

Dr. Kumaradas Vs. the Indian Medical Practitioners' Co-op. Pharmacy and Stores Ltd. and Ors.

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Court : Delhi

Decided On : Jan-23-2007

Reported in : 2007(95)DRJ618

Judge : Gita Mittal, J.

Acts : [Arbitration and Conciliation Act, 1996](#) - Sections 9, 84, 84(1) and 84(5); Multi State Co-operative Societies Act, 1984 - Sections 35, 37 and 47; Madras Co-operative Societies Act, 1961 - Sections 27(3); Multi State Co-operative Societies Act, 2002 - Sections 44, 84, 84(1), 84(3) and 84(4); General Clauses Act - Sections 16; Co-operative Societies Act - Sections 18 and 33(1); Kerala Co-operative Societies Act, 1969; [Companies Act, 1956](#); Uttar Pradesh Municipalities Act - Sections 47A and 87A; Co-operative Societies Rules - Rule 39(1); [Constitution of India](#)

Appeal No. : O.M.P. No. 554/2006

Appellant : Dr. Kumaradas

Respondent : The Indian Medical Practitioners' Co-op. Pharmacy and Stores Ltd. and Ors.

Advocate for Def. : S. Nandkumar, ; S. Muthukrishnan, ; G. Anandaselvan and

Advocate for Pet/Ap. : Rajeev Nayyar, Sr. Adv. and; Sagar Pathak, Adv

Disposition : Petition allowed

Judgement :

Gita Mittal, J.

1. By this petition under Section 9 of the Arbitration & Conciliation Act, 1996, the petitioner has invoked the jurisdiction of this Court contending that he has raised an arbitration dispute before the Central Registrar appointed under the provisions of the Multi State Co-operative Societies Act, 1984 before the Central Registrar at New Delhi under Section 84 of the Act. It is pointed out that by virtue of Section 84 Sub-section 5 of the statute, the provisions of the Arbitration & Conciliation Act, 1996 are applicable to the arbitration proceedings under the Multi State Co-operative Societies Act, 1984 and consequently this Court has jurisdiction under Section 9 to grant the relief prayed for.

2. The undisputed factual matrix to the extent necessary for adjudication in the present case are noticed hereafter. The Indian Medical Practitioners' Co-op. Pharmacy and Stores Ltd. is a co-operative society registered under the Multi State Co-operative Societies Act, 1984 which is engaged in the business of manufacture of medicines in all the three systems of Indian medicines namely, Sidha, Ayurvedha and Unani. The society is stated to have been established in the year 1944 and its members are doctors in the three systems of the Indian medicine numbering over fourteen and thousand at present.

3. As per the scheme of the Multi State Co-operative Societies Act, 1984, it provides for a Board to administer and manage the affairs of the society. The members of the board are elected by the general body of the society. The election of the members of the Board is governed by Section 35 of the statute while Section 37 provides the restriction on holding of office for more than two tenures by the office bearers of the Board.

So far as removal of elected members of the board are concerned, the same is permitted under Section 47 of the statute. It provides the only circumstances in which the elected members of the board can be removed from the board and the

manner in which such removal can take place.

4. These provisions which have been placed before this Court by either side would require to be considered in extenso and reads thus:

35. Election of members of board:

(1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, elections of the members of the board of such multi-State co-operative societies or class of multi-State co-operative societies as the Central Government may, by general or special order, notify, shall be vested in such returning officers as may be appointed by the Central Registrar in this behalf.

(2) The vote at such elections shall be by secret ballot.

(3) The term of office of the elected members of the board shall be such, not exceeding three years from the date of election, as may be specified in the bye-laws of a multi-State co-operative society:

Provided that the elected members shall continue to hold office till their successors are elected or nominated under the provisions of this Act or the rules or the bye-laws and assume the charge of their office. (4) No person shall be eligible to be elected as a member of the board of a multi-State co-operative society unless he is a member of the general body of that society.

(5) The Central Government may make rules generally to provide for or to regulate matters in respect of elections of members of the board.

xxxx xxxx xxxx37. Restrictions on holding of office:

No person shall be eligible to hold the office of a president or chairman or vice-president or vice-chairman on the board of a multi-State co-operative society, after he has held the office as aforesaid during two consecutive terms, whether full or part:

Provided that a person who has ceased to hold the office of a president or chairman continuously for one full term of three years shall again be eligible for

election to the offices aforesaid. Explanationn-Where any person holding the office of the president or vice-president or chairman or vice-chairman at the commencement of this Act is again elected to that office after such commencement, he shall for the purpose of this section, be deemed to have held office for one term before such election.

xxxx xxxx xxxx45. Elections of Members of Board:

(1) The conduct of elections to the board of a multi-State Co-operative Society shall be the responsibility of the existing board.

(2) The election of members of board shall be held by secret ballot in the manner as may be prescribed.

(3) The election of the members of the board shall be held in the general meeting of the members of the multi-State Co-operative Society.

(4) The elected members of the board shall, if the bye-laws of such society permit, be eligible for re-election.

(5) The term of office of the elected members of the board shall be such, not exceeding five years from the date of elections, as may be specified in the bye-laws of a Multi-State Co-operative Society:

Provided that elected members shall continue to hold office till their successors are elected or nominated under the provisions of this Act or the rules or bye-laws and assume charge of their office. (6) Where the board fails to conduct election of the members of the board, the Central Registrar shall hold the election within a period of ninety days from the date when such election became due.

(7) No person shall be eligible to be elected as a member of the board of a multi-State Co-operative Society unless he is a member of the general body of that society.

(8) The expenses for holding election by the Central Registrar shall be borne by the multi-State Co-operative society.

(9) The Central Government may make rules generally to provide for or to regulate matters in respect of election of members of the board.

xxxx xxxx xxxx47. Removal of Elected members by General Body:

An elected member of a board, who has acted adversely to the interests of multi-State Co-operative society, may on the basis of a report of the Central Registrar or otherwise be removed from the board upon a resolution of the general body passed at its meeting by a majority of not less than two-third of the members present and voting at the meeting: Provided that the member concerned shall not be removed unless he has given a reasonable opportunity of making a representation in the matter.

5. My attention has also been drawn to the bye-laws which govern the functioning of the respondent No. 1-society. Bye-laws 14 and 30 of the society are relevant for the purposes of the present case. As per bye-law 30, the general body is the only competent body which is empowered to elect the members of the board of directors. Bye-laws 14 and 30 of the society relied upon by both sides read thus:

Bye-law No. 14:

MANAGEMENT

Subject to such resolution as the General Body, may from time to time pass the Executive Management of the affairs of the Society shall vest in a Committee. The Committee shall consist of not more than 17 members of whom two shall be nominated by the Government of Madras and 2 by the Government of Andhra Pradesh from among the medical officers of the department of Indian Medicine. Notwithstanding anything contained in this bye-law the nominated Directors shall hold office for a period of 3 years or until their successors are nominated.

The members of the committee other than those nominated by the Governments of Madras and Andhra Pradesh shall be elected by the General Body for a period of 3 years from among the members.

For the period of office of the member of the Committee, the year shall begin from 1st August irrespective of the date of election or assumption of office. After the members of the Board of Directors are elected by the General Body they shall elect from among themselves a President and Vice-president. One third of the members elected to the committee shall retire annually from office by rotation and the retiring members shall vacate their office on the date of expiry of their term unless the period is extended by the Registrar under Section 27(3)(C) of the Madras Co-operative Societies Act, 1961. The vacancies caused by the retirement of the members shall be filled by election at the General Body meeting held for the purpose. Retiring members shall be eligible for re-election.

Note:For the purpose of this clause as nearly as may be, one third of the members elected to the committee at the first election after the commencement of the Act shall retire at the end of the first year after such election and as nearly as may be another one third of the members elected as aforesaid shall retire at the end of 2nd year after such election, the members so to retire at the end of the first two years aforesaid being determined by lot by the committee.

Any interim vacancy or any vacancy which has not been filled up at the time of the original election may be filled up by the remaining members of the committee by co-option for unexpired portion of the original period. It shall be competent to the General Body to remove at any time any member of the committee and elect another in his place from the same electoral area and the member so elected shall hold office only for the unexpired portion of the original period. The proceedings of the Committee shall not be invalidated on account of any vacancy or vacancies of the committee which remains unfilled.

Any member of the Committee may at any time resign from his office by sending a letter of resignation to the President of the Society, but such resignation shall take effect only from the date on which it is accepted by the Committee.

xxxx xxxx xxxxBye-law No. 30:

GENERAL BODY

The ultimate authority in all matters relating to the administration of the society shall be the General Body of the members who shall meet from time to time and at least once a year to conduct the work of the society. The General Body shall not, however, interfere with the orders of the Board of Directors in respect of matters delegated to it under the by-laws. The following among other members shall be dealt with by the General Body:

- (1) The election and removal of the Board of Directors;
- (2) The annual report due to the Registrar of Co-operative societies;
- (3) The Registrar's annual audit order;
- (4) The amendment or repeal of any existing by law or the enactment of a New By-law;
- (5) The expulsion of a member;
- (6) The consideration of any complaint which any individual members may prefer against the Board of Directors.
- (7) The returns that may be prescribed by the local Government; and
- (8) Consideration of the annual budget.

6. There is no dispute that the petitioner was elected as the President of the Society in the elections held in the year 1995. Elections held thereafter in the month of December, 1998 for the office of the new Board of Directors were challenged by one Dr. M. Vinobaji by way of a Writ Petition No. 19992/1998 in the High Court of Judicature at Chennai. By an interim order dated 17th December, 1998, the court restrained the newly elected office bearers from taking charge without orders of the court. The order dated 17th December, 1998 was confirmed by the High Court by its order dated 27th January, 1999 prima facie holding that the election was not in accordance with law and it was directed that the newly elected office bearers would not assume charge till disposal of the writ petition.

My attention has been drawn to an observation in the order dated 27th January, 1999 whereby the court prima facie held that the office bearers under the Multi State Co-operative Societies Act, 1984 already stand elected and are in office can continue to hold the same till the new office bearers assume charge. It was held that the amendment restricting the tenure by period of the office bearers was prospective and cannot effect the existing office bearers.

7. In this view of the matter, the court returned a prima facie finding that so far as the board of directors, which was existing in 1998 pursuant to the elections held in 1995, was concerned, it could continue in office till the new office bearers assume charge which would be after vacation of the interim orders passed by the High Court of Chennai.

The position therefore, is that the petitioner continues as the President of the respondent No. 1-society by virtue of the elections held in 1995 and under orders of the High Court of Chennai dated 27th January, 1999. The writ petition is still pending and the orders passed are stated to be continuing even on date.

The petitioner herein is stated to be the respondent in the writ petition before the High Court of Chennai.

8. Before this Court, the petitioner has placed another order dated 2nd September, 2003 passed by the High Court of Chennai in Writ Misc. Petition No. 20937/2003 which was filed in Writ Petition No. 16747/2003. This writ petition was filed by one Dr. G. Jayakumar inter alias against the Central Registrar of Co-op. Societies; the Indian Medical Practitioners' Co-op. Pharmacy and Stores Ltd. as well as against the present petitioner as respondent No. 4. Dr. G. Jayakumar, the petitioner had sought an injunction restraining the present petitioner from functioning as the President of the Board of Directors of the Society herein.

9. I find that by a detailed order dated 2nd September, 2003, the court rejected the submissions made on behalf of Dr. G. Jayakumar, petitioner therein that Dr. Kumaradas (petitioner herein) has functioned for more than two terms as President which was statutorily prohibited under Section 44 of the Multi State Co-operative Societies Act, 2002. The court was of the view that the Act of 1984 was

amended with effect from 16th August, 2002 and the tenure of the office bearers was restricted only from such date. For this reason, it could not impact the present petitioner from continuing to hold the office. The court also relied upon the earlier order dated 27th January, 1999 under which the present petitioner was continuing to hold office. On such finding, the writ misc. petition seeking interim injunction was dismissed.

Thus, the petitioner continues to hold office by virtue of two orders which are final and binding.

10. The present petition has been necessitated inter alias on the ground that a section of workers of the society went on strike with effect from 28th of October, 2006. The petitioner has asserted that Dr. V. R. Seshadri, respondent No. 12 herein had refused to place the demands of the workers before him despite repeated demands. The petitioner had required the respondent No. 12 who is also the Secretary of the Society to convene a meeting of the Board of Directors on 11th of November, 2006 at 11.00 a.m. in this behalf. The agenda for this meeting was to consider the on-going strike by the employees of the Society and to restore normalcy to its affairs. There is a dispute as to the proceedings of this meeting. According to the petitioner, some of the Directors pressed for resignation of the entire Board to which the petitioner did not agree. The respondent No. 9 who was the Vice-President gave his resignation letter and stated that he was prepared to resign if the entire board wanted him to do so. The petitioner however resisted such move of an en-masse resignation on the ground that the same would cripple the affairs of the Society on which the group of the Directors pressing for resignation walked out. At this stage, according to the petitioner, the respondent No. 12 also followed taking the minute book of the society with him as the agenda for which the meeting had been convened could not be discussed.

As the respondent No. 12 was refusing to correctly record the proceedings of the meeting, the petitioner sent a telegram to him in this behalf. However, the respondent No. 12 disobeyed the instructions of the petitioner with ulterior motive.

11. This position is disputed by Mr. S. Nandkumar, learned Counsel who is representing the Society before this Court and relies on a communication dated

13th November, 2006 sent by respondent No. 12 which so far as the meeting dated 11th November, 2006 is concerned, records thus:

10 Directors including yourself and Vice-President came to attend the Meeting and all the 10 Directors including you signed the Minutes Book. Even before commencement of the Meeting majority of the Board of Directors requested you to tender your resignation for the post of the Presidentship of Impcops. Coming to know about the moods of the Directors you abruptly left the venue of the Meeting without saying anything refusing to participate in the Meeting. It is not there that certain Board of Directors pressed for the resignation of the entire Board. After your abrupt exit refusing to participate in the Meeting the Vice-President Dr. K. Parameswaran handed over his resignation letter which he had brought with him to me. Subsequent to that the other 8 Directors who had assembled for the Meeting decided to hold the Meeting in Impcops Head Quarters and moved to the Head Quarters and assembled there. They elected Dr. S. Krishnamurthy to preside over the Meeting and conduct the Meeting.

After that the Board of Directors Meeting was held and Dr. S. Krishnamurthy presided over the Meeting. In the Meeting including Dr. S. Krishnamurthy, 8 Directors participated.

They passed unanimously 'No Confidence' resolution against you and they also unanimously resolved to remove you from the post of President of Impcops and President of Board of Directors with immediate effect.

Board of Directors also passed a resolution unanimously electing Dr. D.S. Jayakaran as the President of the Board of Directors and as well as the President of the Society.

In view of the above said resolutions passed by the Board of Directors, you are no longer the President of the Board of Directors and the President of IMPCOPS.

In conclusion of the meeting all the eight Directors, including Dr. S. Krishnamurthy, who presided over the Board of Directors meeting, signed in the minutes book.

12. The petitioner has also submitted that he learnt from the newspaper that he has been removed from the post of President and the respondent No. 3 has been appointed in his place. In these circumstances, the petitioner has asserted that this removal was in violation of the statutory provisions as well as bye-laws of the society.

13. The petitioner first assailed the action of the respondents by way of Writ Petition No. 43810/2006 which was filed before the High Court of Judicature at Madras. By an order passed on 14th November, 2006, the court was of the view that the petitioner has an alternative remedy under Section 84 of the Multi State Co-operative Societies Act, 2002 which provides a remedy of arbitration and that the petitioner was required to be relegated to such alternative remedy. The court also noticed that as the provisions of the Arbitration & Conciliation Act, 1996 were applicable to the proceedings of the arbitrator, the petitioner had adequate remedy to seek interim relief. Consequently, the writ petition was disposed of on 14th November, 2006 with the following directions:

(a). The petitioner shall be at liberty to file an appropriate application before the 13th respondent raising a dispute.

(b) Exercising power under Sub Sections (3) and (4) of Section 84, the 13th respondent shall either take up the dispute for adjudication by himself or appoint a legally trained person as Arbitrator to adjudicate the dispute between the petitioner and the contesting respondents and ensure that such adjudication either by himself or by his nominee is completed within a period of three months, after affording all opportunities to the petitioner as well as the contesting respondents to appear and also to adduce evidence.

(c) The Arbitrator so appointed shall also go into the question as to whether the dispute raised by the petitioner is referable to Arbitration under Section 84(1) of the Act.

14. In view of the order dated 14th November, 2006, the petitioner has invoked the jurisdiction of the Registrar of Co-operative Societies under Section 18 of the statute by a communication dated 23rd of November, 2006 and the matter is

stated to be pending there. However, aggrieved by the action of his sudden removal, the petitioner has filed the present petition seeking injunction. The petitioner has placed reliance on the above noted provisions of the statute and the rules of the bye-laws of the Society to contend that the petitioner could have been removed only by the general body of the Society.

Strong reliance is also placed on the orders dated 27th January, 1999 and 2nd September, 2003 of the High Court of Madras to contend that the petitioner could not have been removed so long as these orders continue to operate.

15. This petition was filed on the 24th November, 2006. By an interim order dated 27th November, 2006, this Court restrained the respondents from giving effect to the removal of the petitioner as set out in the communication dated 13th November, 2006. It was further directed that the respondents shall maintain status quo as existed on 11th November, 2006.

16. The petition has been vehemently opposed by Mr. S. Nandkumar, learned Counsel appearing for the respondents who has submitted that the petitioner has completed two tenures as President in 1998 and thereforee has no right whatsoever to continue as President in the light of Section 37 of the statute.

17. It has further been contended that the President is elected from the board of directors. The petitioner has not been removed as a primary member of the society or as a member of the board of directors. He has only been removed from his appointment as a President of the Board of Directors which the Board is fully competent to do so.

18. It has further been submitted that in the light of the law laid down by the Supreme Court in : [1992]3SCR338 , Mohan Lal Tripathi v. District Magistrate, Rae Bareilly and Ors., the removal of the petitioner by the Board of Directors is an action taken by the representative body of the electorate itself and consequently cannot be faulted. It is pointed out that it is an electorate which appoints the Board of Directors and the Board of Directors which has a right to appoint its President, has also a right to reject.

19. Learned Counsel for the respondents has also submitted that the two full Bench judgments of the High Courts of Kerala and Punjab and Haryana relied upon by the petitioner did not consider the pronouncement of the Apex Court in : [1992]3SCR338 , Mohan Lal Tripathi v. District Magistrate, Rae Bareilly and Ors. and consequently, would not bind the adjudication in the present matter.

20. It has further been submitted that the removal of the petitioner as President of the Society was wholly in public interest inasmuch as there was strong opposition to his continuation as President and that the workers were on strike because of the continuation of the President alone.

21. I have heard learned Counsels for the parties and perused the available record. I find that issues similar to those as have been raised by the petitioner before this Court were raised before the Division Bench of the High Court of Bombay in : AIR1982 Bom216 , Hindurao Balwant Patil and Anr. v. Krishnarao Parshuram Patil and Ors. The court was required to consider the submissions as have been made by the respondents before this Court. It appears that the Co-operative Society Act applicable in Bombay did not contain a provision to remove the office bearers prior to the completion of their tenure. The respondents were relying on the provisions of Section 16 of the General Clauses Act to urge that the authority which appoints the office bearers would have the right to remove the office bearers by vote of no confidence. In this behalf, the Division Bench of Bombay High Court has observed thus:

10. ...A right to contest the election and the right to move for setting aside an election or right to recall the person already elected are not common law rights. These rights must be conferred by the statute and therefore can be enforced only in accordance with and subject to the conditions laid down therein by the statute concerned. The right guaranteed by Article 19(1)(c) is a fundamental right common to all citizens. It is a right which can be enjoyed by all and everybody. This has no reference to the right conferred or created by a particular statute.

The Co-operative Societies Act has been enacted having regard to the directive principles of the State Policy as enshrined in the [Constitution of India](#). Co-operative movement is a socio-economic and moral movement. To say the least it

is a part of the scheme of decentralization and de concentration of power. Collective power intoxication cannot be equated with co-operation. In the very nature of the said movement it must not be only self-regulated but the constraints and restraints are inherent in the movement itself. The rights conferred or created by the statute are coupled with duty. Fixity of tenure helps proper administration and management of the society. Co-operative movement cannot be permitted to be polluted or choked by internal or individual strike nor it can be permitted to be polluted by party politics. Whenever the legislature thought that a person is not fit to continue as a member of the board, specific provisions are made for his removal. A person is elected as Chairman or Vice-Chairman for a particular term. His office is not controlled by the provisions of the Act. It is not an office at will and therefore, to such an office Section 16 of the General Clauses Act, cannot apply.

22. It is noteworthy that a similar view had been expressed by the Division Bench of the Andhra Pradesh High Court in its judgment reported at 2nd 1975 AP 242, Veeramachaneni Venkata Narayana v. The Deputy Registrar of Co-op. Societies, Eluru and Ors. In this case, the Division Bench of the court had been of the view that the power of removal of the office bearer by the vote of no confidence could not be read or inferred in a statute or could be taken as an implied power.

23. The judgments of the Division Bench of the High Courts of Andhra Pradesh and Bombay were relied upon by the Full Bench of the Punjab & Haryana High Court in its pronouncement reported at , Jagdev Singh v. The Registrar, Co-operative Societies, Haryana and Ors. In this case, the court considered the law extensively and also closely examined other enactments which contained the similar provisions as the Multi State Co-operative Societies Act. Herein also the powers of removal of office bearers of executive bodies were specifically conferred. The court noticed that if the same legislature, for some other local bodies, had specifically conferred the power of removal of office bearers by a vote of no confidence, then the omission of such power in the Co-operative Act of Punjab and Haryana gained significance. Relying on the doctrine of *casus omissus*, the court held that omission in a statute is not to be lightly interfered with. It was held that in the light of the omission in the Co-operative Act and the Rules, the legislature never intended to give such a power of removal by a vote of no

confidence to the members of the Committee/Directors of the Co-operative Bank in question.

24. My attention has been drawn to the pronouncement of the Full Bench of the High Court of Kerala reported in AIR 2002 Ker 325, S. Lakshmanan v. V. Velliankeri Member of Board of Directors. In this behalf, the following question fell for consideration before the Full Bench for decision:

Whether absence of a specific provision in the Kerala Co-operative Societies Act, 1969 and the Rules framed there under will stand in the way of any motion for loss of confidence relating to President of a co-operative society?

The same issue has been raised by the petitioner before this Court.

25. On behalf of the respondents herein, reliance was placed on Section 16 of the General Clauses Act and the similar provisions in the State enactment to urge that when a power to make any appointment is conferred by a statute unless a contrary intention appears, the authority having such power of making the appointment shall also have the power to remove or dismiss any person so appointed whether by itself or by any other authority in exercise of such power.

The admitted position under the Kerala Co-operative Societies Act was also that there was no provision in the Act or the Rules made there under or the Bye-laws of the Society which enables or prescribes the procedure for passing of a no confidence motion by the elected Managing Committee against the President or any other office bearer, nor there was any provision indicating the consequences of such a no confidence motion being passed. After an extensive consideration of judicial pronouncements of different High Courts, the court was of the view that the doctrine of *casus omissus* is squarely applicable to the situation. Placing reliance on the Interpretation of Statutes by Maxwell, the court observed thus:

16. The committee is elected by following the procedure prescribed under the Act and the Rules and is guaranteed a tenure as prescribed in the Bye-laws, by virtue of Rule 39(1). It can only be removed by the procedure prescribed in the Act or the Rules or the Bye-laws. The only contingency under which the Committee may be

removed before the end of its tenure is indicated in Section 33(1) of the Act. Section 33(1) of the Act envisages the passing of a no-confidence motion by the General Body which results in wholesale removal of the Committee. Barring this provision, there is no other provision by which an elected individual member of the Committee can be removed. We are, therefore, unable to accept the contention of the appellants that such a drastic power can be read into the Act, even where there are no provisions. The doctrine of 'casus omissus' is squarely applicable to the situation. In page 33 of the Maxwell's Interpretation of Statutes, 12th Edition it is stated as under:

It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the Legislature intended something which it omitted to express. Lord MERSEY said : It is a strong thing to read into an Act of Parliament words, which are not there and in the absence of clear necessity it is a wrong to do.... We are not entitled', said Lord LOREBURN L.C., 'to read into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself.

It is not for the Court to supply what is an omission in the statute. The Court must interpret the provision as they are without adding anything. This is one of the basic canons of construction of a statute. (See in this connection, Maruthi Wires Industries Pvt. Ltd. v. S.T.O., 1st Circle, Mattancherry : [2001]2SCR829 .

26. Yet another distinction which was pointed out in this judicial pronouncement, which would have bearing on the arguments raised before this Court on behalf of the respondents, is the difference which was drawn by the court between the expression 'appointment to a post' and 'election to a post'. Such a distinction was drawn by the Division Bench of the High Court of Kerala in its pronouncement reported at (1999) 3 Ke LT 680, Chacko v. Jaya Varma. The Division Bench emphasised such a distinction which was pointed out in Ramanatha Aiyar's Law Lexicon, Reprint Edition 1987 as under:

17...The term 'appointment' is to be distinguished from 'election'. The former is an executive act, whereby a person is named as the incumbent of an office and invested therewith, by one or more individuals who have the sole power and right

to select and constitute the officer. Election means that the person is chosen by a principle of selection in the nature of a vote, participate by the public generally or by the entire class of persons qualified to express their choice in this manner.

27. The Full Bench of the High Court of Kerala also noticed the distinction between the Directors of a company incorporated under the provisions of [Companies Act, 1956](#) who appoint a Managing Director from within themselves and the election of an executive body of an organisation.

The fine distinction thus which has to be borne in mind is that the office bearers of a society under the Multi-State Co-operative Societies Act are not appointed by a board. The board of directors or the governing body of a Committee elects such office bearers. In the case in hand, so far as respondent No. 1-society is concerned, I find that bye-law No. 14 provides that after the members of board of directors are elected by the general body, they shall elect from among themselves a President and a Vice-President of the society.

28. In this behalf, a Division Bench of the Bombay High Court in its pronouncement reported at : AIR1982 Bom216 , Hindurao Balwant Patil and Anr. v. Krishnarao Parshuram Patil and Ors. made observations to the effect that it cannot be forgotten that the Co-operative Societies Act has been enacted having regard to the directive principles of the State policy as enshrined in the [Constitution of India](#). Co-operative movement is a socio-economic and moral movement. To say the least, it is a part of the scheme of decentralisation and de-concentration of power. Collective power intoxication cannot be equated with co-operation. In the very nature of the said movement it must not be only self-regulated but the constraints and restraints are inherent in the movement itself. The rights conferred or created by the statute are coupled with duty. Fixity of tenure helps proper administration and management of the society. Co-operative movement cannot be permitted to be polluted or choked by internal or individual strike nor it can be permitted to be polluted by party politics. Co-operative capitalism despotism is not co-operation. On the other hand, co-operation is a substitute for self-interest of the benefit of whole community. therefore, if the society itself while framing and adopting its own code of conduct in the form of

bye-laws, which are to be duly approved by the Registrar, has not made any provision for removal of the Chairman and Vice-Chairman by passing a vote of no-confidence, it cannot be said that the step taken by the Society or Registrar in that behalf is not a regulatory one nor is in the interest of the society or the general public. The so-called mandate theory cannot be pushed to ridiculous extremes to convert co-operative movement into an arena or akhada of power politics. Whenever the Legislature thought that a person is not fit to continue as a member of the Board, specific provisions are made for his removal. A person is elected as Chairman or Vice-Chairman for a particular term. His office is controlled by the provisions of the Act. It is not an office at will and therefore, to such an office Section 16 of the General Clauses Act cannot apply.

29. Thus, the Full Bench of the Kerala High Court held that the Managing Committee of a Co-operative Society constituted under the Kerala Co-operative Societies Act, 1969 and the Rules framed there under has no right to move or consider a motion for loss of confidence in the President, Vice-President and Treasurer or any other office bearer of the Managing Committee which has been elected in accordance with the rules.

30. The respondents have heavily relied on the pronouncement of the Apex Court in : [1992]3SCR338 , Mohan Lal Tripathi v. District Magistrate, Rae Bareilly and Ors. In this case, challenge was laid to the validity of the no confidence motion passed on the 29th March, 1990 under Section 87-A of the U.P. Municipalities Act by the board against the appointment which was effected by the electorate directly under Section 43 (2) of the Act as President of the Rae Bareilly City Municipal Board. One of the grounds of challenge was on the ground of absence of a specific provision applying under Section 47-A and 87-A of the Act to the President elected by the electorate.

31. There is no dispute that in the statute in question, Section 87-A specifically provided for a motion of a no confidence against the President and the manner in which the same would be proceeded with. Section 47-A provided the manner in which the President was required to proceed when a vote of no confidence is moved against him.

Thus, there was no dispute that the legislature had provided a provision of removal of a president by vote of no confidence. The issue raised in this case then was that the vote of no confidence passed by the board was proper irrespective of whether the president was elected by the board or the electorate. It was held by the court that the removal of the president by the board which was elected by the electorate was in fact proper and in public interest.

32. There is material difference between the issue urged before the Apex Court and the question raised before this Court. The undisputed position in the present case is that the Multi-State Co-operative Societies Act or the State enactments in this behalf contained no provision for removal of the office bearers of the board by the members of the board. In my view the principles laid down by the Full Bench of Kerala and the Division Bench of Bombay would guide adjudication in the present matter.

33. I find force in the submission of Mr. Sagar Pathak, learned Counsel for the petitioner who has argued the matter, to the effect that the statute, rules and the bye-laws of the society are silent on the removal of the President.

Certainly, the doctrine of casus omissus would apply and prohibit this Court from reading such power into the legislation which has been excluded by the legislature.

34. So far as legislation on holding of office after two consecutive terms as has been incorporated in Section 37 of the Multi-State Co-operative Societies Act is concerned, I find that the High Court of judicature at Chennai has already considered the same in its two orders passed on 27th January, 1999 and 2nd September, 2003 which would bind consideration of the issue urged before this Court.

Inasmuch as such amendments to the Multi-State Co-operative Societies Act came into force with effect from 2002, the same may not apply to the case of the petitioner for the reasons recorded in these orders.

35. There is yet another reason for the petitioner to be entitled to relief in the present petition. I find that the petitioner is continuing in office by virtue of order dated 27th January, 1999. The prayer for prohibiting the petitioner from functioning as President was rejected by the High Court of Madras in its order dated 2nd September, 2003 which has been noticed hereinabove.

There is no dispute that the order dated 2nd September, 2003 has attained finality and that the order dated 27th January, 1999 continues to operate and bind the parties even on date.

In this view of the matter also, I find force in the submission of the petitioner that he is entitled to continue in office as President of the society.

36. So far as legality and validity of the Resolution dated 11th November, 2006 which has been communicated to the petitioner in the letter dated 13th November, 2006 is concerned, the petitioner has already invoked the remedy by way of the arbitration proceedings.

Section 9 of the Arbitration & Conciliation Act, 1996 empowers this Court to pass such orders as are necessary to preserve the subject matter of the arbitration.

In the light of the foregoing discussion, I have no hesitation in holding that this petition has to be allowed.

The respondents are consequently restrained from giving effect to the removal of the petitioner as communicated to the petitioner in the letter dated 13th November, 2006 issued by the respondent No. 4. The parties shall maintain status quo as existing on the 11th of November, 2006.

The petitioner has claimed a right to continue in office by virtue of order dated 27th January, 1999. It is made clear that the present order shall continue to operate till such time the order dated 27th January, 1999 is varied, modified or set aside by any court.

This petition is allowed in the above terms.

