is well-established principle on which Courts have acted that the issue of a writ being within the discretion of a Court, the Court would rarely issue a writ if the issue of such a writ was to be futile. As I have said, in this case it would be futile."

(13) With these observations, the learned Judges of the Full Bench then proceeded to dismiss the petition.

(14) We are, therefore, of the view that the decision on merits in this writ petition would on the present facts be wholly academic and is incapable of affording any relief to the present petitioner. Upholding the preliminary objection raised on behalf of the respondent, and finding the present petition to be infructuous we would, therefore, dismiss the same. In the circumstances of the case, there will be no order as to costs.

R. S. NARULA, J.—I agree.

K.S.K.

CIVIL MISCELLANEOUS

Before Mehar Singh, C.J. and Bal Raj Tuli, J.

CH. BISHAN DASS AND OTHERS,—*Petitioners*

versus

THE GOVERNOR OF THE PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 2146 of 1968.

August 20, 1968

***Punjab Co-operative Societies** (Amendment) Ordinance* (2 *of* 1968)—*Whether colourable piece of legislation and beyond the competence of State legislature—"Colourable Legislation"—High Court's power to determine and principles for such determination stated—S.* 26(3-*A*) *inserted by Ordinance—Whether valid—"Co-operate, "Co-operation" and "Co-operative"—Meaning of.*

Held, that The Punjab Co-operative Societies (Amendment) Ordinance, 1968, inserting sub-section (3-A) in section 26 of the The Punjab Co-operative Societies Act, 1961, relates to management of co-operative societies in certain evantualities. When most of the co-operative societies in the State do not hold their elections for a long time and many members of the committees continue to function even after the expiry of their full terms of office, which is illegal, the State Government has no option but to bring in such a legislation. There is no method other than nomination to provide interim managing committees for such co-operative societies in which they do not exist in the sense that the legally continuing members are less than the number which is required to form the quorum for it is well known that no committee can perform its functions unless the prescribed quorum is present in the meeting. The Ordinance only provides for interim management of the co-operative societies and is within the competence of the State legislature and is not beyond its powers under Entry 32 in List II of the Seventh Schedule to the Constitution of India and the Governor has the power to promulgate it. The promulgation of this Ordinance being within the competence of the Governor, no question of colourable legislation arises.

(Paras 14 and 20)

Held, that the principles on the subject of colourable legislation and High Court's powers to go into the matter are as under:—

(1) That the legislature cannot do indirectly what it cannot do directly.

(2) The heads of legislation should not be construed in a narrow and pedantic sense but should be given a large and liberal interpretation. None of the items in the Lists is to be read in a narrow or restricted sense and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it.

(3) Whatever justification some people may feel in their criticisms of the political wisdom of the particular legislative or executive action, the High Court cannot be called upon to embark on an enquiry into public policy or investigate into questions of political wisdom or even to pronounce upon motives of the legislature in enacting a law which it is otherwise competent to make.

(4) The doctrine of colourable legislation does not involve any question of *'bona fides'* or *'mala fides'* on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the legislature lacks competency, the question of motive does not arise at all. Whether a statute is constitutional or not is thus always a question of power.

(5) The only way in which the Court can determine as to whether the prescribed limits have been exceeded by the legislature in enacting a law is to look to the terms of the instrument by which, affirmatively, the legislative powers are created, and by which, negatively, they are restricted. If what has been done is legislation, within the general scope of the affirmative words which give the power and if it violates no express condition or restriction by which the power is limited, it is not for any Court of Justice to inquire further, or to enlarge constructively those conditions and restrictions. According to this principle all that has to be looked is that the impugned legislation is within the affirmative words of Entry 32 in List II of the Seventh Schedule to the Constitution and is not contrary to the fundamental rights guaranteed by the Constitution or any other limitation or restriction to be found in any part of the Constitution.

(Para 19)

Held, that the Registrar of Co-operative Societies is a very high officer of the State Government and the power conferred on him under section 26 (3-A) of the Act is to be exercised only in such cases in which the number of continuing members of the committee of management is below the quorum prescribed in the bye-laws and it is necessary to fill up the vacancies of members of the managing committees or the Boards of Directors to provide interim management till the vacancies are filled in by election. He has the power to nominate any person, whether a shareholder or not, whom he considers fit to perform the duties of a member of the managing committee or the Board of Directors. The vesting of this power in the Registrar does not make the section constitutionally invalid. (Para 21)

Held, that the power given to the Registrar to appoint any number of persons to the Managing Committees of Co-operative Societies in order to provide interim management cannot be held to be arbitrary or unguided as it is circumscribed by the limit that he cannot nominate more persons than there are vacancies. The argument that he should have given the power to nominate only such number of persons as would constitute the quorum along with the existing members of the committee is not sound. It is true that the quorum prescribed in the bye-laws is competent to transact the business which the managing committee has to do but the provision for a quorum is only to facilitate the working of a co-operative society in case all the members are not able to attend. It does not mean that the numerical strength of the managing committee should be limited to the quorum prescribed. A "Quorum" in fact means a given number of individuals within the whole body, all of whom have had notice of the meeting and who have attended the meeting. The essence of the matter is that all members of the commitee should be given notice and if only some of them are able to attend, the working of the committee should not be hampered.

For this reason, quorum is prescribed of a lesser number of members of the committee usually one-third. In order to have the quorum present, there must be more members than the number required to form the quorum so that the working of the Society may not suffer if some members do not attend designedly or are not able to attend due to indisposition, pre-occupation in other matters or negligence. The provisions for nomination in the newly enacted sub-section (3-A) of section 26 of the Act has been made for the purpose of providing managing committees to the co-operative societies which do not have any such legally constituted committees and the idea is to see that the functioning of a co-operative society does not suffer. It is, therefore, absolutely necessary that the newly constituted managing committees should have a number much larger than the number which is sufficient to form the quorum so that if at any time some members are not able to attend, the work of the co-operative society does not come to a standstill. (Paras 22 and 26)

Held, that it is clear from the various definitions of the words "co-operate", "Co-operation" and "Co-operative" that the underlying idea is working together for the mutual benefit of the co-operators on the principle "one for all and all for one". (Para 12)

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of certiorari, mandamus *or any other appropriate writ, order or direction be issued quashing the order, dated 27th June,* 1968 *of Registrar, Co-operative Societies, Punjab, Chandigarh and restraining the respondents from interfering with the election of the Board of Directors which has already been fixed for 25th August,* 1968.

KULDIP SINGH AND S. K. AGGARWAL, ADVOCATES, for the Petitioners.

H. L. SIBAL, ADVOCATE-GENERAL, PUNJAB WITH R. C. SETIA, ADVOCATE for Respondents 1 to 4.

B. S. KHOJI, ADVOCATE for Respondent 5.

B. S. BINDRA, ADVOCATE, for Respondents 6 to 16.

JUDGMENT

TULI, J.—This judgment will dispose of three petitions under Articles 226 and 227 of the Constitution of India (*Ch. Bishan Dass and others* v. *The Governor of the Punjab and others*, Civil Writ No. 2146 of 1968; *Santokh Singh and another* v. *Shri Lachhman Singh Gill and others*, Civil Writ No. 2149 of 1968 and *Dr. Upkar*

Singh and another v. *The State of Punjab and others,* Civil Writ No. 2241 of 1968), in which a common point of law as to the constitutional validity of the Punjab Co-operative Societies (Amendment) Ordinance, 1968 (Punjab Ordinance No. 2 of 1968) arises. The main arguments have been addressed by Shri Kuldip Singh, learned counsel for the petitioners, in Civil Writ No. 2146 of 1968.

(2) The Hoshiarpur Central Co-operative Bank Ltd., Hoshiarpur (hereinafter called the Society), is registered as a co-operative society under the Punjab Co-operative Societies Act, 1961 (hereinafter called the Act). Out of the petitioners, Ch. Bishan Dass was elected as a Director of the Society on 2nd December, 1964; Shri Sadhu Singh on 26th May, 1963; Shri Ajit Singh on 29th November, 1964 and Shri Gulbarg Singh was co-opted on 17th June, 1966, in place of Shri Amar Singh Bharta who had been elected on 26th May, 1963. The terms of office of a Director is three years and it is, therefore, evident that Ch. Bishan Dass vacated office on 2nd December, 1967, Shri Sadhu Singh on 26th May, 1966 and Shri Ajit Singh on 29th November, 1967. The co-option of Shri Gulbarg Singh on 17th June, 1966, was illegal as Shri Amar Singh Bharta, in whose place he was co-opted, could hold office up to 26th May, 1966 and no co-option could be made in his place after that date. It is well-settled that a Director can be co-opted only to fill up a casual vacancy which has occurred owing to the vacation of office by a Director before the expiry of his term of office for any reason whatsoever like death, resignation, removal, disqualification incurred after his election or appointment, etc. The so-called co-option of Shri Gulbarg Singh in this case was, therefore, against law and it will be deemed as if he was never co-opted. Instead of vacating office on the expiry of their term of three years, the petitioners continued to act as Directors of the Society which was contrary to the provisions of the bye-laws made under the Act. It appears that in the case of all co-operative societies, the Directors or the Members of Managing Committees continued to hold office as such even after the expiry of their term of office and elections and not been held for many years in some cases. The Registrar of Co-operative Societies seems to have noticed this illegality in the continuance of such persons as Directors/Members even after the expiry of their term of office only in March, 1968, when he issued a circular letter No. E.T./ETA/C.1.49/10823-RCS, dated 27th March, 1968 on the subject of

rotational retirement of Directors/Committee Members—Co-option in casual vacancies (Annexure 'B' to the writ petition). In this letter, the Registrar points out that the provisions for rotational retirement of the members of the Board of Directors/Managing Committees in the bye-laws of some of the State are of mandatory nature and it has come to his notice that in some cases, these provisions are not being properly enforced and observed with the result that the Directors/Committee members continue to participate in the Board/Committee meetings when they are no longer their members. It is further pointed out that it has come to his notice that the circumstances under which the co-option of a member of the Board of Directors/Committee takes place is not properly understood and in a number of cases, illegal co-option is being made. This circular letter was issued to clarify and to interpret the provisions on the subject. According to the Registrar, as stated in this letter, the correct interpretation of the bye-laws relating to the rotational retirement is as follows :—

"(i) The Directors/Members of the Committee on completion of their tenure according to the provisions of the bye-law shall retire automatically from the date on which the tenure ends.

(ii) The Managers/Secretaries of the concerned co-operative institutions shall intimate such retirement to the Board of Directors/Managing Committee at least one month before the actual retirement is due.

(iii) The Manager/Secretary shall also advise the Board of Directors/Managing Committee to hold elections to the vacancies occurring on account of such retirement.

(iv) The Manager/Secretary shall not issue any notice or agenda of the meeting to a Director who has retired on completion of his tenure as in (i) above."

The society shall then arrange elections in such manner that they take place before the completion of the tenure of a member retiring by rotation. It was further clarified that the vacancies occurring as a result of rotational retirement were not vacancies of interim nature but were vacancies which could only be filled in by election and, therefore, an interim vacancy did not include a vacancy caused by rotational retirement. By letters, dated 7th April, 1968

(Annexure 'C' to the writ petition), the Registrar intimated to the officers of various co-operative institutions that the implementation of the circular letter, dated 27th March, 1968 would become effective with effect from 1st September, 1968 and the institutions concerned were advised to ensure holding of elections to the vacant seats well before 31st August, 1968. Since the Registrar had no authority to allow such Directors or Committee members, whose term of office had already expired, to continue in office till 31st August, 1968, the letter, dated 7th April, 1967 had no legal force and for the formation of proper Board of Directors/Managing Committees, it was considered desirable to amend section 26 of the Act by means of Ordinance. This Ordinance inserted sub-section (3A) after sub-section (3) in section 26 of the Act which is in these terms :—

> "3(A) Where for any reason the number of members of the Committee of a Co-operative Society falls short of the quorum prescribed in the bye-laws of the Society for a meeting of the Committee, then notwithstanding anything contained in sub-section (1), the Registrar may nominate such number of Members of the Committee not exceeding the total number of vacancies, as he may deem fit. A member so nominated shall cease to hold office when the vacancy, against which he is nominated, is filled by election or a period of one year has expired from the date of his nomination whichever event occurs earlier."

(3) In exercise of the powers vested in the Registrar under sub-section (3A) of section 26 of the Act, as inserted by the Ordinance, if he nominated 11 persons to the Board of Directors of the Society by order, dated 27th June, 1968, on the ground that the Board of Directors of the Society fell short of the quorum for the meeting of the Board as prescribed in bye-law No. 35 of the bye-laws of the Society. It is stated by the petitioners that 6 out of these nominated Directors are the shareholders of the Society while 5 others, namely, respondents 6, 10, 12, 13 and 14 are not the shareholders of the Society and that these 5 respondents are not eligible under law to be appointed as Directors. It has been stated by the Manager of the Society in his affidavit in reply to the petition that these 5 respondents are shareholders of some of the co-operative societies which are shareholders of the Society and, therefore, are eligible to be nominated as their representatives

for seeking election as Directors. It has been admitted by the petitioners that according to the bye-laws of Society, they vacated office on the expiry of their term of three years on the dates mentioned above.

(4) It is in these circumstances that challenge has been made to the constitutional validity of the Punjab Co-operative Societies (Amendment) Ordinance, 1968 (Punjab Ordinance No. 2 of 1968). The grounds of attack are three, namely :—

(1) The Ordinance is a colourable piece of legislation and is beyond the legislative competence of the State legislature;

(2) It gives unguided and arbitrary powers to the Registrar to nominate as many Directors or members of the Managing Committee as he may like and the persons nominated may or may not be shareholders of the co-operative society concerned; and

(3) The provisions of sub-section (3A) inserted by the Ordinance are repugnant to the provisions contained in sections 23 to 26 of the Act.

(5) I shall deal with these three points in seriatim. On the first point, the argument of the learned counsel for the petitioners is that Entry 32 in List II of the Seventh Schedule to the Constitution of India includes "co-operative societies" as the subject of legislation and the State legislature can only make laws for such societies provided such a law does not go against the co-operative principles and thus destroy the very nature of the co-operative societies. What are "co-operative principles" are nowhere defined. Section 4 of the Act provides :—

"Subject to the provisions hereinafter contained, a society which has as its object the promotion of the economic interests of its members in accordance with co-operative principles, or a society established with the object of facilitating the operations of such a society, may be registered under this Act with or without limited liability."

According to this section, the society must have 'the promotion of the economic interests of its members in accordance with co-operative principles' as its object but what are "co-operative principles" have not been stated. The learned counsel has pointed out that the first enactment with regard to co-operative societies in India was the Co-operative Credit Societies Act, 1904 (Act No. 10 of 1904). The preamble to this Act was in these words :—

> "Whereas it is expedient to encourage thrift, self-help and co-operation among agriculturists, artisans and persons of limited means, and for that purpose, to provide for the constitution and control of Co-operative Credit Societies."

From this preamble, it is clear that the object was to encourage thrift, self-help and co-operation among various classes of persons. But that cannot be said to be the definition of "co-operative principles". The learned counsel then read a passage from the introduction in the book 'Law and Practice of Co-operative Societies in India' by L. S. Sastri which is reproduced below :—

> "Co-operation is a method by which man conducts his business of life. The essence of that method is self-regulated action. It is not a charity organisation, which is concerned with the sick man as such, and helps the helpless man to stand on his own legs. It has been well said that co-operation is to charity what prevention is to cure. Its first concern is the weak, but it is the concern of the weak men for themselves, so to conduct the ordinary business of life that they may develop to the full their own welfare and that of their fellows. It implies a bond of union, a Co-operative Society in which the associated members join together for the attainment in common of some business purpose. It is this that distinguishes it from the Friendly Society and from the Trade Union. The Friendly Society teaches thrift and foresight and makes provision against death, accident, sickness and old age, and though its funds are invested in trade, it does not itself take part in the trade. The major aim of the Trade Union is to bargain with and, if necessary, to fight the employer on behalf of the employees, besides functions connected with the welfare of the members, similar to the Friendly Society."

(6) The statement of objects and reasons given with the Bill which was passed into the Co-operative Societies Act, 1912, gives a glimpse of the several forms that co-operation may take and the first paragraph of the statement of objects and reasons is as under:—

> "Legislation is called for not only in order to lay down the fundamental conditions, which must be observed; but also with a view to giving such societies a corporate existence, without resort to the elaborate provisions of the Companies Act; but it is thought that legislation should be confined within the narrowest possible limits. The Bill has, therefore, been drawn so as to deal only with those points which the Government consider to be essential and its provisions have been expressed in simple and general terms, a wide rule-making power being reserved to local Governments so that what is felt to be of the nature of an experiment may be tried in each Province or part of a Province on such lines as seem to offer most promise of success; and these principles were followed in the Act as passed."

In the last paragraph of the statement of objects and reasons, it was stated as under :—

> "A cardinal principle which is observed in the organization of co-operative societies in Europe is the grouping of such societies into Unions and their financing by means of Central Banks. This stage of co-operation had not been fully realised or provided for in the Act of 1904, but such grouping of societies has already been found feasible in most provinces, and it is now considered desirable to legalize the formation of co-operative credit societies of which the members shall be other co-operative credit societies."

(7) In 1919, the Provinces were given the power to legislate in respect of co-operative societies and the different Pronvices either continued the Co-operative Societies Act of 1912 in force or made their own laws. The President of Bombay enacted its own law in 1925 and the preamble to that Act runs thus :—

> "Whereas it is expedient further to facilitate the formation and working of Co-operative Societies for the promotion of

thrift, self-help and mutual aid among agriculturists and other persons with common economic needs so as to bring about better living, better business and better methods of production and for that purpose to consolidate and amend the law relating to Co-operative Societies in the Presidency of Bombay."

(8) The Madras Act of 1932 copied this preamble. In the Punjab, the first Co-operative Societies Act was enacted in 1954 known as "The Punjab Co-operative Societies Act, 1954 (Punjab Act 14 of 1955)." This Act was later replaced by the present Act (The Punjab Co-operative Societies Act, 1961).

(9) The learned counsel for the petitioners has then drawn our attention to the meanings of the words "co-operate", "co-operation" and "co-operative" in Corpus Juris Secundum, Volume 18, at pages 126 and 127. The meanings of the word "co-operate" relevant to the subject under discussion as given in this book are 'to act or operate jointly with another or others, or to concur in action, effort, or effect or simply to operate with or work together'. "Co-operation" generally means to act or operate jointly with another or others, to concur in action, effort, or effect; in economics the combined action of numbers; and co-operation is of two distinct kinds : (1) such co-operation as takes place when several persons help each other in the same employment; (2) such co-operation as takes place when several persons help each other in different employments. These may be termed "simple co-operation" and "complex co-operation". "Co-operative" means acting together to accomplish the same end, helping, promoting the same end.

(10) According to Shorter Oxford English Dictionary, "co-operate" means to work together, act in conjunction with another person or thing. "Co-operation" means the action of co-operating; joint operation, the combination of a number of persons, or of a community, for purposes of economic production or distribution. "Co-operative" means working together or with others to the same end; pertaining to co-operation.

(11) Webster International Dictionary gives the meaning of "co-operate" as to act or operate jointly with another or others; to concur in action, effort, or effect. "Co-operation" is act of

co-operating; joint operation; concurrent effort or labour or the association of a number of persons for their common well-being, especially in some industrial or business process.

(12) It is thus clear from the various definitions of the words "co-operate", "co-operation" and "co-operative" that the underlying idea is working together for the mutual benefit of the co-operators on the principle "one for all and all for one". In the light of the above discussion, we have to find whether sub-section (3A) inserted in section 26 of the Act is a legislation relating to the co-operative societies or is it destructive of the very principles of co-operation on which the co-operative societies are founded ? In the Punjab Act of 1961, "Co-operative Society" in section 2(c) means a society registered or deemed to be registered under the Act. Co-operative societies are of two kinds, i.e., a co-operative society with limited liability and a co-operative society with unlimited liability. Section 4 prescribes the kind of society which can be registered under the Act and section 8 provides that the Registrar, if satisfied that the objects of the proposed society are in accordance with section 4, that the proposed bye-laws are not contrary to the provisions of the Act and the rules and that the proposed society has reasonable chances of success, may register the society and its bye-laws. It is thus clear that before registering a society under the Act, the Registrar has to satisfy himself that the objects of the proposed society are in accordance with section 4. Once a society is registered under the Act, the Registrar has to issue a certificate of registration signed by him, which shall be conclusive evidence that the co-operative society therein mentioned is duly registered under the Act,—*vide* section 9. From this, it follows that once a society is registered under the Act, that will be conclusive proof of the fact that it is a co-operative society, i.e., a society which has as its objects the promotion of the economic interests of its members in accordance with co-operative principles. Chapter IV of the Act deals with the management of co-operative societies which are registered under the Act and sub-section (3A) inserted by the Ordinance in section 26 of the Act relates to the management of such co-operative societies. The learned counsel for the petitioners has argued that according to section 23(1), the final authority in a co-operative society is to vest in the general body of members and it is this basic principle of co-operation which has been destroyed by the new sub-section (3A). He has further

submitted that according to section 24(b), the general body is to elect the members of the committee other than nominated members and under section 26, the members of the committee of a co-operative society are to be elected in the manner prescribed and no person is to be so elected unless he is a shareholder of the society. It is urged that sub-section (3A) takes away the powers of the general body as given in these sections and the Directors nominated under this sub-section cannot be removed by the general body nor will they be under its control. This argument is not correct. Section 23(1) has a proviso attached to it, according to which, the day-to-day management of a co-operative society is to be vested in a smaller body known as the Committee of Management or Board of Directors or by any other name which is constituted according to the bye-laws of each co-operative society. It thus follows that the management of the co-operative society and the responsibility of carrying on its day-to-day business vested in the Committee of Management or the Board of Directors and not in the general body of a co-operative society. The general body has no control over the day-to-day management of a co-operative society. The general body has to act by holding a meeting of all the shareholders. These meetings are of two kinds; (1) annual general meetings and (2) special general meetings for which provision has been made in sections 24 and 25 of the Act respectively. At the annual general meeting, only the following business can be transacted :—

> "(a) approval of the programme of the activities of the society prepared by the committee for the ensuing year;
>
> (b) election, if any, of the members of the committee other than nominated members;
>
> (c) consideration of the audit report and the annual report;
>
> (d) disposal of the net profits; and
>
> (e) consideration of any other matter which may be brought forward in accordance with the bye-laws."

(13) According to this section, the general body will have no power in an annual general meeting to remove any member of the committee or the Board of Directors unless the committee brings forward that motion before it. The general body can only elect the members if any are to be elected, consider the audit report and the

annual report, dispose of the net profits and generally approve the programme of the activities which do not imply that the general body can exercise any effective control on the activities of the managing committee during the year. Section 25 provides for special general meetings which have to be called by the committee of management if a requisition is made for such a meeting by such number of shareholders as may be prescribed in the bye-laws. If the committee of management does not proceed to hold the meeting as requisitioned, the requisitionists themselves have no power to call the meeting and they will have to approach the Registrar for calling such a meeting. It will then be in the discretion of the Registrar to call the special general meeting or not. Bye-law 22 of the Society is also in similar terms. When we contrast this provision with the one contained in section 169 of the Companies Act (1 of 1956), where if the Board of Directors does not proceed to call the meeting as requisitioned, the requisitionists themselves have the power to call and hold the meeting which will be as legal as the meeting called by the Board of Directors, it becomes evident that section 169 of the Companies Act gives more power to the general body of the shareholders than does section 25 of the Act. Sub-section (2) of section 26 of the Act also provides for nomination of certain members of the managing committee by the Government in such societies in which the Government is the shareholder and by the Industrial Finance Corporation the State Finance Corporation or any other financing institution which has provided finance to a co-operative society so that the provision for nomination of the members of the committee is contained in the Act itself. Section 27 of the Act is very drastic in its terms inasmuch as it gives power to the Registrar to supersede the managing committee of a co-operative society if, in his opinion, the committee persistently makes default or is negligent in the performance of the duties imposed on it by the Act or the rules or the bye-laws or commits any act which is prejudicial to the interests of the society, or its members. From this, it is clear that it is the opinion of the Registrar on these matters which is to prevail and if he forms that opinion, he has the power to supersede the committee of management and either order fresh elections of the committee or appoint one or more administrators, who need not be members of the society, to manage the affairs of the society for period not exceeding one year specified in the order which period may, in the discretion of the Registrar, be extended from time to

time, so, however, that the aggregate period does not exceed five years. Originally, the maximum period provided was two years and the words "five years" were substituted for the words "two years" by the Punjab Co-operative Societies (Amendment) Ordinance, 1964 (Punjab Ordinance No. 3 of 1964) which was enacted into the Punjab Co-operative Societies (Amendment) Act, 1965. The provisions of this section make it amply clear that the Registrar has the power to supersede the committee of management in certain circumstances and place the management of the co-operative society in the hands of one or more administrators for a period which may extend up to five years. The other sections of the Act also have made erosions on the powers of the general body or the committee of management. The powers of the Registrar under Chapter VII which provides for audit, inspection and enquiries by the Registrar and under Chapter IX which provides for the winding up of the co-operative societies make it clear that the Registrar has full powers to control the working of the co-operative society and has the power to wind it up if the circumstances provided in section 57(2) of the Act have come into being. According to clause (b) of sub-section (2) of section 57, the Registrar is to determine whether the Co-operative society has ceased to function in accordance with the co-operative principles before ordering its winding up but once he comes to that conclusion, he an order the winding up of the co-operative society even if all the members of the society are opposed to its winding up.

(14) As I have said above, the provision made by the impugned Ordinance by inserting sub-section (3A) in section 26 of the Act relates to the management of co-operative societies in certain eventualities which unfortunately exist today. It is generally admitted that most of the co-operative societies in the State have not held their elections for a long time and many members of the committees are continuing to function even after the expiry of their full terms of office which is illegal. The State Government had no option but to bring in this legislation because there was no method other than nomination to provide interim managing committees for such co-operative societies in which they did not exist in the sense that the legally continuing members were less than the number which is required to form the quorum. It is well-known that no committee can perform its functions or conduct any business unless the prescribed quorum is present in the meeting. The

Government could not direct that those persons whose terms had already expired could continue to hold the office for the simple reason that there was no continuity and the automatic vacation of office had taken place much earlier. Even if those persons were to be continued, it was to be done by fresh nomination. Viewing the matter from all angles, it is absolutely clear that the impugned Ordinance only provides for interim management of the co-operative societies and is within the competence of the State legislature and is not beyond its powers under Entry 32 in List II of the Seventh Schedule to the Constitution of India and the Governor had the power to promulgate it. The promulgation of this Ordinance being within the competence of the Governor, no question of colourable legislation arises. I will, however, notice certain reported decisions which have been pressed into service by the learned counsel on both the sides pertaining to the doctrine of colourable legislation.

(15) The learned counsel for the petitioners has relied upon the Supreme Court judgment in *the State of Bihar* v. *Sir Kameshwar Singh* (1), in which it was held by majority that section 23(f) of the Bihar Land Reforms Act (30 of 1950) was unconstitutional and void as it sought to take away *zamindaris* of certain persons without providing for payment of compensation to them. It was contended that the legislature, when required to pass an Act to acquire properties on payment of compensation, could also legislate for acquiring such properties without payment of compensation. Mahajan, J., speaking for the majority, in para 59 of the report observed thus :—

> "Section 23(f), however, in my opinion, is a colourable piece of legislation. It has been enacted under power conferred by legislative Entry 42 of List III. It is well-settled that Parliament with limited powers cannot do indirectly what it cannot do directly.....
>
> The provision herein impeached has not been arrived at by laying down any principles of paying compensation but, in truth is designed to deprive a number of people of their property without payment of compensation. The State legislature is authorised to pass an Act in the

(1) A.I.R. 1952 S.C. 252.

interests of persons deprived of property under Entry 42. They could not be permitted under that power to pass a law that operates to the detriment of those persons and the object of which provision is to deprive them of the right of compensation to a certain extent."

It is quite apparent that the present case is not covered by the said dictum of the Superme Court. In this case, I have found that the Governor had the power to promulgate the impugned Ordinance and, therefore, the question of sub-section (3A) newly inserted in section 26 of the Act being a colourable piece of legislation, does not arise.

(16) The learned Advocate-General, Punjab, has cited the classical passage from the Privy Council judgment in *Her Majesty The Queen* v. *Burah* (2), at page 193 which is as under :—

"But their Lordships are of opinion that the doctrine of the majority of the Court is erroneous, and that it rests upon a mistaken view of the powers of the Indian Legislature, and indeed of the nature and principles of legislation. The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits which circumscribe these powers. But, when acting within those limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation, as large, and of the same nature, as those of Parliament itself. The established Courts of Justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question; and the only way in which they can properly do so, is by looking to the terms of the instrument by which, affirmatively, the legislative powers were created, and by which, negatively, they are restricted. If what has been done is legislation within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited (in which category

(2) 5 I.A. 178.

would, of course, be included any Act of the Imperial Parliament at variance with it), it is not for any Court of Justice to inquire further, or to enlarge constructively those conditions and restrictions."

(17) A Full Bench of the High Court of Australia in *The Amalgamated Society of Engineers* v. *The Adelaide Steampship Company Limited and others* (3) considered that the Privy Council had stated the principles with respect to the interpretation of a written Constitution in earest terms in *R.* v. *Burah* (supra), (2).

(18) Their Lordships of theSupreme Court In *Re Art.* 143, *Constitution of India and Delhi Laws Act* (1912), *etc.* (4), referred to *Queen* v. *Burah* (supra) as the leading case on the subject of the ambit of power exercised by the legislature and thus approved the principles laid down in that judgment.

(19) The other judgments relied upon by the learned Advocate-General, Punjab, are *K. C. Gajapati Narayan Deo and others* v. *State of Orissa* (5), *Sri Ram-Ram Narain Medhi and others* v. *The State of Bombay* (6), *Sardar Sarup Singh and others* v. *State of Punjab and others* (7), *Sonapur Tea Co. Ltd., and another* v. *Deputy Commissioner and Collector of Kamrup and others* (8), *and Hari Krishna Bhargav* v. *Union of India and another* (9). The principles deducible from these judgments on the subject of colourable legislation and the Court's powers to go into the matter are as under :—

(1) That the legislature cannot do indirectly what it cannot do directly.

(2) The heads of legislation should not be construed in a narrow and pedantic sense but should be given a large and liberal interpretation. None of the items in the Lists is to be read in a narrow or restricted sense and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it.

(3) 28 C.L.R. 129.
(4) A.I.R. 1951 S.C. 332.
(5) A.I.R. 1953 S.C. 375.
(6) AI.R. 1959 S.C. 459.
(7) AI.R. 1959 S.C. 860.
(8) A.I.R. 1962 S.C. 137.
(9) AI.R. 1966 S.C. 619.

(3) Whatever justification some people may feel in their criticisms of the political wisdom of a particular legislative or executive action, this Court cannot be called upon to embark on an enquiry into public policy or investigate into questions of political wisdom or even to pronounce upon motives of the legislature in enacting a law which it is otherwise competent to make.

(4) The doctrine of colourable legislation does not involve any question of *'bona fides'*. or *'mala fides'* on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the legislature lacks competency, the question of motive does not arise at all. Whether a statute is constitutional or not is thus always a question of power.

(5) The only way in which the Court can determine as to whether the prescribed limits have been exceeded by the legislature in enacting a law is to look to the terms of the instrument by which, affirmatively, the legislative powers are created, and by which, negatively, they are restricted. If what has been done is legislation, within the general scope of the affirmative words · which give the power and if it violates no express condition or restriction by which that power is limited, it is not for any Court of Justice to inquire further, or to enlarge constructively 'hose conditions and restrictions. According to this principle all that we have to look to is that the impugned legislation is within the affirmative words of Entry 32 in List II of the Seventh Schedule to the Constitution and is not contrary to the fundamental rights guaranteed by the Constitution or any other limitation or restriction to be found in any part of the Constitution.

(20) In the light of these principles, I hold that the insertion of sub-section (3A) in section 26 of the Act by the impugned Ordinance is within the competence of the State legislature and the Governor could promulgate the Ordinance in exercise of his powers under Article 213 of the Constitution and we cannot investigate into the motives or political wisdom of enacting it.

(21) The second challenge to the validity of the Ordinance is that sub-section (3A) newly enacted gives powers to the Registrar to nominate any persons, whether shareholder or not, and he can nominate any number of persons and for the exercise of this power, no guiding principles have been laid down. In my view, there is no force in this contention. The Registrar is a very high officer of the State Government and the power has been left with him to be exercised only in such cases in which the number of continuing members of the committee of management is below the quorum prescribed in the bye-laws and it is necessary to fill up the vacancies of members of the managing committees or the Boards of Directors to provide interim management till the vacancies are filled in by election. In all the three cases, the Registrar has nominated such persons who are either the shareholders of the Society or the shareholders of the cooperative societies which are shareholders of the Society. He has, however, the power to nominate any person, whether a shareholder or not, whom he considers fit to perform the duties of a member of the managing committee or the Board of Directors. The vesting of this power in the Registrar does not make the newly-enacted sub-section constitutionally invalid.

(22) The objection with regard to the power of the Registrar to nominate any number of persons also lacks merit. This power is circumscribed by the limit that he cannot nominate more persons than there are vacancies. The argument of the learned counsel for the petitioners is that the Registrar should have been given power to nominate only such number of persons as would constitute the quorum along with the existing numbers of the committee. It is true that the quorum prescribed in the bye-laws is competent to transact the business which the managing committee has to do but the provision for a quorum is only to facilitate the working of a co-operative society in case all the members are not able to attend. It does not mean that the numerical strength of the managing committee should be limited to the quorum prescribed. A "quorum" in act means a given number of individuals within the whole body, all of whom have had notice of the meeting and who have attended the meeting. The essence of the matter is that all members of the committee should be given notice and if only some of them are able to attend, the working of the committee should not be hampered. For this reason, quorum is prescribed of a lesser number of members

of the committee usually one-third. In the case of the Society, the quorum is of 7 members but in order to have the quorum present, there must be more members than the number required to form the quorum so that the working of the Society may not suffer if some members do not attend designedly or are not able to attend due to indisposition, pre-occupation in other matters or negligence. The provisions for nomination in the newly-enacted sub-section (3A) of section 26 of the Act has been made for the purpose of providing managing committees to the co-operative societies which do not have any such legally constituted committees and the idea is to see that the funtioning of a co-operative society does not suffer. It is, therefore, absolutely necessary that the newly constituted managing committees should have a number much larger than the number which is sufficient to form the quorum so that if at any time some members are not able to attend, the work of the co-operative society does not come to a standstill.

(23) The decision as to what number of members may be nominated in a particular co-operative society has been left to the Registrar who holds a very high office in the State Government and it cannot be presumed that he will not exercise this power fairly and *bona fide*.

(24) In *Pannalal Binjraj* v. *Union of India* (10), it was observed by Bhagwati, J., at page 257 :—

> "It may also be remembered that this power is vested not in minor officials but in top-ranking authorities like the Commissioner of Income-tax and the Central Board of Revenue who act on the information supplied to them by the Income-tax officers concerned. This power is discretionary and not necessarily discriminatory and abuse of power cannot be easily assumed where the discretion is vested in such high officials. There is moreover a presumption that public officials will discharge their duties honestly and in accordance with the rules of law."

(25) As against this judgment of the Supreme Court, the learned counsel for the petitioners has relied upon the judgment of their Lordships in *S. Ajit Singh* v. *State of Punjab and another* (11), in which clause (v) of the proviso to para 2 of the Punjab Milk

(10) 1957 S.C.R. 233.

(11) W.P. No. 187 of 1966 decided on 24th February, 1967.

Products Control Order, 1966, was struck down on the ground that it gave arbitrary powers to the Milk Commissioner. It is urged by the learned counsel for the petitioners that the Milk Commissioner is also a high officer of the State Government and their Lordships of the Supreme Court held the power vested in him to be uncanalised and arbitrary. Para 2 of the said Order prohibited the manufacture, sale, service or supply of milk products with the following proviso :—

> "Provided that nothing in this clause shall apply to the use of milk—
>
> * * * *
>
> (v) for the manufacture, sale, service or supply of *khoa, rubree,* or any sweets in the preparation of which milk or any of its products except ghee is an ingredient on such occasions and subject to such terms and conditions as the Milk Commissioner may, by order, specify in this behalf."

Their Lordships of the Supreme Court held that this clause conferred uncanalised power upon the Milk Commissioner which may be arbitrarily used to extend the scope of exemption granted by the order under clauses (i) to (iv). It was stated by the Milk Commissioner in that case that he had exercised the power under clause (v) in favour of only one body, namely, the National Dairy Research Institute, Karnal, authorising that Institute to manufacture certain milk products for teaching or research and not for a commercial purpose. Their Lordships observed :—

> "Whether the power under clause (v) has been exercised for a purpose which is beneficial and has not been arbitrarily exercised is wholly immaterial in considering the validity of the clause. In our view, the Order does not lay down any principles which are to guide the Milk Commissioner in exercising the power and confers upon him authority which is capable of being exercised arbitrarily."

(26) The present case is clearly distinguishable in which there is no question of granting any exemption. In each case, the Registrar has to make up his mind as to how many vacancies are to be filled in and to nominate persons to fill those vacancies. The guidance is given in the sub-section itself, i.e., the number of

members to be nominated will not exceed the number of vacancies existing and that the purpose is to provide managing committees for the proper working of the co-operative societies concerned. It is also provided in sub-section (3A) that this power is to be exercised only in relation to those cooperative societies where the number of continuing members of the Managing committees is less than the quorum provided in the bye-laws. In my view, there is no merit in this contention of the learned counsel of the petitioners and I repel the same.

(27) The third point with regard to repugnancy of newly enacted sub-section (3A) to the provisions of sections 23 to 26 of the Act has been dealt with in detail while discussing the first point and for the reasons stated there, I am of the opinion that not only there is no repugnancy but the provision is in consonance with the already existing provisions of the Act.

(28) For the reasons given above, I hold that the Punjab Co-operative Societies (Amendment) Ordinance, 1968 (Punjab Ordinance No. 2 of 1968) is a valid piece of legislation and, therefore, cannot be struck down.

(29) The only other point raised in Civil Writ No. 2146 of 1968 was that the order nominating new Directors was beyond the power given by sub-section (3A) because only such number of Directors should have been appointed as was absolutely necessary to carry on the work of the Society. There were already three elected members and two nominated members of the Board of Directors whereas the quorum described in the bye-law is 7. I have already dealt with this point while considernig the second point in connection with the validity of the Ordinance and for the reasons given there, I see no force in this argument of the learned counsel for the petitioners.

(30) It is then stated that 5 of the 11 Directors who have now been nominated are not members of the Society and are not qualified to hold office. These 5 members are respondents 6, 10, 12, 13 and 14. The Manager of the Society has stated that these respondents are shareholders of some of the co-operative societies which are shareholders of the Society and are eligible to be nominated as their representatives for casting votes or being elected as

Directors. These respondents are, therefore, no strangers to the Society and are shareholders of co-operative societies. No allegation has been made that the nominated Directors are not the proper persons to hold office owing to having any interest adverse to the interests of the Society or that they were undesirable persons or that they were disqualified to hold office as provided in bye-law 34 of the Society. In the petition, it had been alleged that Chaudhri Kartar Singh, Minister, Co-operative Department, had got his own friends and partymen nominated but no argument has been advanced on this basis.

(31) Lastly, it was stated in the writ petition that the elections of the members of the Board of Directors had been fixed for 25th August, 1968, and the respondents should be directed not to interfere with those elections. In reply to this allegation, it has been stated by the Registrar of Co-operative Societies in his affidavit that no steps were taken by the Manager of the Society for holding the elections and that the Government has taken appropriate action in the matter. The Manager in his affidavit has stated that although the preparations for elections are being made, it is not true that all arrangements for elections are complete. He has also stated that many dates were fixed for elections in the past but were always postponed. I, therefore, find no satisfactory proof of the fact that elections have been fixed for 25th August, 1968.

No other point has been argued in this case.

Civil Writ No. 2149 *of* 1968.

(32) In this writ petition, apart from challenging the *vires* of Punjab Ordinance No. 2 of 1968, it has been argued that the exercise of power under sub-section (3A) was *mala fide* as the Chief Minister, Shri Lachhman Singh Gill, was inimically disposed towards the members of the managing committee of the Jagraon Co-operative Marketing-cum-Processing Society, Jagraon, and he wanted to accommodate his own men. The reason given is that in this Society, the quorum is of 3 and there were 4 officers in who were members of the managing committee, 3 of them being nominees of the State Government under section 26(2) of the Act and the Assistant Registrar, Co-operative Societies, was the *ex officio* member. The State Government withdrew the nomination of its 3 representatives, thus reducing the number of continuing

members of the managing committee to that below the quorum. This was done to nominate new members under the newly inserted sub-section (3A) in section 26 of the Act. The reply of the Registrar is that it was not considered proper to put the Society under the management of officials only and, therefore, their nominations were withdrawn. I do not find anything wrong in the withdrawal of the nominations because the officials may not have the experience of running a co-operative society or may not have enough time to devote to carry out their duties properly as members of the managing committe. The Chief Minister has categorically denied the allegations of *mala fides* made against him and we do not propose to go into this matter. Even assuming, though not accepting in view of the categorical denial of the Chief Minister, that the newly-nominated Directors are his friends and partymen, I see no objection to their nomination unless it is alleged and proved that they are incompetent persons or are persons whose interests are adverse to the interests of the co-operative society or that they do not believe in co-operative principles. The nomination of the newly appointed members of the managing committee cannot be struck down on this ground.

(33) It was vehemently urged by the learned counsel for the petitioners that the election of Directors had been fixed for 11th August, 1968, and the newly-nominated Directors should not interfere with that election and should see that the election takes place on that date. In reply to this allegation, Shri Narinder Singh, Assistant Registrar, Co-operative Societies, Jagraon at Ludhiana and Shri Darshan Singh, President of the said Society have stated on affidavit as under :—

> "In sub-para (4) of para No. 21 of the writ petition a prayer was made for restraining the respondents from interfering in the elections of the Board of Directors fixed for August 11, 1968. In fact no such date for holding the elections was fixed. The Manager of the Society surreptitiously recorded in the minute book of the society an agenda wherein it was mentioned that the election of the society will be held on August 11, 1968. This agenda was made for the approval of the Committee. This was never in fact put before the committee and it was never approved by the Committee. The election programme

according to Appendix 'C' of the Co-operative Societies Rules, sub-rule (3) has to be approved by the Assistant Registrar. This was never got approved."

The register was brought to the Court and shown to us. There were no signatures of any members of the Committee in token of their being present when the said minutes were recorded. The Manager on his own has no authority to fix any election programme. The new members were nominated on 3rd July, 1968, and with effect from that date, the Manager had to act under their guidance and subject to their directions. This managing committee did not meet on 3rd July, 1968, on which date the election programme is said to have been approved. The Manager on his own has no right or authority to issue any notices and we are informed that the notices were issued by him on 8th and 9th of July, 1968. I am not satisfied that the election programme was legally and validly drawn up by the Manager and no effect can be given to it.

Civil Writ No. 2241 *of* 1968.

(34) The learned counsel for the petitioners, in this case, did not urge any new point. All that he stated was that sub-section (3A) of section 26 inserted by the impugned Ordinance in the Act can be worked by the Government in such a manner that one set of members of the managing committee is nominated who will hold office for one year without holding elections and then another set can be nominated on the expiry of the period of one year of the first set and in this manner the elections can be avoided for an indefinite period. I regret my inability to agree to this interpretation of the learned counsel of the provisions of sub-section (3A). In my opinion, this sub-section means that the elections must take place within one year and the nominated Directors shall hold office till the elections are held or for a period of one year whichever is earlier. The apprehension of the learned counsel is misplaced. The learned counsel in his writ petition did not say anything with regard to the nominated Directors nor did he make them parties to the petition. He filed an additional affidavit which is dated 27th July, 1968, in which he stated that the nominated Directors were relations or very close and political associates of Shri Parkash Singh Majithia, Minister for Transport in the Punjab Government. This is no reason to strike down the nomination of these Directors

especially when it has not been alleged that they are not competent persons to act as Directors or have an interest adverse to the interest of the Amritsar Central Co-operative Bank Limited, Amritsar.

(35) During the course of arguments, we asked the learned Advocate-General, Punjab, as to how much time would be taken for holding elections in the case of co-operative societies where members have been nominated to the Managing Committee or Boards of Directors and he assured us that the elections in such cooperative societies or banks would finish in about three to four months. An affidavit of Ch. Kartar Singh, Minister, Co-operation and Parliamentary Affairs, Punjab, dated 8th August, 1968, has been filed stating that elections to co-operative societies will be held within four to five months and that if in any case, it is not possible to hold elections during the above-mentioned period, reasons will be recorded for not doing so. We accept this affidavit and expect the Government to implement this assurance in its true spirit.

(36) With these observations, we dismiss all the three petitions but leave the parties to bear their own costs as the *vires* of a newly promulgated Ordinance were challenged.

MEHAR SINGH, C.J.—I agree.

K. S. K.

APPELLATE CIVIL

Before R. S. Narula and Sandhawalia, JJ.

UNION OF INDIA,—*Appellant*

versus

MOHAN SINGH CHAUDHRI,—*Respondent*

Regular First Appeal No. 94 of 1958.

August 20, 1968

Payment of Wages Act (IV of 1936)—S. 22—Re-instatement of Employee removed from service—Claim for wages for the intervening period—Authorities under the Act—Whether can adjudicate—Suit for such wages—Whether barred—Provisions of the Act—Whether confined to railway employees working on railway track only.