

(1995) 01 BOM CK 0055

Bombay High Court

Case No: Writ Petition No. 420 / 1994

Wasudeo Gulabrao Deshmukh

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision: Jan. 16, 1995

Acts Referred:

- Constitution of India, 1950 - Article 12, 14

Citation: AIR 1995 Bom 390 : (1995) 2 MhLj 160

Hon'ble Judges: H.W. Dhabe, J; G.D. Patil, J

Bench: Division Bench

Advocate: Mr. D.K. Deshmukh, S/Shri S.P. Dharmadhikari, B.G. Kulkarni and Uday Dastane, for the Appellant; Mr. B.T. Patil and Shri P.N. Pande and G.P. Rajeev Madholkar, AGP, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

H. W. Dhabe, J.

Parties by counsel Rule heard forthwith.

2. The petitioner claims in this writ petition a writ of mandamus or any other appropriate writ, order or direction to strike down clauses (i) and (iii) of Bye-law No. 30 of the Bye-laws of the respondent No. 3 Bank and also the relief that his tenure as Chairman of the respondent No. 3 Bank should be declared conterminous with the term of its Board of Directors.

3. Briefly the facts are that the respondent No. 3 Bank is an Urban Co-operative Bank registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 (for short the "Act"). The State Government has issued an order dated 5-1-1990 published in the Maharashtra Government Gazette dated 22-2-1990 notifying that the Urban Co-operative Banks in the State having paid-up capital from Rs.25,00,000/-to Rs. 1,00,00,000/-are deemed to be notified societies for the

purposes of Section 73-1C of the Act so that the elections to the said societies are held in accordance with the provisions of Chapter VA of the Maharashtra Co-operative Societies Rules, 1961 (for short "the Rules"). The respondent No. 3 Bank is thus a notified society with effect from 22-2-1990 since its authorised share capital is Rs. 50,00,000/-. The effect of being a notified society is that the elections to the Board of Directors of the notified societies have to be held by the District Deputy Registrar of Co-operative Societies i.e. the respondent No. 2 in accordance with the provisions of Chapter VA of the Rules as provided in Section 73-1C of the Act.

4. According to the petitioner, the elections to the Board of Directors of the respondent No. 3 Bank were held by the respondent No. 2 and the results were declared by him on 3-2-1991. After the elections to the Board of Directors were over, as provided in Bye-law No. 30 of the Bye-laws of the respondent No. 3 Bank, the elected Board of Directors had to elect in its first meeting from amongst the elected directors its Chairman and the Vice-Chairman. The said meeting of the Board of Directors had to be held within 30 days from the date of the annual general meeting of the General Body of the respondent No. 3 Society, i.e. the Bank.

5. Accordingly, the first meeting of the members of the Board of Directors of the respondent No. 3 Bank elected on 3-2-1991 was as provided in Rules 56A-35 of the Rules, held on 3-3-1991 under the Chairmanship of the Assistant Registrar, Co-operative Societies Devli, a nominee of the respondent No. 2, to elect its Chairman and the Vice-Chairman. The proceedings of the said meeting show that in the said meeting, the petitioner was elected as Chairman of the respondent No. 3 Bank for a period of three years, When the said period of three years was to expire on 3-3-1994 and the respondent No. 2 was likely to initiate the process for election of the Chairman of the respondent No. 3 Bank, again as provided in its Bye-law No. 30(iii), the petitioner has preferred the instant writ petition in this Court challenging the validity of clauses (i) and (iii) of the Bye-law No. 30 of the Bye-laws of the respondent No. 3 Bank, claiming further the relief that he is entitled to continue as Chairman of the respondent No. 3 Bank till the expiry of the term of its Board of Directors.

6. The learned Counsel for the petitioner has urged the following contentions before us:

(i) The provisions of clauses (i) and (iii) of the bye-law No. 30 of the Bye-laws of the respondent No. 3 Bank are arbitrary, discriminatory and are violative of Article 14 of the Constitution of India.

(ii) The said provisions also suffer from uncertainty and inconsistency and ambiguity and are, therefore, liable to be struck down.

(iii) They are also invalid as there is no power in the respondent No. 3 Bank i.e. the Society to frame a bye-law to lay down the term of its Chairman since the said matter is not contained in Rule 8 of the Rules framed by the State Government in

exercise of the powers conferred upon it under Sec. 165(2)(iii) of the Act to prescribe matters, upon which the Bye-laws can be framed by the society.

7. As the question of interpretation and/ or validity of clauses (i) and (Hi) of Bye-law No. 30 of the Bye-laws of the respondent No. 3 Bank is involved, the said clauses of Bye-law No. 30 are reproduced below:

(i) The Board of Directors at its first meeting after the Annual General Meeting shall elect a Chairman and Vice-Chairman for the year from among the elected Directors. This meeting shall be held within 30 days from the date of the annual general meeting. On failure in calling such meeting the Registering Authority shall have power to convene such meeting. The Chairman shall preside over all meetings of the Board. In the absence of the Chairman, the Vice-Chairman shall preside over the meetings and in the absence of both the Chairman and the Vice-Chairman, the Directors shall elect the Chairman for that meeting from among those present.

(ii) The Chairman and the Vice-Chairman as elected under the provisions of Bye-law No. 30(i) shall hold office for a period of three years. For the remaining period of the term of the Board of Directors fresh elections of the Chairman and the Vice-Chairman should be held at appropriate time.

8. Before actually considering the question of interpretation and/or validity of the above clauses (i) and (iii) of Bye-law No. 30 of the Bye-laws of the respondent No. 3 Bank, it would be useful to make a brief survey of the relevant provisions of the Act, the Rules and the Bye-laws of the respondent No. 3 Bank. Section 8 of the Act provides for making an application to the Registrar in the prescribed form for registration of a Society under the Act accompanied by four copies of the proposed Bye-laws of the Society and such registration fee as may be prescribed in that behalf. If the Registrar is satisfied that the proposed Society has complied with the provisions of the Act and the Rules or any other law for the time being in force or policy directives issued by the State Government or the Registrar u/s 4 of the Act and that its proposed Bye laws are not contrary to the Act or the Rules, he can register the Society and its Bye-laws. Section 165 of the Act which provides for rule making power of the State Government provides under clause (iii) of sub-section (2) thereof that the State Government can prescribe the matters in respect of which a Society may make, or the Registrar may direct a Society to make, bye-laws and the procedure to be followed in making, altering and abrogating Bye-laws and the conditions to be satisfied prior to such making, alteration or abrogation. It appears that by virtue of the amendment made with effect from 9-9-1991, the word "Registrar" in the said clause (iii) is substituted by the words "Co-operative Court". .

9. Perusal of Rule 8 framed by the State Government in exercise of the powers conferred upon it u/s 165(2)(iii) of the Act referred to above shows that sub-rule (1) thereof contains the matters upon which the Registrar can require a Society to make Bye-laws whereas sub-rule (2) thereof contains the matters upon which the Society

can itself in its discretion make the Bye-laws. Rule 9 states that the first Bye-laws of the Society shall" be the Bye-laws which are approved and registered by the Registrar at the time when the Society is registered by him under the Act.

10. As regards the respondent No. 3 Bank, it appears from the Bye-laws of the said Society that it was established on 3-2-1967 and was converted into Bank on 2-2-1978. Perusal of its Bye-laws would show that after providing for categories of membership and the qualifications therefore, clause (i) of bye-law No. 19 provides that the final authority of the respondent No. 3 Bank shall vest in its General Body. Clause(iii)of the said Bye-law No. 19 provides that the Annual General Meeting of the General Body shall be on 14th November each year or within such period as may be extended by the Registering Authority. Clause (iv) thereof then provides that the Social General Meeting of the General Body can be called at any time by the Chairman or by the majority of the Directors or on a written requisition made to the Chairman of the Board of Directors by 1/5th of the Members of the General Body or on a requisition from the Registrar, Co-operative Societies. Bye-law No. 20 provides for the business to be transacted by the General Body at its Annual General Meeting. Clause (vi) of the said Bye-law No. 20 shows that the results of the elections of the Board of Directors when due and held are to be declared in the Annual General Meeting of the General Body. Bye-law No. 25 shows that the Chairman of the Board of Directors presides over the meeting of the General Body and in his absence, the Vice-Chairman or in the absence of both a Member of the General Body elected by its members in its General Meeting.

11. Bye-law No. 29 provides for the Constitution of the Board of Directors, clause (vii) of the said Bye-law No. 29 stipulates the terms of the Board of Directors as 5 years and thereafter clause (vi) thereof shows that the Board of Directors shall be elected once in 5 years as per the election Rules framed by it and approved by the General Body of the respondent No. 3 Bank as provided in Bye-law No. 36. Bye-law No. 36 deals with the powers and the functions of the Board of Directors and its clause (xxix)(g) empowers the Board of Directors to make Rules to regulate its election which rules as provided therein require the approval of the General Body. It is thus in accordance with the Rules framed by the Board of Directors as approved by the General Body of the respondent No. 3 Bank that the elections to its Board of Directors were to be held in the respondent No. 3 Bank before it was notified as a notified society by the State Government by its order dated 5-1-1990 after which the elections to its Board of Directors and its office-bearers are regulated by the Rules contained in Chapter V-A of the Rules. We shall refer to the relevant Rules of the said Chapter V-A hereafter when the occasion arises.

12. Bye-law No. 30 whose interpretation is in question in the instant Writ Petition provides as per its impugned clause (i) that the Board of Directors in its first meeting after the Annual General Meeting shall elect the Chairman and Vice-Chairman for the year from among the elected Directors (Underlining ours). Further as per the

said clause (i) of Bye-law No. 30, the said meeting has to be held within 30 days from the date of the Annual General Meeting of the General Body of the respondent No. 3 Society i.e. the Bank and it is normally presided over by its Chairman and in his absence the Vice-Chairman or in the absence of both, the Chairman elected by the Directors for that meeting. However, in view of the provisions of Rule 56 A-35 of the Rules relating to election to the notified society contained in Chapter V-A thereof, the meetings of the Board of Directors Committee of the notified society to elect its office bearers are to be presided over by the Registrar Co-operative Societies or his nominee.

13. Clause (iii) of Bye-law No. 30 deals with the question of tenure of the Chairman and the Vice-Chairman. It provides that the Chairman and the Vice-Chairman as elected under the provisions of Bye-law No. 30(1) shall hold office for a period of three years and for the remaining period of the term of the Board of Directors, fresh elections of the Chairman and the Vice-Chairman should be held at appropriate lime.

14. Bye-law No. 33 provides for filling up of casual vacancies of the Directors in the Board of Directors occurring due to their death, removal or resignation or for any other reason. If the unexpired period of office of such a Director whose office has fallen vacant is not more than one year, his vacancy in the Board of Directors is to be filled in by co-option by the remaining Directors from amongst the members who have been members for at least two continuous years on 30th June immediately preceding the date of co-option. However, if the vacancy in the Board of Directors is to last for more than one year, it is then filled in by election.

15. Before considering the question of validity of clauses (i) and (iii) of Bye-law No. 30 in the conspectus-of the above facts and the provisions of the Act, the Rules and the Bye-laws, we shall first deal with the question of their proper interpretation .Perusal of the said clauses (i) and (iii) of Bye-law No. 30 would show that so far as the term of the Chairman and the Vice-Chairman after their elections in the first meeting of the Board of Directors is concerned, there is ostensibly some incongruity or inconsistency in the said clauses, because it would appear from clause (i) that the said term is one year whereas clause (iii) shows that the said term is three years. It is, however, material to see that clause (i) of Bye-law No. 30, is not actually dealing with the question of the term or the tenure of the Chairman and the Vice-Chairman as such, but is actually dealing with the question of holding the meeting of the Board of Directors for electing them. It is really speaking clause (iii) of the said Bye-law No. 30, which is expressly dealing with the said question of the term of the Chairman and Vice-Chairman.

16. The above anomaly, it is clear, is created because of the use of the words "for the year" in clause (i) of Bye-law No. 30. The said clause (i) of Bye-law No. 30 is not to make it effective and operative on the principle expressed in the maxim *ut res magis valeat quam pereat* (See *C.I.T. v. S. Teja singh* AIR 1959 SC 666 . [The Management of](#)

[Advance Insurance Co. Ltd. Vs. Gurudasmal and Others, ; The Municipal Council, Madurai Vs. R. Narayanan and Others, .](#) It is also a well thus happily worded and the above words "for the year" in the said clause appear to have been used through inadvertence and carelessness when as pointed out hereinbefore, it, is clause (in) of Bye-Law No. 30 which is expressly dealing with the question of tenure of the Chairman and the Vice-Chairman and not clause (i) thereof which is principally dealing with the question of holding the meeting of the Board of Directors for electing the Chairman and the Vice-Chairman. It is, therefore, necessary for harmoniously construing clauses (i) and (iii) of Bye-Law No. 33 that the words "for the year" occurring in clause (i) thereof should not be given any meaning and should be rejected or ignored. Even otherwise, if the said words are to be given sonic meaning in the said clause, the said words can appropriately be read after the words "Annual General Meeting" which as per clause (iii) of Rye-Law No. 19 is held once each year normally before 14th November to transact the business described in Bye-Law No. 20.

17. It may be seen that the framers of the Bye-laws of a Society cannot be said to bestowed with any skill and accuracy in drafting the same. It is observed in Maxwell's Interpretation of Statutes Twelfth Edition at page 150 that Bye-Laws are to be "benevolently" interpreted, and credit ought to be given to those who have to administer them that they will be reasonably administered Courts of Justice should be slow to condemn as invalid any Bye-Law on the ground of supposed unreasonableness. See *Kruse v. Johson* (1878) 2 OB 91. A Bye-Law is thus to be so construed as to give effect to the intention of the authority which made it just as one must construe a Statute so as to give effect to the wishes of the legislature See *Mc Quade v. Barnes* (1949) 1 All ER 154 . The Bye-Laws of the respondent No. 3 Bank therefore, need to be construed in a manner so as to reflect the intention of its framers as also to make them effective and workable.

17A. Even in regard to the statutory enactments the rule of construction is the same viz. that a statute or any enacting provision therein must be so construed as settled canon of construction that normally all the words used in the statute should be construed and given their meaning and the Courts would not normally modify the language used by the legitimate in the statute. However, at times the intention of the legislature is clear but the unskilfulness of the draftsman in introducing certain words in the statute results in apparent ineffectiveness of the language, or creates inconsistency in which case the Courts can modify the language by rejecting the surplus words if necessary to make the statute effective and workable. (See "Craies on Statute Law", 7th Edn. page 106 under the head "Rejection of Surplusage" the cases referred to therein).

18. In *Salmon v. Dimcombe* (1886) 11 Ann Cas 627 , the Privy Council has observed as follows:

"It is, however, a very serious matter to hold that, where the intention of a statute is clear, it shall be reduced to a nullity by the draftsman's unskillfulness or ignorance of law. It may be necessary for a court of justice to come to such a conclusion, but their Lordships hold that nothing can justify it except necessity, or the absolute intractability of the language used."

It may be seen that the words "as if such subject resided in England" used in colonial ordinance has rejected as surplus in the said case.

19. In this regard the following passage from Maxwell's Interpretation of Statutes (12th Edition), fourth impression under the head "Modification of the language to meet the intention" in Chapter 11 relating to "Exceptional Construction" page 228 can be usefully referred to :

"Where the language of the statute in its ordinary meaning and grammatical construction, leads to a manifest contradiction, of the apparent purpose of the enactment, or to some inconvenience or absurdity which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, or by rejecting them altogether, on the ground that the legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a Statute are clear, it must not be reduced to a nullity by the draftsman's unskillfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used. Lord Reid has said that he prefers to see a mistake on the part of the draftsman in doing his revision rather than a deliberate attempt to introduce an irrational rule; "the canons of construction are not so rigid as to prevent a realistic solution."

(See also the cases Hart v. Baxendale (1852) 6 Ex. 769 and Re Lockwood deceased (1958) Ch. 231, Wynn v. Skegness Urban District Council (1967) 1 WLR 52. Relying upon the above passage from Maxwell's Interpretation of Statutes, the above canon of construction is followed by the Supreme Court also in the case of [C.W.S. \(India\) Limited Vs. Commissioner of Income Tax](#),

20. As hereinbefore pointed out, Clause (i) of Bye-law No. 30 principally deals with the question of holding the meeting of the Board of Directors or electing the Chairman or the Vice-Chairman and it is Clause (iii) thereof which expressly deals with the question of the tenure of the Chairman and the Vice-Chairman elected in the first meeting of the Board of Directors, as provided in aforesaid clause (i) thereof. The words for the year used in clause (i) of Bye-law No. 30 which have created inconsistency or incongruity about the term of the Chairman and the Vice-Chairman because clause (iii) thereof has prescribed for them a tenure of three years have, therefore, to be ignored so as to make the provision about the term of

the Chairman and the Vice-Chairman effective and workable without any incongruity or contradiction.

20A. If the above words are not to be rejected or ignored and have to be given some meaning, then as already pointed out, they can appropriately be read after the words "Annual General Meeting" in the said Clause (i) of Bye-Law No. 30 which Annual General Meeting as per clause (iii) of Bye-Law No. 19 is held once in each year normally before 14th Nov to transact the business described in Bye-Law No. 20. If the said words are read after the words "Annual General Meeting", the said sentence in Clause (i) of Bye-Law No. 30 would mean that the Board of Directors in its first meeting held after the Annual General Meeting for the year would elect its Chairman and Vice-Chairman from amongst the elected Directors. The above placement of the said words "for the year" would avoid the ambiguity which is created by their present placement viz. "that the election of the Chairman and the Vice-Chairman is for the year". It may be seen that the device about change of the placement of the words was adopted in the case of *Me. Quade v. Barnes* (1949) All E.R. 154 P 155 in which the sentence to be construed was "No person shall in any street tout a person". It was possible to read the Bye-Law in the said case in one of the two ways -- either that the tout must be standing in the street or that he must be touting people in the street. It was held in the said case that it should be read as meaning "No person shall tout any person who is in any stree"; reading thus the words "in any street" with the words "person".

20B. It has thus to be held that the term of the Chairman and the Vice-Chairman after their election in the first meeting of the Board of Directors is 3 years as provided for in clause (iii) of the Bye-Law No. 30 and not 1 year as it would appear from clause (i) thereof. It is after the said period of 3 years that for the remaining period of the term of the Board of Directors fresh elections of the Chairman and the Vice-Chairman have to be held at appropriate time.

21. The next question to be considered is whether the provisions of Clauses (i) and (iii) by Bye-Law No. 30 are uncertain or ambiguous as urged on behalf of the petitioner. The submission made on behalf of the petitioner is that since the first meeting of the Board of Directors is to be held within a period of 30 days from the date of the Annual General Meeting, originally, before the respondent No. 3 Bank was notified as a notified society u/s 73-1C. of the Act, according to Rule 60 of the Rules, the elections to the Managing Committee/Board of Directors were to be held in the Annual General Meeting of the General Body of the respondent No. 3 Bank and, therefore, according to the learned counsel for the petitioner. Clause (i) of Bye-Law No. 30 provided for election of the Chairman and the Vice-Chairman in the first meeting of the Board of Directors held after the Annual General Meeting. However, according to him, after the respondent No. 3 Bank was notified as a notified society u/s 73-I.C. of the Act, the elections to its Board of Directors have to be held by the Registrar or his nominee in accordance with the provisions contained

in Chapter VA of the Rules.

21A. The case thus sought to be made out on behalf of the petitioner is that the holding of the Annual General Meeting has no relevance or connection with the elections to the Board of Directors and, therefore, the provisions of Clauses (i) and (iii) of Bye-Law No. 30 have become redundant and inoperative. It is, therefore, urged on his behalf that on the ground of uncertainty and ambiguity, the said clauses (i) and (iii) of Bye-Law No. 30 should be struck down and he should be allowed to continue till the expiry of the term of the Board of Directors of the respondent No. 3 Bank.

22. There is no merit in the above submission made on behalf of the petitioner that clauses (i) and (iii) of the Bye-Law No, 30 are redundant and inoperative and are liable to be struck down on the ground of uncertainty and ambiguity after the application of the rules for elections to the Board of Directors contained in Chapter VA of the Rules since the respondent No. 3 Bank is notified as notified society u/s 71-IC of the Act. It is first necessary to see that none of the rules framed under the Act including Rule 60 shows that the elections to the Board of Directors must be held in the Annual General Meeting of the General Body of the respondent No. 3 Bank. Rule 59 only provides for the constitution of a Provisional Committee in the First General Meeting of the General Body of the Society until the regular sections are held under the Bye-laws. In fact, as provided in Clause (O) of Rule 8(1), the mode of appointment of the members of the Committee/ Board of Directors either by election or otherwise has to be regulated by the Bye-Laws framed by the society. So far as the respondent No. 3 Bank is concerned, clause (vi) of Bye-Law No. 29 shows that the Board of Directors is elected as per the election Rules framed by it and approved by the General Body as provided under Clause (xxix) of Bye-Law No. 36 which deals with the powers and functions of the Board of Directors. However, it appears from Clause (vi) of Bye-Law No. 20 relating to the business of the Annual General Meeting that the result of the election of Board of Directors when due and held is to be declared in the Annual General Meeting of the General Body of the respondent No. 3 Bank.

23. It was not thus necessary that either under the Bye-Laws or the Election Rules, if any, framed thereunder before the respondent No. 3, Bank was notified as a notified society, the elections to the Board of Directors had to be held in the Annual General Meeting. At any rate, the Election Rules according to which the elections to the Board of Directors were to be held which might have been framed by it with the approval of the General Body are not placed on record to show that the elections to the Board of Directors were then held in the Annual General Meeting of the General Body itself.

24. Be that as it may, even assuming that the elections to the Board of Directors were held in the Annual General Meeting of the General Body it is difficult to see how the said question has relevance to the question of election of the Chairman and

the Vice-Chairman. It is material to see that the Chairman and the Vice-Chairman are elected by the members of the Board of Directors and not by the members of the General Body. They are elected in the first meeting of the Board of Directors held after the Annual General Meeting. Normally, when the Bye-Laws came into force after the registration of the respondent No. 3 society as a co-operative society under the Act, the elections to its Board of Directors would be held as per Clause (i) of Bye-law No. 30 after the Annual General Meeting. It may be seen that as provided in Clause (iii) of Bye-Law No. 30, the Annual General Meeting of the General Body of the respondent No. 3 Bank has to be held on or before 14th of each year or within the period as may be extended by the Registering Authority. If the first Board of Directors was elected after the first Annual General Meeting of the Society, normally, the term of the Board of Directors would end on or about Annual General Meeting of the General Body of the respondent No. 3 Bank. There should thus be no difficulty in holding the first meeting of the Board of Directors within 30 days from the date of the Annual General Meeting, even though the elections to the Board of Directors are held as per Chapter VA of the Rules after the respondent No. 3 Bank was notified as notified society u/s 73-IC of the Act.

25. Even otherwise, in our view, there is no question of any ambiguity or uncertainty arising in the said Clauses (i) and (iii) of Bye-Law No. 30 after the respondent 3 Bank becomes a notified society whose elections to the Board of Directors are regulated by the Rules in Chapter VA of the Rules framed pursuant to the requirement of Section 731C of the Act. It is material to see that the Rules in Chapter VA of the Rules are given overriding effect by Section 731C of the Act, over provisions of the Act, the Rules and the Bye-Laws relating to the election to the Board of Directors and its office-bearers. It is necessary to state that Rules 56.A to 56.A-35 contained in Chapter VA of the Rules provide a complete mode and manner of holding elections of the Managing Committee., the Board of Directors of the notified society including the elections of its office-bearers and declaration of result of elections. The said rules clearly show that the elections to the Board of Directors are not held in the Annual General Meeting of the notified society.

26. What is material to be seen for our purpose is that Rule 56.A-29 provides for declaration of results and publication of names of the members of the Committee/ Board of Directors. The results of the elections to the Committee/Board of Directors are to be declared by the Returning Officer, who has to send the names of the elected candidates to the District Election Officer, if the District Election Officer himself is not the Returning Officer. On receipt of the results, the District Election Officer has to publish the names of all the elected members of the Committee as provided in the said Rule 56. A-29. It is thus clear that Clause (vi) of Bye-Law No. 20 empowering the Annual General Meeting of the General Body to declare the results of the election of the Board of Directors when due and held stands superseded by the above provision of Rule 56. A-29 of the Rules in view of the non obstante clause in Section 73-IC of the Act.

27. It is then material to see that the elections of the office-bearers of the Committee have to be held as provided in Rule 56.A-35 of the Rules. According to the said. Rule 56.A-35, after the election of the Members of the Committee/Board of Directors and necessary co-option or appointment, as the case may be, of members to the reserved seats u/s 75B or 75BB, as the case may be, or wherever such election is due, the election of the officer or officers of any such notified society has to be held as provided in its bye-laws, but any meeting of the committee for such purpose has to be presided over by the registration an officer nominated by him in this behah. The said Rule No. 56.A-35 would show that the election of the officer or me office-bearers which would include the Chairman and Vice-Chairman as is clear from Section 2(2) of the Act which defines the said word "officer" has to be held as provided in the Bye-Laws after the members of the Committee/Board of Directors are elected and the co-options as per law are made or whenever the said election is due.

28. Turning to the Bye-Laws of the respondent No. 3 Bank the Bye-Law relevant for the purpose of election of the Chairman and the Vice-Chairman of the Hoard of Directors is Bye-Law No. 30, clauses (i) and (iii) of which are impugned in this petition. It is clear from clause (i) of Bye-law No. 30 that the Chairman and Vice-Chairman is elected by the Board of Directors in its first meeting held within 30 days of the Annual General Meeting of the General Body of the respondent No.3 Bank. As we have pointed out earlier, normally the term of the Chairman and the Vice-Chairman laid down under clause (iii) of Bye-Law No. 30 should be over near about the time when the Annual General Meeting of the General Rody of the respondent No. 3 Bank is held and, therefore, there should be no difficulty in ejecting the Chairman and the Vice-Chairman in the first meeting of the Board of Directors held after the Annual General Meeting within the prescribed period i.e. 30 days from the date of the-said Annual General Meeting. It is necessary to state that in the context of the requirements of Clauses (i) and (iii) of Bye-Law No. 30, the first meeting of the Board of Directors for electing its Chairman and the Vice-Chairman would not mean the first meeting after election of its Members only, but it would mean its first meeting held after the Annual General Meeting for the year. In fact; if at all, the words "for the year" used in clause (i) of Bye-Law No. 30 have as shown hereinbefore relevance to the holding of the Annual General Meeting during the year and not to the tenure of the Chairman and the Vice-Chairman.

29. As regards the period of 30 days within "which from the date of the Annual" General Meeting, the meeting of the Board of Directors for electing Chairman and the Vice-chairman has to be held, the said period cannot be construed as mandatory, but has to be construed as directory because, if the Chairman and the Vice-Chairman are, hot elected only because the meeting is not called within 30 days, it may cause great inconvenience and hamper the working of the Bank since there would be no Chairman and in his absence the Vice-Chairman to discharge the duties of the Chairman under Bye-Law No. 39 of the Bye-Laws viz. to preside over

the meetings of the General Body, the Board of Directors and any other Committees of the respondent No. 3 Bank and also to supervise its general working. Such provisions, viz. where a public officer is directed by Statute to perform a duty within a specified time are always held as directory (See *Caldow v. Pixell* (1877) 2 CPD 562.; *R. V. Urbanowski* (1976) 1 All ER 697 (CA); [The Remington Rand of India Ltd. Vs. The Workmen,](#)). It is, however, made clear that the requirement of electing the Chairman and the Vice-Chairman in the first meeting of the Board held after the Annual General Meeting of the General Body of the respondent No. 3 Bank would not be strictly applicable to filling up of casual vacancies in the office of the Chairman and the Vice-Chairman.

30. There is thus no question of any ambiguity or uncertainty in holding the elections of the Chairman and the Vice Chairman of the Board of Directors in the light of the above construction of clauses (i) and (iii) of Bye-Law No. 30 and the rules framed under Chapter VA of the Rules for electing the members and the office-bearers of the Board of Directors. The above contention raised on behalf of the petitioner that clauses (i) and (iii) of Bye-Law No. 30 should be held as inoperative after the respondent No. 3 bank is declared as a notified society as per the notification of the State Government "dated 22-2-1990 and that they should be struck down deserves to be rejected.

31. Turning next to the contention raised on behalf of the petitioner that clause (iii) of Bye-Law No. 30 is arbitrary and is violative of Article 14 of the Constitution of India, what is urged is that the Chairman and the Vice-Chairman elected in its first meeting held after the Annual General Meeting gets a term of three years as provided in clause (iii) of Bye-Law No. 30, but if a vacancy is caused due to death or resignation or disqualification or removal of the said incumbent, then the person who gets elected in his place holds the office for the remaining period of the term of the Board of Directors. The submission thus is that the Chairman or the Vice-Chairman elected for the first time after the elections is placed in a separate class as compared to the person elected as Chairman or the Vice-Chairman in his place subsequently, for which according to the learned counsel for the petitioner there is neither a justification nor any rationale. To illustrate, it is pointed out by him that if a person who gets elected as Chairman in the first meeting after elections to the Board of Directors gives up his post immediately thereafter and on the next day gets elected in the same post, he can hold the post not for a period of three years, but for the remainder of the term of the Board of Directors which can be much more than three years. It is, therefore, urged that the provisions of Bye-Law No. 30 (iii) are arbitrary, discriminatory and violative of Article 14 of the Constitution of India.

32. In considering the above contention raised on behalf of the petitioner, it is necessary to see that what is provided in clause (iii) of the Bye-Law No. 30 is the normal tenure of the Chairman and the Vice-Chairman. As already shown the said

clause (iii) of Bye-Law No. 30 provides for tenure of three years for the Chairman and the Vice-Chairman elected in the first meeting of the Board of Directors as provided in clause (i) thereof whereafter fresh elections are provided for the offices of the Chairman and the Vice-Chairman for the remainder of the term of the Board of Directors i.e. two years which would also be normal tenure for them after the fresh elections.

33. However, when there occurs a casual vacancy in the office of the Chairman or the Vice-Chairman after their elections, say by reason of death, removal, resignation or any other reason, the term of the director elected to fill up such casual vacancy would not be the remainder of the term of the Board of Directors but would be the remainder or the unexpired period of the term of such Chairman or the Vice-Chairman in whose office the vacancy has occurred. In other words, if such a casual vacancy were to occur in the office of the Chairman or the Vice-Chairman whose tenure was three years being elected originally by the Board of Directors immediately after its elections, the term of the director elected to fill up such a casual vacancy would be the unexpired period of three years. Similarly, if such a casual vacancy were to occur in the office of the Chairman or the Vice-Chairman who is elected in fresh elections for the remainder of the term of the Board of Directors, i.e. two years as provided in clause (jii) of Bye-Law No. 30, the term of the Director elected to fill up such casual vacancy in the office of such Chairman or the Vice-Chairman would be the unexpired period of two years.

34. The above construction placed by us upon clause (iii) of Bye-Law No. 30, is reasonable and rational and steers clear of any device including the device suggested by the petitioner by which any director can by causing initially a casual vacancy in the office of the Chairman or the Vice-Chairman continue for a term more than three years prescribed for him under the said clause. The challenge to clause (iii) of Bye-Law No. 30 that it is arbitrary, discriminatory and violative of Article 14 of the Constitution of India, therefore, deserves to be rejected. It is, however, made clear that we have rejected the said challenge on merits without considering the question whether the respondent No. 3 bank is "State" under Article 12 of the Constitution and the said question is thus kept open for consideration, if and when occasion arises.

35. It may be seen that as regards policy underlying clause (iii) of Bye-Law No. 30 of not making the tenure of the Chairman and the Vice-Chairman conterminous with the tenure of the Board of Directors, what has to be seen is that what the term or the tenure of its Chairman and the Vice-Chairman should be left to the discretion of the society itself, because the society is empowered to frame a Bye-Law in that regard under Rule 8 of the Rules, or even otherwise in the absence of any restrictions under the Act or the Rules, under its powers to manage its own affairs and business. If the society has powers to frame Bye-Laws regarding the election of the members of Board of Directors, its officers including Chairman and the

Vice-Chairman and regarding their term or tenure, it is open to the society either to allow the Chairman and the Vice-Chairman to continue for the whole of the term of the Board of Directors or split up their tenure as it may deem fit in its discretion because it may be of the view that for carrying out its objects and for its proper and smooth functioning or other reasons, best known to it, it is necessary to do so. There is no rule or law that the officers of the Society once elected must be allowed to continue for the whole of the term of the Committee/ Board of Directors. It cannot be said that the tenure of the Chairman and Vice-Chairman under clause (iii) of its Bye-Law No. 30 is bereft of any policy. If it is not so, it cannot be said that it is arbitrary, discriminatory and is violative of Article 14 of the Constitution.

See in this regard: 1) [Union of India and others Vs. S.L. Dutta and another](#), .

2) [Indian Railway Service of Mechanical Engineers Association and Others Vs. Indian Railway Traffic Service Association and Another](#), .

36. The last contention which is urged before us is that there is no power in the respondent No. 3 bank to frame a Bye-Law regulating the appointment and the term of office bearers of the society. On the contrary, according to the learned counsel for the petitioner, the said power is vested in the State under the clause (xxix) of Section 165(2) of the Act, which has therefore, to frame rules for the said purpose. It is thus urged that clause (iii) of Bye-Law No. 30, in the absence of any powers to frame such a Bye-Law, is invalid and is liable to be struck down and further that since no rules are framed by the State Government to regulate the term of the Chairman and the Vice-Chairman, or any other officer of the society, the tenure of the Chairman or the Vice-Chairman is co-terminus with the term of the Board of Directors.

37. In appreciating the above submission, it is necessary to see that the power of the 1995 Bom./26 XI G--16 Society to manage its own affairs and business by framing necessary Bye-Laws is regulated by Section 165(2)(iii) of the Act, which provides that the State Government may by framing rules prescribe the matters in respect of which the society may make or the registrar may direct the society to make Bye-Laws and the procedure to be followed in making, altering and abrogating Bye-Laws and the conditions to be satisfied prior to such making, alteration or abrogation. There is an amendment made in the said clause (iii) of Section 165(2) of the Act by the Maharashtra Amendment Act No. 22 of 1991 which came into force with effect from 9-9-1991 which substituted the word "Registrar" by the words "Co-operative Court". It is pursuant to the said power u/s 165(2)(iii) of the Act that the State Govt. has framed Rule 8 which prescribes the matters to be regulated by the Bye-Laws to be framed by the Cooperative Societies. At this stage, we may point out that the scheme of Rule 8 shows that, it falls into two parts, viz. 1) the matters regarding which the registrar may require a society to make Bye-Laws and 2), the matters regarding which the society may itself frame the Bye-Laws.

38. Before we consider the contention raised on behalf of the petitioner, viz as to whether there is any provision in Rule 8 which would show that there is power in the society to frame Bye-Laws regulating appointments and the term of its officers, we shall first deal with the contention raised on behalf of the petitioner that such a power is contained in clause (xxxix) of Section 165(2) of the Act necessitating the rules to be framed by the State Government in that regard in the absence of which, the tenure of the Chairman and the Vice-Chairman would be co-extensive with the term of the Board of Directors. The said clause (xxxix) of Section 165 (2) of the Act is as follows:

"provide for the removal and appointment of the Committee or its members and other officers and for the appointment of administrator u/s 78 and prescribe procedure at meeting of the committee and for the powers to be exercised and the duties to be performed by the committee, administrator and other Officers.;"

39. Perusal of the said Clause xxxix of Section 165(2) of the Act clearly shows that it does not deal with the question of regulating the appointment and the term of the Members/ Officers of the Society as such, but it particularly deals with the question of removal of the Committee/ Board of Directors or its members and other officers, which would include the Chairman and the Vice-Chairman also. The question of appointment of the Committee or its members or the appointment of the Administrator is consequential to the question of removal of the Committee/Board of Directors or its members and its other officers as provided therein. The said provision clearly does not deal with the question of original or initial appointment of the Committee or its members and other officers and their term or tenure as such. Perusal of the rules framed under the Act would show that for the said purpose, it is Rule 64 which is framed by the State Government. The submission made on behalf of the petitioner that the power to regulate the appointment and the term of the officers of the society is covered by the Rule-making power of the State under Clause (xxxix) of Section 165(2) of the Act cannot therefore be accepted.

40. It is however, true that there is some overlapping in Clauses (O) and (V) of Rule 8 of the Rules and Section 165(2)(xxxix) of the Act so far as the question of removal of the committee, its members and the other officers is concerned because like Section 165(2)(xxxix) of the Act under clauses (o) and (v) of Rule 8(1) of the Rules, the registrar can require the society to make Bye-Laws upon the said matters. But then if the Bye-Laws are also framed by the society under clauses (o) and (v) of Rule 8(1) of the rules on the question of removal of the Committee, its members and the officers, the said Bye-Laws have necessarily to be subject to the statutory rule framed by the State Government pursuant to the aforesaid power conferred upon it under clause (xxxix) of Section 165(2) of the Act and further both the Bye-Laws and the Rules so framed would be subject to the substantive provisions of Section 78 of the Act.

41" Considering the question whether there is any power in the society to frame Bye-Laws to regulate the appointment and the term of the officers of the society, we have to turn to Rule 8 of the Rules which is framed by the State Government, under its powers u/s 165(2)(iii) of the Act to prescribe the matters upon which the society can frame the Bye-Laws. As already pointed out, sub-rule (1) of Rule 8 contains the matters upon which the Registrar can require a Society to make the Bye-Laws and sub-rule (2) thereof provides for matters upon which the society can itself make the Bye-Laws. To appreciate the purpose behind the provisions empowering the Registrar to require a society to frame Bye-Laws upon certain matters, it is necessary to see that normally a society which is an autonomous body is free to regulate its working, its affairs and business by framing Bye-Laws which it may deem fit to frame. However, as the preamble of the Act shows with a view to providing for orderly development of the cooperative movement in the State in accordance with the relevant directive principles of State Policy enunciated in the Constitution, the Act requires that every cooperative society and its Bye-Laws should be registered under the Act.

42. In this regard it is pertinent to see that to regulate inter alia its formation and working, Section 8 of the Act requires that every society should make an application to the registrar in the prescribed form accompanied by four copies of its proposed Bye-Laws and the registration fees prescribed therefor. Section 9 of the Act empowers the registrar to register such a co-operative Society, and its Bye-Laws, if he is satisfied that the proposed society has complied with the provisions of the Act and the Rules framed thereunder, or any other law for the time being in force or policy .directives issued by the State Government or the Registrar u/s 4 of the Act. If its proposed Bye-Laws are not contrary to the Act and the Rules. Section 13 of the Act provides that no amendment of the Bye-Laws of the Society is valid until it is registered under the Act. For the purpose of registration of amendment of the Bye-Laws, a copy of the amendment passed by the Society in the prescribed manner at its General Meeting has to be forwarded to the registrar, who takes decision upon the said application in accordance with the provisions of the Act and the Rules framed thereunder. Sub-section IB of Section 13 of the Act, in particular, shows that the amendment to the bye-laws would not be registered if it is repugnant to the policy directives, if any, issued by the State Government u/s 4 of the Act.

43. Further, for proper functioning of the society and to regulate its working so as to fulfil its objects, the State Government is conferred with the power u/s 165(2)(iii) of the Act to prescribe matters upon which the registrar can direct the society to frame the Bye-Laws. Sub-rule (1) of Rule 8 framed by the State Government thereunder has, therefore, importance from the above point of view because the matters contained therein are such matters upon which, as far as may be applicable, the registrar expects that the society must have Bye-Laws for its proper functioning and working. If no Bye-Laws are framed by the society in regard to any of the matters contained in sub-rule (1) of Rule 8, it is open to the Registrar, if he so thinks

necessary, to require the society to make the Bye-Laws upon the said matters before granting registration to it and to its Bye-Laws.

43A. It is pertinent to see that although the matters enumerated in sub-rule (1) of Rule 8 of the Rules are matters in regard to which the registrar can require a society to make Bye-Laws, it would not mean that on its own without being required by the registrar to make the Bye-Laws, the society cannot make the Bye-Laws in regard to the said matters. Perusal of the matters in sub-rule (1) of Rule 8 of the rules would clearly show that they are mostly routine but relevant matters upon which it is necessary for every society to make the Bye-Laws on its own. However, if any society fails to frame any Bye-Laws in regard to the said matters, sub-rule (1) of Rule 8 confers the power upon the registrar to require such a society to make a Bye-Law upon the said matter contained in sub-rule (1) of Rule 8. The question which has thus to be considered is whether any of the matters enumerated in sub-rule (I) of Rule 8 of the Rules deal with the question of appointment and the office-bearers of the society including its Chairman, Vice-chairman and their tenure because it is clear from sub-rule (2) of Rule 8 that the said matter is not comprehended within it.

44. In considering the above question, it is necessary in our view to refer to Clause "O" of sub-rule (1) of Rule 8 which, according to us, is wide enough to cover the question of appointment and term of the office-bearers of a society. At any rate the residuary clause Z thereof would empower the society to frame Bye-Laws on the question of appointment and term of the officers of the society, Clauses "O" and "Z1 of Rule 8(1) are as follows:

"O" -- the mode of appointment either by election or otherwise and removal of members of the Committee and other officer, if any, their duties and powers;

"Z" -- any other matters incidental to the management of its business.

45. The word "Officer" which is used in clause "O" is defined in Section 2(2) of the Act as follows:

"Officer -- means a person elected or appointed by a society to any office of such society according to its Bye-Laws; and includes a Chairman, Vice-Chairman, President, Vice-President, Managing Director, Manager, Secretary, Treasurer, member of the Committee and any other person elected or appointed under this Act, the rules or the Bye-Laws to give directions in regard to the business of such society."

46. It is first material to see that the definition of the word "Officer" specifically includes the Chairman and the Vice-Chairman, a Member of the Committee and any other person elected or appointed under the Act, the Rules or the Bye-Laws to give direction in regard to the business of the society. With the above definition of the word "Officer", if we read Clause "O" of sub-rule (1) of Rule 8 of the Rules, the mode of appointment either by election or otherwise of any member of the

Committee/Board of Directors and its office-bearers including the Chairman and the Vice-Chairman would be comprehended within the said clause. It is material to see that since the member of the Committee himself is an officer within the meaning of the definition of the word "Officer", the expression used in the aforesaid Clause "O" is "other officer" which will include all other office bearers of the Committee/ Board of Directors. The appointment of the Chairman and the Vice-Chairman is thus clearly covered by the said Clause "O" of Rule 8(1) of the Rules and, therefore, the society is competent to make or otherwise the registrar can direct the society to make Bye-Laws upon the said question of appointment of the Chairman and the Vice-Chairman.

47. As regards the question whether the said Clause "O" of sub-rule (1) of Rule 8 would include the provision about the term of the members of the Committee or the other office-bearers including the Chairman and the Vice-Chairman, in our view, the words "mode of appointment" which means the manner of appointment would include the question of their periodicity i.e. the term for which the appointment should be made. Otherwise, if it is held that there is no provision in Rule 8 to prescribe by Bye-Law the term of the member or the office-bearer of the Committee, it would mean that the members of the committee and other office-bearers can continue indefinitely once they are appointed either by election or otherwise which cannot be the intention under the Act or the Rules or the Bye-Laws framed thereunder.

48. In this regard, it is also useful to notice Clause (v) of sub-rule (1) of Rule 8 of the Rules. The said Clause (v) refers to the "mode, of appointment and removal of the committee and its powers and duties". There is also no specific provision in the Act, the Rules and the Bye-Laws regarding the question of laying down the term of the Committee. In this clause (v) also the power to lay down the term of the Committee has to be comprehended within the expression "mode of appointment" used therein. Otherwise, it would mean that the Committee once appointed or elected would continue for an indefinite period which cannot be the intention of the Statute.

49. In our view, therefore, the expression "mode of appointment" used in Clauses "O" and "V of sub-rule (1) of Rule 8 of the Rules should be given a wider meaning so as to include within it the period or the term of the Committee, its members and its other office bearers. We draw assistance for such wider meaning to the word "mode" from the judgment of the M.P. High Court in the case of Dharampat v. B. K. Mishra (1971) M.P.L.J. 37 7n which in the context of the provisions of "the Jabalpur University Act, 1956, it has, after considering the various dictionary meanings of the word "mode", given it a wider meaning so as to cover the entire procedure for all the stages of election of the representatives of the Registered Graduates u/s 22(XXI) of the aforesaid Act.

50. Even assuming that the term of the Committee or its members or the office bearers are not comprehended within the said Clauses "O" and "V of Rule 8(1), the

residuary Clause "Z" of sub-rule (1) of Rule 8 which covers the matters "incidental to the management of the business of the Society" is wide enough to include the composition of the Committee, its tenure and the tenure of its members and office-bearers, for the purpose of proper and efficient management of the business of the society which may require that its Managing Committee/the Board of Directors should be elected periodically and if the society so thinks, its office bearers should have a tenure, which may be less than the actual tenure of its Managing Committee/ Board of Directors. We cannot thus accept the contention raised on behalf of the petitioner that the society has no powers to frame Bye-Laws to regulate the appointment of its officers and to prescribe their term and therefore, in its absence clause (iii) of the Bye-Law No.30 is invalid and is liable to be struck down with the result that the petitioner/ Chairman is entitled to continue till the completion of the term of the Board of Directors of the respondent No. 3 Bank elected on 3-2-1991.

50. In this view of the matter, since we have held that Rule 8(1) covers the matter about appointment and the term of the members and the office bearers of the Committee/ Board of Directors, it is not necessary for us to consider the question whether the society being an autonomous body has power to frame Bye-laws dehors Sec. 165(2)(iii) of the Act and Rule 8 framed thereunder, so that it can frame Bye-laws on its own upon matters not covered by the said Rule 8, or in other words, the question whether Rule 8 is exhaustive and would leave no scope for framing of Bye-laws in respect of any matters not covered by it.

50A. -The expression used in the said sub-rules (1) and (2) of Rule 8 is "in respect of all or any of the following matters.... "that is to say" which may indicate that the said provisions are exhaustive as is held by the Supreme Court in the case of *Rajasthan Roller Flour Mills Association v. State of Rajasthan and others*, etc. 1993(5) SC 138 and in the case of *Royal Hai Cherries Pvt. Ctd. etc. v. State of Andhra Pradesh* and words that is to "say" are interpreted as words of "limitation". However, in certain decided cases relating to the legislative entries in the List II (State List) of the with Schedule of the Constitution or the Government of India Act, 1935, where the expression "that is to say" is used, say for instance Entries 8,17 and 18 thereof and the corresponding Entries 31, 19 and 2"1 of the Govt. of India Act, 1935, it is held that the words or expressions following the said expression "that is to say" merely explain or illustrate but they do not amplify or limit the meaning of the main subject in the said entries. (See *Bhola prasad v. Emperor* AIR 1942 FC 17; *Megh Raj v. Allah Rakha* AIR 1947 FC 72 and [Atma Ram Vs. The State of Punjab and Others](#), , which follows the above case.) It would thus mean that the words "that is to say" have to be construed in the context of each statute. However, as stated hereinabove in view of our interpretation of Rule 8(1), it is not necessary focus to consider the above question i.e. whether dehors Section 165(2)(iii) of the Act, and Rule 8 framed thereunder, there is power in the Society to frame Bye-laws upon matters not covered by Rule 8.

51. These are all the contentions raised in this Writ Petition.

52. In the result, the instant Writ Petition fails and is dismissed. However, in the circumstances, there shall be no order as to costs.

Petition dismissed.