

H. Puttappa and ors. Vs. the State of Karnataka and ors.

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Court : Karnataka

Decided On : Feb-03-1978

Reported in : AIR1978Kant148; ILR1978KAR605; 1978(1)KarLJ302

Judge : V.S. Malimath, ;K. Jagannatha Shetty, ;M.K. Srinivasa Iyengar, ;P.P. Bopanna and ;N. Venkatachala, JJ.

Acts : [Constitution of India](#) - Articles 13, 14, 17, 19, 23, 24, 31(1), 31(2), 31A(1) and 32; Karnataka Co-operative Societies Act, 1959 - Sections 4, 6, 7, 9, 10, 11, 12, 13, 14A, 14A(1), 14A(2), 14A(4), 14A(5), 14A(6), 15, 16, 16(3), 17, 26, 30, 30A, 30B and 105A; Karnataka Co-operative Societies (Amendment) Act, 1976; Karnataka Co-operative Societies Ordinance, 1977; [Transfer of Property Act, 1882](#) ; [Registration Act, 1908](#); [Code of Civil Procedure \(CPC\), 1908](#) - Sections 60(1); Co-operative Societies Act, 1912 - Sections 39, 47, 72, 112; Bombay Government Premises (Eviction) Act, 1955; Forward Contracts (Regulation) Act, 1952 - Sections 5, 6, 6(2) and 10; [Companies Act, 1956](#) - Sections 326; The Hindi Sahitya Sammelan Act, 1962; Andhra Pradesh Co-operative Societies Act

Appeal No. : Writ Petn. Nos. 8298, 8461, 8462, 9520, 9654 and 10301 of 1976 and 49 and 5120 to 5122 of 1977

Appellant : H. Puttappa and ors.

Respondent : The State of Karnataka and ors.

Advocate for Def. : B. Veerabhadrappe, Adv. in W.P. No. 23 of 1976, ;R.N. Byra Reddy, Adv. General and ;S.G. Doddakale Gowda, 1st Addl. Govt. Adv., ;Basavaraj, ;K.I. Bhatta and ;K. Mallegowda, Advs.

Advocate for Pet/Ap. : B. Veerabhadrappe, Adv. in W.P. No. 49 of 1976, ;K. Channabhasappa, Adv. for ;R.B. Sadashivappa and ;C.M. Desai, Advs., ;B.K. Venkatakrishna, Adv. for ;M.C. Rayanna, Adv., ;T.S. Ramachandra, ;S.C. Java

Judgement :

K. Jagannatha Shetty, J.

1. These writ petitions challenge the constitutional validity of Section 14-A of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as 'the Act') and the legality of the orders made thereunder whereby the Deputy Registrars of different districts have directed the amalgamation of co-operative societies of more than eight hundred. Almost all the affected societies have approached this Court with similar contentions. For the present disposal, however, we have taken only a few of those writ petitions.

2. The petitioners in most of the writ petitions' are the amalgamating co-operative societies. But in some, the members of such societies have also joined as petitioners. The orders which they attack are all stereotyped. They provide for compulsory amalgamation of co-operative societies which are primary credit societies. It was uniformly stated that the amalgamation was found to be necessary in public interest and to secure the proper management of co-operative societies. It was further stated that the amalgamation was to meet the credit requirement of rural people particularly the weaker sections, and to make arrangements for the distribution of fertilizers and essential consumer articles. The orders appear to have been based on certain uniform norms apparently as expert committee of the Reserve Bank of India.

The said orders also provide for incidental and consequential matters. The first committee of the amalgamated society has been constituted with a Chairman. The members nominated thereof appear to have been selected at the sweet will of the

Deputy Registrars. The term of the office of the committee shall be three years, but liberty has been reserved to the joint Registrars at any time to limit the term of any member (including the Chairman) to a shorter period and nominate another person in his place.

3. The constitutional validity of Section 14-A was attacked on the grounds: (i) that it is beyond the legislative power and a colourable legislation; (ii) that it conferred unguided and arbitrary power on the Deputy Registrar and so violative of Article 14 of the Constitution; and (iii) that it contravenes Article 19(1)(c) of the Constitution inasmuch as it nullifies the liberty of the members to have a co-operative society of their choice. As against the orders of amalgamation, the contention urged was with regard to the nature of the power conferred under Section 14-A and the need to observe the principles of audi alteram partem. Since the impugned orders were made without any opportunity to the petitioners, it was urged that they were nullity. Incidentally, it was also contended that the sole purpose of the Government in enacting Section 14-A was to confer on the Registrar and Deputy Registrar the power to destroy all the co-operative societies controlled and managed by the members belonging to opposition parties and to pack those societies with the henchmen of the Ruling Party.

4. The respondents have filed a common statement of objections in which the history of the legislation has been traced and the necessity to enact Section 14-A has been explained. It was stated that in the State of Karnataka there are 8500 Agricultural Credit Co-operative Societies, out of which only 2500 are viable and the remaining 6000 societies are not viable and 1175 societies are either defunct or not functioning properly. It was also stated that most of the existing societies do not serve the weaker sections of the community and big landlords or rich farmers are the real beneficiaries of the credit facilities offered by the societies. It was further stated that an Expert Study Group appointed by the Reserve Bank of India examined in depth the credit structure of the cooperative societies in the rural areas, followed by the examination of another Expert Committee appointed by the Government of India, popularly called as 'Shivaraman Committee.' In accordance with their recommendations, the co-operative societies in the rural areas were chosen as the principal agency for meeting credit needs and in order to achieve

these objectives, Section 14-A was enacted by the State Legislature. It was denied that the power conferred under the said section was arbitrary or unguided. It was stated that the statutory authorities have to exercise the power having regard to: (a) the public interest; (b) the interest of the co-operative movement; and (c) for purpose of securing the proper management of co-operative societies. On the question of observing the rules of natural justice before making the impugned orders, it was contended that the power under Section 14-A is administrative and the Legislature while enacting the said section, has specifically excluded the application of the principles of natural justice.

5. We will now proceed to consider the relevant contentions urged for the petitioners while ignoring the contention that relates to the alleged motive behind the legislation as it is totally irrelevant for the courts to judge the validity of any enactment. The first contention that falls for decision is, whether Section 14-A providing for compulsory amalgamation, division or reorganisation of co-operative societies is beyond the competency of the Legislature, or is a colourable piece of legislation. For immediate reference, we set out the section hereunder:

'14-A. (1) Notwithstanding anything contained in this Act or the rules made thereunder and the byelaws of the co-operative societies concerned, where the Registrar is satisfied that it is essential in public interest or in the interest of co-operative movement or for the purpose of securing the proper management of any co-operative society that any two or more co-operative societies should be amalgamated to form a single co-operative society or any co-operative society should be divided or any co-operative society should be reorganised, then, the Registrar shall order the amalgamation, division or reorganisation of such cooperative societies.

(2) The order shall,--

(a) Provide for the devolution of the assets and liabilities of the co-operative society or societies amalgamated, divided or reorganised, and the date on which the devolution takes effect;

(b) specify,--

(i) the composition, strength, names and the term of office of the members (including the Chairman) of the first committee;

(ii) who shall be the Managing Director/Secretary, of the new cooperative society or each of the new co-operative societies as the case may be; and

(iii) the bye-laws which the new co-operative society or each of the new co-operative societies shall, until amended in accordance with the provisions of the Act and the rules, follow.

(3) Every such order shall be published in the official Gazette and shall, unless otherwise specified in the order, come into force on such publication.

(4) The order referred in Sub-section (1) may contain such incidental, consequential and supplemental provisions as may, in the opinion of the Registrar, be necessary to give effect to amalgamation, division or reorganisation, as the case may be.

(5) Notwithstanding anything contained in the [Transfer of Property Act, 1882](#) (Central Act 4 of 1882) or the [Registration Act, 1908](#) (Central Act 16 of 1908) in the event of amalgamation, the registration of the amalgamated co-operative society and in the event of division, the registration of new co-operative societies shall with effect from the date specified in the order of amalgamation or division in each case, be sufficient conveyance to vest the assets and liabilities of the amalgamating cooperative societies or the original cooperative society in the amalgamated co-operative society or the new cooperative societies as the case may be.

(6) The amalgamation of co-operative societies or division or reorganisation of a co-operative society shall not affect any right or obligation of the co-operative societies so amalgamated or the co-operative society so divided or reorganised or render defective any legal proceedings which might have been continued or commenced by or against the co-operative societies which have been amalgamated or divided or reorganized and accordingly such legal proceedings may be continued or commenced by or against the amalgamated co-operative

society, the reorganised co-operative society or the new co-operative societies as the case may be.'

By this section, the power to amalgamate, divide or reorganise co-operative societies has been conferred upon the Registrar; but by Karnataka Ordinance No. 7 of 1977, the said power has also been conferred on the Deputy Registrar in respect of co-operative societies whose area of operation is less than a taluk. In other respects the framework of the section is kept undisturbed.

6. Here it is not necessary for us to verge upon the scheme of the section. It may be sufficient, if we remember the broad outlines of the section. The argument advanced for the petitioners largely depended on the compulsive nature of the power conferred, the principles of 'co-operation' and the meaning to be given to the words 'co-operative society' found in the legislative entry 32, List II in the Seventh Schedule. It was urged that the 'Co-operative society' envisaged in the said legislative entry, is a co-operative society built upon the free choice and action of the members, and the law relating to its compulsory amalgamation is an antithesis of 'co-operation' and, therefore, it is a colourable legislation.

The contention was sought to be justified with a flash-back on the purpose and development of co-operative movement right from its inception. The history of the co-operative movement, to put it briefly, runs like this: The father of that movement was Robert Owen (1771 to 1828). He was also the founder of the British Socialism. He did not trust the State to solve economic problems but put his hope in voluntary association based on the principle of mutual help. He thus advanced the concept of co-operation as the basis of a new social and economic order. His movement was built upon the free choice and action of the people. That movement spread in all democratic countries of the West and Rochdale Pioneers in England for the first time established their Equitable society in 1884 for self help and mutual help. The rules of co-operation were also traced to Rochdale Pioneers. Those rules consisted of Voluntary Association, Democratic Management, self-help, mutual help, open door policy, no profit motive, etc.

7. These, in fact, were the real principles of the 'co-operation.' Cooperative society was a democratic society in which no one was compelled to join it or prevented

from withdrawing from it. There was no element of compulsion either in its formation or in its working. But as days rolled on, that Principle had undergone modifications as the movement was extended from country to country. They did not remain as gospel preached from the pulpit although the core of the movement remained the same. The cooperative movement under the capitalist system remained as a corrective for the evils of that system. 'Co-operation' in a socialist country remained as a part of that system. But in a communist country, 'co-operation' was adopted as a State dominated society. Denmark however, stands aloof. That country appears to defy even what Harold J. Laski says 'Man is not, in fact, born free. It is said that there is even now no law in that country to regulate the working of dairy societies. The whole structure is based on the civic sense and spirit of sacrifice of the people.

Thus, the co-operative movement has never been a cloistered virtue of any particular system of Government. It has always been recognised to be a scheme of social reform in the modern world.

8. At one stage, it was urged for the petitioners, that we must try to ascertain, the meaning of 'co-operation' as existed when the Constitution was enacted and should give that conception alone to the 'co-operative society' found in Entry 32 List II. Certainly, it will not be difficult for us to trace that conception and for a proper understanding we will try to ascertain it also. But, we must state that it is not a correct principle of construction. It will be unreasonable to confine the intention of the Legislature to the meaning attributable to the word used at the time the law was made assuming for a moment any such meaning was then available. The Courts have given modern meaning even to the words found in ancient statutes although the statutes are ordinarily designed to meet the fugitive exigencies of the hour. In *Senior Electric Inspector v. Laxminarayan Chopra*, : [1962]3SCR146 the Supreme Court held that 'wireless receiving station' clearly comes within the definition of 'Telegraph' in the Telegraph Act (1885) and observed:

'It is more reasonable to confine its intention only to the circumstances obtaining at the time the law was made. But in a modern progressive society it would be

unreasonable to confine the intention of a Legislature to the meaning attributable to the word used at the time the law was made, for a modern Legislation making laws to govern a society which is fast moving must be presumed to be aware of an enlarged meaning the same concept might attract with the march of time and with the revolutionary changes brought about in social, economic, political and scientific and other fields of human activity. Indeed, unless a contrary intention appears, an interpretation should be given to the words used to take in new facts and situations, if the words are capable of comprehending them.'

In this context, it may be useful to refer to the observation made by Hegde, J., while he was in this Court in *P. Nathmal Sanchethi v. Dasarath*, (1958) 36 Mys LJ 204 at p. 207 : (AIR 1959 Mys 96 at p. 98). He gave a wider meaning to the word 'wages' as found in Section 60(1)(h) of the Code of Civil Procedure and held that its conception should take within its fold the bonus paid to the Industrial workers. He said:

'Life is dynamic. So are our laws. They grow with the nation. The words acquire new meaning with the passage of time. The newly acquired meanings are in consonance with the new ideas. The march of time is not a matter of indifference to Courts. It is neither possible nor wise to create a gulf between society and its laws. Laws are not prison houses nor are the Judges required to go by antiquated meanings of words and ideas corroded by the process of time.'

9. If these are the principles that may govern the interpretation of words in a statute, what then should be the rules of construction of a word in the Constitution? Needless to state that they should govern with full force, because, the 'Constitution' according to Benjamin N. Cardoza, 'states or ought to state not rules for the passing hour, but principles for expanding future.' 'We must never forget' Marshall's mighty statement 'that it is a constitution that we are expounding.' We should not also forget the warning given to Judges (although in a different context) by Patanjali Sastri, C. J., in *State of Madras v. V. G. Row*, : 1952 CriLJ966 :

'...The sobering reflection that the constitution is meant not only for people of their way of thinking, but for all ...'

That apart, we are trying to grasp the meaning of the words 'co-operative society' found in the legislative entry. It is a settled principle that we must always give the most liberal construction to words conferring legislative power. We must give such meaning so that they may have effect in their widest amplitude. It is an accepted principle of construction that 'none of the legislative items in the List should be read in a narrow restricted sense and each general word should be held to extend to all ancillary and subsidiary matters which can fairly and reasonably be said to be comprehended.' *R.S. Joshi v. Ajit Mills Ltd.*, : [1978]1SCR338 .

10. The principles being thus explained, let us turn to the co-operative movement in our country. Long before the Constitution came into force, the co-operative movement in this country was regulated and governed by an Act called 'the Co-operative societies Act, 1912.' If we peruse the provisions of that Act, it becomes clear that the Indian Co-operative movement was never a spontaneous development in its formal phase. It was a creation of the statute which has its object the promotion of the economic interests of its members in accordance with the co-operative principles (See Section 4 of the 1912 Act). It was no doubt a democratic body, but the Registrar had always a large measure of control. That appears to be the scheme of every co-operative movement made from time to time. It was Government initiated and has since its inception been largely nurtured and guided by the Government. That has become inevitable in the context of widespread poverty and illiteracy among the rural population. The provisions of the Act are in pari materia with the provisions of the Co-operative societies Act, 1912. Section 47 of the 1912 Act, like Section 112 herein, prohibited the use of word 'co-operative' by any person for trading purpose unless the co-operative society was registered. Section 39 of the 1912 Act, like Section 72, herein provided for compulsory dissolution of societies. We are referring to these provisions only to show that the 'cooperative principles' as mooted by Robert Owen or Rochdale Pioneers with all their pristine purity of voluntarism had never existed in this country at least for the promotion of economic interests. It, however, remained as a welfare movement aiming at the betterment of the poor man's lot. Its principles, according to us, are no more than the rules of business varying from time to time by statutory enactments keeping, of course, undisturbed the democratic structure of the organisation.

Indeed, in the context of planning where period is fixed to achieve certain objectives, voluntary principle in the co-operative movement has perforce to undergo modification. The official road has to intervene to introduce certain amount of compulsion or control to bring speedy results. Such compulsion or control was all the more found to be necessary and justified in this country since the State or Reserve Bank or other financial institutions have been major partners in most of the credit co-operative societies. R D. Bedi in his book 'Theory, History and Practice of Co-operation' states:

'In these days, when free enterprise is giving place to planned economy, there seems to be little room for a strict adherence to the policy of laissez-faire. Planning envisages the fixation of targets with a certain amount of surety about their achievement. Voluntary principle, which leaves the acceptance of schemes to the sweet will of the people, does not seem to fit in the system of planning. Late Prof. D. G. Karve once remarked that, 'In the overall context of a planned society in which direction by the State is elementary, its voluntary character becomes a historical, not a fundamental feature of co-operation.' The planning Committee (1964) also remarked that voluntary principle hampered planning and must undergo some modification. It also recommended that in certain kinds of societies for example, consolidation of holdings, irrigation and farming societies, resolution passed by two-thirds majority should be binding on the remaining person also.'

11. The voluntary principle is no doubt a precious asset of the co-operative movement and should remain as a golden rule, but then, it cannot be held to be a constraint on the plenary powers of legislation under entry 32, List II. The principles of co-operation must be left to the good sense of our elected representatives and responsible Government.

There is also no substance in the contention that Section 14-A is colourable legislation. The rule against colourable legislation was first explained by Mukherjea, J. (Afterwards C. J.) in *K. C. Gajapati Narayan Deo v. State of Orissa*, : [1954]1SCR1 . The learned Judge observed therein:

'The idea conveyed by the expression is that although apparently a legislature in passing a statute purported to act within the limits of its powers, yet in substance

and in reality it transgressed these powers, the transgression being veiled by what appears on proper examination to be a mere pretence or disguise. ... In other words, the rule lays down that a Legislature cannot go outside its sphere of competence whether directly or indirectly.'

The above principle has been reiterated by Krishna Iyer, J., in *R.S. Joshi v. Ajit Mills Ltd.*, : [1978]1SCR338 -

'..... It is very important to notice that if the legislature is competent to pass the particular law, the motives which impel it to pass the law are really irrelevant. To put it more relevantly to the case on hand, if a legislation apparently enacted under one Entry in the List, falls in plain truth and fact, within the content, not of that Entry but of one assigned to another legislature, it can be struck down as colourable even if the motive were most commendable

Having regard to the nature of the legislation and the scope of Entry 32, we cannot say that Section 14-A in essence falls outside the said entry, or falls into another entry assigned to Parliament. The section is primarily concerned with the co-operative societies with regard to its amalgamation, division or reorganisation, and thus quite fairly and squarely falls within entry 32 List II.

12. We shall now take up the contention, whether Section 14-A conferred unguided and arbitrary power on the Registrar and Deputy Registrar and so is void being in contravention of Article 14.

For this purpose, we must have a close look at the Section. Sub-section

(1) of Section 14-A begins with non-obstinate clause. It confers power on the Registrar and Deputy Registrar to amalgamate, divide or reorganise co-operative societies, notwithstanding anything contained in the Act, Rules or the Bye-laws of the Co-operative societies. They could take action only when they are satisfied: (i) that it is essential in public interest; or (ii) in the interest of co-operative movement; or (iii) for the purpose of securing the proper management of any co-operative society. Sub-section

(2) provides the terms upon which the order shall be made. The order shall provide for the devolution of the assets and liabilities of the co-operative societies, the composition, strength, names and the term of office of the members of the first committee. It must also specify who shall be the Managing Director/Secretary and the bye-laws to be applicable to the amalgamated societies. Sub-section

(4) provides power to make other incidental or consequential orders. Complimentary to this are the provisions contained in Sub-sections

(5) and (6). The Section, no doubt, does not make a precise classification of the co-operative societies, in respect of which amalgamation or division or reorganisation may be effected. It leaves the selective application of the law to be made by the Registrar or the Deputy Registrar. But the selective application of the law for any one of the purposes set out in the section is not unguided. The legislature has prescribed the guidelines to the statutory authorities for the exercise of discretion. Therefore, it cannot be said that the power conferred upon the authorities was arbitrary or violative of Article

14. The scope of Article 14 has been well settled by a catena of decisions of the Supreme Court. It is not necessary to have a lengthy review of those cases. It may be sufficient to refer to the observation made in *Kedar Nath v. State of West Bengal*, : 1953 CriLJ1621 wherein, Patanjali Sastri C. J. at p. 409 Para 14, said:

'That if the impugned legislation indicates the policy which inspired it and the object which it seeks to attain, the mere fact that the legislation does not itself make a complete and precise classification of the persons or things to which it is to be applied, but leaves the selective application of the law to be made by the executive authority in accordance with the standard indicated or the underlying policy and object disclosed is not a sufficient ground for condemning it as arbitrary and, therefore, obnoxious to Article 14.'

But in a given case, if the discretion exercised by the statutory authority is proved to be arbitrary or in utter disregard to the policy laid down by the Legislature, then that particular action could be condemned as obnoxious to Article 14. On this principle, the learned Chief Justice continued:

'..... but as has been pointed out,if it be shown in any given case that the discretion has been exercised in disregard of the standard or contrary to the declared policy and object of the legislation, such exercise could be challenged and annulled under Article 14.'

Coming to the recent decision of the Supreme Court in *Maganlal Chhagganlal (P) Ltd. v. Greater Bombay Municipality*, : [1975]1SCR1 . Alagriswami, J., while upholding the validity of the provisions of Chapter V-A of the Bombay Municipal Corporation Act and the provisions of the Bombay Government Premises (Eviction) Act, 1955, observed at page 2022:

'The provision of these two Acts cannot be struck down on the fanciful theory that power would be exercised in such an unrealistic fashion. In considering whether the officers would be discriminating between one set of persons and another, one has got to take into account normal human behaviour and not behaviour which is abnormal. It is not every fancied possibility of discrimination that we must take into account.'

13. Having regard to these principles, we cannot think that Section 14-A has conferred discretionary power, unguided and uncontrolled. It is not a power-packed section without any guiding principles. The amalgamation, division or reorganisation of co-operative societies could be ordered only when the statutory authorities are satisfied that such action is essential either in public interest or in the interest of co-operative movement or for the purpose of securing the proper management of any co-operative society. The section, therefore, not only lays down the policy, but also provides safeguards to ensure that the cooperative societies are not dismantled unnecessarily.

14. But learned counsel for thepetitioners highlighted the two omissions made by the Legislature, to reinforce their contention that the power conferred under Section 14-A is arbitrary. It is said that there is no provision for appeal against the abuse of powers; and there is also no provision to afford reasonable opportunity to the co-operative societies before any action is taken. It is true that these circumstances are sometimes relevant to judge whether the statutory power is arbitrary and uncontrolled. But each case has to be considered, having regard to

the nature of the power conferred and the authority on whom it has been conferred. In the present case, the section confers power on the Registrar and the Deputy Registrar. They are the controlling authorities for co-operative societies. They must therefore, be held to be familiar with the working of all the co-operative societies. They are required to exercise their power having regard to the guidelines provided by the Legislature. Therefore, the omission to provide for a right of appeal against their action is not so much relevant in the instant case. The mere fact that there is no provision for appeal is no ground to hold that there is a possibility of abuse of the power. Article 14 does not demand 'a fanatical approach.' The guidelines provided by the Legislature are themselves the best safeguard to ensure that the societies are not disturbed arbitrarily. When such safeguards are provided by the Legislature, it is necessary that the authority which makes an order under the section, complies strictly with all the conditions laid down by law to be satisfied by him before he makes an order.

On the question of affording opportunity to the affected co-operative societies, no doubt, there is no express provision provided for that purpose. But the omission to provide for is not conclusive of the fact that the statutory authorities should not follow the rules of natural justice. We, however, do not want to examine that question at this stage. We shall have occasion to go over the ground again a little later.

15. On this part of the case, we have to still consider one other contention urged for the petitioners. It was urged that Sub-section (2) of Section 14-A contains no guidelines either for appointment of members, Chairman or Secretary of the first committee or for determining their period in office. It was also urged that the Deputy Registrar has arbitrarily nominated persons amongst whom some are not even the primary members of the societies and some are chronic defaulters, ignoring altogether the elected members of the amalgamating societies.

We do not agree that there are no guidelines for making an order under Sub-section (2) of Section 14-A. The guiding principles provided under Sub-section (1) equally govern the action of the Deputy Registrar while constituting the first committee, selecting suitable persons as Chairman, Managing Director or

Secretary of the amalgamated co-operative society and fixing their term of office. If there is any lapse in following those guidelines, it may be a different matter and we are not concerned with that for the present.

16. The next question that falls to be determined is, whether Section 14-A is violative of Article 19(1)(c) of the Constitution. In some writ petitions as noticed earlier, the shareholders of the co-operative societies are also the petitioners. They have contended that the compulsory amalgamation of their societies has violated their fundamental right of freedom of association as guaranteed under Article 19(1)(c). This contention, however, was countered by the respondents on two grounds: Firstly, that Section 14-A deals with only the co-operative societies which are corporate bodies and as such, the corporate bodies have no fundamental rights guaranteed under Article 19 and secondly, the co-operative society is a creature of the Act recognised for the purpose of sound business and its compulsory amalgamation has nothing to do with the right guaranteed to the citizens to form an association.

17. We shall make it clear, at the outset, that if Section 14-A purports to restrict the right of citizens as guaranteed under Article 19(1)(c), the validity of it presents little problem as it cannot be said to be a law imposing reasonable restrictions, in the interests of the sovereignty and integrity of India or public order or morality as provided under Article 19(4). The frame work of the law under Section 14-A is to provide for compulsory amalgamation, division or reorganisation of co-operative societies and as such falls evidently outside the matters covered under Article 19(4).

18. The question urged for the petitioners may be examined from three aspects: Firstly, on the nature of the right; second, the interest which the petitioners complain of; and third, the injury resulting from the operation of Section 14-A. These were also the principles emphasised by Shah, J. (later C. J.) in *R. C. Cooper v. Union of India*, : [1970]3SCR530 . The learned Judge observed that protection against the impairment of the guarantee of fundamental rights is to be determined by the nature of the right, the interest of the aggrieved party and the degree of harm resulting from the State action. Therefore, we shall proceed to examine the nature of the

right guaranteed to the citizens under Article 19(1)(c).

De Toequeville said :

'In democratic countries, the science of association is the mother of science; the progress of all the rest depends upon the progress it has made.'

Aristotle said long ago that man is a social animal. He is gregarious and loves to combine with his fellowmen in numerous forms of associations in the course of his activities, Freedom of association thus becomes a cherished objective of man's efforts in the pursuit of happiness. This freedom, as observed by the Supreme Court in *D. A. V. College v. State of Punjab*, : AIR 1971 SC1737 implies that several individuals get together and form voluntarily an association with a common aim, legitimate purpose and having a community of interests. In our view, it only comprehends the right to form an association of citizens, political, economic religious, cultural, fraternal and social which have become an indispensable ally in the struggle to preserve democracy against totalitarianism. The industrial association known as labour; trade union which has been the most important single force in the struggle for industrial democracy has also been included in that right. The content of this right must necessarily include as observed by the Supreme Court in *Damayanti v. Union of India*, : [1971]3SCR840 the right to continue the association with its composition as voluntarily agreed upon by the persons forming the association. It was also observed therein that the right to form an association includes the right to its continuance and any law altering the composition of the association compulsorily, will be a breach of that right.

With that, we may turn to the nature of the right or interests the infringement of which has been complained of by the members of the cooperative societies. Their only grievance as we see it, is that without their consent, they have been made members of the amalgamated co-operative societies and that has affected their right to form an association as guaranteed under Article 19(1)(c). To put it more elaborately, the compulsory amalgamation, dissolution, division and reconstruction of co-operative societies, or the addition of some more members without the consent of the existing members, will be violative of the freedom to form an association which includes within it, the continuance of the association as

originally formed.

19. We consider this argument, is without force. There appears to be some misconception on the relative rights of the citizens and that of a cooperative society. The Co-operative society with which we are concerned is a corporate body. Article 19(1)(c) guarantees rights to the citizens as such and not to corporate bodies or associations. The Act provides no compulsion for anybody to form a cooperative society. The Act also does not preclude any one from going out of his co-operative society. When these two principles are not restricted by the Act, we fail to see how the fundamental right guaranteed by Article 19(1)(c) has been impaired or infringed.

As soon as citizens form an association, the right is guaranteed to them by Article 19(1)(c). The association so formed also cannot lay claim to the fundamental right guaranteed by Article 19(1)(c) on the basis of their being an aggregation of citizens. In other words, the association cannot complain about the restrictions in the Act as restrictions against the right conferred by Article 19(1)(c). The provisions in the Act govern the duties and privileges, rights and liabilities, property and funds, the audit, inspection and surcharge, the dissolution and amalgamation of co-operative societies and its members. The Act thus regulates the economic interests of the members and controls the trading activities of the societies in the interests of the public or in the interests of the advancement of the co-operative movement. The process of amalgamation and division or reorganisation of co-operative societies relate only to structural alterations in the corporate bodies and cannot be construed as a restriction on the right guaranteed to the citizens by Article 19(1)(c).

20. The Act by Section 4. authorises registration of an association of citizens as a co-operative society if it is likely to be economically sound. But an association cannot claim and obtain registration as a co-operative society as its fundamental right guaranteed by Article 19(1)(c). Article 19(1)(c) does not guarantee any fundamental right to an association to obtain registration as a corporate body. The Supreme Court in *Raghubar Dayal Jai Prakash v. Union of India*, : [1962]3SCR547 considered almost similar questions. In that case, Sections 5, 6 and 10 of Forward

Contracts (Regulation) Act (1952) were challenged on the ground that they were violative of Article 19(1)(c). Section 6 of the said Act empowers the Government to grant recognition to the association specifying the goods or classes of goods with respect to which forward contracts may be entered into between the members of such association or through or with any such member. Section 6(2) contains conditions which ought to be complied with by association before recognition was granted. Complimentary to this were the provisions contained in Section 10 which empower the Central Government to direct rules to be made, with power in case the recognised association fails to take action to comply with the order of the Government. Dealing with these provisions and their impact on the right to form an association, Rajagopala Ayyangar, J., speaking for the constitution Bench observed at p. 270:

'In the first place, the restriction imposed by Section 6 of the Act is for the purpose of recognition and no association is compelled to apply to the Government for recognition under that Act. An application for the recognition of the association for the purpose of functioning under the enactment is a voluntary act on the part of the association and if the statute imposes conditions subject to which alone recognition could be accorded or continued, it is a little difficult to see how the freedom to form the association is affected unless of course, that freedom implies or involves a guaranteed right to recognition also. Could it be contended that there is a right in the association guaranteed by the Constitution to obtain recognition?'

21. Let us consider the question from another angle. Section 112 prohibits persons other than a co-operative society from trading or carrying on business under the name 'co-operative' or the equivalent in any Indian language. The association of citizens must, therefore, be registered as a cooperative society under the Act for doing business or carrying on like other activities. It is now a settled principle that the freedom to form an association guaranteed to the citizens by Article 19(1)(c) does not include the freedom to achieve any object of the association. The amalgamation, compulsive or consensual pertains to the rights of the latter category. The law on this question has been succinctly summarised by the Supreme Court in *All India Bank Employees' Association v. National Industrial Tribunal (Bank Disputes) Bombay*, : (1961) IILLJ385SC thus:

'The resulting position may be illustrated thus: If an association were formed for the purpose of carrying on business, the right to form it would be guaranteed by Sub-clause (c) of Clause (1) of Article 19 subject to any law restricting that right conforming to Clause (4) of Article 19. As regards its business activities, however, and the achievement of the objects for which it was brought into existence its rights would be those guaranteed by Sub-clause (g) of Clause (1) of Article 19 subject to any relevant law on the matter conforming to Clause (6) of Article 19; while the property which the association acquires or possesses would be protected by Sub-clause (f) of Clause (1) of Article 19 subject to legislation within the limits laid down by Clause (5) of Article 19.'

It was further observed at para 20:

'While the right to form a union is guaranteed by Sub-clause (e), the right of the members of the association to meet would be guaranteed by Sub-clause (b), their right to move from place to place within India by Sub-clause (d), their right to discuss their problems and to propagate their views by Sub-clause (a), their right to hold property would be that guaranteed by Sub-clause (f) and so on -- each of these freedoms being subject to such restrictions as might properly be imposed by Clauses (2) to (6) of Article 19 as might be appropriate in the context. It is one thing to interpret each of the freedoms guaranteed by the several Articles in Part III in a fair and liberal sense, it is quite another to read each guaranteed right as involving or including concomitant rights necessary to achieve the object which might be supposed to underlie the grant of each of those rights, for that construction would, by a series of ever expanding concentric circles in the shape of rights concomitant to concomitant rights and so on, lead to an almost grotesque result.'

22. We will now refer to the case *Damayanti v. Union of India*, : [1971]3SCR840 upon which strong reliance was placed by counsel for the petitioners. In that case, Parliament passed a law under Entry 63 of List II of Seventh Schedule to the Constitution whereby a Hindi Sammelan was constituted as a corporate body materially affecting the management and the property of the previous committee of members of the society registered under the societies Registration Act. The

Supreme Court held that the Act in so far as it Interfered with the composition of the society in constituting the Sammelan violated the rights of the members of the original society to form an association. The facts of that case are far removed from those of the case on hand. Therefore, we do not think that the principles stated therein are of much assistance to the petitioners herein. When the Sammelan in that case was registered under the societies Registration Act, it became not a body corporate. Even the properties did not vest in such society. The properties vested in the governing body of the society. The Hindi Sammelan registered under the societies Registration Act was really an association of persons. Therefore, the Supreme Court said on the facts of that case that the enactment of the Central Government was violative of Article 19(1)(c) of the Constitution.

The view that we take finds full support from the decision of the Full Bench of the High Court of Andhra Pradesh in K. Suryanarayana v. The District Co-operative Officer-cum Election Officer, the West Godavari Co-op. Sugars Ltd., : AIR 1976 AP 340 . While repelling the similar contention it was held therein that the right to form a co-operative society under the Co-operative societies Act is not a fundamental right and it is only a right given under the Act, subject to its provisions and the rules framed thereunder.

23. Before parting with this part of the case, we may refer to one other contention urged for the petitioners. It was urged that under the model Bye-laws made applicable to the amalgamated societies, it was provided that the members of the amalgamating societies automatically become the members of the amalgamated societies and the said members have no right to withdraw their membership for three years. It was urged that that restriction is violative of Article 19(1)(c). We do not think that it is necessary to deal with this contention in detail. The Deputy Registrar has imposed that restriction by the model bye-laws framed by him as incidental or consequential to the order of amalgamation. Even assuming that that restriction is bad, it does not invalidate the order of amalgamation, if it is otherwise according to law. The bye-laws have no statutory force. They are only executive instructions.

24. This takes us to the question whether the power conferred under Section 14-A is judicial or administrative and whether it was obligatory for the Deputy Registrar to have afforded an opportunity to the societies in accordance with the principles of natural justice before the impugned orders were made.

25. Before examining the question, it will be necessary to recall the contention urged by learned Advocate General. He urged that under the Karnataka Act No. 39 of 1975 introducing Section 14-A as it then was, provided provisions making it obligatory for the Registrar to afford an opportunity to the co-operative societies and to consider the representations, if any, from them before any final order was made on the question of amalgamation or division. But that provision has been deleted by Karnataka Act No. 70 of 1976 and also by Karnataka Ordinance No. 7 of 1977. He also urged that that omission was decisive, making the legislative intention clear that the Court should not supply the requirement of audi alteram partem. It is true that the provisions relating to audi alteram partem in the Karnataka Act 39 of 1975 have been omitted in Section 14-A with which we are concerned. But that, in our view, is not at all conclusive of the intention of the Legislature and has little relevance to determine the nature of the power conferred on the statutory authorities. The question of applicability of audi alteram partem cannot be approached merely on the relative terms of those two enactments. It must rest on a consideration of the necessity to observe a fair procedure in the exercise of the power conferred by Section 14-A. The question to be answered, in our opinion, is this: 'Is it fair that the Registrar or Deputy Registrar should go on amalgamating, dividing or reorganising the co-operative societies without any kind of opportunity to them.'

26. Section 14-A as introduced by Karnataka Act 70 of 1976 does not provide that the co-operative societies need not be heard before any order of amalgamation is made. In the absence of such a provision, we have to examine whether audi alteram partem that made its first appearance in the Garden of Eden where even Adam had been called upon by God to meet the charge of having eaten the forbidden fruit, before suffering expulsion (*R. v. Cambridge University* (1723) 1 Str. 557) should be applied to these cases or not.

According to learned Counsel for the petitioners, the case on hand presents little difficulty for the application of principles of natural justice because the statutory authorities under Section 14-A are required to act judicially. They placed reliance on the decision of the Supreme Court in *Rampur Distillery and Chemical Co, Ltd. v. Company Law Board, New Delhi* : [1970]2SCR177 . Therein the Supreme Court considered the scope of Section 326 of the Companies Act (1956). The said section conferred power on the Central Government to accord approval for appointment or re-appointment of Managing Agent if it is satisfied that the appointment is not against the public interest, etc.

The Supreme Court after examining the scope of the said section, held that that power was quasi-judicial and not administrative. But we do not think that it is necessary to examine the nature of the power conferred under Section 14-A. It is really unnecessary to examine whether the power is judicial, quasi-judicial or administrative at least for two reasons. Firstly, there is no point in labelling such functions for the application of rules of natural justice, because administrative power has never been considered as antithesis of judicial power and secondly, it will be extremely difficult to distinguish the administrative power from quasi-judicial power.

On the first point, Lord Hodson in the oft cited case *Ridge v. Baldwin*. 1904 AC 40 at p. 130 observed:

'..... The answer in a given case is not provided by the statement that the giver of the decision is acting in an executive or administrative capacity as if that was the antithesis of a judicial capacity. The cases seem to me to show that persons acting in a capacity which is not on the face of it judicial but rather executive or administrative have been held by the Courts to be subject to the principles of natural justice.'

On the second point, Hegde, J., in *A. K. Kraipak v. Union of India*, : [1970]1SCR457 observed :

'The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated.'

The difficulty in drawing a line between these two powers has been felt by the Courts in the Overseas count-by as well In the Canadian case of *Voyager Exportation Ltd. v. Ontario Securities Commission*, (1970) 1 OR 237 it was observed:

'That that distinction between 'administrative' and 'judicial' is as elusive as the Scarlet Pimpernel.'

27. Whatever might have been the medieval concept of natural justice, it must be admitted, that in recent years it has a wide ranging application in many Governmental action. Although the precise content of it was doubted from time to time, its general applicability to Governmental action was never doubted by the Judges. One vital principle, that is, the right of a person to be given a fair hearing, before he suffers in some way under the official rod, has been consistently applied by the Courts, and today, it has become one of the most essential elements in the rule of law as Professor H. W. R. Wade puts it :

'The subject-matter contains the very kernel of the problem of administrative justice.'

Its principal aim, as observed by Hegde, J., in *A. K. Kraipak's case*, : [1970]1SCR457 , is to secure justice or to put it negatively to prevent miscarriage of justice, and they can be operative only in areas not covered by any law validly made. The learned Judge had also a warning to give:

'The concept of rule of law would lose its validity if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner.'

(Underlining is our)

Lord Morris of Borth-y-Gest has gone a step further in *Wiseman v. Borne-man*, 1971 AC 297 at p. 309 and said;

'.....We do not search for prescriptions which will lay down exactly what must, in various divergent situations, be done. The principles and procedures are to be

applied which, in any particular situation or set of circumstances, are right and just and fair. Natural justice, it has been said, is only 'fair play in action.' Nor do we wait for directions from Parliament.' (Underlining is our)

28. These decisions have no doubt brought out prominently the purpose of the application of the sacred maxim audi alteram partem. But, its application in a given case as observed by the Supreme Court in *Union of India v. P. K. Roy*, : [1972]3SCR405 depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the case. It is therefore necessary to examine these aspects of the matter with particular reference to the relevant provisions in the Act.

Sections 4 to 15 provide for registration, amalgamation, transfer of assets and liabilities and division of co-operative societies. Section 9 renders the registration of a co-operative society as a body corporate with perpetual succession and a common seal, with power to hold property, enter into contracts, institute and defend suits, etc. Section 14 provides for consensual amalgamation, transfer of assets and liabilities and division of co-operative societies. Section 14-A provides for compulsory amalgamation, division and reorganisation of co-operative societies. Section 15 provides for automatic cancellation of registration certificates in the event of such amalgamation or division of societies. Section 30 provides for supersession of committees of a co-operative society. If a committee persistently makes default or is negligent in the performance of duties, the Registrar could supersede it, but not without giving an opportunity to state its objections. It is relevant to state that while superseding the committee of management the society as a corporate body, is kept undisturbed and its management is only transferred to the Administrator appointed by the Registrar. But, when a co-operative society is compulsorily amalgamated, the entire corporate body is disintegrated with cancellation of its registration, deprivation of its property and loss of office by its officers. The President, Vice President, Chairman or Secretary are officers of the societies as defined under Section 2(g) of the Act. They will automatically cease to hold their office without any such corresponding right in the amalgamated society. When such serious civil consequences and losses, pecuniary and otherwise,

result from the order of compulsory amalgamation, is it reasonable to assume that the legislature has impliedly intended to deny even the minimal requirement of rules of natural justice! We cannot assume that. We must always presume that the Legislature acts reasonably with awareness of the modern approach of the Courts in matters affecting the rights of persons. They are presumed to intend justice and to avoid injustice, or in the words of Hegde. J., in *Union of India v. J. N. Singh*, : (1970) IILLJ284SC 'that it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice.' To put it negatively in the words of Lord Guest in *Wiseman v. Borneman*, 1971 AC 297 at p. 309 'Legislature is not to be presumed to act unfairly.'

29. In our judgment, there is no, warrant for the inference that the Legislature by enacting Section 14-A has excluded the application of any or all the rules of natural justice. Such inference should not be drawn merely on the history of the legislation. The Court should take into consideration all the circumstances of the case including the nature of the power conferred, the purpose for which it is conferred and the consequences of the exercise of the power. If the purpose for which the power conferred is likely to be defeated by giving an opportunity to the person concerned, the courts may be justified in not insisting on the principles of natural justice. If there is any other public purpose in the case, which could conceivably outweigh the necessity of fair procedure, the courts may be equally justified in holding that the legislature by implication has intended to deny the said principles. But we do not find any one of these things in these cases. Judged from all the circumstances, we are firmly of the opinion that this is not a case where we should hold that the Legislature by necessary implication has excluded the application of any or all the principles of audi alteram partem.

30. It is not in dispute that all the orders impugned in these petitions were made without affording any opportunity to the amalgamating cooperative societies. They must, therefore, be held to be void on this ground alone

31. In the result, the rule issued in each of these petitions is made absolute. The impugned orders are quashed.

V. S. Malimath, J.

32. As in these writ petitions the constitutional validity of Section 14-A of the Karnataka Co-operative societies Act, 1959 (hereinafter referred to as the Act) and the orders made thereunder are challenged and as common questions of law arise for consideration, they were heard together and are being disposed of by this common order.

33. The first writ petition is by the members of the concerned co-operative society, the second is by the members and the co-operative society and the remaining writ petitions are by the concerned co-operative societies. In these cases Section 14-A of the Act and the orders made under the said provision amalgamating two or more co-operative societies have been challenged. In order to appreciate the contentions, a brief summary of the relevant provisions of the Act and the legislative history is necessary.

34. The Preamble to the Act shows that it was enacted to consolidate and amend the laws relating to Co-operative societies in the State of Karnataka. The principal Act received the assent of the President on the 11th of August, 1959. The expression 'Cooperative society' is defined in Section 2(c) of the Act to mean a society registered or deemed to be registered under the Act. Section 4 provides that a Co-operative society which has as its objects the promotion of the economic interests or general welfare of its members, or of the public, in accordance with Co-operative principles, or a Co-operative society established with the object of facilitating the operations of such a society, may be registered. It further provides that a co-operative society shall not be registered if it is likely to be economically unsound, or the registration of which may have an adverse effect on development of the co-operative movement. Section 5 provides for registration of the co-operative society with or without unlimited liability. Section 6 provides for application for registration of a co-operative society and enumerates the information to be furnished in the application. Section 7 provides that if the Registrar is satisfied (a) that the application complies with the provisions of this Act and the rules; (b) that the objects of the proposed society are in accordance with Section 4; (c) that the aims of the proposed society are not inconsistent with the

principles of social justice; (d) that the proposed bye-laws are not contrary to the provisions of this Act and the rules; and (e) that the proposed society complies with the requirement of sound business and has reasonable chances of success; the Registrar may register the co-operative society and its bye-laws. It further provides that if the Registrar is unable to dispose of the application within six months, he shall report to the State Government, stating the reasons therefor and where the Registrar refuses to register a proposed cooperative society, he shall forthwith communicate his decision, with the reasons therefor, to the person making the application. The Registrar is required to maintain a register of all co-operative societies registered or deemed to be registered under the Act. Section 8 contemplates issuance of a certificate of registration by the Registrar. Section 9 provides that the registration of a co-operative society shall render it a body corporate by the name under which it is registered having perpetual succession and a common seal, and with power to hold property, enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it was constituted. Whereas Section 10 provides for change of name of the co-operative society, Section 11 provides for change of liability. Section 12 provides for amendment of bye-laws of the cooperative society and Section 13 provides for the date of coming into operation of the bye-laws. Section 14 provides for voluntary amalgamation, transfer of assets and liabilities and division of co-operative societies. Section 14-A which provides for compulsory amalgamation, division and reorganisation of co-operative societies, as substituted by Act 70 of 1976 and further amended by Karnataka Ordinance 7 of 1977, reads as follows :--

'14-A. Power to direct amalgamation, division and reorganisation in public interest.

(1) Notwithstanding anything contained in this Act or the rules made thereunder and the bye-laws of the co-operative societies concerned, where the Registrar or in case of Co-operative society where the area of operation is less than a taluk, the Deputy Registrar concerned is satisfied that it is essential in public interest or in the interest of the co-operative movement or for the purpose of securing the proper management of any co-operative society that any two or more cooperative societies should be amalgamated to form a single co-operative society or any co-

operative society be divided or any co-operative society should be reorganised then, the Registrar or the Deputy Registrar as the case may be shall order the amalgamation, division or reorganisation of such Co-operative societies.

(2) The order shall.-

(a) provide for the devolution of the assets and liabilities of the co-operative society or societies amalgamated, divided or reorganised and the date on which the devolution takes effect;

(b) specify,

(i) the composition, strength, names and the term of office of the members (including the Chairman) of the first committee;

(ii) who shall be the Managing Director/Secretary, of the new Co-operative society or each of the new cooperative societies, as the case may be; and

(iii) the bye-laws which the new-co-operative society or each of the new co-operative societies shall, until amended in accordance with the provisions of the Act and the rules, follow.

(3) Every such order shall be published in the official Gazette and shall, unless otherwise specified in the order, come into force on such publication.

(4) The order referred to in Sub-section (1) may contain such incidental, consequential and supplemental provisions as may, in the opinion of the Registrar, be necessary to give effect to amalgamation, division or reorganisation as the case may be.

(5) Notwithstanding anything contained in the [Transfer of Property Act, 1882](#). (Central Act 4 of 1882), or the [Registration Act, 1908](#) (Central Act 16 of 1908), in the event of amalgamation, the registration of the amalgamated Co-operative society and in the event of division, the registration of new Co-operative societies shall with effect from the date specified in the order of amalgamation or division in such case, be sufficient conveyance to vest the assets and liabilities of the amalgamating Co-operative societies or the original Co-operative society in the

amalgamated Co-operative society or the new Co-operative Societies, as the case may be.

(6) The amalgamation of Co-operative societies or reorganisation of a Co-operative society shall not affect any right or obligation of the Co-operative societies so amalgamated or the Co-operative society so divided or reorganised or render defective any legal proceedings which might have been continued or commenced by or against the Co-operative societies which have been amalgamated or divided or reorganised and accordingly such legal proceedings may be continued or commenced by or against the amalgamated Co-operative Society, the reorganised Co-operative society or the new Co-operative societies as the case may be.'

Section 15 provides for cancellation of registration of certificates of Co-operative societies consequent upon amalgamation or division of Co-operative societies effected under Section 14-A of the Act. Section 16 provides for membership of Co-operative Societies. Section 17 provides for disqualification for membership. Section 26 provides that subject to the provisions of the Act, the rules and the bye-laws, the final authority of a Co-operative society shall vest in the general body of members. It further provides for constitution of a Committee to exercise all or any of the powers of the general body as may be specified in the bye-laws. Section 30 empowers the Registrar to supersede the Committee of Management of any Co-operative society if it persistently makes default or is negligent in the performance of the duties imposed on it by the Act or the rules or bye-laws or commits any act which is prejudicial to the interests of the society or its members, or is otherwise not functioning properly. Section 30A empowers the State Government to appoint a Special Officer for a Co-operative society if it is not functioning in accordance with the provisions of the Act, the rules made thereunder or its bye-laws or any order, direction or circular issued by the State Government or the Registrar. Section 30B empowers the State Government to issue directions to any Co-operative society if such directions are necessary in public interest or for the purpose of securing proper implementation of Co-operative and other development programmes approved or undertaken by the State Government or to secure proper management of the business of the Co-operative society or for

preventing the affairs of the Co-operative society being conducted in a manner detrimental to the interests of the members or of the depositors or of the creditors thereof. The Society, to whom directions are issued, is bound to comply with the same. Section 40 provides that it shall be the duty of the State Government to encourage and promote the co-operative movement including encouragement of Co-operative farming in the State and to take such steps in this direction as may be necessary. The principal Act, which came into force on the 1st of June, 1960 did not contain any provision for compulsory amalgamation, division or reorganisation of Co-operative Societies. There was only provision in Section 14 for voluntary amalgamation or division of Co-operative Societies. By Act 39 of 1975, Section 14-A was also introduced empowering the Registrar to compulsorily amalgamate, divide or reorganise Co-operative Societies. Sub-section (2) of Section 14-A, as introduced by Act 39 of 1975, required the Registrar to send a draft of the proposed order to the concerned societies and to consider their objections before passing final orders. By Ordinance 4 of 1976, Section 14-A was amended and Sub-sections (2) and (4) of Section 14-A were omitted. The said Ordinance was replaced by Act 19 of 1976. By Karnataka Ordinance 19 of 1976, Sub-sections (1) and (3) of Section 14-A were substituted. The said Ordinance was replaced by Karnataka Act 70 of 1976 which was given retrospective effect from 20-1-1976. Act 70 of 1976 was not reserved for the assent of the President. By Karnataka Ordinance 7 of 1977, Section 14-A was further amended retrospectively with effect from 20-1-1976 empowering the Deputy Registrar in the case of a Co-operative society where the area of operation is less than a taluka to exercise the power of amalgamation, division or reorganisation of Co-operative Societies. It is under the provisions of Section 14-A as Substituted by Karnataka Act 70 of 1976 that large number of Co-operative societies in the State have been amalgamated or reorganised, which have been challenged in more than 500 writ petitions pending in our Court. We have now heard only these cases which were ready.

35. Arguments advanced by the learned counsel appearing for the petitioners may briefly be summarised as follows:--

(1) That the Legislature which is competent to make law in respect of Co-operative societies under Entry 32 of List II of the VII Schedule to the Constitution, is not competent to enact Section 14-A providing for compulsory amalgamation of Co-operative societies inasmuch as compulsion is the antithesis of co-operation or Co-operative Societies.

(2) That Section 14-A confers arbitrary power on the Registrar and the Deputy Registrar in the matter of amalgamating, dividing and reorganising the Co-operative societies and is therefore void as offending Article 14 of the Constitution.

(3) That Section 14-A is void on the ground that it infringes the fundamental right of freedom of association guaranteed by Article 19(1)(c) of the Constitution.

(4) That Section 14-A is void on the ground that it infringes the fundamental rights guaranteed by Article 19(1)(f) and (g) of the Constitution.

(5) That Section 14-A is void on the ground that it offends Article 31(1) and (2) of the Constitution.

(6) That the impugned orders are illegal and void on the ground that they have been passed without giving an opportunity to show cause to the persons affected by them.

(7) That the impugned orders are illegal and invalid as they have been made by the Registrar without the application of his mind and without his being satisfied about the requirements of Sub-section (1) of Section 14-A of the Act.

36. I will first examine the contention bearing on the question of legislative competence raised by the petitioner in W. P. No. 10301 of 1976. The contention as formulated by the petitioner, reads as follows:--

'8. Section 14-A suffers from various infirmities, in that it does not contain the principles that should guide the authorities in reorganising the Societies. It has given arbitrary powers to the Registrar. Though in principle the object of compulsorily reorganising the societies by amalgamating one with the other is the fundamental object of the law, the Act does not provide for the Registrar to take

into consideration factors which are relevant for the achievement of the object. Although the Act, has not provided any guidelines, Government should have prescribed the guidelines by making the Rules under Section 14-A. In the instant case no such guidelines have been prescribed by the Rules either. In matter of this type the Act or the Rules should have prescribed the relevant guidelines such as the continuity of the area, the geographical situation and pattern with the facilities of means of communications avoiding any inconvenience to the officers and members of the Society; economic and administrative factors; homogeneity of the area; classes of different Societies, implications of the concerned Societies; the existence or otherwise of the panchayats, hospitals, schools, shady places, post and telegraphic office, Banks, Roads, etc., and other means of communications and total membership of the societies etc. Section 14-A while delegating power has given unguided and uncontrolled power to the Registrar while reorganising the Societies.'

The learned Advocate-General submitted his arguments, taking the stand that the State Legislature is competent to enact Section 14-A, under item 'Co-operative Societies' in Entry 32 List II of VII Schedule to the Constitution. He did not rely upon any other entry. Entry 32 reads as follows:--

'Incorporation, regulation and winding up of corporations other than those specified in List I, and Universities; unincorporated trading, literary, scientific, religious and other societies and Associations; Co-operative Societies.'

It is clear from Entry 32 that 'Cooperative Societies' is a distinct entry. What was urged on behalf of the petitioners is that a Co-operative society is a voluntary association and that therefore formation of a new Co-operative society by compulsorily amalgamating two or more Co-operative societies without the consent of the members of those societies is an antithesis of a Co-operative Society. It was maintained that a new Co-operative society that is formed by compulsory amalgamation cannot in truth and in substance be regarded as a Co-operative society because it is not a product of voluntary association. It was submitted that a society formed by co-operation that becomes a Cooperative society and not a society formed by compulsion. Shri Venkatakrisnan, learned

counsel for the petitioner, pointed out that Mr. Calvert in his book 'Law and Practice of Cooperation' defines 'Co-operative Society' as 'A form of organisation wherein the persons voluntarily associate together as human beings on a basis of equality, for the promotion of economic interests of themselves.' He further invited our attention to the following passages at pages 8 to 10 in the book 'Co-operation in Foreign Lands' by Dr. C. B. Mamoria and Dr. R. D. Saksena III Edition, where the authors have traced the origin of Cooperative society and summarised the principles of co-operation as follows:--

'Co-operative principles are those practices which are essential to the achievement of the co-operative enterprise or movement. The principles of co-operation are normally traced to Rochdale pioneers who established their Equitable society in 1844, though their origin goes back to Robert Owen and Dr. William Kind of Brighton and to some of the Leticia Socialists. The Co-operative principles, though revolutionary in character, were never stridently announced from the pulpit or the platform and though of deep philosophical import, they were not enunciated in any weighty tone of a learned philosopher. They were simply the rules of business recorded in the proceedings of a small consumer society of a handful of weavers who come together for providing common mutual services. But herein lies the secret of the profound combination of vision and realism in the principle of co-operation when seen together as a totality (sic). More than a century has elapsed since the principles were first enunciated; through the years they have been examined and commented upon, refurbished and reburnished, but their original statement remains almost unaltered in all the essential aspects.

Co-operative principles were reformulated by a commission appointed by the International Co-operative Alliance in 1964 under the Chairmanship of D. G. Karve of India, with Mr. A. Bonner (of England), Mr. Harvard. A. Cavden (of U.S. Section A.), Prof. D. R. Henzler (of Germany) and Prof. I. Istanov (of USSR) as members. It submitted its report in 1966.

The Commission laid down the following essential principles and ideas:

(i) Open and Voluntary Membership.

- (ii) Democratic administration.
- (iii) Self-help and Mutual help,
- (iv) Principles of service.
- (v) Distribution of Surplus.
- (vi) Political and Religious neutrality.
- (vii) Proper weighment and supply of unadulterated goods.
- (viii) Principle of education.
- (ix) Co-operation among co-operatives.

In the first place it is purely a 'Voluntary Association.' There is no compulsion for anyone to join it. 'A Co-operative Philosophy of Society', says J. J. Woreley, 'must rest on free-Universal Association democratically governed, conditioned by equity and personal liberty'. As such the membership of a co-operative organisation is always open to all people irrespective of differences of caste, creed, colour, community or race. The universality of co-operation can brook no discrimination. They may join it at their sweet-will for achieving the common economic goal. On the other hand they may also quit its membership on their own accord. Rightly it has been remarked by H. Calvert that, unless such a freedom is given to the people, a truly co-operative spirit cannot be developed amongst the members.' The development of such aspirit full of loyalty, honesty and unselfishness is the sine qua non of the success of co-operation.

Voluntarism is thus considered to be a cardinal principle of co-operation. No one can be compelled to join it or prevented from withdrawing from it. It provides an incentive for better work and develops initiative among the members of Co-operative Societies. Super-imposed, direction always stands in the way of smooth working of the co-operative institutions.

But this principle is now undergoing modification and in order to bring speedy results, a small measure of compulsion is being introduced. In planned economy

also, it is subject to proper control. In socialistic countries such as China and Russia, this principle of voluntarism is not accepted but it is State-controlled.

There is some justice for making co-operation compulsory in backward countries as Calvert points out, 'Compulsory Co-operation, wisely conducted, is compulsory adult education in business methods.' But such a compulsion cannot develop the healthy spirit in the co-operative field and it cannot be called co-operation in its true sense but a scheme of social reform by the State.'

It appears from these observations that though voluntary character of the association may historically be regarded as an important aspect of the co-operative movement, compulsory co-operation is not regarded as something which is the antithesis of cooperative movement. Whether voluntary co-operation should be preferred or compulsory co-operation should be preferred are really matters of policy. Calvert has gone to the extent of saying that compulsory co-operation wisely conducted may be justified on the ground that it is really compulsory adult education in business methods. R. D. Bedi in 'Theory, History and Practice of Co-operation' 9th Edition, has stated as follows at pages 26 to 28 :--

'Element of Compulsion in Co-operation.

Voluntary association is an important principle of Co-operation, in so far as it enlarges the freedom of individuals, provides incentive for work and develops initiative. The principle of 'All for each and each for all' requires that there should be freedom of choice regarding the persons with whom to associate. There should, therefore, be no compulsion for joining the Society, nor should there be any restrictions on withdrawals. Patronage of the society by the members should also be left to their free will.

In all democratic countries of the West, co-operative movement grew spontaneously and naturally, built upon the free choice and action of the people. In DENMARK, there is even now no law to regulate the working of dairy Societies. The whole structure is based on the civic sense and spirit of self-sacrifice created in the people through the educational system in the country. In the rest of the Western world also, the movement grew on the basis of a free initiative of the

people.

There is, however, a feeling that strict adherence to this principle is not always conducive to the interests of the people. Co-operation is a welfare movement aiming at the betterment of the poor man's lot. A panacea as it is, for all socio-economic ills of mankind, it should have made a much faster headway than it has actually been able to make in India and some other countries. The enthusiastic co-operators, therefore, who are dissatisfied with the crawl of the movement along years of persuasion manifest a tendency to sacrifice this principle to some extent in the interest of accelerating the pace of the movement.

In these days, when free enterprise is giving place to planned economy, there seems to be little room for a strict adherence to the policy of laissez-faire. Planning envisages the fixation of targets with a certain amount of surety about their achievement. Voluntary principle, which leaves the acceptance of schemes to the sweet will of the people, does not seem to fit in the system of planning. Late Prof. D. G. Karve once remarked that, 'In the overall context of a planned society in which direction by the State is elementary, its voluntary character becomes a historical, not a fundamental feature of co-operation'. The Planning Committee (1964) also remarked that voluntary principle hampered planning and must undergo some modification. It also recommended that in certain kinds of societies for example, consolidation of holdings, irrigation and farming societies, resolution passed by two-thirds majority should be binding on the remaining persons also.

The introduction of an element of compulsion in co-operatives can be justified on some grounds, viz.;

1. For people of under-developed countries, who are mostly illiterate and who do not understand the implications and advantages of co-operation, compulsion can be more effective. Voluntary association is being suggested to them for scores of years now but the suggestion has fallen mostly on deaf ears. In their own interest, therefore, they should, like a patient, be compelled to swallow the bitter pill.

2. In some countries the movement has not made much headway. In India also, it was revealed in the Rural Credit Survey Report that even though the co-operation

movement was introduced 50 years back, it had not been able to meet a major portion of the needs of the people; had left a large majority of the people out of its fold and there were large tracts in which the movement was non-existent. In order to speed up the pace of its development, it is suggested that compulsion should be introduced.

3. It is argued that voluntary principle is derogatory to the spirit of planning and as such the voluntary character of the movement in a planned economy is out of date and should be discarded.

4. It may also be argued that in these days when more and more stress is being placed on scientific management of Co-operative Societies, freewill, initiative and incentive do not play a significant role in the success of the societies and, therefore, undue importance should not be given to the principle of voluntarism.

A rational approach to the problem would show that there is much to be said in favour of voluntary association also.'

In 'Indian Co-operative Laws vis-a-vis Co-operative Principles' by P. E. Weeraman, R. C. Dwivedi and P. Seshadri written on behalf of International Co-operative Alliance, it is stated that the principle of voluntary and open membership of Co-operative societies is one of the basic features of a Co-operative Society. The authors have also examined the provisions for compulsory amalgamation and division contained in the various State enactments and expressed their view as follows at pages 68 and 69.

'(c) Compulsory Division and Amalgamation.

Acts: The State Acts contain provisions clothing the Registrar with power to direct the amalgamation of societies or the division of an existing Society. The relevant sections are as follows :--

Andhra Pradesh: Section 15, Himachal Pradesh: Section 14, Kerala: Section 14 (8) & (9). Madhya Pradesh: Sections 16(2) & (3), 17(A). Maharashtra: Sections 17, 18, 19 (1), 20. Mysore : Section 14-A. Orissa: Section 14 (3) (i) (ii), Punjab: Section 13. Uttar Pradesh: Sections 125, 126. West Bengal: Sections 18A, 18B, 18C.

Delhi: Section 16 (1).

Comments: When groups of persons join together into a society they do so voluntarily. It is therefore incorrect to take away a part of this group compulsorily and form them into a separate society, or to compel this group to join another group. Such compulsion infringes the Principles of Voluntary Association and Democratic Control. These are matters for the societies to decide of their own free will.

Commission Reports: The Committee on Co-operative Law (1956) observed ;

Therefore, what is necessary is not a provision in the Act which will facilitate amalgamation of societies against the wishes of their members, but a provision that will facilitate such amalgamation, if the members so desire.'

The Working Group on Co-operation, Administrative Reforms Commission, 1968, observed:

'The following statutory powers given to Registrar..... are repugnant to the voluntary and democratic character of the co-operative institutions:

(i) Power of the Registrar to direct Co-operative societies to amend their bye-laws.

(ii) Power of the Registrar to direct amalgamation or division of Societies.

(iii) Power given to Government nominee in the Board of Directors to veto majority decisions of the Board or refer the matter to the Government for final decision.

We strongly recommend that there should be no further delay in removing the above objectionable features from the co-operative legislations in the States where they have been included.'

It is thus seen that there is no unanimity in the views expressed by leading men in the co-operative field on the question as to whether voluntary character of the association is one of the essential and basic features of a Co-operative Society. One of the authors has gone to the extent of saying that compulsory element may be justified as being in the interest of the persons who are subject to such

compulsion. Late Prof. D. G. Karve, one of the leading persons in the field of co-operation in India has given to the principle of voluntary association a status in the historical development of co-operative movement and points out that it cannot be regarded as a fundamental feature of co-operation. (Theory, History and Practice of Co-operation--R. D. Bedi, page 27). The concept of Co-operative society is changing and it is not possible to say that it bears the only meaning as given to it by Rochdale Pioneers in England. It is not possible, therefore, to hold that a Co-operative society formed by the process of compulsory amalgamation is the antithesis of Cooperative society or co-operative principles.

37. The language of the entry should be given the widest scope of which its meaning is fairly capable of in interpreting an entry in the VII Schedule. If two reasonable views are possible, the one giving widest scope should be preferred. It is also well-settled that each entry should be understood as entitling the Legislature to make provisions for all ancillary and subsidiary matters which can fairly and reasonably be comprehended in the entry. Provisions regarding amalgamation, division and reorganisation of Co-operative societies are in the nature of ancillary and incidental provisions which can be made under the entry 'Co-operative Societies'. This view of mine receives support from the decision of the Patna High Court in Harakh Bhagat v. Asstt. Registrar, Co-operative Societies, Barh : AIR1968 Pat211 . The question as to whether there should be voluntary character and if so to what extent is a matter of legislative policy. If an element of compulsion is involved, the question as to whether the same is likely to result in infringement of any of the fundamental rights is altogether a different matter. A law which is well within the legislative competence of the State may, however, be bad if it infringes any of the fundamental rights conferred by Part III of the Constitution. In my judgment, Section 14-A of the Act is within the competence of the State Legislature under Entry 32 of List II of VII Schedule to the Constitution.

38. It was next contended that Section 14-A confers arbitrary power on the Registrar or the Deputy Registrar in the matter of amalgamation, division and reorganisation of Co-operative societies and that therefore the said provision is void as violating Article 14 of the Constitution. What has been conferred by Section 14-A is executive power and not power to legislate. It was therefore

conceded by the learned counsel appearing for the petitioners that the question of excessive delegation of legislative powers does not arise in these cases, though at one stage such an argument was sought to be advanced. All the learned counsel for the petitioners, therefore, confined their attention to the conferment of unguided or uncontrolled discretionary power on the Registrar and the Deputy Registrar. If a power is conferred on an executive authority without any guidance, it can be exercised by it in any way it likes, in other words arbitrarily. If the power can be exercised arbitrarily, there will be negation of the principle of equality before law which is one of the fundamental rights guaranteed by Article 14 of the Constitution. If the Legislature provides guidance in the matter of exercise of the executive power, the authority is bound to exercise the same in accordance with those guidelines or policy laid down by the Legislature. Obligation to follow the guidelines or the policy laid down by the Legislature thus prevents the authority from acting arbitrarily. These are well recognised principles enunciated by the Supreme Court in various decisions, viz.. *Ram Krishna Dalmia v. S. R. Tendolkar* : [1959]1SCR279 and *Satwant Singh v. D. Ramarathnam, Asstt. Passport Officer* : [1967]3SCR525 .

39. The real question for examination is, as to whether it can be said that Section 14-A confers upon the Registrar and the Deputy Registrar unguided or uncontrolled discretionary power in the matter of amalgamation, division or reorganisation of Co-operative Societies. Power has been conferred on the Registrar and the Deputy Registrar to amalgamate, divide or reorganise Co-operative Societies. This power can be exercised only if the concerned authority is satisfied that it is essential in public interest or in the interest of co-operative movement or for the purpose of securing the proper management of Co-operative Society. The power cannot, therefore, be said to be unguided or uncontrolled. The concerned authority can exercise the power only if it is satisfied that it is essential to amalgamate, divide or reorganise the Co-operative societies in public interest or in the interest of co-operative movement or for the purpose of securing proper management of any Co-operative Society. Public interest, interest of co-operative movement or securing proper management of a Co-operative society are the guidelines subject to which the power has to be exercised. The power cannot be exercised merely because the Registrar or the Deputy Registrar is satisfied that it

is in public interest or in the interest of co-operative movement or for the purpose of securing proper management. He has further to be satisfied that it is essential to amalgamate, divide or reorganise a co-operative society. In other words, only the most appropriate measure among the three alternatives, viz., amalgamation, division or reorganisation which causes minimum interference that has to be chosen. In my opinion, there are sufficient guidelines to regulate the discretionary power conferred by Section 14-A of the Act

40. It was next contended that there are two other features of the section which render it violative of Article 14 of the Constitution. The first is that there is no provision affording opportunity to affected persons to present their objections. The second is that there is no provision for correction of the errors that may be committed by the Registrar or the Deputy Registrar by way of appeal. Absence of provision for submission of objections by affected persons or absence of provision for correction of errors are matters which are relevant for considering if the restriction imposed by the statutory provision is an unreasonable restriction on the fundamental rights guaranteed by Article 19 of the Constitution. I fail to see how merely because an opportunity to the affected person to file his objection is not given and there is no provision for appeal that it can be said that the provision is, on that account, violative of Article 14 of the Constitution.

41. Some of the learned counsel for the petitioners urged that the principle of audi alteram partem (hear the other side) is attracted and that therefore we must presume that the Registrar and the Deputy Registrar, as the case may be, is under a duty to give an opportunity to the affected persons of presenting their objections. It is well settled that the principle of audi alteram partem can be invoked when the Statute is silent about the procedure to be followed by the authority or the opportunity of being heard is not by necessary implication taken away. In *Union of India v, J. N. Singh*, : (1970)ILLJ284SC the principle has been stated in very clear terms by Justice Hegde in para 7 in the following terms:

'.....

Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this Court in *Kraipak v. Union of*

India, : [1970]1SCR457 , 'the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice, These rules can operate only in areas not covered by any law validly made, In other words they do not supplant the law but supplement it.' It is true that if a statutory provision can be read consistently with the principles of natural justice, the Courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But, if on the other hand, a statutory provision either specifically or by necessary implication excludes the application of any or all the rules of principles of natural justice then the Court cannot ignore the mandate of the legislature of the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power.' (Underlining is mine).

Section 14-A does not expressly exclude the operation of the principle of audi alteram partem. I will therefore examine if the same has been excluded by necessary implication. It is necessary to point out that for the first time Section 14-A was introduced in the Act providing for compulsory amalgamation of co-operative societies by Act 39 of 1975. Section 14-A introduced by the Act did contain Sub-section (2) which required the authority to send a draft of the proposed order to the cooperative societies concerned and to consider the suggestions and objections that may be received from them. But, the said Sub-section (2) was subsequently deleted by Karnataka Ordinance 4 of 1976 which in turn was replaced by Karnataka Act 19 of 1976. Sub-sections (1) and (3) of Section 14-A were substituted by Karnataka Ordinance 19 of 1976 which was replaced by Karnataka Act 70 of 1976. Section 14-A as it now stands after its amendment by Act 70 of 1976 and Ordinance 7 of 1977 does not contain any provision providing for an opportunity of presenting objections to the societies likely to be affected by the proposed order of the Registrar or the Deputy Registrar. The Legislature which had made express provision in this behalf by Act 39 of 1975 has, by omitting those provisions subsequently, expressed its intention to exclude opportunity of hearing being given to the affected societies. That is also

the stand taken by the State in its statement of objections. In paragraph 10 of the statement of objections, it is stated as follows:--

'The contention of the petitioners that by the reorganisation and formation of a new Society, the erstwhile societies are superseded and the same is in violation of the principles of natural justice, is not correct and is not tenable. In the reorganisation of societies, to achieve the purposes and objects of the Act, there is no suppression of the Committees of Management of societies as such calling for issue of a show cause notice and the application of the principles of natural justice. Even otherwise Section 14-A as introduced by the Ordinance specifically excludes the application of the principles of natural Justice in the reorganisation of Societies.

(Underlining is mine)

When the Legislature has said that no opportunity of hearing should be given to the affected societies or persons, the Courts have no right to invoke the principles of audi alteram partem and hold that the authority must follow the said principle before exercising its power under Section 14-A of the Act. As by necessary implication the principle of audi alteram partem has been excluded from operation, the question as to whether the power conferred by Section 14-A is of a quasi-judicial nature or not does not assume much importance. As an order made under Section 14-A (1) will have civil consequences adversely affecting the rights of the concerned societies, the principle of audi alteram partem could have been invoked applying the rule laid down by the Supreme Court in *State of Orissa v. Binapani Dei*, : (1967) 11 LLJ 266 SC and *A. K. Kraipak v. Union of India* : [1970] 1 SCR 457 if its application was not excluded by necessary implication. As in my opinion, the principle of audi alteram partem has been excluded by the Legislature by necessary implication, it is not possible to accede to the contention of the petitioners that the impugned orders which have been made without giving the persons affected an opportunity of hearing are void on that ground. If the power under Section 14-A is exercised arbitrarily and not in accordance with the guidelines laid down by the Legislature, such executive action may be struck down and not the Section itself which does not authorise exercise of arbitrary power.

42. Another argument that was advanced by Shri Javali, Senior Advocate, is about the existence of two sets of provisions dealing with identical situations but providing for different results and consequences. It was maintained that Section 30-B of the Act entitles the State Government to give certain directions to the co-operative society or societies if it is satisfied that it is in public interest or for the purpose of securing proper implementation of co-operative and other development programmes approved or undertaken by the State Government or to ensure the proper management of the co-operative society generally or for preventing the affairs of the co-operative society being conducted in a manner detrimental to the interests of the members or of the depositors or of the creditors thereof, it is necessary to issue such directions. Though some of the guidelines for exercise of the power under Section 30-B may be similar to the guidelines given in Section 14-A of the Act, it is necessary to point out that whereas the power of issuing directions to the co-operative societies under Section 30-B can be exercised by the State Government only when it is satisfied that it is necessary to issue such directions, [the power under Section 14-A can be exercised by the Registrar or the Deputy Registrar, as the case may be, when he is satisfied that it is essential for him to amalgamate, divide or reorganize the co-operative society. The power conferred on the State Govt. under Section 30-B and the power conferred on the Registrar and the Deputy Registrar under Section 14-A are different and mutually exclusive. If the principle of harmonious construction is applied, as we ought to, it follows that whereas smaller power of giving directions under Section 30-B can be exercised by the State Government when it can set right matters by issuing such directions,] a much larger power can be exercised by the Registrar or the Deputy Registrar under Section 14-A when matters cannot be rectified by mere issue of directions under Section 30-B and it becomes necessary to amalgamate, divide or reorganise the concerned co-operative societies. As the two provisions are expected to operate in two different fields, it cannot be held that Sub-section (1) of Section 14-A is void as violating Article 14 of the Constitution.

43. The only other Sub-section of Section 14-A in regard to which arguments were advanced is Sub-section (2). The said provision empowers the Registrar or the Deputy Registrar to make provision in the order for devolution of assets and liabilities, the date on which the devolution is to take effect, the composition.

strength, names and the term of office of the members (including the Chairman), of the first committee, the name of the Managing Director or the Secretary of the new Co-operative society or each of the new Co-operative societies, as the case may be; and the bye-laws which the new Co-operative society or each of the new co-operative societies shall follow until amended in accordance with the rules. These, in my opinion, are incidental and consequential matters in regard to which the Registrar or the Deputy Registrar has to make provision consequent upon his making the order under Sub-section (1) of Section 14-A of amalgamating, dividing or reorganising the co-operative society. The said power has to be exercised bearing in mind the guidelines given in Sub-section (1) of Section 14-A. viz., public interest, interest of cooperative movement or the purpose of securing proper management of the co-operative society concerned. As there is sufficient guidance in this matter, it cannot be said that arbitrary power has been conferred by Sub-section (2) and is therefore void as offending Article 14 of the Constitution.

44. I shall now take up for consideration the contention urged in some of the writ petitions filed by citizens who were the original members of the societies which have been compulsorily amalgamated that Section 14-A of the Act infringes their fundamental right of freedom of association conferred by Article 19(1)(c) of the Constitution. Their case is that they are citizens who had voluntarily become members of the co-operative society which is registered under the Act. As a result of compulsory amalgamation of the society which they had voluntarily joined, they ceased to be its members and have been made members of the newly formed society consisting of other new members, against their wishes and by compulsion. This result that flows from the order made under Section 14-A, it was maintained, infringes their fundamental right of freedom of association. It was maintained that it is in recognition of this fundamental right of the citizens to form association that the Act, as originally framed, did not contain any provision compelling a citizen to become member of a cooperative society. When the societies in question were registered, there was no provision in the Act for compulsory amalgamation or division of co-operative societies but there was however a provision for voluntary amalgamation of co-operative societies in Section 14 of the Act. It is only by later amendments that Section 14-A was introduced empowering the Registrar and the Deputy Registrar to compulsorily amalgamate, divide or reorganise the co-

operative societies. It is their case that by compulsory amalgamation of their co-operative societies, the members of the societies sought to be amalgamated are made members of the amalgamated co-operative society without their consent and against their will. It is also their case that they have been forced to associate themselves with others with whom they are not willing to associate themselves. It is this compulsive element that is involved in Section 14-A according to the petitioners that offends Article 19(1)(c) of the Constitution. It was maintained that as the restriction imposed is not in the interest of the sovereignty and integrity of India or public order or morality, it is not saved by Article 19(4). For proper consideration of these contentions, it is necessary to ascertain the consequences flowing from the exercise of power conferred by Section 14-A of the Act.

45. Section 14-A of the Act empowers the Registrar or the Deputy Registrar to amalgamate, divide or reorganise co-operative societies without consulting the societies sought to be affected. The power under the said section can be exercised even if all the concerned societies and their members oppose the action sought to be taken under Section 14-A. When compulsory amalgamation is made under Section 14-A, several consequences automatically flow. When two co-operative societies are amalgamated and the new co-operative society registered, the old societies which were distinct legal persons on account of their incorporation under Section 9, cease to exist. The legal personality of the old societies is destroyed or brought to an end. The newly formed society by amalgamation when registered, gets incorporated by the operation of Section 9 of the Act and thus becomes a legal person quite distinct and different from the old societies. When the old societies thus cease to exist, the membership automatically comes to an end. This result is brought about not on account of the volition of the members but on account of the compulsion of law. Though Section 14-A in terms does not expressly state that the members of the old co-operative society or societies automatically become members of the new society on amalgamation, it is clear that that is the consequence which naturally flows when an order is made under that section. Even if all the members of all the societies sought to be amalgamated oppose, amalgamation can be brought about resulting in citizens who were members of the old societies becoming members of the new society against their wishes. There is provision in Sub-section (5) in regard to

devolution of assets and liabilities of the old co-operative societies on the new co-operative society or societies. No provision has been made to the effect that it is only those who give consent that will become members of the new society consequent upon amalgamation. There is also no provision to the effect that it is only those who express their consent that become the members of the new societies formed by division. There is provision for devolution of assets and liabilities and in regard to institution and continuance of legal proceedings. There is also provision for specifying composition, strength, names and term of office of the members including the Chairman of the first committee and the Managing Director or Secretary of the new society or societies. From the scheme of Section 14-A, it is clear that when two or more co-operative societies are amalgamated and the new co-operative society is registered, citizens who were members of the old societies automatically become members of the new society. The learned Advocate General also took the stand that when there is amalgamation or division under Section 14-A, those who were the members of the old co-operative society or societies automatically become members of the new co-operative society or societies by the operation of law and not on their volition. The learned Advocate General while conceding that persons who were members of the old societies thus become members of the new societies by the compulsion of law, maintained that such compulsion is permissible in law. The question to be answered, therefore, is as to whether Section 14-A which provides for compulsory membership of the co-operative societies consequent upon amalgamation, imposes any restriction on the fundamental right of freedom of association guaranteed by Article 19(1)(c) of the Constitution.

46. The learned Advocate General maintained that when a citizen becomes a member of an association, which is formed into a co-operative society and registered under the Act, his rights and liabilities are regulated by the Act and therefore he cannot complain that his freedom of association is affected by anything done under the Act. In support of this contention of his, reliance was placed on the decision in *The Tata Engineering and Locomotive Co. Ltd. v. State of Bihar* : [1964] 6 SCR 885 . As the discussion in para 29 of the judgment is relevant, the same is extracted below:--

'Mr. Palkhivala sought to draw a distinction between the right of a citizen to carry on trade or business which is contemplated by Article 19(1)(g) from his right to form associations or unions contemplated by Article 19(1)(c). He argued that Article 19(1)(c) enables the citizens to choose their instruments or agents for carrying on the business which it is their fundamental right to carry, on. If citizens decide to set up a Corporation or a company as their agent for the purpose of carrying on trade or business, that is a right which is guaranteed to them under Article 19(1)(c). Basing himself on this distinction between the two rights guaranteed by Article 19(1)(g) and (c) respectively. Mr. Palkhivala somewhat ingeniously contended that we should not hesitate to lift the veil, because by looking at the substance of the matter, we would really be giving effect to the two fundamental rights guaranteed by Article 19(1). We are not impressed by this argument either. The fundamental right to form an association cannot in this manner be coupled with the fundamental right to carry on any trade or business. As has been held by this Court in *All India Bank Employees' Association v. National Industrial Tribunal (Bank Disputes) Bombay* : (1961) 11 LLJ 385 SC the argument which is thus attractively presented before us overlooks the fact that Article 19, as contrasted, with certain other articles like Arts. 26, 29 and 30 guarantees rights to the citizens as such, and associations cannot lay claim to the fundamental rights guaranteed by that Article solely on the basis of their being an aggregation of citizens, that is to say, the right of the citizens composing the body. The respective rights guaranteed by Article 19(1) cannot be combined as suggested by Mr. Palkhivala, but must be asserted each in its own way and within its own limits; the sweep of the several rights is no doubt wide, but the combination of any of those two rights would not justify a claim such as is made by Mr. Palkhivala in the present petitions. As soon as citizens form a company, the right guaranteed to them by Article 19(1)(c) has been exercised and no restraint has been placed on that right and no infringement of that right is made. Once a company or a Corporation is formed, the business which is carried on by the said company or corporation is the business of the company or corporation and is not the business of the citizens who get the company or corporation formed or incorporated, and the rights of the incorporated body must be judged on that footing and cannot be judged on the assumption that they are the rights attributable to the business of individual citizens. Therefore, we

are satisfied that the argument based on the distinction between the two rights guaranteed by Article 19(1)(c). and (g) and the effect of their combination cannot take the petitioners' case very far when they seek to invoke the doctrine that the veil of the corporation should be lifted. That is why we have come to the conclusion that the petitions filed by the petitioners are incompetent under Article 32, even though in each of these petitions one or two of the shareholders of the petitioning companies or corporation have joined.'

It was pointed out that once a company or corporation is formed, the business which is carried on by the said company or corporation is the business of the company or corporation and is not the business of the citizens who get the company or corporation formed or incorporated and the rights of the incorporated body must be judged on that footing and cannot be judged on the assumption that they are the rights attributable to the business of the individual citizens. It was also pointed out in that case that as soon as citizens form a company, the right guaranteed to them by Article 19(1)(c) has been exercised and no restraint has been placed on that right and no infringement of that right is made. It is, therefore, clear that that was a case in which the restrictions that were really placed on the company were sought to be challenged by its members on the ground that the said restrictions must be regarded as restrictions on the fundamental rights of the members. The Supreme Court repelled that contention holding that once the company is formed, if restrictions are imposed on the company, they cannot be regarded as restrictions imposed on the members of the company. The Supreme Court has pointed out in that case that no restraint was placed on the freedom of association of the members guaranteed by Article 19(1)(c) of the Constitution. The principle laid down in that case is not of assistance in this case, inasmuch as the petitioners are not contending that the restrictions placed on the co-operative society must be regarded as the restrictions on its members and that it is on that footing that Section 14-A should be struck down as offending the fundamental right guaranteed by Article 19(1)(c) of the Constitution. As already stated the case of the petitioners is that they are made members of the new co-operative society against their will which restriction is imposed not on the cooperative societies amalgamated but on the petitioners.

47. Another decision relied upon by the learned Advocate General is *R. C. Cooner v Union of India* : [1970]3SCR530 . The discussion in paras 13 and 14 of the judgment being relevant is extracted below:--

'13. A company registered under the Companies Act is a legal person, separate and distinct from its individual members. Property of the Company is not the property of the share-holders. A shareholder has merely an interest in the Company arising under its Articles of Association, measured by a sum of money for the purpose of liability, and by a share in the profit. Again a director of a company is merely its agent for the purpose of management. The holder of a deposit account in a Company is its creditor; he is not the owner of any specific fund being with the company. A shareholder, a depositor or a director may not therefore be entitled to move a petition for infringement of the rights of the company, unless by the action impugned by him, his rights are also infringed.

14. By a petition praying for a writ against infringement of fundamental rights, except in a case where the petition is for a writ of habeas corpus and probably for infringement of the guarantees under Articles 17, 23 and 24, the petitioner may seek relief in respect of his own rights and not of others. The shareholder of a Company, it is true, is not the owner of its assets; he has merely a right to participate in the profits of the Company subject to the contract contained in the Articles of Association. But on that account the petitions will not fail. A measure executive or legislative may impair the rights of the Company alone, and not of its shareholders; it may impair the rights of the shareholders and not of the Company: it may impair the rights of the shareholders as well as of the Company. Jurisdiction of the Court to grant relief cannot be denied, when by State action the rights of the individual shareholder are impaired, if that action impairs the rights of the Company as well. The test in determining whether the shareholder's right is impaired is not formal; it is essentially qualitative; if the State action impairs the right of the shareholders as well as of the Company, the Court will not, concentrating merely under the technical operation of the action, deny itself jurisdiction to grant relief.'

That was a case in which the petitioner was a shareholder and a director of a company which was acquired under the statute. The Act was struck down as infringing the fundamental right of the shareholders of the company under Article 19(1)(f) and (g). Though the Statute providing for nationalisation of Banks sought to affect the banks, the Court on examination of the law held that it also infringes the fundamental rights of the members under Article 19(1)(f) and (g) of the Constitution. The said decision is a clear authority for the proposition that the fundamental rights of the citizens as citizens are not lost when they associate to form a company, and that they can enforce the same. This decision, therefore, helps the petitioners to maintain that though Section 14-A providing for amalgamation, division or reorganisation of co-operative societies seeks to affect the rights of the co-operative societies as such, if the same also affects the rights of the citizens who are the members of the co-operative societies, they are entitled to relief at the hands of the Court. This principle has been reiterated in a subsequent decision in *Bennett Coleman and Co. Ltd. v. Hindustan Times Ltd.* : [1973]2SCR757 wherein the Supreme Court has observed as follows in paragraph .22 of the judgment:

'In the Bank Nationalisation case, : [1970]3SCR530 (supra) this Court held the statute to be void for infringing the rights under Articles. 19(1)(f) and 19(1)(g) of the Constitution. In the Bank Nationalisation case (supra) the petitioner was a shareholder and a director of the company which was acquired under the statute. As a result of the Bank Nationalisation case (supra) it follows that the Court finds out whether the legislative measure directly touches the company of which the petitioner is a shareholder. A shareholder is entitled to protection of Article 19. That individual right is not lost by reason of the fact that he is a shareholder of the company. The Bank Nationalisation case (supra) has established the view that the fundamental rights of shareholders as citizens are not lost when they associate to form a company. When their fundamental rights as shareholders are impaired by State action their rights as shareholders are protected. The reason is that the shareholders' rights are equally and necessarily affected if the rights of the company are affected. The rights of the shareholders with regard to Article 19(1)(a) are projected and manifested by the newspapers owned and controlled by the shareholders through the medium of the corporation. In the present case, the

individual rights of freedom of speech and expression of editors, Directors and shareholders are all exercised through their newspapers through which they speak. The press reaches the public through the newspapers. The shareholders speak through their editors. The fact that the companies are the petitioners does not prevent this Court from giving relief to the shareholders, editors, printers who have asked for protection of their fundamental rights by reason of the effect of the law and of the action upon their rights. The locus standi of the shareholder petitioners is beyond challenge after the ruling of this Court in the Bank Nationalisation case (supra). The presence of the company is on the same ruling not a bar to the grant of relief.'

The decision next relied upon by the learned Advocate General is the one reported in *All India Bank Employees' Association v. National Industrial Tribunal* : (1961) 111 LLJ 385 SC . Paras 19 to 21, on which reliance was placed, may be extracted as follows:--

'(19) The resulting position may be illustrated thus: If an association were formed for the purpose of carrying on business, the right to form it would be guaranteed by sub-cl. (c) of Clause (1) of Article 19 subject to any law restricting that right conforming to Clause (4) of Article 19. As regards its business activities, however, and the achievement of the objects for which it was brought into existence, its rights would be those guaranteed by sub-cl. (g) of Clause (1) of Article 19 subject to any relevant law on the matter conforming to Clause (6) of Article 19; while the property which the association acquires or possesses would be protected by sub-cl. (f) of Clause (1) of Article 19 subject to legislation within the limits laid down by Clause (5) of Article 19.

(20) We consider it unnecessary to multiply examples to further illustrate the point. Applying what we have stated earlier to the case of a labour union the position would be this: While the right to form a union is guaranteed by sub-cl. (c) the right of the members of the association to meet would be guaranteed by sub-cl. (b), their right to move from place to place within India by sub-cl. (d), their right to discuss their problems and to propagate their views by sub-cl. (a), their right to hold property would be that guaranteed by sub-cl. (f) and so on -- each of these

freedoms being subject to such restrictions as might properly be imposed by Cls. (2) to (6) of Article 19 as might be appropriate in the contest. It is one thing to interpret each of the freedoms guaranteed by the several Articles in Part III in a fair and liberal sense, it is quite another to read each guaranteed right as involving or including concomitant rights necessary to achieve the object which might be supposed to underlie the grant of each of those rights, for that construction would, by a series of ever expanding concentric circles in the shape of rights concomitant to concomitant rights and so on, lead to an almost grotesque result.

(21) There is no doubt that in the context of the principles underlying the Constitution and the manner in which its Part III has been framed the guarantees embodied in it are to be interpreted in a liberal way so as to subserve the purpose for which the Constitution-makers intend them and not in any pedantic or narrow sense, but this however does not imply that the Court is at liberty to give an unnatural and artificial meaning to the expressions used based on ideological considerations. Besides it may be pointed out that both under the Trade Unions Act as well as under the Industrial Disputes Act the expression 'union' signifies not merely a union of workers but includes also unions of employers. If the fulfilment of every object for which a union of workmen was formed were held to be a guaranteed right, it would logically follow that a similar content ought to be given to the same freedom when applied to a union of employers which would result in an absurdity. We are pointing out this not as any conclusive answer, but to indicate that the theory of learned Counsel that a right to form Unions guaranteed by sub-cl. (c) of Clause (1) of Article 19 carries with it a fundamental right in the union so formed to achieve every object for which it was formed with the legal consequence that any legislation not falling within Clause (4) of Article 19 which might in any way hamper the fulfilment of those objects, should be declared unconstitutional and void under Article 13 of the Constitution is not a proposition which could be accepted as correct.' It is clear from this decision that the right to form an association guaranteed by Article 19(i)(c) does NOT carry with it a fundamental right of the association to achieve the object for which it was formed. Another principle laid down by this decision is that if any restriction on the trade or business is imposed by law on the association, the said restriction can only be regarded as a restriction on the fundamental right guaranteed by Article 19(1)(g) and cannot be

regarded as a restriction on the fundamental right of freedom of association guaranteed by Article 19(1)(c) of the Constitution. But, it is not the case of the petitioners that their fundamental right of freedom of association must be regarded as having been infringed on account of any restriction imposed on the trade or business of the co-operative society of which they were members. Therefore, if Section 14-A restricts the freedom of association of the petitioner who are members of the old societies, the same has to be declared as void unless the restriction imposed falls under Article 19(4) and the question of applying Article 19(6) of the Constitution does not arise.

48. A Full Bench of the Allahabad High Court in *Raja Suryapal singh v. U. P. Government*, : AIR1951 All674 laid down that no person can be made a member of an association against his will. This is what is stated in paras 128 and 129 of the decision:--

'(128) Under Clause (4) of Article 19 a law imposing a reasonable restriction on the right of assocn. can be made only in the interest of public order or morality. The Advocate-General has refd. us to the Declaration of Human Rights adopted by the United Nations Organisation where the right of as-socn. is expressed both in its positive as well as in its negative form, & he places reliance on the fact that in Article 19 there is no such negative restriction. It appears, however, to us clear that the right to form an as-socn, or union necessarily implies that a person is free to refuse to be member of an assocn. or union if he so desires.

(129) There is no doubt, we think that under the Common Law a person cannot be made a member of a Corpn. without his consent:

'If the inhabitants of a town are incorporated yet everyone must be admitted before he becomes a corporator. The Crown can't oblige a man to be a corporator, without his consent; he shall not be subjected to the inconveniences of it without accepting it & assenting to it': per Lord Mansfield in *R. v. Askew*, (1768) 4Burr. 2186 at p. 2200'...

This decision has been followed by the Andhra Pradesh High Court in *M. Sitharamachary v. Senior Deputy Inspector of Schools, Gannavaram*, AIR 1958

Andh Pra 78 wherein it is held that the right to form an association or union necessarily implies that a person is free to refuse to be a member of an association or union. In that case, Rules 3 and 4 in Government Order No. Ms. 418 Education and Public Health, dated the 24th February, 1939, in so far as they empower the authorities to make it obligatory on the part of every teacher in an elementary school to become a member of the Association sponsored by the Government was declared to be void as offending Article 19(1)(c) of the Constitution.

49. In *Tika Ramji v. State of Uttar Pradesh*, : [1956]1SCR393 . The Supreme Court has observed as follows in para 49 of the judgment:

'There is also another fallacy in their argument and it lies in ignoring that no cane grower is prevented from resigning his membership of a Cane-growers' Co-operative Society. These are voluntary organisations which a cane grower is entitled to join or not at his choice. If he has once joined it he is also entitled to resign his membership at his choice and the only obstacle to his right of resignation, as has been laid down in the by-laws of the society, is the fact of his being indebted to the society, or the fact of his being a surety for debt due by another member of the society.

Until these debts are discharged and also until the crushing season during which the cane growers Co-operative society has entered into an agreement with the occupier of a factory is over, a member of a society cannot resign his membership. These restrictions do not fetter his right to resign his membership of the society. If he became a member of the society he is bound by the bye-laws of the society and can only resign his membership after fulfilling all the conditions which are laid down in the bye-laws of the society.'

It is clear from this decision that a co-operative society is a voluntary organisation which a citizen is entitled to join or not at his choice. It is because there was freedom to become or not to become a member or having become a member to resign from membership, that the Supreme Court held that the question of offending Article 19(1)(c) did not arise in that case, It, therefore, follows that if there was an element of compulsion in the matter of membership such a provision

would have offended Article 19(1)(c) of the Constitution. There may be restriction on the citizen's right to join or not to join an association. There may also be restrictions in regard to his continuance as a member of the association. There may be restrictions at either of those stages or at both the stages. Even if no restriction is imposed in regard to continuance of the membership, the restriction imposed in regard to the citizen's initial right to join or not to join an association cannot be sustained unless it is a reasonable restriction falling under Article 19(4) of the Constitution.

50. In *O. K. Ghosh v. E. X. Joseph*, : (1962)11LLJ615SC , the Supreme Court was required to consider the question of validity of Rule 4-B of the Central Civil Services (Conduct) Rules, 1955. The said rule provided that a Government servant can become member of an association of Government employees if the association obtains a recognition and continues to enjoy it. It further provided that if the association does not secure recognition from the Government or the recognition granted to it is withdrawn, Government servants must cease to be members of the said association. The Supreme Court held that the said rule is void as it offends the fundamental right of freedom of association. It is clear from this decision that if compulsion is brought about either in the matter of becoming a member of an association or in the matter of continuance of membership, the provision imposing such a restriction offends Article 19(1)(c) of the Constitution.

51. Another important decision bearing on the question is the one in *Smt. Damayanti v. Union of India* : [1971]3SCR840 . That was a case in which an association by the name Hindi Sahitya Sammelan was formed and was registered under the societies Registration Act, 1860. The Hindi Sahitya Sammelan Act, 1962 was enacted, as a result of which the old Hindi Sahitya Sammelan which was a society ceased to exist and a new incorporated body by the name Hindi Sahitya Sammelan was brought into existence. The newly constituted Sammelan under the Act was composed of not only all persons who are members of the old society but of others who have been given the right to be members of the society, without the consent of the pre-existing members of the society. The said Act was challenged on the ground that the fundamental right of freedom of association of the members of the society was infringed by that Act. Dealing with this question,

this is what the Supreme Court observed in paras 5 and 6 of the judgment:

'5.

It will, thus, be seen that the Sammelan, which has come into existence under the Act, is not identical with the Sammelan which was registered as a society under the societies Registration Act, 1860. Certain persons have been added as members by the Act and by the Rules. Admission of future members is no longer at the choice of the original members who had formed the Association. Persons, in whose admission as members the members of the society had no hand, can become members and get the right of associating with them in the Sammelan, without the original members having any right to object. This is clear interference with the right to form an association which had been exercised by the members of the society by forming the society with its constitution under which they were members and future members could only come in as a result of their choice by being elected by their Working Committee. We are unable to agree with the High Court that the new Sammelan, as constituted under the Act, is identical with the society and that all the rights of forming an association, which were being exercised by members of the society, have been kept intact under the Act.

6. It was argued that the right guaranteed by Article 19(1)(c) is only to form an association and, consequently any regulation of the affairs of the Association, after it has been formed will not amount to a breach of that right. It is true that it has been held by this Court that, after an association has been formed and the right under Article 19(1)(c) has been exercised by the members forming it, they have no right to claim that its activities must also be permitted to be carried on in the manner they desire. Those cases are, however, inapplicable to the present case. The Act does not merely regulate the administration of the affairs of the society, what it does is to alter the composition of the society itself as we have indicated above. The result of this change in composition is that the members, who voluntarily formed the Association, are now compelled to act in that Association with other members who have been imposed as members by the Act and in whose admission to membership they had no say. Such alteration in the composition of the Association itself clearly interferes with the right to continue to function as

members of the Association which was voluntarily formed by the original founders. The right to form an association, in our opinion, necessarily implies that the persons forming the Association have also the right to continue to be associated with only those whom they voluntarily admit in the Association. Any law, by which members are introduced in the voluntary Association without any option being given to the members to keep them out. or any law which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form an association. If we were to accept the submission that the right guaranteed by Article 19(1)(c) is confined to the initial stage of forming an Association and does not protect the right to continue the Association with the membership either chosen by the founders or regulated by the rules made by the Association itself, the right would be meaningless because, as soon as an Association is formed, a law may be passed interfering with its composition so that the Association formed may not be able to function at all. The right can be effective only if it is held to include within it the right to continue the Association with its composition as voluntarily agreed upon by the persons forming the Association. This aspect was recognised by this Court, though not in plain words, in the case of *G. K. Ghosh v. E. X. Joseph*, : (1962) IILLJ615SC . ' The principle laid down by the Supreme Court in this case is that the right to form an association includes the right to its continuance and any law altering the composition of the association compulsorily will be a breach of the right to form an association. It is also an authority for the proposition that no person can be made a member of an association without his consent and against his will. This decision is a direct authority which fully supports the petitioners' case.

52. Our attention was also invited to another decision of the Supreme Court in *D. A. V. College, Jullundur v. State of Punjab* : AIR 1971 SC1737 . That was a case of compulsory affiliation to the University of a college run by an association. The Statute only provided for affiliation of the College run by the Association to the University. The Supreme Court pointed out that as the law did not interfere with the rights of the members of the association which owns the college, the question of infringement of Article 19(1)(c) did not arise.

53. In *Kammareddy Suryanarayana v. The District Co-operative Officer-cum-Election Officer, The West Godavari Co-operative Sugars Ltd.*, : AIR 1976 AP340 (FB) a Full Bench of the Andhra Pradesh High Court was required to examine if Section 21-C of the Andhra Pradesh Co-operative societies Act offends Article 19(1)(c). By Section 21-C, a bar was imposed on holding office of a member of committee of the co-operative society for the third time in succession. The Court held that the restriction imposed is not on a citizen so as to entitle him to invoke Article 19(1)(c), but that the restriction is on his right as a member of the Co-operative society. The relevant discussion in this behalf contained in para 22 is as follows:--

'22. We do not think that the right to form a society under the Co-operative societies Act has anything to do with the fundamental right guaranteed under Article 19(1)(c) of the Constitution. The society in question is a creature of the statute formed under the provisions of the Andhra Pradesh Cooperative societies Act, which we have referred to in this judgment as the Act. It is under the provisions of the Act, the Rules framed thereunder and the bye-laws made in accordance with them by the society, the Committee is constituted and the appointment of its members are made. According to those provisions the members of the Committee are to be appointed either by nomination or election. The right of the 1st petitioner to contest the election for membership of the committee emanated only out of the provisions of the Act, the rules and the bye-laws. That right he cannot claim otherwise than under those provisions. His right to become a member of the society or a member of the Committee is not the common law a general right given to him to form an association and which is guaranteed under Article 19(1)(c) of the Constitution. The Act under which the society is formed confers certain rights and privileges on the societies that is in effect on their members and also imposes certain obligations and restrictions on the societies and their members. A person claiming rights under those provisions is also bound by any restrictions imposed thereunder. There is no compulsion to form or become a member of a society under the Act. One is free to form or become a member of a society under the Act or not. A society can also be formed as a right guaranteed under Article 19(1)(c) without registering it under the Act. But the only disability for such a society which does not get itself registered under the Act is that it will not

get the special benefits and the special privileges which have been guaranteed by the provisions of the Act. The restriction on the consecutive membership in the committee in question applies only to societies registered under the Act. It has no application to societies formed and not registered under the provisions of the Act. If a society is formed and is registered under the Act and its members claim special privileges and advantages conferred by the Act and the Rules framed thereunder, they cannot turn round and say that they are not bound by any restrictions imposed by some provision of the Act or the Rules in the interest of good and fair administration and working of the society on the ground that they are violative of the fundamental right to form Associations guaranteed under Article 19(1)(c) of the Constitution and the restrictions imposed are not those contemplated under clause (4) of Article 19 and therefore they are not bound by them.'

So far as membership is concerned, it has been emphasized that there is no compulsion and that one is free to form or become a member of the Society. It is only if a person chooses to become a member of the society to claim special rights and privileges under the Act that he cannot complain of the other provisions by which restrictions are imposed on the rights he acquires as a member. If the restrictions are not confined to the rights he has acquired as a member but are restrictions on his rights as a citizen, he can challenge them by invoking Article 19(1)(c), just as a citizen who has not become a member is entitled to. The distinction between the rights of a person before he becomes a member of a co-operative society and his rights after he becomes a member has been clearly brought out. It is in exercise of the citizens' fundamental right of freedom of Association that he decides to join or not as a member of a co-operative society. Any restriction on this right of becoming or not becoming a member is therefore a restriction on the freedom of Association guaranteed under Article 19(1)(c). Any restrictions only on his rights as a member under the Act are those which he has willingly agreed to be subject to when he chose to become a member. Such restriction cannot be assailed as offending Article 19(1)(c) of the Constitution if they are restrictions on the rights he has acquired as a member. If on amalgamation under Section 14-A a person is made a member of the new society against his will the freedom of association which he had of becoming or not

becoming a member of the new society will be infringed. Such restriction cannot be regarded as a restriction of his rights as a member of the old co-operative society as he automatically ceased to be a member of the old society on its amalgamation.

54. In *D. Papi Reddy v. Deputy Registrar of Co-operative Societies, Nellore South Circle*, ILR (1972) Andh Pra 1140 the validity of Section 15 of the Andhra Pradesh Co-operative societies Act, 1964 providing for compulsory amalgamation and division of co-operative societies was challenged on the ground it offends Article 19(1)(c). The Court repelled the challenge, holding that the Act having received the assent of the President is immune from the attack that it infringes Arts. 14, 19 and 31 of the Constitution. But, no such protection is available to Section 14-A of the Act with which we are concerned, as the amending Act by which it was introduced in the main Act was not reserved for the assent of the President. After repelling the challenge as aforesaid, the Court has also examined the contention on the assumption that Article 19(1)(c) was available for the petitioners. It further held that if the co-operative society cannot take advantage of Article 19 not being a citizen, its members also cannot invoke the Article. It was held that the freedom of association is not affected because there is no vested right to form a registered society and that the provision which only affects the continuance of the society does not infringe Article 19(1)(c). Support for the conclusion was drawn from the fact that the members are not compelled to continue as members of the co-operative society because they can withdraw from membership of the amalgamated society and form their own societies. This view is clearly opposed to the principles laid down by the Supreme Court in the case of *Rustom Cavasjee Cooper*. : [1970]3SCR530 discussed earlier. The Supreme Court has held that a citizen does not lose his rights under Article 19 by becoming a member of an association which is a corporation and that he can challenge any law made to affect such e corporation if it offends his rights under Article 19(1). That a citizen has no fundamental right to registration of a co-operative society or that the provision for compulsory amalgamation affects the society cannot come in the way of the citizen invoking Article 19(1)(c) if the said provision also affects his freedom of association. That a member of the amalgamated society is free to withdraw from membership and form another association does not mean that no fetter was

imposed on the freedom he has of choosing not to become a member of the amalgamated society. With great respect, I cannot persuade myself to follow this decision which conflicts with the principles laid down by the Supreme Court.

55. Following are the principles that emerge from the decisions discussed above :--

(i) An association like a co-operative society which is incorporated not being a citizen cannot claim any fundamental rights under Article 19 of the Constitution.

(ii) A citizen does not abdicate his, fundamental right of freedom of association guaranteed by Article 19(1)(c) of his becoming a member of an association like a company or a cooperative society incorporated under an Act.

(iii) The fundamental right of freedom of association necessarily implies that a citizen is free to join or not to join as a member of an association.

(iv) There is no fundamental right to registration of a co-operative society. That right flows only from the Act.

(v) When a citizen voluntarily joins an association incorporated under an Act, it implies that he has agreed to the regulation of the rights he has acquired as a member in accordance with the provisions of that Act. He cannot therefore complain that such restrictions offend Article 19(1)(c).

(vi) The source of the right of a citizen to join or not to join a co-operative society is Article 19(1)(c) and not the Act. Any restriction on this right offends Article 19(1)(c).

(vii) A restriction imposed on the right of an association to carry on trade or business cannot be regarded as a restriction on the freedom of association of its members as the right to achieve the object of the association does not fall under Article 19(1)(c). Such restriction can be justified only under Article 19(6) and not under Article 19(4).

(viii) A law which affects the rights of an association whether incorporated or not may also affect the freedom of association of its members who are citizens. In such a case, the members can challenge the law as offending Article 19(1)(c).

(ix) Co-operative society is a voluntary organisation which a citizen is free to join or not to join. A provision which deprives the citizen of such a freedom offends Article 19(1)(c).

(x) A State enactment providing for amalgamation of co-operative societies, which has not received the assent of the President, can be challenged as offending Article 19(1)(c) of the Constitution.

56. I have already held that when two or more co-operative societies are amalgamated under Section 14-A of the Act, members of the old societies automatically become members of the new society without their consent and against their will. When such a new co-operative society is registered, a new legal person is created by the process of incorporation and the old societies cease to exist. Consequently, the membership of the old societies gets terminated. Persons who thus cease to be members of the old societies are free as citizens to join or not to join the new society. But, by compulsion they are automatically made members of the new society formed by amalgamation. Compulsory membership brought about by Section 14-A is not a restriction on the members' right but a restriction on the citizens' freedom of association. It is obvious that a law providing that every citizen in the taluka shall be deemed to be a member of the Taluka co-operative society offends Article 19(1)(c) of the Constitution. I do not find any difference between such a law and Section 14-A which makes the members of the old societies, members of the new societies without their consent and against their will. The citizen by joining as a member of a co-operative society does not surrender his fundamental rights under Article 19(1)(c). Membership of a co-operative society is not a charter entitling the State to act in violation of Article 13 of the Constitution.

57. But, it was maintained that when the citizens voluntarily joined the old societies, they agreed to regulation of their rights in accordance with the Act. If action to amalgamate is taken under the provisions of the Act, it was maintained, the same cannot be challenged by the members. Support for this contention was sought to be derived from Sections 16 and 105-A of the Act. Sub-section (3) of Section 16 provides that any person may make an application seeking admission as a

member of a co-operative society. If his application is refused, he can prefer an appeal to the Registrar under Section 105-A of the Act. The Registrar is competent to allow the appeal and to direct admission of the applicant as a member of the co-operative society. Thus the applicant will become a member against any wishes of the members of the society who had refused admission to him. Provisions of Sections 16 and 105-A cannot be regarded as imposing restrictions on the freedom of association of the citizens, as they are restrictions imposed on the members and not on the rights of the citizens. As Section 14-A was introduced in the Act after the co-operative societies which have been amalgamated in these cases were formed and registered under the Act it cannot be said that the citizens who joined them as members, agreed to be bound by restrictions to be imposed by Section 14-A of the Act.

58. It is true that Section 366 of the [Companies Act, 1956](#) provides for compulsory amalgamation of companies which may result in the members of the old companies compulsorily becoming members of the new company formed by the process of amalgamation. But that section cannot be challenged in view of Article 31-A(1)(c) of the Constitution. But, the State Act by which Section 14-A was incorporated in the Act not having received the assent of the President as required by the first proviso to Article 31-A(1) of the Constitution, has not acquired immunity from attack on the ground that it infringes Article 19(1)(c) of the Constitution.

59. As in these cases, the petitioners have been made members against their will, which is the consequence that necessarily flows from amalgamation under Section 14-A, it follows that the fundamental right of freedom of association of the petitioner is infringed. Section 14-A which thus infringes the fundamental right of freedom of association of the petitioners can be sustained only if the restriction imposed on the freedom of association of the petitioners falls under Article 19(4) of the Constitution. Under the said provision, reasonable restrictions can be imposed on the freedom of association only in the interest of sovereignty and integrity of India or public order or morality. As it is not the case of the State that the restriction imposed by Section 14-A of the Act is a reasonable restriction falling under Article 19(4) of the Constitution, I have no hesitation in holding that Section 14-A of the Act offends Article 19(1)(c) of the Constitution, and is therefore void.

60. Though the petitioners have also invoked Article 19(1)(f) and (g) of the Constitution, for want of adequate and satisfactory pleadings, learned counsel for the petitioners did not press their contentions. Therefore, it is unnecessary to deal with the same.

61. A feeble argument was advanced by learned counsel appearing for some of the petitioners that Section 14-A is void on the ground that it violates Article 31(1) and (2) of the Constitution. The deprivation of the property, if any, of the members of the co-operative societies sought to be amalgamated cannot be said to offend Article 31(1) as the same is not brought about by any executive action but by law made by the State Legislature. The provisions of Article 31(2) also cannot be invoked in view of Article 31(2-A). Section 14-A does not provide for transfer- of ownership or right to possession of any -property to the State or to a Corporation owned or controlled by the State. Section 14-A cannot be deemed to provide for compulsory acquisition or requisition of property in view of Article 31(2-A). I, therefore, hold that Section 14-A is not void as offending Article 31(1) or (2) of the Constitution.

62. In Writ Petitions Nos. 5120 to 5122 of 1977, the impugned orders of amalgamation have been challenged also on the ground that they have been passed by the Deputy Registrar mechanically without examining the working of the individual societies sought to be amalgamated. It is also their case that the norms set out in the impugned orders for effecting amalgamation are also contrary to the provisions of the Act. It is, therefore, contended that the impugned orders are liable to be struck down on the ground that they have been made in contravention of Section 14-A, even assuming that the said section is not void as offending any of the fundamental rights of the citizens. All the impugned orders are similarly worded. It is enough for the purpose of considering the petitioners' contentions to extract the relevant portion of the order made in W. P. Nos. 5120 to 5122 of 1977, which reads as follows:--

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Office of the Deputy Registrar of Co-operative societies Tumkur District Tumkur.

No DRT/S-847-869/77-78 dated 28th April 1977.

Whereas the powers of the Registrar of Co-operative societies under Section 14-A of the Karnataka Co-operative societies Act, 1959 (Karnataka Act 11 of 1959) have been conferred on the Deputy Registrar of Co-operative Societies.

Whereas on an examination of the working of the several Agricultural Credit Co-operative societies (by whatever name called) in the District, it is found that many of them either by the inadequacy of their resources or the limits of their restricted territorial operation cannot effectively function to subserve the interest of the larger sections of the rural people, to wit, to meet the credit requirements for:

(a) Agricultural production programme.

(b) Consumption purposes of the weaker sections and to make arrangements for the distribution of fertilisers and essential consumer articles.

Whereas it is the policy of the State to channelise credit facilities in rural areas for the aforesaid purposes primarily through Co-operative Societies,

Whereas it is considered essential in public interest and in order to secure proper management of co-operative societies and also to carry out the aforesaid purposes in an effective manner, to reorganise such Co-operative societies into broad Agricultural Service Co-operative societies or Farmers Service Co-operative Societies, as the case may be, by suitably amalgamating them and whereas necessary including new areas within their area of operation having regard to the broad normal specified below.

Norms in respect of Agricultural Service (Co-operative societies (Vyava-saya Seva Sahakari Sangha).

(1) to (6)

Norms for Farmers Service Co-operative societies (Ryataka Sevasahakari Sangha)

(1) to (6)

Now therefore, I, H. A. Markan-daiya, Deputy Registrar of Co-operative Societies, Tumkur District, Tumkur in exercise of the powers conferred on me by Section 14-A of the Karnataka Co-operative societies Act, 1959 (Karnataka Act 11 of 1959) being satisfied that in the public interest and in the interest of the Co-operative movement and for the purpose of securing the proper management of co-operative societies it is essential to do so hereby order as follows:--

1. The order shall come into force on 10th May 1977.
2. The Co-operative societies specified in column (3) of the Schedule below (hereinafter referred to as the amalgamating co-operative societies, shall be amalgamated into a single cooperative society specified in the corresponding entry in column (2) thereof, with the headquarters and certificate) of registration number specified therein.
3. The area of operation of each such single co-operative society shall comprise the villages specified in column (4) of the said schedule.
4. All the members of the amalgamating co-operative societies shall be the members of the corresponding single co-operative society....

The preamble to the order states that the Deputy Registrar, on examination of the working of the several agricultural credit co-operative societies in the district, found that many of them either by the inadequacy of their resources or the limits of their restricted territorial operation cannot effectively function to subserve the interests of the larger sections of the rural people, to wit, to meet the credit requirements for agricultural production programme and consumption purposes of the weaker sections and to make arrangements for the distribution of fertilisers and essential consumer articles. It is further stated that it is the policy of the State to channelise credit facilities in the rural areas for the aforesaid purposes primarily through co-operative societies. It is thereafter that it is stated that it is considered essential in public interest and in order to secure proper management of co-operative societies and also to carry out the aforesaid purposes in an effective manner, to reorganise

such co-operative societies into broad Agricultural Service Co-operative societies or Farmer Service Co-operative Societies, as the case may be, by suitably amalgamating them and wherever necessary including new areas within their area of operation having regard to the broad norms specified therein, I have pointed out, after analysing Section 14-A of the Act, that the power of amalgamation can be exercised by the Registrar or the Dy. Registrar only when he forms an opinion that it is essential to do so in the public interest or in the interest of co-operative movement or for the purpose of securing proper management of any co-operative societies. I have also pointed out that such measure which causes least interference should be adopted under Section 14-A having regard to the use of the expression 'essential' in sub-sec, (1) of Section 14-A. The formation of the necessary opinion by the Registrar or the Deputy Registrar contemplated by Sub-section (1) can only be made after examining the working and structure of the concerned co-operative societies. It is necessary to bear in mind that Section 14-A does not give blanket power to amalgamate the co-operative societies in such a manner as to make them viable units of a prescribed capital and area of operation. The power under Sub-section (1) of Section 14-A cannot be exercised bearing in mind only the policy of the State and the abstract norms that the authority has formulated in this behalf. The Registrar or the Deputy Registrar can make an order under Sub-section (1) of Section 14-A only if he forms the necessary opinion after examining the working and structure and all relevant aspects of each co-operative society sought to be dealt with. But, what the Deputy Registrar says he has done is to form an opinion on examination of the working of several agricultural co-operative societies in the district that many of them cannot effectively function to subserve the interest of the rural people, viz., to meet their credit requirements. That merely because many of the societies are not functioning effectively, the Deputy Registrar cannot make that as the basis for amalgamating other societies, The working of which he has not examined or the working of which is otherwise satisfactory. The preamble to the order makes it clear that the Deputy Registrar has not examined the working and structure of the societies sought to be amalgamated, As the Deputy Registrar has not formed the necessary opinion after examining the working and structure of the societies sought to be amalgamated, he could not have exercised the power of amalgamation under sub-sec, (1) of

Section 14-A of the Act. The norms specified in the order pertain to the area of operation, the capital etc. These are norms having a bearing on the question of the size and capital of the co-operative society to be formed by amalgamation. There are no norms to take into account the manner in which the existing cooperative societies are functioning. As all the impugned orders are stereotyped orders, this is another circumstance indicating that there is no application of the mind of the Registrar to the requirements of Sub-section (1) of Section 14-A before he passed the impugned orders. When a power is conferred on an authority to make an order on his being satisfied about the existence of certain conditions, he has to make an order after applying his mind and forming an opinion that the conditions for exercising the powers have been satisfied. If such authority passes an order in a mechanical way without the application of his mind, the same cannot be regarded as a valid order. As I am satisfied that the impugned orders have been passed mechanically and without the application of the mind of the Deputy Registrar, the same are liable to be quashed.

63. For the reasons stated above, I hereby strike down Section 14-A of the Karnataka Co-operative societies Act, 1959 as offending Art, 19(1)(c) of the Constitution and I also quash the impugned orders made under Section 14-A of the Act.

M.K. Srinivasa Iyengar, J.

I agree.

ORDER

V.S. Malimath, J.

64. I. The following emerge from the separate judgments pronounced in these cases:

(i) It is unanimously held that Section 14-A of the Karnataka Co-operative societies Act, 1959 is within the competence of the State Legislature under Entry 32 of List II of VII Schedule to the Constitution.

(ii) It is unanimously held that Section 14-A of the Act is not void as offending Article 14 of the Constitution.

(iii) It is held in accordance with the majority opinion (Jagannatha Shetty, Bopanna & Venkatachala JJ.) that Section 14-A is not void as offending Art 19(1)(c) of the Constitution.

65. It is held in the minority judgment (Malimath & Srinivasa Iyengar JJ.) that Section 14-A is void as offending Article 19(1)(c) of the Constitution.

(iv) It is held by Malimath & Srinivasa Iyengar JJ. that Section 14-A is not void as offending Article 31(1) or Article 31(2) of the Constitution.

(v) It is held in accordance with the majority opinion (Jagannatha Shetty, Bopanna & Venkatachala JJ.) that the principle of audi alteram partem has to be followed while exercising power under Section 14-A of the Act and that the impugned orders made under the said provision are void, they having been made in contravention of the said principle.

66. Malimath and Srinivasa Iyengar JJ. have, in their minority judgment, held that the Legislature has, by necessary implication, excluded the principle of audi alteram partem.

(vi) It is held by Malimath and Srinivasa Iyengar JJ. that the impugned orders have to be quashed on the ground that the same have been made by the Deputy Registrar in a mechanical manner and without applying his mind.

II. In the result, the impugned orders made under Section 14-A of the Karnataka Co-operative societies Act, 1959 are hereby quashed.

III. The petitioners are entitled to costs from the State. Advocate's fee is in each case.

67. Rule made absolute.