of the Government are in the possession of the 7th respondent union have to be noted. Initially, the integrated Milk Project was launched as a department of Government and as the dairy activities have grown up the Government converted the same into a public sector corporation under name and style "A.P. Dairy Corporation Limited" owned and controlled by the Government of A.P. by registering the same under the provisions of Indian Companies Act, 1956, vide G.O. Ms. No.842 dated 14-8-1973 and the same came into existence with effect from 2-4-1974. Thereafter, the land, buildings, machinery, equipment, tools, furniture and fixtures etc., and all the vehicles attached to the units were transferred to the Corporation by the Government in G.O. Ms. No.80 F and RD (Dairy-I) Department dated 15-4-1974. In the year 1980 the Government having taken a policy decision to introduce three tier system for procurement, distribution and sale of milk and other bye-products on Anand pattern the present 4th respondent federation was organised by issuing G.O. Ms. No.551, F and RD (Dairy-I) Department dated 10-12-1980. In the said G.O., the assets and liabilities and the plant and machinery established by the Government all over the State were given on lease for Rs. 1,000/- per annum. The respondents estimated the value of the assets in possession of the 7th respondent union at Rs.5.00 crores as seen from Annexure-II of letter No.4013/ G.M (F and AO/98 dated 1-11-1998. He estimated the value of the plant and machinery not on the basis of depreciated value but on the basis of appreciated value and such a procedure is unknown.

17. With regard to the land and building he estimated the value on the basis of the prevailing market rate as on 31-3-1996, though these lands were purchased at the time of starting integrated milk project under the control of Dairy Development Department. Further it is seen as per G.O. Ms. No.551 dated 10-12-1980 that entire assets and liabilities of A.P. Dairy Development Corporation all over the State were leased out on a token rent of Rs.1,000/- per annum to the 4th respondent union. It is not known how he can claim such an amount while the federation is enjoying the plant and machinery and the buildings constructed by the integrated Milk Project only on a nominal rent of Rs.1,000/-per year. Nextly, it is to be seen that either in his

correspondence to various authorities or in the counters Filed in the writ petition no where he stated that the assets of the Government were handed over by the Guntur District Milk Producers Co-operative Union, at the time of their conversion under the New Act. In reply to this contention, the 7th respondent stated that while transferring the Srikakulam and Vijayanagaram District Unions, the assets under the control of those two units were estimated at Rs.20,87,453.32 ps and their the liabilities were estimated at Rs.78,09,400.00. After transfer of the Srikakulam and Vijayanagaram District Unions to it the 6th respondent union not only discharged the liabilities, but also improved the assets by investing huge amounts during past 15 years. It is their case that the ITDA units functioning at Paderu, Aruku, Chintapally, Jurupur and Seethampet were constructed with the funds of ITDA for tribal development and the said units are not in working conditions and are under the control of respective ITDAs. As far as Narsipatnam and Amdalavalsa units are concerned they were purchased with VCD funds and grants received by it. There remains two units with R.P. Puram and Srikakutam which were transferred to the 6th respondent as per the orders of the Government in G.O. Ms. No.67 dated 31-1-1985 with effect from 14-2-1985. Further it is also stated that the fourth respondent federation is liable to pay an amount of Rs.4.00 lakhs to the 6th respondent union exclusive of loss of 54.7 lakhs at the end of 31-2-1985.

18. During the course of the arguments, the Counsel for the 7th respondent union expressed its willingness to hand over the assets of 4th respondent federation at any time either before or after settling its accounts. He also stated that though the 6th respondent got itself converted into a society under the provisions of the new Act, it has no intention of any cessation from the 4th respondent as it can continue to be member of the 4th respondent federation by virtue of amendment Act 6 of 1998 to Section 19 of Act 7 of 64.

19. From the above, firstly it is seen that the "provisions of the new act do not contemplate handing over the assets of the Government at the time of applying for conversion. Secondly, the 4th respondent as well as official respondents have taken a different stand at the time of conversion of Sangam Dairy and conversion of the 6th respondent union. From the contention of the 7th respondent assets and liabilities of only two units were transferred to it by the federation under the orders of the Government in G.O. Ms. No.67 and as far as units under the control of ITDAs are concerned they are not in working condition apart from the fact that those units were constructed with the ITDA funds. Further it is the case of the 7th respondent that al the time of transfer of these units while the liabilities were valued at about 78 lakhs the value of the assets transferred was less than 21 lakhs that apart as on today about 4 crores have to be paid to the 7th respondent society. Unless all these accounts are settled, the handing over of the assets to 4th respondent or entering into MOU does not arise. Even assuming without admitting that the assets of the 4th respondent federation has to be redelivered at the time of filing application seeking conversion, it is only a procedural irregularity and as the 7th respondent is willing

and ready to redeliver the properties that are under its control even before settling its accounts shows the bona fides on the part of the 7th respondent. At the worse it may be a procedural irregularity and the same is curable, but it cannot have the effect in validating the very conversion of the 6th respondent as 7th respondent under the new Act.

20. Lastly, it is seen that while 4th respondent federation is running in losses as per the audit report of the audit officer of 4th respondent union in FAR No.2/97-98 dated 28-8-1998 the 7th respondent earned a gross profit of Rs.13,02,49,033.88 ps. during the Co-operative year 1997-98. ""In the circumstances, any prudent person will try to come out of a sinking unit as and when opportunity comes and as the provisions of the new Act are intended to minimise the Governmental interference and to promote more self-reliant and autonomous Co-operative societies, there is nothing wrong in the action of the 6th respondent in trying to get itself converted as 7th respondent under the provisions of the new Act. Accordingly, I hold that the objections raised by the official respondents do not hold much water and this contention is also rejected.

21. There remains certain technical objections raised by the 4th respondent federation as well as official respondents with regard to the registration of the 7th respondent union. The respondents contended that the 5th respondent has no jurisdiction to register the conversion of the 6th respondent whose area of operation is extended over three districts i.e., Srikakulam, Vijayanagaram and Visakhapatnam as the Government notified him as a functional registrar under the provisions of the new Act only for Visakhapatnam District. After the new Act came into force, the third respondent in his capacity as a registrar for the entire State issued guidelines from time to time with regard to registration of Co-operative societies under the new Act. As per the letter of the 3rd respondent dated 23-4-1996, the District Registrars are directed to instruct the promoters to file applications for registration with the Registrar at Hyderabad in case the area extends beyond the district. But the same was modified in his letter Re. No.57310/98/ MACS dated 29-8-1998. From this letter it is seen that the Society having more than 1 district as area of operation, the registrar under the new Act under whose jurisdiction the headquarters of the proposed society exists is empowered to register the society under the provisions of the new Act. In the light of these above instructions the respondents cannot take a round about turn and contend that the 5th respondent has no jurisdiction.

22. Nextly, it is contended that if a society registered under old Act intends to convert itself as a society under the provisions of new Act before general body meeting is convened notices have to be issued to creditors and others having some interest in the affairs of the society and such notice shall also to be published in any one of the vernacular news paper having good circulation in the local area. I have gone through the provisions of the Act carefully and I do not find that giving notice

to the creditors or the persons interested in the affairs of the society is a pre-condition for an old society to get itself converted under the provisions of the new Act. Again I have gone through the file of the Sangam Dairy and such a plea was not raised by the respondents at the time of its conversion. Hence, they are estopped from raising this contention.

23. The 4th respondent in para 9 of his counter contended that the Legislature passed two Acts i.e., 64 Act and 1995 Act and the provisions of one Act cannot supercede the provisions of another Act and u/s 30 of the Act 7 of 1964 no provision is made for any society to go out of perview of the Act and as such the general body resolution dated 18-9-1999 by the 6th respondent union is not valid. From this it is seen that this officer has gone to the extent of questioning the authority of the Legislature itself in passing two Acts and the reasons given by me in upholding the validity of Act 30 of 1995 holds good for rejecting his contention and it is accordingly rejected.

24. Nextly, it is contended that it is obligatory on the part of the 6th respondent union to settle the accounts as on the date of conversion under the Act. But, from the conduct of the 4th respondent federation, it is seen that he is opposing tooth and nail by approaching every authority concerned to come to his rescue in stopping the conversion of the 6th respondent union. Hence, it is highly difficult to hold that this respondent federation would have settled the accounts had the 6th respondent approached him for settling of its accounts, more so, when it is his specific case that the production, distribution and sale of milk is interlinked under the 3 tier system that is functioning in the State and if any imbalances occurs in the structure, the fourth respondent federation will get disintegrated. That is the reason why the 6th respondent approached the NDDDB seeking no objection certificate by reducing the Government guarantee to the extent of the loan availed by it and also the third respondent. Though, initially by 3rd respondents proceedings dated 19-4-1999 the District Registrar was directed to register the conversion of the 6th respondent union under the new Act perhaps because of the pressure brought by the 4th respondent he changed his attitude and he has even gone to the extent of finding fault with the subordinate in issuing proceedings without his knowledge. Even assuming without admitting that the said proceedings were issued without the knowledge of the 3rd respondent, I do not find any illegality or irregularity in the proceedings dated 19-4-1999 emanated from 3rd respondents office. At any rate, under the provisions of the new Act the society intending to convert itself has to show evidence that it is not in receipt of any Government loan. The 4th respondent which was incorporated under the provisions of the A.P. Act 7 of 1964 cannot equate itself to that of Government and as the 7th respondent have expressed their willingness to settle their accounts with the 4th respondent and also to return the assets that were handed over to it at the time of formation of the 4th respondent union. It is always open to the 4th respondent federation to settle disputes amicably. Accordingly, this contention is also rejected.

25. Nextly it is contended that under clause 2(k) the federation is defined as a mutually aided Co-operative society registered u/s 4. Hence, according to the petitioners and these respondents unless the primary societies affiliated to it are converted as societies under the new Act, the question of getting itself converted under the provisions of new Act does not arise. It is not in dispute that out of a total number of 615 member societies 576 member societies opted for conversion at the general body meeting held on 18-9-1999 and by the time of conversion of the union as many as 47 primary Co-operative societies got themselves converted under the new Act. Further it is seen from the proceedings Re. No.1315/97/ MACS dated 1-5-1997 addressed to the President of Milk Union, Vadlamudi (Sangam dairy) and the District Co-operative Officer, Guntur one of the pre-condition for conversion is that within one year time frame all the member societies of the erstwhile federation should be converted into new Act. From this it is seen that there is still time for the Primary Co-operative Societies to get themselves converted under the provisions of the new Act. Accordingly, this contention is also rejected.

26. Nextly, it is contended that after conversion of the 7th respondent under the new Act there is no obligation on the part of the 7th respondent to follow the guidelines of the State federation which may lead to unhealthy competition from different agencies apart from existing competition from private sector. It is rather unfortunate that an officer of I.A.S. rank has taken this stand forgetting the fact that the healthy competition is always invited between the competing organisations so that the efficiency of the organisation, quality of service will improve apart from implementing innovative ideas to face the competition in the market.

27. Lastly it is contended that the Managing Director of the 4th respondent federation being the functional milk commissioner under the provisions of Act 7 of 1964 his prior permission ought to have been obtained. From his letter dated 1-11-1998 and from Section 4 of the new Act I do not find any such condition was imposed and even as per his own version he was not nominated as a Milk Commissioner under the provisions of the new Act. Accordingly, this objection was also rejected.

28. The objections of the unofficial respondents are that

(1) if any laches are committed by the 7th respondent the milk producers are entitled to make representation to the 4th respondent federation which is being headed by a senior IAS officer;

(2) by the conversion the function, administration and control will be effected and practically there will not be any control of the 4th respondent federation; and

(3) since the Government control is being minimised as such, there will not be any protection to the milk producers and also effect the payments due to them as the accountability of 7th respondent is doubtful and ultimately overall administration will be effected thereby functioning of the unit will be effected.

29. All these above contentions are raised without knowing the aims and objectives underlying the new enactment and ,its provisions. Any member society which not willing to join the federation is always at liberty to opt itself out of the federation if it is having any apprehension, either on the functioning, the administration and control of the 7th respondent even as per Clause 3(iii) of the letter of the 3rd respondent dated 23-4-1996. Hence, the objections raised above by the unofficial respondents are also rejected.

30. Lastly as seen from the proceedings of the 3rd respondent dated 19-4-1999, the Government share capital accounting to Rs.20.39 lakhs was repaid by the 6th respondent union on 27-12-1997 much in advance to its conversion under the provisions of the new Act. In fact, this issue was not raised by the petitioners and the same was not disputed by either petitioners or the official respondents. To leave no doubt and see that the judgment is complete in all respects the above fact is also incorporated in the judgment.

31. In the light of the foregoing discussions, I do not find any merit in any of the contentions raised by the petitioners as well as by the official respondents. Further, the official respondents having not raised their little finger against the conversion of Sangam Dairy in 1997 and raised these objections with regard to the conversion of 6th respondent union under the provisions of the new Act on an apprehension that if the conversion of 6th respondent union is permitted the 4th respondent gets disintegrated which cannot form basis for opposing conversion of the 6th respondent union, in the light of the aims and objects underlying the new Legislation lastly I hold that the officers cannot approbate or reapprobate to suit their convenience more so contrary to the provisions of the Act and guidelines issued by them from time to time.

32. Lastly, it is to be seen whether the petitioners can invoke the jurisdiction of this Court without exhausting the statutory remedy. As held supra u/s 40 of the new Act any interested person can move the Co-operative Tribunal constituted u/s 32 of the Act for the dissolution of the society if the registration is obtained by playing fraud or mistake following the procedure mentioned. Hence, if the petitioners are really aggrieved by the action of the 5th respondent in converting the 6th respondent union as a 7th respondent union under the provisions of the new Act, they would have filed an appeal before the Co-operative Tribunal where the dispute would have been settled between the parties on the basis of the pleadings and also after recording evidence on the issues in controversy. Hence, the petitioners cannot invoke the jurisdiction of this Court under Article 226 of the Constitution of India.

33. Further, this writ petition cannot be treated as a public interest litigation as the interest of the community at large is not going to be effected in any way by conversion of the 6th respondent union nor any injury is said to have been caused to the public due to the conversion of the 6th respondent union. Hence, I hold that the writ petition filed by the petitioners is not maintainable both on the ground of

existence of an alternative remedy and also on the ground that it cannot be treated as a public interest litigation.

34. For all the aforesaid reasons, I do not find any merit in any of the contentions raised by the petitioners as well as official respondents in this writ petition opposing conversion of the 6th respondent union as 7th respondent union under the provisions of APMACS Act. In the circumstances of the case the 5th and 7th respondents shall be paid costs for defending the registration of 7th respondent union by the 4th respondent who is responsible for all this litigation. Advocates fee is fixed at Rs.5,000/- and the same will be equally apportioned between 5th and 7th respondents union.