Babaji Kondaji Garad Etc vs The Nasik Merchants Co-Operative Bank ... on 31 October, 1983

Equivalent citations: 1984 AIR 192, 1984 SCR (1) 767, AIR 1984 SUPREME COURT 192, 1984 UJ (SC) 239, (1984) KER LT 14, (1984) MAHLR 405, (1984) 20 COOPLJ 1, 1984 (2) SCC 50, (1984) 1 BOM CR 399, 1984 BOM LR 86 114

Author: D.A. Desai

Bench: D.A. Desai, O. Chinnappa Reddy, A. Varadarajan

PETITIONER:
BABAJI KONDAJI GARAD ETC.

Vs.

RESPONDENT:
THE NASIK MERCHANTS CO-OPERATIVE BANK LTD., NASIK & ORS.ETC.

DATE OF JUDGMENT31/10/1983

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
REDDY, O. CHINNAPPA (J)
VARADARAJAN, A. (J)

CITATION:
1984 AIR 192 1984 SCR (1) 767
1984 SCC (2) 50 1983 SCALE (2)696
CITATOR INFO :
RF 1986 SC1499 (16)
RF 1988 SC 784 (21)

ACT:
Maharashtra Cooperative Societies Act, 1960-Sec. 73B interpretation of-Reservation of two seats for Scheduled Casts/Scheduled Tribes and weaker section on committee of a specified society mandatory-Reserved seats to be filled in primarily by election-Failing election alone seats may be filled by appointment or co-option. Election held pursuant to election notification not mentioning reservation of seats-Illegal.

Interpretation- 'The equity of the statute'-Method of construction of a statute-Used in the past-Still in vogue. Legislature uses appropriate language to manifest its intention.

Administrative Law-Bye-law-Status of-Cannot be held to be law or have the force of law. In case of inconsistency between bye-law & statute-Statute prevails. Construction placed on a statutory provision by executive branch-Not relevant for interpreting the provision by court.

HEADNOTE:

On expiry of the term of the committee known as Board of Directors of a specified society under the Maharashtra Cooperative Societies Act, 1960 the Collector notified the election programme without specifying that the two seats on the committee would be reserved seats; one for the members belonging to the Scheduled Castes or Scheduled Tribes and one for the weaker section of the members of the society. Pursuant to that election programme the poll was held and the result was declared. The said election was challenged by a member of the society belonging to Scheduled Tribe on the ground that the whole of the election programme is vitiated on account of its non compliance with the mandatory statutory provision enacted in sec. 73B which prescribed reservation of seats; one in favour of Scheduled Castes or Scheduled Tribes and another in favour of weaker section from the members of the society. The Additional Commissioner who heard the election petition declared the election of the elected members as void and ineffective. On a writ petition filed by some of the elected members the High Court held that it was not imperative that the reserved seats must be filled in only by election and the mandate of sec. 73B would be adequately complied with if reserved seats are filled in by co-option and there was no error in conducting the election. In these appeals the appellants submitted that sec. 73B proceeded to make a statutory reservation of two seats and declared its preference in favour of filling in the reserved seats by
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election failing which alone the reserved seats were to be filled in by appointment or co-option. The respondent submitted that the filling of the reserved seats was a sine qua non; the method of filling reserved seats was directory and therefore any of the three modes could be adopted.

Allowing the appeals,

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HELD: The election in question is ex facie illegal, invalid and contrary to law. [781 F]

Section 73 of the Act requires the Collector to hold election in accordance with the Act including sec. 73B. The failure to hold election in accordance with the Act including sec.73B would vitiate the whole election programme from commencement till the end. It would all the more be so because the failure to hold election according to the provisions of the Act which denies an opportunity to the

persons who are eligible to get elected to the reserved seats would certainly vitiate the whole election programme. Therefore, the Collector must specify in the election programme inter alia that there are reserved seats to be filled in by election and the class in whose favour reservation is made. This will be notice to the members eligible for contesting election to reserved seats so that they may fill in their nomination. In the instant case there is not even a whisper in the election programme whether any of the seats were reserved. The omission is glaring and fatal. Therefore, it can be safely concluded that the election is held in violation of sec. 73B. [781 D-F]

Any provision making for reservation must receive such construction as would advance the purpose and intendment underlying the provision making reservation and not thwart it. In the past a method of construction was used to extend a remedial statute called proceeding upon 'the equity of the statute'. Now a days even though that method of construction has fallen into disuse, it is still in vogue in somewhat similar from in that if it is manifest that the principles of justice require something to be done which is not expressly provided for in an Act of Parliament, a court of justice will take into consideration the spirit and meaning of the Act apart from the words. [775 G-H; 776 B]

Hay v. Lord Provost of Perth, [1863] 3 Macq. H.L. (S.C.) 535 at 544; Re Bethlem Hospital [1875] L.R. 19 Eq. 457 and Craies Statute Law, Seventh Edition P. 101-103 referred to.

No canon of construction can be said to be more firmly established than this that the legislature uses appropriate language to manifest its intention. In the instant case, the use of the expression 'shall' in sec. 73B clearly mandates obligation to reserve. The section itself clearly manifests legislative intention when it says that 'if no such persons are elected or appointed,' the reserved seats may be filled in by co-option. The language and the chronology of the methodology of filling in reserved seats employed in sec. 73B provide a clue to its correct construction and there should be no doubt that opportunity must be provided for filling in seats by election. It is the failure of the election machinery to fill in the seats by election which would enable the concerned authority to fill in seats by appointment or co-option. [776 G-H; 777 A-B]

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The bye-laws of a cooperative society framed in pursuance of the provision of the relevant Act cannot be held to be law or to have the force of law. They are neither statutory in character nor they have statutory flavour so as to be raised to the status of law. If there is any conflict between a statute and the subordinate legislation, the statute prevails over subordinate legislation and the bye-law if not in conformity with the statute in order to give effect to the statutory provision the rule or bye-law has to

be ignored. The statutory provision has precedence and must be complied with. [780 B-C]

In the instant case sec. 73B provides a legislative mandate. Rule 61 has a status of subsidiary legislation or delegated legislation. [779 H]

Co-operative Central Bank Ltd. and Ors. v. Additional Industrial Tribunal, Andhra Pradesh and Ors. [1970] 1 S.C.R. 205 referred to.

A view of law or a legal provision expressed by a Government Officer cannot afford reliable basis or even guidance in the matter of construction of a legislative measure. It is the function of the Court to construe legislative measures and in reaching the correct meaning of a statutory provision, opinion of executive branch is hardly relevant. Nor can the Court abdicate in favour of such opinion. In the instant case the opinion of the Deputy Registrar as expressed in his letter and circular has no relevance. [780 F-G; D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 11991 of 1983.

From the Judgment and Order dated the 27th April, 1983 of the High Court of Bombay in Writ Petition No.392 of 1982.

AND Civil Appeal No.1810/81.

From the Judgment and Order dated the 8th July, 1981 of the High Court of Bombay in Writ Petition No.1484 of 1981.

V.M. Tarkunde, Mrs. M. Karanjawala and R. Karanjawala, for the appellant in C.A.No. 11991/83.

M.N. Phadke, C.K. Ratnaparkhi and A.N. Sawant for the respondents in C.A.No. 11991/83.

P.R. Mridul, P.N. Parekh and P. Mishra for the R.P. Bhatt, K. Rajendra Choudhary and K.S. Choudhary, for the appellant in C.A. No.1810/81.

Dr. N.M. Ghatate, S.V. Deshpande, V.B. Joshi and M.N. Shroff for the respondents in C.A. No. 1810/81.

The Judgment of the Court was delivered by DESAI, J. Construction of Sec. 73B of the Maharashtra Cooperative Societies Act, 1960 ('Act' for short) figures in these two appeals arising from the two decisions rendered by the Bombay High Court, covering the same point and reaching the same conclusion, but the latter one does not take note of the earlier decision. Re: S.L.P. (Civil) No. 773283: The Nasik Merchants Co-operative Bank Ltd., the first respondent, is a co-operative Bank

deemed to be registered under the Act and is governed by the Act. It was registered on June 11, 1959. It is a specified society within the meaning of the expression in Sec. 73G(1)(vii) of the Act. Accordingly the election of the members of the Committee and the election of the office-bearers by the Committee of the first respondent would be subject to the provisions of Chapter XI-A and has to be conducted in the manner prescribed in the Chapter. The Committee in which management of the first respondent vests, is designated as Board of Directors. The term of the members of the Board of Directors is five years. The election to the Board of Directors for the period 1981-82 to 1985-86 became due. As required by Sec. 144-C, the Collector having jurisdiction in the matter notified the programme of election on October 29, 1981. At the relevant time, the strength of the Board of Directors was 15 in number. 14 Directors were to be elected by members and one was to be nominated by the Central Co-operative Bank. It is not disputed but in fact conceded that the election programme notified by the Collector did not specify that the two seats on the Board of Directors of the first respondent would be reserved seats; one for the members belonging to the Scheduled Castes or Scheduled Tribes and one for the weaker section of the members who have been granted loans from the society of an amount not exceeding Rs. 200 during the year immediately preceding as required by Sec. 73B of the Act. Poll was held on December 14, 1981 and the counting of votes took place on December 14, 1981 and the result was declared on December 17, 1981. Respondents 3 to 16 were declared elected. Thereupon the present petitioner, a member of the first respondent-Bank and belonging to the Joshi community which is recognised as a Scheduled Tribe moved an election petition under Sec. 144 before the Additional Commissioner, Nasik, calling in question the election of respondents 3 to 16 to the Board of Directors of the firs respondent-Bank inter alia on the ground that the whole of the election programme is vitiated on account of its non-compliance with the mandatory statutory provision enacted in Sec. 73B which prescribes reservation of seats; one in favour of Scheduled Castes or Scheduled Tribes and another in favour of weaker section from the members who had borrowed loans not exceeding Rs. 200 in the year preceding the year of election ('reservation for weaker section' for short). There were other grounds on which the election of respondents 3 to 16 was called in question but they are no more relevant and need not clutter the record here. The Additional Commissioner as per his judgment and order dated February 8, 1982 held that despite the failure of the first respondent-Bank to amend bye-law 41 (correct bye-law appears to be 40) even after repeated reminders by the District Deputy Registrar, the mandate of Sec. 73B will have precedence overt he unamended bye-law 40 and as the election process was set in motion in contravention of the mandatory provision contained in Sec. 73B and the relevant rules, the result of the election has been materially affected and accordingly declared the election of respondents Nos. 3 to 16 as void and ineffective and directed the Collector, Nasik to hold the election de novo.

Respondents Nos. 3 to 7 and 9, 10 and 12 and 14 to 16 filed Writ Petition No. 392 of 1982 in the High Court of Judicature at Bombay under Art. 227 of the Constitution for a writ of certiorari. A Division Bench of the Bombay High Court granted the writ and made the rule absolute holding that it is not imperative that the reserved seats must be filled in only by election and the mandate of Sec. 73B would be adequately complied with if reserved seats are filled in by co-option and therefore, there is no error in conducting the election. Accordingly, the order of the Additional Collector was quashed and set aside and the election petition was dismissed.

When the petition for special leave to appeal came up before this Court, a direction was given that the matter will be disposed of at the stage of granting special leave as if it is an appeal. Hence this appeal by special leave. Re. C.A. No. 1810/81: The Parbhani District Central Co- operative bank Ltd., the second respondent is a co-operative bank deemed to be registered under the Act. It is a specified society within the meaning of the expression in Sec. 73G. The term of members of the Board of Directors expired. Accordingly, the Collector of Parbhani, the first respondent notified programme of election commencing from March 30, 1981 and ending with the counting of votes and declaration of result on April 24, 1981. The election was held and the result was announced and respondents No. 3 to 12 were declared elected. Thereafter the meeting of the elected members of the Board of Directors is to be convened to elect the office bearers. At that stage, the two appellants filed Writ Petition No. 1484 of 1981 in the Bombay High Court questioning the validity of the election of the respondents 3 to 12 inter alia on the ground that the election was held in violation of Sec. 73B of the Act.

A Division Bench of the Bombay High Court held that there was some confusion between the procedure for election prescribed in the rules and the bye-laws and the one prescribed in Sec. 73B and therefore, the Collector did not take steps to hold election to the reserved seats. The Court further held that the first petitioner did not take any objection until the whole election process was completed and at a later stage approached the Court to 'throttle down' the election of the office-bearers and that this might indicate a waiver of the right on the part of the petitioner and also it amounts to acquiescence and therefore, no interference is called for at the instance of the petitioner. The Court also observed that co-option being an alternative to election to the reserved seats, the mandate of Sec. 73B would be satisfied if the Board of Directors co-opts two members to provide representation to the two reserved seats. Approaching the matter from this angle, the writ petition was dismissed. Hence this appeal by special leave.

The out-come of these two appeals depends upon the construction to be put on Sec. 73B which must subserve the underlying intendment of that provision. Sec. 73B reads as under:

> "On the committee of such society or class of societies as the State Government may, by general or special order, direct, two seats shall be reserved, one for the members who belong to the Scheduled Castes or Scheduled tribes and one for the weaker section of the members who have been granted loans from the society of an amount not exceeding Rs. 200 during the year immediately preceding. If no such persons are elected or appointed, the committee shall co-opt the required number of members on the committee from amongst the persons entitled to such representation."

Section 73 provides that the management of every society shall vest in a committee, constituted in accordance with the Act, the rules and the bye-laws. Sec. 73B mandates that two seats shall be reserved on the committee of such society or class of societies as the State Government may, by general or special order, direct, ('Specified society' for short) one for the members who belong to the Scheduled Castes or Scheduled Tribes and one for the weaker section of the members who have been granted loans from the society of an amount not exceeding Rs. 200 during the year immediately preceding. Sec. 73B further provides that if no such persons are elected or appointed,

the committee shall co-opt the required number of members on the committee from amongst the persons entitled to such representation.

We may now note the rival contentions. Appellants assert that the reservation in favour of the Scheduled Castes and Scheduled Tribes and weaker section of the members on the committee of the society manifests a statutory attempt giving effect to the provisions of the Constitution especially the one contained in Arts 43 and 46 and has to be given effect as if carrying out the constitutional mandate enshrined in Arts. 15 and 16 of the Constitution. Proceeding along this line, it was submitted that a democratic polity swears by setting up democratic institutions election, neither by appointment nor co-option. It was submitted that the Legislature has clearly indicated its preference in favour of election failing which alone the reserved seats may be filled in by appointment or co-option. They have called in aid the chronology of methodology set out in Sec. 73B. wherein it is stated that 'if no such persons are elected or appointed,' the committee shall co- opt the required number of members on the committee from amongst the persons entitled to such representation.' Appellants assert that Sec. 73B proceeded to make a statutory reservation of two seats and declared its preference in favour of filling in the reserved seats by election and that is indicated by the expression; 'if no such persons are elected or appointed,' the committee then in order not to defeat legislative intention of giving representation to the class in whose favour reservation is made, shall co-opt the required number of members on the committee. The appellants say that co-option can be availed of as the last resort and cannot be used to supplant election to defeat the legislative mandate according priority to election or appointment. They say that co-option can only be resorted to, to effectuate the purpose underlying Sec. 73B if and only if an attempt having been made at first providing an opportunity to fill in reserved seats by election, failing which appointment and thereafter co-option, which cannot be equated with election or appointment so that anyone mode may be adopted for filling in the reserved seats at the whim or caprice or sweet will either of the statutory authority or the committee of members.

The respondents excluding the statutory authority on the other hand contend that the object underlying Sec. 73B is to provide for giving an opportunity to persons belonging to the class in whose favour reservation is made such as members of the Scheduled Casts/Scheduled Tribes or the weaker section of the members of the Society to be on the committee. The primary importance is of filling in reserved seats and not the methodology because the legislature was aware that a class of persons in whose favour reservation is made may not be available for election and therefore, provision for appointment as also for co-option has been simultaneously made in Sec. 73B. The respondents assert that the filling in of the reserved seats is a sine qua non to carry out the mandate of Sec. 73B and not the mode or method by which the reserved seats are filled.

The rival contentions clearly bring to the fore the question of construction of Sec. 73B.

The Act was enacted in 1960 and it repealed the Bombay Co operative Societies Act, 1925. Sec. 73 provides for the vesting of the management of every society in a committee to be constituted in accordance with the Act, the rules and the bye-laws. At the commencement of the Act, there was no provision for reservation of seats in favour of the members of the Scheduled Castes and the Scheduled Tribes and the weaker section of the members. Sec. 73B making reservation obligatory

was introduced in the Act by Amending Act 27 of 1969. Why was this specific amendment made ? The working of the Act must have disclosed a sorry state of affairs that even though the cooperative movement was expanding by leaps and bounds, the members of Scheduled Castes and Schedule Tribes or the weaker section of the members of the society were not represented in the committee and had no opportunity to participate in the decision making process, laying down broad policies and management of the society. Art. 43 of the Constitution set the goal that the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas. In our onward march of economic independence, India was destined to be a co operative commonwealth. Since independence, co-operative movement proliferated in all directions, its activities were diversified, more especially in the rural areas; Every activity of a person devoted to agriculture in the rural area is considerably influenced by the co-operative movement, such as seed distribution, credit, disposal of agricultural produce etc. The members of the Scheduled Castes and Scheduled Tribes predominantly in rural areas did not remain unaffected by the gigantic stride that the co-operative movement took. They were directly and substantially affected by it. In order to avoid that those who are affected by the movement in their vital day to day existence enjoy a second class status by being denied the opportunity to be represented in the management council, and decision making bodies, a provision like Sec. 73B was introduced to ensure representation of such persons who in the absence of reservation may find it difficult to be elected to the committee in which the entire power of management vests. Absence of representation coupled with subjection to the dictates of the society would be antithesis of democratic process reducing such persons to serfdom. A co-operative society is to be governed by a committee elected by democratic process. This democratic process must permeate in filling in reserved seats otherwise the committee would not enjoy a representative character. One can draw light from the provisions contained in Part XVI of the Constitution and especially Arts. 330 and 332 which provide for reservation of seats in the House of People and in the Legislative Assembly of every State for the Scheduled Castes and the Scheduled Tribes. The felt necessities of the time and the historical perspective of class domination led to the constitutional guarantee of reservation so that India can truly be a Sovereign Socialist Secular Democratic Republic. A republic is made up of men and institutions. That is why democratic institutions have to be set up by providing for election and to make the democratic institutions truly representative, reservation of seats for those who on account, of their backwardness, exploitation and unjust treatment both social and economic cannot obtain representation because of the class domination. This is the genesis of reservation. Therefore, any provision making for reservation must receive such construction as would advance the purpose and intendment underlying the provision making reservation and not thwart it. "In the past a method of construction was used to extend a remedial statute called proceeding upon the equity of the statute. In Hay v. Lord Provost of Perth Lord Westbury observed that the mode of construction known as the equity of the statute' was 'very common with regard to our earlier statutes, and very consistent with the principle and manner according to which Acts of Parliament were at that time framed.' Undoubtedly, now-a-days this mode of construction has fallen into disuse:

> Even though the expression 'the equity of the statute' has fallen into disuse, it is still in vogue in somewhat similar form in that if it is manifest that the principles of justice require something to be done which is not expressly provided for in an Act of Parliament, a court of justice will take into consideration the spirit and meaning of

the Act apart from the words. In this context, one can recall the words of Jessel M.R. in Re Bethlem Hospital, that 'the equity of the statute' may as well mean, such a thing as construing an Act according to its intent, though not according to its words. Alternatively, one can bring in Hydon's test more often noticed by this Court that in order to arrive at true intendment of a statute, the Court should pose to itself the questions; (1) what was the situation prior to the provision under construction, (2) what mischief or defect was noticed before introducing the provision, (3) whether it was remedial and (4) the reason for the remedy. Applying this test, the same result would follow inasmuch as looking to the position and the plight of Scheduled Castes and Scheduled Tribes and the weaker section of the members of a society, though they would be subject to the dictate of the society they had no voice in the managerial councils and that to raise the stature and status of such persons so as to bring them on the footing of equality with other segments of the society, reservation was provided in the absence of which those in whose favour reservation was made could not get elected to the decision making bodies. While ascertaining the true canon of construction applicable to Sec. 73B, these aspects must stare into our face.

Before going in search of any external aids of construction, let us look at the language employed by the Legislature because no canon of construction can be said to be more firmly established than this that the Legislature uses appropriate language to manifest its intention. No controversy was raised with regard to the power of Legislature to prescribe reservation of seats in the committee in which the management of the society vests. The use of the expression 'shall' in Sec. 73B clearly mandates obligation to reserve.

The next question is how the reserved seats are to be filled in ? The section itself clearly manifests legislative intention when it says that 'if no such persons are elected or appointed,' the reserved seats may be filled in by co- option. Therefore, the pride of place is accorded to election of persons eligible to fill in reserved seats. Let there be no mistake that there is no reserved constituency which may divide the society or the electorate. The constituency is the general constituency. Only the seats are reserved. This would imply that the general body of members will elect persons eligible to fill in reserved seats.

When statute requires a certain thing to be done in a certain manner, it can be done in that manner alone unless a contrary indication is to be found in the statute. If the Legislature uses expression 'if no such persons are elected' it indubitably suggests that primarily the reserved seats are to be filled in by election. Failing the election, one can resort to appointment or co-option. The chronology of the methodology by which seats are to be filled in as set out in Sec. 73B clearly manifests the legislative intention. The first and the foremost pride of place is accorded to election. It ought to be so because a representative institution ordinarily must be democratically elected. The section therefore, speaks 'if no such persons are elected' which would mean the authorities charged with a duty to hold election must proceed to arrange for holding

the election. If election is held giving out information that there are reserved seats and no candidate is forthcoming to contest for the reserved seats, the Legislature in its wisdom provided that the seats shall not remain vacant but can be filled in by two subsidiary methods such as appointment or co-option which cannot be put on par or equated with election which is a universally recognised method by which representative institutions are set up. Therefore, the language and the chronology of the methodology of filling in reserved seats employed in Sec. 73B provide a clue to its correct construction and there should be no doubt that opportunity must be provided for filling in seats by election. It is the failure of the election machinery to fill in the seats which would enable the concerned authority to fill in the seats by appointment or co-option. The condition precedent to filling in reserved seats by appointment or co-option is holding of the election and failure to elect such persons would permit resort to other methods of filling in the reserved seats.

It was submitted that the object underlying Sec. 73B can as well be fulfilled by co-opting two persons eligible to fill in reserved seats.

The more vociferous submission was that such construction should be put on a statutory provision which accords with the main thrust of the section and not with peripheral requirements which would appear to be directory. It was urged that the fundamental requirement of Sec. 73B is to provide representation to specified classes therein mentioned and that must be held to be mandatory and not the method by which the representation is ensured. Further it was said that there is illuminating inter evidence in Sec. 73B itself which shows that the method of filling in seats is directory and therefore three alternative modes by which reserved seats could be filled in were provided in the provision itself. Proceeding along this line, it was said that co-option can equally ensure representation to the qualified persons to fill in the reserved seats, and that therefore, the Court should not upset the entire election process on this account. If this approach is ever accepted, it would strike a death-knell of the democratic principle of giving the constituency the right to elect its representatives and it would be usurped by a coterie of certain elected persons. From enjoying a direct representation, the constituency would move backwards and the process of regress would be that instead of direct election by the constituency which is the statutory right granted by Sec. 73B, the right to select would be usurped by the Board of Directors who would decide who should be co- opted to fill in the reserved seats. Such a retrograde movement is undemocratic. The struggle to get direct representation cannot be thwarted in this manner. This becomes manifest from the fact that the power to co-opt the members to fill in reserved seats is conferred on the members of the committee i.e. on the Board of Directors. To tersely put the issue in focus, the method of co-option denudes the power of the constituency to elect members and is usurped by a small body like the Board of Directors. The outcome is not difficult to gauge. The committee will co-opt members who would be their puppets, totally ignoring whom the constituency i.e. the general body of members would have elected. If it is the effect of co-option, it could never be equated with

election much less accorded precedence over election by the general body of the members that is the constituency. Therefore the submission that method of filling in reserved seats is directory and therefore any one of the three modes can be adopted to comply with the mandatory part of Sec. 73B viz. filling in reserved seats, does not commend to us.

Mr. Phadke, learned counsel who appeared for the respondents in one of the appeals urged that the emphasis is on filling in reserved seats and not the mode or method by which the seats are filled in. In this connection, he drew our attention to the unamended bye-law No. 40 of the bye-laws framed by Nasik Merchants Co-operative Bank Ltd., the first respondent in the first matter. After referring to the unamended bye-laws, it was urged that there was no provision for electing members to the reserved seats. He further urged that Sec. 72 requires that the election to the committee has to be held according to the Act, the rules and the bye-laws. Reference was also made to the procedure for counting for votes set out in rule 61 of the Maharashtra Specified Co-operative Societies Election to Committees Rules, 1971 ('Rules' for short), which provide that the Returning Officer shall after the counting of votes declare the candidate to whom the highest number of valid votes has been given, as having been elected. It was pointed out that bye-law No. 40 was amended as late as February 13, 1983, which was much later than the date of the impugned election. The amended bye-law did make provision for election to reserved seats. The High Court has also noticed amendment of Rule 61 by Maharashtra Specified Co-operative Societies Elections to Committee (Amendment) Rules, 1979. He further drew our attention to the circular dated Ist February, 1979, issued by the District Deputy Registrar of Co-operative Societies at Nasik in which he pointed out that the committee should co-opt required number of members on the committee from amongst the persons entitled to representation on the reserved seats. The specified societies were also requested to amend the bye-

laws as early as possible. He also drew our attention to a letter dated June 4, 1979 addressed to the Nasik Merchant Co-operative Society Bank Ltd, by the District Deputy Registrar, Nasik pointing out therein that if the bye-law is not amended the reserved seats should be filled in by co- option and that the compliance should be reported before March 31, 1979. He again requested the Bank to amend the bye-laws to bring them in conformity with the requirements of Sec. 73B. Relying on the unamended bye-law, rule 61 and the aforementioned two documents, it was submitted that the Government itself did not consider election to be the only mode or method of filling in the reserved seats and persistently requested the Bank to co-opt necessary number of members to fill in the reserved seats, and therefore, it is not proper to invalidate the whole process of election. We remain unconvinced.

Sec. 73B provides a legislative mandate. Rule 61 has a status of subsidiary legislation or delegated legislation. Bye-law of a co-

operative society can at best have the status of an Article of Association of a company governed by the Companies Act, 1956 and as held by this Court in Co-operative Central Bank Ltd. and others v. Additional Industrial Tribunal, Andhra Pradesh and Others the bye-laws of a co-operative society framed in pursuance of the provision of the relevant Act cannot be held to be law or to have the force of law. They are neither statutory in character nor they have statutory flavour so as to be raised to the status of law. Now if there is any conflict between a statute and the subordinate legislation, it does not require elaborate reasoning to firmly state that the statute prevails over subordinate legislation and the bye-law if not in conformity with the statute in order to give effect to the statutory provision the rule or bye-law has to be ignored. The statutory provision has precedence and must be complied with. Further the opinion of the Deputy Registrar as expressed in his circular dated February 1, 1979 and his letter dated June 4, 1979 has no relevance because his lake of knowledge or misunderstanding of law as expressed in his opinion has no relevance. The High Court relying upon the aforementioned two documents observed as under:

> "There is no inconsistency between Section 73B and the bye-laws because even the Government has construed Section 73B in such manner that even though the bye-laws are not amended and reserved seats remain unfilled by election the same can be filled up by co-option."

With respect, we find it difficult to subscribe to this untenable approach that a view of law or a legal provision expressed by a Government Officer can afford reliable basis or even guidance in the matter of construction of a legislative measure. It is the function of the Court to construe legislative measures and in reaching the correct meaning of a statutory provision, opinion of executive branch is hardly relevant. Nor can the Court abdicate in favour of such opinion.

The provision contained in Chapter XI-A applies to election to the committees of specified societies categorised in Sec. 73B. Sec. 144-C requires the Collector to draw an election programme and arrange for conducting the election or under his control by the Returning Officer according to the programme. Now the election programme has to be published. The programme therefore, must in order to comply with legal formality show whether any of the seats to be filled in are reserved and specify the class in whose favour reservation has been made, so as to give notice to persons eligible for contesting election to reserved seats. This becomes manifestly clear from the form prescribed for filling in the nomination paper being Form No. 2 appended to the rules. In the case of reserved seats a further declaration has to be made in the nomination form that the candidate belongs to Scheduled Castes or Scheduled Tribes or Vimukta Jati or the weaker section candidate. And this declaration has to be signed by the candidate himself. Now therefore, the Collector, a statutory authority charged with a duty to hold election according to the Act, must specify in the election programme inter alia that there are reserved seats to be filled in by election and the class in whose favour reservation is made. This will be notice to the members eligible for contesting election to reserved seats so that they may fill in their nomination. There is not even a whisper in the election programme whether any of the seats were reserved. The omission is glaring and fatal. As pointed out earlier, election has to be held to form the committee. Sec. 73 requires the Collector to hold election in accordance with the Act including Sec. 73B. The failure to hold election in accordance with the Act including Sec. 73B would vitiate the whole election programme from commencement till the

end. It would all the more be so because the failure to hold election according to the provisions of the Act which denies an opportunity to the persons who are eligible to get elected to the reserved seats would certainly vitiate the whole election programme. One can safely conclude that the election is held in violation of Sec. 73B. Therefore, in our opinion, the High Court was in error in upholding the election, which is ex facie illegal, invalid and contrary to law.

Accordingly both these appeals succeed Civil Appeal arising from S.L.P. No. 7732/83 is allowed and the decision of the High Court is quashed and set aside and the one rendered by the Additional Commissioner is restored.

Civil Appeal No. 1810/81 is allowed and the judgment and order of the High Court are set aside. A writ be issued quashing and setting aside the election of respondents 3 to 12 to the Board of Directors of the Parbhani District Co- operative Bank Ltd.

The concerned statutory authority in both the cases should proceed to hold the election afresh as early as possible and should complete the process within a period of 3 months from today. In the meantime, the status quo as on today should continue. There will be no orders as to costs of hearing in this Court.

H.S.K. Appeals allowed.