



Darshan Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12987 OF 2018

1. **Smt. Meenakshitai Arjunrao Watti,**]
Aged about 53 years, Occ. Director]
Resident of Mukkam Post Rajaswa]
Society, Jai-Vijay Chowk, Waghapur,]
Yavatmal.]
2. **Ashok s/o Bhaurao Mangam,**]
Aged about 44 years, Occ. Director]
Resident of Mukkam Post Nanza,]
Tahsil Kalamb,]
District Yavatmal.]
3. **Prakash s/o Tulshiram Dadmal,**]
Aged about 54 years, Occ. Director]
Resident of Mukkam Post Wagegaon]
(Bhoyer), Tahsil Warora,]
District Chandrapur.]
4. **Kewalrao s/o Tulshiram Kale,**]
Aged about 56 years, Occ. Director]
Resident of Mukkam Post Gaulkheda]
Bazaar, Tahsil Chikhaldara,]
District Amravati.]
5. **Bharatlal s/o Thukelsing Dudhnath,**]
Aged about 62 years, Occ. Director]
Resident of Mukkam Post Deori,]
Tahsil Deori,]
District Gondia.]
6. **Dhanraj s/o Haribhau Mahale,**]
Aged about 42 years, Occ. Director]
Resident of Mukkam Post Ware,]
Tahsil Dindori,]

- District Nashik.]
7. **Sunil s/o Chandrakant Bhusara,**]
 Aged about 36 years, Occ. Director]
 Resident of Mukkam Post Hirwe]
 Pimpalwada, Tahsil Mokhada,]
 District Palghar.]
8. **Vikas s/o Dulhaji Walvi,**]
 Aged about 42 years, Occ. Director]
 Resident of Mukkam Bangda,]
 Post Walsai,]
 Tahsil and District Nandurbar.]
9. **Smt. Tarabai Shankar Malekar,**]
 Aged about 60 years, Occ. Director]
 Resident of Mukkam Post Saraste,]
 Tahsil Tryambakeshwar,]
 District Nashik.]
10. **Madhukar s/o Nimbaji Kadhe,**]
 Aged about 49 years, Occ. Director]
 Resident of Mukkam Post Soonawale]]
 Tahsil Junnar,]
 District Pune.]
11. **Magan s/o Jura Walvi,**]
 Aged about 59 years, Occ. Director]
 Resident of Mukkam Post Aatlipada,]
 Tahsil Nawapur,]
 District Nandurbar.]
12. **Devidas s/o Pandurang Patil,**]
 Aged about 65 years, Occ. Director]
 Resident of Mukkam Post Saturle,]
 Tahsil Mokhada,]
 District Palghar.]
- ...Petitioners

VERSUS

1. **The State of Maharashtra,**]
Through its Secretary,]
Tribal Development Department,]
Mantralaya (Extension),]
Mumbai – 400 032.]

 2. **The Maharashtra State Cooperative]
Tribal Development Corporation]
Limited, Nasik,]
A society registered under the]
Maharashtra Cooperative Societies]
Act, 1960 having registration]
No.PN./G.N.L. (A) 1/1972, having]
registered office at Adiwasi Vikas]
Bhawan, Second Floor, Ram Ganesh]
Gadkari Chowk, Old Agra Road,]
Nasik – 422 002.]
Through its President.]**

 3. **The Commissioner of Cooperation]
and Registrar Cooperative Societies]
(Maharashtra State), Second Floor,]
New Central Building,]
Pune – 411 001.]**

 4. **Shri Vishnuji Sawra,**]
The Hon'ble Minister,]
Adiwasi Vikas Department,]
Government of Maharashtra,]
Mumbai and the President of the]
Maharashtra State Cooperative Tribal]
Development Corporation Limited,]
Nasik.]

 5. **Union of India,**]
Through its Secretary of Ministry]
of Law and Justice, 4th Floor, A-Wing]
Shastri Bhavan, New Delhi,]
110001.]
- ...Respondents

APPEARANCES-

Mr Sandeep S. Salunkhe, for the Petitioners.

Dr. Birendra B. Saraf, AG, a/w Ms Neha S. Bhide, GP, Mr Jay Sanklecha, 'B' Panel Counsel, Mr S. H. Kankal, AGP, Mr. Y. D. Patil, AGP, for the Respondent-State.

Ms Kavita N. Solunke, for Respondents 2 and 4 (MSCTDC).

**CORAM : M.S.Sonak &
Jitendra Jain, JJ.**

RESERVED ON : 28 January 2025

PRONOUNCED ON : 30 January 2025

JUDGMENT (Per MS Sonak J):-

1. Heard learned counsel for the parties.
2. Rule. At the request of and with the consent of the learned counsel for the parties, the Rule is made returnable immediately. Even otherwise, there are orders posting this matter for final disposal.
3. The petitioners at the time of the institution of this petition were the Directors of the Maharashtra State Cooperative Tribal Development Corporation Limited, Nashik (Respondent No.2) ("**Corporation**"). This is a society registered under the Maharashtra Co-operative Societies Act, 1960 ("**MCS Act**") and is concerned with the welfare of the tribals.
4. The petitioners have pleaded that in terms of the bye-laws of the Corporation, its affairs are controlled and managed by the board of directors comprising 36 directors. The petitioners have pleaded that the State Legislature passed

the Maharashtra State Cooperative Societies (Amendment) Act, 2013, effective 14 February 2013. By Section 30 of this Amendment Act of 2013, Section 73AAA was inserted. The first proviso to Section 73AAA (1) restricts the maximum number of directors in the Cooperative society to 21.

5. Mr Sandeep Salunkhe, learned counsel for the petitioners, submitted that Section 73AAA, including in particular the first proviso to sub-section(1) thereof, is ultra-vires, unconstitutional, null and void because the impugned amendment was forced upon the State Legislature by the Constitution (97th Amendment) Act, 2011. This Constitutional amendment was declared ultra-vires by the Gujarat High Court vide its judgment and order dated 22 April 2013 in Writ Petition (PIL) No. 166 of 2012. At the time of the institution of this petition, the Hon'ble Supreme Court granted Special Leave to Appeal the Gujarat High Court's decision. But no interim relief was granted.

6. Mr Salunke submitted that finally, in **Union of India Vs. Rajendra N. Shah**¹, Hon'ble Supreme Court upheld the Gujarat High Court's judgment and order except to the extent it had struck down the entirety of Part IXB of the Constitution of India. However, the Hon'ble Supreme Court declared that Part IXB of the Constitution is operative only insofar as it concerns multi-state cooperative societies both within the various states and in the Union Territories of India.

7. Accordingly, Mr Salunkhe submitted that once the Constitutional amendments were declared as ultra-vires and inapplicable to cooperative societies, the impugned

¹ 2021 SCCOnline SC 474

amendments would also have to be declared as ultra-vires, unconstitutional, null and void.

8. Mr Salunke submitted that the Corporation was formed to address to the welfare of the tribals. Bye-laws had provided for 36 directors to give representation to the various districts with sizable populations of tribals. He submitted that without any rationale, rhyme or reason, the legislature could not have amended the MCS Act and restricted the number of directors to only 21. He submitted that such a reduction is arbitrary and, therefore, violative of Article 14 of the Constitution. He submitted that such restriction is against the cooperative principles and amounts to an unreasonable restriction on the Right guaranteed by Article 19(1)(c), which concerns the Right to form cooperative societies, associations, or unions. Accordingly, he submitted that the impugned amendment deserves to be struck down.

9. Mr Salunkhe submitted that Section 73B of the MCS Act provides for reservations inter-alia to members belonging to the Scheduled Castes, Other Backward Classes and De-notified Tribes or Special Backward Classes. He submitted that in terms of the bye-laws of the Corporation, only tribals are permitted to be members of the Corporation. Therefore, he submitted that mandating reservations for members who are not tribals would be impossible to comply with. He, therefore, submitted that the impugned amendments must be declared illegal, unconstitutional, null and void.

10. Mr Salunkhe submitted that the Hon'ble Supreme Court already addressed relief for the declaration of Part IXB, containing Articles 243ZH to 243ZT, as ultra-vires the

Constitution of India in the case of *Rajendra N. Shah (supra)*. As such, the petitioners were not pressing for this relief.

11. Based on the above contentions, Mr Salunkhe submitted that the provisions of Section 73AAA in the MCS Act are to be struck down as arbitrary, unconstitutional, null and void. He submitted that in any event, the provisions, to the extent they restrict the number of directors of the Corporation to 21 or for that matter, 25, should be struck down, and the Corporation must be permitted to have 36 directors as provided by its by-laws.

12. Learned Advocate General, at the outset, submitted that there was a presumption in favour of constitutionality, and the petitioners have not rebutted this presumption. He submitted that there is no challenge to the legislative competence of the State, and no case is made out of any violation of the Articles in Part III of the Constitution. He relied on **Charanjit Lal Chowdhury Vs. Union of India**²; **Amalgamated Tea Estates Vs. State of Kerala**³; **B.K. Pavitra Vs. Union of India**⁴; **State of A.P. Vs. McDowell & Co.**⁵; **State of MP Vs. Rakesh Kohli**⁶; **Dr Jaya Thakur Vs. Union of India**⁷ in support of his contentions.

13. Learned AG submitted that the allegations regarding the violation of Articles 14 or 19 are extremely vague and bereft of any particulars. He submitted without unambiguous pleadings, challenges to the constitutionality of statutory provisions should not be entertained. He relied on **Amrit**

² 1950 SCC Online SC 49 at Pr.40-43

³ (1974) 4 SCC 415 at Pr.10-12

⁴ (2019) 16 SCC 129 at Pr. 96 and 97

⁵ (1996) 3 SCC 709 at Pr. 43

⁶ (2012) 6 SCC 312 at Pr. 16, 17, 26-28

⁷ (2023) 10 SCC 276 at Prs.70-74

Banaspati Co. Ltd. Vs. Union of India & Ors.⁸; Aparna Chaterjee Vs. Union of India⁹; Bank of Baroda Vs. Rednam Devi¹⁰; Ashutosh Gupta Vs. State of Rajasthan¹¹.

14. Learned AG submitted after the decision of the Gujarat High Court or after this decision was partly upheld by the Hon'ble Supreme Court in Rajendra Shah (supra), it may have been open to the State Legislature to delete impugned amendments, but it was not obligatory to do so. Still, the State Legislature consciously chose to retain the amendments. He submitted that the State Legislature made further amendments to the MCS Act, which relaxed the restriction on the maximum number of directors in committees for cooperative societies subject to the fulfilment of specified conditions. In this regard, he referred to the Maharashtra Cooperative Societies (3rd Amendment) Act, 2021.

15. Learned AG submitted that there was no question of the State Legislature being forced to carry out amendments to the MCS Act. He submitted amendments that were introduced or, in any event, retained because the legislature is best suited to understand and appreciate the needs of its people. He submitted that the State Government undertook a detailed study regarding the functioning of the cooperative societies. There was consultation with various stakeholders through a conference convened by the State Cooperative Ministers. Accordingly, the learned AG submitted that no unconstitutionality was involved in the impugned amendments.

⁸ (1995) 3 SCC 335

⁹ 2022(5) MhLJ 447 at Prs. 12-15

¹⁰ (1998) 4 SCC 470 at Pr. 13

¹¹ (2002) 4 SCC 34 at Pr. 5 to 7

16. Learned AG submitted that issues concerning fixing the maximum number of committee members or reservations are essentially policy matters. He submitted that to save a clear case of violation of any of the provisions in Part III, the courts should not interfere with policy, mainly when such policy is reflected in its statutory provisions like the MCS Act. Accordingly, he submitted that there was no unconstitutionality involved in the impugned amended provisions of the MCS Act

17. Learned AG submitted that cooperative principles require elections to managing committees or boards of cooperative societies to be held on time. Accordingly, he submitted that interim reliefs, if any, restraining the holding of such elections should be vacated so that the State Cooperative Election Authority (Authority) can proceed with the holding of elections as soon as possible. Learned AG referred to the order dated 25 November 2019 passed by the Hon'ble Supreme Court in **Baburao s/o Banduji Kubde Vs. Yavatmal District Central Cooperative Bank Limited & Ors., in Special Leave to Appeal(c) No. 8004 of 2019.**

18. For all the above reasons, learned AG submitted that this petition may be dismissed and the interim order, if any, be vacated.

19. Ms. Kavita Solunke, learned counsel for the second and fourth respondents, adopted the arguments advanced by the learned AG. She submitted that this petition may be dismissed and interim orders, if any, vacated.

20. The rival contentions now fall for our determination.

21. The challenges in this petition are the following: -

(a) The Corporation's resolution dated 09 December 2015 under the chairpersonship of the fourth respondent and the Government Resolution (GR) dated 29 June 2016 restricting the number of directors on the board of directors to govern the affairs of the Corporation from 36 to 21.

(b) To declare the insertion of Part IXB containing articles 243ZH to 243ZT as ultra-vires to the Constitution of India and to strike down the same.

(c) To declare Section 73AAA of the MCS Act as ultra-vires the Constitution of India and to strike down the same in the city before the wash and aside of the same.

22. Insofar as the challenge to inserting Part IXB in the Constitution of India is concerned, Mr Salunkhe fairly submitted that the Hon'ble Supreme Court has already addressed this issue in the case of *Rajendra N. Shah (supra)*. Accordingly, Mr Salunkhe clarified that the petitioners were not pressing for relief concerning the insertion of Part IXB in the Constitution of India.

23. Thus, challenges that survive concern the resolution dated 09 December 2015 and GR dated 29 June 2016, as well as the challenge to the constitutional validity of section 73AAA of the MCS Act as obtained on the date of institution of the petition. No independent arguments were advanced to challenge the resolution dated 09 December 2015 or GR dated 29 June 2016. Mr Salunkhe submitted that if Section 73AAA of the MCS Act is struck down, then the resolution dated 09 December 2015 or the GR dated 29 June 2016 would be of no avail and based upon the same, there could be no reduction in

the number of directors on the board of the second respondent Corporation. Accordingly, he submitted the main challenge in this petition was to the Constitutional validity of Section 73AAA of the MCS Act.

24. Before we consider the provisions of Section 73AAA of the MCS Act and the challenges to them, it is necessary to briefly reference the constitutional provisions, the decision of the Hon'ble Supreme Court in Rajendra Shah (supra), and the provisions of Section 73AAA.

25. The central government contemplated reforms in legislation relating to cooperative societies in the states and union territories. In this regard, several consultations were held with the State Governments. A conference of the State Co-operative Ministers was held in 2004, wherein amendments were also discussed. A resolution was passed at the conference of the State Co-operative Ministers. Subsequently, on 10th May 2005, a High-Power Committee was appointed to review the co-operative sector's achievements, identify the sector's challenges and suggest appropriate policy and legislative changes required in the co-operative legislation across the country.

26. Based upon all this groundwork, the Constitution (106 Amendment) Bill, 2006, was introduced in Lok Sabha on 22nd May 2006, which contemplated the introduction of Part IX-B to the Constitution. Draft Article 243ZJ(1) in the Bill restricted the maximum number of directors of a co-operative society to twenty-one, except for a state-level co-operative society. The Standing Committee on Agriculture (14th Lok Sabha) considered the said Bill and submitted their report after inviting the views of various State Governments and the

High-Power Committee on 20th August 2007. The report recommended that the maximum number of Directors in a cooperative Society, including for state-level co-operative societies, should be restricted to 21 irrespective of their size. This was because it has been observed that there were huge boards that made it very difficult to arrive at reasonable decisions.

27. The Standing Committee recommended as under:

"Clause 243 ZJ (1) The Clause read as under: "The board shall consist of such number of directors as may be provided by the Legislature of a State, by law: Provided that the maximum number of directors of a cooperative society shall not exceed twenty-one, except in the case of a State level cooperative society".

The Committee note that this Clause specifies that the maximum number of Directors shall not exceed twenty-one except in the case of a State level co-operative society. It has been observed that in many cases there are very large boards and it is very difficult to arrive at reasonable decision. The Committee, therefore, recommend that the maximum number of directors including functional directors should be restricted to twentyone for all cooperatives irrespective of their sizes. Hence, the words 'except in case of a State Level co-operative society' should be deleted from the proviso to Clause 243 ZJ (1).

28. The Cabinet considered the Standing Committee report in a meeting held on 8 August 2008. The agriculture minister gave the requisite notice for consideration of the Bill in accordance with the rules of procedure. However, the Bill could not be discussed in the Lok Sabha and lapsed when the Lok Sabha was dissolved on 18 May 2009.

29. The High-Power Committee submitted its report in May 2009. After receipt of the final report of the High-Power Committee in May 2009, the Constitution (111th

Amendment) Bill, 2009, was presented in Lok Sabha and referred to the Committee of Agriculture for detailed examination. The Committee, after inviting the views of various stakeholders, submitted its report in August 2010. Thereafter, the said Bill was approved in both houses, and the Constitution (97th Amendment) Act, 2011 was passed, amending the Constitution to inter alia include Article 43-B and insert Part IX-B to the Constitution. Article 243ZJ of the Constitution restricted the maximum number of directors of a cooperative society to 21. Unlike the previous Constitutional Amendment Bill and in terms of the recommendation of the Standing Committee, the exception for State level co-operative societies was removed. Article 243ZT further provided that notwithstanding anything in this Part, any provision of law relating to co-operative societies in force in a State immediately before the commencement of the Constitutional (Ninety Seventh Amendment) Act, 2011, which is inconsistent with the provisions of Part IX-B, shall continue to be in force until amended or repealed by a competent legislature or until the expiration of one year from such commencement, whichever was less.

30. The MCS Act was amended by the Amendment Act to bring its provisions in consonance with Part IX-B of the Constitution. One of the amendments was the insertion of Section 73AAA in the MCS Act. This is transcribed below for the convenience of reference:

⁴²[73AAA. *Constitution of committee*

(1) *The Committee shall consist of such number of members as may be provided in the by-laws:*

¹² Section 73AAA was inserted by Mah. Act No. 16 of 2013 dt. 13-8-2013, s.30, (w.e.f. 14-2-2013).

Provided that, the maximum number of members of the committee shall not exceed twenty one:

¹³*[Provided further that, in case of an apex society and, in exceptional circumstances, in case of any other society, the Registrar may increase the number of members of the committee upto twenty-five with the prior approval of the State Government:]*

¹⁴*[Provided also that], the provisions of the Banking Regulation Act, 1949, shall apply to all the societies carrying the business of banking.*

(2) The Committee may co-opt "expert directors" relating to the objects and activities undertaken by the society:

Provided that, the number of expert directors shall not exceed two, which shall be in addition to the maximum number of members of the committee as specified in the first proviso of sub-section (1):

¹⁵*[Provided further that, the Committee may nominate one person as a functional director:*

Provided also that, in the case of such societies or class of societies, as the State Government may by general or special order notify, where the number of permanent employees of the society is twenty-five or more, the committee shall include,—

(i) where the committee consists of not more than eleven members, one representative of the employees of the society; and

(ii) where the committee consists of more than eleven members and not more than twenty-one members, two representatives of the employees of the society.

Such representatives of the employees shall be selected by the union or unions recognised under the Maharashtra Industrial Relations Act, or the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, from amongst the employees of the society.

¹³ Proviso was inserted by Mah. 28 of 2022 dt. 28-3-2022, s.7(1), (w.e.f. 28-3-2022).

¹⁴ Substituted for the words "Provided further that" by Mah. 28 of 2022 dt. 28-3-2022, s.7(2), (w.e.f. 28-3-2022).

¹⁵ Proviso was substituted by Mah. 36 of 2016 dt. 17-10-2016, s.3(a), (w.e.f. 2-3-2016).

Where there is no such recognised union or unions or where there is no union at all or where there is a dispute in relation to such issues including whether a union is recognised or not, then such representatives of the employees shall be elected by the employees of the society from amongst themselves in the prescribed manner. No employee who is under suspension shall be eligible for being selected or elected or for being continued as a member of the committee under this proviso:

Provided also that, the representative of the employees selected or elected as per the provisions of the third proviso shall have the right to take part in the meetings of the committee, but shall have no right to vote therein.]

¹⁶*[Provided also that, ¹⁷[in respect of society, excluding the Housing Society, having assistance of the Government in the form of share capital, loan, guarantee, grant, the Government land or any other form whether cash or kind], the committee shall also include following two members nominated by the Government, namely:—*

(i) one Government Officer not below the rank of the Assistant Registrar of Cooperative Societies, and

(ii) one person having such requisite experience relating to the work of the society and such qualifications, as may be specified by the Government, by an order published in the Official Gazette:]

¹⁸*[* * *]:*

Provided also that, the functional directors and the members nominated by the state Government under the third proviso of a society shall also be the members of the committee and such members shall be excluded for the purposes of counting the total number of members of the committee specified in the first proviso to sub-section (1):

Provided also that, such expert directors shall not have the right to vote at any election of the society and shall not be eligible to be elected as office bearers of the committee.

¹⁶ Proviso was substituted by Mah. 36 2016 dt. 17-10-2016, s.3(b), (w.e.f. 2-3-2016).

¹⁷ Substituted for the words “in respect of the society having contribution of the Government towards its share capital” by Mah. Act 64 of 2018, s.2, (w.e.f. 8-6-2018).

¹⁸ Proviso was omitted by Mah. 36 of 2016 dt. 17-10-2016, s 3(c), (w.e.f. 2-3-2016).

(3) *The term of the office of the elected members of the committee and its office bearers shall be five years from the date of election and the term of the office bearers shall be co-terminus with the term of the committee*¹⁹*[and on the expiry of the term of the committee, the members shall be deemed to have vacated their offices as members of the committee].*

²⁰*[Provided that, if the term of office of the elected members of the committee and its office bearers has expired, and if the election to the committee of the society could not be held due to*²¹*[imposition of lockdown in the State in view of the Covid-19 pandemic,] the orders issued by the Government, from time to time, or any reason not attributable to the members of the committee of the society, such members and office bearers of the committee shall be deemed to have continued as members and office bearers of the committee till new committee is duly constituted:.]*

²²²³*[Provided further that], if the election to the Committee of the society could not be held for any reason not attributable to the members of the Committee of such Society, the existing members of the Committee shall be deemed to have continued till new committee is duly constituted.]*

(4) *Any casual vacancy in the committee may be filled in from amongst the members belonging to the same category of persons in respect of which a casual vacancy has arisen.*

(5) (a) *If, at any general election of members of the committee, the committee could not be constituted after declaration of results, then notwithstanding anything contained in this Act or the rules or the by-laws of the society, the returning officer or any other officer or authority conducting such election shall, within seven days of the declaration of two-thirds or more number of members, forward their names together with their permanent addresses to the Registrar, who shall, within fifteen days from the date of receipt thereof by him,*

¹⁹ Inserted by Mah. 50 of 2018 dt. 9-8-2018, s.2, (w.e.f. 13-6-2018).

²⁰ This proviso was added by Mah. 6 of 2022 dt. 20-1-2022, s.2(i), (w.r.e.f. 24-3-2020).

²¹ Del. By Mah. Act No. 26/2023

²² This proviso was added by Mah. 27 of 2020 dt. 12-10-2020, s.2, (w.e.f. 10-7-2020).

²³ Substituted for the words "Provided that" by Mah. 6 of 2022 dt. 20-1-2022, s.2(ii), (w.e.f. 2-11-2021).

publish or cause to be published such names and addresses by affixing a notice on the Notice Board or at any prominent place in his office; and upon such publication the committee of the society shall be deemed to be duly constituted. In determining two-thirds of the number of members, fraction shall be ignored:

Provided that, such publication shall not be deemed,—

(i) to preclude the completion of elections of the remaining members and the publication of their names and the permanent addresses of the elected members likewise as and when they are available; or

(ii) to affect the term of the office of members of the committee under the Act;

(b) the names of the remaining members after they are elected (together with their permanent addresses), may also thereafter be likewise published by the Registrar.]”

31. Meanwhile, the Constitution (97th Amendment) Act, 2011, was challenged before the Gujarat High Court. The Gujarat High Court held that the insertion of Part IX-B by the Constitution (97th Amendment Act), 2011, was unconstitutional because it effectively sought to change List II of the 7th Schedule of the Constitution of India without following the procedure contemplated under the proviso to Article 368(2) of the Constitution. This Judgment was challenged before the Hon'ble Supreme Court.

32. The Hon'ble Supreme Court in *Rajendra Shah (supra)* partly upheld the judgment of the Gujarat High Court. The Supreme Court held that the applicability of Part IX-B to the State Cooperative Societies effectively sought to change the lists under the 7th Schedule by encroaching on the power of the States to legislate on subjects set out of List II without following the procedure contemplated under Article 368(2). The Supreme Court, however, held that Part IX-B of the

Constitution would continue to apply to Multi-state Co-operative societies. In effect, the Hon'ble Supreme Court held that the power to legislate in respect of State cooperative societies was within the exclusive domain of the State Government under List II of the 7th Schedule of the Constitution of India. The same could not be indirectly encroached upon by inserting Part IX-B to the Constitution without following the procedure contemplated under the proviso to Article 368(2).

33. After the Gujarat High Court and the Hon'ble Supreme Court decided that Part IX B of the Constitution did not apply to State cooperative societies, the State legislature was free to undo the amendments made to the MCS Act. In fact, after considering these decisions, the legislature consciously chose to retain the provision but made further amendments to the MCS Act, which relaxed the restriction on a maximum number of directors in committees for Cooperative Societies in certain circumstances.

34. The Maharashtra Co-operative Societies amended section 73AAA of the MCS Act (Third Amendment) Act, 2021 (Maharashtra Act no. XXVIII of 2022) to add a proviso enabling the Registrar to increase the number of Members of the Committee of Apex Societies and, in exceptional circumstances, of any other society up to 25 members with prior approval of the State Government.

35. The Statement of Objects & Reasons for the 2021 Amendment makes the object clear:

"A new Part IX-B regarding Co-operatives Societies has been inserted in the Constitution of India by the Constitution (Ninety Seventh Amendment) Act, 2011. The

Government of Maharashtra has made various amendments in the Maharashtra Co-operative Societies Act, 1960 (Mah. XXIV of 1961) (hereinafter referred to as "the said Act", so as to make the provisions in the said Act in consonance with the constitutional provisions of the said Part IX-B.

2. The Gujarat High Court in the case of Rajendra Shah Vs Union of India Chief Director (Co-operation) (C/WPPIL/166 of 2012) has declared the said Constitutional Amendment Act inserting Part IX-B ultra-virus the Constitution. The Supreme Court, in Civil Appeal No. 9108-9109 of 2014 has upheld the judgement of the Gujarat High Court except to the extent that it strikes down the entirety of Part IX-B of the Constitution of India. The Supreme Court in the said judgment has declared that Part IX-B of Constitution of India is operative only in so far as it concerns multi-state co-operative societies both within the various states and in the Union Territories of India. The Government considers it expedient to make certain amendments in the said Act for the interest of the society members and for smooth functioning of the co-operative movement.

3. The salient features of the proposed amendments to the said

Act are as follows:—

(1)... ..

(2) ...

(3) to amend section 73AAA to enable the Registrar to increase the number of members of committee of apex society and, in exceptional circumstances, of any other society upto twenty-five, with the prior approval of the State Government, in order to give representation to all revenue divisions, districts or talukas in the committee of the apex societies or any other Society, as the case may be;"

j. Thus, the State Legislature after being conscious that Part IX-B introduced by the Constitution (97th Amendment) Act, 2011 to the Constitution was no longer applicable to State Co-operative Societies amended the MCS Act and provided for increase in the number of Members of the Committee of Co-operative Societies in

certain circumstances. However, the State Legislature did not think it appropriate to reintroduce provisions for reservation to economically weaker section of the society or for the employees of the Co-operative Societies. Various other provisions of the MCS Act were also amended after the State Legislature noticed that the Part IX B of the Constitution was no longer applicable to State Cooperative Societies.”

36. In terms of Article 246 of the Constitution, read with Entry 32 of List II of the VIIth Schedule to the Constitution, the State Legislature was empowered to legislate on matters concerning Co-operative Societies. Therefore, no challenge was raised by the Petitioners about the legislative competence of the State Legislature to amend the MCS Act and insert Section 73AAA therein. After the decision of the Hon’ble Supreme Court in *Rajendra Shah (supra)*, the State Legislature, perhaps, could have withdrawn the impugned amendments. Still, it would not be correct to hold that the State Legislature was bound to withdraw the impugned amendments. The record shows that the State Legislature consciously decided to not only retain the impugned amendments but carry out further amendments to the MCS Act. Thus, the impugned provisions are those that the State Legislature has retained in its present form, even after taking cognizance of the Hon’ble Supreme Court’s decision in *Rajendra Shah (supra)*. Learned Advocate General submitted that the State Legislature has evinced a clear intention to restrict the number of directors or committee members to 21 or up to a maximum of 25 in the exceptional circumstances referred to in the third proviso.

37. Learned Advocate General, in the notes of arguments submitted by him, stated the following at paragraph 10:-

“10. As detailed hereinabove, there was a detailed study as regards the functioning of the Co-operative Societies and consultation with the various State Governments including a conference of the State Co-operative Ministers. It is with the avowed object of improving the Co-operative movement in the State of Maharashtra that the amendments were introduced to the MCS Act. Under Article 43B of the Constitution, the State is obliged to endeavor to ensure democratic control and the professional management of the co-operative societies. The rationale underlying the introduction of the constitutional amendments would be equally applicable to the amendments introduced by the State Legislature to the MCS Act. Neither the Gujarat High Court nor the Hon'ble Supreme Court held that any of the amendments introduced by the constitutional amendments constituted an infringement of any rights recognized in Part III of the Constitution. The decision of the Hon'ble Supreme Court was confined to the procedural aspect of compliance with the proviso to Article 368(2) In fact, the Hon'ble Supreme Court has proceeded to hold that Part IX B would continue to apply Multi State Co-operative Societies. After being fully conscious that the provisions of Part IX-B of the Constitution are no longer applicable to the State Co-operative Societies, the State Legislature enacted the Maharashtra Co-operative Societies (Third Amendment) Act, 2021 (Maharashtra Act no. XXVIII of 2022) to further amend the provisions of the MCS Act. Thus, after the decision of the Hon'ble Supreme Court, the State Legislature being conscious that Part IX-B was no longer applicable as chosen to amend certain provisions and retained the other amendments which were earlier introduced.”

38. Upon due consideration of Mr Salunkhe's first contention, we find no merit therein. Although it is correct that Part IXB of the Constitution would not apply to Co-operative Societies other than multistate Co-operative Societies both within the various States and the Union Territories of India, still, the position that the State Legislatures have the legislative competence to legislate about Co-operative Societies was reiterated by the Hon'ble Supreme Court. Therefore, on the ground that a portion of Part IXB of

the Constitution was held ultra-vires, the impugned amendments introduced by the State Legislature cannot be struck down.

39. The argument that the State Legislature was forced to bring about such an amendment cannot be accepted. In any event, the State Legislature has now decided to retain the amended provisions. The State Legislature has, in fact, further amended the provisions. Therefore, based on the decision of the Gujarat High Court, which was partly upheld by the Hon'ble Supreme Court in *Rajendra Shah (supra)*, no case is made out to strike down the impugned amendment. The State Legislature has acted within its legislative competence. Whatever may have been the motive of the State legislature at the time of introducing Section 73 AAA, even after the decision of the Gujarat High Court, which was partly upheld by the Hon'ble Supreme Court in *Rajendra Shah (supra)*, the State Legislature consciously chose to not only retain the introduced provision but also further amend the same. In any event, it is well settled that the Legislature's motives are irrelevant to determining the Constitutionality or otherwise of the legislation it enacts.

40. The next argument is about the corporation being formed to promote the welfare of tribals, and the provision of 36 directors in the bye-laws was to give adequate representation to the various districts in which such tribals had a sizable population. It was contended that the State Legislature had ignored this vital consideration and, therefore, the impugned amendment was arbitrary and violative of Article 14 of the Constitution.

41. The above contention cannot be accepted because the decision on the maximum number of directors is essentially a policy decision. By restricting the number to 21 or, in exceptional cases to 25, no constitutional provision can be said to have been violated. A restriction cannot even be called an unreasonable restriction on the right to form an association or a Co-operative Society. In any event, no such arguments were advanced on these lines. These are essentially policy matters, and unless a case of clear violation of the rights in Part III of the Constitution is made out, the Courts, in exercising their powers of judicial review, do not strike down legislation.

42. The above argument does not overcome the presumption of constitutionality. The Legislature is presumed to better understand its people's Needs. It is supposed to have considered the experience of cooperative societies and the problems of decision-making due to unwieldy committee or board size. Based on such arguments, The Constitutional Courts do not strike down legislation. From the perusal of the pleadings, no ground regarding violation of Article 19(1)(c) of the Constitution is adequately raised or made out. Even the ground based on the alleged breach of Article 14 is quite vague. The entire emphasis was that the bye-laws allowed 36 directors, but the impugned amendment now restricts this number to 21 or 25; therefore, the provision is arbitrary or unconstitutional. This is not acceptable. Without proper pleadings, it would not be safe to entertain challenges to statutory provisions.

43. Mr. Salunkhe made some submissions based on Section 73B of the MCS Act. However, the provisions of Section 73B

of the MCS Act are not challenged in this Petition. Sections 73AAA and 73B of the MCS Act provide for the inclusion of certain persons, such as expert directors, permanent salaried employees, and members belonging to the Scheduled Castes, Scheduled Tribes, Other Backward Classes, De-notified Tribes, or Special Backward Classes, in the committees or the board of directors. However, that by itself will not render such provisions ultra vires or unconstitutional.

44. The provisions relating to reservations are primarily enabling. Whether or not to provide for reservations is mainly a policy decision. In such circumstances, there is no question of entertaining challenges not supported by proper pleadings. It was not clear whether the Petitioners objected to the reservations provided or to some of the earlier reservations that were deleted. The effect of the Corporation allegedly not permitting non-tribals to the membership of the society and its impact on the reservation provisions is not a situation we must deal with in this petition. Based on this premise, in any event, no case is made out to strike down the impugned amendments in the MCS Act.

45. Based on none of the grounds urged by Mr. Salunkhe, any case is made to grant any relief to the Petitioners. The Petition was premised on the circumstance that upon the declaration of Part IXB to the Constitution as partly ultra vires, the amendments introduced by the State Legislatures were also bound to be declared ultra vires, illegal or unconstitutional. This premise overlooks that the Hon'ble Supreme Court in *Rajendra Shah (supra)* has reiterated that the State Legislature has the legislative competence to legislate about cooperative societies. In the entire Petition,

there is no serious challenge based on the contravention of any of the provisions of Part III of the Constitution.

46. For all the above reasons, this Petition is liable to be dismissed and is hereby dismissed. Interim order, if any, is hereby vacated. Interim Applications, if any, are disposed of.

47. If the elections are due and have not been held due to any interim orders, we direct the State Cooperative Election Authority (Authority) to take all steps to hold them as expeditiously as possible. Such elections must be concluded within a maximum of six months from today. This is consistent with the statement made by the learned Advocate General in Writ Petition No.4547 of 2018. Meanwhile, suppose the board whose term has expired is continuing. In that case, it shall take no major policy decisions or expend or authorise the expending of any Corporation funds other than for its routine day-to-day operations and activities. Under no circumstances should such boards continue beyond six months from today.

48. This Petition is disposed of under the above terms without any cost orders.

(Jitendra Jain, J)

(M. S. Sonak, J)