

THE KARNATAKA CO-OPERATIVE SOCIETIES ACT, 1959.

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CHAPTER I Preliminary

Note – Certain provisions of the Act have been amended during 2010 through The Co-operative Societies [Amendment] Act, 2010

Sections 2, 3, 4, 6, 8, 9, 12, 13, 14, 15, 16, 17, 18, 19, 21, 28, 29 and 30 excluding section 98D sought to be inserted therein 33, 34, and 35 shall be deemed to have come into force with effect from the 3rd day of November 2009.

Sections 1, 5, 7, 10, 11, 20, 22, 23, 24, 25, 26, 27, 31, 32 and 37 shall come in force at once.

Section 98D sought to be inserted by section 30 shall come into force on such date as the state government may by notification in the official gazette appoint

The notification was published through gazette notification No. Soum sha e 50 law 2009 Bangalore dated 30th March 2010

S. 1 - Short title, extent and commencement

- (1) The Act may be called The Karnataka Co-operative Societies Act, 1959.
- (2) It extends to the whole of the State of Karnataka.
- (3) It shall come into force on such date as the State Government may by notification, in the official gazette, appoint

S. 2 - Definitions

In this Act, unless the context otherwise requires -

2(a) 'Apex Society' means a federal society whose area of operation extends to the whole of the State;

2(a-1) 'Assisted Society' means a co-operative Society which has received Government or State assistance in the form of share capital or loan or grant or guarantee for repayment of loan or interest

2(a-1-1) 'Agriculture and Rural Development Bank' means a co-operative Agriculture and Rural development Bank registered or deemed to be registered under this Act and admitted as a member of the State Agriculture and Rural development Bank and includes such class or classes of the co-operative societies as may be notified by the Registrar and admitted as members of the State Agriculture and Rural development Bank

2(a-2) 'Bye-laws' means the bye-laws registered or deemed to be registered under this Act, and for the time being in force and includes a registered amendment of the bye-laws

2(a-2-1) 'Backward Class' means the Backward Classes as notified under clause (a) of section 2 of the Karnataka State Commission for Backward Classes Act, 1995

2(a-3) 'Chief Executive' means any employee of a co-operative society by whatever designation called and includes, an official of the State Government, an employee of any other institution or co-operative society, who discharges the functions of a Chief Executive under the Act, rules or the bye laws;

2(a-4) 'Director of Co-operative Audit' means a person appointed to perform the functions of the Director of Co-operative Audit under this Act and includes,

- an Additional Director of Co-operative Audit,
 - a Joint Director of Co-operative Audit,
 - a Deputy Director of Co-operative Audit, and
 - an Assistant Director of Co-operative Audit,
- appointed to assist the Director of Co-operative Audit when exercising all or any of the powers of the Director of Co-operative Audit;

2(b) 'Committee' means the governing body of a co-operative society, by whatever name called, to which the management of the affairs of the society is entrusted

2(b-1) 'Co-operative Bank' means a Co-operative Society which is doing the business of banking;

Explanation-

For the purpose of this clause “Banking” shall have the meaning assigned to it in Section 5 of the Banking Regulation Act, 1949

2(b-2) ‘Co-operative Credit Structure’ means and includes Primary Agriculture Credit Societies by whatever name called, Central Co-operative Banks, State Co-operative Bank, Agriculture and Rural Development Banks and State Agriculture and Rural Development Bank

2(b-3) ‘Central Co-operative Bank’ means a federal society engaged in the business of banking

2(b-4) ‘Chartered Accountant’ means a member of the Institute of Chartered Accountants of India within the meaning of the Chartered Accountants Act, 1949 (38 of 1949)

2(c) ‘Co-operative society’ means, a society registered or deemed to be registered under this Act;

2(d) ‘Co-operative society with limited liability’ means a co-operative society in which the liability of its members, for the debts of the society in the event of its being wound up, is limited by its bye-laws,

(i) to the amount if any, unpaid on the shares respectively held by them or

(ii) to such amount as they may respectively, undertake to contribute to the assets of the society;

2(d-1) Co-operative Year or Year means the year commencing from the first day of April

2(d-2) ‘Co-operative’ means a co-operative registered under the Karnataka Souharda Sahakari Act, 1997 and includes the Union Co-operative and the Federal Co-operative.

2(e) ‘Co-operative society with unlimited liability’ means a co-operative society, the members of which are, in the event of its being wound up, jointly and severally liable for and in respect of all its obligations and to contribute to any deficit in the assets of the society,

2(e-1) 'Credit Agency' means;

- a credit agency as defined in the Karnataka Agriculture Credit Operations and Miscellaneous Provisions Act, 1974 and
- includes any other body or corporation or financial institution which gives financial assistance to a co-operative society and has been notified by the State Government from time to time,

2(e-2) 'Deposit Insurance Corporation' means the Deposit Insurance Corporation established under section 3 of the Deposit Insurance Corporation Act, 1961

2(e-3) 'Employee' means a salaried employee of a co-operative society and includes, an official of the State Government or any employee of any other institution or co-operative society, who for the time being is working in a co-operative society;

2(e-4) 'Federal Society' means a co-operative society, the membership of which is not open to individuals:

Provided that

- nothing in this clause shall apply, to admission of individuals as nominal members,

2(e-5) 'Financing Bank' means a co-operative society, the main object of which is to make advances in cash or in kind to other co-operative societies,

2(f) 'Member' means

- a person joining in the application for the registration of a co-operative society and
- a person admitted to membership after such registration in accordance with this Act, the rules and the bye-laws and
- includes a nominal and an associate member

2(f-1) 'Multipurpose Co-operative Society' means a primary society the object of which is to provide various services including services related to credit, business, industry, consumer durables to its members

2(f-2) 'National Bank' means the National Bank for Agriculture and Rural Development established under section 3 of the National Bank for Agriculture and Rural Development Act, 1981 (Central Act No.61 of 1981)

2(g) 'Office Bearer' means the President, Vice-President, Chairperson, Vice Chairperson, Liquidator, Administrator, Special Officer and includes a member of the committee or any other person [not being an employee], empowered to exercise any power or perform any function in regard to the business of a co-operative society and to give directions in regard to policies affecting the business of the society

2(h) 'Prescribed' means prescribed by rules made under this Act,

2(h-1) 'Primary Society' means a co-operative society, whose membership is not open to another co-operative society,

2(h-2) 'Primary Agriculture Credit Co-operative Society' means a co-operative society as defined under clause (cciv) of section 5 of Banking regulation Act, 1949 (Central Act 10 of 1949) and includes a multipurpose co-operative society

2(i) 'Registrar' means a person appointed to perform the functions of the Registrar of Co-operative Societies under this Act, and includes,

- an Additional Registrar of Co-operative Societies,
- a Joint Registrar of Co-operative Societies,
- a Deputy Registrar of Co-operative Societies and
- an Assistant Registrar of Co-operative Societies,

Appointed to assist the Registrar when exercising all or any of the powers of the Registrar;

2(i-1) 'Reserve Bank' means the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934

2(j) 'Rules' means rules made under this Act,

2(j-1)] 'Scheduled Castes and Scheduled Tribes' means the Scheduled Castes and Scheduled Tribes specified in respect of the State of Karnataka in the Constitution (scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) order, 1950 for the time being in force

2(j-2) 'Secondary Society' means a co-operative society, whose membership is also open to another co-operative society,

2(j-3) 'State Representative' means any person appointed as State Representative under Section 2A

2(j-4) State Agriculture and Rural development Bank means the Karnataka State Agriculture and Rural development Bank Limited

2(j-5) State Co-operative Bank' means an apex society doing the business of Banking

[Banking means 'the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise and withdraw able by cheque, order or otherwise' [5.5 (b) of the BR Act, 1949]

2(k) 'Tribunal' means the Tribunal constituted under the Karnataka Appellate Tribunal Act, 1976 (Karnataka Act 10 of 1976);

2(l) Reference to any enactment or provision of law not in force in any area of the State of Karnataka shall be construed as references to the corresponding enactment or provision of law, if any, in that area.

CHAPTER - IA

Authorities and appellate Tribunal

S. 2A - Registrar, Additional Registrars, Joint Registrars, Deputy Registrars (State Representatives) and Assistant Registrars

(1) The State Government may appoint a person to be the Registrar of Co-operative Societies for the State.

(2) The State Government may appoint as many, Additional Registrars of Co-operative Societies, Joint Registrars Co-operative Societies, Deputy Registrars of Co-operative Societies, State Representatives and Assistant Registrars of Co-operative Societies

Either as officiating or otherwise as it thinks fit for the purpose of assisting the Registrar.

(3) The State Government may appoint such other officers with such designations as it deems fit to assist the Registrar.

Government Notification Dated 6.6.1986

In exercise of the powers conferred by sub section (3) of Section-2A of the Karnataka Co-operative Societies Act, 1959,

Government of Karnataka hereby appoint the,

- Additional Director of Industries and Commerce in Karnataka in charge of Industrial co-operatives as Additional Registrars of Co-operative Societies,
- General Managers of Department of Industries and Commerce in District Industries centers,
- Deputy Registrars of Co-operative Societies, and
- Assistant Directors of District Industries Centre in Sub-divisions as Ex-officio Assistant Registrars of Co-operative Societies,

Respectively within their jurisdiction only in so far as Industrial Co-operative Societies are concerned, to enable them to exercise such powers of Registrar of Co-operative Societies as may be expressly conferred on them from time to time.

(4) All officers and persons employed in the administration of this Act (except relating to the Audit),

Shall be subject to the superintendence, direction and control of the State Government and the Registrar and the officer or officers to whom each officer appointed under this Act shall be subordinate shall be determined by the State Government,

Provided that

- the power vested in the State Government and the Registrar, under this sub-section shall not be exercisable
- so as to interfere with the discretion of any authority in the exercise of quasi-judicial function whether as original or appellate authority,

Government Notification Dated 5.7.1978

In exercise of the powers conferred by sub-section (4) of Section 2-A of the Karnataka Co-operative Societies Act, 1959 and in supersession of Government Notification No.DPC-105, CCS-65 dated 28th June 1966, the Government of Karnataka hereby determines that;

- An Assistant Registrar shall be subordinate to the Deputy Registrar of Co-operative societies, the Joint Registrar of Co-operative Societies and the Additional Registrar of Co-operative Societies.
 - A Deputy Registrar of Co-operative Societies shall be subordinate to Joint Registrar of Co-operative Societies, Additional Registrar of Co-operative Societies and the Registrar of Co-operative Societies.
 - A Joint Registrar of Co-operative Societies shall be subordinate to the Additional Registrar of Co-operative Societies and the Registrar of Co-operative Societies.
 - An additional Registrar of Co-operative Societies shall be subordinate to the Registrar of Co-operative Societies.
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(5) The State Government may, by general or special order, confer on any person appointed as Additional Registrar of Co-operative Societies, Joint Registrar Co-operative Societies, Deputy Registrar of Co-operative Societies and Assistant Registrar of Co-operative Societies (either as officiating or otherwise) all or any of the powers of the Registrar under this Act.

Rulings

1] "A person who is in-charge Deputy Registrar is not in fact and indeed a Deputy Registrar but is only performing current duties of a Deputy Registrar and cannot exercise all the powers of a Deputy Registrar

[Puttaswamaiah-Vs- The Deputy Registrar, 1996(2) Mys, LJ 225 (DB)]

2] "Where under Section.2A (5) of the Act, powers exercised by the Registrar under Section.29C is conferred on the Additional Registrar, the power exercised by the Additional Registrar is as a delegate and therefore appeal to the State government is competent

[C.S.Mohan-Vs-State, ILR 1979(2) Kar 1757; 1979 (2) KLJ 50]

(6) Notwithstanding anything contained in this Act, matters relating to the accounts of every co-operative society shall be subject to the supervision and control of the Registrar of Co-operative Societies for the State.

(7) In proceedings before the Tribunal, the State Representative shall be competent,-

- i) to prepare and sign applications, appeals and other documents;
- ii) to appear, represent, act and plead;
- iii) to receive notices and other processes;
- iv) to do all other acts connected with such proceedings,

On behalf of the State Government or any officer appointed under this Act.

S. 2AA - Director of Co-operative Audit, Additional Director of Co-operative Audit Joint Directors of Co-operative Audit, Deputy Directors of Co-operative Audit, Assistant Directors of Co-operative Audit

1] The State Government may, appoint a person to be the Director of Co-operative Audit of Co-operative Societies for the State.

2] The State Government may appoint, an Additional Director of Co-operative Audit of Co-operative Societies, and as many Joint Directors Co-operative Audit, Deputy Directors of Audit and Assistant Directors of Co-operative audit of Co-operative societies, as it thinks fit for the purpose of assisting the Director of Co-operative Audit.

3] The State Government may appoint such other officers with such designations as it deems fit to assist the Director of Co-operative Audit.

4] All officers and persons employed in the administration of this Act relating to the Audit shall be subject to the superintendence, direction and control of the State Government and the Director of Co-operative Audit, and the officer or officers to whom each officer appointed under this section shall be subordinate, shall be determined by the State Government,

Provided that

- the power vested in the State Government and the Director of Cooperative Audit, under this sub-section shall not be exercisable so as to interfere with the discretion of any authority in the exercise of quasi-judicial function whether as original or appellate authority.

5] The State Government may by general or special order confer on any person appointed as Additional Director of Co-operative Audit, Joint Director Co-operative Audit, Deputy Director of Audit and Assistant Director of Co-operative Audit, of co-operative societies all or any of the powers of the Director of Co-operative Audit under this Act.

6] Notwithstanding anything contained in this Act, matters relating to audit of every co-operative society shall be subject to the supervision and control of the Director of Co-operative Audit.

CHAPTER II

Registration of Co-operative Societies

S. 3 - Omitted wef 26.06.1965

S. 4 - Societies which may be registered

Subject to the provisions of this Act, a co-operative society which has 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 under this Act,

Provided that -

No co-operative society shall 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

S. 5 - Registration with limited or unlimited liability

(1) A co-operative society may be registered with or without limited liability;

Provided that

- the liability of a co-operative society, of which any member is a co-operative society shall be limited

(2) The word 'limited' or its equivalent in any Indian language shall be the last word in the name of a co-operative society registered under this Act with limited liability.

S. 6 - Applications for registration of co-operative societies

[1] An application for the registration of a co-operative society shall be made to the Registrar in such form and after complying with such formalities as may be prescribed, and the applicants shall furnish to him all such information about the society as he may require.

[2] Every such application shall conform to the following requirements, namely

a] the application shall be accompanied by five copies of the proposed bye-laws of the co-operative society

b] where all the applicants are individuals, the number of applicants shall not be less than ten

c] every one of

- the applicants who is an individual shall be above the age of eighteen years and
- the applicants shall not be members of the same family,

Explanation

For the purpose of this clause, family in relation to a person means, an individual, wife or husband as the case be and their dependant children and parents,

d] where the objects of the co-operative society include, the creation of funds to be lent to its members and where all the applicants are individuals,

- the applicants shall reside in the same village or town or
- in the proposed area of operation of the co-operative society or
- belong to the same class or pursue the same occupation,

e] the application shall be signed by every one of the applicants, who is an individual and by a person duly authorized, on behalf of any co-operative society which is an applicant;

f] the application shall be accompanied, by such fee, as may be prescribed and different fees may be prescribed for different class or classes of co-operative societies.

g] in the case of the co-operative, which intends to convert itself in to a co-operative society under this Act, the application shall be accompanied by a resolution of the general meeting of such co-operative approving such conversion

S. 7 - Registration

(1) If the Registrar is satisfied,

a] that the application complies with the provisions of this Act, the rules and the provisions of any other law for the time being in force,

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 requirements of sound business and has reasonable chances of success,

The Registrar shall within a period of three months from the date of receipt of the application register the co-operative society and its bye-laws and send by registered post a certificate of registration and the original registered bye-laws signed with date and seal by him to the Chief Executive of the co-operative of the co-operative which is converted

(2) If the Registrar is unable to dispose of such application within the period specified in subsection (1), the society and the bye-laws shall be deemed to have been registered.

(3) Where the Registrar, refuses to register a proposed co-operative society,

- he shall forthwith communicate his decision, with the reasons therefor,
- to the person making the application and
- if there be more than one to the person who has signed first in the application.

(4) The Registrar shall maintain a register of all co-operative societies registered or deemed to be registered under this Act.

Ruling

Scope of enquiry by Registrar is limited to satisfying himself of matters specified in section 7 of the Act,

Authority to admit persons as member vests with committee of management of bank and it is for committee to verify application for membership and to admit applicant as member if he is found eligible there for

Registrar has no authority to direct management to admit any person as member.

[Hemavati Mahila Co-operative Bank Limited, Hasan Vs State of Karnataka and Others 1998 [4] Kar. L.J. 471A]

S. 8 - Registration Certificate

Where a co-operative society is registered or is deemed to be registered under this Act,

- the Registrar shall issue a certificate of registration signed by him,
- which shall be conclusive evidence that the co-operative society there in mentioned is a co-operative society duly registered or is deemed to be registered under this Act.

S. 9 - Co-operative societies to be body corporate

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 in to contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it was constituted

S. 10 - Change of name of co-operative society

- 1] A co-operative society may by an amendment of its bye-laws, change its name.
- 2] Where a co-operative society changes its name the Registrar shall enter the new name on the register of co-operative societies in the place of former name and shall amend the certificate of registration accordingly.
- 3] The change of name of a co-operative society,
 - shall not affect any rights or obligations of the co-operative society, or
 - render defective any legal proceedings by or against it and
 - any legal proceedings which might have been continued or commenced by or against the society, by its former name may be continued or commenced by its new name.

S. 11 - Change of liability

- 1) Subject to the provisions of this Act and the rules, a co-operative society may by an amendment of its bye-laws change the form or extent of its liability.
- 2) When a co-operative society has passed a resolution to change the form or extent of its liability,
 - it shall give notice thereof in writing to all its members and creditors and notwithstanding any bye-law or contract to the contrary,
 - any member or creditor shall during a period of one month from the date of service of the notice upon him,
 - have the option of withdrawing his shares, deposits or loans, as the case may be.
- 3) Any member or creditor who does not exercise his option within the period specified in subsection (2) shall be deemed to have assented to the change.
- 4) An amendment of the bye-laws of a co-operative society changing the form or extent of its liability shall not be registered or take effect until either-

a] the assent thereto of all members and creditors has been or deemed to have been obtained or

b] all claims of members and creditors who exercise the option referred to in sub-section (2), within the period specified therein have been met in full.

S. 12 - Amendment of bye-laws of a co-operative society

[1] No amendment of any bye-law of a co-operative society shall be valid unless such amendment has been registered under this Act.

[1A] Every proposal for such amendment

- shall be accompanied by such fee as may be prescribed and
- different fees may be prescribed for different class of co-operative societies

[2] Every proposal for such amendment shall be forwarded to the Registrar and if the Registrar is satisfied that the proposed amendment

- i) is not contrary to the provisions of this Act and the Rules,
- ii) does not conflict with co-operative principles,
- iii) satisfies the requirements of sound business,
- iv) will promote the economic interests of the members of the society and
- v) is not inconsistent with the principles of social justice,

He shall,

- within a period of three months
- from the date of receipt of the proposal
- register the amendment

[2A] If the Registrar, is unable to dispose of such application within the period specified in sub-section (1),

- the amendment of bye-laws
- shall be deemed to have been registered

[3] When the Registrar, registers an amendment of the bye-laws of a society or

- where an amendment of the bye-laws is deemed to have been registered,
- he shall issue to the society,
- a copy of amendment certified by him and
- such certificate shall be conclusive evidence that the amendment of the bye-law has been duly registered or deemed to be registered, as the case may be.

[4] Where the Registrar, refuses to register an amendment of the bye-laws of a co-operative society he shall communicate the order of refusal together with the reasons therefore to the society

[5] If it appears to the Registrar, that any amendment of the bye-laws of a co-operative society is necessary or desirable in the interest of such society or to give effect to the provisions of the Act or rules made thereunder

The Registrar may, by order call upon the co-operative society to make the amendment proposed by him in such manner as may be prescribed and within such time as he may specify

[6] If such amendment is not made by the co-operative society within the time specified in the said order, notwithstanding anything contained in the Act, the registrar may after giving the co-operative society an opportunity of being heard, register the said amendment and forward a copy thereof to the co-operative society along with a certificate signed by him which shall be conclusive evidence that the amendment has been duly registered

5. 13 - When amendments of bye-laws come into force

Subject to any appellate order under Section.106,

- an amendment of the bye-laws of a co-operative society shall, [unless it is expressed to come into operation on a particular day]
- come into force on the day on which it is registered.

Rulings

1] Section 12 and 13- Amendment of Bye-laws affecting another society

Petitioner society was adversely affected by reason of the amended bye-law of Farmers Service Co-operative.

A society cannot extend its area of operations to an area of a different society likely to be affected by making a bye-law and obtain approval from the concerned authorities without reference whatsoever to the society, the area of which is taken over under the bye-law.

The granting of approval by the concerned authorities for such amended bye-laws of a society without affording an opportunity to the society likely to be affected by such amendment would be against the principles of natural justice.

[Kundawada Service Co-operative Society Vs State of Karnataka 1981(1) Kar. LJ.Sh.N.71 (DB)]

2] Co-operative bank proposing to enter in to an area of operation of another similar society seeking permission for amendment of bye-law.

Joint Registrar to issue notice to former existing society and provide an opportunity of hearing before amendment of bye-law

Unless the preexisting societies are heard the Registrar himself will not be able to assess the possible damage or destruction and to this extent, therefore, the appellants were justified in their plea that the Joint Registrar was in error in having sanctioned due amendment of the bye-laws without notice to them.

[Bhatkal Urban Co-operative Bank Ltd., Bhatkal and others Vs State of Karnataka and Another, 1994[4] Kar.LJ.303 (DB)]

3] Section 13 – Rule 6 of the KCSR, 1969

Amendment of Bye-laws – Approval – inordinate delay in taking action - High Court issued direction for taking action within 30 days.

[B.T.Subbarangayya Vs Registrar of Co-operative Societies, 1988(1) Kar.Lj.387:ILR 1988 Kar.2179]

S. 14 - Amalgamation, transfer of assets and liabilities and division of Co-operative Societies

(1) A co-operative society may by a resolution passed by a two thirds majority of the members present and voting at a general meeting of the society,

a] divide itself into two or more co-operative societies, or

b] transfer its assets and liabilities in whole or in part to any other co-operative society,

which by a like resolution agrees to such transfer.

(2) Any two or more co-operative societies may by a resolution passed by a two thirds majority of the members present and voting

- at a general meeting of each such society
- amalgamate themselves and form a new co-operative society.

(3) The resolution of a co-operative society under sub-section (1) or (2) shall contain,

- all particulars of the transfer, division or amalgamation, as the case may be, and
- no such resolution shall have any effect unless approved by the Registrar

Provided that, in the case of a co-operative bank,

- the Registrar shall not approve such resolution

- without the previous sanction in writing of the Reserve Bank

(4) When a co-operative society, has passed any such resolution and it has been approved by the Registrar the co-operative society shall give notice thereof in writing

- to all its creditors and
- such members of the society as did not vote in favor of the resolution and
- notwithstanding any bye-laws or contract to the contrary,

Any creditor or any member to whom such notice is given

- shall during the period of one month from the date of service of the notice upon him,
- have the option of withdrawing his shares, deposits or loans, as the case may be.

5] Any member or creditor who does not exercise his option within the period specified in sub-section (4) and every member, who has voted in favor of the resolution, shall be deemed to have assented to the proposals contained in the resolution.

[6] A resolution passed by a co-operative society under this section shall not take effect until either,

- a) the assent thereto of all the members and creditors has been or deemed to have been obtained under this section, or
- b) all claims of members and creditors who exercise the option referred to in sub-section (4) within the period specified therein, have been met in full.

[7] Where a resolution passed by a co-operative society under this section involves the transfer of any assets and liabilities,

- the resolution shall not withstanding anything contained in any law for the time being in force,
- be a sufficient conveyance to vest the assets and liabilities in the transferee
- without any further assurance.

S. 14A – Power to direct amalgamation, division and reorganization in public interest

Omitted wef 23.09.1975

S. 14B - Registrar to prepare scheme for amalgamation of co-operative Banks in certain areas,

(1) Where an order of moratorium has been made by the Central Government under sub-section (2) of Section 45 of the Banking Regulation Act 1949, in respect of a co-operative bank the Registrar may, during the period of moratorium, prepare a scheme.

- for the re-organization of the co-operative bank, or
- for the amalgamation of the co-operative bank with any other co-operative bank;

[2] No such scheme shall be given effect to, unless it has been sanctioned by the Reserve Bank

Rulings

1] Amalgamation of Co-operative Bank

Since provision of State Co-operative Act under which scheme of amalgamation is promulgated, has received assent of President,

- Provision is immune from attack on ground of its infraction of fundamental rights guaranteed under Articles 14 and 19 of Constitution

Writ Petition by employee of erstwhile transferor bank, challenging his expulsion from absorption in service of transferee bank under scheme of amalgamation as discriminatory and violative of Article 14 of Constitution,

held not maintainable”

[D.M.Nagarajasetty Vs The Registrar of Co-operative Societies in Karnataka, Bangalore and Another. 2000(1) Kar.LJ.595B (DB)]

2] Section 14-B – Constitution of India, Article 21 and 226 Amalgamation of Co-operative Banks

Exclusion of employees of erstwhile transferor bank from being absorbed in service of transferee bank.

- Exclusion is to be worked out and recommended by independent screening committee.
- Employees allowed to continue in transferee bank provisionally
- till screening committee gives its recommendations and on condition that they are liable to be discharged if they are found surplus or undesirable by screening committee.
- Employees who have accepted such condition, cannot raise industrial dispute against transferee bank

Non-absorption does not amount wrongful termination of service, but amounts only to refusal to take in to service, person whom bank finds undesirable

No employer can be forced to employ person whom he considers not suitable – question of application of principles of natural justice held does not arise.

Non absorption on ground of undesirability does not cast stigma on unabsorbed employee No writ lies against order of transferee bank refusing to absorb in its service, employee of erstwhile transferor bank.

[D.M.Nagarajasetty Vs The Registrar of Co-operative Societies in Karnataka, Bangalore and Another. 2000(1) Kar.LJ.595A (DB)]

S. 14C - Liability of Co-operative Bank to the Deposit Insurance Corporation

Notwithstanding anything contained in section 14 or other provision of this Act,

- where a co-operative bank being an insured bank within the meaning of the Deposit Insurance Act, 1961 is amalgamated or re-organized and
- the Deposit Insurance Corporation has become liable to pay to the depositors of the insured bank under sub-section [2] of section 16 of that Act,
- the bank with which such insured bank is amalgamated or the new co-operative bank formed after such amalgamation or as the case may be
- the insured bank or transferee bank shall be under an obligation to repay the Deposit Insurance Corporation in the circumstances, to the extent and in the manner referred to in section 21 of the Deposit Insurance Corporation Act, 1961.

S. 15 - Cancellation of Registration Certificates of Co-operative Societies in certain cases

(1) Where the whole of the assets and liabilities of a co-operative society are transferred to another co-operative society in accordance with the provisions of section.14 (or section.14-A),

- the registration of the first mentioned co-operative society shall stand cancelled and
- that society shall be deemed to have been dissolved and shall cease to exist as a corporate body.

(2) Where two or more co-operative societies are amalgamated in to a new co-operative society in accordance with the provisions of Section 14, (or section.14-A),

- the registration of each of the amalgamating society shall stand cancelled on the registration of the new society and
- each such society shall be deemed to have been dissolved and shall cease to exist as a corporate body.

(3) Where a co-operative society is divided in to two or more co-operative societies in accordance with the provisions of section - 14 or Section 14A,

- the registration of that society shall stand cancelled on the registration of the new societies and
- That society shall be deemed to have been dissolved and shall cease to exist as a corporate body.

CHAPTER III

Members of co-operative societies and their rights and liabilities

Section – 16 - Persons who may become members

(1) Subject to the provisions of Section 17, no person shall be admitted as a member of a co-operative society except the following namely,

(a) an individual **who needs the services** of such co-operative society and is competent to enter into contract under the Contract Act 1872 (Central Act IX of 1872)

(a-1) a **depositor**

(b) **any other co-operative society,**

(c) the **State** Government or the **Central** Government,

(d) the **LIC** of India, **State Warehousing Corporation** and such **other** institutions as may be **approved** by the State Government,

(e) a **firm, a company or any other body corporate** constituted under any law for the time being in force including a **society registered** under the Karnataka **Societies Registration Act, 1960,**

(f) a **Market Committee** established under the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966,

(g) a **local authority.**

Explanation -

For the purpose of this clause, local authority means, a Municipal Corporation, Municipal Council, Town Panchayat, Zilla Panchayat, Taluk Panchayat or Gram Panchayat constituted under any law for the time being in force.

(h) a **self help group**

(2) No co-operative society shall without **sufficient cause refuse** admission to membership to any person duly qualified therefore under the provisions of this Act, Rules and Bye-laws.

(3) Any person seeking admission as a member of any co-operative society shall **make an application in writing** for admission as a member of such society.

(4) Every co-operative society **shall within three months** from the date on which application for admission was delivered to such society,

- **either admit or refuse** to admit any such person as a member, and
- shall send a **written communication of such admission or refusal** to the applicant before the said period.

If no communication of admission as a member is received by the applicant before the expiry of the said period, his application for admission shall be **deemed to have been refused** by the co-operative society on the last day of the said period for purposes of **Section 105A**.

(5) Notwithstanding anything contained in the preceding sub-sections or section 18 or the rules and the bye-laws of such co-operative society or classes of co-operative societies as the State Government may by notification, specify,

- an **individual** who makes an application for admission as a member of such co-operative society shall be,
- **deemed to have been admitted** as an **associate** member of such co-operative society
- from the date of receipt of such application.

Notification

In exercise of the powers conferred under sub-section (5) of section 16 of the KCS Act (Amendment) Ordinance, 1976, Government of Karnataka vide Notification No.RDC 33,CEA 76(11) (2) Bangalore, has notified the following classes of Co-operative societies for the purpose of said section,

All Agricultural Credit Co-operative Societies by whatever name called, All Primary Co-operative Land Development Banks

(6) If the society **does not within 60 days** from the said date, prefer an application to the Registrar objecting to such admission such individual shall be deemed to have been admitted as a member.

(7) Where the application under sub-section - 6 is preferred, the Registrar shall after giving to the individual and the co-operative society concerned an opportunity of making representation, by order reject the application, if he finds that the individual is not disqualified under Section 17 for being a member and thereupon the individual shall be deemed to have been admitted as a member of the co-operative society concerned.

(8) Notwithstanding anything contained in this section and section 17 the State Government shall be deemed to have been admitted as a member of the co-operative society on the day, it subscribes to the share capital of such co-operative society.

Rulings

Bye-laws and amendments-

1] Section 16 and 17 – Bye-laws –Amendment – Validity

An amendment of the bye-laws of a society which has the effect of removing certain individuals from membership and taking away their right to elect their representatives would be invalid.

[K.N.Pattansetty Vs Registrar of Co-operative Societies, (1975)1 Kar.LJ.JR.70 Sh.N. 211]

2] Section 16 and 17 – Bye-law disqualifying from membership – Validity

A society cannot make a bye-law effecting the removal of a member

The power conferred by Rule 5 cannot be extended to make bye-laws for removing an existing member

[Shiva yogi Vs Registrar of Co-operative Societies ILR 1973 Mys.309 (DB)]

Section – 17 - Disqualification for membership

(1) No person shall be eligible **for admission as a member** of a co-operative society, if he –
a) has applied to be adjudicated an insolvent or is an un discharged insolvent, or

- b) has been sentenced for any offence, other than an offence of a political character or an offence not involving moral turpitude, such sentence not having been reversed or the offence pardoned and a period of five years has not elapsed from the date of expiry of the sentence,
- c) carries on business of the kind carried on by such co-operative society,
- d) is already a member of a co-operative society, carrying on business of the same kind as itself;

(2) If a member becomes subject to any of the disqualifications specified in sub-section (1), he shall be deemed to have ceased to be a member from the date when the disqualification was incurred.

(2A) If a member fails to fulfill his obligations as a member under the Act, rules or bye-laws for a continuous period of three years, he shall on the expiry of such period, cease to be a member.

(3) If any question arises as to whether a member is deemed to have ceased to be a member under sub-section (2) or (2A),

The Registrar may either suo motu or on a report made to him and after giving an opportunity to the person concerned of being heard, decide the question.

Rulings

S. 18 - Nominal or Associate Members

[1] Notwithstanding anything contained in section 16, a co-operative society may admit

- (a) any individual as a nominal or associate member,
- (b) any banking company as a nominal member

Explanation-

In this sub section

- “Banking Company” shall have the same meaning, as is assigned to it in the Deposit Insurance Corporation Act, 1961.
- (c) Any firm, company, co-operative society or any body or corporation constituted by or under any law for the time being in force, as a nominal or associate member,

(d) Self help group as nominal members

[2] A nominal member, shall not be entitled to any share in any form whatsoever in the assets or profits of the society and

A nominal member who is an individual shall not also be entitled to become an office bearer of the society.

[3] An associate member may hold shares but shall not be entitled to become an office bearer of the society.

[4] Save as provided in this section a nominal or associate member shall have such privileges and rights of a member and be subject to such liabilities of a member as may be specified in the bye-laws of the society.

Clarification regarding admitting minors as associated and nominal members

RSR.57.XMA.88-89 Bangalore Dated 22.3.1989

Sub - Clarification regarding admitting minors as associate and nominal members in student's co-operative stores

A doubt has been arisen whether the students below the age of 19 years can become the members of the Students Co-operative Stores, where such stores are organized for their benefits only.

The Government in their letter No.CMW.206.CLM.88.Dated 27.1.1989 has clarified that the section 18 of the KCS.Act, 1959, implies that a co-operative society can admit 'minors' as associate or nominal members.

Thus the students in the age group of 12 to 18 years can be enrolled as nominal or associate members

Hence, you are requested to take action to enroll the students between the age group of 12 to 18 years as nominal or associate members in student's co-operative stores

However, care should be taken to incorporate such provision in the bye-law before enrolling students

S. 18A - Cessation of membership

A person shall cease to be a member of a co-operative society,

[a] In the case of an individual, on his or her,

- (i) death;
- (ii) resignation,
- (iii) removal or expulsion in accordance with bye-laws of the co-operative society or,
- (iv) transfer of whole of his or her share or interest in the co-operative society to another member

[b] In the case of a firm, company, co-operative society or corporate body,

- (i) on dissolution of the firm or a corporate body,
- (ii) on winding up of a company or a co-operative society,

S. 19 - Member not to exercise rights till due payment are made.

Save as otherwise provided in sub-section (8) of section 16,

No member of a co-operative society shall exercise the rights of a member, unless

- he has made such payment to the society in respect of membership or
- has acquired such interest in the society, as may be specified in the bye-laws

S. 20 - Vote of members

(1) No member of a society shall have more than one vote in the general meeting or in the election of the members of the committee of the co-operative society.

Provided that -

Where the State Government is a member of a co-operative society,

- each person nominated or deemed to have been nominated by the State Government on the committee of such co-operative society
- shall have one vote.

(2) The following shall not have the right to vote at a general meeting or an election of the members of the committee of the co-operative society in which they are members, namely,

- (a) a nominal or associate member

- (a-i) an individual member who is a defaulter,
- (a-ii) members admitted as per clauses (d), (e), (f) and (g) of sub-section (1) of section 16, who are defaulters.
- (a-iii) a person who has become member of a society not later than 12 months prior to the date of such meeting,

Provided that

Nothing in this clause shall apply to members of a society, participating in the first general body meeting of such society held immediately after its registration.

- (b) a co-operative society,
 - (i) the committee of which stands superseded or to which a special officer is appointed under section 31 of the Act,
 - (ii) which is ordered to be wound up under section 72,
 - (iii) which has not commenced working or has ceased to work,
 - (iv) Whose principal object is to advance loans and whose percentage of recovery is less than 75% of the total demand for the co-operative year immediately preceding the co-operative year during which the meeting is held and which has failed to pass on, to the financing bank or the credit agency, as the case may be, to which it is indebted;
 - (a) 75% of the demand of the society, if the demand of the society is less than the demand of the financing bank or credit agency, or
 - (b) the actual demand of the financing bank or credit agency, if the demand of the society is more than the demand of the financing bank or credit agency,
 - not later than 15 days of the close of the said co-operative year
 - (c) omitted wef 15-08-1998
 - (v) Other than the society referred to in sub-clause (iv) which is a defaulter

Explanation

A member shall be deemed to be a defaulter, if he has failed to pay

- the arrears of any kind due by him to the society **as borrower**
- or has failed to pay any other amount due by him to the society or
- in any other capacity
- **at least 15 days before** the date of the general meeting or the date of election of the members of the committee

- **after a notice of not less than 30 days** in this behalf has been issued to him.

[3] An agriculture credit society,

- which is the member of the concerned District Co-operative Bank,
- but has been permitted by the Registrar to raise loan from another financing agency for the purpose of financing its members
- shall not have a right to vote at a meeting as such District Co-operative Bank.

Rulings

1] Section 20(1) – Meaning of “borrower” and “non-borrower”

Meaning of “borrower” and “non-borrower” as provided in Explanation 1 and 2 of Section 20(1) of the Act

The two explanations in Explanations 1 and 2 are mutually exclusive and deal with two different categories of person. “At any time” under Explanation 2 does not mean within 30 days of the date of election.

A non-borrower under explanation 1 cannot be categorized as a borrower under Explanation 2 if he borrows any money from the bank after the period prescribed under Explanation - 1
[Muniyappa. K Vs Tahsildar and RO for elections 1986(2) Kar.LJ.142 ILR 1986 Kar.2698 (DB)]

2] Section 20[2][a-iii] / Right to vote

Right to vote

Bar on new members for period of one year on exercise of –

Intention behind provision is to prevent abuse by outgoing committee to enroll members of their choice for purpose of getting themselves or their friends elected

Provision is regulatory, not unconstitutional.

[Arya Vyasa Srirama Co-operative Society Limited Shimoga and Others Vs State of Karnataka and Others, 2001[5] Kar.LJ.238H]

S. 21 – Manner of exercising vote -

[1] Every member, every delegate and every nominee shall exercise his vote in person and not by proxy at a general meeting or an election of the members of the committee of a co-operative society

[2] Notwithstanding anything contained in sub-section (1) –

(a) the committee of a co-operative society which is a member of another co-operative society may appoint one of the members of the committee to vote on its behalf in the affairs of that other society

Provided that where a new committee has been elected to a co-operative society, such newly elected committee shall send a delegate or nominee to any other co-operative society where it is a member

(b) where the LIC of India, the state warehousing corporation or such other institutions approved by the state Government or a market committee or a local authority or a firm, or a self help group, a company or any other body corporate constituted under any law for the time being in force is a member of a co-operative society,

- a person nominated by such institution, market committee or local authority or a firm, or a self help group, a company or any other body corporate constituted under any law for the time being in force, may vote on its behalf in the general meeting or the election of the members of the committee of the society

(3) A member once nominated by the committee of a co-operative society under clause (a) of sub-section (2) to vote on its behalf in any meeting of any other co-operative society shall not be changed except by a resolution passed in a general body meeting by a majority of the members present and voting in such meeting

S. 22 – Restrictions on holding of shares -

Omitted with effect from 15.08.1998

S. 23 – Restrictions on transfer of shares or interest

[1] Omitted with effect from 15.08.1998

[2] No transfer by a member of his share or interest in a co-operative society shall be valid unless –

- (a) the member has held such share or interest for not less one year
- (b) the transfer is made to a member of the society and
- (c) the transfer is approved by the committee of the society

S. 23. A – Refund of value of share

(1) If an individual member of a co-operative society the principal object of which is to advance agriculture loans is not indebted to such society, then the value of all except one of the shares held by him shall on his application be refunded to him

(2) If the amount of debt due by such member to the co-operative society is equal to or less than the value of all except one share held by him in such society then on the application of such member the value of such number of shares as are required to discharge the amount of debt may be adjusted in full discharge of such debt and the value of the remaining shares except one shall be refunded to him there upon, the share certificates relating thereto shall be cancelled

S. 24 – Transfer of interest on death of member –

(1) On the death of a member of a co-operative society the society shall transfer the share or interest of the deceased member –

(a) to the person or persons nominated in accordance with the rules and if the nomination subsists or

(b) if no person has been so nominated or the nomination does not subsist,

(i) where the shares or interest of the deceased member does not exceed one lakh rupees, to such person as may appear to the committee to be the heirs or legal representatives of the deceased member on the execution by such persons of an indemnity bond with such sureties as it may require

(ii) where the share or interest of the deceased member exceeds one lakh rupees, to such person or persons as produce a succession certificate or other legal authority granted by a competent court of law

Provided that

- such nominee, heir or legal representative as the case may be is admitted as a member of the society

Provided further that

- nothing in this sub section shall prevent a minor or a person of unsound mind from acquiring by inheritance or otherwise the share or interest of a deceased member in a co-operative society

(2) Notwithstanding anything contained in sub-section (1), any such nominee, heir or legal representative as the case may be, may require the society to pay to him the value of the share or interest of the deceased ascertained in accordance with the rules

(3) A co-operative society may pay all other monies due to the deceased member from the society to such nominee or heir or legal representative as the case may be

(4) All transfers and payments made by a co-operative society in accordance with the provisions of this section shall be valid and effective against any demand made upon the society by any other person

S. 25 – Liability of past member and estate of deceased member –

(1) Subject to the provisions of sub-section (2) the liability of a past member or of the estate of a deceased member of a co-operative society for the debts of the society as they existed –

- (a) in the case of a past member on the date on which he ceased to be a member, and
- (b) in the case of a deceased member, on the date of his death shall continue for a period of two years from such date

(2) Where a co-operative society is ordered to be wound up under section 72, the liability of a past member or of the estate of a deceased member who ceased to be a member or died within two years immediately preceding the date of the order of winding up, shall continue until the entire liquidation proceedings are completed, but such liability shall extend only to the debts of the society as they existed on the date of his ceasing to be a member or death as the case may be

CHAPTER IV

Management of Co-operative Societies

S. 26 – Final authority in a co-operative society

(1) Subject to the provisions of this Act, the rules and the bye-laws, the final authority of a co-operative society shall vest in the General Body of members

Provided that nothing contained in this sub-section shall affect the exercise by a committee or any office bearer of a registered co-operative society of any power conferred on such committee or such office bearer by this Act, the rules and the bye-laws

(2) Notwithstanding any thing contained in sub-section (1) –

(a) where the area of operation of a co-operative society is not less than the area that may be prescribed or

(b) where a co-operative society consists of not less than the number of members that may be prescribed,

The Registrar may amend the bye-laws of the co-operative society providing for the constitution of a similar body consisting of such number of members of the co-operative society as may be prescribed, elected in accordance with the rules (herein after referred to as the representative general body) to exercise all or any of the powers of the general body as may be specified in the bye laws and any reference by whatever form or words in this Act to the general body or a meeting thereof shall have effect as if such reference were a reference to representative general body or a meeting thereof as the case may be

(3) The amendments of the bye-laws made by the Registrar under sub-section (2) shall be deemed to have been registered under section 12

(4) The exercise of any power by the representative general body shall be subject to such restrictions and conditions as may be prescribed by the rules or by the bye-laws

S. 26A - Partnership in co-operative societies -

(1) Any two or more co-operative societies may,

- by resolution passed by 3/4th majorities of the members
- present and after voting at a general meeting
- of each of such co-operative societies,
- may enter into partnership
- to carry out any one or more specific business.

A written notice of the date of general meeting shall be given to each member before 10 clear days of such meeting.

(2) Nothing in the Indian Partnership Act, 1932 shall apply to such partnership.

Provided that

- no such partnership shall be entered into without prior permission of the Registrar in the case of an assisted society and of the Reserve Bank of India in the case of a co-operative bank.

S. 26B - Collaboration by Co-operative Societies -

(1) Any co-operative society or co-operative societies may enter in to collaboration with any Government undertaking or any other undertaking approved by the State Government to carry out any one or more specified business provided in the bye laws of such society or societies including industrial investment, financial aid or marketing and management expertise.

Provided that no such collaboration shall be entered into

- without the prior approval of the Registrar in the case of an assisted society and
- of the Reserve Bank of India in the case of co-operative bank.

(2) Before approving such schemes of collaboration under sub-section (1), the Registrar or Reserve Bank of India, as the case may be shall have due regard to the following matters, namely,

(a) the scheme is economically viable,

- (b) it can be implemented without, in any way, altering the co-operative character of the co-operative society or the co-operative societies,
- (c) the scheme is in the interests of the members of the co-operative society or co-operative societies, or is in the public interest or in the interest of the co-operative movement, in general,
- (d) in the case of co-operative bank, the scheme is not detrimental to the interest of depositors or Banking Policy.

(3) If default is made in calling a general meeting in accordance with the provisions of sub-section (1) the Registrar or any other person authorized by him in this behalf shall without prejudice to the provision of sub-section (2) convene the general meeting for the purpose of sub-section (1)

S. 27 – Annual General Meeting

[1] Every co-operative society shall convene a general meeting of its members once in a year before 30th day of September for the purpose of –

- (a) consideration of annual report presented by the committee,
- (b) consideration of latest available audit report and the report of the committee thereon
- (c) consideration of enquiry report if any,
- (d) disposal of net profits,
- (e) review of operational deficit, if any, and program to reduce such deficit,
- (f) approval of the program of activities of the society prepared by the committee for the ensuing year,
- (g) approval of the annual budget
- (h) creation of specific reserve and other funds,
- (i) approval of membership of the co-operative society in other co-operative societies,
- (j) review of annual report and accounts of any subsidiary organization if any
- (k) perusal of list of employees recruited who are relatives of members of the committee or the chief executive,
- (l) amendment of bye-laws,
- (m) formation of code of conduct for the members of the committee, office bearers and employees of the co-operative society,

- (n) note on admission or termination of members and
- (o) consideration of any other matter which may be brought forward in accordance with bye-laws,

Provided that the Registrar may by a special order extend the period for holding such meeting by a period not exceeding six months

(2) If default is made in calling a general meeting in accordance with the provisions of sub-section (1) the Registrar shall by order –

(a) In case of an office bearer or member of the committee whose duty it was to call such meeting and who without reasonable excuse failed to call such meeting, disqualify him for being elected as and for being an office bearer or member of the committee for such period not exceeding five years

(b) In case of an employee of the society whose duty it was to call such meeting and who without reasonable excuse failed to call such meeting, impose a penalty of rupees one thousand and may also direct the committee to initiate disciplinary action on such employee and if the amount so fined remains unpaid, it shall be recovered as arrears of land revenue

Provide that no order shall be made under this sub-section unless a reasonable opportunity of being heard is given to the person against whom the order is to be made

(3) If default is made in calling a general meeting in accordance with the provisions of sub-section (1), the Registrar or any other person authorized by him in this behalf shall without prejudice to the provisions of sub-section (2) convene the general meeting for the purpose of sub-section (1)

S. 28 – Special General Meeting

(1) The committee of a co-operative society may at any time call a special general meeting of the society and shall call such meeting within one month

- after receipt of a requisition in writing from the Registrar or
- from fifty members or
- one fifth of the total number of members
- whichever is less to transact a specified business

(2) If a special general meeting of a co-operative society is not called in accordance with the requisition referred to in sub-section (1) the Registrar or any person authorized by him in this behalf shall have the power to call such meeting and that meeting shall be deemed to be a meeting called by the committee and shall have power to transact all business which can be transacted at the annual general meeting under the bye laws of the society and such other business as is specially mentioned in the requisition made by the Registrar

S. 28A – Management of co-operative societies vest in the committee –

(1) The management of a co-operative society shall vest in a committee constituted in accordance this Act, the rules and the bye laws of such society. The committee shall exercise such powers, discharge such duties and perform such functions as may be conferred or imposed upon it by this Act, the rules and the bye laws

(2) The committee of a co-operative society shall consist of not less than nine but not exceeding the number of members specified below excluding Government nominees and the Chief Executive –

(i) in the case of a primary society and a secondary society whose area of operation extends to

(a) a part of a taluk, - 9 members,

(b) whole taluk, - 11 members,

(c) beyond a taluk but not beyond a district - 13 members

Provided that in the case of an urban co-operative bank having an area of operation not beyond a district the maximum number shall not exceed 15 members

(d) beyond a district, 18 members

(ii) in case of a federal society, excluding Apex Societies 21 members

(iii) in the case of an Apex society 32 members

Provided that a member shall not represent more than one constituency in the committee of a society

(3) In the committee of every primary society there shall be reserved

(i) one seat to be filled by election in favor of the persons belonging to the SCs and STs

(ii) one seat to be filled by election in favor of women

Provided that no such reservation shall be required to be made in case of a society where there are no members belonging to the SCs, STs and women

(4) Subject to the provisions of section 29A and 39A, the term of office of the members of the committee shall be five co-operative years and they shall be deemed to have vacated office as such members of the committee on the date of completion of the said term.

Provided that –

- if an election to the committee of any co-operative society had already been held in accordance with the bye laws of such society, prior to the commencement of the KCS (Amendment) Act 1997, the term of office of the committee of such co-operative society shall be three years including the co-operative year in which such election was held

Explanation –

For the purpose of this sub-section where elections to the committee have been held in the middle of a co-operative year for the purpose of computing the term of office of the committee the remaining part of the co-operative year shall be deemed to be a co-operative year

Provided further

- that the first general meeting of a society after registration shall be held within one month from the date of its registration to elect the first committee to manage the affairs of the society and the term of office of such committee shall also be five co-operative years

Provided also

- that the first general meeting of the co-operative society or societies formed after amalgamation or reorganization or division in accordance with section 14 shall be held within three months from the date of registration to elect the first committee to manage the affairs of the co-operative society or societies and the term of office of such committee shall also be five co-operative years

(5) If the new committee is not constituted under section 29A, on the date of expiry of the term of office of the committee or if the elections are not held within the time limits specified in section 39A, the Registrar or any other officer within whose jurisdiction the society is situated and who is authorized by the Registrar shall be deemed to have assumed charge as administrator and he shall for all purposes function as such committee of management.

The Administrator shall subject to the control of the Registrar, exercise all the powers and perform all the functions of the committee of the co-operative society or any office bearer of the co-operative society and take all such actions as may be required in the interest of the co-operative society.

Provided that

- the Registrar shall appoint an Administrator to a co-operative society or each of the co-operative societies formed after amalgamation or reorganization or division in accordance section 14 for a period of three months and the Administrator so appointed shall arrange for holding elections to a committee of such co-operative society or the societies as the case may be.

(6) The members of the committee shall elect among themselves the office bearers of the co-operative society. The election of the office bearers shall be by secret ballot.

S. 28B. Committee to arrange for election

(1) The committee shall make arrangement for election of members of the next committee in accordance with the Act, rules and the bye laws

(2) The members of the committee who have failed to make arrangements for election within the time limit specified in section 39-A, shall be deemed to have vacated their office on the last day of the time limit so specified and such members shall not be eligible for election as members of the committee for a period of five years from the date of expiry of their term

(3) The Administrator who shall assume charge under sub-section (5) of section 28-A, shall as early as possible but within a period of six months arrange for the constitution of a new committee of the society in accordance with the Act, rules and the bye laws

Provided that

- the Administrator so appointed shall not continue for a period of three months in respect of a society in co-operative credit structure

5. 29 – Nominees of government on the committee of an assisted co-operative society

(1) The State Government may nominate not more than three persons as its representatives on the committee of any assisted society of whom one shall be a person belonging to the SCs / STs and one shall be a woman

(2) The persons so nominated shall not have the right to become office bearers of primary societies and any other class or classes of co-operative societies as may be specified by the State Government from time to time

(3) The person nominated as a member of a co-operative society under sub-section (1) shall hold office as such member during the pleasure of the State Government

(4) Where an officer of the State Government is nominated under sub-section (1) such officer may if unable to be present himself at any meeting of the committee depute a sub-ordinate officer to the meeting as his representative and such sub-ordinate officer shall be deemed to be a person nominated as a representative of the State Government for the purpose of such meeting.

(5) The nominated member under sub-section (1) shall perform the following duties, namely –

(a) to attend meetings of the committee

(b) to ensure implementation of Government policies

(c) to register his vote of dissent in all matters in which, according to the best judgment, the resolutions sought to be carried in the committee meetings are not in the interests of the society or of the co-operative movement or are likely to be prejudicial to the interests of the society or of the co-operative movement

(d) to register his vote of dissent when the meeting of the committee seeks to pass a resolution contravening any express order of the State Government or the Registrar or any provisions of the Act or the rules or the bye laws of the society and

(e) to keep the registrar or the Government apprised of such resolution under clause (c) or clause (d) if adopted by majority of votes

S.29A. Commencement of term of office

(1) The term of office of the members of the committee shall commence on the date on which the majority of the elected members of the committee assume office or the term of the outgoing committee expires, whichever is later

(2) Notwithstanding anything contained in this Act, or the rules or the bye laws of a co-operative society, the committee shall be deemed to be duly constituted when majority of elected members of the committee are available to function as members of the committee after the election

(3) The committee deemed to be constituted under sub-section (2) shall be competent to exercise all the powers and perform all the functions of the committee of the co-operative society

(4) to (6) omitted wef 15-08-1998

S. 29B. Resignation of a member

A member of a committee [other than a nominated member]

- may resign his membership in writing under his hand and
- delivered to the Chief Executive and
- his seat shall become vacant on the expiry of 15 days from the date of such delivery
- unless within the said period of 15 days he withdraws such resignation in writing under his hand and delivered to the Chief Executive.

The Chief Executive shall place the letter of resignation before the meeting of the committee convened next after the delivery of such letter

S. 29C - Disqualification for membership of the committee

(1) No person shall be eligible for being elected or appointed or continued as a member of the committee of any co-operative society, if

(a) he is in default to that society or any other co-operative society in respect of any dues from him as borrower,

(b) he is interested directly or indirectly in any contract made with such co-operative society or in the sale or purchase made by such co-operative society privately or in auction or in any contract or transaction of the co-operative society (other than investment and borrowing) involving financial interests in that contract, sale, purchase or transaction,

(c) he or any of his near relation carries on a business of the kind carried on by such co-operative society or by a co-operative society of which such a co-operative society is a member,

Provided that -

- if any question arises as to whether any person is near relation or not, the case shall be decided by the Registrar and his decision shall be final.

(d) he is employed as legal practitioner on behalf of such co-operative society or accepts employment as legal practitioner against such co-operative society,

(e) he is a paid employee other than chief executive of, such co-operative society or of its financing bank,

(f) he is a near relation of a paid employee of such co-operative society.

Explanation -

For the purpose of this clause and clause (c) near relation means,

(i) husband, wife, unmarried daughter

(ii) father, mother, undivided son, undivided brother and unmarried sister; and

(iii) such other relations as may be prescribed to be a near relation.

(g) he was a paid employee of a co-operative society and was dismissed, removed or compulsorily retired from service of a co-operative society,

(h) he is disqualified to be a member of the society or to vote as such member,

(i) he has been convicted of an offence punishable under section 153-A or section 171-E or section 171-F or sub-section (2) or sub-section (3) of section 505 of the Penal Code, 1860 or under section 39-J or clause (b) of sub-section (2) of section 39-K of this Act, unless a period of six years has elapsed from the date of such conviction,

Section 39-J of KCS ACT –

Removal of ballot papers from polling station to be an offence.

Clause (b) of Sub-section (2) of Section 39-K

Electoral offences

(j) he has been convicted by a Court in India for any offence and sentenced to imprisonment for a term of not less than two years, unless a period of five years has elapsed from the date of his release,

(k) he is found guilty of corrupt practice within the meaning of section 39-C unless a period of six years has elapsed from the date on which he was found guilty,

(l) he has failed to remit to any co-operative society any amount (other than a loan) retained by him in contravention of the provision of the provisions of this Act, rules or bye-laws,

(m) he is a representative of a co-operative society which is in default to a financing bank or to any co-operative society in respect of any dues by the co-operative society which he represents, for a continuous period of one year,

Provided that,

- the disqualification under this clause for being continued as a member of the committee shall apply to a co-operative society

- which has defaulted in payment of an amount exceeding 30% of such dues

(n) he was a member of the committee which failed to make arrangement for election within the time limit specified in section 39-A,

(o) he is in the committee of a District Central Society or a Federal Society or an Apex Society as a representative of a co-operative society, and

(i) he ceases to be a member of the primary or secondary society which he represents, or

(ii) the society which nominated him as a representative withdraws his nomination, or

(iii) the committee of the society of which he is a member has been removed under section 30 or a special officer is appointed under section 31,

(iv) the society of which he is the representative has been liquidated.

(2) No person including a person elected by a co-operative society as a member of a committee of another co-operative society of which such co-operative society is a member shall be a President or Chairperson, Vice-President or Vice-chairperson or other office bearer of more than two co-operative societies.

(3) Omitted wef 15.08.98

(4) Nothing in sub-section (2) shall apply,

(i) to any person who is appointed by the State Government or the Registrar as the President or Chairperson, Vice-President or the Vice-chairperson; or

(ii) to any person who is merely a member of the committee.

(5) In the case of co-operative marketing societies, consumers co-operative societies and such class or classes of co-operative societies as may be specified by the State Government, by notification in the official gazette,

- no member shall be eligible for being appointed or elected as a member of the committee of such co-operative society
- if he does not fulfill the minimum qualifications relating to his transactions with the co-operative society
- up to such monetary limits as may be specified from time to time in such notification.

(6) There shall be no representative of individual members on the committees of a District Central Co-operative Bank or an Apex Co-operative Bank or such other classes of co-operative banks as may be prescribed.

(7) Any question as to, whether a member of the committee was or has become subject to any of the disqualifications mentioned in this section shall be decided by the Registrar after giving the person concerned a reasonable opportunity of being heard.

(8) If any member of a committee of a co-operative society during the term of his office,

(a) becomes subject to any disqualifications specified in sub-sections (1), (2) and (5) or

(b) has acted or has been acting

- fraudulently or with gross negligence or
- in contravention of the provisions of this Act, the rules or the bye-laws of the co-operative society or
- without the sanction of the committee of the co-operative society where such sanction is necessary or
- contrary to the resolution of the co-operative society or its committee or
- in any way prejudicial to the interest of the co-operative society, or

(c) has acted or has been acting persistently against the directions or orders issued under this Act, rules or bye-laws, or

(d) is not discharging his duties satisfactorily,

The Registrar may either on a report made to him or other wise, by order remove such member and in cases falling under clauses (a), (b), (c) and (d) of this sub-section disqualify him

from holding any office in the co-operative society for such period not exceeding five years, as may be specified in such order,

Provided that,

No order shall be made under this sub-section unless a reasonable opportunity of being heard is given to the person against whom the order is to be made

(9) A copy of the order made under sub-section (8) shall be communicated to the member and the co-operative concerned.

Rulings-

1] 29-C / Rejection of nomination paper and writ petition

Election to Managing Committee

Nominations filed by six persons were prima facie invalid but yet Returning Officer did not reject them, whereas he rejected the nomination paper of petitioner illegally. Petitioner filed writ petition for directing the Returning Officer to accept petitioner's nomination.

Whether writ petition is maintainable in the light of any alternative relief admissible under the Act?

It is clear that section 106 of the Act gives no remedy to the petitioner to have a fresh poll on the basis of the nomination paper which is found to be illegally rejected along with the other candidates who were contesting at the election which is set aside.

The right to contest on the basis of the nomination of which the candidate was deprived by the illegal rejection by the Returning Officer is lost forever.

Holding of a fresh election by the issue of a fresh calendar of events is not the same thing as the restoration of the right which the petitioner is seeking in this writ petition by praying for the quashing of the impugned order of the Returning Officer and also for a further direction to the Returning officer to accept the petitioner's nomination and to take the poll.

In the present case of the election court is not invested with the power to grant the relief which the petitioner has sought for and which can be granted in the writ petition.

On facts, this case falls under the exceptional category where flagrant irregularity has been committed and abuse of power indulged in by the Returning Officer and in which the court should stop the illegality at the earliest and if the court declines to interfere under Article 226, the court would be failing in its duty.

In the result, we make the following order,

I. In Writ Appeal No 2489 of 1991,

The writ appeal is allowed,

In reversal of the order made by the learned Judge in W.P.No 166778 of 1991 is allowed,

The acceptance of nomination of respondents 3 to 8 for election to the committee of management of Respondent 2, is set aside,

Consequently the final list of candidates [Annexure-E] prepared under Rule 14-A[3] of the KSCR Rules in so far as it relates to the inclusion of the names of Respondents 3 to 8 in it is set aside,

All further steps taken by the first Respondent including the poll held, are set aside,

The first Respondent, Returning Officer is directed to proceed further in accordance with law and declare the result of the election on the basis that Respondents 3 to 8 are not candidates for the election to the committee of the second Respondent.

II. Writ Appeal No.2487 of 1991 is dismissed

[L.Ramakrisnappa and another Vs Presiding Officer and Assistant Registrar of Co-operative Societies Bangalore and Others, 1991[4] Kar.LJ. 654B (DB)]

[ILR 1991 KAR.4421 (DB)]

[2] Section 29-C / Primary and Union Societies

Primary and Union Societies Removal of Director of Primary Society –

Effect on Directorship In Union of Societies –

Feasibility of raising dispute under section 70 and scope explained

[Boregouda Vs Assistant Registrar of Co-operative Societies ILR 1985 Kar.260]

[3] Section 29-C and 126-A / Disqualifying under section 29-C

Disqualifying under section 29-C – Registrar if can suo moto Act –

Time granted - Estoppel

[Tarihal V.S.S. Sangh Limited Vs Joint Registrar of Co-operative Societies and Others 1979[2] Kar.LJ.318]

[4] Section 29-C [1][c] and Explanation below clause [f]

As amended by Karnataka act 25 of 1998 / Constitution of India, Article 14, 19[1][c] and [g] and 21

Membership of committee –

Disqualification for – Amendment of provision to disqualify member if any of his “near relation” carries on business adverse to interests of society of which member is Director –

Amended provision held, is unconstitutional and liable to be struck down.

The definition of “near relation” extending to all kinds of persons who are really speaking not “near relations” would be detrimental to co-operative the movement.

It also would cause mischief in so far as any near relation over which that member has no control can start rival business and seek disqualification of that member....

The restriction placed on a member is arbitrary and irrational and it does not in anyway serve the co-operative movement and is violative of Article 14 and 21 of the Constitution.....

Accordingly the words “or any of his near relation on” in section 17[1][c] and the explanation immediately after and section 29-C[f] is liable to be struck down and is struck down as being violative of Article 14, 19 and 21 of the Constitution of India and in section 29-C [1][c] the words “or any of his near relation” and the proviso therein and the explanation of “near relation” immediately after section 29[1][f] and the words “or any of his near relation” and its explanation of “near relation” for the purpose of disqualification is liable to be struck down and is struck down as being violative of Article 14, 19 and 21 of the Constitution of India

[Arya Vyasya Srirama Co-operative Society Limited Shimoga and Others Vs State of Karnataka and Others 2001[5] Kar.LJ.238B]

[5] Section 29-C [7] and 70 / Challenge to Election / Scope of section 29-C [7] and section 70

Having regard to the non obstante clause in section 70[1] and to the principle of harmonious construction of statutes it has to be held that sub-section [7] of section 29-C applies only to cases where a member has incurred a disqualification subsequent to the election.

Where the alleged disqualification is one incurred prior to the election it can be decided only in a proceeding commenced under section 70 of the Act.

The Arbitrator appointed for the purpose under section 71[1][c] has jurisdiction to hear and decide the election

[Govindappa Vs Somasekhar Ishwarappa and Others 1979[1] Kar.LJ.124]

[6] Section 29-C [1][a] / Person in default to society / Reasonable opportunity of hearing

Person in default to society in respect of dues from him as borrower –

Proceedings for disqualification of person for membership of committee –

Ten days time sought for by person for producing document to prove that he is not defaulter, not given and order of disqualification passed straight way –

Action of authority in hurriedly passing order, held amounts to denying person reasonable opportunity of being heard –

Order, held is not sustainable in law

[Dinesh Suvarna Vs State of Karnataka and Others 2004[2] Kar.LJ.308]

S. 29D – Disqualification for being a president, Vice President, Managing Director, Treasurer or Secretary

Omitted wef 15.08.1998

S. 29E - Filling up of casual vacancy in the office of the members of the committee

Any vacancy in the office of members of the committee of a co-operative society by reason of death, resignation, removal or otherwise, shall be filled up in such manner as may be specified in the bye-laws of such society.

S. 29F – Election of President, Chairperson, Vice President or Vice Chairperson etc –

(1) Every co-operative society shall have a President, Chairperson, Vice President or Vice Chairperson and such other office bearers elected in accordance with the provisions of this Act, rules or bye-laws

(2) The President or Chairperson shall preside over meetings of the committee of the society and its sub committee as well as general meeting of the society

(3) In the event of vacancy in the office of President or Chairperson by resignation, death or removal or otherwise, the Vice President or Vice Chairperson, shall perform the duties of the President or Chairperson as the case may be, until a member is duly elected as President or Chair person

(4) The Chief Executive shall within 15 days from the date of constitution or deemed constitution of the committee after a general election and immediately before the expiry of the term of office of the President or the Chairperson, Vice president or vice chairperson convene a meeting in the prescribed manner of all the members of the committee for the purpose of electing President or Chairperson, Vice President or Vice chairperson and such other office bearers as are required to be elected under the byelaws of the co-operative society.

One of the members who is not a candidate for the election of President or Chairperson, Vice president or Vice Chairperson shall be chosen to preside over such meeting.

The Chief Executive shall not have a right to vote at such a meeting

Provided that -

- the members of the first committee elected in the first general meeting held after the registration of a co-operative society, shall elect the president, or chairperson, vice president, vice chairperson and other office bearers in such manner as may be prescribed

(5) Save as otherwise provided under this Act, the President or Vice-President, chairperson or Vice Chairperson or other office bearers, shall hold office for a term of two and half years.

(6) The chief executive shall as and when there is a casual vacancy in the office of the president or chairperson, vice president or vice chairperson or other office bearers, convene a meeting of the members of the committee for the purpose of filling up the casual vacancy and the provisions of subsection (4) shall mutatis mutandis apply

(7) The chief executive shall within 3 days from the date of the meeting, forward to the Registrar a copy of the notice convening the meeting and also a copy of the proceedings of the meeting.

(8) If the Chief executive fails to convene the meeting in accordance with subsections (4) and (6), the Registrar or any person authorized by him to do so shall convene a meeting for the purpose specified in the said subsections,

Section - 29G - Appointment of Chief Executive

(1) For every co-operative society there shall be a Chief Executive who shall be appointed and be removable by the society;

Provided that,

(i) Subject to such rules as may be prescribed, in case of an assisted society other than a society in co-operative credit structure, the Government or the Registrar shall have power to appoint and remove the Chief Executives and

(ii) in other cases, the Government or the Registrar may appoint Chief Executives where such society makes a request for appointment of a Chief Executive for a term which shall not be less than five years and remove such Chief Executive;

["Assisted Society" means a Co-operative Society which has received the Government assistance in the form of Share Capital or loan or grant or guarantee for payment of loan or interest [5.2 (a-1)]]

Provided further –

- that a society in co-operative credit structure shall have the option of getting the chief executive appointed by requesting the Government or the Registrar, as the case may be

(2) On the appointment of Chief Executive to a co-operative society by the Government or the Registrar, the person appointed as Chief Executive by the society, if any by whatever name called, shall cease to be the Chief Executive

(3) Salary and other conditions of services of the Chief Executive shall,

(i) in the case of an official of the State Government be as approved by the State Government; and

(ii) in other cases, be as approved by the Registrar,

(4) The Chief Executive shall be the Chief Administrative Officer of the society and shall, subject to the general supervision and control of the committee and such other conditions and restrictions as may be specified in the bye-laws,-

(a) be responsible for the general supervision and control over the employees of the society and be responsible for the day today management and business of the society;

(b) carry on the authorized and normal business of the society;

(c) make arrangement for repayment of loans due to the State Government and loans obtained on Government guarantee and other loans and shall send report to the Registrar in this behalf;

(d) be responsible for operating the bank accounts in accordance with the provisions of the bye-laws and shall make arrangements for safe custody of cash;

(e) sign and authenticate all documents of the co-operative society for and on behalf of the society

(f) be the custodian of all records and documents of the co-operative society and shall make arrangements for the correct maintenance of accounts and various books and records of the society and for the correct preparation and timely submission of periodical statements and

returns in accordance with the provisions of the Act, rules and bye-laws and as directed by the Registrar or the Director of Co-operative Audit;

(g) be responsible for convening the meeting of the general body, the committee of management and sub-committee in consultation with the President or Chairperson and recording and maintaining minutes of such meetings;

(h) assist the committee in the formulation of policies and objectives and planning;

(i) provide necessary information to the committee and appraise the committee the functions and operations of the society;

(j) sue and be sued on behalf of the co-operative society;

(k) perform such other duties and exercise such other powers imposed or conferred on him under the Act, rules or bye-laws

(4A) The Chief Executive shall have, right to attend every meeting of the society and the committee thereof and to take part in the discussion and to move any resolution

(4B) Notwithstanding anything contained in this Act or the Rules or the byelaws of a co-operative society, the chief executive shall be a member of the committee of the co-operative society

(5) In addition to the powers and duties specified in sub-section (4) the Chief Executive of an Apex Society

(a) shall have power to appoint with the approval of the committee and subject to the provisions of the Act, rules and the bye-laws, necessary staff;

(b) shall specify the powers, functions and duties of the employees of the society;

(c) may conduct, defend, compound or abandon any suit or legal proceeding instituted by or against the society or otherwise concerning the affairs of the society and also allow in consultation with the President or Chairperson, reasonable time for payment or satisfaction of any claims or demand by or against the society;

(d) may subject to the guidelines issued by the committee enter into negotiations and execute contracts;

(e) may delegate any of his powers to any employee

(6) In respect of primary co-operative societies the Chief Executive shall send a (copy of the receipt and payment account) duly certified by him every month

- to the Registrar and the financing bank or credit agency,
- within 15 days of the next following month.

He shall also send a certified copy of the proceedings, of the General Meetings and of the committee meetings

- to the Registrar and financing bank or credit agency
- with in 15 days from the date of such meetings.

Rulings

1] Section 29-G [6] / Extract of cash book and certified copy of proceedings of meetings

As amended by Karnataka Act 25 of 1998 –

Extract of cash book and certified copy of proceedings of meetings –

Requirement of furnishing of, to Registrar every month –

Imposition of duty of furnishing such returns to Registrar held, is by way of administrative measure and cannot be interfered with –

Mere fact that requirement is imposed only on primary societies and not on other societies does not render provision discriminatory

[Arya Vyasa Srirama Co-operative Society Ltd Shimoga and Others Vs State of Karnataka and Others 2001[5] Kar.LJ.238F]

S. 30 - Super Session of Committee

(1) If in the opinion of the Registrar, the committee,

(a) persistently makes default or is negligent in the performance of the duties imposed on it by this Act or the rules or the bye-laws or

(b) commits any act which is prejudicial to the interests of the society or its members or

(c) incurs losses for three consecutive years; or

- (d) has serious financial irregularities or frauds which have been detected or
- (e) fails to get its accounts audited for three consecutive years or
- (f) against which there are judicial directives to this effect or
- (g) is otherwise not functioning properly or
- (h) is not functioning in accordance with the provisions of this Act, the rules or bye-laws or any order or direction issued by the state government or the registrar including the direction issued under section 30B

The Registrar may after giving the committee an opportunity to state its objections, if any by order in writing, remove the said committee and appoint an Administrator to manage the affairs of the society for such period not exceeding six months as may be specified by the Registrar.

The Registrar may for the reasons to be recorded in writing, extend the period of such appointment for a further period of six months at a time and in any case such extension shall not exceed one year in the aggregate.

Provided that the supersession of the committee of a co-operative Bank shall be done only after consultation with the Reserve Bank of India

(2) The Administrator so appointed shall subject to the control of the Registrar and such instructions as he may give from time to time,

- exercise all or any of the functions of the committee or of any (office bearer) of the co-operative society and
- take such action as he may consider necessary
- in the interest of the society.

(3) The Administrator shall before the expiry of his term of office,

- arrange for the constitution of a new committee
- after holding the election in accordance with this Act, the rules and the bye-laws of the co-operative society.

Provided that in such an election -

- no member of the committee removed under Sub-section (1) shall, [not withstanding any thing contained in this Act, the rule or the bye-laws],
- be eligible for being elected as a member of the committee,
- for a period of four years from the date of super session of the committee under the said sub-section

(4) Before taking any action under sub-section (1) in respect of a co-operative society,

- the Registrar shall consult the financing banks
- to which it is indebted.

(5) Not withstanding anything contained in this Act, the Registrar shall in the case of a co-operative bank if so required in writing by the Reserve Bank of India,

- in public interest or
- in preventing the affairs of the co-operative bank being conducted in a manner detrimental to the interest of the depositors or
- for securing the proper management of the co-operative bank,

By order in writing,

- remove the committee of that co-operative bank and
- appoint an administrator to manage the affairs of the co-operative bank
- for such period as may, from time to time be specified by the Reserve Bank of India.

Rulings

[1] Section 30 / Super session of committee

Constitution of India, Articles 226 and 227 –

Super session of committee

Grounds for – Mistakes that occur in normal functioning of society like omission to send extract of cash book, delay in reconciling loan ledgers, delay in appointing Arbitrators, etc, cannot be ground for super session –

Act provides for machineries for rectification of such mistakes –

Committee newly elected for a term of five years cannot be super ceded within six months from date of its formation on ground of mistakes relating to period during which previous committee was in office –

Order of super session for such mistakes is to be held undemocratic, arbitrary and ultravires powers of Registrar

[M.Srinivase Reddy and Others Vs The Registrar of Co-operative Societies for Karnataka Bangalore and Others] [2000 [5] Kar.LJ.365A]

[2] Section 30 / Administrator can exercise the powers of the committee

Administrator can exercise, the powers of the committee but not powers which the general body alone exercise by resolution under section 14

[Rajaradhya Vs Joint Director of Co-operative Society 1974[2] Kar.Lj.Jr.4 Sh.N.12]

[3] Section 30 / Object of Super session of the Committee

Provision not violative of Article 19 of Constitution –

Object of superseding the committee when members of such committee of management are found guilty of charges, is in the interest of society –

Preventing re-entry of such members in the committee for a period of four years held to be not violative of Article 19

[Aswathanarayana A and Others Vs State of Karnataka and Others
1989[1] Kar.LJ.292]

[4] Section 30 / Requirements of –

It is not obligatory for the Registrar to consult the financing institution under sub-section [5] of section 30 before issuance of any show-cause notice cannot be said to be taken within the sub-section.

The only condition precedent before taking any action under sub-section [1] is to consult the financing institution to which the society is indebted.

It is not necessary that there should be an enquiry on the charges before forming an opinion against the Directors.

[Bomme Gouda Vs State of Karnataka 1973[2] Mys.LJ.Sh.24]

[5] Section 30 [1] / Duty to consider explanation

Duty to consider explanation offered to each of the allegations in show cause Notice where explanation offered was rejected by generalization without examining the same, the order was held to be a non-speaking order

[K.T.Puttegouda Vs The Deputy Registrar of Co-operative Societies and Others 1989[2] Kar.LJ.17]

[6] Section 30 [1] / Authority must consider every explanation

Show-cause notice alleging various acts of omissions and commissions –

Explanation submitted by committee members –

Order superseding management of co-operative society without going in to details of explanation –

Held, absence of discussion evidences non application of mind. Authority must consider every explanation offered in its order.

[Ibrahim Katnalsab Maskawale and Others Vs Joint Registrar of Co-operative Societies Belgium 1988[2]. Kar.LJ.213]

[7] Section 30 [1] / Opportunity of being heard

Super session of committee –

Order passed after issuance of show cause notice and duly considering the objection filed by the committee –

Order held to be not bad for not providing an opportunity of being heard before passing the same –

Explained –

So far as opportunity of being heard is concerned, all that is required under section 30[1] of the Act, is the Authority who wants to take action has to serve the show-cause notice and to proceed to pass orders, after consideration of objections, if any, filed by the persons concerned, which in fact has been rightly complied by the Deputy Registrar of Co-operative Societies.

Hence the question of affording an opportunity of personal hearing to the petitioners does not arise.

[Aswathappa and Others Vs Deputy Registrar of Co-operative Societies and Others, 1990[2] Kar.LJ.182A]

[8] Section 30 [1] and 108 – Super session of order by the Deputy Registrar

Super session order by Deputy Registrar –

Stay by Government pending consideration of legality of action of Deputy Registrar –

Power to pass order is available to Government under section 108

[M.D.Bannigol and Others Vs Hubli Municipal borough Primary Teachers Co-operative Credit Society and Others 1989[3] kar.Lj.556]

[9] Section 30[2] – Powers and functions of the Administrator

Administrator – Powers and functions of –

He has no power to enroll new members –

His duty is to manage routine affairs of society from day today –

He even though supersedes committee cannot exercise powers of committee, he can only perform its functions –

Enrolling new members is not performance of function but exercise of power which only committee can do –

Admission of new members by Administrator is without authority and new members so admitted are not eligible to participate in election

[K. Shantaraj Vs ML. Nagaraj and Others 1998[2] Kar.LJ.248B [DB]

[10] Section 30[3] and 28-B[3] –Time limit for Administrator to hold election

Superseded society –

Time limit for Administrator to hold election to constitute new management committee –

Administrator has to complete process before expiry of his term of office –

Court cannot fix any time limit different from one prescribed in statute –

Calendar of events for holding election approved and published by superseded committee does not bind Administrator appointed subsequently but before election could be held and he cannot be directed to adhere to such calendar of events

[BV.Munegouda and Others Vs State of Karnataka and Others 2000[2] Kar.LJ.135]

S. 30A - Appointment of Special Officer

Omitted wef 15.08.1998

S. 30B - Power to give direction in public interest

(1) Where the State Government is satisfied that,

- in public interest and
- for the purpose of securing proper implementation of co-operative and other development programs approved or undertaken by the State government or
- for specially safeguarding the interest of the members belonging the Scheduled Castes, Scheduled Tribes and other Backward Classes and
- ensuring reservations to persons belonging to such castes, tribes or classes in the services under the co-operative societies,

It is necessary to issue directions,

- to any class of co-operative societies generally or
- to any co-operative society or
- co-operative societies in particular,

It may issue directions from time to time and all such co-operative societies or the co-operative society concerned shall be bound to comply with such directions.

(2) The State Government may modify or cancel any directions issued under sub-section (1) and in modifying or canceling such directions may impose such conditions as it may deem fit.

(3) The State Government may by notification, delegate its power under this section to the Registrar subject to such restrictions and conditions as may be specified in the notification.

Rulings

1] Section 30-B / Powers of Registrar to issue in public interest

Directions – Powers of Registrar to issue, in public interest

Rule of Audi alteram partem to be complied with before issue of such directions –

Direction issued to co-operative societies not to withdraw and utilize interest accrued on reserve fund created and deposited in accordance with provisions of sections 57[2] and 58 is liable to be set aside for having been issued without hearing societies which are affected by direction and also for not specifying reason therefore, when there is no statutory provision prohibiting utilization of accrued interest.

[Chikodi Large Size Multipurpose Co-operative Society Limited Chikodi District Belgaum and Others 1998[2] Kar.LJ.302]

2] Section 30-B – Powers of State Government to issue order

Direction in public interest – Power of State Government to issue

Order issued by State Government directing Co-operative Bank to postpone for months, election to its Management Committee when Bank had already published calendar of events for holding election and process of election had already commenced –

Government order does not nullify calendar of events already published and on expiry of six months from date of receipt of Government Order, process of election should resume from stage at which it was temporarily stopped by Government Order

Where all events except holding of election were completed as per calendar of events, when process was interrupted by Government Order, only election can take place after Government Order ceases to be operative.

[Jindappa and another Vs State of Karnataka and Others 1999[2] KAR.LJ.634]

3] Section 30-B / Scope and ambit

Order NO.RDC 16 CIM 76 Dated 2.9.1976 – Scope and ambit explained

[Basavaraj Nagappa Mailwar Vs Common Cadre Authority ILR 1986 Kar.LJ.701 [DB]

S. 31 - Appointment of Special Officer by the Registrar

When can a Special Officer be appointed?

(1) Where the Registrar is of the opinion that,

- a co-operative society is not functioning in accordance with the provisions of the Act, rules or bye-laws
- on account of the number of members of the committee falling short of the required number to form a quorum due to disqualification, resignation or death or removal of a member,

The Registrar may, notwithstanding anything contained in this Act, rules or bye-laws, by order appoint a special officer for such co-operative, for such period not exceeding six months.

The Registrar may for the reasons to be recorded in writing

- extend the period of such appointment for a further period of six months at a time and
- in any case such extension shall not exceed one year in the aggregate.

Provided that the special officer so appointed shall not continue for a period beyond three months in respect of a society in co-operative credit structure

Giving opportunity is not required

(2) Before making an order under sub-section (1) it shall not be necessary for the Registrar to give any co-operative society or person likely to be affected by such order, an opportunity to state its or his objection, if any

Vacating the office

(3) On the issue of the order under sub-section (1),

- (a) the members of the committee of the co-operative society, if any, shall vacate and shall be deemed to have vacated their offices; and
- (b) the special officer shall be deemed to have assumed charge of the affairs of the co-operative society

Special officer to act as a committee

(4) The Special Officer shall subject to the control of the Registrar, exercise and perform all the powers and functions of the committee of the co operative society or any office bearer of the co-operative society and take all such actions as may be required in the interest of the co-operative society.

Special officer to arrange for election

(5) The Special Officer shall, before the expiry of his term, arrange for constitution of a new committee for the co-operative society in accordance with its bye-laws

Rulings

[1] Section 30 and 31-A / Administrator has power to organize election process with the members

Administrator has power to organize election process with the members as on the roles and by necessary implication, he is not vested with power to enroll new members of the society.

It would be clear from the language of the provisions of section 30 and 30-a that the Administrator or Special Officer subject to control of any of the functions of the society and in the interest of the society take such action as is necessary for proper functioning of the society as per law.

The power of Administrator given under the statute to conduct elections should be confined within the parameters set under the relevant provisions of the Act, Rules and Bye-laws.

The Administrator has no power to enroll new members but has the power to organize election process in accordance with the Act, Rules and Bye-laws of the society.

In other words he has to conduct elections with the members as on the roles and by necessary implication he is not vested with power to enroll new members of the society.

[K.Shantaraj and another Vs Nagaraj and Others AIR 1997 SC 2925]

[2] Section 31 – Special Official appointed

Constitution of India Article 226 and 227 / Special Officer appointed

Condition precedent for extending period of appointment of –

Recording of reasons for extension and prior approval of State Government, held are mandatory –

Such extension can be made for period of six months at a time and such extended periods cannot exceed one year in aggregate –

Extension of period of appointment of Special Officer ordered by Registrar without obtaining approval of State Government for no apparent reason and for periods aggregating more than one year, held is arbitrary, illegal and contrary to statutory provisions

[MH.Gavali Vs State of Karnataka and Others 2003[3] Kar.LJ.107A]

S. 31A - Delivery of possession of records and properties of the co-operative societies

(1) Where -

- a new Committee is elected or
- an Administrator or Special Officer is appointed by the Registrar or
- where the co-operative is ordered to be wound up and a Liquidator is appointed under this Act, and

Such new committee, Administrator or Special Officer or Liquidator

- is resisted in, or prevented from obtaining possession of the books, accounts, documents, securities, cash and other properties, whether movable or immovable of the co-operative society (hereinafter in this section referred to as the records and properties of the society)
- by the previous committee or superseded committee or by the committee of the society which has been ordered to be taken over or to be wound up, or
- a person who is not entitled to be in possession of the records and properties of the society,

The Registrar may on application by the new committee or Administrator or Special Officer or Liquidator, if satisfied,

- authorize in the prescribed form setting forth the reasons there for any officer subordinate to him not below the rank of a Senior Inspector of co-operative societies,
- to enter, search or break open any premises or place where such records and properties of the co-operative societies are kept and
- to seize any such records and properties of the co-operative society and
- to cause them to be delivered to the new committee, Administrator or Special Officer or Liquidator

(2) For the purpose of the proceedings under sub-section (1) the authorization aforesaid shall be conclusive evidence that the records and properties to which it relates belong to the co-operative society.

(3) The provisions of section 100, 101, and 102 of the Code of Criminal Procedure 1973 relating to searches and seizure shall mutatis mutandis apply to searches and seizures under this section

(4) The provision of sub-section (1) (2) and (3) shall mutatis mutandis apply if necessary records and properties of a co-operative society are not made available for purposes of inspection, inquiry or audit under this Act or for taking charge of office by the Chief Executive or any other employee.

CHAPTER V

Privileges of co-operative societies

S. 32 - First charge of co-operative societies on certain assets

(1) Not withstanding anything contained in any law for the time being in force, but subject to any prior claim of the Government in respect of land revenue or any money recoverable as land revenue,

- any debt or outstanding demand owing to a co-operative society by any member or past member or deceased member
- shall be a first charge upon the crops and other agriculture produce, cattle, fodder for cattle, agricultural or industrial implements or machinery, raw materials for manufacture and any finished products manufactured from such raw materials,
- belonging to such member, past member or forming part of the estate of the deceased member as the case may be.

(2) No person shall transfer any property,

- which is subject to a charge under sub - section [1]

- except with the previous permission in writing of the co-operative society which holds the charge.

(3) Notwithstanding anything contained in any law for the time being in force

- any transfer of property,
- made in contravention of the provisions of sub-section [2]
- shall be void.

(4) The charge created under sub-section [1] shall be available as against any claim of the Government arising from a loan granted under the Land Improvement Loan Act 1883 or the Karnataka Agriculturists Loans Act 1963, after the grant of the loan by the society.

S. 33 - Charge on land owned by members or held as tenants by members borrowing loans from certain co-operative societies

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force,

(i) any person who makes an application to a co-operative society of which he is a member for a loan shall if he owns any land or holds any land as a tenant, makes a declaration in the prescribed form,

- such declaration shall state that applicant thereby creates a charge on the land owned by him or on his interest in the land held by him as tenant and specified therein
- for the payment of the amount of the loan
- which the society may make to the member in pursuance of the application and
- for all future advances if any required by him which the society may make to the member as such member subject to such maximum as may be determined by the society
- together with interest on such amount of the loan and advances;

(ii) a declaration made under clause (i) may be varied at any time by a member with the consent of the co-operative society in favor of which such charge is created;

(iii) no member shall alienate, the whole or any part of the land or any interest of his in the land specified in the declaration made under clause (i) or varied under clause (ii) until the whole amount borrowed by the member together with interest thereon is paid in full.

Provided that -

- standing crops on any such land
- may be alienated with the previous permission in writing of the society

Provided further that -

- it shall be lawful for a member
- to mortgage such lands or any part thereof
- in favor of the state Government or a (Agriculture and Rural Development Bank);

Provided also that -

- if a part of the amount borrowed by a member is paid,
 - the co-operative society with the approval of the financing bank to which it may be indebted
-
- may on an application from the member,
 - release from the charge created by the declaration made under clause (i) or varied under clause (ii), such part of the land or of the interest in the land specified in the declaration as it may deem proper,
 - with due regard to the security for the balance of the amount of loan outstanding from the member.

(iv) any alienation made in contravention of the provisions of clause (iii) shall be void,

(v) subject to

- the prior claims of the Government, in respect of land revenue or any money recoverable as land revenue and
- the prior claims of any person in whose favor alienation of the land or interest in such land has been effected and duly registered, before the date of the grant of the loan by the society,
- there shall be a first charge in favor of the society on the land or interest in the land specified in the declaration made under clause (i) or varied under clause (ii) for and to the extent of the dues owing by him on account of the loan

- (2) Notwithstanding anything contained in the (Karnataka Land Revenue Act, 1964);
- (i) the Record of Rights (ROR) maintained under the said Act shall also include the particulars of every charge on land or interest in land created under sub-section (i)
 - (ii) the co-operative society in whose favor a charge is created under sub-section (i) shall communicate the particulars of the charge and when the loan is discharged, the cessation of the charge, to the Deputy Commissioner or the prescribed officer and he shall cause necessary entries to be made in the Record of Rights;
 - (iii) the State Government may by notification in the official Gazette, make rules to carry out the purposes of clauses (i) and (ii)

Explanation -

For the purpose of this section,-

- (1) 'land' shall mean land to which the Karnataka Land Revenue Act, 1964 is applicable; and
- (2) 'Co-operative society' shall mean a co-operative society of which majority of members are agriculturists and which is;-
 - (a) a credit society the primary object of which is to obtain credit for its members; or
 - (b) any other class of society specified in this behalf by the State Government by general or special order

S. 34 - Deduction from salary to meet society's claim in certain cases

- (1) Notwithstanding anything contained in any law for the time being in force,
 - a member of a co-operative society may execute an agreement in favor of the society providing that
 - his employer shall be competent to deduct from the salary or wages payable to him by the employer, such amount as may be specified in the agreement and
 - to pay the amount so deducted to the society
 - in satisfaction of any debt or other demand owing by the member to the society.
 - (2) On the execution of such an agreement the employer shall,
 - if so required by the co-operative society by requisition in writing and
 - so long as such debt or demand or any part of it remains unpaid,
-

- make the deduction in accordance with the agreement and pay the amount so deducted to the society
- within 14 days from the date of the deduction.

(3) Nothing contained in this section shall apply to the persons employed in railways as defined in Article 366 of the Constitution, mines and oil fields.

S. 35 - Charge and set off in respect of shares or interest of members in the capital of a co-operative society

A co-operative society shall have a charge upon

- the share or interest in the capital and on the deposits
 - of a member or a past member and
 - on any dividend, bonus or profits payable to a member or a past member
-
- in respect of any debt or outstanding demand owing to the co-operative society and may set off any sum credited or payable to a member towards payment of any such debt or outstanding demand;

Provided that,

No financing bank [to which a co-operative society is affiliated]

- shall have a charge upon any sum invested in the financing bank as reserve fund by the society if the bank is not the sole creditor of the society or
- be entitled to set off any such sum credited or payable to the society towards any debt due from such society.

S. 36 - Shares or interest not liable to attachments

Subject to the provisions of section 35, the share or interest of a member in the capital of a co-operative society

- shall not be liable to attachment or sale
- under any decree or order of a court in respect of any debt or liability incurred by such member or past member and an official assignee or a receiver under any law relating to insolvency,
- shall not be entitled to or have any claim on such share or interest.

S. 37 - Exemption from certain taxes, duties and fees

The State Government, if in its opinion it is necessary in public interest so to do, may by notification in the official Gazette and subject to such restrictions and conditions as may be specified in such notification, reduce or exempt in respect of any class of co-operative societies;

- (a) the tax payable under the Karnataka Agricultural Income Tax Act, 1957 for the time being in force.,
- (b) the tax payable under The Karnataka Sales Tax Act, 1957
- (c) the duties with which any instrument executed by or on behalf of a co-operative society or / by an officer or member thereof and relating to the business of such society, or any class of such instruments or in respect of any award or order made under this Act, are chargeable under The Karnataka Stamp Act, 1957 for the time being in force;
- (d) the fees payable in respect of any document under the Karnataka Court Fees and Suits Valuation Act' for the time being in force;
- (e) any fee payable under the Indian Registration Act, 1908 for the time being in force

S. 38 - Exemption from compulsory registration of instruments

Nothing in clauses (b) and (c) of sub-section (i) of section 17 of the Indian Registration Act, 1908 shall apply to

- (a) any instrument relating to shares in a co-operative society notwithstanding that the assets of the society consist in whole or in part of immovable property
- (b) any debentures issued by any such society and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the society has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or
- (c) any endorsement upon or transfer of any other debenture issued by any such society

Provided that -

- the exemption from compulsory registration of instrument
- shall not apply to instruments which he intended to transfer or

- in effect transfers the right, title or interest in immovable property executed by or in favor of House Building Co-operative Societies, registered under this Act;
-

Rulings

1] Section 38 – Transfer of share in co-operative housing society

Transferee getting membership of society and right to occupy premises belonging to society as incidence of membership

Transaction, though called transfer of share, is in substance and effect, conveyance of right to occupy immovable property

Hence, such instrument of transfer of shares is chargeable to stamp duty Stamp Act and Registration Act being special enactments, they prevail over Co-operative societies Act, in matters of registration and levy of stamp duty.

[Dattaprasad co-operative Society Limited Bangalore and Others Vs State of Karnataka 2004(3) Kar.LJ.310B]

S. 39 - Registration of documents executed on behalf of co-operative societies

(1) Notwithstanding any thing contained in the Indian Registration Act, 1908, it shall not be necessary for any member of a committee, (chief executive) or other (office bearer of a co-operative society) or any officer of the Department of Co-operative to appear in person or by agent at any registration office in any proceeding connected with the registration of any instrument executed by him in his official capacity on behalf of a co-operative society or to sign as provided in section 58 of that Act;

(2) Where any instrument is so executed the registering officer to whom such instrument is presented for registration may, if he thinks fit, refer to such member, secretary or officer for information respecting the same and on being satisfied of the execution thereof, shall register the instrument

CHAPTER V-A

Election of members of the committees of co-operative societies

S.39A – Conduct of elections

Elections subject to the superintendence, direction and control of the Registrar

(1) Every general election of members of the committee (other than the members of the first committee of a co-operative society after its registration or any casual vacancy)

- shall be held
- subject to the superintendence, direction and control of the Registrar.

Elections within 15 days before the expiry of the term

(2) Every general election of members of the committee shall be held

(a) in respect of primary societies within 21 days before the date of expiry of the term of office of the committee

(b) in respect of secondary societies within 10 days before the date of expiry of the term of office of the committee

(c) in respect of federal societies within 15 days after the date of expiry of the term of office of the committee

(d) in respect of apex societies within 30 days before the date of expiry of the term of office of the committee

(2A) The date of such general election shall be fixed by the committee or in the absence of the committee by the Administrator or Special Officer

Elections by secret ballot

(3) Subject to the provisions of the Act, the election of members of the committee

- shall be held by secret ballot,
- in accordance with such rules as may be prescribed.

Postponement by State Government

(4) Where due to scarcity, draught, flood, fire or any other natural calamities or rainy season or any election program of the State Legislative Assembly or Council of Parliament or Local Authority

- coinciding with the election program of any society or class of societies, or
- in public interest the elections are to be postponed, the State Government may, (notwithstanding anything contained in this Act or rules or bye-laws) by general or special order
- postpone the election of any society or class of societies
- for a period not exceeding six months at a time and
- in any case not exceeding two years in aggregate.

Provided –

- that the state government shall not postpone the elections of a society in a co-operative credit structure for a period beyond three months

Rulings

1] Section 39-A / Interruption

Election process – Interruption of –

On removal of interruption, election process lawfully commenced is to be continued from stage at which it was interrupted.

If the Government or any other authority passes an order postponing the election after the issuance of the calendar of events and if that order is without authority of law, then the election process shall take off from where it was interrupted by the order passed without authority of law.

[K.Channaiah and Others Vs State of Karnataka and Others, 2000(5) Kar.LJ.390B]

2] Sections 39-A proviso below explanation, 70 and 30 / First Election

First committee of management

Election of members to – Jurisdiction of Registrar

Registrar has no role to play in first election which is required to be held within one month from date of registration of society, as first election is not subject to superintendence, direction and control of Registrar

Where promoters had convened first meeting and held election without due notice to all the persons enrolled as members, such irregularity in election cannot be ground for Registrar to supersede first elected committee

Show cause notice issued to society in this regard is without authority of law and is void

It is open to members aggrieved by irregularity in constituting first committee to raise dispute under section 70 of Act

[K. Mallesh and Others Vs DRCS Mandya and Others 1999(6) Kar.LJ.492A]

S.39B - Cost of conducting elections

The expenses of holding any election, including the payment of traveling allowances, dearness allowances and other remuneration, if any, to the persons appointed to exercise the powers and perform the duties in respect of the election shall be borne by the co-operative society concerned

S.39C - Corrupt practices

The following shall be deemed to be corrupt practices for the purpose of this Act, namely,

(i) 'Bribery' as defined in clause (1) of section 123 of the Representation of the Peoples Act, 1951 for the time being in force.

(ii) 'undue Influence' as defined in clause (2) of the above section for the time being in force

(iii) the appeal by a candidate or his agent or by any other person with the consent of a candidate or his agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of or appeal to national symbols, such as the national flag or the national emblem for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

(iv) the promotion of or attempt to promote, feeling of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community or language by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the election of that candidate or for prejudicially affecting the election of any other candidates.

(v) the publication by a candidate or by his agent or by any other person, with the consent of candidate or his agent of any statement of fact which is false and which he either believes to be false or does not believe to be true in relation to the personal

character or conduct of any candidate or in relation to the candidature or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.

(vi) the hiring or procuring whether on payment or otherwise, any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or his agent, or the use of such vehicle or vessel for the free conveyance of any voter (other than the candidate himself, the members of his family or his agent) to or from any polling station provided in accordance with the rules made under this Act.

Provided that,

The use of any public transport vehicle or vessel or railway carriage by any voter at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause

Explanation

In this clause the expression "vehicle" means any vehicle used or capable of being used for the purposes of road transport, whether propelled by mechanical power or otherwise, whether used for the drawing of other vehicles or otherwise.

(vii) the holding of any meeting at where intoxicating liquors are served,

(viii) the issuing of any circular, placard or poster having reference to the election which does not bear the name and address of the printer and publisher thereof.

(ix) any other practice which the State Government may by rule specify to be a corrupt practice

S.9D - Maintenance of secrecy of voting

(1) Every officer, clerk, agent or other person who performs any duty in connection with the recording or counting of votes at an election

- shall maintain and aid in maintaining the secrecy of the voting and
- shall not (except for some purpose authorized by or under any law) communicate to any person

any information calculated to violate such secrecy.

(2) Any person who contravenes the provisions of sub-section (1) shall on conviction, be punished with imprisonment for a term which may extend to three months or with fine or with both

S. 39E - Officers etc. at election not to act for candidates or to influence voting

(1) No person who is a Returning Officer or an Assistant Returning Officer or a Presiding or Polling Officer at an election or an officer or clerk appointed by the Returning Officer or the Presiding Officer to perform any duty in connection with an election

- shall in the conduct or the management of the election
- do any act (other than the giving of vote) for the furtherance of the prospects of the election of a candidate.

(2) No such person as aforesaid and no member of a police force shall endeavor,

- (a) to persuade any person to give his vote at an election; or
- (b) to dissuade any person from giving his vote at an election or
- (c) to dissuade any person at an election in any manner.

(3) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall on conviction,

- be punished with imprisonment for a term which
- may extend to six months or with fine or with both.

(4) Any offence punishable under sub-section (3) shall be cognizable.

S. 39F - Prohibition of canvassing in or near polling station

(1) No person shall on the date or dates on which a poll is taken at any polling station commit any of the following acts within the polling station or

- in any public or private place
- within a distance of one hundred meters of the polling station, namely;

(a) canvassing for votes; or

(b) soliciting the vote of any elector; or

(c) persuading any elector not to vote for any particular candidate; or

(d) persuading any elector not to vote at the election; or

(e) exhibiting any notice or sign (other than an official notice) relating to the election

(2) Any person who contravenes the provisions of sub-section (1) shall on conviction

- be punished with fine which
 - may extend to two hundred and fifty rupees
-

(3) An offence punishable under sub-section (2) shall be cognizable

S. 39G - Penalty for disorderly conduct in or near polling station

(1) No person shall on the date or dates on which a poll is taken at any polling station;

(a) use or operate within or at the entrance of the polling station, or in any public or private place in the neighborhood thereof, any apparatus for amplifying or reproducing the human voice such as megaphone or a loudspeaker; or

(b) shout or otherwise act in a disorderly manner, within or at the entrance of the polling station or in any public or private place in the neighborhood thereof, so as to cause annoyance to any person visiting the polling station for the poll or so as to interfere with the work of officers and other persons on duty at the polling station

(2) Any person who contravenes or willfully aids or abets the contravention of the provisions of sub-section (1) shall on conviction,

- be punished with imprisonment
- for a term which may extend to three months or with fine or with both.

(3) If the Presiding Officer of a polling station

- has reason to believe that any person is committing or has committed an offence punishable under this section,
- he may direct any police officer to arrest such person and thereupon,
- the police officer shall arrest him

(4) Any police officer may take such steps and use such force,

- as may be reasonably necessary for preventing any contravention of the provisions of sub-section (1) and
- may seize any apparatus used for such contravention.

S. 39H - Penalty for misconduct at the polling station

(1) Any person who during hours fixed for the poll at any polling station,

- misconducts himself or

- fails to obey the lawful directions of the Presiding officer,
- may be removed from the polling station by the Presiding Officer or by any police officer on duty or by any person authorized in this behalf by such Presiding Officer;

(2) The powers conferred by sub-section (1), shall not be exercised so as to,

- prevent any elector who is otherwise entitled to vote at a polling station
- from having an opportunity of voting at that station;

(3) If any person who has been removed from a polling station

- re-enters the polling station without the permission of the Presiding Officer,
- he shall, on conviction be punished with imprisonment for a term which may extend to three months, or with fine, or with both;

(4) An offence punishable under sub-section (3) shall be cognizable.

5. 39-I - Breaches of official duty in connection with election

(1) If any person to whom this section applies is without reasonable cause guilty of any act or omission in breach of official duty he shall on conviction be punished with fine which may extend to five hundred rupees

(2) An offence punishable under sub-section (1) shall be cognizable

(3) No suit or other legal proceedings shall lie against any such person for damages in respect of any such act or omission as afore said

(4) The persons to whom this section applies are,

- the Returning Officers, Assistant Returning Officers, Presiding Officers, Polling Officers and
- any other person appointed to perform any duty in connection with the receipt of nomination or withdrawal of candidature or the recording or counting of votes at an election and

- the expression “official duty” shall for the purpose of this section be construed accordingly, but shall not include duties imposed otherwise than by or under this Act

S. 39J - Removal of ballot papers from polling station to be an offence

(1) Any person who at any election,

- fraudulently takes or attempts to take a ballot paper out of a polling station, or
- willfully aids or abets the doing of any such act,
- shall on conviction be punished with imprisonment for a term which may extend to one year or with fine which may extend to five hundred rupees or with both.

(2) If the Presiding Officer of a polling station has reason to believe that,

- any person is committing or has committed an offence punishable under sub-section (1), such officer may,
- before such person leaves the polling station
- arrest or direct a police officer to arrest such person and
- may search such person or cause him to be searched by a police officer;

Provided that,

When it is necessary to cause a woman to be searched the search shall be made by another woman with strict regard to decency

(3) Any ballot paper found upon the person arrested on search

- shall be made over for safe custody to the police officer by the presiding officer or
- when the search is made by police officer shall be kept by such officer in safe custody

(4) An offence punishable under sub-section (1) shall be cognizable

S. 39K - Other offences and penalties

(1) A person shall be guilty of an electoral offence, if at any election, he,-

- (a) fraudulently defaces or fraudulently destroys any nomination paper; or
- (b) fraudulently defaces, destroys or removes any list, notice or other document affixed by or under the authority of a returning officer; or

(c) fraudulently defaces or destroys any ballot paper or the official mark on any ballot paper; or

- (d) without due authority supplies any ballot paper to any person or receives any ballot paper from any person or is in possession of any ballot paper; or
- (e) fraudulently puts into any ballot box any thing other than ballot paper which he is authorized by law to put in ;or
- (f) without due authority destroys, takes, opens or otherwise interferes with any ballot box or ballot papers then in use for the purposes of the election or
- (g) fraudulently or without due authority, as the case may be, attempts to do any of the foregoing acts or willfully aids or abets the doing of any such acts.

(2) Any person guilty of an offence under this section shall;

(a) If he is a Returning Officer, Assistant Returning Officer or a Presiding Officer at a polling station or any other officer or clerk employed on official duty in connection with the election,

- on conviction, be punished
- with imprisonment for a term which may extend to two years or with fine or with both;

(b) If he is any other person, on conviction, be punished with imprisonment for a term which may extend to six months or with fine or with both

(3) For the purposes of this section a person shall be deemed to be on official duty,

- if his duty is to take part in the conduct of an election or part of an election including the counting of votes or
- to be responsible after an election for the used ballot papers and other documents in connection with such election,
- but the expression "official duty" shall not include any duty imposed otherwise than by or under this Act.

(4) An offence punishable under sub-section (2) shall be cognizable

CHAPTER VI

State Aid To Co-Operative Societies

S. 40 - Promotion Of Co-Operative Movement

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.

S. 41 - Direct Partnership Of State Government In Co-Operative Societies

- (1) The State Government may subscribe directly to the share capital of a co-operative society with limited liability;
- (2) Notwithstanding any agreement to the contrary, the State Government shall not be entitled to a dividend on the shares of any such co-operative society at a rate higher than that at which such dividend is payable to any other share holder to the society.

S. 42 - Indirect Partnership Of State Government In Co-Operative Societies

The State Government may subject to appropriation by law provide moneys to a co-operative society (herein after in this chapter referred to as apex society) for the purchase of shares in other co-operative societies with limited liability.

S. 43 - Principal State Partnership Fund

- (1) An apex society which is provided with moneys by the State Government under section 42 shall, with such moneys establish a fund to be called the "Principal State Partnership Fund"
- (2) An Apex society shall utilize the "Principal State Partnership Fund" for the purpose of
 - (a) directly purchasing shares in other co-operative societies with limited liability
 - (b) providing moneys to a co-operative society (herein after in this chapter referred to as central society) to enable that society to purchase shares in other co-operative societies with limited liability (herein after in this chapter referred to as primary societies)
 - (c) making payments to the State Government in accordance with the provisions of this chapter
 - and for no other purpose

S. 44 - Subsidiary state partnership fund

- (1) A central society which is provided with moneys by an apex society from the “Principal State Partnership Fund” shall, with such moneys, establish a fund to be called the “Subsidiary State Partnership Fund”
- (2) A central society shall utilize the “Subsidiary State Partnership Fund” for the purpose of
- (a) purchasing shares in primary societies
 - (b) making payments to the apex society in accordance with the provisions of this chapter
 - and for no other purposes

S. 45 - Approval Of State Government For Purchase Of Shares

No shares shall be purchased in a co-operative society from the moneys in the “Principal State Partnership Fund” or the “Subsidiary State Partnership Fund” except with the previous approval in writing of the State Government”

S. 46 - Liability To Be Limited In Respect Of Certain Shares

Where any shares are purchased in a co-operative society by

- (a) the State Government
- (b) an apex society or a central society from the “Principal State Partnership Fund” or the “Subsidiary State Partnership Fund” as the case may be,

The liability in respect of such shares shall in the event of the co-operative society being wound up be limited to the amount paid in respect of such shares.

S. 47 - Restriction On Amount Of Dividend

An apex society which has purchased shares in other co-operative societies from the moneys in the “Principal State Partnership Fund” and a central society which has purchased shares in the primary societies from the moneys in the “Subsidiary State Partnership Fund”

Shall be entitled only to such dividend on the said shares as is declared by the society concerned and is payable to other share holders of that society.

S. 48 - Indemnity Of Apex And Central Societies

- (1) If a co-operative society in which shares are purchased from the “Principal State Partnership Fund” is wound up or dissolved the State Government shall not have any claim against the apex society which purchased the shares, in respect of any loss arising from such

purchase but the State Government shall be entitled to any moneys received by the apex society in liquidation proceedings or on dissolution as the case may be;

(2) If a co-operative society in which shares are purchased from the “Subsidiary State Partnership Fund”, is wound up or dissolved,

Neither the State Government nor the apex society shall have any claim against the central society which purchased the shares in respect of any loss arising from such purchase

But the apex society shall be entitled to any moneys received by the central society in liquidation proceedings or on dissolution as the case may be and such moneys shall be credited to the “Principal State Partnership Fund”

S. 49 - Disposal Of Share Capital And Dividend Etc.,

(1) All moneys received by an apex society in respect of shares of other co-operative societies purchased from the moneys in the “Principal State Partnership Fund” on redemption of such shares or by way of dividends or otherwise shall in the first instance be credited to that fund.

(2) All moneys received by a central society, in respect of shares of primary societies purchased from the moneys in the “Subsidiary State Partnership Fund” on redemption of such shares or by way of dividends or otherwise shall in the first instance be credited to that fund and then transferred to the apex society which shall credit them to the “Principal State Partnership Fund”

(3) All moneys and dividends referred to in sub-section (1) and sub-section (2) shall, notwithstanding that the share stands in the name of the apex society or the central society, as the case may be, paid to the state Government.

(4) Save as provided in sub-section (3), the State Government shall not be entitled to any other return on the moneys provided by it to an apex society under section 42

S. 50 - Disposal Of 'Principal State Partnership Fund' And 'Subsidiary State Partnership Fund' On Winding Up Of An Apex Or A Central Society

(1) If an apex society which has established a "Principal State Partnership Fund" is wound up or is dissolved, all moneys to the credit of or payable to, that fund shall be paid to the State Government.

(2) If a central society which has established a "Subsidiary State Partnership Fund" is wound up or is dissolved, all moneys to the credit or payable to that fund shall be paid and credited to the "Principal State Partnership Fund" from which it received moneys under clause (b) of section 43;

S. 51 - 'Principal State Partnership Fund' And 'Subsidiary State Partnership Fund' Not To Form Part Of The Assets

Any amount to the credit of a "Principal State Partnership Fund" or a "Subsidiary State Partnership Fund" shall not form part of the assets of the apex society or the central society, as the case may be

S. 52 - Agreement By State Government And Apex Societies

Subject to the foregoing provisions of this chapter,

(a) The State Government may enter in to an agreement with an apex society setting out the terms and conditions on which it shall provide moneys to the apex society for the purpose specified in section 44

(b) An apex society may, with the previous approval of the State Government enter in to an agreement with a central society, setting out the terms and conditions on which it shall provide moneys to that society from the "Principal State Partnership Fund" for the purpose specified in clause (b) of sub-section (2) of section 43.

S. 53 - Other Forms Of State Aid To Co-Operative Societies

Notwithstanding anything contained in any law for the time being in force,

The State Government may,

(a) give loans or make advances to co-operative societies

- (b) guarantee the repayment of principal and payment of interest on debentures issued by a co-operative society;
- (c) guarantee the repayment of share capital of a co-operative society and dividends thereon at such rates as may be specified by the State Government;
- (d) guarantee the repayment of principal and payment of interest on loans and advances to a co-operative society; and
- (e) give financial assistance in any other form, including subsidies to any co-operative society

S. 53-A - Nomination Of Members Of Committee By State Government In Certain Cases

(1) Notwithstanding anything contained in section 29, where the State Government has subscribed to the share capital of a co-operative society to the extent of not less than,

- (i) 50% of the total share capital or
- (ii) five lakhs of rupees,

The State Government shall have the right, to nominate as its representatives, one third of the total number of members of the committee of the co-operative society.

(2) A person nominated as a member of a committee of a co-operative society under sub-section (1) (herein after in this section referred to as nominated member) shall hold office as such member during the pleasure of the State Government.

(3) Subject to the provisions of sub-section (2) a nominated member shall hold office as such member for such period as the State Government may, by order specify.

(4) When an officer of the State Government is nominated as member of a committee under sub-section (1),

Such officer may be nominated by virtue of his office and when any such nomination is made, such officer may, if unable to be present himself at any meeting of the committee, depute a subordinate officer to the meeting as his representative and

Such sub-ordinate officer shall be deemed to be the person nominated as a representative of the State Government for purposes of such meeting.

(5) Notwithstanding any thing contained in this Act a person so nominated under this section, shall not have right to vote in any meeting of a co-operative society convened for the purpose

of election of office bearers under section 29-F, nor he shall have right to become an office bearer of the society.

S. 54 - Control Of Society Assisted

Deleted wef 30.03.10

S. 55 - Provisions Of This Chapter To Override Other Laws

The provisions of sections 42 to 51 of this chapter shall have effect; notwithstanding any thing inconsistent therewith contained in this Act or any other law for the time being in force.

Rulings

1] Section 54 – Power to remove the President and Vice-President of the society.

Section 54 does not confer any power to remove the President and Vice-President of the society.

In the guise of exercising control, the state cannot displace the committee of management and substitute its own committee.

Section 54 contemplates exercise of control over the conduct of the business.

The word 'control' suggests check, restraint or influence.

Control is intended to regulate and hold in check restrain from action. In the guise of exercising control, the state cannot displace the committee of management and substitute its own committee.

In doing so the state is indirectly intended to achieve what it is directly prohibited from doing under section 54 of the Act.

[State of Mysore Vs Allam Karibasappa and Others AIR 1974 SC 1863: [1974]2 SCC 498: SCWR 259: 1974 UJ [SC] 518]

CHAPTER VII

Properties and Funds of Co-Operative Societies

S. 56 – Mobilization of Funds

(1) A co-operative society may mobilize funds in the form of share capital, deposits, debentures, loans and other contributions from –

(i) its members or

(ii) its depositors or

(iii) any other person, institutions and organizations to such extent and subject to such conditions **as may be specified in the bye-laws of the co-operative society**

(2) No part of the funds other than the net profits of a co-operative society, shall be paid by way of bonus or dividend or otherwise distributed among its members

Provided that

- a members may be paid such remuneration, allowances or honoraria at such rate as may be specified in the bye-laws for any services rendered by him to such co-operative society

Provided further that

- no member other than a member of a society in co-operative credit structure shall be paid travelling allowance, daily allowance or such other allowances or fees for attending meetings of the committees or for performing any other functions as a member at a rate higher than the maximum rate specified by the Registrar for the purpose and different rates may be specified for different classes of co-operative societies or for different purposes

S. 57 – Net profits and their disposal

(1) The net profits of co-operative societies shall be determined in accordance with such rules as may be prescribed and different rules may be made for different classes of co-operative societies.

(2) A co-operative society shall out of its net profits in any year, transfer an amount not being less than 25% of the profits, to the Reserve Fund

(2-A) A co-operative society shall from out of the balance of the net profits, contribute 2% to the co-operative education fund to be administered by the Karnataka State Co-operative Federation Ltd., Bangalore

(2-B) No co-operative society, which has failed to contribute to the co-operative education fund shall pay a dividend to its members

(3) The balance of the net profits may be utilized for all or any of the following purposes, namely,

a) omitted

b) omitted

c) payment of bonus to members on the amount or volume of business done by them with the society to the extent and in the manner specified in the bye-laws,

Provided that no bonus shall be payable to members in a credit society,

d) constitution of or contribution to such special funds as may be specified in the bye-laws,

e) donations of amounts not exceeding 10% of the net profits for any charitable purpose as defined in section 2 of Charitable Endowments Act, 1890; and

f) payment of bonus to employees of the society to the extent and in the manner specified in the bye-laws;

Provided that, the bonus payable in any year to any employee shall not exceed two months pay

(4) A co-operative society may pay dividend to its members, from out of the balance of net profits available after making deductions as provided for under sub-section(2), (2A) and (3) and the bye-laws of the society.

S. 58 - Investment of funds

A co-operative society may invest or deposit its funds,

a) in a Government Savings Bank; or

b) in any of the securities specified in section 20 of the Indian Trusts Act, 1882; or

c) in the shares or securities of any other co-operative society; or

d) with any co-operative bank; or

e) with any scheduled bank or financial institution regulated by the Reserve Bank of its choice and approved by the Registrar

Provided that

- no such approval shall be necessary in respect of a society in co-operative credit structure and a co-operative bank

Provided further

- that in the case of a co-operative bank, such investment shall be made in accordance with the instructions and directives issued by the Reserve Bank from time to time

S. 59 - Restrictions on borrowings

(1) A co-operative society shall receive deposits and loans only to such extent and under such conditions as may be **specified in the bye-laws**.

(2) Notwithstanding anything contained in sub-section (1) such co-operative societies or class of co-operative societies, as the Registrar may by general or special order, specify, shall have power to borrow from a credit agency subject to such conditions as may be specified in such order

S. 60 - Restrictions on loans

(1) A co-operative society shall not make a loan to any person other than a member;

Provided a co-operative society may make loans to another co-operative society

(2) Notwithstanding anything contained in sub-section (1), a co-operative society may make a loan to a depositor on the security of his deposit.

S. 61 - Restrictions on other transactions with non-members

Save as is provided in sections 59 and 60, the transaction of a co-operative society with persons other than members shall be subject to such restrictions, if any, as may be prescribed.

S. 62 – Provident Fund

- 1) A co-operative may establish a contributory Provident Fund for the benefit of its employees to which shall be credited all contributions made by the employees and society in accordance with the bye laws of the society
- 2) A contributory Provident Fund established by a co-operative society under sub-section (1) –
 - a) Shall not be used in the business of the society
 - b) Shall not form part of the assets of the society and
 - c) Shall not be liable to attachment or be subject to any other process of any court or other authority

CHAPTER VIII

Audit, Inquiry, Inspection and Surcharge

S. 63 – Audit

- (1) Every co-operative society shall get its accounts audited at least once in each year by the Director of Co-operative Audit or by a person authorized by him by general or special order in writing in this behalf
- (2) The audit under sub-section (1) or section 98 U or section 98 V shall include an examination of overdue debts if any the verification of the cash balance and securities and securities a valuation of the assets and liabilities and an examination of the working and the other prescribed particulars of the society
- (3) The DCA or the person authorized by him shall at all times have access to all the books, accounts, documents, papers, securities, cash and other properties belonging to or in the custody of, the society and may summon any person in possession or responsible for the custody of any such books, accounts, documents, papers, securities, cash or other properties, to produce the same at any public office at the headquarters of the society or any branch thereof

(4) Every person who is, or has at any time been, an officer or employee of the society and every member and past member of the society shall furnish such information in regard to the transactions and working of the society as the Director of Co-operative Audit may require

(4A) Every co-operative society shall for each co-operative year, prepare and furnish within two months from the end of the year to the Registrar and the DCA, a statement showing the receipts and disbursement, profit and loss and the Balance sheet for the year and such other statements and returns as the Registrar or the DCA may direct

(5) The DCA shall send copies of the Audit report and communicate the results of Audit to the Co-operative society, the Registrar and to the financing Bank or credit agency, and if the society is affiliated to any other co-operative society, to such co-operative society

(6) The DCA or any person authorized by him shall have right to receive all notices and every communication relating to the annual general meeting of a co-operative society and to attend such meeting and to be heard thereat in respect of any part of the business with which he is concerned as Auditor

(7) If the result of the audit held under sub-section (1) discloses any defects in the working of the society the society shall within six months from the date of the audit report, explain to the DCA and to the Registrar the defects or the irregularities pointed out in audit and take steps to rectify the defects and remedy the irregularities and report to the Registrar the action taken by it thereon.

The Registrar may also make an order directing the society or its office bearers to take such action as may be specified in the order to remedy the defects within the time specified therein

(8)(a) Any society aggrieved by any item held under objection in the audit report may apply to the DCA for the deletion within six months of the receipt of the audit report

(8)(b) The DCA may on receipt of the application under clause (a) summon the production of documents if any, pertaining to the objection and examine the same.

He may also examine any person including the auditor and order for deletion or confirmation of the audit objection and on deletion the objection shall stand removed from the balance sheet of the society and on confirmation the amount held under objection shall be recoverable

(9) The Registrar shall submit half yearly reports to the state government furnishing details of the number of defects disclosed in audit number of defects rectified, action taken to remedy the defects and the reasons for pendency, if any. A copy of such report may be forwarded to the DCA

(10) If it appears to the state government on an application by a co-operative society or otherwise that it is necessary or expedient to re-audit any account of a society the state government may by an order provide for such re-audit and the provisions of the Act, the rules applicable to the audit shall apply to such re-audit

Provided also that such re-audit shall be ordered only when there is a prima facie case of fraud or misappropriation or embezzlement of funds not detected or properly examined by the auditor during regular audit or misclassification of accounts or for any other valid reasons with a view to truly reflect the financial position of the society

(11) Notwithstanding anything contained in the preceding sub-sections the DCA shall have power to reexamine or re verify the audited accounts of any co-operative society pertaining to any year and incorporate the lapses observed during such re examination or re verification in the next audit report to be issued

(12) Without prejudice to the provisions of sub-section (3) the auditor shall inquire

a) Whether loans and advances made by the co-operative society on the basis of security have been properly secured and whether terms on which they have been made are not prejudicial to the interests of the co-operative society or its members

b) Whether transactions of the co-operative society which are represented merely by book entries are not prejudicial to the interests of the co-operative society

c) Whether personal expenses have been charged to revenue account

d) Where it is stated in the books and papers of the co-operative society that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading and

e) Whether any special issue or subject matter referred to for enquiry by the Reserve Bank or National Bank has been duly enquired into and report thereof is submitted to the Bank or National Bank as the case may be

(13) The auditor shall make a report to the members of the co-operative society on the accounts examined by him and on every balance sheet and profit and loss account and on every other document required to be part of or annexed to the balance sheet or profit and loss account, which are placed before the co-operative society in general meeting during his tenure of office and the report shall state whether, in his opinion and to the best of his information and according to the explanation given to him, the said accounts give the information required by this Act in the manner so required and give a true and fair view

(a) in the case of the balance sheet of the state of the co-operative society's affairs as at the end of the year and

(b) in the case of the profit and loss account of the profit or loss for the year

(14) The auditor's report shall also state –

(a) Whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit

Whether in his opinion, proper books of accounts have been kept by the co-operative

(b) society so far as appears from his examination of those books and proper returns adequate for the purpose of his audit have been received from branches or offices of the co-operative society not visited by him

(c) Whether the report on the accounts of any branch office audited by a person other than the co-operative society's auditor has been forwarded to him and now he has dealt with the same in preparing the auditor's report and

(d) Whether the co-operative society's balance sheet and profit and loss account dealt with by the report are in agreement with the books of account and returns

(15) Whether any of the matters referred to in clauses (a) and (b) of sub-section (13) or in clauses (a), (b), (c) and (d) of sub-section (14) is answered in the negative or with a qualifying observation, the auditor's special report shall state the reason for the answer

S. 64 – Inquiry by the Registrar

(1) The Registrar of his own motion, by him self or by a person authorized by him, by order in writing hold an inquiry in to any matter specified in the order touching the constitution, working and financial condition of a co-operative society

(2) An inquiry of the nature referred to in sub-section (1) shall be held on the application of –

(a) a co-operative society to which the society concerned is affiliated

(b) a majority of members of the committee of the society or

(c) not less than 1/3rd of the total number of members of the society

(2-A) An inquiry under sub-section (1) shall be completed within a period of 12 months which may however by the Registrar, for the reasons to be recorded in writing for a further period of 6 months

(3) The Registrar or the person authorized by him under sub-section (1) shall for the purpose of an inquiry under this section have the powers

(a) he shall at all times have free access to the books of accounts, documents, securities, cash and other properties belonging to or in the custody of the society and may summon any person in possession or responsible for the custody of any such books, accounts, documents, securities, cash or other properties to produce the same at any public office at the headquarters of the society or any branch thereof

(b) he may summon any person who he has reason to believe has knowledge of any of the affairs of society to appear before him at any public office at the headquarters of the society or any branch thereof and may examine such person on oath and

(c)(i) he may notwithstanding any rule or bye-law specifying the period of notice for a general meeting of the society require the office bearers of the society to call a general meeting at such time and place at the headquarters of the society or any branch thereof and to determine such matters as may be directed by him and where the office bearers of the society refuse or fail to call such a meeting he shall have power to call it himself

(ii) any meeting called under clause (i) shall have the powers of the general meeting called under the bye-laws of the society and its proceeding shall be regulated by such byelaws except that no quorum shall be necessary for such meeting

(4) When an inquiry is made under this section, the Registrar shall send a copy of the inquiry report and communicate the result of the inquiry to the society and to the co-operative society if any to which that society is affiliated and also to the director of Co-operative Audit

(5) If the result of the inquiry held under sub-section (1) discloses any defects in the working of the society, the society shall within three months from the date of the receipt of the inquiry report and communication of the result of the inquiry explain to the Registrar the defects or the irregularities pointed out in the inquiry and take steps to rectify the defects and remedy the irregularities and report to the Registrar the action taken by it thereon.

The Registrar may also make an order directing the society or its office bearers to take such action as may be specified in the order to remedy the defects within the time specified therein

S. 65 – Inspection of books of a co-operative society

(1) The Registrar may of his own motion or on the application of a creditor of a co-operative society, inspect or direct any person authorized by him by order in writing in this behalf, to inspect the books of the society

Provided that no such inspection shall be made on the application of a creditor unless the applicant –

(a) Satisfies the Registrar that the debt is a sum then due and that he has demanded payment thereof and has not received satisfaction within a reasonable time and

(b) Deposits with the Registrar such sum as security for the costs of the proposed inception as the Registrar may require

(2) The Registrar shall send a copy of the inspection report and communicate the result of any such inspection to the Director of Co-operative Audit and

(a) Where the inspection is made of his own motion to the society and

(b) Where the inspection is made on the application of a creditor to the creditor and the society

(3) If the result of the inspection held under sub-section (1) discloses any defects in the working of the society, the society shall within three months from the date of the receipt of the inspection report and communication of the result of the inspection explain to the Registrar the defects or the irregularities pointed out in the inspection and take steps to rectify the defects and remedy the irregularities and report to the Registrar the action taken by it thereon. The Registrar may also make an order directing the society or its office bearers to take such action as may be specified in the order to remedy the defects within the time specified therein

S. 65-A – Report of inquiry inspection and final report to be made available to a credit agency

The Registrar shall draw the attention of a credit agency financing a co-operative society to the defects noticed in any inquiry or inspection of such co-operative society and shall also supply a copy of each of such inquiry or inspection report, if demanded in writing by such credit agency

Explanation – For the purpose of this section and section 65 – B credit agency includes a financing agency

S. 65-B - Inspection of books of co-operatives by a credit agency

(1) A credit agency, shall have the right to inspect the books of any co-operative society, which has either applied to the credit agency for financial assistance or is indebted to it.

(2) The inspection may be made, either by an officer of the credit agency or a member of its paid staff authorized by the credit agency as competent to undertake such inspection.

(3) The officer or member so inspecting shall at all reasonable times, have free access to the books, accounts, documents, securities, cash and other properties belonging to or in the custody of the co-operative society and may also call for such information, statements and returns as may be necessary to ascertain the financial conditions of the co-operative society and to ensure security of the sums lent to it by the credit agency.

S. 66 – Power to seize books and property

If any person or officer conducting audit under section 63, inquiry under section 64 or inspection under section 65 has reason to believe that any books or other property of the society have been tampered with, or likely to be tampered with, if left with the society with a view to eliminate or efface or change or manipulate any evidence which may be deemed necessary by such officer or person in connection with the proof of any defect or irregularities noticed by him during the course of audit, inquiry or inspection, he shall have power to seize and impound such books or property in such manner and for such period as may be prescribed

S. 67 – Costs of Inquiry

When an inquiry is held under section 64 or an inspection is made under section 65 on the application of a creditor, the registrar may apportion the costs or such part of the costs as he may deem fit, between the co-operative society to which the society concerned is affiliated, the society, the members or creditor demanding an inquiry or inspection and the office bearers or former office bearers of the society

Provided that –

- (a) no order of the apportionment of the costs shall be made under this section unless the society or the person sought to be made liable to pay the costs thereunder has had a reasonable opportunity of being heard
- (b) the Registrar shall state in writing the grounds on which the costs are apportioned

S. 68 – Order by the Registrar

(1) The Registrar may make an order directing the co-operative society or its office bearers to take such action as may be specified in the order within the time mentioned therein to remedy the defects disclosed in the audit under section 63 or the inquiry under section 64 or inspection under section 65 and 65-B

(2) A report about rectification of defects by the co-operative society shall be sent by the committee of such society periodically till all such defects are rectified to the Registrar, the credit agency and the financing bank and where the defects were pointed out in the audit to the Director of Co-operative Audit

(3) When the Registrar makes an order under sub-section (1) to remedy the defects disclosed in the inquiry or inspection he shall send a copy of the order along with the result of the inquiry or inspection as the case may be to the Director of Co-operative Audit who shall take action for incorporation of such results in the next audit report and financial statements wherever necessary

S.69 – Surcharge

(1) If in the course of an audit, inquiry, inspection or the winding up of a co-operative society, it is found that

- the committee of management including Government nominees and ex officio members of such society or the President, Vice President,, the Chairman,, Vice Chairman or any other member of the committee of management or
- any person who is or was entrusted with the organization or management of such co-operative society or
- who is or has at any time been an officer or an employee of a co-operative society
- has made any payment contrary to the Act, the rules or the bye-laws or
- has caused any deficiency in the assets of the co-operative society by breach of trust or negligence or
- has misappropriated or fraudulently retained any money or other property belonging to such co-operative society

The Registrar may

- of his own motion or
- on an application of the committee, Liquidator or any creditor
- frame charges against such person or persons and
- after giving such persons and in the case of a deceased person to his representative who inherits his estate an opportunity of making representation
- make an order requiring him to pay or restore the money or property or any part thereof with interest
- at such rate as he may determine or to contribute such sum to the assets of the co-operative society by way of compensation to such extent as he may consider just and equitable

(2) This section shall apply notwithstanding that the act is one of for which the person concerned may be criminally liable

(3) The order made by the Registrar under sub-section (1) may also provide for recovery of cost of surcharge proceeding from the person against whom the order is made at such rate and in such manner as may be prescribed

(4) The application under sub-section (1) shall be decided within a period of 12 months excluding the the period of stay granted by the court if any. However, the Registrar may for reasons to be recorded in writing extend the said period not exceeding 18 months

CHAPTER IX

Settlement of disputes

S. 70 - Disputes which may be referred to Registrar for decision

(1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a co-operative society arises,

(a) among members, past members and persons claiming through members, past members and deceased members, or

(b) **between** a member, past member or person claiming through a member, past member or deceased member **and** the society, its committee or any officer, agent or employee of the society or

(c) **between the society** or its committee **and** any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representative of any deceased officer, deceased agent, or deceased employee of the society, or

(d) **between the society and any other co-operative society** [or a credit agency]

Such dispute shall be referred to the Registrar for decision and **no Civil or Labor or Revenue court or Industrial Tribunal shall have jurisdiction** to entertain any suit or other proceeding in respect of such dispute.

(2) For the purpose of sub-section [1] the following shall **be deemed to be disputes** touching the constitution, management or the business of a co-operative society, namely,

(a) a claim by the society, for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not,

(b) a claim by a society against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor, as a result of the default of the principal debtor whether such debt or demand is admitted or not,

(c) any dispute arising in connection with the election of a President, Vice-President, Chairman, Vice-Chairman, secretary, Treasurer or any other office bearer or Member of Committee of the Society,

(d) any dispute between a co-operative society and its employees or past employees or heirs or legal representatives of a deceased employee,

- including a dispute regarding the terms of employment, working conditions and disciplinary action taken by a co-operative society
- notwithstanding anything contrary contained in the Industrial Disputes Act, 1947,

(e) a claim by a co-operative society for any deficiency caused in the assets of the co-operative society

- by a member, past member, deceased member or deceased officer, past agent or deceased agent or by any servant, past servant or deceased servant or
- by its committee, past or present whether such loss be admitted or not.

(3) If any question arises whether a dispute referred to the Registrar under this section

- is a dispute touching the constitution, management or the business of a co-operative society,
- the decision thereon of the Registrar
- shall be final and shall not be called in question in any court.

Rulings

1] Section 70 – One of the parties is not a member of any co-operative society

A dispute to which one of the parties is not a member of any co-operative society cannot be brought within section 70

[Jyotiba Yallappa Vs Hubli Co-operative Cotton sale society Ltd (1970) 2 Mys.LJ.344]

2] Section 70 / Arbitrator

Agreed rate of interest – Arbitrator cannot reduce the same

[Shimoga housing Co-operative society limited Vs State of Karnataka 1988(2) Kar.LJ.400]

3] Section 70 / misconstruing relevant provision of law

Article 226 of Constitution of India

Where action challenged was as a result of misconstruing relevant provision of law by mis-application of law resulting in miscarriage of justice, remedy available under section 70 held to be not a bar for exercise of jurisdiction under article 226 of Constitution

[K Maruthi Vs K Dasappa and Others 1989(1) Kar.LJ.130]

4] Section 70 / Challenge to election – Scope of section 29-C (7) and section 70 – 1979(1) Kar.LJ.124(DB)

Principles of natural justice must be observed before proceeding to recover the amount demanded in a notice issued under

Registrar is bound to consider objections issued with regards to the amount demanded and any material evidence produced in support thereof after due notice to the society – Only after that he may arrive at a conclusion

If the amount of recovery sought is not free from doubt, in view of the objections raised by the party concerned, the Registrar may ask the society to raise a dispute under section 70 of the Act

[Kalappa Vs State of Karnataka ILR 1986 Kar.1252 (DB)]

5] Section 70 / Refund of deposit

CPC 1908, Section 9

Refund of deposit

Party's suit against co-operative bank of which he is a member

Civil court held, has no jurisdiction to entertain such suit

Remedy is to raise dispute and refer same to registrar for adjudication

[Kalappa Vs The Chairman Jamakhandi Co-operative Bank Limited and Another 2001(1) Kar.LJ.49]

6] Section 70 / Terms of employment

Disputes between co-operative society and its employee regarding terms of employment, working conditions etc, to be referred to Registrar for decision

Grievance regarding denial of promotion

Subject matter of writ petition

Writ petition not maintainable when alternative remedy existing

[M.Hanumantappa Vs Executive Director Kolar District Milk Co-operative Producers Society Union limited and others 1994(5) Kar.LJ.54B]

7] Section 70 / Claims coming under section 69

In respect of claims coming under section 69, dispute under section 70 cannot be raised

[Bhadravati TAPCMS Vs Karnataka Co-operative Appellate Tribunal (1976) 1 Kar.LJ.92 Sh.N.55]

8] Section 70 / Reference by society

Reference by society

Person competent to make

Bye law of the society stated that the society can sue or be sued in the name of the society.

Held the bye-law related only to suits in courts and a making of a reference under section 70 was not relatable to the bye-law.

Hence the President was competent to make a reference under section 70.

[Large sized co-operative society Vs HN.Raju.ILR 1974 Kar.413 / (1974)1 Kar.LJ.421]

9] Section 70 / Resolving disputes by arbitration

Resolving disputes by arbitration

Object is to give finalities to adjudicated disputes as quickly as possible

Where the Tribunal set aside the award of the Arbitrator holding that in view of enlargement of area of operation as a result of amendment of byelaws, arbitrator had lost jurisdiction to try the dispute, in writ petition having regard the facts of the case, held

Amendment of bye laws did not bring any change of law, the same having no force of law and that Arbitrator had jurisdiction to try the dispute

Order of the Tribunal setting aside the award and remanding the same for fresh disposal set aside restoring the award of the arbitrator

[Canara Bank Vs Bapujinagar Industrial Workers Co-operative Society Limited and Others 1989(3) Kar.LJ.507]

10] Section 70 / Jurisdiction of Arbitrator

Section 21(1) of CPC, 1908

Reference to Arbitration

Jurisdiction of Arbitrator depending upon facts prevailing as on date of reference

Where during the pendency of arbitration proceedings before ARCS and area of operation of the society was enlarged by amendment of its bye-laws held – Assistant Registrar did not cease to have jurisdiction – explained

[Canara Bank Vs Bapujinagar industrial Worker's Co-operative Society limited and Others 1989(3) Kar.LJ.507]

11] Section 70 / interest to be awarded is in issue in the dispute

Section 34 of the CPC

No enabling power in Arbitrator to award interest pendente lite

Provision of section 34 CPC applicable only if interest to be awarded is in issue in the dispute

Rate of interest has to be always contractual rate and in the absence of it, at a rate any other law which provides for payment of interest.

Therefore the Tribunal has correctly reduced the rate of interest to the contractual rate and as such the order does not call for interference

[Ashok Bhaskar Chittar Vs Shimoga Housing Co-operative Society 1987(2) Kar.LJ.Sh.N.306 / ILR 1987 Kar.220]

12] Section 70 / Suit against firm consisting of members and non-members

A Co-operative Bank filed a suit against defendant No 1, a firm which had an account with the Bank.

Defendant No 1, the firm and defendant 8, one of its partners, were not members of the plaintiff bank.

The jurisdiction of the Civil Court to entertain the suit was not excluded by section 70 of the co-operative societies Act

[(1970) 2 Mys.LJ.344, AIR 1943 Bom.288 and 1961(2) Guj LR 299 relied on – Tuljanasa Narayanasa Vs SSK Co-operative Bank Ltd (1972)1 Mys.LJ.365]

13] Section 70 and 69 / Amount due by a Director – recovery through alternative means

As amended by Act 19 of 1976

Amounts due by a member of committee of management whether in terms of section 69 or otherwise may be recovered either by raising a due or initiating surcharge proceedings under section 69

Dispute under section 70 held to be maintainable

[G.Narasimhappa Vs The ARCS and Others 1989(2) Kar.LJ.361]

14] Section 70 and 71 / Award of interest

Award on interest ex contract on undertaking given by defendant / judgment debtor – held to be fully justified

[Pariksatraj Vs ARCS Raichur and Others 1989(1) LJ.134]

15] Section 70 and 71 / Right to vote and be elected to Committee of Management

Constitution of India Article 226

Right to vote and be elected to the Committee of Management

Dispute re; Reference to Registrar of co-operative Societies for settlement of dispute

Not making reference

No bar to exercise of writ jurisdiction of court.

The fact that he could have made such reference cannot constitute a bar to the exercise of our jurisdiction under article 226 of the constitution in a case like this where the order of the Returning officer rejecting nomination paper of the petitioner is so plainly unsustainable, as to attract like this, it would be wasteful expenditure of public time money to insist on the petitioner adopting the procedure referred to in section 70 of the KCSR Act and reserve the exercise of our jurisdiction under Article 226 of the Constitution

[ME.Ebrahim Vs Returning officer to hold the election to the Board of Directors of The Town co-operative Bank Ltd and Co-operative Development Officer Ponampet, virajpet Taluka Kodagu district and others 1995(6) Kar.LJ.470B]

16] Sections 70 and 71 / Deal with civil disputes

Deal with civil disputes and have no relevance to offences under the Act

[Taluk Industrial Co-operative Society Limited Vs Patel CM Timmegouda (1965)1 Mys LJ.97]

17] Section 70 and 71 / Resolution Book and Accounts Book not being confidential documents

Dispute – Reference to Arbitration

Direction by Arbitrator to produce Resolution Book and Accounts book in possession of society

Direction held to be proper, Resolution Book and accounts Book not being confidential documents

Order of Appellate Tribunal confirming order of Arbitrator upheld

[The Bangalore Horticultural Producers Marketing and Processing Co-operative Society Limited Vs The DRCS Bangalore District and Others 1988(2) Kar.LJ.217]

18] Section 70 / Domestic enquiry

Domestic enquiry – Defects noticed in

Termination of services of employee of society

Award of Deputy Registrar directing reinstatement of employee on ground that domestic enquiry found to have been conducted in violation of principles of natural justice

Society's appeal to Tribunal against award and Tribunal's order setting aside award and permitting society to hold fresh enquiry to substantiate charge against employee

Order of Tribunal held, is without jurisdiction

Where society in spite of being aware of defect in domestic enquiry by way of alternative relief, no duty is cast on Tribunal to suo moto to permit society to hold domestic enquiry afresh

Tribunal cannot assume advisory role and give unsolicited advice

Award made by Deputy Registrar merits to be confirmed

De novo domestic enquiry conducted pursuant to Tribunal's order is void and cannot be given effect to.

[The Nurserymen Co-operative Society Ltd Bangalore Vs Muniramu (deceased) by LR's and others 2000(3) Kar.LJ.Sh.N.7]

19] Section 70(1)(d) and 71-B / recovery of unpaid amount

Loan given to a co-operative society by a credit agency [in the instant case a nationalized bank] for purposes of digging bore wells, purchase of submersible pump sets, sprinkler sets and construction of pump houses etc

Recovery of unpaid amount of such dues – held can be realized by resorting to the provisions of section 70(1)(d) read with section 71-B only and remedy of a civil suit is unavailable to a credit agency – explained

[Syndicate Bank Vs Small Farmers Marginal Farmers, SC and ST Sprinkler Community Irrigation Well Co-operative Society Limited and Others 1990(2) Kar.LJ.475 (DB) / ILR 1990 Kar.2925 (DB)]

20] Section 70(2)(a) / Loan secured by hypothecation of vehicle

Default in repayment of loan

Seizure and sale of vehicle by society without taking recourse to law illegal

While claim for debt, seizure and sale should have been subject-matter of dispute to be raised under section 70(2)(a),

Held – society could not have been permitted to treat the hypothecation agreement to be an award in its favor merely because there was breach in the repayment of the installments explained

[Tumkur town Veerashaiva Co-operative Limited Vs H.C.Shymala and Others 1990(1) Kar.LJ.48]

21] Section 70(2)(b) – claim against non-member surety

A dispute between a society and a non-member surety cannot be referred to the Registrar under section 70 of the Act

Section 70(2)(b) only provides a remedy for the surety against the principal debtor when he discharges the liability of the principal debtor (1970)2 Mys.LJ.344. rel on

[Karnataka State Woolen Handloom Weavers Co-operative Society Vs Vittappa ILR 1973 Mys.684]

22] Section 70(2)(c) / Nomination of candidate rejected by Returning Officer

Co-operative bank – Election

Nomination of candidate rejected by Returning officer

Writ whether section is barred to invoking of writ jurisdiction in election dispute

No alternative remedy available

No extraordinary circumstances made out to exercise discretion – writ liable to be dismissed.

[Kondapalli Subbanna Vs The Managing Director and Another 1989(2) Kar.LJ.25]

23] Section 70(2)(d) and 118(1) – Industrial disputes between co-operative institution and its employees

As amended by Karnataka Act No.2 of 2000, with retrospective effect from 20.6.2000
Industrial Disputes Act, 1947, Sections 2(k) and 2-A

Constitution of India, articles 246(2) and 254 and Entry 22 of List II and List III respectively of seventh schedule

Industrial disputes between co-operative institution and its employees

Amended provision of State Act ousting jurisdiction of Industrial Tribunal / Labor Court set up under Industrial Disputes Act (Central Legislation) and conferring jurisdiction on Registrar on matter of deciding

Ouster of jurisdiction of IT / LC is only in respect of matters which are to be decided by Registrar, reference of such disputes to Industrial Tribunal / Labor Court is not barred

In spite of inconsistencies between State Law and Central law, former has to prevail within State by virtue of its having received Presidential assent subsequent to central Act

Amended provision, held, valid

[Karnataka Sugar Workers federation Bangalore Vs KAT and Others, 1995(6) Kar.LJ.573B]

S. 70A - Period of limitation

(1) No dispute under section 70 shall be entertained, unless it is referred to the Registrar **within six years** from the date of the cause of action,

Provided that,

- a **dispute relating to the election** of a Member, President, Vice-President, or other office bearer shall be referred to the Registrar **within 30 days** from the date of declaration of the result of the election.

(2) Notwithstanding anything containing in sub-section [1], the Registrar may entertain a dispute referred after the period specified in sub-section [1] if he is satisfied that the person making the reference had sufficient cause for not making the reference within that period.

Provided that

- a dispute relating to the disciplinary action against or service conditions of an employee shall be filed within a period of 12 months from the date of the order relating to such dispute

S. 71 - Disposal of disputes

(1) The Registrar may on receipt of the reference of a dispute under section 70,

(a) decide the dispute himself, or

(b) transfer it for disposal to any person who has been invested by the State Government with powers in that behalf or

(c) refer it for disposal to one arbitrator appointed by the Registrar.

(2) The Registrar **may withdraw** any reference transferred under clause [b] of sub-section [1] or referred under clause [c] of that sub-section and decide it himself.

(3) The Registrar or any other person to whom a dispute is referred for decision under this section may, pending the decision of the dispute **make such interlocutory** orders as he may deem necessary in the interests of justice.

(3-A) When a dispute is referred to an arbitrator under clause [c] of sub-section [1] the award shall subject to such rules as may be prescribed **include the fee payable to the Arbitrator and the fees and expenses payable to the Registrar.**

Such an award shall not be invalid merely on the ground that it was made after the expiry of the period fixed for deciding the dispute by the Registrar and shall subject to appeal or revision be binding on the parties to the dispute.

(4) Notwithstanding anything contained in section 70, when any dispute under clause [a] or [b] of sub-section [1], of the said section is referred for decision to the Registrar and the Registrar is satisfied on an application by the society concerned that in the interest of the society it is necessary for an effective decision of the dispute **to implead persons** who cannot be made parties to the dispute in proceedings before him, he may permit the society to institute a

regular suit in a Civil Court having jurisdiction and the Civil Court shall be competent to entertain such suit.

(5) The dispute under sub-section (1) shall be decided within a period of 12 months excluding the period of stay granted by the court if any. However the Registrar may for reasons to be recorded in writing extend the said period not exceeding 18 months

S. 71A - Powers of financing bank to proceed against members of a co-operative society for the recovery of money due to it from such society

(1) If a co-operative is unable to pay its debts to a financing bank by reason of its members committing default in the payment of moneys due by them,

- the financing bank may direct the committee of such co-operative society, to take proceedings against such members under section 70 or to initiate proceedings under section 101, as the case may be, and
- if the committee fails to do so within a period of 90 days from the date of receipt of such direction,
- the financing bank itself may proceed against such members under section 70 or section 101 as the case may be,
- in which case, the provisions of this Act, the rules or the bye laws shall apply as if all references to the co-operative society or its committee in the said provisions were references to the financing bank.

(2) Where a financing bank has obtained a decree or decision against a co-operative society in respect of money due to it from the co-operative society the financing bank may proceed to recover such moneys,

- first from the assets of the co-operative society and
- secondly from the members of such co-operative society to the extent of their debts to the society.

S. 71B - Powers of credit agency to proceed against member of a co-operative society for the recovery of money due to it from such society

(1) If a co-operative society is unable to pay its debts to a credit agency by reason of its members committing default in the payment of the moneys due by them,

- the credit agency may direct the committee of such co-operative society to take proceedings against such member under section 70 or initiate proceedings under section 101, as the case may be and
- if the committee fails to do so, within a period of 90 days from the date of receipt of such direction,
- the credit agency may itself proceed against such defaulting members under section 70 or section 101, as the case may be,
- in which case, the provisions of the Act, the Rules or the bye-laws shall apply as if all references to the co-operative society or its committee in the said provisions were reference to the credit agency.

(2) Where a credit agency has obtained a decree or award against a co-operative society in respect of money due to it from the co-operative society,

- the credit agency may proceed to recover such moneys
- firstly from the assets of the co-operative society and secondly from the members of the co-operative society to the extent of their debts due to the society.

CHAPTER - X

Winding up and dissolution of co-operative societies

S. 72 - Winding up of co-operative societies

(1) If the Registrar,

- after the inquiry has been held under section 64 or
- an inspection has been made under section 65 or
- on receipt of an application made by no less than 3/4th of the members of a co-operative society,

is of opinion that the society ought to be wound up, he may issue an order directing it to be wound up.

(2) The Registrar may of his motion, make an order directing the winding up of a co-operative society-

- (a) where the number of members of the society has been reduced to less than the minimum number required for registration of the co-operative society, or
- (b) where the co-operative society has not commenced working or has ceased to work or,
- (c) where the co-operative society has ceased to comply with the conditions imposed by or under this Act, regarding registration and management.

(3) The Registrar may cancel an order for the winding up of a co-operative society at any time, in any case where in his opinion the society should continue to exist.

(4) Notwithstanding anything contained in this section,

- no co-operative bank shall be wound up or
- an order for winding up shall be cancelled
- except with the previous sanction in writing of the Reserve Bank.

S. 72A - Winding up of a co-operative bank, if so required by the Reserve Bank

Notwithstanding anything to the contrary contained in this Act,

The Registrar shall make an order for winding up of a co-operative bank,

- if so required by the Reserve Bank
- in the circumstances mentioned in section 13-D of the Deposit Insurance Corporation Act, 1961

S. 72B - Reimbursement to the Deposit Insurance Corporation by the Liquidator

Where

- a Co-operative Bank being an insured bank within the meaning of the Deposit Insurance Corporation Act, 1961, is wound up or taken in to liquidation and
- the Deposit Insurance Corporation has become liable to the depositors of the insured bank under sub-section [1] of section 16 of that Act,
- the Deposit Insurance Corporation shall be reimbursed by the liquidator or such other person in the circumstances,

- to the extent and in the manner provided in section 21 of the Deposit Insurance Corporation Act, 1961.

S.73 - Liquidator

(1) Where the Registrar has made an order under section 72 for the winding up of a co-operative society, he may appoint a liquidator for the purpose and fix his remuneration.

(2) A liquidator shall on appointment,

- take into his custody or under his control all the property, effects and actionable claims to which the society is or appears to be entitled and
- shall take such steps as he may deem necessary or expedient, to prevent loss or deterioration of, or damage to such property, effects and claims.

(3) Where an appeal is preferred under section 106, an order of winding up of a co-operative society made under section 72 shall not operate thereafter until the order is confirmed in appeal.

Provided that

The Liquidator shall continue to have custody or control of the property, effects and actionable claims mentioned in sub-section [2] and have authority to take the steps referred to in that sub-section.

(4) Where an order of winding up of a co-operative society is set aside in appeal the property, effects and actionable claims of the society shall revert in the society.

S. 74 - Powers of liquidator

(1) Subject to any rules made in this behalf, the whole of the assets of a co-operative society in respect of which an order for winding up has been made,

- shall vest in the Liquidator appointed under section 73 from the date on which the order takes effect and
- the Liquidator shall have power to realize such assets by sale or otherwise.

(2) Such Liquidator shall also have power, **subject to the control of the Registrar,**

- (a) to institute and defend suits and other legal proceedings on behalf of the co-operative society by the name of his office,
- (b) to determine from time to time the contribution to be made or remaining to be made by the members or past members or by the estates or nominees, heirs or legal representative of deceased members or by any office bearers or former office bearers, to the assets of the society,
- (c) to investigate all claims against the co-operative society and subject to the provisions of this Act, to decide questions of priority arising between claimants,
- (d) to pay claims against the co-operative society including **interest up to the date of winding up** according to their respective priorities, if any, in full or ratably, as the assets of the society may permit, the surplus, if any, remaining after payment of the claims being applied in payment of interest from the date of such order of winding up at a rate fixed by him but not exceeding the contract rate in any case,
- (e) to determine by what persons and in what proportions the costs of the liquidation are to be borne,
- (f) to determine whether any person is a member, past member or nominee of a deceased member,
- (g) to give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for winding up the affairs of the society,
- (h) to carry on the business of the society so far as may be necessary for the beneficial winding up of the same,
- (i) to make any compromise for arrangement with creditors or persons claiming to be creditors or having or alleging to have any claim, present or future, whereby the society may be rendered liable and
- (j) to compromise all calls or liabilities to call and debts and liabilities capable of resulting in debts and all claims present or future, certain or contingent, subsisting or supposed to subsist between the society and a contributory or alleged contributory or other debtor or person apprehending liability to the co-operative society and all questions in any way relating to or affecting the assets or the winding up of the society on such terms as may be agreed and take any security for the discharge of any such call, liability, debt or claim and give a complete discharge in respect thereof.

(3) When the affairs of a co-operative society have been wound up, the Liquidator shall make a report to the Registrar and deposit the records of the society in such place as the Registrar may direct.

S. 75 - Cancellation of Registration of a co-operative society

Where -

- in respect of a co-operative society which has been ordered to be wound up under section 72, no Liquidator has been appointed under section 73 after two months from the date of such order, or
- if an appeal has been filed, from the date of confirmation of the order in appeal or
- where the affairs of a co-operative society in respect of which a Liquidator has been appointed under section 73, have been wound up,

The Registrar shall make an order canceling the registration of the society and

- the society shall be deemed to be dissolved and
- shall cease to exist as a corporate body from the date of such order of cancellation.

CHAPTER XI

Agriculture and Rural Development Banks

S.76 - Definitions

In this Chapter-

(a) 'Board' means the Board of Directors of the State Agriculture and Rural Development Bank;

(b) Omitted wef 30.03.10

(c) Omitted wef 30.03.10

(d) 'Trustee' means the Trustee referred to in section 77

S. 76A - Application of chapter to Agriculture and Rural Development Banks

This chapter shall apply to co-operative banks,

- advancing loans either on the security or mortgage of lands or
- by hypothecation of the agricultural machinery or other assets created out of the loan for the purposes as may be notified by the Government in this behalf from time to time;

S. 76B - State and other Agriculture and Rural Development Banks

(1) There shall be a,

'State Agriculture and Rural Development Bank' for the state of Karnataka, and as many 'Agriculture and Rural Development Banks' as may be deemed necessary

(2) A reference to Land Mortgage Bank in any law or instrument for the time being in force in the state, shall with effect from the commencement of The Karnataka Co-operative Societies (Amendment) Act, 1964,

be construed as a reference to a Land Development Bank (up to the date of commencement of the Karnataka Co-operative Societies (Amendment) Act, 1984 and thereafter as Agriculture and Rural Development Bank within the meaning of this Chapter;

(3) With effect, from the commencement of The Karnataka Co-operative Societies (Amendment) Act, 1964 and until such time as the name of the Land Mortgage Banks and societies functioning in the state at the commencement of the said Act are changed into Land Mortgage Banks, all acts done by them or mortgages and other documents executed by them, or in their favor and all suits and other proceedings filed by or against them, shall be deemed to have been done, executed or filed, as the case may be, by or against them as Land Development Banks;

(4) With effect from the date of commencement of the Karnataka Co-operative Societies (Amendment) Act, 1984 and until such time as the names of the Land Mortgage Banks and Land Development Banks functioning in the state at the commencement of the said Act are changed as Agriculture and Rural Development Banks,

Notwithstanding anything contained in sub-section (3), all acts done by them or mortgages and documents executed by them or in their favor and all suits and other proceedings filed by or against them shall be deemed to have been done, executed or filed as the case may be by or against them as Agriculture and Rural Development Bank.

S. 77 - Appointment of Trustee and his powers and functions

(1) The Registrar or where the State Government appoints any other person in this behalf, such person shall be the Trustee for the purpose of securing the fulfillment of the obligations of the

State Agriculture and Rural Development Bank to the holders of debentures issued by the Board.

(2) The powers and functions of the Trustee shall be governed by the provisions of this Act and by the instrument of trust executed between the Bank and the Trustee as modified from time to time by mutual agreement between the board and the Trustee

S. 78 - Trustee to be a corporate sole

The Trustee appointed under section 77,

- shall be a corporation sole by the name of the Trustee for the debentures and
- as such shall have perpetual succession and a common seal and in his corporate shall sue and be sued.

S. 79 - Issue of debentures

(1) With the previous sanction of the State Government and the Trustee and subject to such terms and conditions as the State Government may impose,

The State Agriculture and Rural Development Bank, in the discharge of its function as a Agriculture and Rural Development Bank,

- may issue debentures of such denominations or
- take loans for such period and at such rates of interest,
- as it may deem expedient on the security of,

(a) mortgage or mortgages or the hypothecation of the agricultural machinery or on the basis of charges created on the lands of the borrowers under section 33 or other assets created out of the loan already held, or

(aa) charges already created under section 33 on the land owned by members or on the interest in the land held by such members as tenants,

(b) mortgage or mortgages or the hypothecation of the Agricultural machinery or other assets created out of the loan to be acquired; or

(bb) charges to be created under section 33 on the lands owned by the members or on the interest in the land held by such members as tenants;

(c) penalty on mortgage or the hypothecation of the agricultural machinery or other assets created out of the loans held and partly to be acquired, or

(cc) partly on charges already created and partly on charges to be created under section 33 on the lands owned by members or on the interest in the land held by such members as tenants,

(d) the guarantee of the State Government guaranteeing the full amount of principal and interest till the complete discharge of the debentures or loans, and

(e) partly on mortgage held or to be acquired and partly on the Government guarantee for the principal and interest till the complete discharge of the debentures or loans, and

(f) properties and other assets of the Agriculture and Rural Development Banks

(2) Every debenture may contain a term fixing a period not exceeding 30 years from the date of issue during which it shall be redeemable or reserving to the committee the right to redeem at any time in advance of the date fixed for debenture not less than three months notice in writing.

(3) The total amount due on debenture issued or loans taken by the State Agriculture and Rural Development Bank and outstanding at any time shall not exceed;

(a) where debentures are issued (or loans are taken) against mortgages or charges on lands or hypothecations of agricultural machinery or other assets created out of loans held, the aggregate of-

(i) the amounts due on the mortgages,

(ii) the value of the properties and other assets transferred or deemed to have been transferred under section 85 by, the Primary Agriculture and Rural Development Bank to the State Agriculture and Rural Development Bank and subsisting at such time and

(iii) the amounts paid under the mortgages aforesaid and the unsecured amounts remaining in the hands of the (State Agriculture and rural Development Bank) or the Trustee at the time,

(b) where debentures are issued or loans are taken otherwise than on mortgages held, the total amount as calculated under clause (a) increased by such portion of the amount obtained on the debentures as is not covered by a mortgage,

S. 80 - Charge of debenture holders on certain properties

The holders of the debentures shall have a floating charge on-

(a) all such mortgages and assets as are transferred to in case (a) of sub-section (3) of section 79,

(b) the amount paid under such mortgages and remaining in the hands of the Board of the Trustee and

(c) the other properties of the State Agriculture and Rural Development Bank.

S. 81 - Guarantee by state Government of principal of and interest on debentures

(1) The principal of, and interest on, the debentures issued under section 79 shall, in respect of,

- such maximum amount as may be fixed by the State Government and subject to
- such conditions as it may think fit to impose,
- carry the guarantee of the State Government.

(2) The State Government may subject to any law of the Legislature of the State increase the maximum amount of any guarantee given under sub-section (1)

(3) The State Government may, after consulting the Board and the Trustee-

(a) by notification in the official Gazette; and

(b) by notice of not less than 14 days in such of the principal news papers in the State and of other states in India as the State government may select in this behalf;

-discontinue any guarantee given by it or restrict the maximum amount thereof or modify the conditions, subject to which it is given, with effect from a specified date, not being earlier than 6 months from the date of publication of the notification in the Official Gazette,

Provided that,

- the withdrawal, restriction or modification of any guarantee under this sub-section,
- shall not in any way affect the guarantee carried by any debentures
- issued prior to the date on which such withdrawal, restriction or modification takes effect

(4) Every notification and notice referred to in sub-section (3) shall,

- where the maximum amount of the guarantee is to be restricted or the conditions subject to which the guarantee is given are to be modified,
- set forth precisely the scope and effect of the restriction or modification as the case may be.

S. 82 - Other Guarantees by State Government

(1) The State Government may by general or special order -

- authorize the grant of loans to members by the State Agriculture and Rural Development Bank or the Agriculture and Rural Development Banks
- for the development of land
- in excess of the loans to which such members may be entitled on the basis of the value of the lands determined in accordance with the principles of valuation approved by the State Government,
- such excess not exceeding such limits as may be specified in such order.

(2) In respect of loans granted in accordance with sub-section (1),

- the State Government may guarantee for a specific period the repayment of the loan
- to the extent of the excess granted to the members.

S. 82A - Powers of Agriculture and Rural Development Banks to advance loans and to hold lands

Subject to the provisions of this Act and the rules made there under, it shall be competent for the Agriculture and rural Development Banks

- to advance loans for the purposes referred to in section 76-A and to hold lands
- the possession of which is transferred to them under the provisions of this chapter.

S. 82B - Mode of dealing with applications for loans

(1) When an application for a loan is made for any of the purposes mentioned in section 76-A, A public notice shall be given of the application in such manner as may be prescribed

- calling upon all persons interested
- to present their objections to the loan, if any, in person, at a time and place fixed therein.

The State Government may, from time to time,

- prescribe the persons by whom such public notice shall be given and
- the manner in which the objections shall be heard and disposed off.

(2) The prescribed officer shall consider every objection submitted under sub-section (1) and make an order in writing either upholding or overruling it.

Provided that,

- when the question raised by an objection is in the opinion of the officer one of such a nature that
- it cannot be satisfactorily decided except by a civil court,
- he shall postpone the proceedings on the application until the question has been so decided.

(3) A notice under sub-section (1) published in the manner prescribed, shall for the purpose of this Act be deemed to be proper notice to all persons having or claiming interest in the land to be improved, or offered as security for the loan.

(4) Subject to such rules as may be prescribed, the Agriculture and Rural Development Banks shall consider such application after due enquiry for the purpose of making loans under this chapter.

(5) Notwithstanding anything containing in the preceding sub-section, where an applicant for a loan furnishes an affidavit wherein he makes a statement that the lands offered by him as security are in his actual possession and are owned by him and that they are free from any encumbrance the Agriculture and Rural Development Bank may make an initial grant of an amount not exceeding 20% of the loan applied for, pending necessary action in accordance with the provisions of the said sub-section and

Where after such action it is decided to grant loan, the amount paid shall also be taken in to consideration and the total amount granted shall be secured by the mortgage deed execution by the applicant.?

S. 82C - Order granting loans conclusive of certain matters

A written order by the Agriculture and Rural Development Bank or persons or committees authorized under the bye-laws of the Bank, to make loans for all or any of the purposes specified in section 76-A, granting either before or after the commencement of the KCS (Amendment) ACT, 1964, a loan to or with the consent of a person mentioned therein, for the purpose of works specified therein for the benefit of the land or for the productive purpose specified therein, shall for the purposes of this Act be conclusive of the following matters, that is to say,

- (a) that the work described or the purpose for which the loan is granted, is an improvement or productive purpose, as the case may be, within the meaning of section 76A,
- (b) that the person had at the date of the order a right to make such an improvement or incur expenditure for productive purpose, as the case may be and
- (c) that the improvement is one benefiting the land specified and productive purpose concerns the land offered in security or any part thereof as may be relevant.

S. 83 – Priority of mortgage over certain claims

(1) A mortgage executed in favor of a ARDB shall have priority over any claim of the Government arising from a loan under the Karnataka land Improvement loans act 1963 or the Karnataka Agriculturists loans Act 1963 granted after the execution of the mortgage

(2) Notwithstanding anything contained in the Karnataka land reforms act 1961, where a mortgage in favor of a ARDB is in respect of land in which a tenant purchases or tenant has

an interest the mortgage may be against the security of such interest and the rights of the mortgagee shall not be affected by the failure of the tenant purchaser or tenant to comply with the requirements of the said act and the sale of the land and his interest therein under the said act shall be subject to the prior charge of the ARDB

S. 84 – Right of ARDB or the State ARDB to purchase mortgaged property

(1) Not anything contained in any law for the time being in force, it shall be lawful for the State ARDB or a ARDB to purchase any mortgaged property sold under this chapter and the property so purchased shall be disposed of by such bank by sale within such period as may be fixed by the trustee

(2) Nothing in any law fixing a maximum limit of agriculture holding shall apply to the acquisition of land by a (ARDB) or the (SARDB) under sub-section (1)

S.85 – Mortgage executed in favor of ARD Bank to stand vested in SARD Bank –

The mortgages executed in favor of and all other assets transferred to a ARD Bank by the members thereof shall with effect from the date of such execution or transfer be deemed to have been transferred by such ARD Bank to the State ARD Bank and shall vest in the trustee

S.85 A – registration of mortgage or lease in favor of ARD Bank

Not with standing anything contained the Indian Registration Act, 1908 it shall not be necessary to register mortgages or leases executed in favor of the ARD Bank provided that the ARD Bank concerned sends within such time and in such manner as may be prescribed a copy of the instrument whereby immovable property is mortgaged or leased to the registering officer within the local limits of whose jurisdiction the whole or any part of the property mortgaged or as the case may be leased is situate and such registering officer shall file a copy or copies as the case may be in his book number 1 prescribed under section 51 of the Indian Registration Act, 1908.

S. 86 - Power of Agriculture and Rural Development Bank to receive moneys and grant discharges

Notwithstanding that a mortgage executed in favor of Agriculture and Rural Development Bank has been transferred or is deemed under the provisions of section 85, to have been transferred to the State Agriculture and Rural Development Bank.

(a) All moneys due under the mortgage shall in the absence of any specific direction to the contrary issued by the Board or Trustee and communicated to the mortgagor

- be payable to the Agriculture and Rural Development Bank and
- such payment shall be as valid as if the mortgage had not been so transferred; and

(b) The Agriculture and Rural Development Bank shall in the absence of any specific direction to the contrary issued by the Board or Trustee and communicated to the Agriculture and Rural Development Bank,

- be entitled to use on the mortgage or
- take any other proceeding for the recovery of the moneys due under the mortgage.

S. 86A - Recovery of loans by Development Banks

All loans granted by the Agriculture and Rural Development Banks, all interests (if any) chargeable thereon and costs (if any) incurred in making the same shall when they become due, be recovered by the Agriculture and Rural Development Bank concerned.

S. 87 - Right of Agriculture and Rural Development Bank to pay prior debts of mortgager

(1) Where a mortgage is executed in favor of a Agriculture and Rural Development Bank, for payment of prior debts of the mortgagor the Bank may, notwithstanding the provisions of section 83 and 84 of the Transfer of property Act, 1882 by notice in writing,

- require any person to whom any such debt is due to receive payment of such debt or part thereof from the Bank at its registered office,
- within such period as may be specified in the notice.

(2) Where any such person fails to receive such notice or such payment, such debt or part thereof, as the case may be,

- shall cease to carry interest
- from the expiration of the period specified in the notice.

Provided that -

where there is a dispute as regards the amount of any such debt the person to whom such debt is due

- shall be bound to receive payment of the amount offered by the Agriculture and Rural Development Bank towards the debt but
- such receipt shall not prejudice the right, if any of such person, to recover the balance claimed by him.

(3) For purposes of determining the particulars of prior debts referred to in sub-section (1) any officer of the (State Agriculture and Rural Development Bank) or of the (Agriculture and Rural Development Bank) authorized in this behalf by the State Government by notification in the Official Gazette,

- may subject to such restrictions, limitations and conditions as may be prescribed, by order in writing
- require any person to whom any such prior debt may be due,
- to furnish any information or any document relating to such debt and thereupon
- such person shall furnish the information or document so required.

S. 87A - Mortgages executed by managers of Joint Hindu Families

(1) Mortgages in respect of loans by a (Agriculture and Rural Development Bank) or the (State Agriculture and Rural Development Bank) either before or after the commencement of the Karnataka Co-operative Societies Act, 1964

- by the manager of a joint Hindu family
- for the improvement of agriculture land or of the methods of cultivation or for financing any other means to increase the productivity of the land or for the purchase of land
- shall be binding on every member of such joint Hindu family,
- notwithstanding any law to the contrary.

(2) In other cases, where a mortgage executed in favor of a Agriculture and Rural Development Bank or State Agriculture and Rural Development Bank either before or after commencement of the KCS (Amendment) ACT 1964,

- is called in question on the ground that it was executed by the manager of the joint Hindu family for the purpose, not binding on the members (whether such members have attained majority or not) thereof
- the burden of proving the same shall notwithstanding any law to the contrary lie on the party alleging it.

S. 87B - Restrictions on lease

(1) Notwithstanding any thing contained in the Transfer of Property Act, 1882, or any other law for the time being in force,

- no mortgagor of property mortgaged to a Agriculture and Rural Development Bank, shall except with the prior consent in writing of the bank, and
- subject to such terms and conditions as the Bank may impose,
- lease or create any tenancy rights on any such property:

Provided that -

- the rights of the (Agriculture and Rural Development Bank) shall be enforceable against the tenant purchaser, the lessee or the tenant, as the case may be,
- as if he himself was a mortgagor.

(2) Where land mortgaged with possession to a Agriculture and Rural Development Bank is in actual possession of a tenant the mortgagor or the Agriculture and Rural Development Bank

- shall give notice to the tenant to pay the rent to the Agriculture and Rural Development Bank during the currency of the lease and the mortgage, and
- on such notice being given,
- the tenant shall be deemed to have atoned to the Agriculture and Rural Development Bank.

S. 88 - Distraint when to be made

(1) If any installment payable under a mortgage executed in favor of a (Agriculture and Rural Development Bank) or any part of such installment has remained unpaid for more than one month from the date on which it fell due,

- the committee may, in addition to any other remedy available to the Bank,
- apply to the Registrar for recovery of such installment or part thereof
- by distraint and sale of the produce of the mortgaged land including the standing crops thereon.

(2) On receipt of such application, the Registrar may notwithstanding any thing contained in the Transfer of Property Act, 1882,

- take action in the manner prescribed
- for the purpose of distraining and selling such produce:

Provided that -

- no distraint shall be made after the expiry of 36 months from the date on which the installment fell due

(3) The value of the property distrained shall be as nearly as possible, equal to the amount due and expenses of the distrained and the costs of the sale.

S. 89 - Power of sale when to be exercised

(1) Not anything contained in the Transfer of Property Act, 1882,

Where a power of sale without the intervention of the court is expressly conferred on the Primary Agriculture and Rural Development Bank by the mortgage deed, the committee of such bank or any person authorized by such committee in this behalf

- shall in case of default of payment of the mortgage money or any part thereof,
- have power, in addition to any other remedy available to the Bank,
- to bring the mortgaged property to sale without the intervention of the court.

(2) No such power shall be exercised unless and until,

(a) the board has previously authorized the exercise of the power conferred by sub-section (1), after hearing the objections, if any, of the mortgagor,

(b) notice in writing requiring payment of such mortgage money or part has been served upon-

(i) the mortgagor;

(ii) any person who has any interest in or charge upon the property mortgaged or in or upon the right to redeem the same;

(iii) any surety for the payment of the mortgage debt or any part thereof and

(iv) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property; and

(c) default has been made in payment of such mortgage money or part thereof for 3 months after such service.

(3) Notwithstanding anything contained in any law for the time being in force,

- it shall be lawful for Agriculture and Rural Development Bank or the State Agriculture and Rural Development Bank
- to purchase any mortgaged property sold under this chapter.

S. 89A - Confirmation of sale

(1) On effecting the sale by a Agriculture and Rural Development Bank under section 89, the Bank shall [in the prescribed manner] submit to the State Agriculture and Rural Development Bank and the Registrar a report setting forth the manner in which the sale has been effected and the result of the sale and the State Agriculture and Rural Development Bank may with the approval of the Registrar, confirm the sale or cancel it.

(2) Where the sale is effected by the State Agriculture and Rural Development Bank or the Trustee under section 89, the State Agriculture and Rural Development Bank or the Trustee, as the case may be, shall in the prescribed manner

- submit to the Registrar
- a report setting for the manner in which the sale has been effected and the result of the sale and
- the Registrar may confirm or cancel the sale.

S. 89B - Disposal of sale proceeds

The proceeds of every sale effected under section 89 and confirmed under section 89-A, shall be applied

- first in payment of all costs, charges and expenses incurred in connection with the sale or attempted sales,
- secondly in payment of any or all interest due on account of mortgage in consequence where the mortgaged property was sold, and
- thirdly in payment of the principal due on account of the mortgage including the costs and charges incidental to the recovery.

If there remain any residue from the proceeds of the sale,

- the same shall be paid to the person proving himself interested in the property sold or
- if there are more such persons than one, then to such persons upon on their joint receipt or according to their respective interest therein, as may be determined by the Agriculture and Rural Development Bank.

Provided that before any such payments are made, the unsecured dues owing

(a) from the mortgagor to the Agriculture and Rural Development Bank may be adjusted and

(b) from any member or past member to whom the mortgagor is indebted may also be adjusted under the return authority given by such member and past member and after holding such inquiry as may be deemed necessary.

S. 89C - Certificate to purchase, delivery of property and title of purchaser

(1) Where a sale of mortgaged property has become absolute under section 89A and the sale proceeds have been received in full by the Agriculture and Rural Development Bank,

- the Bank shall grant a certificate to the purchaser in the prescribed form, certifying the property sold, the sale price, the date of its sale, the name of the person who at the time of the sale is declared to be the purchaser and the date on which the sale become absolute and

- upon the production of such certificate the Sub-Registrar appointed under the Indian Registration Act, 1908, within the limits of whose jurisdiction, the whole or any part of the property specified in the certificate is situated,
- shall enter the contents of such certificate in his register relating to immoveable property.

(2)(a) Where the mortgaged property sold is in the occupancy, of a mortgagor or of some person on his behalf or some person claiming under a title created by the mortgagor subsequent to the mortgage in favor of the State Agriculture and Rural Development Bank or a Agriculture and Rural Development Bank and a certificate in respect thereof has been granted under the foregoing sub-section,

- the Deputy Commissioner shall, on the application of the purchaser,
- order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf, in possession of the property.

(b) Where the property sold is in the occupancy,

- of a tenant or
- other person entitled to occupy the same, and a certificate in respect thereof has been granted under the foregoing sub-section,
- the Deputy Commissioner shall, on the application of the purchaser and after notice to such tenants or other persons,
- order the delivery to be made by affixing copy of the certificate of sale in a conspicuous place on the property and proclaiming to the occupant by beat of drum or other customary mode at some convenient place that the right, title and interest of the mortgagor have been transferred to the purchaser.

(3) Where any property is sold in the exercise or purported exercise of a power of sale under section 89, the title of the purchaser shall not be questioned on the ground that, the circumstances required for authorizing the sale had not arisen or due notice of the sale was not given or the power of sale was otherwise improperly or irregularly exercised.

Provided that,

- any person who suffers damage on account of unauthorized, improper or irregular exercise of such power
- shall have a remedy in damages against the Agriculture and Rural Development Bank.

S. 89D - Recovery of loans on certificate by Registrar

(1) Notwithstanding anything contained in section 70 and 71,

- on an application made by a Agriculture and Rural Development Bank for the recovery of arrears of any sum advanced by it to any of its members and
- on its furnishing a statement of accounts in respect of the arrears,
- the Registrar may after making such enquiries as he deems fit grant a certificate for the recovery of the amount stated therein to be dues as arrears.

(2) A certificate by the Registrar under sub section (1) shall be final and conclusive as to the arrears due, the arrears stated to be due therein shall be recoverable according to the law for the time being in force for the recovery of arrears of land revenue.

(3) It shall be lawful to the Deputy Commissioner to take precautionary measures authorized by section 188 of the Karnataka Land Revenue Act, 1964 or any law or provision corresponding thereto for the time being in force until the arrears due to the Agriculture and Rural Development Bank Ltd together with interest and any incidental charges incurred in the recovery of such arrears, are paid or security for payment of such arrears, is furnished to the satisfaction of the Registrar.

(4) It shall be competent for the Registrar or a person authorized by him to direct conditional attachment of the property of the mortgagor

- until the arrears due to the Agriculture and Rural Development Bank together with interest and incidental charges incurred in recovery of such arrears are paid or
 - security for payment of such arrears is furnished to the satisfaction of the Registrar and
- Provisions of section 95 shall apply mutatis mutandis to conditional attachment of any property made or to be made under this section.

S. 89E - Deputy Commissioner to make recoveries during a certain period

(1) During such period as the State Government may by general or special order notify in the Official Gazette,

- it shall be competent for the Deputy Commissioner
- on application being made to him in that behalf by a Agriculture and Rural Development Bank
- to recover all sums due to the Agriculture and Rural Development Bank including the cost of such recovery;

(2) Any amount due to a Agriculture and Rural Development Bank shall be recoverable by the Deputy Commissioner or any officer specially authorized by the Deputy Commissioner in this behalf in all or any of the following modes, namely;-

- a) from the borrowers as if they were arrears of land revenue due by him;
- b) out of the land for the benefit of which the loan has been granted according to the procedure for the realization of land revenue by the sale of immoveable property;
- c) from a surety (if any) as if they were arrears of land revenue due by him
- d) out of the property comprised in the collateral security (if any) according to the procedure for the realization of land revenue by the sale of immovable property.

S. 89F - Officers of banks not to bid at sales

At any sale for movable or immovable property held under the provisions of this Chapter no officer or employee of a Agriculture and Rural Development Bank or the State Agriculture and Rural Development Bank except on behalf of the Bank of which he is an officer or an employee and no person having any duty to perform in connection with such sale shall either directly or indirectly bid for or acquire or attempt to acquire any interest in such property

S. 89G - Section - 40 of Bombay Act 28 of 1947 not to apply to alienators in favor of Agriculture and Rural Development Banks

Nothing contained in Section 40 of the Bombay Agriculture Debtors Relief Act, 1947 or any corresponding law for the time being in force in any part of the state shall apply to any alienation in favor of the Agriculture and Rural Development Banks

S. 89H - Provision for guarantee funds to meet certain losses

(1) It shall be competent for the State Government to constitute one or more Guarantee Funds on such terms and conditions as it may deem fit,

- for the purpose of meeting losses that might arise
- as a result of loans being made by the Agriculture and Rural Development Bank on titles to immovable property subsequently found to be defective or
- for any other purpose under this chapter
- for which in the opinion of the State Government it is necessary to provide for or create a separate Guarantee Fund,

(2) The State Agriculture and Rural Development Bank and the Agriculture and Rural Development Bank shall contribute to such funds at such rate as may be prescribed and the constitution, maintenance and utilization of such funds shall be governed by such rules as may be made by the State Government in this behalf.

S. 90 - Powers of Agriculture and Rural Development Bank where mortgaged property is destroyed or security becomes insufficient

Where any property mortgaged to a Agriculture and Rural Development Bank is wholly or partially destroyed or the security is rendered insufficient and the mortgagor having been given a reasonable opportunity by the committee of the Agriculture and Rural Development Bank of providing further security enough to render the whole security sufficient or of repaying such portion of the loan as may be determined by the committee has failed to provide such security or to repay such portion of the loan,

The whole of the loan shall be deemed to fall due at once and the committee shall be entitled to take action against the mortgagor under section 88 or section 89 for the recovery thereof.

Explanation-

A security is insufficient within the meaning of this section unless the value of such mortgaged property exceeds the amount for the time being due on the mortgage by such proportion as may be specified in the bye-laws of the Agriculture and Rural Development Bank.

S. 91 - Powers of Board or of Trustee to distrain and sell property etc

(1) The Board or the Trustee may direct the committee of a Agriculture and Rural Development Bank to take action against defaulter under section 88, section 89 or section 90 and if the committee neglects or fails to do so the Board or the Trustee may take such action,

(2)(a) Where such action is taken by the Board the provisions of this chapter and of any rules or regulations made in this behalf shall apply in respect thereto as if all references to the Agriculture and Rural Development Bank and to its committee in the said provisions were reference to the State Agriculture and Rural Development Bank and the Board respectively,

(b) Where such action is taken by the Trustee the provisions of this Act and of any rules or regulations made there under shall apply in respect thereto as if all references to the mortgage or to its committee in the said provisions were references to the trustee.

S. 92 - Title of purchaser not to be questioned on the grand of irregularity etc

Where any property is sold in the exercise or purported exercise of a power of sale under Section 89, the title of the purchaser shall not be questioned on the ground that;

- (a) the circumstances required for authorizing the sale, had not arisen, or,
- (b) the power of sale was improperly or irregularly exercised;

But any person who has suffered any damage by an unauthorized, improper or irregular exercise of any such power shall have a remedy in damages against the Agriculture and Rural Development Bank.

S. 93 - Mortgage not to be questioned on insolvency of mortgagor

Notwithstanding anything contained in any law relating to insolvency, a mortgage executed in favor of a Agriculture and Rural Development Bank shall not be called in question

- on the ground that it was not executed in good faith for valuable consideration or
- on the ground that it was executed in order to give the Agriculture and Rural Development Bank a preference over the other creditors of the mortgagor.

S. 94 - Appointment of receiver and his powers

(1) The Board may on the application of a Agriculture and Rural Development Bank and under circumstances in which the power of sale conferred by section 89 may be exercised

- appoint in writing a receiver of the produce and income of the mortgaged property or any part thereof and

Such receiver shall be entitled either to,

- take possession of the property or collect its produce and income as the case may be,
- to retain out of any money realized by him,
- his expenses of management including his remuneration, if any,
- as fixed by the Board and to apply the balance in accordance with the provisions of sub section (8) of section 69-A of the Transfer of Property Act, 1882.

(2) A receiver appointed under sub-section (1) may for sufficient cause and on application made by the mortgagor be removed by the Board.

(3) A vacancy in the office of the receiver may be filled up by the Board.

(4) Nothing in this section shall empower the Board to appoint a receiver, where the mortgaged property is already in the possession of receiver appointed by a civil court.

S. 95 - Mortgagor's power to lease

(1) Notwithstanding anything contained in the Transfer of Property Act, 1882 or any other law for the time being in force,

- a mortgagor shall not grant a lease of the mortgaged property
- for a period exceeding five years;

(2) Any lease granted in contraventions of the provisions of sub-section (1) shall be void

S. 96 - Delegation of certain powers by Board

The Board may if it thinks fit, delegate all or any or of its powers under sections 89, 91 and 94, to an executive committee constituted by it and consisting of two or more of its members.

S. 97 - Sections 102, 103 and 104 of the Transfer of Property Act, 1882 to apply to notices under this chapter

The provisions of Sections 102 and 103 of the Transfer of Property Act, 1882 and of any rules made by the High Court under Section 104 of the Act for carrying out the purposes of the said sections shall apply so far as may be in respect of all notices to be served under this chapter.

S. 98 - Power to Board of State Agriculture and Rural Development Bank to supervise Agriculture and Rural Development Bank to make regulations

The Board of the State Agriculture and Rural Development Bank shall have a general power of supervision over Agriculture and Rural Development Bank and may with the previous sanction of the State Government, by notification in the official gazette, make regulations not inconsistent with this Act or the rules made there under for all or any of the matters namely,

- (a) for the inspection of the account books and proceedings of Agriculture and Rural Development Banks;
- (b) for the submission of returns and reports by such banks in respect of their transactions;
- (c) for the periodical settlement of accounts between such Banks and the State Agriculture and Rural Development Bank being accounts relating to the payment of the amounts recovered by such Banks on mortgages transferred to the State Agriculture and Rural Development Bank;
- (d) for the form in which applications to such Banks for loans shall be made and for the valuation of properties offered as security for such loans;
- (e) for the investment of moneys realized from the mortgagors;
- (f) the conditions of service of employees of such Banks;
- (g) the programme and policy to be followed by such Banks for making loans;
- (h) the types and extent of security to be obtained by such Banks for advancing loans;

(i) generally for the purpose of safeguarding the interest of the parties, furtherance of activities of such Banks and carrying out the purposes of this Chapter.

Chapter XI A

Special Provisions Applicable to Societies in Cooperative Credit structure

S. 98A - Application of this Chapter

This chapter shall apply only to co-operative societies in co-operative credit structure.

S. 98B - Overriding effect of Chapter XIA

Notwithstanding anything contrary or inconsistent contained in any other chapter of this Act or rules framed there under or bye-laws of any co-operative society or orders issued there under,

- the provisions of this chapter
- shall have overriding effect in respect of societies in co-operative credit structure.

S. 98C - Approval of bye-laws:

- 1) The bye-laws or any amendment to the bye-laws of a co-operative credit structure society shall be registered by the Registrar within thirty days from the date of receipt of the application.
- 2) If the Registrar is satisfied that the proposed bye-laws or the amendments to the bye-laws are contrary to the provisions of the Act and the rules made there under, he shall reject the same duly recording his reasons thereon within thirty days from the date of receipt of the application.

S. 98D. Ensuring membership to Depositors:

- 1) Every person or group holding a minimum deposit of rupees five thousand for a continuous period of minimum one year in a primary agricultural credit co-operative society shall become

a member of the society by subscribing the minimum share capital specified in the bye-laws and shall have full membership and voting rights;

Provided that a persons having deposit of less than rupees five thousand and for a period of less than one year shall remain a nominal member.

2) A borrower group shall become a member of a primary agricultural credit cooperative society under sub-section (1) of Section 16 by subscribing the prescribed share capital specified in the bye-laws and shall have full voting rights.

3) Every depositor group or borrower group admitted as a member under sub-section (1) of Section 16 shall be entitled to vote through one delegate nominated by the group.

S. 98E - Freedom in all financial and internal administrative matters-

A cooperative society under Co-operative Credit Structure shall have freedom to decide its financial and internal administrative matters, which –

i) include interest rates on deposits and loans.

Provided that in the case of the State Co-operative Bank & a Central Co-operative bank, the interest rates shall be in conformity with the guidelines issued by Reserve Bank

ii) the borrowing, investment, depositing its surplus funds, loaning policies (including individual loans) and other business policies.

iii) the personnel policies including issues relating to recruitment, promotion, staffing, training, posting and compensation to staff as per business requirements of the society;

iv) the Internal checks and control systems, appointment of auditors, compensation for the audit and other internal administrative issues; and

v) the borrowing from any financial institution regulated by the Reserve Bank of India, keeping in mind the interest of the society and its members.”

S. 98F - Limit on State Government's subscription:

The State Government's subscription in the share capital of any society under the Co-operative Credit Structure shall not exceed twenty-five percent of the total paid up share capital of such society.

Provided that the State Government may further reduce its contribution or such society shall have option to further repay the subscription of the State Government and if the society intends to repay the subscription of the state government it shall not be prevented from doing so by the State Government.

S. 98G - Restriction on number of Government Nominees-

- 1) Where the Government has subscribed to share capital, there shall be only one nominee of the state government in the committee of the state co-operative bank or a central co-operative bank or the state agriculture and rural development bank or a agriculture and rural development bank
- 2) There shall be no nominee of the state government in the committee of a primary agricultural credit co-operative society irrespective of whether the state government has subscribed to the share capital of such society or not

S. 98H – Freedom for affiliation or disaffiliation with a federal society

- 1) A co-operative credit structure society registered under Karnataka Co-operative Societies Act 1959 shall be eligible to become a member of a federal co-operative or a secondary co-operative registered under the provisions of Karnataka Souharda Sahakari Act, 1997
- 2) A Cooperative registered under Karnataka Souharda Sahakari Act, 1997 may become the member of a Federal society or a Secondary society registered under Karnataka Cooperative Societies Act 1959.
- 3) A cooperative society under the Co-operative Credit Structure shall be at liberty to affiliate or disaffiliate with any Federal society or a secondary society of its choice keeping in view the financial position of the Federal society or the secondary society.

Provided that –

- a resolution approving such affiliation or disaffiliation with a Federal society or a secondary society shall be passed in the annual general meeting held for the purpose with three fourths majority of the total members.

Provided further that –

- before disaffiliation, the society shall discharge its financial liability if any to the society from whom it is disaffiliating

S. 98I - Restriction regarding area of operation

A Co-operative society under Co-operative Credit Structure shall have the freedom of entry and exit at any tier and there shall be no mandatory restrictions of geographical boundaries for the conduct of its business operations.

S. 98J - Freedom of investment and deposits

A co-operative society under Co-operative Credit Structure may subject to the guidelines of the Reserve Bank if any invest or deposit its funds in any bank or financial institution regulated by the reserve Bank and not necessarily in the federal society to which it is affiliated

S. 98K - Freedom of borrowings

A Co-operative society under Co-operative Credit Structure may obtain loans from any Bank or financial institution regulated by the Reserve Bank and refinance from National Bank or any other financial institution directly or through any Reserve Bank regulated financial institutions and not necessarily from the federal society to which it is affiliated.

S. 98L - Guidelines for payment of dividend

A primary agricultural credit cooperative society may pay dividend in accordance with the guidelines framed by the Registrar in consultation with the National Bank.

S. 98M - Contribution to any fund

The Registrar shall have no powers to direct any co-operative society in Co-operative Credit structure to contribute to any funds other than those required for improving its net worth or own funds.

S. 98N - Disqualification of members of the committee of CCS -

1) No person shall be nominated or co-opted or allowed to continue as a member of the committee of a society in co-operative credit structure, if he:-

i) is a person who represents a society [other than a primary agricultural credit co-operative society or a Agriculture and Rural Development Bank] on the Committee of a Central Co-operative Bank or the State Co-operative Bank or the State Agriculture and Rural Development Bank, if such society which he represents has committed a default towards the payments of such Bank on intimation of such defaults by the Chief Executive of the bank concerned.

ii) is a persons who is a defaulter to discharge the liabilities to a primary agricultural credit cooperative society or a Agriculture and Rural Development Bank or represents a primary agricultural credit cooperative society or a Agriculture and Rural Development Bank on the committee of a Central Co-operative Bank or the State Co-operative Bank or the State Agriculture and Rural Development Bank, if such society which he represents has committed a default towards the payments of such Bank on intimation of such defaults by the Chief Executive of the bank concerned.

iii) If a person,-

a) who represents a society whose Committee is superseded, or

b) who is not a member of such society, or

c) who is in default to the society or any other co-operative society in respect of any loan taken by him or has any dues of the society on the date of filing of nomination, or

d) who has directly or indirectly, any interest in any subsisting contract made with the society or in any property sold or purchased by the society or in any other transaction of the society, except in any investment made in, or any loan taken from the society, or

e) against whom any proceeding for surcharge under section 69 relating to any cooperative society is pending, or

against whom a criminal proceeding relating to any transaction of a any co-operative society is pending in which cognizance has been taken.

S. 98-O - Applicability of section 20 and section 29C to the election of a new committee

The provisions of section 20 and section 29C shall be applicable for election of a new committee of a society in co-operative credit structure

S. 98P - Supersession of the Co-operative Credit Structure

- 1) The supersession of the Committee of the State Co-operative Bank or a central co-operative bank shall be done by the Registrar only after prior consultation with the Reserve Bank.
- 2) The supersession of the committee of a Primary Agricultural Credit Co-operative Society shall be done by the Registrar only on the following grounds, namely:-
 - a) if a society incurs losses for three consecutive years, or
 - b) if serious financial irregularities or frauds have been committed, or
 - c) if there are judicial directives to this effect, or
 - d) if there is lack of quorum for three consecutive meetings, or
 - e) if there is a failure in getting the audit of accounts conducted for three consecutive years per the Act, or
 - f) if there is willful disobedience or failure to comply with any lawful direction/guidelines issued by the Registrar.

S. 98Q - Elections

- 1) The election to the committee of a co-operative society under the Co-operative Credit Structure shall be conducted before the expiry of the term of the existing Committee and in case of supersession of the committee of such co-operative society, the election shall be conducted within two months from the date of supersession;

Provided that -

in circumstances beyond control, the State Government may allow holding of such elections within a period not exceeding six months from the date of supersession.

- 2) A member of the Committee of a Primary Agriculture Credit Cooperative Society which has been superseded under this Act shall not be eligible to be re-elected, reappointed, re-nominated or re-co-opted as a member of the committee for a period of four consecutive years from the date of supersession.

S. 98R - The Prudential norms

The prudential norms including capital to Risk Weighting Assets Ratio shall be prescribed by the Registrar for all the Primary Agricultural Credit Co-operative Societies in consultation with the National Bank.

S. 98S - Removal of Directors and Chief Executive Officers

1) The members of the Committee or chief executive officers of the State Cooperative Bank and central cooperative bank shall fulfill the criteria stipulated by the Reserve Bank for the time being in force

2) A member of the committee of the State Co-Operative Bank or a central Co-Operative Bank or a person

- holding the post of chief executive officer
- who does not fulfill the criteria stipulated by the Reserve bank
- shall be treated as ineligible for such post and if such person is holding the post
- he shall be removed by the registrar or the appointing authority as the case may be
- within two months of being so advised by the Reserve bank or the national Bank.

However the existing elected members of the committee holding their posts as such members on the date of the commencement of karnataka Co-operative Societies (Amendments) Act 2009 shall continue to hold their offices till the expiry of their remaining term

S. 98T - Co-option of professionals in the committee

1) The managing committee of the State Co-operative Bank or Central Co-operative Banks

- shall have at least such number of professionals
- having special knowledge or experience in such fields
- as may be stipulated by the Reserve Bank from time to time and
- if such number of professionals do not get elected,
- the Committee of that society shall, to the extent of the shortfall, co-opt professionals having special knowledge or experience in such fields as may be stipulated by the Reserve Bank.

The co-opted members have have all the rights of members inclusive of voting rights and the term of such members shall be co-extensive with the term of other elected members.

2) If any person who, in the opinion of the Reserve Bank or the National Bank, has been co-opted as a member of the Committee without having the requisite special knowledge or experience in such fields as may be stipulated by the Reserve Bank, the committee of such

society shall ensure removal of that person within two months of being so advised by the Reserve Bank or the National Bank, after giving him an opportunity of being heard.

S. 98U - Audit of accounts

The State Co-operative Bank and a central co-operative bank shall cause audit and certification of its accounts by a Chartered Accountant selected by it from the panel approved by the National Bank.

S. 98V - Special audit of Co-operative Credit Structure

The Director of Co-operative Audit shall arrange to conduct the special audit of the State Co-operative Bank or Central Co-operative Banks on the request of the Reserve Bank in the manner and form stipulated by the Reserve Bank and also arrange to furnish a copy of the report of such special audit to the Reserve Bank and National Bank within the time stipulated. The provisions relating to audit of accounts made under this Act, shall also apply to such special audit.

S. 98W - Restriction for using the word 'Bank'

No Primary Agricultural Credit Society or its federation or association shall, except those which are permitted to act as a Bank under the Banking Regulation Act 1949 (Central Act 10 Of 1949), be registered with the word 'Bank', 'Banker', 'Banking' or any other derivative of the word 'Bank' in its registered name or shall use the same as a part of its name;

Provided that

where any primary agricultural credit society or its federation or association, except those which are permitted to act as a Bank under the Banking Regulation Act, 1949 (Central Act 10 Of 1949), has been registered with the word Bank or any of its derivatives a part of its name or has been using the same as a part of its name before the commencement of the Karnataka co-operative (Amendments) Act 2009, it shall within three months from the date of such commencement, change its name so as to remove the word 'Bank' or its derivative, if any, from its name;

Provided further that

where any such society fails to comply with the above provisions within the period specified therein, the Registrar shall order the winding up of such society after giving a reasonable time and opportunity to the committee of such society for complying with the above provisions

S. 98X - Implementation of regulatory prescriptions of Reserve Bank:-

- 1) The Registrar shall ensure the implementation of regulatory prescription given by the Reserve Bank, including recommendation for supersession of the committee and winding up of the State Co-operative Bank and Central Co-operative Banks, within one month from the date of receipt of the advice from the Reserve Bank or within such time as may be permitted by the Reserve Bank.
- 2) The Registrar shall, on being advised by the Reserve Bank for supersession or winding up, ensure that the Administrator or the liquidator as the case may be, is appointed within one month from the date of the advice from the Reserve Bank or within such time as may be permitted by the Reserve Bank.
- 3) If, in the opinion of the Reserve Bank or the National Bank, the Chief Executive Officer of the State Co-operative Bank or a Central Co-operative bank does not fulfill eligibility criteria specified by the Reserve Bank, the Registrar shall direct compliance of the orders of the Reserve Bank or, as the case may be, the National Bank within two months of being so advised by the Reserve Bank or the National Bank.
- 4) If in the opinion of the Reserve Bank or the National Bank, a person has been co-opted as a member of the committee of the State Cooperative Bank or a Central Cooperative Bank without having the requisite special knowledge or experience in such fields as may be stipulated by the Reserve Bank, the Registrar shall, on being advised by the Reserve Bank or the National Bank, direct compliance of the orders of the Reserve Bank or, as the case may be, the National Bank within two months of being so advised by the Reserve Bank or the National Bank.

S. 98Y - Exemption by the State Government:-

No society in the Co-operative Credit Structure shall be exempted under Section 121 of this Act in any manner from the application of the provisions of this chapter without prior consultation with the Reserve Bank or the National Bank”

CHAPTER XII

Execution of awards, decrees, orders and decisions

S.99 - Enforcement of charge

Notwithstanding anything contained in chapter 1X [Settlement of Disputes] or any other law for the time being in force but without prejudice to any other mode of recovery provided in the Act,

The Registrar or any person subordinate to him empowered by the Registrar in this behalf may on the application of a co-operative society,

- make an order directing the payment of any debt or outstanding demand
- due to the society by any member or past or deceased member,
- by sale of the property which is subject to a charge under sub-section [1] of section 32.

Provided that

No order shall be made under this section unless the member, past members or the nominee, heir or legal representative of the deceased member

- has been served with a notice of the application and
- has failed to pay the debt or outstanding demand
- within 7 days from the date of such service.

S. 100 - Recovery of moneys due to societies

(1) Notwithstanding anything contained in chapter 1X [ARDB] or any other law for the time being in force,

- on an application made by an approved society,
- for the recovery of arrears of any sum advanced by it to any of its members on account of the financing of crops or seasonal finance and
- on its furnishing a statement of accounts in respect of the arrears,

The Registrar may after making an enquiry in such manner as may be prescribed, grant a certificate for the recovery of the amount stated therein to be due as arrears.

Provided that

If the determination of the amount due from any person to the society depends upon decisions on complicated questions of fact or law,

- the Registrar shall dispose off the case in accordance with the provisions of section 71,
- as if it were a dispute referred to him for decision under section 70.

(2) A certificate granted by the Registrar under sub-section [1] shall be final and conclusive.

The arrears stated to be due therein shall be recoverable as arrears of land revenue or according to the procedure provided in section 101.

Provided that

Any error in such certificate may be rectified by the Registrar suo motu or on the application of the society or the member affected by the certificate.

(3) It shall be lawful for the Deputy Commissioner to take precautionary measures authorized under section 188 of the Karnataka Land Revenue Act, 1964 until the arrears dues to the society together with interest and any incidental charges incurred in the recovery of such arrears are paid or security for payment of such arrears is furnished to the satisfaction of the Registrar.

Explanation-

For the purpose of this section

(i) "Approved Society"

- shall mean a society or such class of societies declared to be approved societies for purpose of this section by rules,

(ii) "Financing of crops"

-shall mean advancing of loans for the raising of crops during the ploughing season or later for ploughing, weeding, harvesting, purchase of seeds, manure or for such other purposes, such loans being repayable during the season when the crops for which the loans were advanced are harvesting,

(iii) "Seasonal Finance"

-shall mean the advancing of loans for the purposes enumerated in item (ii) above, such loans being repayable on or before 31st March following or such other date as may be specified by the financing bank or the credit agency".

S. 101 - Execution of orders etc

(1) Every order made by the Registrar under sub-section [1] of section 99, every decision or award made under section 71, every order made by the Liquidator under section 74 and every order made by the Tribunal under sections 105 and 107 and every order made under section 106 or 108

Shall subject to any other provision of this Act, be binding on the person or co-operative society against whom the order, decision or award has been obtained or passed and shall if not carried out,

(a) on a certificate signed by the Registrar or any person authorized by him in this behalf, be deemed to be a decree of a Civil Court and shall be executed in the same manner as a decree of such Court or

(b) be executed according to the law and under the rules for the time being in force for the recovery of arrears as land revenue.

Provided that -

An application for the recovery in such manner of any sum shall be made

(i) to the Deputy Commissioner and shall be accompanied by a certificate signed by the Registrar or by any person authorized by him in this behalf,

(ii) within 12 years from the date fixed in the order, decision or award and if no such date is fixed from the date of the order, decision or award as the case may be, or

(c) be executed by the Registrar or any other person subordinate to him empowered by the Registrar in this behalf, by the attachment and sale or sale without attachment of any property of the person or a co-operative society against whom the order, decision or award has been obtained or passed

(2)(a) Notwithstanding anything contained in this Act, every question relating to the execution, discharge or satisfaction of an order, decision or award referred to in sub-section [1] or relating to the confirmation or setting aside of a sale held in an execution of such order, decision or award in pursuance of clause [c] of sub-section [1] or relating to any claim or

objection to an attachment of any property made under section 103 or in execution in pursuance of the said clause [c]

- shall be determined by an order of the Registrar or any other person subordinate to him
- empowered by the Registrar under the said clause [c] [hereinafter in this section referred to as authorized person]
- before whom such question arises.

(b)(i) Where any claim is preferred against or any objection is made

- to the attachment of any property made under section 103 or
- in execution, in pursuance of clause [c] of sub-section [1]
- on the ground that the said property is not liable to such attachment,

The Registrar or the authorized person shall proceed to investigate the claim or objection.

Provided that -

Where the Registrar or the authorized person

- considers that the claim or objection was designedly or unnecessarily delayed
- he shall make an order refusing such investigation

(ii) Where upon such investigation,

- the Registrar or the authorized person is satisfied that for the reason stated in the claim or objection
- such property was not at the date of the attachment in the possession of the person or co-operative society against whom the order, decision or award has been obtained or passed [hereinafter in this section referred to as the judgment debtor] or of some person in trust for the judgment-debtor or
- In the occupancy of a tenant or other person paying rent to the judgment-debtor or
- that being in the possession of the judgment-debtor at the said date, it was so in his possession, not in his own account or as his own property but on account of or in trust for some other person , or partly on his own account and partly on account of some other person

The Registrar or the authorized person shall make an order, releasing the property, wholly or to such extent as he thinks fit, from attachment

(iii) where the Registrar or the authorized person is satisfied that,

- the property was on the said date, in the possession of the judgment-debtor
- as his own property and not on account of any other person or

- was in the occupancy of a tenant or other person paying rent to him,
- the Registrar or the authorized person shall disallow the claim.

(iv) Where a claim or an objection is preferred, the party against whom an order is made

- may within a period of one year from the date of such order,
- institute a suit in a civil court to establish the right which he claims to the property in dispute

But subject to the result of such suit, if any the order of the Registrar or the authorized person shall be conclusive.

FORM VIII

Certificate of Transfer of Property under section 101-B

[See Rule 38-A]

Whereas in execution of the award or order or awards or orders passed under section 71 or an order or awards or orders passed under section 71 or an order or orders made by a Liquidator under section 74 of the KCS Act, 1959 in favor of the -----Society an order was made on --- ----day of-----19-----for the sale of the under mentioned property of the person or persons [debtor or debtors],

And whereas the Court / The Deputy Commissioner / The Registrar is satisfied that the said property cannot be sold for want of buyers.

It is hereby ordered under section 101-B, of the said Act that the right, title and interest of the debtor in the said property shall vest in the said society and shall be delivered to the society subject to the terms and conditions laid down in the schedule hereto annexed.

DESCRIPTION OF THE PROPERTY

Survey Number	Area and Assessment	Name of right, title and interest of the defaulter	Details of encumbrances to which property is subject
1	2	3	4

SCHEDULE

The said property is transferred to the society in full / partial satisfaction of the amount due to it from the debtor.

Given under my hand, seal of the Court / Deputy Commissioner

Registrar this-----day -----of 1919-----

Court / Deputy Commissioner

Registrar of Co-operative Societies

S. 101.A - Transfer of property made after issue of certificate void against co-operative society

Any private, transfer or delivery of or encumbrances or charge on property made or created

- after the issue of the certificate of the Registrar or any person authorized by him in this behalf under section 101,
- shall be null and void
- as against the Co-operative Society on whose application the said certificate was issued.

S. 101B - Transfer of property which cannot be sold

(1) When in any execution of an order sought to be executed under section 101, any property cannot be sold for want of buyers, if such property is in the occupancy of the defaulter or of some person on his behalf or of some person claiming under a title created by the defaulter after the issue of the certificate by the Registrar or any person authorized by him under section 101, the court, or the Deputy Commissioner or the Registrar as the case may be, may notwithstanding anything contained in any law for the time being in force direct that the said property or any portion thereof shall be transferred in the manner prescribed to the co-operative society which has applied for the execution of the said order

(2) Where property is transferred to the co-operative society under section [1] or where the property is sold under section 101 the court, or the Deputy Commissioner or the Registrar as the case may be, may in accordance with the rules place the society or the purchaser as the case may be in possession of the property transferred or sold

(3) Subject to such rules as may be made in this behalf and to any rights encumbrances, charges or equities lawfully subsisting in favor of any person, such property or portion thereof shall be under sub-section [1] by the said society on such terms and conditions as may be

agreed upon between the court, or the Deputy Commissioner or the Registrar as the case may be, and the said society

(4) Subject to the general or special order of the state government, the Deputy Commissioner or the Registrar may delegate to an officer not below the rank of an Assistant commissioner, or an Assistant Registrar under this section

S. 101C – deleted wef 10.12.1991

S. 102 – Registrar or person empowered by him to be a Civil Court for certain purposes

The Registrar or any person empowered by him in this behalf shall be deemed when exercising any powers under this Act for the recovery of any amount by the attachment and sale or by sale without attachment of any property or when passing any orders on any application made to him for such recovery or for taking a step in aid of such recovery to be a civil court for the purposes of Article 182 of the first schedule to the Limitation Act 1963

S. 103 - Attachment of property before award or order

(1) If the Registrar is satisfied on an application, report, enquiry or otherwise that any person with intent to delay or obstruct the enforcement of any order, decision or award that may be made against him under the provisions of this Act,

a) is about to dispose of the whole or any part of his property or

b) is about to remove the whole or any part of his property from the jurisdiction of the Registrar, the Arbitrator or liquidator as the case may be,

He may,

- unless adequate security is furnished,
- direct the attachment of the said property and
- such attachment shall have the same effect as if made by a competent civil court.

(2) Where the Registrar directs attachment of the property under sub section [1],

- he shall issue a notice calling upon the person whose property is so attached
- to furnish security which he thinks adequate within a specified period and

If the person fails to provide the security so demanded,

- the Registrar may confirm the order and

- after the decision in the dispute or the completion of the proceedings referred to in the foregoing sub-section
 - may direct the disposal of the property so attached towards the claim if awarded.
- (3) Attachment made under this section shall not affect the rights subsisting prior to the attachment of property of persons not parties to the proceedings in connection with which the attachment is made or
- bar any person holding a decree against the person whose property is so attached
 - from applying for the sale of the property under attachment in execution of such decree.

S. 104 - Recovery of sums due to Government

(1) All sums due from a co-operative society or from an office bearer or member or past member of a co-operative society as such to Government including any costs awarded to Government under any provisions of this Act, may on a certificate issued by the Registrar or the Director of co-operative Audit in this behalf, be recovered in the same manner as arrears of land revenue.

(2) Sums due from a society to Government and recoverable under sub-section [1] may be recovered

- firstly from the property of the society,
- secondly in the case of a society, the liability of the members of which is limited from the members, past members or the estates of deceased members, subject to the limit of their liability and
- thirdly in the case of other societies, from the members, past members or the estates of the deceased members.

Provided that

- the liability of past members and the estates of the diseased members
- shall in all cases be subject to the provisions of section 25

(3) Notwithstanding anything contained in the preceding sub-sections,

- the audit fee due from a co-operative society
- may also be recovered in such manner as may be prescribed.

S. 104A - Application of this chapter to co-operative societies in other states

The provisions of this chapter and all rules made under this Act relating to or in any manner connected with the recovery of the sum, specified in section 103 shall apply with such modifications if any, as may be directed by the State Government in regard to the recovery of like sums due to co-operative societies registered or deemed to be registered under any law for the time being in force in any State in India notified in this behalf by the State Government in the Official Gazette as if such Co-operative Societies had been registered in the State of Karnataka under this Act.

CHAPTER XIII

Appeals, Revision and Review

S. 105 - Appeals to the Tribunal

(1) Any person aggrieved by

- (a) any decision of the Registrar made under clause (a) of sub-section (1) of section 71 or
- (b) any decision of the person invested by the State Government with powers in that behalf under clause [b] of sub-section (1) of section 71,
- (c) any award of an Arbitrator under clause (c) of sub-section (1) of section 71,
- (d) any determination of a Liquidator under clause (f) of sub-section (2) of section 74
- (e) any order made under section 103 with a view to preventing any delay or obstruction in the execution of any order, decision or award as the case may be made under section 69 and 71
- (f) any order passed under section 69

May within 60 days from the date of the decision, award or order as the case may be appeal to the Tribunal

(2) No appeal against an order, decision or award for payment of money shall be considered by the Appellate Authority under sub-section [1] unless it is accompanied by satisfactory proof for having deposited with the concerned society 25% of the amount due in terms of the order, decision or award. After the disposal of the appeal, the amount so deposited shall be adjusted towards the amount payable by the appellant and in case no amount is required to be paid by the Appellant, the amount so deposited shall be refunded to him by the society

S. 105A - Appeals relating to admission of members to societies

(1) Any person who has made an application for admission as a member under sub-section (3) of section 16 may appeal to the Registrar against any refusal of co-operative society to admit him as a member or against any failure on its part within the period referred to in sub-section (4) of section 16 to admit him as a member or to send a notice of its refusal to admit

(2) Every appeal under sub-section (1) shall be made by a petition in writing within 60 days by the person seeking admission of the communication of refusal or within 60 days on which the admission shall be deemed to have been refused under sub-section (4) of section 16 as the case may be

(3) The Registrar shall after causing reasonable notice to be given to the co-operative society and also to the person seeking admission and giving them a reasonable opportunity to make their representations, if any in writing by order direct either that the person shall be admitted by the co-operative society or that he need not be admitted by the society and in the former case the co-operative society shall give effect to the decision within 10 days of the receipt of the order

(4) Before making an order under sub-section (3) on an appeal against any refusal of the co-operative society to admit a person as a member the Registrar may require the co-operative society to disclose to him the reasons for such refusal and on the failure or refusal of the co-operative society to disclose such reasons the Registrar may presume that the disclosure if made would be unfavorable to the co-operative society. The Registrar shall dispose of every appeal as expeditiously as possible

(5) All proceedings in appeals under this section or in relation thereto shall be confidential and no suit, prosecution or other legal proceedings shall lie in respect of any allegation made in such proceedings whether orally or otherwise

S. 106 – Appeals to other authorities

(1) Subject to the provisions of section 108-A an appeal shall lie under this section against -
 (a) an order of the Registrar made under section 7

- (b) an order of the Registrar made under section 12
- (c) an order of the Registrar under section 17
- (d) an order of the Registrar under sub-section (2) of section 27
- (d-1) an order of the Registrar made under section 28A (5)
- (d-2) an order of the Registrar under section 29-C
- (e) an order of the Registrar made under section 30
- (e-1) an order of the Registrar under sub-section (1) of section 31
- (f) the seizure and impounding of books or property under section 66
- (g) an order made by the Registrar under section 67 appointing the costs of an inquiry held under section 64 or an inspection made under section 65
- (h) an order of the Registrar under section 68
- (i) omitted wef 20.01.1976
- (j) an order of the Registrar under section 72
- (k) any order made by the Liquidator of a co-operative society in exercise of the powers conferred on him by section 74, other than a determination made under clause [f] of sub-section [2] of that section
- (k-1) an order made by the Registrar under section 99
- (l) an order made by the Registrar under section 101 or
- (m) an order for attachment of any property made by the Registrar under section 103 other than an order referred to in clause (e) of section 105
- (n) an order made by the registrar under section 105A
- (o) an order of the registrar made under section 111

(2) An appeal against any act, decision or order under sub-section (1) shall be made within 60 days from the date of the act, decision or order;

- (a) if the act, decision or order was made by the Assistant Registrar, to the jurisdictional Deputy registrar
- (b) if the act, decision or order was made by any deputy registrar to the jurisdictional joint Registrar
- (c) if the act, decision or order was made by any joint registrar to the jurisdictional additional registrar or to the registrar as the case may be
- (d) if the act, decision or order was made by any additional registrar to the registrar
- (e) if the act, decision or order was made the registrar to the government

Provided further that,

- the appellate authority may admit an appeal preferred after the said period of 60 days,
- if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period

Explanation – omitted wef 26.06.1965

(3) Where an appeal is preferred, the appellate authority may in order to prevent the ends of justice being defeated,

- make such interlocutory orders
- pending the final decision of appeal as it may deem fit

(4) In disposing of an appeal under this section, the appellate authority may,

- after giving the parties an opportunity of making their representations
- pass such order thereon as it may deem fit

(5) The appeal shall be decided within a period of 12 months excluding the period of stay granted by a court if any. However the registrar may for the reasons to be recorded in writing extend the period not exceeding 18 months

(6) No appeal against an order for execution of an order, decision or award for payment of money shall be entertained by the appellate authority under sub-section (1) unless it is accompanied by satisfactory proof for having deposited with the concerned society, 25% of the amount in terms of the order, decision or award. After disposal of the appeal, the amount so deposited shall be adjusted towards the amount payable by the appellant and in case no amount is required to be paid by the appellant, the amount so deposited shall be refunded to him by the society

S. 107 - Revision by Tribunal

Subject to the provisions of section 108-A, the Tribunal may suo moto or on application of any person aggrieved call for and examine the record of any proceedings in which an appeal lies to it for the purpose of satisfying itself as to the legality or propriety of any decision or order passed and

- if in any case it shall appear to the Tribunal that any such decision or order should be modified, annulled or revised,
- the Tribunal may pass such order thereon as it may deem fit.

S. 108 - Powers of revision of State Government

Subject to provisions of section 108-A the State Government

- suo moto at any time and on application of any person aggrieved
- within a period of six months from the date of any order,
- may call for and examine the record of any case or proceedings of any office subordinate to it
- **except those subject to appeal or revision by the Tribunal** or those in respect of which an appeal has been made to the State Government under section 196 and
- the State Government after such enquiry as it deems fit, is satisfied that the order of the officer is contrary to law, has resulted in a miscarriage of justice, pass such orders thereon as the State Government deems just.

Provided that

- no order shall be made to the prejudice of any person under this section
- unless he has been given a reasonable opportunity of being heard

S. 108A - No appeal or revision in certain cases

Notwithstanding anything contained in this Act, where with the previous sanction in writing or on the requisition of the Reserve Bank-

- (i) a co-operative bank has been ordered to be wound up, or
- (ii) a scheme of amalgamation or reorganization of a co-operative bank is given effect to or,
- (iii) an order for the removal of the committee and the appointment of an Administrator and Special Officer in respect of a co-operative Bank, has been made,

There shall be no appeal or revision against such order or action and the sanction or requisition of the Reserve Bank shall not be liable to be called in question in any Court of law.

CHAPTER XIV

Offences and Penalties

Section – 109 - Offences

Using the word 'co-operation' without authority

- (1) Any person other than a co-operative society carrying on business under any name or title,
- for which the word “co-operative” or its equivalent in any Indian language is part, without the sanction of the State Government,
 - shall be punishable with a fine which may extend to 2,000/- rupees.

Default in giving effect to order of Registrar

(1-A) If default is made in

- giving effect to the order of the Registrar, within the period specified in sub-section [3] of section 105-A,
- the co-operative society and every office bearer of the society who is in default
- shall be punishable with fine which may extend to 1,000/- rupees or with further fine which may extend to 100/- rupees for every day after the first during which the default continues.

Disposing of property having the first charge without authority

(2) Any member or past member or the nominee, heir or legal representative of a deceased member of a co-operative society who contravenes the provisions of section 32, or 33

- by disposing of any property in respect of which the society is entitled to have a first charge under that section or
- do any other act to the prejudice of such claim,
- shall be punishable with fine which may extend to 5,000 rupees.

Willfully making a false statement disobeying summons, lawful orders

(3) A co-operative society or an office bearer or member thereof,

- willfully making a false return or furnishing false information, or

Any person willfully or without any reasonable excuse

- disobeying any summons, requisition or lawful written order issued under the provisions of this Act or
- willfully not furnishing any information or
- handing over any documents or property required from him by a person or body of persons authorized in this behalf under the provisions of this Act,

- shall be punishable with imprisonment which may extend to two years but shall not be less than three months and
- with fine which may extend to 3,000/- rupees but shall not be less than 5,00/- rupees.

Employer failing to make deductions

(4) Any employer who without sufficient cause,

- fails to make the deduction under sub-section [2] of section 34, or
- fails to pay to a co-operative society the amount deducted by him under sub-section [2] of section 34
- within a period of 14 days from the date on which such deduction is made,
- shall without prejudice to any action that may be taken against him under any law for the time being in force,
- be punishable with imprisonment for a term which may extend to three months or
- with fine which may extend to 3,000/- rupees.

(5) if default is made in complying with provisions of,

- sub-section [4] of section 16,
- sub-clause [ii] of clause [b] of sub-section [I] of section 24,
- sub-section [1] of section 28,
- section 56, section 58, section 59, section 60, or section 62,

-the co-operative society and every office bearer or member of committee of the society who is in default shall be punishable with fine which may extend to 300/- rupees.

Exercising powers of a member without authority

(6) If any person

(i) not eligible to become a member under section 17, applies to a co-operative society for admission as a member or becomes a member or after ceasing to be a member under sub-section [2] of that section, acts as or exercises any rights or privileges of a member of any such co-operative society.

(ii) exercise the rights of a member in contravention of the provisions of section 19,

(iii) willfully fails to furnish the information or document in contravention of the provisions of sub-section [3] of section 87,

(iv) grants a lease of the mortgaged property in contravention of sub-section [1] of section 95,

Shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to 3,000/- rupees.

Exercising voting powers without authority

(7) If any person who is not eligible to vote under sub-section (2) of section 20, exercises such vote, he shall be punishable with a fine which may extend to 3,000/- rupees.

Promoter not transferring the collected money to the Bank

(8) If any person,

- collecting any money as share money for a co-operative society in formation
- does not within a period of 7 days from the date of such collection,
- deposit the same in a co-operative bank specified by the Registrar in this behalf in the name of the co-operative society to be formed,
- he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to 3,000/- rupees.

Failure to give evidence, documents during statutory enquiries etc

(9) Any office bearer or member of a co-operative society

- who is in possession of any information, books and records
- fails to furnish such information or produce such books or records or
- to give assistance to a person appointed or authorized by the State Government or the Registrar or the Director of Co-operative Audit
- under sections 30, 31, 63, 64, 65, 65-B or 73 and entitled to the possession thereof,
- shall be punishable with fine which may extend to 3,000/- rupees.

Failure to hand over the records etc

(10) Any office bearer of a co-operative society or other person who fails to hand over the custody of books, records, cash, securities and other property belonging to the co-operative society

- to a person appointed under section 30, 31, 73 or
- any other person or office bearer
- entitled to the possession thereof,
- shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to 3,000/- rupees.

Failure to comply the orders

(11) Any office bearer or member of a co-operative society

- who willfully fails to comply with any decision, award or order
- passed by the Registrar or Arbitrator or the Tribunal,
- shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to 3,000/- rupees.

Sanction of benami loans

(12) Any office bearer or member of a co-operative society

- who willfully recommends or sanctions
- for his own personal use or benefit or
- for the use or benefit of a person in whom he has interest, a loan in the name of any other person
- shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to 3,000/- rupees or with both.

Suppression of true facts during enquiry etc

(12-A) Where any person conducting, audit under section 63 or inquiry under section 64 or inspection under section 65 or section 65-B -

- (i) willfully omits to mention in his report any defects or irregularity which he has noticed or might have noticed had he exercised due diligence during the course of audit, inquiry or inspection, or
- (ii) willfully makes false observation in his report,

Shall without prejudice to any other action that may be taken against him under any law for the time being in force,

- be punishable with imprisonment for a term which may extend to 6 months or
- with fine which may extend to 3,000/- rupees or
- with both.

CEO failing to send extracts, copies etc

(12-B) Where a Chief Executive fails to send,

- periodical extracts of cash book and
- certified copies of the proceedings of the General Meetings and Committee Meetings to the Registrar and the financing Bank or credit agency
- within the time limits specified under sub-section [6] of section 29-G,
- he shall be punishable with imprisonment for a term which may extend to six months or

- with fine which may extend to 3,000/- rupees or
- with both.

Failure to comply orders issued under section 71

(13) Any co-operative society or any office bearer or employee or paid servant thereof,

- who fails to give effect to any decision or award under section 71, including order if any, passed by the appropriate appellate authority,
- such decision or award not being a money decree,

Shall if such failure is by-

(a) the Board, be punishable with fine which may extend to 5,000/- rupees, and

(b) an office bearer or an employee or a paid servant of such co-operative society, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to 5,000/- rupees or with both.

Misuse of properties of the society

(14) A member of the committee of a co-operative society,

- who uses or allows the use of properties or funds of any co-operative
- otherwise than in accordance with the provisions of this Act, the Rules or the bye-laws of the society,
- shall be punishable with fine which may extend to 5,000/- rupees.

Corrupt practices

(15) Where an office bearer, an employee, a paid servant or a member of a co-operative society, receives or sanctions a benami loan, accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person

- any gratification whatsoever, other than legal remuneration
- as a motive or reward
- for doing or fore bearing to do any official act or
- showing or fore bearing to show in exercise of his official functions
- favor or disfavor to any person or for rendering or attempting to render any services or disservice to any person or
- used or allows to use
- the properties or funds of any co-operative society
- otherwise than in accordance with the provisions of this Act, the Rules or the bye-laws of the co-operative society, or

Signing the minutes without attending the meetings

- where any office bearer of the co-operative society signs in the minutes of the board or other committee meetings
 - without actually attending such meeting,
 - he shall be deemed to be guilty of corrupt practice and
- (i) every person found guilty of any corrupt practice shall be punishable with imprisonment for a term which may extend to one year or
- with fine which may extend to 5,000/- rupees or
 - with both,
- (ii) every person convicted of an offence under clause [1]
- shall be disqualified permanently
 - to be an office bearer or an employee or a servant of any co-operative society.

Contravening provisions, where no penalty is provided

- (16) Any co-operative society or a member of its committee or any employee thereof guilty of any contravention of the provisions of this Act, for which no penalty is provided elsewhere,
- shall be punishable with imprisonment for a term which may extend to three months or
 - with fine which may extend to 5,000/- rupees or
 - with both.

S. 110 - Offences by companies

- (1) Where an offence under sub-section [i] or sub-section [4] of section 109 or under any rule has been committed by a company,
- every person who, at the time of offence was committed,
 - was in charge of and was responsible to the company for the conduct of the business of the company as well as the company
 - shall be deemed to be guilty of the offence and
 - shall be liable to be proceeded against and punished accordingly.

Provided that,

- nothing contained in this sub-section shall render any such person liable to any punishment provided in the aforesaid sub-section or in any rules,
- if he proves that

- the offence was committed without his knowledge or
- that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding any thing contained in sub-section [i],

Where an offence under sub-section [1] or [4] of section 109 or any rule has been committed by a company and

- it is proved that the offence has been committed with the consent or connivance of or
- is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer
- shall be deemed to be guilty of that offence and
- shall be liable to be proceeded against and punished accordingly.

Explanation-

For the purpose of this section,-

(a) “company” means a body corporate and includes a firm or other association of individuals, and

(b) “director” in relation to a firm means a partner of the firm.

S. 110A - Power to compound offences

(1) The Registrar may accept from any person against whom a reasonable suspicion exists that he has committed any offence punishable under sub-section [1], [1-A], [2], [5], [7], [9], [13] and [14] of section 109, [except an offence in respect of contravention of section 63], a sum of money not exceeding 1,000/- by way of composition of the offence which such person is suspected to have committed.

(1-A) The Director of Co-operative Audit may accept from any person against whom a reasonable suspicion exists that he has committed an offence in respect of contravention of section 63, punishable under sub-section [9] of section 109, a sum of money not exceeding 1,000/- rupees by way of composition for the offence which such person is suspected to have committed.

(2) On the payment of such money to the Registrar or the Director of Co-operative Audit as the case may be the suspected person if in custody shall be discharged, the property if any, seized shall be released and no further proceeding shall be taken against such person or property.

S. 111 - Cognizance of offences

(1) No Court inferior to that of a Magistrate of the First Class shall try any offence under this Act,

(2) No prosecution shall be instituted under this Act, without the previous sanction of,

(a) the Director of Co-operative Audit, in respect of matters arising out of audit, other than matters relating to co-operative credit structure society

(b) the Registrar in respect of other matters including matters relating to audit in respect of co-operative credit structure society

Provided that

- no sanction of the registrar or the director of co-operative audit shall be necessary for filing criminal complaints against the delinquents for alleged misappropriation or embezzlement of funds of a co-operative society detected during the course of audit, inquiry or inspection or in the normal course of business of a co-operative society

(3) The sanction under sub-section [2] shall not be given-

(i) without giving to the person concerned an opportunity to represent his case,

(ii) if the Director of Co-operative Audit or the Registrar, as the case may be is satisfied that the person concerned has acted in good faith.

Ruling

Section - 2(g)

An accountant of a co-operative society, cannot be called an 'officer' as defined in Section.2 (g) of the Act and hence sanction to prosecute him under Section.111 (2) of the Act is not required

[Gurupad Ramachandra Nandini-Vs-State, 1971(1) Mys LJ 172]

Rulings

1] Section 111 – cognizance of offences

Requirement of sanction cannot be evaded by splitting up facts

[Neelagouda Vs Marigouda 1971 Mys LJ Sh.N.287]

2] Section 111[2] – Sanction to prosecute is required only for offences falling under the Act and mentioned in section 109

[Ramachandra Nandini Vs State of Mysore [1971]1 Mys LJ.172]

3] Section 111[2]

Sanction under is required only for offences under the Act and not for those under the general penal law

[State of Mysore Vs Mallaiah (1974)2 Kar.L.Jr.66 Sh.N.245 [DB]

4] Section 111[2] – Prosecution of secretary of society for misappropriation – sanction, if necessary

Section 111[2] deals with prosecution for the offences only falling under the Act. What are the offences falling under the Act are stated in section 109 of the Act.

Hence section 111[2] does not extend to offences punishable under other laws.

Section 68 and 69, deal with the properties and the funds of the co-operative society and other liabilities of the officers concerned.

They do not deal with offences falling under the Act

[Taluka Industrial Co-operative Society Limited Vs Patel C.M.Timmegouda (1965)1 Mys.LJ.98]

5] Section 111[2] / Sanction to prosecute

IPC, 1860, Sections 406 and 409

Sanction to prosecute – criminal proceedings instituted against the servant of co-operative society for his omission to account for sale proceeds of empty gunny bags in books of account

Omission notified in audit

Previous sanction of director of Co-operative audit is necessary and without such sanction

Criminal Court has no jurisdiction to try case

In absence of such sanction order of acquittal passed by the Magistrate is to be affirmed

Reopening of case after obtaining sanction, held is not proper in view of case being very old and amount involved being very small.

[State by PSI (I and O) Athani Police Station Vs Pundalik Annappa Garage 2002(4) Kar.LJ.409 (DB)]

S. 111. A- Secretary omitted wef 20.01.1976

S. 111-B - Preservation of records

The books and every records of a co-operative Society shall be preserved for such period as the Registrar may from time to time by general or special order direct.

A list of records destroyed shall be prepared and kept by the Chief Executive.

CHAPTER XV

Miscellaneous

S. 112 - Prohibition against the use of the word “Co-operative”

No person other than a co-operative society shall trade or carry on business under any name or title, of which the word ‘co-operative’ or its equivalent in any Indian language is part,

Provided that nothing in this section shall apply to the use by any person or his successor in respect of any name or title under which he carried on business at the date on which the Co-operative Societies Act, 1912, came in to operation.

S. 113 – Address of a co-operative society

(1) Every co-operative society shall have an office address registered in accordance with the rules to which all notices and communications may be sent and shall send to the registrar notice of any change thereof within 30 days of the change

(2) All the meetings including the general meetings of a co-operative society shall be held in the registered office

Provided that any such meeting may with the previous permission of the registrar be held at any other place within the same city, town or village where the registered office is situated if there is no sufficient accommodation to hold such meeting in the registered office

S. 114 - Copy of the Act, Rules and Bye-laws to be open to inspection

Every co-operative society shall keep a copy of this Act, the Rules and its bye-laws

- open to inspection of bye laws free of charge
- at all reasonable times
- at the registered office of the society

S. 115 – Amendment of bye laws of co-operative societies in certain circumstances

Omitted wef 09.01.1984

S. 116 – Orders to be pronounced

Every order, decision or award made or given by the registrar or any officer or other person or a liquidator under this Act shall be pronounced on the day on which the case is finally heard or on some future day of which due notice shall be given to the parties

Section – 117 - Procedure for settlement of disputes and power of the Registrar or any other person to whom a dispute is referred for decision under section 70

(1) The Registrar or any other person to whom a dispute is referred for decision under section 70, hearing a dispute under section 71, shall hear the dispute in the manner prescribed and shall have power

- to summon and enforce attendance of witnesses including the parties interested or any of them and
- to compel them to give evidence on oath, affirmation or affidavit and
- to compel the production of documents by the same means and as far as possible in the same manner as is provided in the case of a Civil Court by the Code of Civil Procedure, 1908.

(2) Except with the permission of the Registrar or any other person deciding a dispute, as the case may be, no party shall be represented at the hearing of a dispute by a legal practitioner.

(3)(a) If the Registrar or any other person to whom a dispute is referred is satisfied, that a person, whether he be a member of the co-operative society or not has acquired any interest in the property of a person who is a party to a dispute, he may order that the person who has acquired the interest in the property may join as a party to the dispute and

Any decision that may be passed on the reference by the Registrar or his nominee or any other person shall be binding on the party so joined in the same manner as if he were an original party to the dispute.

(b) Where a dispute has been instituted in the name of the wrong person or where all the defendants have not been included,

- the Registrar or any other person to whom a dispute is referred for decision under section 70,
- may at any stage of the hearing of the dispute,

- if satisfied that the mistake was bona fide
- order any other person to be substituted or added as a plaintiff or a defendant upon such terms as he thinks just.

(c) The Registrar or any other person, to whom a dispute is referred for decision under section 70 may at any stage of the proceedings

- either upon or without the application of any party and
- on such terms as may appear to the Registrar or any other person deciding a dispute as the case may be to be just,
- order that the name of any party improperly joined whether as plaintiff or defendant
- be struck out and

That the name of any person who ought to have been joined whether as plaintiff or defendant or whose presence before the Registrar or any other person deciding a dispute under section 70, as the case may be necessary in order to enable the Registrar or such person effectually and completely to adjudicate upon and settle all the questions involved in the dispute, be added.

(d) Any person,

- who is a party to the dispute and
- entitled to more than one relief in respect of the same cause of action
- may claim all or any of such relief,

But if he omits to claim for all such relief,

- he shall not forward a claim for any relief so omitted,
- except with the leave of the Registrar or any other person to whom a dispute is referred for decision under section 70.

S. 118 - Bar of jurisdiction of courts

(1) Save as provided in this Act,

No Civil, Labor or Revenue Court or Industrial Tribunal shall have any jurisdiction in respect of,

- (a) the registration of a co-operative society or bye-laws or of an amendment of a bye-law,
- (b) the removal of a committee [or member thereof] ,

- (c) any dispute required under Section 70 to be referred to the Registrar for the recovery of money under Section 100,
- (d) any matter concerning the winding up and the dissolution of a co-operative society.

(2) While co-operative society is being wound up, no suit or other legal proceedings relating to the business of such society shall be proceeded with or instituted against the Liquidator as such or against the society or any other member thereof, except by leave of the Registrar and subject to such terms as he may impose.

(3) Save as provided in this Act,

- no order, decision or award made under this Act
- shall be questioned in any court
- on any ground whatsoever.

Rulings

1] Section 118 / Criminal prosecutions for offences under general law

Bar under will not apply to criminal prosecutions for offences under general law

[State of Mysore Vs Malliah (1974) 2 Kar.L.Jr.66 Sh.N.245 (DB)]

2] Section 118 and 101(2)

KCSR 1960 –Rule 38(5) –CPC 1908 – Section 9

Bar of jurisdiction of Civil Courts

Sale of property as per adjudication order under section 71 of Act for recovery of loan Suite against sale only when objection to sale filed under Rule 38(5) for setting sale is rejected by sale officer

Suite against sale not maintainable if this condition precedent is not satisfied.

3] Section 118(3)

Whether Civil Court has jurisdiction to go behind the award made under section 70 of the Act and grant an injunction restraining the co-operative society from executing the award

Held - No – In view of bar of jurisdiction Civil courts under section 118(3)

S. 119 - Application of Limitation Act

The provisions of sections 4, 5, 12 and 14 of the Indian Limitation Act, 1908 shall be applicable to the filing of

- any appeal or application
- for revision under this Act.

S. 120 - Power to exempt Societies from conditions of Registration

Notwithstanding anything contained in this Act, the State Government may, by special order published in the Official Gazette in each case and subject to such conditions, if any, as it may impose, exempt any co-operative society from any of the requirements of this Act as to registration

S. 121 - Power to exempt societies

The State Government may

- by general or special order published in the official Gazette,
- exempt any co-operative society or any class of societies from any of the provisions of this Act,
- or may direct that such provisions shall apply to such society or class of societies with such modifications as may be specified in the order

Rulings

1] Section 121 – Colorable exercise of power

State Government to modify provisions of Act is exercised to remove statutory disqualification of person to hold elected office in co-operative society beyond six years –

Necessity for exercising power not ascertained and no reason recorded –

Repeated issue of orders mechanically citing same reasons permitting individual to continue to hold office year after year purported to be in public interest but really to favor individual, amounts to colorable exercise of power, violative of Article 14 of Constitution

[B.N.Jayant Kumar Vs State of Karnataka and Others 1998[3] Kar.LJ.19B] - [ILR 1998 Kar.2081]

2] Section 121[1] –Service conditions of employees

Not open to State Government to prescribe service conditions of employees of co-operative societies without adherence to mandate of section 129

On facts the Government Notification dated 23-6-1983 issued by the State Government quashed

[L.M.Shenvy Vs State of Karnataka 1991 [1] Kar.LJ.289 ILR 1991 Kar.1209]

3] Section 121[1] and 70 / Termination of service of employee

KCSR, 1960, sections 18[1] and 17

Industrial Disputes Act.1947, Sections 2[OO] and 25-F

Employee of society

Appointment made in disregard of eligibility criteria and rules of recruitment which are mandatory

Termination of service of such employee, held does not amount to retrenchment.

[The Rajajinagar Co-operative Bank Lmt. Vs The Presiding Officer Bangalore and Another, 2001[6] Kar.L.J.36B]

4] Section 129[2][O] / Power of Registrar

KCSR 1960 Rule 17 – Posts in Co-operative Society – Abolition of – Power of Registrar – Registrar, held, has no power to abolish post existing in society.

The strength of the establishment of the society is subject to the budget allotment sanctioned by the General Body.

The Registrar is conferred with the power to only accord prior approval and he has no power to abolish the existing post in the society.

This is without authority of law.

[T.B.Muddanna Vs The Registrar of Co-operative Societies Bangalore and Others 2000[3] Kar.Lj.400A]

5] Section 129[1] / Relaxation of age restriction

KCSR 1960 Rule 17 and Rule 18[1]

Appointment of post of manager

Relaxation of age restriction for

Scope of Registrar's power to relax age restriction and prescribe additional qualifications

Only maximum prescribed by Rules can be relaxed where post has to be filled by person of high qualifications and special experience and not minimum age of 18 years prescribed by Rules

No additional qualification can be prescribed except ones prescribed by Rules

Approval given by Registrar for issue of advertisement calling for applications from ex-servicemen who have attained age of 45 years and not attained age of 52 years with additional qualification of holding rank of Major or Lieutenant Colonel while in service, held is in excess of jurisdiction conferred on Registrar

His order of approval is liable to be set aside.

[Gajanana.T.Bhat Vs The Registrar of Co-operative in Karnataka Bangalore and Another, 2004[1] Kar.LJ.328]

S. 122 - Register of members

Any register or list of members or shares kept by any co-operative society shall be prima facie evidence of any of the following particulars entered therein,

- (a) the date on which the name of any person was entered in such register or list as a member
- (b) the date on which any such person ceased to be a member.

S. 123 - Proof of entries in co-operative societies books

(1) A copy of any entry in a book of a co-operative society regularly kept in the course of its business,

- shall if certified in such manner as may be prescribed,
- be received in any suit or legal proceedings as prima facie evidence of such entry and
- shall be admitted as evidence of the matters, transaction and accounts therein recorded
- in the same manner and to the same extent as the original entry itself is admissible.

(2) A co-operative society may grant copies of any document obtained and kept by it in the course of its business or of any entries in such document and any copy so granted shall when certified in such manner as may be prescribed

- be admissible in evidence for any purpose
- in the same manner and to the same extent as the original document or the entries therein, as the case may be.

(3) No office bearer of a co-operative society and no office bearer in whose office the books of a co-operative society are deposited after liquidation,

- shall in any legal proceedings to which the society or the Liquidator is not a party,
- be compelled to produce any of the society's books or documents, the contents of which can be proved under this section or
- to appear as a witness to prove the matters, transactions and accounts therein recorded,

- except under the order of the Court, Tribunal or the Arbitrator made for special cause.

S. 124 - Service of notice under the Act

Every notice or order issued or made under this Act may be served on any person,

- by properly addressing it to the last known place of residence or business of such person prepaying and posting by registered post
- a letter containing the notice or order and
- unless the contrary is proved,
- such service shall be deemed to have been effected at the time at which the letter would be delivered in the ordinary course.

Provided that

- a notice relating to any meeting or election of a co-operative society,
- other than the meeting convened for the purpose of election of office-bearers,
- shall be issued by certificate of posting.

S. 125 - Notice necessary in suits

No suit shall be instituted against a co-operative society or any of its officers in respect of any act touching the constitution, management or the business of the society

- until the expiration of two months next after notice in writing has been delivered to the Registrar, or left at his office,
- stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims and
- the plaint shall contain a statement that such notice has been so delivered or left.

S. 126 - Acts of co-operative societies not to be invalidated by certain defects

No act of co-operative society or any committee or of any officer shall be deemed to be invalid

- by reason only of the existence of any defect in the institution of the society or in the appointment or election of an officer or
- on the ground that such officer was disqualified for his appointment.

S. 126-A – Removal and disqualification of a member of a committee

Omitted wef 15.08.1998

S. 127 - Indemnity

No suit, prosecution or other legal proceedings shall lie

- against the Registrar or any person subordinate to him or acting on his authority or
 - the Director of Co-operative Audit or any other person subordinate to him acting on his authority or
 - against the new committee of the co-operative society or
 - the Administrator or the Special officer appointed under section 30, or 30-A
- in respect of anything in good faith done or purporting to have been done under this Act

S. 127A - Office bearers, members and employees of a co-operative society to be public servants

Every office bearer of a co-operative society, every member of a committee and every employee of a co-operative society including sale and recovery officers shall be deemed to be public servants within the meaning of section 21 of IPC.

S. 128 - Companies Act, 1956, not to apply

The provisions of the Companies Act, 1956 shall not apply to co-operative societies.

S. 128A - Constitution of a common cadre

This section shall be omitted with effect from the first of July 2010

(1) Notwithstanding any thing contained in this Act, the rules or the bye-laws,

- where the Registrar in the interest of the co-operative movement,
- considers that the creation of a common cadre of employees for any class of co-operative societies is necessary,
- he shall authorize one or more federal societies to which such class of co-operative societies is affiliated
- to exercise the power of appointment, transfer and disciplinary action
- in respect of such categories of employees of that class of co-operative societies as may be specified by him and

- make such regulations as may be necessary for carrying out the said purpose.

Where such federal society is so authorized by the Registrar, the affiliated co-operative societies

- shall not have powers to deal with such categories of employees
- except to the extent the regulations may permit

(2) The Registrar, shall have,

- power to require the affiliated co-operative societies to make contribution of such sum every year towards expenditure,
- as the federal society is likely to incur or has incurred for the purpose.

If any co-operative society fails to pay the said sum to such authority as may be specified by the Registrar and within the time fixed by him,

- the Registrar may on the application of the authority and after such inquiry as he may consider,
- make an order requiring the co-operative society to pay the amount and
- every such order shall be enforceable against the co-operative society as if it were an award under section 71

Rulings

1] Section 128-A – Constitutional validity

Provision not violative of Article 14, 19(i)(g) and 23 of the Constitution of India – Scope explained

[Primary co-operative Land development Bank limited Vs State of Karnataka ILR 1986 Kar.427]

2] Section 128-A / common cadre authority

Power of dismissed employee – Appointment, re-appointment or reinstatement Held could be done only with the approval of the common Cadre authority – explained

[P.L.Sannappa Vs The Common Cadre Authority and Another, 1989(3) Kar.LJ.277]

3] Section 128-A

Secretary of the society – suspension of – Managing Director, pending initiation of disciplinary action by CCA, competent to keep the secretary under suspension – explained

Initiating disciplinary action is quite different from placing a person under suspension pending initiation of disciplinary action.

Regulation 30 is quite clear on the point and gives the MD the power to make an interim order placing the erring secretary under suspension pending institution of disciplinary action by the CCA.

[Basavannappa Vs The Registrar of Co-operative Societies and Others, 1990(3) Kar.LJ.355]

4] Section 128-A / Rule 17-C

A secretary of a co-operative society, who did not possess the qualification prescribed under R-17-C of the Rules or whose appointment has not been approved by the joint regulations.

Consequently the CCA has no power to place the secretary under suspension and the society alone is competent to place him under suspension and to take disciplinary action against him.

[Boregouda Vs ARCS Pandavapura and Others 1981(2) Kar.LJ.273]

5] Section 128-A / Post of permanent secretary

KCS Rules, 1960, Rule 17 – Secretary – Appointment to post of –agriculture Credit Co-operative Societies covered by CCA

Power to make appointment rests with Authority and appointment made by Society itself by promotion by lower cadre is unauthorized

Subsequent reversion by such unauthorized appointee to lower cadre to enable person duly appointed by Authority to take charge as Secretary does not amount to imposition of penalty of reversion.

[N.Raje Urs Vs CCC for secretaries of PACS in Mandya district and Others 2001(4) Kar.LJ.516]

S. 128B – Duties of Police Officers

It shall be the duty of every police officer

- to assist the Registrar or any person subordinate to the Registrar
- reasonably demanding his aid
- for the lawful exercise of any power vesting in the Registrar or such person under this Act or any rule or bye-law made there under.

S. 129 – Powers to make rules

(1) The State Government may for the whole or any part of the state and for any class of co-operative societies, after previous publication, by notification in the official gazette make rules to carry out the purpose of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely,

- (a) the application to whom the order refusing the registration of a co-operation society may be sent by the Registrar;
- (b) the procedure and conditions for change in the form and extent of the liability of a co-operative society;
- (c) the matters in respect of which a co-operative society shall or may make bye-laws;
- (d) the procedure to be followed for amendment of bye-laws by a co-operative society;
- (e) the qualifications of individuals who may be admitted as members of co-operative societies;
- (f) the provision for a second or casting vote by the chairman of a meeting of a co-operative society;
- (g) the appointment by a co-operative society of one of its members to represent and vote on its behalf at a meeting of another co-operative society of which it is a member;
- (h) omitted;
- (i) the procedure for the nomination of a person to whom the share or interest of a member on his death may be transferred or the value thereof may be paid;
- (j) the mode in which the value of a deceased member's share shall be ascertained;
- (k) conduct of election of members of the committee and office bearers of the co-operative society including the appointment of returning officers, polling officers and such officers and their powers and functions;
- (l) the requisitioning of a general meeting of a co-operative society;
- (m) remuneration payable to the members of the committee and the administrator or the special officer appointed in place of a committee removed by the Registrar;
- (n) the qualifications for membership of committee of a co-operative society, (the authority competent to decide questions of disqualification and appeals from such decisions);
- (o) the recruitment including qualification for recruitment and conditions of service of employees of co-operative societies;
- (p) the prohibition against officers of a co-operative society being interested in contracts with the society;
- (q) the matters connected with the direct and indirect partnership of the State Government in co-operative societies;
- (r) the rate at which dividend may be paid by co-operative societies;

- (s) the objects of the reserve fund of a co-operative society and mode of its investment;
- (t) the mode of disposal of reserve fund of a co-operative society on its winding up;
- (u) the extent and conditions subject to which a co-operative society may receive deposits and loans;
- (v) the restrictions on transactions by a co-operative society with non-members;
- (w) the restrictions on grant of loans by a co-operative society against its shares;
- (x) the form and standards of fluid resources to be maintained by co-operative societies accepting deposits and granting cash credits;
- (y) the levy of audit fees on co-operative societies;
- (z) the procedure to be followed in proceedings before the Registrar, arbitrator or other person deciding disputes and the fees payable to arbitrators;
- (aa) the conditions subject to which assets of a co-operative society shall vest in a liquidator and the procedure to be adopted in winding up of a co-operative society;
- (bb) the procedure for recovery of amounts due or payable to a co-operative society and for the transfer of property under section 101-B;
- (cc) the mode of making attachment before judgment;
- (dd) the procedure and conditions for the issue, redemption, re-issue, transfer, replacement or conversion of debentures issued by a society to which chapter X1 is applicable;
- (dd-1) the maximum amount of principal, the rate of interest and other conditions for the guarantee of debentures issued by a society to which chapter X1 is applicable
- (dd-2) the qualifications and methods of appointment of an officer to effect sale under section 89 and the powers and function which such an officer may exercise
- (dd-3) for the appointment of a receiver of the produce and income of the mortgaged property for sale under section 89, the conditions in which he may be appointed or removed, the powers and functions which he may exercise and the expenses of management and remuneration which he may receive
- (dd-4) the circumstances in which action may be taken by a (Agriculture and Rural Development Bank) against a mortgagor under section 91;
- (dd-5) in case of sale of immovable property under chapter X1 –
 - (i) the procedure for proclamation and conduct of the sale and the conditions on which the proposed sale may be abandoned;
 - (ii) the method of calculating the expenses incidental to the sale or proposed sale;
 - (iii) the procedure for the receipt of deposits and disposal of the proceeds of sale;

- (iv) the procedure for a resale, if a proposed sale is abandoned or the purchase money is not deposited within the prescribed time and the penalty to be levied against the purchaser who fails so to deposit the purchase money;
 - (v) the form and method of disposal of money by a (Agriculture and Rural Development Bank) under section 89-B;
 - (vi) the form of sale certificate under section 89-C;
 - (vii) the procedure for the delivery by the court to the purchaser of the property purchased under section 89-C;
 - (viii) the form of the notice referred to in section 97; and
 - (ix) the fee payable for the service of such notices and the manner of serving such notices on the landlord named in such notices;
 - (dd-6) the time within which and the procedure according to which property purchased by a (Agriculture and Rural Development Bank) at a sale of immovable property under Chapter X1 shall be disposed of by the Bank,
 - (ee) the manner of registering the address of a co-operative society;
 - (ff) the account books and records and registers to be kept by a co-operative society and power of Registrar to direct the accounts and books to be written up;
 - (gg) the manner of certification of entries in the books of a co-operative society and of copies of documents kept by it in the course of its business;
 - (hh) the statements and returns to be furnished by co-operative societies to the Registrar;
 - (ii) the restrictions on persons appearing as legal practitioners;
 - (jj) the inspection of documents and the levy of fees for granting certified copies thereof; and
 - (kk) the matters expressly required or allowed by this Act to be prescribed;
 - (ll) any other matter necessary for giving effect to the purposes of this Act;
- (3) In making a rule under this section the state government may provide that a person guilty of breach thereof shall be punishable with fine which may extend to 200 rupees
- (4) A rule under this Act may be made with retrospective effect and when such a rule is made the reasons for making the rule shall be specified in a statement laid before both houses of the state legislature. Subject to any modification made under section 130 every rule made under this Act shall have effect as if enacted in this Act

S. 129A - Model Bye laws

(1) In respect any of the matters specified in the rules made in accordance with clause [c] of sub-section (2) of section 129,

- the Registrar may by notification, make model bye-laws and
- different model bye-laws may be made for different classes of societies.

(2) The Registrar may by order,

- direct any co-operative society or class or classes of co-operative societies
- to adopt the model bye-laws
- in respect of any matter within such period not being less than three months from the date of receipt of the **discretion by the society**.

(3) If a co-operative society fails to take action for adopting the model bye-laws with or without modification

- the Registrar may by order declare that the said model bye-laws
- shall be deemed to have been adopted by such society
- from such date as may be specified in such order and
- such bye-laws come in to force accordingly.

S. 130 - Rules and orders to be laid before State Legislature

Every notification issued under sections 37, 54 and 132,

- every order made under sections 120 and 121 and
- every rule made under section 129

Shall, as soon as may be, after it is issued or made,

- be laid before each House of the State Legislature
- while it is in session for a total period of 30 days which may be comprised in one session or in two or more sessions and

If before the expiry of the said period, either house of the State Legislature

- makes any modification in the notification, order or rule or
- directs that the notification, order or rule shall not have effect and
- if the modification or direction is agreed to by the other House,
- the notification, order or rule

- shall thereafter have effect only in such modified form or be of no effect, as the case may be.

S. 131 - Repeal and Savings

The Bombay Co-operative Societies Act, 1925 [Bombay Act VII of 1925], as in force in the Bombay area,

The Madras Co-operative Societies Act, 1932 [Madras Act IV of 1932] and the Madras Co-operative Land Mortgage Banks Act, 1934 [Madras Act X of 1934] as in force the Madras Area,

The Coorg Co-operative Societies Act, 1936 [Coorg Act II of 1936] as in force in Coorg District,

The Mysore Co-operative Societies Act, 1948 [Mysore Act LII of 1948], as in force in the Mysore Area,

The Hyderabad Co-operative Societies Act, 1952 [Hyderabad Act XVI of 1952] and the Hyderabad Co-operative Land Mortgage Banks Act, 1349 F [Hyderabad Act II of 1349 Fasli] as in force in the Hyderabad Area,

- are hereby repealed

Provided that-

Any co-operative society existing on the date of commencement of this Act

- which has been registered or deemed to be registered under this Act and the bye-laws of such society
- shall so far as they are not inconsistent with the provisions of this Act or the rules made there under,
- continue in force until altered or rescinded in accordance with the provisions of this Act and the Rules made there under,

Provided further that subject to the preceding proviso,

- Section 6 of the Karnataka General Clauses Act, 1899, shall be applicable in respect of the repeal of the said enactments and
- Section 8 and 24 of the said Act shall be applicable as if the said enactments had been repealed and reenacted by a Karnataka Act.

S. 132 - Power to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of this Act in consequences of the transition to the said provisions from the provisions of the Acts in force immediately before the commencement of this Act,

- the State Government may by notification in the Official Gazette,
- make such provisions as appear to it to be necessary or expedient for removing the difficulty.

Provided that no such notification shall be issued under this section after the expiry of two years from the commencement of the relevant provision under the KCS [Amendment] Act 2010

(2) Every notification issued under this section shall, as soon as may be after it is made be laid before the State Legislature

THE END