(1983) 02 BOM CK 0038

Bombay High Court

Case No: Writ Petns. No''s. 1440 and 1276 of 1981 and 120 of 1982

The Saraswat Co-operative Bank Limited and Others		APPELLANT
	Vs	
P.G. Koranne and Others		RESPONDENT

Date of Decision: Feb. 1, 1983

Acts Referred:

- Banking Regulation Act, 1949 - Section 34A
- Constitution of India, 1950 - Article 14, 19(1), 245, 246
- Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 - Section 3(13)

Citation: AIR 1983 Bom 317 : (1983) 85 BOMLR 134

Hon'ble Judges: Madon, C.J; Pendse, J

Bench: Division Bench

Advocate: A.J. Rana, S.I. Thakor, R.A. Dada, D.R. Dhanuka, S.M. Jhunjunwala and G. Pillai, for the Appellant; M.D. Rijhwani, S.M. Shah and A.G., for the Respondent

Judgement

Madon C.J.

1. These three writ petitions under Article 226 of the Constitution of India challenge the constitutionality of Section 73BB of the Maharashtra Co-operative Societies Act, 1960 (Maharashtra Act No. XXIV of 1961) and of the Government Resolution No. CSL 1577/ 14599-15-C dated Sept. 13, 1977 issued by the Agriculture and Co-operation Department of the Government of Maharashtra. As the grounds of challenge in these petitions to the said section and the said Government Resolution are mostly the same, we have thought it convenient to dispose of these three petitions by a common judgment.

2. The Petitioners in Writ Petition No. 1440 of 1981 are the Saraswat Cooperative Bank Limited and two of its members and shareholders. In Writ Petition No. 1276 of 1981 the Petitioners are the Bombay Mercantile Co-operative Bank Limited and two

of its members and shareholders and in Writ Petition No. 120 of 1980 the petitioners are the Greater Bombay Co-operative Bank Limited and one of its members and shareholders. The respondents in Writ Petitions Nos. 1440 of 1981 and 1276 of 1981 are the Deputy Secretary to the Government of Maharashtra, Agriculture and Co-operation Department, the Deputy Registrar, Co-operative Societies, and the State of Maharashtra, while the respondents in Writ Petition No. 120 of 1982 are the State of Maharashtra and the Deputy Registrar, Co-operative Societies. As the constitutionality of the said Section 73BB was challenged in these petitions, notice was issued to the Advocate-General and in response thereto the the Advocate-General appeared through Counsel.

3. All the three Petitioner-Banks were registered as Co-operative Societies under the Bombay Co-operative Societies Act, 1925 (Bombay VII of 1925), The said Act was repealed by the Maharashtra Co-operative Societies Act, 1960 (hereinafter for the sake of brevity called "the Act") and the three Petitioner-Banks are now deemed to be registered under the Act on the commencement thereof, namely, with effect from Jan. 26, 1962. The Saraswat Co-operative Bank Limited, Petitioner No. 1 in Writ Petition No. 1440 of 1981, was registered in the year 1918 with its registered office in Bombay. It has 26 branches in Greater Bombay and nine branches outside Greater Bombay in the State of Maharashtra. It has also a branch at Belgaum in the State of Karnataka and has received permission from the Deputy Director, Ministry for Civil Supplies and Co-operation, to extend its area of operation to the State of Karnataka and the Union Territory of Goa, Daman and Diu. The Bombay Mercantile Co-operative Bank Limited, Petitioner No. 1 in Writ Petition No. 1276 of 1981, was registered in the year 1939 and has its registered office in Bombay and has 19 branches in the State of Maharashtra including six branches outside Greater Bombay. It has five branches in the State of Gujarat and one branch in the State of Jammu and Kashmir and also one branch in the Union Territory of Delhi. The Greater Bombay Co-operative Bank Limited, Petitioner No. 1 in Writ Petition No. 120 of 1982, has its registered office in Bombay and has five branches in Greater Bombay. It does not have any branch outside Greater Bombay.

4. The facts which have given rise to these three petitions are almost the same and it is unnecessary to narrate separately the facts of each of these petitions. It is sufficient to set out the facts which have given rise to Writ Petition No. 1440 of 1981. Section 73BB was inserted in the Act by the Maharashtra Co-operative Societies (Third Amendment) Act, 1973 (Maharashtra Act No. III of 1974) with retrospective effect. The said Amending Act received the President''s assent on Feb. 15, 1974 and was brought into force with effect from March 1, 1975. The said Section 73BB provides as follows:

"Reservation of seats for employees on committees of certain Societies. -

73BB. On the committee of such society or class of societies as the State Government may, by general or special order, direct where the number of

permanent salaried employees of the society is 25 or more: --

(a) if the number of members of the committee thereof is 11 or less -- one seat; and

(b) if the number of such members is 12 or more -- one additional seat for every 10 members over and above the first 11 members, shall be reserved for such employees. The seats so reserved shall be filled by selection made by the recognised union or unions, from, amongst such employees. If there be no such union, the members representing such employees may be nominated by the Stale Government. Any person selected or nominated as a member of the committee to any reserved seat shall not be entitled to be elected as an officer of such society, or to vote at any election of officers."

By his letter dated September 24, 1979 the Officer on Special Duty in the Agriculture and Co-operation Department, Government of Maharashtra, intimated the Chairman of the Saraswat Co-operative Bank Limited that the Government had received a representation from the Vice-President of the Co-operative Bank Employees'' Union, Bombay, requesting the Government to notify the said Bank for the purpose of Section 73BB of the Act. The said letter added that before taking any final decision in the matter the Government desired to have the views of the said Bank on the subject and further requested the said Bank to forward its views within a period of fifteen days. Accordingly, by his letter dated November 23, 1979 the General Manager and Secretary of the said Bank set out a number of objections to making the said section applicable to it. It, however, appears that the Government of Maharashtra had already passed the impugned Resolution dated September 13, 1977. The said impugned Resolution is in the following terms:

"List of Societies or Class
of Societies which are
within the purview of
Section 73BB of Maharashtra
Co-operative Societies Act,
1960.

GOVERNMENT OF MAHARASHTRA
Agriculture and Co-operation Department,
Resolution No. CSL 1577/14599-15-C,
Mantralaya Annexe.
Bombay-32. 13th September, 1977.

READ:

(i) Section 73BB of the Maharashtra Co-operative Societies Act, 1960,

(ii) Government Resolution, Agriculture and Co-operation Department No. CSL 1574/22544-C-5, dt. the 19th March, 1975.

(iii) Letter No. 14-URB-1, dated the 15th July 1977 from the Commissioner for Co-operation and Registrar, Co-operative Societies. Pune.

RESOLUTION: Government is pleased to bring the Urban Co-operative Banks which have in their establishment at least 25 permanent employees, within the purview of Section 73BB of the Maharashtra Co-operative Societies Act, 1960.

2. The Commissioner for Co-operation and Registrar of Co-operative Societies should be requested to suggest the names of employees who would be required to be nominated in the light of the provisions of Section 73BB of Maharashtra Co-operative Societies Act, 1960.

By order and in the name of the Governor of Maharashtra.
Sd/
(P. G. Koranne)
Officer on Special Duty
to Government."

The passing of this Resolution does not appear to have been communicated to any of the Urban Co-operative Banks or to the Petitioner Banks. Thereafter, by his letter dated July 24/31, 1980, the Deputy Registrar of Co-operative Societies intimated the said Saraswat Cooperative Bank Limited about the said Government Resolution and called upon the said Bank to make necessary provisions in the bye-laws of the said Bank in the ensuing Annual General Meeting and send the proposal for approval to the office of the Deputy Registrar without fail. By his letter dated August 6, 1980, the General Manager and Secretary of the said Bank informed the said Deputy Registrar that any amendment of the bye-laws of the said Bank was not necessary because the said Section 73BB of the Act when applied to the said Bank would prevail over the bye-laws. He further expressed surprise that the Government had called upon the said Bank by the said letter to express its views with regard to the Application of the said Section 73BB of the Act to the said Bank and that though the said Bank had sent a detailed reply dated Nov. 23, 1979 it had not received any further communication in respect there- of. By his reply dated April 1, 1981 the said Deputy Registrar called upon the said Bank to implement the provisions of the said Section 73BB. Thereupon the said Bank along with two of its members and shareholders filed Writ Petition No. 1440 of 198l.

5. The constitutionality of the said section 73BB has been challenged by the petitioners on the following grounds:

(1) The said Section 73BB suffers from the vice of excessive delegation of legislative power.

(2) The said section is violative of Article 14 of the Constitution inasmuch as it confers upon the Slate Government an unfettered and unguided power to pick and choose any society or any class of societies as it pleases.

(3) The said section imposes unreasonable restrictions on the fundamental rights guaranteed by Sub-clauses (f) and (g) of Clause (1) of Article 19 of the Constitution.

(4) The State Legislature did not possess legislative competence to enact the said section in so far as co-operative banks were concerned.

(5) The said section in so far as the co-operative banks are concerned is in conflict with the provisions of the Central enactment, namely, the Banking Regulation Act, 1949.

(6) The said section is void because it is unworkable and incapable of implementation.

The challenge to the said impugned Government Resolution was made on the following grounds:

(1) The said Government Resolution is violative of Article 14 of the Constitution of India inasmuch as it applied Section 73BB to urban co-operative banks and not to all co-operative banks thus leaving out rural co-operative banks.

(2) The said Government Resolution is violative of the fundamental rights guaranteed by Sub-clauses (f) and (g) of Clause (1) of Article 19 of the Constitution.

(3) The said Government Resolution is in conflict with the provisions of the Central enactment, namely, the Banking Regulation Act, 1949. On behalf of the Respondents and the Advocate-General it was contended that the said Section 73BB of the said Act was not an instance of delegated legislation but of conditional legislation. The Respondents also contested the validity of the other contentions taken by the Petitioners.

6. The first question which falls for consideration is, whether the said Section 73BB is a piece of delegated legislation or of conditional legislation. The principles underlying these two types of legislation are well-settled, though difficulty may and at times does arise about their application to particular cases. In delegated legislation some portion of the legislative power of the Legislature is delegated to an outside authority and the Legislature though competent to perform both the essential and ancillary legislative functions performs only the essential functions and parts with the ancillary functions in favour of the delegate for executing the policy underlying the enactment. In the case of conditional legislation, the legislation is complete in itself but its operation is made to depend upon the fulfilment of certain conditions and what is delegated to an outside authority is the power to determine according to its own judgment whether or not these conditions are fulfilled. The Supreme Court in Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others, , thus enunciated the distinction between these two types of legislation (at pp. 566-567):

".... The distinction between conditional legislation and delegated legislation is this that in the former the delegate''s power is that of determining when a legislative declared rule of conduct shall become effective; Hampton & Co. v. United States (1927) 276 US 394, and the latter involves delegation of rule making power which constitutionally may be exercised by the administrative agent. This means that the legislature having laid down the broad principles of its policy in the legislation can then leave the details to be supplied by the administrative authority. In other words by delegated legislation the delegate completes the legislation by supplying details within the limits prescribed by the statute and in the case of conditional legislation the power of legislation is exercised by the legislature conditionally leaving to the discretion of an external authority the time and manner of carrying its legislation into effect as also the determination of the area to which it is to extend; Queen v. Burah (1878) 3 AC 889; Charles Russell v. Queen (1882) 7 AC 829 ; AIR 1945 48 (Privy Council); Sardar Inder Singh Vs. The State of Rajasthan, . Thus when the delegate is given the power of making rules and regulations in order to fill in the details to carry out and subserve the purposes of the legislation the manner in which the requirements of the statute are to be met and the rights therein created to be enjoyed it is an exercise of delegated legislation. But when the legislation is complete in itself and the legislature has itself made the law and the only function left to the delegate is to apply the law to an area or to determine the time and manner of carrying it into effect, it is conditional legislation."

It is now well-settled by several decisions of the Supreme Court that in delegating the legislative power the Legislature cannot delegate any essential legislative function which consists of the determination of legislative policy and its formulation as a binding rule of conduct and that delegation of legislative power is permissible only when the legislative policy and principles are adequately laid down and the delegate is only empowered to carry out the subsidiary policy within the guidelines laid down by the Legislature. In Municipal Corporation of Delhi Vs. Birla Cotton, Spinning and Weaving Mills, Delhi and Another, , Wanchoo C.J. observed as follows (at page 1244):

"A review of these authorities therefore leads to the conclusion that so far as this Court is concerned the principle is well established that essential legislative function consists of the determination of the legislative policy and its formulation as a binding rule of conduct and cannot be delegated by the legislature. Nor is there any unlimited right of delegation inherent in the legislative power itself. This is not warranted by the provisions of the Constitution. The legislature must retain in its own hands the essential legislative functions and what can be delegated is the task of subordinate legislation necessary for implementing the purposes and objects of the Act. Where the legislative policy is enunciated with sufficient clearness or a standard is laid down, the courts should not interfere. What guidance should be given and to what extent and whether guidance has been given in a particular case at all depends on a consideration of the provisions of the particular Act with which

the Court has to deal including its preamble. Further it appears to us that the nature of the body to which delegation is made is also a factor to be taken into consideration in determining whether there is sufficient guidance in the matter of delegation."

In Tata Iron and Steel Co. Ltd. Vs. The Workmen and Others, , the Supreme Court pointed out both the necessity for delegating legislative power to other authorities as also the limitations on the Legislature in delegating such powers. In that case, Dua J. speaking for the Court said (at page 1922):

"Now, the increasing complexity of modern administration and the need for flexibility capable of rapid readjustment to meet changing circumstances which cannot always be foreseen, in implementing our socio-economic policy pursuant to the establishment of a welfare State as contemplated by our Constitution, have rendered it convenient and practical, nay, necessary, for the legislatures to have frequent resort to the practice of delegating subsidiary or ancillary powers to delegates, of their choice. The parliamentary procedure and discussion in getting through a legislative measure in the legislatures is usually time-consuming. Again such measures cannot provide for all possible contingencies because one cannot visualize various permutations and combinations of human conduct and behaviour. This explains the necessity for delegated or conditional legislation. Due to the challenge of the complex socio-economic problems requiring speedy solution the power of delegation has by now as per necessity become a constituent element of legislative power as a whole. The legal position as regards the limitation of this power is, however, no longer in doubt. The delegation of legislative power is permissible only when the legislative policy and principle are adequately laid down and the delegate is only empowered to carry out the subsidiary policy within the guidelines laid down by the legislature. The legislature, it must be borne in mind, cannot abdicate its authority and cannot pass on to some other body the obligation and the responsibility imposed on it by the Constitution. It can only utilise other bodies or authorities for the purpose of working out the details within the essential principles laid down by it. In each ease, therefore, it has to be seen if there is delegation of the essential legislative function or if it is merely a case in which some authority or body other than the legislature is empowered to work out the subsidiary and ancillary details within the essential guidelines, policy and principles, laid down by the legislative wing of the Government."

On the above principles legislation has sometimes been struck down as suffering from the vice of excessive delegation and in other cases upheld on the ground that the Legislature had laid down the policy and guidelines on which such delegated powers were to be exercised. Thus, in Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others, the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, made provisions to control the

advertisement of drugs in certain cases and to prohibit the advertisement for certain purposes of remedies alleged to possess magic qualities. Section 3 of that Act prohibited every person from taking any part in the publication of any advertisement referring to any drug which in terms suggested or were calculated to lead to the use of that drug for the purposes set out in Clauses (a) to (d) of that section. Clause (d) of Section 3 was as follows:

"(d) the diagnosis, cure, mitigation, treatment or prevention of any venereal disease or any other disease or condition which may be specified in rules made under this Act."

The Supreme Court held that the words "or any other disease or condition which may be specified in the rules made under this Act" in the said Clause (d) did not lay down any criteria or proper standards or did not prescribe any principle upon which a particular disease or condition can be specified and by enacting this portion of the said Clause (d) the Legislature had conferred an uncanalised and unguided power upon the executive to add to the diseases mentioned in that Act and had thus travelled beyond the permissible boundaries of valid delegation. Upon this ground the impugned words in the said Clause (d) were held to be ultra vires.. In Harishankar Bagla and Another Vs. The State of Madhya Pradesh, the challenge to the validity of Section 3 of the Essential Supplies (Temporary Powers) Act, 1946, on the ground that it amounted to impermissible delegation of legislative power was negatived by the Supreme Court on the ground that the principles upon which the authority to whom the power was delegated to act had been laid down by the legislature. In that case, the Supreme Court also negatived a similar challenge made against Clause 3 of the Cotton Textiles (Control of Movements) Order, 1948, made in exercise of the powers conferred upon the Central Government by the said Section 3 of that Act on the ground that the policy under-lying the said Control Order was clearly to be found in the said Order. In Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others, the Supreme Court held that it is for the Court to hold on a fair, generous and liberal construction of an impugned statute whether the Legislature had exceeded the limits of permissible delegation. It further held that such liberal construction should not be carried by the Courts to the extent of trying to discover dormant or latent legislative policy to sustain an arbitrary power conferred on executive authorities. In that case, the Court held that Section 5 of the Punjab General Sales Tax Act, 1948, prior to its amendment was void, because it conferred an uncontrolled power on the Provincial Government to levy every year on the taxable turnover of a dealer a tax at such rates as the said Government might direct and that by doing so, the Legislature had practically effaced itself in the matter of fixation of rates and had not given any guidance under that section or under any other provisions of the said Punjab Act. In Municipal Corporation of Delhi Vs. Birla Cotton, Spinning and Weaving Mills, Delhi and Another, , the Supreme Court by a majority upheld Section 150 of the Delhi Municipal Corporation Act, 1957, on the ground that the power conferred by the said section on the Corporation to

levy any of the optional taxes by prescribing the maximum rates of tax to be levied, to fix class or classes of persons or the description or descriptions of articles and properties to be taxed and to lay down the system of assessment and exemptions, if any, to be granted on the ground that the conferment of such power was not unguided and therefore could not be said to amount to excessive delegation. In Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi, , the Supreme Court upheld the validity of Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956, under which landlords were barred from executing eviction decrees against tenants except with the previous permission of the competent authority. It held that though the said section did not in terms lay down any rules for the guidance of the competent authority in exercising his discretion in granting or refusing permission, there was enough guidance in the impugned Act which could be gathered from the policy and purpose of that Act as set out in the preamble and in the operative provisions thereof.

7. It would be better now, if instead of referring to other instances in which the statutory provisions have either been upheld as being within the permissible limits of delegated legislation or have been struck down on the ground that they have travelled beyond such limits, to turn to the class of cases where the concerned legislation has been held to be conditional legislation. In the leading Privy Council case of Queen v. Burah (1877) 5 Ind App 178, Act No. XXII of 1869 passed by the Indian Legislature removed the territory of Garo Hills from the jurisdiction of the Courts of Civil and Criminal Judicature, and from the control of the revenue offices and vested the administration of civil and criminal justice within the said territory in such officers as the Lieutenant-Governor may by notification in the Calcutta Gazette direct. By Section 9 of that Act the Lieutenant-Governor was empowered from time to time by notification in the Calcutta Gazette to extend mutatis mutandis all or any of the provisions contained in the other sections to the Jaintia Hills, the Naga Hills and such portion of the Khasi Hills as might, for the time being, form part of British India. The Lieutenant-Governor of Bengal, by notification published in the Calcutta Gazette, fixed the date on which that Act was to come into operation in. the Garo Hills, and thereafter, by another notification published in the Calcutta Gazette, extended all the provisions of that Act to the Khasi and Jaintia Hills, declaring the administration of civil and criminal justice within that district to be vested in the Commissioner of Assam, subject to the general direction and control of the Lieutenant-Governor, and further providing that the Commissioner should exercise the powers of the High Court in the civil and criminal cases triable in the Courts of the district, subject to the proviso that no sentence of death should be carried out without the sanction of the Lieutenant-Governor. Further, the Deputy Commissioner of the district was, inter alia, empowered to exercise the same powers. One Burah, the respondent before the Privy Council, was tried upon a charge of murder and convicted by the Deputy Commissioner of the Khasi and Jaintia Hills. The sentence of death imposed upon him was commuted by the Chief Commissioner of Assam to

transportation for life. On a petition of appeal to the High Court at Calcutta, the High Court by a majority held that the case fell within their appellate jurisdiction. The decision of the High Court was challenged before the Judicial Committee of the Privy Council. The Judicial Committee held (page 195):

"Their Lordships think that it is a fallacy to speak of the powers thus conferred upon the Lieutenant-Governor (large as they undoubtedly are) as if, when they were exercised, the efficacy of the acts done under them would be due to any other legislative authority than that of the Governor-General in Council. Their whole operation is, directly and immediately, under and by virtue of this Act (XXII of 1869) itself. The proper Legislature has exercised its judgment as to place, person, laws, powers; and the result of that judgment has been to legislate conditionally as to all these things. The conditions having been fulfilled, the legislation is now absolute. Where plenary powers of legislation exist as to particular subjects, whether in an imperial or in a provincial Legislature, they may (in their Lordships" judgment) be well exercised, either absolutely or conditionally. Legislation, conditional on the use of particular powers, or on the exercise of a limited discretion, entrusted by the Legislature to persons in whom it places confidence, is no uncommon thing; and, in many circumstances, it may be highly convenient." (The emphasis has been supplied by us).

The principle laid down by the Judicial Committee of the Privy Council has been accepted, approved and followed by the Supreme Court in several cases. In The Edward Mills Co. Ltd., Beawar and Others Vs. The State of Ajmer and Another, , a notification issued by the State of Ajmer fixing minimum wages in respect of the employment in the textile industry within that State under the provisions of the Minimum Wages Act, 1948, was challenged as being illegal and ultra vires. The Schedule attached to that Act specified under two parts the employments in respect of which minimum wages of the employees can be fixed and Section 27 of that Act authorised the appropriate Government to add to either part of the Schedule any other employment in respect of which it was of the opinion that minimum wages should be fixed under that Act. It was contended before the Supreme Court that the Minimum Wages Act nowhere formulated a legislative policy according to which an employment could be chosen for being included in the Schedule and that that Act prescribed no principles nor laid down any standards which could furnish any guidance to the administrative authority in making selection. Rejecting this contention the Supreme Court held (at p. 32):

"There is undoubtedly an element of delegation implied in the provision of Section 27 of the Act, for the Legislature, in a sense, authorises another body, specified by it, to do something which it might do itself. But such delegation if it can be so called at all does not, in the circumstances of the present case, appear to us to be unwarranted and unconstitutional."

The Supreme Court then referred to the case of Baxter v. Ah Way (1909) 8 CLR 626, decided by the High Court of Australia and to the Privy Council case of Queen v. Burah 1878 Ind App 178. It then pointed out that in Burah''s case what was left to the Lieutenant-Governor was the power to apply the provisions of the concerned Act to certain territories at his option and those territories to which the said Act was to be extended were also specified in the said Act. The Legislature could be said to have applied its mind to the question of the application of the law to particular places and it was left to the executive only to determine when the laws would be made operative in those places. According to the High Court of Australia the same principle would apply even when the executive is given power to determine to what other persons or goods the law should be extended besides those specifically mentioned therein. The Supreme Court observed that it was not very material whether provision like the one which was impugned before it, came within the description of what is called "conditional legislation" and proceeded to consider the question, whether it exceeded the limits of permissible delegation. It then proceeded to consider the legislative policy underlying that Act (pages 32-33):

"The legislature undoubtedly intended to apply this Act not to all industries but to those industries only where by reason of unorganized labour or want of proper arrangements for effective regulation of wages or for other causes the wages of labourers in a particular industry were very low. It is with an eye to these facts that the list of trades has been drawn up in the schedule attached to the Act but the list is not an exhaustive one and it is the policy of the legislature not to lay down at once and for all time, to which industries the Act should be applied. Conditions of labour vary under different circumstances and from State to State and the expediency of including a particular trade or industry within the schedule depends upon a variety of facts which are by no means uniform and which can best be ascertained by the person who is placed in charge of the administration of a particular State,

It is to carry out effectively the purpose of this enactment that power has been given to the ''appropriate Government'' to decide with reference to local conditions, whether it is desirable that minimum wages should be fixed in regard to a particular trade or industry which is not already included in the list. We do not think that in enacting Section 27 the legislature has in any way stripped itself of its essential powers or assigned to the administrative authority anything but an accessory or subordinate power which was deemed necessary to carry out the purpose and the policy of the Act." (The emphasis has been supplied by us),

In Bangalore Woollen, Cotton and Silk Mills Co. Ltd., Bangalore Vs. The Corporation of The City of Bangalore by its Commissioner, Bangalore City, , what was challenged was the power conferred upon the Municipal Council to impose octroi duty, on articles which were not specified in the Schedule to the City of Bangalore Municipal Corporation Act, 1949, but which may be approved by the Corporation. The Supreme Court repelling the challenge held that the Legislature had laid down the

powers of the Municipality to tax various goods and had enumerated certain articles and animals and had further authorized the Municipality to impose tax on other articles and goods and that this power was more in the nature of conditional delegation as was held in the case of Baxter v. Ah Way (1909) 8 CLR 626. It observed (page 1266):

"..... All that the Legislature has done in the present case is that it has specified certain articles on which octroi duty can be imposed and it has also given to the Municipal Corporation the discretion to determine on what other goods and under what conditions the tax should be levied. That, in our opinion, is not a case which falls under the rule laid down by this Court in Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others,

8. Another case which may also be usefully referred to is a decision of the Supreme Court in Basant Kumar Sarkar and Others Vs. Eagle Rolling Mills Ltd. and Others, . In that case, Sub-section (3) of Section 1 of the Employees'' State Insurance Act, 1948, was challenged on the ground of excessive delegation. That section provided that that Act should come into force on such date or dates as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of that Act and for different States or for different parts thereof. The Supreme Court held that Section 1(3) of that Act was not an illustration of delegated legislation at all but was what could properly be described as conditional legislation. It pointed out that the said Act prescribed a self-contained Code in regard to the insurance of the employees covered by it and had specifically dealt with other remedial measures which Legislature thought it necessary to enforce in regard to such workmen and had made appropriate provisions to carry out the policy of that Act as laid down in its relevant sections, and in leaving to the discretion of the Central Government when the notification should be issued and in respect of what factories, what the Legislature had done was what is usually done by conditional legislation. After examining the scheme of that Act, the Supreme Court pointed out as follows (at p. 1262-1263):

"..... In the very nature of things, it would have been impossible for the legislature to decide in what areas and in respect of which factories the Employees'' State Insurance Corporation should be established. It is obvious that a scheme of this kind, though very beneficent could not be introduced in the whole of the country all at once. Such beneficial measures which need careful experimentation have sometimes to be adopted by stages and in different phases, and so, inevitably, the question of extending the statutory benefits contemplated by the Act has to be left to the discretion of the appropriate Government."(The emphasis has been supplied by us.) In Mohmedalli and Others Vs. Union of India (UOI) and Another, u/s 1(3)(b) of the Employees'' Provident Funds Act, 1952, that Act applied to every establishment which was a factory engaged in any industry specified in Schedule I and in which

twenty or more persons were employed, and to any other establishment employing twenty or more persons or class of such establishments which the Central Government might, by notification in the Official Gazette, specify in that behalf. It was contended that Clause (b) of Section 1(3), which conferred power upon the Central Government to extend that Act to the establishments other than those specified in the Schedule, suffered from the vice of excessive delegation. The Court held (at page 983):

".... The Act has given sufficient indication of the policy underlying its provisions, namely, that it shall apply to all factories engaged in any kind of industry and to all other establishments employing 20 or more persons. This Court has repeatedly laid it down that where the discretion to apply the provisions of a particular statute is left with Government, it will be presumed that the discretion so vested in such a high authority will not be abused. The Government is in a position to have all the relevant and necessary information in relation to each kind of establishment enabling it to determine which of such establishments can bear the additional burden of making contribution by way of provident fund for the benefit of its employees." (The emphasis has been supplied by us). The contention that this was a piece of conditional legislation was, however, not advanced before the Supreme Court in that case. In the same way, the Supreme Court in Mohammad Hussain Gulam Mohammad and Another Vs. The State of Bombay and Another, negatived the challenge to Section 29 of the Bombay Agricultural Produce Markets Act, 1939, which conferred power upon the State Government to acid to, or amend, or cancel any of the items of the agricultural produce specified in the Schedule. The Supreme Court pointed out that the said Act dealt with what may be called wholesale trade and in its opinion this provided ample guidance to the State Government when it came to decide whether a particular agricultural produce should be added to, or taken out of, the Schedule and that the State Government would have to consider in each case whether the volume of produce in trade was of such a nature as to give rise to give rise to wholesale trade. It further pointed out that what the Legislature had done was to confer power upon the State Government to add to, amend or cancel any of the items of the agricultural produce specified in the Schedule in accordance with the local conditions prevailing in different parts of the State in pursuance to the legislative policy which was apparent on the face of that Act and that by doing so the Legislature had not stripped itself of its essential powers or assigned to the administrative authority anything but an ancillary or subordinate power which was deemed necessary to carry out the purpose and policy of the said Act. In this case also the contention that the said statutory provisions amounted to conditional legislation does not appear to have been taken before the Supreme Court and accordingly, this aspect was not considered by the Supreme Court. In Kerala State Electricity Board Vs. The Indian Aluminium Co. Ltd., Section 2(a) of the Kerala Essential Articles Control (Temporary Powers) Act, 1962, was challenged, inter alia, on the ground of excessive delegation. Section 2 (a) of that Act defined

"essential article" as meaning any article (not being an essential commodity as defined in the Essential Commodities Act, 1955) which may be declared fey the Government by notified order to be an essential article. Section 3 of that Act enabled the Govt., if it was of opinion that it was necessary or expedient so to do for maintaining or increasing the supplies of any essential article or for securing their equitable distribution and availability at fair prices, to make notified orders providing for certain regulatory measures. In exercise of these powers the Kerala Government declared electricity as an essential article and thereafter issued the Kerala State Electricity Supply (Kerala State Electricity Board and Licensees Areas) Surcharge Order, 1968. The said notification as well as the said Order were challenged before the Supreme Court on various grounds. Dealing with the ground of challenge based on excessive delegation, the Supreme Court referred to and cited with approval the Privy Council case of Queen v. Burah ((1878) 5 Ind App 178) and proceeded to hold as follows (at page 1048):

"We are of opinion that the power conferred by the Kerala Act is a case of conditional legislation as contemplated in the above decision. The various types of powers that can be exercised under that Act are enumerated in it. Only the article with reference to which those powers are to be exercised is left to be determined by the executive. That will vary from time to time; at one time salt may be an essential article, at another time rice may be an essential article and on a third occasion match boxes. It is the executive that would be in a position to judge when and under what circumstances an article becomes an essential article and therefore it is necessary to control the production, supply and distribution or trade and commerce in a particular article."

9. While we are on this aspect of the case, it would not be out of place to refer to a decision of the Supreme Court in The Registrar of Co-operative Societies, Trivandrum and Another Vs. K. Kunjabmu and Others, , in which the vires of Section 60 of the Madras Co-operative Societies Act, 1932, was challenged on the ground that it amounted to excessive delegation. The said section empowered the state Government, by general or special order, to exempt any registered society from any of the provisions of the said Act or to direct that such provisions should apply to such societies with such modifications as might be specified In the order. The Court held that it was not open to the Legislature to delegate its essential legislative function and that the Legislature must lay down the policy and principle and can only delegate the filling in of the details and carrying out of the policy. How these guidelines are to be laid down was described by the Court in the following words (at p. 352):

".... The legislature may guide the delegate by speaking through the express provision empowering delegation or the other provision of the statute, the preamble, the scheme or even the very subject-matter of the statute. If guidance there is, wherever it may be found, the delegation is valid. A good deal of latitude

has been held to be permissible in the case of taxing statutes and on the same principle a generous degree of latitude must be permissible in the case of welfare legislation, particularly those statutes which are designed to further the Directive Principles of State Policy."

The Court then examined the Madras Act, its preamble and its scheme to find out whether the Legislature had laid down any policy or guidelines. It held that the Madras Act was a welfare legislation and referred to its preamble for that purpose. The Court then stated (at page 354):

"..... The objectives are clear; the guidelines are there. There are numerous provisions of the Act dealing with registration of societies, rights and liabilities of members, duties of registered societies, privileges of registered societies, property and funds of registered societies, inquiry and inspection, supersession of committees of societies, dissolution of societies, surcharge and attachment, arbitration etc. We refrain from referring to the details of the provisions except to say that they are generally designed to further the objective set out in the preamble. But, numerous as the provisions are, they are not capable of meeting the extensive demands of the complex situations which may arise in the course of the working of the Act and the formation and the functioning of the societies. In fact, the too rigorous application of some of the provisions of the Act may itself occasionally result in frustrating the very objects of the Act instead of advancing them. It is to provide for such situations that the Government is invested by Section 60 with a power to relax the occasional rigour of the provisions of the Act and to advance the objects of the Act. Section 60 empowers the State Government to exempt a registered society from any of the provisions of the Act or to direct that such provision shall apply to such society with specified modifications. The power given to the Government u/s 60 of the Act is to be exercised so as to advance the policy and objects of the Act, according to the guidelines as may be gleaned from the preamble and other provisions which we have already pointed out, are clear."

10. In the light of the above decisions of the Supreme Court, we will now consider the impugned Section 73BB of the Act. Section 73BB, which we have reproduced above, was inserted with retrospective effect in the Act by Section 15 of the Maharashtra Co-operative Societies (Third Amendment) Act, 1973 (Maharashtra Act No. III of 1974). This Amending Act amended several sections of the Act. Clause 15 of L. A. Bill No. XL of 1973, which introduced the said Amending Act in the Maharashtra Legislature on August 22, 1973 related to the insertion of Section 73BB in the Act. This clause was adopted without effecting any change therein. The said Bill was published in the Maharashtra Government Gazette Extraordinary, Part V, dated August 30, 1973 at pages 398 to 412. Clause 15 of the Statement of Objects and Reasons was in the following terms:

"Clause 15.-- New Section 73BB is being inserted with a view to enabling the employees of certain societies to have their representatives on the managing

committees of their societies. This will ensure labour participation in the management particularly in large and medium scale industrial co-operative societies."

It will be noticed that while the Statement of Objects and Reasons speaks of the intention of the Legislature to ensure labour participation in the management particularly in large and medium scale industrial co-operative societies, neither the said Clause 15 of the Bill nor the said Section 73BB of the Act contains any such provision. However, on the strength of this Statement of Objects and Reasons it was argued on behalf of the petitioners that the operation of this section must be confined only to large and medium scale industrial co-operative societies. It is, however, now well settled that the Statement of Objects and Reasons is not admissible as an aid to the construction of a statute and cannot be referred to for the purpose of construing any part of a statute or for ascertaining the meaning of any word used in the said statute and that it can be referred to only for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extent and urgency of the evil which he sought to remedy (see The State of West Bengal Vs. Subodh Gopal Bose and Others, . Whether the intention as expressed in the Statement of Objects and Reasons has been implemented by the Legislature is to be judged from the provisions of the relevant sections and not by interpreting it with the aid of the Statement of Objects and Reasons. The operation and implications of Section 73BB of the said Act, therefore, cannot be cut down by a reference to the Statement of Objects and Reasons. We also do not find the reliance placed by the petitioners upon the Statement and Objects and Reasons to be justified. The Statement of Objects of Reasons does not State that the intention of the sponsor of the Bill was to confine Section 73BB only to large and medium scale industrial co-operative societies. It shows that the intention was to ensure labour participation in the management of co-operative societies particularly in large and medium scale industrial co-operative societies. Section 73BB in terms applies to all co-operative societies provided the number of permanent salaried employees of the society is 25 or more. Thus, all societies where the number of permanent salaried employees is 25 or more come within the scope of this section. It, however, does not by i*s own terms apply immediately to all such societies but leaves it to the State Government by a general or special order to direct to which of such societies or class of societies the section would apply. It then makes provision for the number of such employees who are to be appointed on the managing committee and the mode of such appointment and also provides for restriction on the power of such employee-members of the committee. The question that arises is. "Why has the Legislature left it to the State Government to specify by general or special order such society or class of societies?"

The reason is obvious when we examine the scheme of the Act. Under the Act there are several classes of co-operative societies. Section 2 of the Act, which is the

interpretation clause, deals with several of these classes of societies. The other classes of societies are to be Hound de-scribed in other provisions off the Act and in the Rules framed under the Act. Turning to the various clauses of Section 2 of the Act, we find that Clause (1) defines "agricultural marketing society"; Clause (6), "Central Bank"; Clause (10), "cooperative bank"; Clause (10-A), "crop protection society"; Clause (12), "farming society"; Clause (13), "federal society"; Clause (15), "general society"; Clause (16), "housing society"; Clause (16-A), "lift irrigation society"; Clause (22), "processing society"; Clause (23), "producers'' society"; Clause (25), "resource society"; Clause (28), "society with limited liability"; and Clause (29), "society with unlimited liability". Section 51 of the Act defines an Apex society and Section 52(2)(b), "Central Society" and "Primary Societies". u/s 12 the Registrar of Cooperative Societies has to classify all societies into one or other of the classes of societies defined in Section 2 and also into such sub-classes thereof as may be prescribed by rules. Rule 10 of the Maharashtra Co-operative Societies Rules, 1961, sets out nine main classifications. Some of them have several sub-classifications. It is unnecessary to reproduce the table of classifications and sub-classifications. It is also pertinent to note that u/s 73E of the said Act the Government is empowered, by notification in the Official Gazette, to specify such class or classes of societies in which no member is to be eligible for being elected or appointed as a designated officer as (defined in Section 73A(1) unless he fulfils the minimum qualification laid down from time to time in such notification. u/s 73G(1) special provision is made for the conduct of election to the committees and of officers of certain societies and the term of office of such committees. These societies are such Apex Co-operative Institutions, as may be specified by the State Government by general or special order published in the Official Gazette, from time to time, District Central Co-operative Banks; Primary Land Development Banks; District Co-operative Sale and Purchase Organisations; Taluka Cooperative Sale and Purchase Organisations; Co-operative Sugar Factories; Cooperative Spinning Mills; and other societies for class of societies, which the State Government may, by general or special order published in the Official Gazette, from time to time, specify in this behalf. These classes of societies are known as "specified societies". Thus, it will be seen that all co-operative societies do not and cannot stand on the same footing. The nature of their functions, the object for which they have been formed, the areas of their operation, the purposes for which they have been brought into existence and the type of members from the very nature of the different classes of societies are all different. If we look at these different types of societies, it is clear that every society and class of society is not of such a type in which labour participation in management is necessary or required. It may be desirable in the case of some societies or classes of societies and wholly unnecessary in other classes of societies, for instance, a housing society. Even in societies falling under the same classification or sub-classification some societies either by reason of their area of operation or type of membership may be in substance wholly different from other societies in the same classification or sub-classification. Thus a society operating in a backward or

rural area cannot be equated with a society having the same objects and falling under the same classification or sub-classification but operating in am urban or highly industrialised area. To apply the section immediately on its enactment to all societies would be to create confusion and chaos in the working of many societies as also make their operations unworkable. The Legislature cannot be the proper judge as to the class or classes of societies or even societies within a particular class in which employee-participation in management would foe desirable. This can only be done by an agency which has before it sufficient information and data with respect to all societies and which is capable of having knowledge of changing circumstances. This information and knowledge can only be possessed by the State Government and its department which deal with co-operative societies. Section 73BB of the Act, while providing that all societies can be brought within the scope of the section, has, therefore, left it to the State Government to decide to which societies the said section would apply. The said section, therefore is a type of legislation as was before the Court in the The Edward Mills Co. Ltd., Beawar and Others Vs. The State of Ajmer and Another, , Bangalore Woollen, Cotton and Silk Mills Co. Ltd., Bangalore Vs. The Corporation of The City of Bangalore by its Commissioner, Bangalore City, , the case of Basant Kumar Sarkar and Others Vs. Eagle Rolling Mills Ltd. and Others, and in Mohmedalli and Others Vs. Union of India (UOI) and Another, , Kerala State Electricity Board Vs. The Indian Aluminium Co. Ltd., , and The Registrar of Co-operative Societies, Trivandrum and Another Vs. K. Kunjabmu and Others, . In our opinion, therefore, Section 73BB can properly be described as a piece of conditional legislation.

11. Even if it were to be held that Section 73BB of the Act is not an instance of conditional legislation but is a piece of delegated legislation, we are unable to hold that the power delegated thereunder to the State Government is unguided or uncanalised or arbitrary as was sought to be argued on behalf of the petitioners. The object underlying Section 73BB is clear and is writ large on the face of the section itself. It is to provide for participation of employees in the management of societies. Many concepts we once held have in the recent years become due dated. States including India have assumed the role of Welfare States and as part of their welfare programme have brought about socio-economic reforms by enacting appropriate legislations. It is now well-recognised that a company or a corporation does not exist purely for the sake of its shareholders or merely to earn profits for them. It is recognised and accepted that it exists not only for the sake of its shareholders taut also for the sake of its employees to whom it provides livelihood and for the sake of the consumers for whom it produces goods. It can thus be said to have a social responsibility. Such social responsibility of a company or a corporation has been recognised in law and sought to be enforced by appropriate legislation, as for example, in preventing a merger which, would concentrate wealth in the hands of a small group of persons or which would lead to stifling free and fair competition to the detriment of the public. We have for this reason on the statute

book of this country the Monopolies and Restrictive Trade Practices Act, 1969. Similarly, a co-operative society cannot be said to exist only for the sake of its members or those who manage it, namely, the members of the managing committee. The object, of the Act, as stated in its preamble, is to provide for the orderly development of the co-operative movement in the State of Maharashtra in accordance with the relevant directive principles of State policy enunciated in the Constitution of India. Co-operation is a form of organization in which a group of people term a co-operative combination voluntarily and work together for a common end on the principle that each should work for all and that all should work for each in the attainment of common need. Formation of co-operative societies has made it possible for persons of comparatively poor means to group themselves together by forming a co-operative society to give to the members thereof some of the advantages ordinarily obtainable only by the well-to-do. The basis of the co-operative movement is not finance as in the case of companies and corporations. It is the co-operative effort of all its members. In the production of goods finance is not the only requirement. Finance may be the basic requirement for purchasing raw materials or for setting up a factory, but it is the labour which makes the factory work and which converts the raw materials into finished products. There must be, therefore, harmonious employer and employee relationship if any such organised form of activity is to function properly and yield the optimum result. Employees participation in management can, therefore, be said to form a part of the co-operative movement in its wider sense. In this context, we may usefully refer to the decision of the Supreme Court in Monogram Mills Ltd. and Others Vs. The State of Gujarat, In that case, the vires of Sections 53A and 53B of the Bombay Industrial Relations Act, 1947, as in force in the State of Gujarat and which was inserted in that Act by Gujarat Act No. 21 of 1972, were challenged. These sections provided for setting up of Joint Management Councils consisting of representatives of the employers and employees in the prescribed manner in all undertakings or any class of undertakings in any industry in which five hundred or more employees were employed or had been employed on any day in the preceding twelve months as the Slate Government may by general or special order require the employer to constitute. The writ petitions filed in the Gujarat High Court challenging the validity of the said sections were dismissed as also the appeals filed before the Supreme Court against the judgment of that High Court, Khanna, J., speaking for the Court, pointed out how the concept of labour participation in management has developed in different countries. His Lordship then proceeded to observe (at p. 2182) :

"……The object of workers" participation in joint management councils is to enlist co-operation of workers with a view to bring about improvement in the performance of industrial organisations. It is assumed that the above scheme would give a robust feeling of participation to the workers in the management and thus result in improved functioning of the industrial undertaking. Another object appears to be to democratise the industrial milieu and ensure egalitarianism in the process."

We thus fail to see why co-operative societies should form an exception to this now well accepted principle of labour participation in the management.

12. Just as there cannot be employee participation in every form of activity, there cannot be employee participation in every type of society. The section itself indicates that societies to which the section should be applied by the State Government should have a minimum number of 25 permanent salaried employees. Thus, the societies to which the said section can apply are societies which may be said to be developed societies. Not all societies have 25 permanent salaried employees. Many of them have just a handful of employees. Even in the case of urban Co-operative Banks, we find from the supplemental affidavit filed in Writ Petition No. 1440 of 1981 by P. G. Koranne, Deputy Secretary to the Government of Maharashtra in the Agriculture and Co-operation Department, affirmed on August 6, 1982, that there are nearly 350 urban Cooperative Banks in the State of Maharashtra, but the number of Banks having more than 25 salaried employees is estimated at about 162 only. In many other classes of societies there will not be 25 permanent salaried employees. The principle of workers participation in the management of industries is now so well recognised that it has been made a directive principle of State policy in our Constitution. This has been done by the Constitution (Forty-second Amendment) Act, 1976, by inserting With effect from 3rd Jan., 1977 Article 43A in Part IV of the Constitution, which lays down the Directive Principles of State Policy. Article 43A provides as follows:
"43A. Participation of workers in management of industries. -

The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry."

It is true that this Article was not in the Constitution when the impugned section was enacted. By the insertion of Article 43A in the Constitution, Parliament did not, however, evolve any new principle or theory. All that it did was to give constitutional recognition to what had already received international recognition as a welfare and socio-economic measure. It is the above principle and policy which underlie Section 72BB of the Act and afford clear guidelines to the State Government.

13. It was urged that the said section confers upon the State Government the power to pick and choose any society out of a class of societies for the purposes of Section 73BB and the said power was, therefore, arbitrary and violative of Article 14 of the Constitution of India. We are unable to accept this argument. The society or class of societies which the Government is empowered to specify for the purpose of Section 73BB of the Act can only be such society or class of societies to which the section can be applied conformably with the object and policy underlying it, namely, such society or class of societies in which employee-participation in management is desirable or necessary. What was particularly attacked in this section was the power

of the State Government to make this section applicable to any society. It was urged that this conferred upon the Government the power to select any one society out of a class of societies and make this section applicable to it and thus discriminate against it. In our opinion, the expression "such society" in the said section does not mean a society which the Government can select at its own whim and pleasure. We have already pointed out that all societies even though they may fall in the same classification or sub-classification do not stand on an equal footing. In our opinion, therefore, the expression "such society" means a society which by reason of its special features, such as, its area of operation, the class to which its members belong, its objects and the operation it carries on forms a class by itself for the purpose of Article 14 of the Constitution, though it may be a society which along with other societies not similarly circumstanced falls in the same classification or sub-classification. The above expression, therefore, refers only to a society out of several societies which is not similarly circumstanced to other societies in the same classification or sub-classification. If a society out of a class of societies which are similarly circumstanced is chosen for the application of Sec. 73BB and the others are left out, such exercise of power by the State Government would be bad as offending Article 14 of the Constitution, but Section 73BB cannot, therefore, be impugned on that ground (see In re the Special Courts Bill, 1978, In Re: The Special Courts Bill, 1978, .

14. In this connection it may not be out of place to mention that by Government Resolution No. CSL-1574/22544/ C-5, dated March 19, 1975, the State Government has applied the provisions of Section 73BB to (1) The Maharashtra State Co-operative Bank Limited, Bombay, (2) The Maharashtra State Co-operative Land Development Bank Limited, Bombay, (3) The Maharashtra State Cooperative Marketing Federation Limited, Bombay, (4) all District Central Cooperative Banks, (5) all Co-operative Sugar Factories, (6) all Co-operative Spinning Mills, and (7) The Maharashtra Co-operative Housing Finance Society Limited, Bombay. The supplementary return filed on behalf of the Government shows that by the said Resolution 26 District Central Co-operative Banks, 67 Co-operative Sugar Factories and 22 Co-operative Spinning Mills in the State have been brought within the ambit of Section 73BB of the Act.

15. It will be convenient, at this stage, also to deal with the challenge under Article 14 of the Constitution to the vires of the impugned Government Resolution. The argument here was that in applying Section 73BB to urban Co-operative Banks the State Government has discriminated against them by at the same time not applying the said section to rural Co-operative Banks. It is obvious that rural Co-operative Banks and urban Co-operative Banks do not stand on the same footing. The supplementary return filed on behalf of the Government shows that though there are nearly 350 urban Co-operative Banks in the State of Maharashtra, the number of such Banks having more than 25 salaried employees is about 162 only. If such is the position with urban Co-operative Banks, the number of rural Co-operative Banks in

which the strength of permanent salaried employees is 25 would be negligible. Rural Co-operative Banks are small banks catering to a small number of clients while urban Co-operative Banks have not only a larger number of clients but deal in far more complex banking transactions. The distinction between rural areas and urban areas and between industries and undertakings set up in these two classes of areas has always been well recognised. It is an accepted position that setting up of industries and undertakings in rural and backward areas requires encouragement by way of incentive measures which will induce people to set up industries and undertakings in such areas. Laws which seek to achieve this have not been held to be violative of Article 14 of the Constitution. It cannot, therefore, be said that in selecting urban Co-operative Banks only for the application of Section 73BB, the State Government has acted in a discriminatory manner. The challenge to the impugned Government Notification on this ground must, therefore, be negatived.

16. We now turn to the challenge to the vires of Section 73BB founded upon Sub-clauses (f) and (g) of Clause (1) of Article 19. Sub-clause (f) of Article 19(I) prior to its deletion by the Constitution (Forty-fourth Amendment) Act. 1978, provided that all citizens shall have the right "to acquire, hold and dispose of property." Sub-clause (g) of Article 19(1) provides that all citizens shall have the right "to practise any profession, or to carry on any occupation, trade or business." Under Clause (5) of Article 19, prior to its amendment by the Constitution (Forty-fourth Amendment) Act, 1978, the State could make a law imposing reasonable restrictions on the exercise of any of the rights conferred by sub-clause (f) in the interests of the general public. Under Clause (6) of Article 19, the State can make any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by Sub-clause (g). The argument on behalf of the Petitioner''s was that the restrictions imposed by Section 73BB were unreasonable and, therefore, their fundamental rights guaranteed by Sub-clauses (f) and (g) of Article 19(1) were violated. The fundamental rights guaranteed under Article 19(1) are those which belong to the citizens of India alone, and it has now been settled by decision of the Supreme Court that an artificial or a legal person such as a corporation is not a citizen and cannot, therefore, invoke Article 19(1). (See Slate Trading Corporation of India Limited v. Commercial Tax Officer AIR 1963 SC 1811 . In all the three petitions, however, some of the members and shareholders of each of the petitioner-Banks have joined as Petitioners and they are all citizens of India and it would be, therefore, open to them to invoke their fundamental rights under Article 19(1). (See Rustom Cavasjee Cooper Vs. Union of India (UOI), ; Bennett Coleman and Co. and Others Vs. Union of India (UOI) and Others, and The Godhra Electricity Co. Ltd. and Another Vs. The State of Gujarat and Another, It may also be mentioned that sub-Clause (f) of Article 19(1) was deleted by the Constitution (Forty-fourth Amendment) Act, 1978, with effect from June 1, 1979. No attempt was equally made before us to argue that by reason of the deletion of Sub-clause (f) of Article 19(1), Section 73BB even if it was void as infringing Sub-clause (f) of Article 19(1) was revived and

became operative on the deletion of Sub-clause (f). A Division Bench of this High Court consisting of Deshmukh C. J. & Madon J. (as he then was) had occasion to exhaustively consider this point in Misc. Petn. No. 1340 of 1977 Mrs. Kamal Sukumar Durgule v. State of Maharashtra decided on February 8, 1980 (Unreported). It was held in that case that the doctrine of eclipse does not apply to a post-constitutional law and, therefore, an act which was violative of Article 19(1)(f) of the Constitution when passed, does not revive or become effective on the deletion of Sub-clause (f) by the Constitution (Forty-fourth Amendment) Act, 1978. What was, however, urged on behalf of the Respondents was that restrictions, if any, imposed by Section 73BB were not unreasonable, but were imposed in the interests of the general public. The arguments advanced on behalf of the Petitioners to assail the validity of Section 73BB both under Sub-clause (f) and Sub-clause (g) of Article 19(1) were the same. It was argued on behalf of the Petitioners that compulsory appointment of employees on the Managing Committees of Co-operatives Societies was a restriction on the right of the members of the Managing Committees to manage the affairs of such Societies as also a restriction on the right of the members of a Co-operative Society to have the affairs of the Society managed by the representatives of their own choice. It was further contended that the presence of an employee on the Managing Committee of a Society would detrimentally affect the working of a Co-operative Society and that an employee, even if he was one who has been suspended for misconduct or against whom a disciplinary enquiry was pending could be appointed as a member of the Managing Committee and that by reason of a dispute between himself and the Society such an employee would obstruct in every way the working of that Society. We are not able to accept these contentions. We have already pointed out that the object underlying Section 73BB is to ensure harmonious employer and employee relationship. If such relationship prevails, it would, instead of being detrimental to the working of a Society, be beneficial to its working and would yield more productivity and better results, for it would give the employees a sense of belonging and a feeling that they are participating in the working of the Society not only by merely contributing labour but also their opinions, and viewpoints and by their having been given an opportunity to put forward their viewpoints and advance their opinions before those who take decisions with respect to the working of a Society. Even if this provision can be construed as a restriction on the rights of the members of a Society, it would be a restriction imposed in the interests of the general public. While considering whether a restriction is reasonable in the interests of the general public or not, the Court cannot lose sight of the fact that what our Constitution envisages is a welfare state founded on socio-economic reforms. The reasonableness of this restriction can be seen from the fact that the representation given to the employees is very small and almost negligible. u/s 73BB if the number of members of the managing committee is eleven or less, only one seat is reserved for permanent salaried employees, while if the number of members of the committee is twelve or more, one additional seat for every ten members over and above the first eleven members is reserved for permanent salaried employees.

The argument that even a suspended employee can be appointed to the committee by a recognised union is equally not well-founded. In our opinion, the expression "permanent salaried employees of the society" in Section 73BB must refer to those permanent salaried employees of the society between whom and the society full relationship of employer and employee exists and would not include within the scope of that expression an employee who is suspended. The argument that an employee who is facing a disciplinary enquiry or who is being prosecuted by the society can also be appointed to the committee is unrealistic, for such an employee would be or could be suspended by the society pending the result of the enquiry or prosecution. Further, the section expressly debars an employee-member of the committee from being elected as an officer of such society or from voting at any election of officers thereof. The object, therefore, of having representatives of employees on the committee is not to put them in possession of executive responsibility or having a voice in the election of officers of the society, but of inducing in the workers a feeling of participation in decision-making by having their representatives take part in the process of decision-making. There is, therefore, no substance in the challenge under Sub-clauses (f) and (g) of Article 19(1) to the vires of Section 73BB.

17. The ground of legislative incompetence next falls to be considered. It was urged on behalf of the petitioners that the State Legislature does not have legislative competence to enact Section 73BB inasmuch as the subject of banking is an exclusive Union subject. Entries 43 and 45 in List I, namely, Union List, in the Seventh Schedule to the Constitution provide as follows:--

"43. Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies.

XX XX XX

45. Banking."

Entry 32 in List II, namely, State List, in the said Seventh Schedule provides as follows:

"32. Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated, trading, literary, scientific, religious and other societies and associations; co-operative societies."

It was submitted that in so far as banks are concerned, the legislative field is covered by Entries 43 and 45 in List I and, therefore, no law can be made by the State Legislature which would take within the scope management of cooperative banks. Assuming that this argument were correct, it would not lead to invalidating Section 73BB, because it is now well settled that, if necessary, the Court will uphold the validity of an Act by reading down the provision in question. This has been done

in a number of cases, but we may refer only to the judgment of the Federal Court in In re the Hindu Women''s Rights to Property Act, 1937, and the Hindu Women''s Rights to Property (Amendment) Act 1941 FCR 12 : AIR 1941 72 (Federal Court) By applying this principle we would have held that Section 73BB should be read down so as to exclude from its operation co-operative banks. This would, however, only have been were the arguments advanced on this point correct; but this contention does not bear scrutiny. It may be mentioned that this contention was raised only on behalf of the petitioners in Writ Petitions Nos. 1276 and 1448 of 1981 and not on behalf of the petitioners in Writ Petition No. 120 of 1982. In Rustom Cavasjee Cooper Vs. Union of India (UOI), , the Supreme Court held that a law regulating the business of a corporation is not a law with respect to regulation of a corporation. What Section 73BB does is to provide for the regulation of co-operative societies and not for regulating the business of banking carried on by co-operative banks. In order to ascertain whether a particular legislation falls under a legislative entry or not what the Court has to look to is the pith and substance of legislation, and merely because an Act falling under one legislative entry incidentally trenches upon another legislative entry, the legislative powers with respect to the subjects contained therein being vested in a different legislative body, it does not make such an Act void as having been passed by a body not possessing the requisite legislative competence in Virendra Pal Singh and Others Vs. District Assistant Registrar, Cooperative Societies, Etah and Another, , it was contended that the U. P. Co-operative Societies Act, 1965, in so far as it was sought to be made applicable to co-operative banks, was beyond the competence of the State Legislature. The argument which was advanced in that case before the Supreme Court was that while the subject "cooperative societies" was included in Entry 32 of List II in the Seventh Sch., "Banking" was a distinct entry being Entry 45 in List I and, therefore, the State Legislature was incompetent to legislate in regard to banking by cooperative societies. The Supreme Court held that there was no substance whatever in that submission. After referring to the various Entries, the Supreme Court said (at page 114) -

"We do not think it necessary to refer to the abundance of authority on the question as to how to determine whether a legislation falls under an entry in one list or another entry in another list. Long ago in Prafulla Kumar Mukherjee v. Bank of Commerce Ltd. (1947) 74 I. A. 23 : AIR 1947 PC 60 the Privy Council was confronted with the question whether the Bengal Moneylenders Act fell within Entry 27 in List II of the Seventh Schedule to the Government of India Act, 1935, which was ''money-lending'', in respect of which the provincial legislature was competent to legislate, or whether it fell within Entries 28 and 38 in List I which were ''Promissory notes'' and ''banking'' which were within the competence of the Central Legislature. The argument was that the Bengal Money-Lenders Act was beyond the competence of the provincial legislature insofar as it dealt with promissory notes and the business of banking. The Privy Council upheld the vires of the whole of the Act

because it dealt, in pith and substance, with money-lending. They observed:

Subjects must still overlap, and where they do the question must be asked what in pith and substance is the effect of the enactment of which complaint is made, and in what list is its true nature and character to be found. If these questions could not be asked, much beneficent legislation would be stifled at birth, and many of the subjects entrusted to provincial legislation could never effectively be dealt with.

Examining the provisions of the U. P. Co-operative Societies Act in the light of the observations of the Privy Council we do not have the slightest doubt that in pith and substance the Act deals with ''co-operative societies''. That it trenches upon banking incidentally does not take it beyond the competence of the State legislature. It is obvious that for the proper financing and effective functioning of co-operative societies there must also be co-operative societies which do banking business to facilitate the working of other co-operative societies. Merely because they do banking business such co-operative societies do not cease to be co-operative societies, when otherwise they are registered under the Co-operative Societies Act and are subject to the duties, liabilities and control of the provisions of the Co-operative Societies Act. We do not think that the question deserves any more consideration and, we, therefore, hold that the U. P. Co-operative Societies Act was within the competence of the State legislature. This was also the view taken in Nagpur District Central Co-operative Bank Ltd. and Another Vs. Divisional Joint Registrar, Co-operative Societies, Nagpur and Another, and Sant Sadhu Singh and Others Vs. The State of Punjab and Another,

18. It was next contended that Entries 33 and 33 in List I -- Federal Legislative List in the Seventh Sch. to the Government of India Act, 1''935, corresponded to Entries 43 in List I --Union List in the Seventh Schedule to the Constitution of India and Entry 33 in List II of the Seventh Schedule to the Government of India Act, 1935, corresponded to Entry 32 in List II -- State List in the Seventh Schedule to the Constitution and that the Central legislature had already passed the Banking Regulation Act, 1949, and, therefore, the legislative field of banking was already occupied by that Act and the State legislature therefore, could not make any legislation with respect to co-operative banks. This contention is like begging the question. It assumes that the Banking Regulation Act, 1949, and the provisions of the Maharashtra Co-operative Societies Act, 1960, relating to banking co-operative societies operate in the same field. We have already pointed out that they do not operate in the same field and this contention must, therefore, be negatived.

19. We will next deal with the question whether Section 73BB in so far as it concerns co-operative banks and the impugned Government Resolution are in conflict with the Banking Regulation Act, 1949. It was submitted that the relationship of a banker and customer is one of confidence and that the law enjoins a duty of secrecy upon a banker with respect to the financial position and affairs of its customers. In support of this submission, reliance was placed upon what is stated in Paget''s Law of

Banking, Eighth Edition, at pages 166-167. It was argued that if an employee were made a member of the managing committee, customers would lose all confidence in the co-operative banks and would go elsewhere, because they would be afraid that such an employee-member would make public their financial dealings. Reliance was also placed upon Section 34-A of the Banking Regulation Act, 1949. The said Section 34-A provides as follows:

"34-A. Production of documents of confidential nature. -

(1) Notwithstanding anything contained in Section 11 of the Industrial Disputes Act, 1947 (14 of 1947), or any other law for the time being in force, no banking company shall, in any proceeding under the said Act or in any appeal or other proceeding arising therefrom or connected therewith, be compelled by any authority before which such proceeding is pending to produce, or give inspection of, any of its books of account or other document or furnish or disclose any statement or information, when the banking company claims that such document, statement or information is of a confidential nature and that the production or inspection of such document or the furnishing or disclosure of such statement or information would involve disclosure of information relating to -

(a) any reserves not shown as such in its published balance-sheet; or

(b) any particulars not shown therein in respect of provisions made for bad and doubtful debts and other usual or necessary provisions.

(2) If, in any such proceeding in relation to any banking company other than the Reserve Bank of India, any question arises as to whether any amount out of the reserves or provisions referred to in Sub-section (1) should be taken into account by the authority before which such proceeding is pending, the authority may, if it so thinks fit, refer the question to the Reserve Bank and the Reserve Bank shall, after taking into account principles of sound banking and all relevant circumstances concerning the banking company, furnish to the authority a certificate stating that the authority shall not take into account any amount as such reserves and provisions of the banking company or may take them into account only to the extent of the amount specified by it in the certificate, and the certificate of the Reserve Bank on such question shall be final and shall not be called in question in any such proceeding.

(3) For the purposes of this section, ''banking company'' includes the Industrial Development Bank of India, the Reserve Bank, the State Bank of India, a corresponding new bank constituted u/s 3 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 (5 of 1970), a Regional Rural Bank established u/s 3 of the Regional Rural Banks Act, 1976 (21 of 1976) and any subsidiary bank."

Under Section 56(v), Section 34-A applies to co-operative banks with the omission of Sub-section (3) thereof. It was submitted that in a dispute between a bank and its employees, an employee-member can produce information gathered from the books of account and other documents of the bank and give information with respect thereto even though such information might relate to any reserves not shown in the published balance-sheet, or any particulars not shown therein in respect of provisions made for bad and doubtful debts and other usual or necessary provisions. We do not see any substance in this argument, It is not necessary for an employee to be a member of the board of directors of a bank or a member of the managing committee of a co-operative bank to have access to the books of account of the bank. Further, in a case such as this, the Tribunal would itself not permit such an employee to give such information or disclose such documents, because though the section protects a banking company from being compelled to produce such documents and giving such information, by necessary implication the Tribunal is bound not to permit an employee of the bank to produce such documents or give such information for to permit this to be done would amount to nullifying the provisions of the said section. It will be noticed that Section 34-A also applies to nationalised banks, that is, banks constituted u/s 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. u/s 9 of the said Act the Central Government has power, after consultation with the Reserve Bank to make a scheme for carrying out the provisions of the said Act and in particular, inter alia, for the constitution of the board of directors. In pursuance of this power, the Central Government has framed a scheme called the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970. Clause 3 of that scheme provides for constitution of the Board of a nationalized bank which is to consist inter alia of one director from among the employees of the nationalized bank, who are workmen, to be appointed by the Central Government from out of a panel of three such employees furnished to it by the representative union by the prescribed date. Power is also conferred upon the Central Government to appoint any employee of the nationalized bank who is a workman to be a director of that bank where there is no representative union to represent the workmen or where there is a representative union but it omits to furnish any panel of names within the specified date. Complaints such as those imagined by the petitioners have not been made with respect to the nationalized banks which are the biggest banks in the country. It was said that nationalized banks have no shareholders or members of the public as their members. This is true; but, according to the petitioners, this so-called conflict between the Central Act and Section 73BB concerns as much the customers of a co-operative bank as it does the members of a co-operative bank. If so, one would have at least expected a similar complaint from the members of the public who have dealings with nationalized banks, particularly, where the bulk of banking business is with the nationalized banks. No such complaint by any depositor, customer of any group or section of the public or any public organisation with respect to the nationalized banks has been brought to our notice in the course of the arguments.

The fears expressed by the petitioners can, therefore, only be categorized as being imaginary. The arguments advanced to assail the impugned Government Resolution were the same as those advanced to assail the vires of Section 73BB which we have already dealt with. It is, therefore, not necessary for us to deal separately with the challenge to the impugned Government Resolution.

28. This brings us to the last point, namely, that Section 73BB is void because it is unworkable and incapable of implementation. It was argued that the seats reserved for employees were to be filled by selection by recognised Union or Unions and that the expression "recognised Union" has not been defined in the Maharashtra Co-operative Societies Act. The expression "recognised union", however, has been defined in the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, (Maharashtra Act No. I of 1872) (hereinafter for the sake of brevity referred to as "the Recognition of Trade Unions Act"). The Recognition of Trade Unions Act was enacted on February 1, 1972 but was brought into force only on Sept. 8, 1975. It was, therefore, not operative when Section 73BB was enacted and brought into force. The expression "recognised union" in Section 73BB cannot, therefore, be given the meaning it has in the Recognition of Trade Unions Act. There is yet another reason why the meaning of the expression "recognised union" as given in the Recognition of Trade Unions Act cannot, apply to the said expression as used in Section 73BB. Section 3(13) of the Recognition of Trade Unions Act defines "recognised union" as meaning a union which has been issued a certificate of recognition under Chap. III. Section 16 of the Recognition of Trade Unions Act makes provision for the application of Chapter III, and it provides as follows :
"10. Application of Chapter III. -

(1) Subject to the provisions of Sub-sections (2) and (3), the provisions of this Chapter shall apply to every undertaking, wherein fifty or more employees are employed, or were employed on any day of the preceding twelve months.

Provided that, State Government may, after giving not less than sixty days'' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Chapter to any undertaking, employing such number of employees less than fifty as may be specified in the notification.

(2) The provisions of this Chapter shall not apply to undertakings in industries to which the provisions of the Bombay Act for the time being apply.

(3) If the number of employees employed in any undertaking to which the provisions of this Chapter apply at any time falls below fifty continuously for a period of one year, those provisions shall cease to apply to such undertaking."

The expression "Bombay Act" is defined by Clause (1) of Section 3 of the Recognition of Trade Unions Act as meaning the Bombay Industrial Relations Act, 1946. Two salient features about Section 10, so far as it relates to the question we are

considering is concerned, immediately strike one. The first is that the provisions of Chap. III do not apply to undertakings in industries to which the provisions of the Bombay Industrial Relations Act, 1946, for the time being apply, and the second is that, the provisions of Chapter III apply only to an undertaking wherein fifty or more employees are employed or were employed on any day of the preceding twelve months. The Bombay Industrial Relations Act, 1946, provides for registration of unions in different categories such as representative union for an industry in a local area, Qualified Union and Primary Union and also for recognition of certain union as approved unions. The expression "recognised union", however, does not occur in the Bombay Industrial Relations Act, 1946. It is an agreed position that the Bombay Industrial Relations Act applies to cooperative banks which do not have a branch or other establishment outside the State of Maharashtra. Thus, the Bombay Industrial Relations Act does not apply to the Saraswat Co-operative Bank Limited and the Bombay Mercantile Co-operative Bank Limited, while it applies to the Greater Bombay Co-operative Bank Limited. Further, in view of the fact that at least fifty employees are required before a union can be registered as a recognised union, many co-operative banks would not have a recognised union considering that the minimum number of permanent employees of a banking society for the application of Section 73BB is twenty-five only. The expression "recognised union or unions" in Section 73BB, therefore, must bear a different meaning, namely, the ordinary meaning of a union which is recognised. The question is, recognised by whom? On behalf of the respondents, it was submitted that it must be a union recognised by the employer. This appears to us to be a reasonable construction and, therefore, the seats of the employees have to be filled by selection made by the union recognised by the employers. It was argued on behalf of the Saraswat Co-operative Bank Limited and the Bombay Mercantile Cooperative Bank Limited that in their branches outside the State as also outside Greater Bombay employees belong to different unions and a conflict would arise amongst the unions. We are unable to accept the correctness of this submission. Under the Act, when a society is proposed to be registered, an application for that purpose is to be made to the Registrar of Co-operative Societies and u/s 9 of the Act, if the Registrar is satisfied that the application is in order, he would register the society and its bye-laws. u/s 36, the registration of a society renders it a body corporate by the name under which it is registered with perpetual succession and a common seal. u/s 37, every society is to have an address, registered in accordance with the rules, to which all notices and communications may be sent; and the society is to send a notice in writing to the Registrar of any change in the said address within thirty days thereof. A society which has its branches in any State or States outside the State in which it is registered is known as a multi-unit co-operative society. The Multi-unit Co-operative Societies Act, 1942 (Act VI of 1942), applies to all cooperative societies with objects not confined to one State. Sub-section (1) of Section 2 of that Act provides as follows;

"(1) A co-operative society to which this Act applies which has been registered in any State under the law relating to co-operative societies in force in that State shall be deemed in any other State to which its objects extend to be duly registered in that other State under the law there in force relating to co-operative societies, but shall, save as provided in Sub-sections (2) and (3), be subject for all the purposes of registration, control and dissolution to the law relating to co-operative societies in force for the time being in the State in which it is actually registered."

Sub-section (2) of the said Section 2 requires a multi-unit society to furnish within the prescribed time to the Registrar of Co-operative Societies of the State in which such branch or place of business is situated a copy of its bye-laws and if so required by such Registrar to submit any returns and supply any information which the said Registrar might require. Under Sub-section (3) of the said Section 2, the Registrar of Co-operative Societies of the State in which a branch or place of business such as is referred to in the said Sub-section (2) is situated may exercise in respect of that branch or place of business any powers of audit and of inspection which he might exercise in respect of a co-operative society actually registered in the State. This section, therefore, shows that, for all purposes of control, it is the law of the State in which a co-operative society is actually registered which will apply. Thus, the union which is referred to in Section 73BB can only be the union which is operating in the city in which the concerned cooperative society has its registered address.

21. It was next argued that under the bye-laws of every co-operative society there is a limit to the term of office of the members of the managing committee and a provision for re-election and that there are provisions in the Maharashtra Co-operative Societies Rules, 1961, providing for disqualifications for membership of the committee; while u/s 73BB no term of office is provided in respect of an employee-member of the committee nor are any disqualifications prescribed with respect to an employee being selected or nominated as a member of the committee. Section 165 of the Act confers rule-making power upon the Government. Under Clause (xxxix) of Sub-section (2) of Section 165 the Government has the power to make rules providing for removal and appointment of the committee of a co-operative society or its members as also under Clause (xl) prescribing qualifications for members of the committee. In pursuance of the rule-making power conferred upon the Government, the Government has made the Maharashtra Co-operative Societies Rules, 1961. Rule 58 deals with disqualification for membership of the committee of a society. It provides in which cases a person is to be ineligible for appointment or election as a member of the committee of the society. It also provides that a member of the committee of a society is to cease to hold office if he incurs any of the disqualifications which make him ineligible for appointment or election as a member of the committee. Rule 58, however, applies only to the members of a society even though the opening part of Rule 58 is "No person shall be eligible for appointment or election as a member of the committee of a society, if--". From the very nature of the said rule it cannot apply to an

employee-member. In fact, when Rule 58 was made, Section 73BB was not even enacted. The other disqualifications which make a member vacate his office as a member of the committee before the expiry of his normal term of office and other like matters are provided for in the bye-laws of every cooperative society, and we have on the record the bye-laws of all the three petitioner-Banks making these provisions. None of these provisions can apply to an employee-member. On the section as it stands, an employee-member can continue indefinitely on the committee even though the Union which selected him or the Government which nominated him finds him undesirable to continue on the committee. These lacunae in the section are serious defects and militate against the workability of this section and make its implementation contrary to the very object for which the section was enacted. It may be pointed out that Clause 3 of the Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970, provides when a workman of a nationalized bank is to be disqualified for being appointed as a director. Further, Clause 9 of the said scheme provides for the term of office, inter alia, of a workman-director. Clause 10 provides for disqualifications of directors and Clause 11 provides for vacation of office of director. Provisions analogous to these are conspicuously absent in the Maharashtra Co-operative Societies Rules, 1961. It is true that by the letter dated July 24/31, 1980, the Deputy Registrar, Co-operative Societies, had called upon the Saraswat Co-operative Bank Limited and other Petitioner-Banks to make the necessary provision in the bye-laws of the Banks in the ensuing Annual General meeting and to send the proposals for amendments for approval. As pointed out earlier, under the Act, the power to prescribe qualifications for appointment or election to the committee is with the Government and it is for the Government to amend the Rules to make provisions in this behalf in respect of employee-members, Further, u/s 13 of the Act an amendment of a bye-law made by a co-operative society is not valid unless it is approved by the Registrar. Section 14 confers powers upon the Registrar, when he considers it necessary or desirable in the interests of a society that an amendment of a bye-law should be made, to call upon the society in the manner prescribed by the Rules to make the amendment within such time as he may specify. If the society fails to make the amendment within the specified time, the Registrar has the power, after giving the society an opportunity of being heard and after consulting such State federal society as may be notified by the State Government, to register such amendment, and issue to the society a copy of such amendment certified by him. The bye-laws of the concerned society are deemed, to have been duly amended with effect from the date of registration of the amendment in the manner aforesaid and subject to appeal, if any, the amendment is to be binding on the society and its members. Rule 13 of the Maharashtra Co-operative Societies Rules prescribe the manner of calling upon a society to make amendment to its bye-laws. This is to be done by serving a notice in Form ''E'' upon the society. The notice in Form ''E'' requires the Registrar to set out in the statement accompanying the notice the amendment or amendments which according to the Registrar are desirable to be made in the interests of the society. It

is true, as shown by the returns filed by the Respondents, that several co-operative societies have implemented the provisions of Section 73BB in pursuance of the Government Resolution dated March 19, 1975 and the impugned Government Resolution, but, obviously, they have done so voluntarily. We have not been informed whether those societies have amended their bye-laws or how they are able to work the provisions of Section 73BB; but, so far as the societies which have not voluntarily implemented the provisions of Section 73BB in pursuance of the impugned Government Resolution are concerned, they cannot be made to do so until the Maharashtra Co-operative Societies Rules, 1961, and the bye-laws of the concerned societies are amended as indicated above. We may also mention that it would be desirable for the Government, in order to avoid future litigation, to make provisions in the Act itself defining the expression "recognised union or unions" and making provisions for a case where the employees of a, society belong to more than one union.

22. To summarise our conclusions:

(1) Section 73BB of the Maharashtra Co-operative Societies Act, 1960, is a piece of conditional legislation.

(2) Assuming that Section 73BB is an instance of delegated legislation, it does not suffer from the vice of excessive delegation of legislative power. The section lays down sufficient guidelines for the State Government to enable it to exercise its powers under the said section.

(3) Section 73BB does not infringe Article 14 of the Constitution of India for it does not confer on the state any unfettered or unguided power to pick and choose any society or class of societies as it pleases.

(4) The expression "such society" in Section 73BB refers only to a society out of several societies which is not similarly circumstanced to other societies in the same classification or sub-classification.

(5) If the State Government were to direct Section 73BB to apply to a society out of a class of societies which are similarly circumstanced, the order of the State Government would be void as offending Article 14 of the Constitution.

(6) Restrictions, if any, imposed by Section 73BB are reasonable in the interests of the general public and do not infringe either Sub-clause (f) or Sub-clause (g) of Clause (1) of Article 19 of the Constitution.

(7) The State legislature has legislative competence to include co-operative banks within the ambit of Section 73BB.

(8) Section 73BB in so far as it relates to co-operative banks does not conflict with the Banking Regulation Act, 1949.

(9) The impugned Government Resolution dated September 13, 1977 is not violative of Article 14 of the Constitution on the ground that it applies only to urban co-operative banks.

(10) The impugned Government Resolution is also not violative of Sub-clause (f) or (g) of Article 19(1) of the Constitution.

(11) The impugned Government Resolution is also not in conflict with the provisions of the Banking Regulation Act, 1949.

(12) The expression "recognised union or onions" in Section 73BB means a union or unions recognised by the concerned co-operative society and not a recognised union within the meaning of Section 3(13) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

(13) The expression "permanent salaried employees of the society" in Section 73BB does not include a permanent salaried employee who has been suspended by the society,

(14) The provisions of Section 73BB and of the Government Resolution No. CSL 1577/14599-15C dated September 13, 1977, cannot be implemented or enforced in the case of a co-operative society which has not voluntarily done so unless the Maharashtra Co-operative Societies Rules, 1961, are amended by the State Government or the bye-laws of the concerned society are amended by the Registrar of Co-operative Societies in pursuance of power conferred upon him by Section 14 of the Maharashtra Co-operative Societies Act, 1960, as may be necessary, prescribing disqualifications for a permanent salaried employee of the society to be selected or nominated on the Managing Committee as also providing for cases in which a member of the Managing Committee selected or nominated under the said Section 73BB vacates his office.

(15) It would be desirable if steps are taken by the Government to amend the Maharashtra Co-operative Societies Act, 1960, to define the expression "recognised union or unions" occurring in Section 73BB and to provide for a contingency where the employees of a society belong to more than one union.

23. In the result, we declare that Section 73BB of the Maharashtra Cooperative Societies Act, 1960, and the Government Resolution No. 1577/14599-15-C, dated September 13, 1977, are valid and constitutional. We, however, issue a writ, order and direction under Article 226 of the Constitution of India in each of the three Writ Petitions against the Respondents and each of them and their officers, servants and agents restraining them from enforcing or implementing the provisions of Section 73BB of the Maharashtra Co-operative Societies Act, 1960, and the Government Resolution No. 1577/14599-15-C dated September 13, 1977 against the 1st Petitioner Bank in each of the three Writ petitions until the State Government amends the Maharashtra Co-operative Societies Rules, 1961, or the Registrar of

Co-operative Societies amends in pursuance of the power conferred upon him by Section 14 of the said Act the bye-laws of the 1st Petitioner-Bank in each of the three Writ Petitions, as may be necessary, prescribing the disqualifications for a permanent, salaried employee of the society to be selected or nominated on the Managing Committee as also providing for cases in which a member of the Managing Committee selected or nominated under the said Section 73BB vacates his office.

24. We accordingly partly allow each of these Writ Petitions and make the rule issued in each of them absolute to the extent set out above. Parties to each of these three Writ Petitions will bear and pay their own costs of the Petition.

25. Immediately after this judgment was pronounced, learned Counsel for the Petitioners in each of the above three Writ Petitions, orally applied under Article 134A of the Constitution of India for a certificate under Clause (1) of Article 133 of the Constitution to enable the Petitioners to file an appeal to the Supreme Court. We have decided the vires of the said Section 73BB and the impugned Government Resolution only in the light of the various pronouncements of the Supreme Court and, in our opinion, this is not a fit case in which the application made on behalf of the Petitioners should be granted and we accordingly reject it.