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document not falling within the ambit of section 195(1)(b)(ii), the police will have undisputed right of investigation in case its machinery is set in motion.

(18) The net result of the discussion is that *Karnail Singh's* case is correctly decided and depicts the correct position of the law. Section 195(1)(b)(ii) of the new Code is limited in its operation only to the offences mentioned in this section if committed in regard to a document produced or given in evidence in such proceedings, while the document is in the custody of the Court. It has no application to a case in which such a document is fabricated prior to its production or given in evidence.

(19) The reference is accordingly answered. The individual cases will now go back for decision on merits.

Surinder Singh, J.—I agree.

N.K.S.

FULL BENCH

Before : Hon'ble P. C. Jain, C.J., D. S. Tewatia & S. P. Goyal, JJ.

SONEPAT CO-OPERATIVE SUGAR MILLS LTD., SONEPAT,—
Petitioner.

versus

THE PRESIDING OFFICER, LABOUR COURT, ROHTAK and another,—Respondents.

Civil Writ Petition No. 2018 of 1985.

August 14, 1986.

Industrial Disputes Act (XIV of 1947)—Section 10—Haryana Co-operative Societies Act (XXII of 1984)—Sections 102, 103 and 128—Punjab Co-operative Societies Act (XXV of 1961)—Sections 55, 56 and 82—Constitution of India, 1950—Article 14—Industrial disputes arising in a co-operative society referred for adjudication to a Labour Court—1961 Act repealed during the pendency of the references and the 1984 Act brought on the statute book—Section 128 of the 1984

Act taking away jurisdiction of the Labour Court without any reference to the disputes already pending—References of the disputes already pending before the Labour Court—Whether could continue there—Introduction of the word 'establishment' in section 102 (1)—Whether intended to expand the jurisdiction of the Arbitrator so as to exclude the jurisdiction of the Labour Court—Section 128 (1) in so far as it takes away the jurisdiction of the Labour Court/Industrial Tribunal—Whether unconstitutional.

Held, that :

- (1) the Labour Court would not be divested of the references which had been made or were pending before it *qua* the employees of the Co-operative Societies by the Haryana Co-operative Societies Act whereby such disputes are purported to have been taken out of its jurisdiction ;
- (2) that the Legislature did not intend to include in the expression 'establishment' industrial disputes for the adjudication of which the Parliament has enacted the Industrial Disputes Act ;
- (3) that the Industrial Disputes Act is a special enactment dealing with a special subject of industrial disputes and special provisions have been made in the statute for setting up Tribunals qualified for adjudicating upon them. Therefore, an industrial dispute between a Co-operative Society under the Co-operative Societies Act and its workmen under the law has to be referred to an Industrial Tribunal set up under the Industrial Disputes Act; and
- (4) that the provisions made in section 128 of the Co-operative Societies Act, 1984, to the extent they exclude the jurisdiction of the Industrial Tribunal and Labour Court are unconstitutional and hit by the provisions of Article 14 of the Constitution. (Para 29).

Petition under Articles 226 and 227 of the Constitution of India praying that the petition be accepted, records of the case sent for, and

- (a) a writ in the nature of certiorari issued quashing the impugned orders Annexures P-3 and P-4;
- (b) any other suitable writ, order or direction issued which this Hon'ble Court deems fit and proper in the circumstances of the case;

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- (c) *filing of original/certified copies of Annexures P-1 to P-4 dispensed with;*
- (d) *service of notice of motion dispensed with since the Award has become enforceable and respondent No. 2 is seeking its implementation;*
- (e) *operation of the impugned Award stayed till the writ petition is finally disposed of by this Hon'ble Court; and*
- (f) *costs awarded to the petitioner.*

(Case admitted and referred to Full Bench as it involved an important question of Law by Hon'ble Mr. Justice R. N. Mittal and Hon'ble Mr. Justice S. S. Kang on May 1, 1985).

N. K. Sodhi, Senior Advocate S. K. Hirajee, Advocate and R. N. Raina, Advocate,

Anand Swarup, Senior Advocate with Manoj Swarup, Advocates, H. L. Sibal, A.G. Haryana with P. S. Duhan D.A.G. Haryana and Jagdev Sharma, D.A.G. Haryana.

JUDGMENT

Prem Chand Jain, C.J.

(1) The petitioner is a Cooperative Society registered under Section 127 of the Haryana Co-operative Societies Act (Act No. XXII of 1984) (hereinafter referred to as the Act) and is carrying on its business activities at Sonepat under the name and style of the Sonepat Cooperative Sugar Mills Ltd. Ajit Singh, respondent No. 2, was employed as a Legal Assistant in the Supervisory Grade 'B' vide appointment letter dated 27th September, 1978. The duties which were assigned to him were mainly managerial and administrative in nature though he also performed supervisory duties as well. According to staffing pattern sanctioned by the Haryana State Federation of Co-operative Sugar Mills Ltd., Chandigarh, which has got a statutory control over the petitioner-Society, the post of Legal Assistant was not sanctioned and, therefore, the Board of Directors in their meeting held on 6th November, 1979 decided to abolish the post at the close of the then crushing season. Respondent No. 2 had been appointed with effect from 28th September, 1978 and was kept on probation for one year. As under the new staffing pattern, no post

of Legal Assistant was provided for the petitioner-Society, respondent No. 2 was intimated *vide* office letter dated 23rd October, 1979 to the effect that it was not possible to confirm him on the post and his probationary period was extended for two months upto 28th November, 1979. However, the Board of Directors in the meeting held on 6th November, 1979 decided to abolish the post and this decision was conveyed to respondent No. 2, *vide* letter dated 28th November, 1979. Again, *vide* letter dated 24th January, 1980, respondent No. 2 was intimated that he would no more be required in the organisation at the close of the crushing season, and, accordingly, he was relieved from his post with effect from 9th February, 1980.

(2) It was further averred that in view of the decision of the Board and the final action of terminating his services, respondent No. 2 sought to raise an industrial dispute regarding his termination and the State Government made a reference to the Labour Court, respondent, under Section 10(1) of the Industrial Disputes Act for adjudication. On receipt of the reference, the Labour Court issued notices to the parties to put in their respective claims. On the pleadings of the parties, the following two issues were framed:—

- (i) Whether the applicant does not fall under the definition of workman ?
- (ii) Whether the termination of services of the workman is proper, justified and in order ? If not, to what relief is he entitled ?

The Labour Court *vide* its order dated 24th September, 1982, held that respondent No. 2 was a workman. On Issue No. 2, it was held that the order of termination of the services of the said respondent was invalid being in contravention of the provisions of Section 25-F of the Industrial Disputes Act. A copy of the order dated 24th September, 1982 is Annexure P-3 and of the award published on February 5, 1985 is attached with the petition as Annexure P-4.

(3) It is also averred that while the proceedings were pending before the Labour Court, the Punjab Cooperative Societies Act, 1961 (hereinafter referred to as the old Act) was repealed and the 1984 Act was enacted by the Haryana Legislature, which received the assent of the President of India on 20th September, 1984 and was published in the Haryana Government Gazette Extraordinary on 15th October, 1984. It is alleged in the petition that in view of the provisions of Section 102 read with section 128 of the Act, the dispute

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between the petitioner-Society and respondent No. 2 was now required to be decided by a reference to arbitration of the Registrar and that the jurisdiction of the Industrial Tribunal/Labour Court to decide such a dispute has, therefore, been taken away. On this ground, as well as on the grounds which are enumerated in para 7 of the petition, the petitioner has called in question the legality and propriety of the order dated 24th September, 1982, copy Annexure P-3 and the award dated 5th February, 1985, copy Annexure P-4.

(4) As is evident from the grounds of challenge, one of the points raised in the petition is about the applicability of the provisions of Section 102 and 128 of the Act on pending proceedings. On 1st May, 1985, when the matter came up for motion hearing it was found that a similar question had been referred to a Full Bench in Income Tax Reference No. 219 of 1980, with the result that this petition was also ordered to be heard and decided with that Income Tax Reference.

(5) On the point of applicability of the amended provisions of law to the pending proceedings, we have already opined in I.T.R. No. 219 of 1980 that an amendment unless expressly so provides, would not affect a pending proceeding and that the same shall be continued under the old law before the same forum. In view of that decision a fortiori it has to be held in this case also that whatever references were pending for decision on the enactment and enforcement of the Cooperative Societies Act, 1984, shall not be affected and will have to be decided by the Authority before whom the same were pending.

(6) The aforesaid finding though recorded, in my view, does not settle the dispute, as the other equally important question that needs determination is whether by the enactment of section 102 and section 128, the jurisdiction of the Industrial Tribunal/Labour Court has been taken away so as to completely vest the power in the Registrar or his nominee so appointed under the Cooperative Societies Act to decide all disputes between a Society and its employees.

(7) It was very vehemently contended by Mr. N. K. Sodhi, Senior Advocate, learned counsel for the petitioner that an industrial dispute between a Society and its employees covered by the provisions of Section 102 of 1984 Act has to be decided by the Registrar, Cooperative Societies or his nominee on reference by way of arbitration as contemplated under Section 103 of the 1984 Act and the

jurisdiction of the Labour Court/Industrial Tribunal is completely ousted by Section 128 of the Act.

(8) On the other hand, what was sought to be argued by the learned counsel for the respondents was that the industrial dispute between an employee and a Society was not referable to an Arbitrator, that the Industrial Tribunal/Labour Court under the scheme of the Industrial Disputes Act alone had jurisdiction to decide such a dispute and that the change in law could not be interpreted in a manner which would result in destruction of the purpose for which industrial law was enacted.

(9) Before I advert to the merits of the controversy, it is necessary to refer to the relevant provisions of the Punjab Cooperative Societies Act, 1961, which has been repealed by the Haryana Cooperative Societies Act, 1984.

(10) Section 55 which refers to the settlement of disputes, reads as under :—

“55. Disputes which may be referred to arbitration.—(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 liquidator, past or present; 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 representatives of any deceased officer, deceased agent, or deceased employee of the society; or
- (d) between the society and any other cooperative society, between a society and liquidator of another society or

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between the liquidator of one society and the liquidator of another society; such dispute shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

- (2) For the purposes 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 surety 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 any officer of the society.
- (3) If any question arises whether a dispute referred to the Registrar under this section is or is not 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.
- (4) No dispute arising in connection with the election of an officer of the society shall be entertained by the Registrar unless it is referred to him within thirty days from the date of the declaration of the result of election.

(11) Section 56 which gave powers to the Registrar to make reference was in the following terms :—

“56. Reference of disputes to arbitration :—

- (1) The Registrar may, on receipt of the reference of dispute under section 55:—
 - (a) decide the dispute himself ; or

- (b) transfer it for disposal to any person who has been invested by the Government with powers in that behalf ; or
- (c) refer it for disposal to one arbitrator;
- (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 or refer the same to another arbitrator for decision.
- (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 interest of justice."

(12) Section 82, which makes reference to the bar of the jurisdiction of the Civil Court reads thus:—

"82. Bar of jurisdiction of Court :—

(1) Save as provided in this Act, no civil or revenue court shall have any jurisdiction in respect of—

- (a) the registration of a co-operative society or its bye-laws or of an amendment of a bye-law ;
- (b) the removal of a committee ;
- (c) any dispute required under section 55 to be referred to the Registrar or any matter in which proceedings under section 55-A have been initiated ; or
- (d) any matter concerning the winding up and the dissolution of a co-operative society,

(2) While a 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 member thereof, except by leave of the Registrar and subject to such terms as may impose.

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(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."

(2) The perusal of the aforesaid provisions would show that disputes falling within the ambit of Section 55(1) (b) of 1961 Act were referred to the arbitration of the Registrar for decision and the jurisdiction of the Civil Court to entertain any suit or any other proceedings in respect of such disputes was specifically barred.

(14) Every State in the country has made analogous provisions under the Cooperative Societies Act framed by them. The scope of the provisions, which are similar to the provisions of 1961 Act, came to be considered in various cases to which reference is being made hereunder:—

(1) In case *The Jullundur Transport Co-operative Society Jullundur v. The Punjab State*, reported in (1), the question which arose for consideration was, whether an industrial dispute between a Cooperative Society under the Punjab Cooperative Societies Act, 1954 and its workmen could under the law be referred to an Industrial Tribunal set up under the Industrial Disputes Act, 1947. The Court observed that a reading of sub-section (1) of Section 50 clearly shows that though the words "touching the constitution or business of the Society" are unqualified and extremely wide and comprehensive, still the Legislature did not intend to include in this expression "industrial disputes" for adjudication of which the Parliament has enacted the Industrial Disputes Act. It was also noticed that there is no provision in the Cooperative Societies Act which excludes the applicability of the Industrial Disputes Act to the industrial disputes which may arise between the Co-operative Societies and their workmen. Besides, the Industrial Disputes Act is a special enactment dealing with a special subject of industrial disputes and special provisions have been made in the statute for setting up Tribunals qualified for adjudicating upon them. Therefore, an industrial dispute between a Co-operative Society under the Punjab Co-operative Societies Act and its workmen

under the law be referred to an Industrial Tribunal set up under the Industrial Disputes Act.

- (2) In case *D.M. Co-operative Bank v. Dalichand, etc.*, reported in (2), the issue which came up for determination before the Court was whether the dispute between the petitioner and the Bank could be referred to the Registrar for arbitration under sub-section (1) of Section 91 of the Maharashtra Cooperative Societies Act, 1961. The Bank had become the owner of the property under a certificate of transfer dated 13th May, 1963 issued by the Collector of Bombay and physical possession of the property was also handed over to the Bank. On 5th June, 1963, the Bank called upon the petitioners in that case to quit, vacate and deliver the vacant possession of the building in their occupation within 48 hours from the date of the receipt of the notice to which the petitioners in their reply dated June 24, 1963, challenged the transfer of the property to the Bank and also denied that they were in unauthorised and illegal possession. However, on July 11, 1963, the Bank had applied to the District Deputy Registrar, Co-operative Societies, Bombay, under Sections 91—96 of the Act with a prayer that the dispute between the petitioners and the Bank be referred to the Arbitrator. The words, "dispute touching business of Society" so employed in Section 91(1) of the Maharashtra Cooperative Societies Act, 1961 were examined by the Court and it was observed that the word "business" in sub-section (1) of Section 91 has been used in narrow sense and it means the actual trading or other similar business activity of the Society, which the Society is authorised to enter into under the Act and the bye-laws. On ultimate analysis it came to the conclusion that a dispute between a tenant and a member of the Bank in a building which has subsequently been acquired by the Bank is not one touching the business of the Bank and Section 91 of the Act does not affect the provisions of Section 28 of the Rent Act.

- (3) In *Co-operative Central Bank Ltd., and others v. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad*, (3), an

(2) AIR 1969 S.C. 1320.

(3) AIR 1970 S.C. 245.

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industrial dispute arose between 25 Cooperative Central Banks in the State of Andhra Pradesh and their workmen. The principal question related to the number of service conditions and transfer of some employees of the Bank. After noticing the observations made in *D.M. Co-operative Bank's case* (supra) as well as other cases it was laid down by the Supreme Court that in respect of the dispute relating to alteration of various conditions of service, the Registrar or other person dealing with it under Section 62 of the Act is not competent to grant the relief claimed by the workmen at all and as such the dispute is not a dispute covered by the provisions of Section 61 of the Act. If such a dispute is not contemplated to be dealt with under Section 62 of the Act, it must, therefore, be held to be outside the scope of Section 61, and it could only be dealt with by the Industrial Tribunal under the Industrial Disputes Act, 1947.

- (4) In another case *The Gujarat State Co-operative Land Development Bank Ltd. v. P. R. Mankad and another*, reported in (4), the facts were that Babu Bhai Nagrecha, the second respondent, was serving as an Additional Supervisor in the Dasada Branch of the Gujarat State Cooperative Land Development Bank Ltd. His services were terminated on 21st February, 1961 giving him a month's pay under Staff Regulation No. 15. He challenged that termination order by filing an application in the Labour Court at Rajkot, alleging that his services have been illegally and maliciously terminated by an act of victimisation because of his trade union activities. The Bank took up the plea that the Labour Court had no jurisdiction to entertain and decide the application because it was a Cooperative Society governed by the Gujarat Co-operative Societies Act, under which only the Registrar or his nominee had the jurisdiction to decide the dispute. It was observed that such a dispute was not 'any dispute' touching the business of the society within the contemplation of section 96 of the 1961 Act or Section 54 of the 1925 Act. Consequently, the dispute can be adjudicated upon

by the Labour Court alone. Reliance was placed on the case reported in *Co-operative Central Bank's case* (supra).

- (5) In the *Allahabad District Co-operative Ltd. v. Hanuman Dutt Tewari*, reported in (5), a question arose whether the suit filed by Hanuman Dutt Tewari for a declaration that the retrenchment of his services by the Society is barred by the provisions of Section 70 of the U.P. Co-operative Societies Act, 1966. After referring to the observations made in cases *D. M. Cooperative Bank's* (supra) and *Co-operative Central Bank's* (case) it was observed that the dispute does not relate to the business of the Society and the dispute relating to the conditions of service of the workmen employed by the Society cannot be held to be a dispute touching the business of the Society and as such is not barred under Section 70 of the U.P. Cooperative Societies Act, 1966.

(15) From the decisions referred to above and the interpretation given to the expression 'touching the business of the Society', it is quite evident that the disputes falling under the jurisdiction of the Labour Court or the Industrial Tribunal under the Industrial Disputes Act, 1947, could never be brought within the ambit of the provisions of Section 55 of the 1961 Act. However, it seems that in order to overcome the judicial pronouncements referred to above, the Act of 1984 introduced new sections in place of sections 55 and 56 of the Act, which read as under :—

"102. Disputes for arbitration.—(1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, establishment, management or the business of a co-operative society arises—

- (a) among members, past members and persons claiming through a member, past member or deceased members;
or
- (b) between a member, past member or persons claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society or liquidator, past or present;
or

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- (c) between the society or its committee and past committee, any officer, agent or employee or any past officer, agent or employee or the nominee, heirs or legal representatives of any deceased officer, agent or employee of the society; or
 - (d) between the society and any other society, between a society and liquidator of another society or between the liquidator of one society and the liquidator of another society; such disputes shall be referred to the arbitration of the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceedings 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 nominee, heirs or legal representative of a deceased member, whether such debt or demand be admitted or not;
 - (b) a claim by a surety 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 any officer of the society.
- (3) If any question arises whether a dispute referred to the Registrar under this section is or is not a dispute touching the constitutions, management or the business of co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any Court.
- (4) No dispute arising in connection with the election of committee member or officer of the society shall be entertained

by the Registrar unless it is referred to him within thirty days from the date of the declaration of the result of election.

103. Reference of dispute to arbitration,—

- (1) The Registrar may, on receipt of the reference of dispute for arbitration under section 102,—
 - (a) decide the dispute himself;
 - (b) transfer it for disposal to any person who has been vested by the Government with powers in that behalf; or
 - (c) refer it for disposal to any other person as arbitrator.
- (2) The Registrar may withdraw any reference from an officer who in exercising the powers of Registrar and entrust it for disposal to any other officer who has been vested with the powers of the Registrar.
- (3) 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 or refer the same to another arbitrator for decision.
- (4) The Registrar or any other person to whom a dispute is referred for decision under this section may, pending the decision of this dispute, make such interlocutory order as he may deem necessary in the interest of justice.

Regarding the bar of jurisdiction of Courts, the relevant provision is in the following terms:—

- (1) Save as provided in this Act, no civil court, revenue court, industrial tribunal or labour court shall have any jurisdiction in respect of—
 - (a) the registration of a co-operative society or its bye-laws or of an amendment of bye-laws;
 - (b) the removal of a committee;

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(c) any dispute required under section 102 to be referred to the arbitration of the Registrar or any matter in which proceedings under section 104 have been initiated; or
 (d) any matter concerning the winding up and dissolution of a co-operative society.

(2) While a co-operative Society is being wound up, no suit or other legal proceeding relating to the business of such society shall be proceeded with or instituted against the liquidator as such or against the society or any member thereof, except by leave of the Registrar and subject to such terms as he may impose.

(3) Save as provided in this Act, decision or award, made under this Act, shall not be questioned in any court or tribunal on any ground whatsoever."

(16) A comparison of the provisions of the Act of 1961 with the provisions of the Act of 1984 shows that in section 102, which corresponds to section 55, in sub-section (1) the word 'establishment' has been introduced, while in section 128, which corresponds to section 32, in sub-section (1) the words 'Industrial Tribunal' or 'Labour Court' have been added. There can be no gainsaying that from the amendment now made in the Act of 1984 the dispute touching the constitution, establishment, management or the business of a Cooperative Society shall be referable to the Arbitrator or his nominee and shall be decided by that authority. Thus, it follows that with regard to any dispute which touches the constitution, establishment, management or the business of a Cooperative Society, the Industrial Tribunal or the Labour Court shall have no jurisdiction in the matter.

(17) As has come in the earlier part of the judgment, the three words 'constitution, management or the business of a Cooperative Society' had come up for interpretation in some judgments, to which reference has been made wherein it has been authoritatively held that the jurisdiction of the authority under the Industrial Disputes Act, 1947, is not barred. In this view of the matter, the question that would arise for determination would be whether by the introduction of the word 'establishment' in section 102(1) of the Act was it intended by the legislature to expand the jurisdiction of the Arbitrator in such a manner so as to exclude the jurisdiction of the Industrial

Tribunal or the Labour Court so provided under section 128(1) of the Act completely?

(18) In order to get a correct answer, it will be necessary to find out as to what meaning should be given to the word 'establishment' (which has now been added in section 102(1) of the Act, but before I do so, it would be appropriate to refer to the principal objects of the Industrial Disputes Act, which have been enunciated by the Supreme Court in *Workmen of Dimakuchi Tea Estate (Assam Chah Karamchhari Sangha) v. Dimakuchi Tea Estate* (6) S. K. Das, J. (as his Lordship then was) (speaking for the majority) has succinctly summed up the principal objects of the Act as follows:—

- “(i) promotion and measures for securing and preserving amity and good relations between the employer and workmen;
- (ii) an investigation of industrial disputes, between employers and employees, employers and workmen or workmen and workmen, with a right of representation by registered trade union or a federation of trade unions or an association of employers or a federation of association of employers;
- (iii) prevention of Illegal strikes and lock-outs;
- (iv) relief to workmen in the matter of lay-off and retrenchment; and
- (v) collective bargaining.”

The learned Judge examined the scheme of the Act and its salient features in detail and in that respect observed as under:

“The long title shows that the object of the Act is “to make provision for the investigation and settlement of industrial disputes, and for certain other purposes.” The preamble states the same object, and S. 2 of the Act which contains the definitions states that unless there is anything repugnant in the subject or context, certain expressions will have certain meanings. Chapter II refers to the

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authorities set up under the Act, such as, works committees, Conciliation Officers, Boards of conciliation, courts of enquiry and industrial tribunals. The primary duty of a works committee is to promote measures for securing and preserving amity and good relation between employers and workmen and, to that end, to comment upon their common interests or concern and endeavour to compose any material difference of opinion in respect of such matters. Conciliation Officers are charged with the duties of mediating in, and promoting the settlement of, industrial disputes. A Board of conciliation may also be constituted for the same purpose, namely, for promoting the settlement of an industrial dispute. A court of enquiry may be appointed for enquiring into any matter which appears to be connected with or relevant to an industrial dispute. S. 7 of the Act empowers the appropriate Government to constitute one or more tribunals for the adjudication of industrial disputes in accordance with the provisions of the Act. Chapter III contains provisions relating to the reference of industrial disputes to boards of conciliation, courts of enquiry or industrial tribunals; and the reference in the present case was made under S. 10 of that Chapter. Under S. 10(1)(c) of the Act where an appropriate government is of an opinion that any industrial disputes exist or are apprehended, it may, at any time, by order in writing, refer the dispute or any matter appearing to be connected with or relevant to the dispute to a Tribunal for adjudication. Chapter IV of the Act deals with procedure, powers and duties of the authorities set up under the Act. Where an industrial dispute has been referred to tribunal for adjudication, S. 15 requires that the tribunal shall hold its proceeding expeditiously and shall as soon as practicable on the conclusion thereof submit its award to the appropriate government. S. 17 lays down *inter alia* that the award of a tribunal shall, within a period of one month from the date of its receipt by the appropriate government be published in such manner as it thinks fit. Section 17-A lays down that the award of a tribunal shall become enforceable on the expiry of thirty days from the date of its publication, under S. 17; it also contains certain other provisions which empower the appropriate government to modify or reject the award."

Section 18 relates to awards.

Section 19 lays down the period of operation of settlements and awards and states *inter-alia*, that an award shall, subject to the provisions of the section, remain in operation for a period of one year.

Chapter V of the Act deals with strikes and lockouts, Chapter V-A with lay-off and retrenchment, Chapter VI with penalties and Chapter VII with miscellaneous matters. It is important to note that though in the definition of "lock-out", S. 2(1) of the Act and "Strike".

S. 2(q) of the Act, the expression "any person" has been used, in Sections 22(2) and 23 of the Act which deal with "lock out" and "strike", only the word "workmen" has been used.

Section 33 provides that during the pendency of any conciliation proceedings or any proceedings before a tribunal of any industrial dispute, the conditions of service, etc., shall not be changed.

S. 33A, however, uses the word "employee" but read with S. 33, the word "employee" must mean there a workman. S. 36 which deals with representation of parties.

Sub-section (3) of S. 36 states that no party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under the Act or in any proceedings before a Court. Sub-section (4) states that in any proceeding before a tribunal a party to a dispute may be represented by a legal practitioner with the consent of the parties to the proceeding and with the leave of the tribunal. The point to note is that there is no particular provision for the representation of a party other than a workman or an employer, presumably because under the second part of the definition clause the parties to an industrial dispute can only be employers and employees, employers and workmen or workmen and workmen.

(19) In a recent judgment in *L.I.C. of India v. D. J. Bahadur* (7), V. R. Krishna Iyer, J, has observed that the Industrial Disputes Act

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is a benign measure which seeks to pre-empt industrial tensions, provide the mechanics of dispute—resolutions and set up the necessary infrastructure so that the energies of partners in production may not be dissipated in counter-productive battles and assurance of industrial justice may create a climate of goodwill.

(20) The Industrial Disputes Act has been enacted with the object of securing harmonious relations in the working of the industry, between the employer and the employees by providing a machinery for adjudication of disputes between them. While summing up the Scheme of the Act, it was said that the personality of the whole statute is being a beneficial legislation which protects labour, promotes their contentment and regulates situations of crisis and tension where production may be imperilled by untenable strikes and blackmail lock-outs. The mechanism of the Act is geared to conferment of regulated benefits to workmen and resolution, according to a sympathetic rule of law, of the conflicts, actual or potential, between managements and workmen. Its goal is amelioration of the conditions of workers, tempered by a practical sense of peaceful co-existence, to the benefit of both—not a neutral position but restraints on *laissez faire* and concern for the welfare of the weaker lot. Empathy with the statute is necessary to understand not merely its spirit, but also its sense. In short, the Industrial Disputes Act deals with industrial disputes; provides for conciliation, adjudication and settlements, and regulates the rights of parties and the enforcement of awards and settlements.

(21) The analysis of the aforesaid judgments would show that the Act enables the State to compel the parties to resort to industrial arbitration and for that purpose different forums have been set up for the resolution of such disputes. The Act is intended to be a self contained one and it seeks to achieve social justice on the basis of collective bargaining, conciliation, arbitration and failing that compulsory adjudication. The Scheme of the Act shows that it attains a settlement of all industrial disputes arising between capital and labour by peaceful method through the machinery of conciliation, arbitration and if necessary by approaching the Tribunal constituted under the Act. As has come in the earlier part of the judgment, the only change that has been made in the 1984 Act is that in section 102 word 'establishment' has been added; while in section 128 words 'Industrial Tribunal' and 'Court' have been introduced. The question that has now to be seen is whether by making these amendments,

the Legislature actually intended to oust the jurisdiction of the Industrial Tribunal and the Court completely with regard to the matters which exclusively fall within their competence.

(22) One of the cardinal rules of interpretation is whether the intended provisions have carried out the purpose for which they were made. No doubt, the legislature wants the Registrar to decide all the disputes relating to the 'establishment' of a society so as to provide complete and speedy forum of adjudication of the dispute. But that alone is not sufficient enough to uphold the validity of Section 102 of the Act of 1984. The speedy remedy cannot be at the cost of fair adjudication of the rights of the parties, because when the legislature wants to divest the other Courts or Tribunal of their jurisdiction, it has to take care that no injustice results to either of the parties and vested rights of the parties to invoke the jurisdiction of the Court are not taken away without any adequate safeguards for providing a proper alternate forum for deciding a dispute of the parties. Therefore, the question arises whether these provisions have actually and factually provided an alternative forum?

(23) A bare examination of the provisions of Section 102(1) of the Act would reveal that the legislature has provided no parameter or the guidelines as to what matter would fall within the purview of the word 'establishment'. It would be manifest from the provisions of section 102(2) of 1984 Act that the legislature has clearly defined the limits of the dispute touching the constitution, management or the business of a co-operative society, which are required to be referred to the Registrar for arbitration. But with regard to the dispute touching the establishment of a co-operative society, no attempt has been made by the legislature to clearly specify the guidelines for the Registrar and in this regard similar provisions are missing whether inadvertently or by design. By this fundamental omission on the part of the legislature, it is clear that the Registrar was not intended to be vested with any power to adjudicate the dispute touching the establishment of a Co-operative Society.

(24) Further, the provisions of section 102(3) of the New Act go to show that the legislature has not provided an effective machinery to settle the dispute touching the establishment of a Co-operative Society. The Registrar has been vested with the powers to decide, under section 102(3) of the Act, 1984, whether the dispute referred to him is or is not a dispute touching the constitution, management

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or the business of the society and his decision is final, which cannot even be questioned in any Court. Surprisingly enough, there is a conspicuous omission of the word 'establishment' in section 102(3) of the Act, which means that when the matter in dispute referred to him relates to 'establishment' of a co-operative society he is not empowered to decide whether it is or is not a dispute touching the establishment of a co-operative society and no finality as such could be attached to his decision and the same could be questioned in any Court. These provisions are clearly in contradiction to the provisions of Section 102(1), which oust the jurisdiction of the Civil Court to entertain any suit or any proceedings in respect of any dispute relating to 'establishment' of a co-operative society, which is required to be referred to the arbitration of the Registrar for decision. This contradiction would also apply to the provisions of section 128 of the Act, 1984, because there too the language employed by the legislature is that no Civil Court, Revenue Court, Industrial Tribunal or Labour Court shall have jurisdiction in respect of any dispute under section 102 required to be referred to the arbitration of the Registrar. In this view of the matter keeping in view the contradiction a fair inference can be drawn that the legislature itself did not intend to oust the jurisdiction of the Industrial Tribunal/Court in respect of any dispute relating to establishment of a Co-operative Society.

(25) Apart from this, the matter can also be examined from altogether different angle. Though the provisions of section 102 read with section 128 of the Act aim at vesting jurisdiction in the Registrar to decide the dispute touching the establishment of a co-operative society to the exclusion of any other Court, but it has not cared to define establishment in the Act. One course open to the Registrar is to take the ordinary and dictionary meaning of the word 'establishment, in order to decide whether the matter falls for his determination or not. The dictionary meaning of the word 'establishment' as given in Webster's International Dictionary is "place where one is permanently fixed for residence or business, residence including grounds, furniture, equipage reference, etc..... with which one is fitted out; also an institution, a place of business with its fixtures' an organized staff as a large establishment, a manufacturing establishment".

(26) The dictionary and ordinary meaning shows that establishment must have a separate identifiable existence, but dictionary

meaning is no yardstick or guide to decide what types of disputes touching the establishment of a co-operative society are required to be referred to the arbitration of the Registrar for decision under the Act. When the provisions are ambiguous and leave a scope of unchecked, unguided and arbitrary assumption of jurisdiction, then the Court has no alternative but to strike down those provisions. The principal objects, salient features and the scheme of the Industrial Disputes Act have already been discussed in *Workmen of Dimakuchi Tea Estate's* case (supra), which would reveal that a complete procedure has been laid down for the adjudication of the dispute of the workmen under the Act as an alternative forum which excludes the jurisdiction of the Civil Court to decide the dispute. No such detailed procedure has been prescribed in the Act of 1984 by the legislature and simply by insertion of word 'establishment' in one sweep, would not include the whole gamut of the safeguards provided under the Industrial Disputes Act. Therefore, the Act of 1984 has failed to provide a speedy forum for deciding a dispute between a member of the Society relating to the establishment of the society under Section 102 of the Act and for that reason the exclusion of the jurisdiction of the Industrial Tribunal, Labour Court under the provisions of section 128(c) are invalid.

(27) Further the Industrial Disputes Act is a Central Act and its jurisdiction cannot be ousted simply by insertion of the word 'establishment' in section 102 of the Act of 1984 or by adding words 'Industrial Tribunal/Court in section 128. On this aspect of the matter, the observations made in *P. R. Mankad's* case (supra) in para 28 are very relevant, which read as under:

"The matter can be looked at from another angle also. The law of industrial disputes or industrial relations is a special law dealing with rights and obligations specially created by it. As against this, the provision in section 54 of the Act of 1925/Section 96 of the Act of 1961 is a general provision. In accordance with the maxim *generalia specialibus non-derogant*, therefore, nothing in these general provisions can derogate from B.I.R. Act and the Co-operative Society Act must yield to the special provisions in the Bombay Industrial Relation Act, whenever a dispute clearly comes within the language of the latter Act."

(28) Further, another important aspect which cannot be overlooked is that under the Act of 1984 no qualification for the Registrar or his nominee has been prescribed, nor does any provision of

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the Act require that the Registrar or his nominee should be possessed of legal training. Section 2(2) of the Act only defines Registrar as a person appointed to perform the function of the Registrar of Co-operative Societies under this Act, and includes any person appointed to assist the Registrar when exercising all or any of the powers of the Registrar. Whereas, under Section 7 and section 7-A of the Industrial Disputes Act, the person to be appointed as a presiding Officer of a Labour Court or the Presiding Officer of a Tribunal, cannot be appointed unless he is or has been a Judge of the High Court or he has for a period not less than three years, been a District Judge or an Additional District Judge or he has been a Commissioner of a division or an Administrative Secretary to Government or an officer of the Labour Department not below the rank of a Joint Labour Commissioner for a period of not less than two years. These qualifications are common for the appointment of the Presiding Officer of a Labour Court and the Industrial Tribunal. With regard to the Labour Court, two other additional qualifications are that he should have held any other judicial office in India for period not less than seven years or he had been the Presiding Officer of the Labour Court constituted under any Provincial Act for a period not less than five years. The question of qualification assumes greater importance particularly when under section 128 of the Act of 1984, jurisdiction of the Industrial Tribunal and the Labour Court is ousted. Keeping in view the qualifications prescribed under the Industrial Disputes Act, a very fair inference can be drawn that the disputes relating to the establishment of a Co-operative Society, which are required to be decided under the Industrial Disputes Act cannot be properly adjudicated upon by the Registrar, who may have no legal background or experience. Further, no intelligible criteria has been prescribed under the Act take out the dispute relating to the establishment of a Co-operative Society from the purview of the Industrial Disputes Act. Moreover, the provisions of the Act, on the face of it, appear to be discriminatory, inasmuch as with regard to the employees of the Co-operative Societies, the Registrar would have jurisdiction; while with regard to employees of other establishments the matter would be triable by an Authority possessing high qualifications and judicial experience. Thus viewed from any angle, there can be no escape from the conclusion that the provisions of section 128 of the Act so far as they exclude the jurisdiction of the Industrial Tribunal and the Labour Court to decide the dispute

relating to a member and a Co-operative Society are invalid, arbitrary, *ultra vires* of Article 14 of the Constitution and as such are struck down.

(29) As a result of our discussion aforesaid..., the conclusions may be summarised thus:

- (1) For the detailed discussion in our judgment of the even date in Income-tax Reference No. 219 of 1980, it is held that the Labour Court would not be divested of the references which have been made or are pending before it *qua* the employees of the Co-operative Societies by the later amendment in the Haryana Co-operative Societies Act whereby such disputes are purported to have been taken out of its jurisdiction;
 - (2) that the Legislature did not intend to include in the expression 'establishment' industrial disputes for the adjudication of which the Parliament has enacted the Industrial Disputes Act;
 - (3) that the Industrial Disputes Act is a special enactment dealing with a special subject of industrial disputes and special provisions have been made in the statute for setting up Tribunal qualified for adjudicating upon them. Therefore, an industrial dispute between a Co-operative Society under the Co-operative Societies Act and its workmen under the law has to be referred to an Industrial Tribunal set up under the Industrial Disputes Act; and
 - (4) that the provisions made in section 128 of the Co-operative Societies Act, 1984, to the extent they exclude the jurisdiction of the Industrial Tribunal and Labour Court are unconstitutional and hit by the provisions of Article 14 of the Constitution.
- (30) Having answered the law points, the case would now go back before a learned Single Judge of this Court for decision on merits.

N.K.S.