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RAJENDRA PRASAD YADAV AND ORS.

v.

STATE OF MADHYA PRADESH AND ORS.

JULY 9, 1997

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[K. RAMASWAMY AND D.P. WADHWA, JJ.]

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*Cooperative Societies—M.P. Cooperative Societies Act, 1960—Section 49(8)(ii)—Board of Directors and Managing Committee of the Apex Society—Election to—Failure to hold election to Board of Directors and Management Committee within time—Election to Managing Committee representatives of Central Societies, primary societies—Condition precedent for completion of election process of the Apex Society—Obligation, to conduct such elections on request of the respective committees of the Central Societies lies on Registrar and not on Apex Society—Held, the liability of statutory vacation of office under Section 49(8)(ii) on expiry of term cannot be saddled on Board of Directors, President, Vice-President and Members of Management Committee of the Apex Society when Registrar has failed to hold election to Central Bank and Primary Societies—However, whole process of election having since been completed and election to the board of the Apex Society having also been over, writ petition filed by the appellants became infructuous and hence liable to be dismissed.*

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*Constitution of India, 1950—Article 226—Writ of Quo Warranto—Issuance of—Court issued Writ of Mandamus—Held, Writ of Quo Warrants cannot be issued to disobey writ of Mandamus already used and allowed to become final.*

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District Co-operative Central Bank sent delegates to the M.P. State Co-operative Bank Ltd., the 'Apex Bank'. On August 24, 1984 when the first meeting of the Board of Directors of the Apex Bank was held the term of office of three years started running. The President and Vice-President, and other office bearers from the Board of Directors were elected, resulting in constitution of the Board of Directors and the Managing Committee of the Apex Bank. The term of the representatives of the Central Bank, Board of Directors and of their office bearers was co-terminus with the term of the Managing Committee of the Central Bank. Equally, the term of the Board of Directors and of the Managing Committee of the Apex Bank was

co-terminus, which was three years, later amended as five years as per M.P. Cooperative bye-laws 41(1). The three-tier system of Co-operative Society existed therein. A

By Resolution dated April 26, 1990, the Apex Bank applied to the Registrar to hold elections. On failure to do so matter was filed in High Court which gave a direction that election be conducted in accordance with the procedure prescribed under law. On the same date, Ordinance No. 2 of 1990 replaced by Act (14 of 1990) was passed by the State Legislature terminating the term of the Committees; the Registrar was directed to take over management of all the Primary Societies, Central Banks and of the Apex Bank. As a consequence, the Committees of all the Societies were superseded by proceedings dated April 26, 1990. The Board again filed writ petition. The High Court by its judgment dated June 21, 1993 reported as *A.P. Sastri* case declared the Amendment Act (14 of 1990) amending Section 49(8) of the M.P. Co-operative Societies Act, 1960 as *ultra vires* the legislative power. As a necessary consequence, it held that the officers of the earlier Managing Committee would continue to function, till election were held in accordance with law. Subsequently, Writ Petition was filed seeking writ of *quo warranto* to show cause under which authority the appellants were functioning. In the meanwhile Section 49(8) was amended by Act 12 of 1994. The High Court disposed of the writ petition on finding that the appellants deliberately delayed the conduct of election and that they had no right to continue in office after the expiry of the term. B  
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In appeal to this court the appellants contended that if the Registrar fails to conduct timely elections to the primary societies and district societies, existing Board of Directors, President, Vice-President and members of Managing Committee of the Apex Society cannot be deemed to have vacated their office on expiry of the statutory term and the Registrar cannot assume office of the Board of Directors or Managing Committee of Apex Society. F

The respondents contended that on expiry of the term of the President, two Vice-Presidents of the Board of Directors and the term of the Managing Committee which being co-terminus with the Board of Directors must be deemed to have vacated their offices. Thereby, the Registrar is not entitled to assume office of the Board of the Directors and the Managing Committee. G  
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**A HELD : Per K. Ramaswamy, J.**

**B 1.1. For completion of the electoral process of Apex Bank, election to the Primary Societies and in turn election to the managing committee of each of the District Central Banks and election of one representative from each of the 45 Central Banks as members of the Apex Bank, as the two steps are condition precedent and are necessary. Until then, constitution of the Board of Directors and the Managing Committee of the Apex Bank cannot be done. As a pre-condition for completion of these two sequential steps, i.e., (i) election of the President and two Vice-Presidents and (ii) election of 5 elected member-Directors to the Management Committee, the election of a representative by the General Body of the Managing Committee alongwith members of its Managing Committee is mandatory and are necessary concomitant. For the latter election, the elections to the Primary Societies, which in turn simultaneously elect the Managing Committee and representatives to Central Bank, is also necessary. [741-B-E]**

**E 1.2. The term of the representatives is co-terminus with the term of the Managing Committee of the Central Bank or the Apex Co-operative Societies. They shall, however, be entitled to remain in office alongwith other nominated members of the Board of Directors of the Apex Bank under the bye-laws of the Apex Bank until the respective successors assume office. The constitution of the Board Directors and also constitution of the Managing Committee of the Apex Bank is not complete without the election of the representatives by the concerned Central Banks or President of Apex Cooperative Societies. The President and Vice-President of the Apex Bank cannot be elected. The Managing Committee cannot be constituted without electing the members of the Managing Committee from among the Board of Directors, as per the bye-laws. That is how the three-tier system of election has got interlinked and become inseparable and in view of the unbreakable interlink, the Board cannot be saddled with the liability of statutory vacation of the office on expiry of the term, unless the Registrar had the election conducted to the Central Banks or Apex Cooperative Societies, as the case may be. Preceding there to, election to the Managing Committee of Primary Society is mandatory. [741-F-H; 742-A-B]**

**H 1.3. Under the bye-laws of the apex bank there is no obligation or duty cast on it to have the elections to the Managing Committee or repre-**

sentation to the Central Bank or Apex Cooperative Society conducted. It is the power, the function and duty under the Act of the Registrar, on a request made by the respective committees of the Central Banks or Apex Cooperative Society concerned to conduct elections. Thus, it is difficult to accept that on expiry of the term of President, two Vice- Presidents of the Board of Directors and the term of the Managing Committee which being co-terminus with the Board of Directors must be deemed to have vacated their offices. Thereby, the Registrar is not entitled to assume office of Board of the Directors and Managing Committee. Thus, the Registrar was unjustified to assume charge of the Board of Directors and Managing Committee of the Apex Bank. [742-H] A B

2. This Court in *A.P. Sastri's* case issued mandamus with the declaration that the Officers of the Managing Committee of the Petitioner Society would continue to function till elections are held in accordance with the law. In view of the above mandamus, without conducting the elections in accordance with the provisions of the Act, Rules and bye-laws, the Registrar cannot assume *suo motu* power to terminate the term of the Board of Directors and the Managing Committee by statutory declaration and assume charge of the management of the Apex Bank. Therefore, as long as the writ of mandamus is not complied with and remains in operation a court cannot issue writ of *quo warranto* to disobey the writ of mandamus already issued by the High Court and allowed it to become final. [743-A-E] C D E

*A.P. Sastri & Others v. State of Madhya Pradesh*, (1993) 2 M.P.J.R. 33, referred to.

3. The new Board of Directors elected the President, two Vice-Presidents and five members of the Managing Committee of the Apex Bank must have, by now, been elected and assumed the office; therefore, it is futile to issue the writ as prayed for. [743-G-H] F

HELD : Per D.P. WADHWA, J. (Supplementing)

1.1. The term of the Board would be five years from the date of its first meeting when it also elects one President and two Vice-Presidents. The Board being continuous body, the five years term would, therefore, apply only to the election of President and two Vice-Presidents and Section 49(8) of the M.P. Cooperative Society Act puts an obligation on the outgoing committee of the society to hold elections prior to the expiration of its term would apply, in the case of the apex society only to the election of President G H

**A and two Vice-Presidents as per its byelaws. [747-F-H; 748-A-C]**

**B 1.2. The interpretation that the election of the new board is dependent on the elections first to be held of the primary society and then of the Central Society is a misconception. If the election to the Board of the apex body is to be dependent on the election first to be held by the primary and then by the district bodies, possibly with different byelaws, it can be anybody's guess as to when the election to the Board of the apex body would be held. [749-A-B]**

**C 1.3. If the Board failed to take steps to hold elections of the President and two Vice-Presidents in terms of sub-section (8) of Section 49 of the Act, the Registrar would be competent to assume charge. [748-F]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4318 of 1997.

**D From the Judgment and Order dated 22.1.97 of the Madhya Pradesh High Court in W.P. No. 5143 of 1996.**

G.L. Sanghi, Ashok Kr. Gupta, A.R. Siddiqui and Mr. Vivek Tanka for the Appellants.

**E S.S. Ray, S.K. Agnihotri, Biswajit Meitei, Madhur Dadlani and P.K. Manohar for the Respondents.**

The Judgments of the Court was delivered by

**K. RAMASWAMY, J.** Leave granted.

**F We have heard learned counsel on both sides.**

This appeal by special leave arises from the judgment of the Division Bench of the Madhya Pradesh High Court, Jabalpur Bench passed on January 22, 1997 in Writ Petition No. 5143/96.

**G Section 2(a-i) of the Madhya Pradesh Co-operative Societies Act, 1960 (Act 17 of 1961) (for short, 'the Act') defines 'Apex Society' to mean a society whose principal object is to provide facilities for the operation of other societies affiliated to it and whose area of operation extends to the whole State of Madhya Pradesh. Section 2(c-i) defines 'Central Society' to**

**H mean a Co-operative Land Development Bank or any other society whose**

area of operation is confined to a part to the State and which has as its principal object the promotion of the principal object and the provision of facilities for the operation of same type of societies and for other societies affiliated to it and not less than five members of which are societies. Section 2(c-ii) defines 'Central Cooperative Bank' to mean a resource society registered or deemed to be registered under this Act. Section 2(d) defines 'Committee' to mean the Board of a management by whatever name called constituted under Section 48. Section 2(j) defines 'Farming Society' to mean a society formed with the object of promoting development of land and better methods of cultivation, and includes a better farming society, tenant farming society, collective farming society, joint farming society, irrigation society and a crop protection society. Section 2(r) defines 'Member' to mean a person joining in the application for the registration of a society or a person admitted to membership after registration in accordance with this Act, the rules and the bye-laws applicable to such society and includes the State Government when it subscribes to the share capital of a society. Section 2(t-i) defines 'Officer' to mean a person elected or appointed by a society according to its bye-laws to any office of such society and includes Chairman, Vice-Chairman, President, Vice-President, Managing Director etc., Member of the Committee and any other person elected or appointed under this Act, the rules or the bye-laws to give directions in regard to the business of such society. Section 2(u-i) defines 'Primary Society' to mean a society which is neither an Apex Society nor a Central Society. Section 2(x-i) defines 'Representative' to mean a member of the society to represent the society in other societies. Section 2(z- i) (aa) defines 'State Co-operative Bank' to mean the Madhya Pradesh State Cooperative Bank, Limited.

Section 4 of the Act obligates the registration of a society and envisages that subject to the provisions of this Act, a society which has as its objects the promotion of the economic interest of its members or their general welfare 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. The registration has been envisaged under Section 9 and the societies have been classified into 11 categories in sub-section (1) of Section 10. The details of which are not material for the purpose of this case. Sub-section (1-a) of Section 10 further empowers the Registrar to classify the societies enumerated in clauses (i) to (xi) of sub-section (1-a) which again makes three heads, namely : (a) Apex

A Society; (b) Central Society; and (c) Primary Society. Right to membership has been conferred by Section 19 envisaging in sub-section (1) thereof that no person shall be admitted as a member of a society except the enumerated categories, namely : (a) an individual; (b) any other society; (c) to (e) are omitted as being not relevant for the purpose of this case; and (f) the State Government. Under sub-section (2), notwithstanding anything contained in this Act or rules or in the bye-laws of a society, where the State Government has contributed to the share capital of a society, the liability of the State Government shall be limited to the face value of the shares held by it.

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C Section 22 gives right to vote. Sub-section (1) says that every member of the society shall have one vote in the affairs of the society. The other details in sub-section (2) to (8) are not material for the purpose of this case, hence omitted. Section 23 prescribes the manner of exercising vote. Sub-section (1) thereof postulates that every member of a society shall exercise his vote in person and no member shall be permitted to vote by proxy. Provided that subject to any rules made under this Act - (i)(a) a society which is a member of another society may appoint one of its members as a representative to vote on its behalf; and (b) not necessary for the purpose of this case. Section 23(ii) says that the State Government may nominate one of its officers as its representative, to vote or otherwise participate in its behalf in the affairs of the society of which such society or the State Government is a member. Other details are not necessary for the purpose of this case, hence omitted. Section 47-A prescribes the functions of Apex society. Sub-section (1) thereof says that the Apex society may, for servicing its constituents and in accordance with its byelaws, perform the functions enumerated therein. Sub-section 1(k)

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F enjoins to ensure timely conduct of elections in member societies.

Chapter V deals with "Management of Societies" and sub-section (1) of Section 48 says that the final authority in a society shall vest in the general body of members. The proviso is not relevant, hence omitted.

G Sub-section (2) of section 48 says that subject to sub-section (1), the management of every society shall vest in a committee constituted in accordance with this Act or rules made thereunder or byelaws of the Society and it shall exercise such powers and perform such duties as may be conferred or imposed respectively by the Act or rules made thereunder

H or byelaws of the society. Sub-section (3) if not relevant for the purpose of

this case, hence omitted. Sub-section (5) of Section 48 says that there shall be a President/Chairman and two Vice-Presidents. The details of representation of the Vice-Chairman are not relevant for the purpose of this case, hence omitted. Section 48-B gives power to the Representatives and delegates to represent their society or group of members. A

Sub-section (1) says that every committee of society shall at the time of election of Chairman or Vice-Chairman, also elect representative who shall represent it in other society and the representative so elected shall not be withdrawn by the Committee till the next election of the committee. Sub-sections (2) and (3) are not relevant for the purpose of this case, hence omitted. Section 48-C provides Powers of the Committee as under : B C

The Board or the Committee of a society shall in accordance with the byelaws, have power to -

(a) admit and terminate membership; (b) elect the Chairman and other office bearers; clauses (c) to (h) are not relevant for the purpose of this case, hence omitted. D

Section 7-A(i) provides that the term of the committee shall be five years from the date on which first meeting of the committee is held. Section 7-A(ii) provides that the term of the representative elected by the committee of the society shall be co-terminus with the term of the committee of the society for which representative is elected. The other details are not material for the purpose of this case, hence omitted. E

The survey of the aforesaid provisions of the Act provides formation and registration of the co-operative society. The membership of the society, the general body, the committees to manage the affairs of the society, their tenure and qualifications have been provided for and the management of the society shall vest with the committee and the committee is empowered to elect the officers, namely, the President, two Vice-Presidents etc. etc. and the representatives to represent its membership in other societies. F G

The undisputed facts are that on June 5, 1984, the District Co-operative Central bank (for short the "Central Bank") had sent their 45 delegates to the M.P. State Co-operative Bank Ltd. (for short, the 'Apex Bank'). On August 24, 1984, the first meeting of the Board of Directors of the Apex Bank was held and from that date its term of office of three years H

- A started running. The President and Vice-President, and other office bearers from the Board of Directors came to be elected, resulting in constitution of the Board of Directors and the Managing Committee of the Apex Bank. The term of the representatives of the Central Bank (Board of Directors) and of their office bearers was co-terminus with the term of the Managing Committee of the Central Bank. Equally, the term of the Board of Directors and of the Managing Committee of the Apex Bank was co-terminus, i.e., three years which was later amended as five years as per bye-law 41(1). Admittedly, three-tier system of Co-operative Societies exists in the State of Madhya Pradesh with the village level Primary Co-operative Credit Societies (for short "Primary Societies"); the District Co-operative Central Banks (for short, the 'Central Banks'); and the Apex Bank. The term of all the Societies, Central Banks and Apex Bank was extended for period ranging from one year to the maximum of 1-1/2 years, by operation of the amendment brought to the M.P. Co-operative Societies Act, 1960 (for short, "the Act"), till April 30, 1990. By Resolution dated April 26, 1990, the Apex Bank applied to the Registrar to hold elections. Since that was not being done, Officers and Managing Committees filed M.P. No. 908/90 in the High Court which directed that elections be conducted in accordance with the procedure prescribed under the law. On the even date, the Ordinance No. 2 of 1990 replaced by Act (14 of 1990) was passed by the State Legislature terminating the term of the Committees; the Registrar was directed to take over management of all the Primary Societies, Central Banks and of the Apex Bank. As a consequence, the Committees of all the Societies were superseded by proceedings dated April 26, 1990. Consequently, they again filed writ petition bearing M.P. No. 1111/90. The High Court by its judgment date June 21, 1993 reported as *A.P. Sastri & Others v. State of Madhya Pradesh*, (1993) 2 M.P.J.R. 33, declared the Amendment Act (14 of 1990) amending Section 49(8) of the M.P. Co-operative Societies Act, 1960 (for short, the 'Act') as *ultra vires* the legislative power. The Division Bench declared as under :
- G "Indeed the factual situation is that the petitioner Societies had passed resolution and requested the respondent Registrar to appoint the Returning Officer for holding new elections. In a situation like this, the real question is whether the Registrar by not performing his obligations under the Act and not holding election before the expiry of the term of the existing committee, can be permitted to be benefited by his own default. If the matter is
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considered in the context of default of the Registrar on the Returning Officer appointed by him, and the decision is required to be taken in the context of democratic destiny and the rights of the members to manage the Society, the provision would appear, *prima facie*, unreasonable and arbitrary. A

In view of the discussions aforesaid, these petitions succeed and are allowed by quashing Section 48(4) and Section 49(8) of the Act, as amended by M.P. Act No. 14/90. As a necessary consequence, provisions in these sections existing immediately before the aforesaid amendment would be deemed to be continuing legally and validly. As a necessary consequence, the officers of the earlier Managing Committee of the petitioners Societies will continue to function, till elections are held, in accordance with law." B C

While the writ petitioners were pending, the office bearers continued to hold office. Subsequently, the present writ petition come to be filed seeking writ of *quo warranto* to show cause under which authority the appellants were functioning. In the meanwhile, Section 49(8) was amended which reads as under; D

"49(8)(i) It shall be obligatory on the outgoing committee of the Society to hold elections prior to the expiration of the term under sub-section (7-A) or extended term under sub-section (7-AA). The outgoing committee shall apply to the Registrar for holding election within a reasonable time which shall not be in any case less than ninety days before expiration of the term of the committee : E F

Provided that if the outgoing committee has resolved and requested the Registrar to hold election at least ninety days in advance and the Registrar has failed to conduct elections on its request, the Registrar shall not assume charge of the committee and the members of the committee shall continue to hold the offices : G

Provided further, that if the Registrar fails to conduct elections of the committee within ninety days from the date of expiry of the term of the committee, the committee of the Society shall appoint H

A returning officer who shall conduct the election of the committee within 180 days from the date of the expiry of the term.

(ii) If the committee fails to hold election and has not handed over the charge on expiration of the term, under sub-section (7-A) or extended term under sub-section (7-AA) to the Registrar or any officer authorised by him on his behalf, all the members of the committee shall be deemed to have vacated their seats and the Registrar shall assume charge and hold election as early as possible."

C The amendment Act (12 of 1994) came into effect from May 8 1994. The High Court disposed of the writ petition on the findings that the appellants deliberately delayed conduct of the elections and that they had no right to continue in office after the expiry of the term. The Writ Petition Nos. 4126/96, 4473/96, 60/97 and 83/97 were disposed of in the light of these directions. The interim orders and by orders Writ Petition Nos. 2924 and D 3342/96 were disposed of as having become infructuous; other writ petitions also have been disposed of with the same observations. Thus, this appeal.

E In the counter-affidavit filed in this Court, it has been admitted as under :

"Before the term of the elected body of the respondents Society could expire a notification was issued by the state Government under Section 49(7)(AA) of the M.P. Co-operative Societies Act 1960 for short the 'Act', extending the term of the society till F 31.12.1989. A copy of this notification is filed herewith as Annexure R-1.

A second notification was issued by the state Government on G 30.12.1989 extending the term till 30.4.1990. Annexure R-2.

The State Government issued an ordinance dated 26.4.90 & also issued a notification to the effect that the term of all the Societies shall expire on 28.4.90. The notification relating to the answering respondents is filed herewith and marked as Annexure H R-3.

That consequent to the notification dated 26.4 the Registrar took over the charge of the Respondent No. 3 Society on 28.4.90 itself. A

On 4.5.90 this Hon'ble Court vide interim orders directed that the old committees which were incharge of the Societies as on 28.4.90 shall continue to remain incharge. B

On 5.5.90 the elected committees again took over charge as per the interim orders of the Hon'ble High Court.

That the state Government enacted M.P. Act No. 14 of 1990 by way of which the previously notified ordinance was duly incorporated in the Act vide notification dated 31.7.90. C

That in view of the Act No. 14 of 1990 charge was again taken over by the Registrar w.e.f. 1.8.90.

*However, it is pertinent to note that the Co-operative set up in the state of M.P. is three tier set up i.e. Primary Society at the village level, Central Society at the district level and apex Society at the state level. The representatives elected by the Primary Society from the electoral college for the central Societies along with some other representatives and the representatives elected by the central Societies from electoral college for apex Societies. Thus, in view of the aforesaid set up until and unless the elections of representatives at the Primary Society level are not complete the electoral college for the central Society is not complete and therefore elections of the central Society level can only be held after the elections for representatives of the Primary Society I which are complete. Similar is the position as regard the apex Society i.e. elections in apex Society cannot take place until unless the elections of representatives at the central Society level is not complete, and the electoral college so formed is not complete."* D  
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(emphasis supplied) G

In para 4 of the judgment, the learned Judges have noted as under :

"The election Process which had started in 1988 came to halt till 1993 when the general elections were ordered. In December 1993, new Government took over and the elections for Panchayats were H

A held in May-June, 1994. It is alleged that by Act No. 12/94, which  
 came into effect from 8.5.1994, certain provisions of the Act of  
 1960 were amended and sub-section (7-A) and sub-section (8) of  
 Section 49 were also amended. It is then alleged that elections to  
 the Municipal Corporations were ordered in 1994-95. It is further  
 B alleged that on 22nd July, 1995 rules were amended and they were  
 notified. Then on 16th August, 1995, elections for 24 thousand  
 Primary Societies were conducted. Thereafter, elections for other  
 than agricultural societies, about 6000 in number, were conducted  
 in March 1996. It is alleged that elections to other societies were  
 postponed because of the monsoon. *Then it is pointed out that on*  
 C *16th September 1996, election process for Marketing Societies started*  
*and was completed on 16th Oct. 1996. It is further pointed out that*  
*on 13th September 1996, elections for District Co-operative Central*  
*Banks started. The elections at the district level are likely to be over*  
*by 5th February 1997."*

D (emphasis supplied)

There is no doubt that in our democratic policy, all democratic  
 institutions including the Co-operative Societies governed by the provisions  
 of the Act, are required to be organised on the principles of democratic  
 governance. In fact, Part IX of the Constitution, brought by Constitution  
 E (Sixty-third Amendment) Act 1992, provides for the Panchayat system  
 within the democratic governance by requiring holding of periodical elec-  
 tions right from the bottom-most democratic set up of the village panchayat  
 upto the District Board. The elections, therefore, to the Co-operative  
 Societies are also required to be conducted periodically before the expiry  
 of the term of the Managing Committee of the Societies so that the elected  
 F body would remain in office and organise the management of the Society  
 and disburse loans to the agriculturists for their economic and social  
 empowerment and to augment their economic resources for self-sufficiency  
 and to give a boost to the national productivity in agricultural produce. The  
 conduct of the periodical elections is required to be organised in accord-  
 G ance with the provisions of the Act, Rules and bye-laws of each Society.

The question, therefore, is : whether the Registrar was justified under  
 Section 49(8)(ii) of the Act to assume charge of the Apex Bank? Section  
 2(d) of the Act defines 'Committee' to mean the Board of a management,  
 by whatever name called, constituted under Section 48. The 'Registrar'  
 H defined under Section 2(x) of the Act shall be the Registrar of

Co-operative Societies and under Section 3, the State Government is empowered to appoint a person to be the Registrar and may appoint one or more officers of the enumerated categories to assist him, for the performance of all the functions and duties under the Act. Section 48 in Chapter V deals with management of the Societies. It provides that the final authority in a Society shall vest in the general body of the members. The management of every Society, by operation of sub-section (2), shall vest in a committee constituted in accordance with the Act or Rules made thereunder or bye-laws of the Society. It shall exercise such powers and perform such duties as may be conferred or imposed respectively by the Act or Rules made thereunder or bye-laws of the Society. Sub-section (1) of Section 48-B posits that *"every committee of Society shall, at the time of election of Chairman or Vice-Chairman, also elect representative who shall represent it in other Societies and the representative so elected shall not be withdrawn by the Committee till the next election of the Committee."* (emphasis supplied) Section 48-C prescribes the powers of the Committee and under clause (b) thereof, the Board of the Committee of a Society shall, in accordance with the bye-laws, have power to elect the Chairman and other office bearers. Sub-section (1) of Section 49 envisages "Annual General Meeting" and provides that every Society shall, within a period of twelve months from the date of last annual general meeting, call a general meeting of its members for the purposes specified in clauses (a) to (f) of sub-section (1) thereof. Section 49(b) says that the purpose of annual general meeting is *"election, if fallen due of the members of the Committee."* Explanation to Section 49(1)(b) envisages that "Election of the Committee shall be deemed to have fallen due, if the term of the Committee comes to an end within a period of three months from the date of the annual general meeting". Sub-section (6) of Section 49 envisages that "(I) if the bye-laws of the Society provide for election of all or some members of the Committee on territorial basis under sub-section (7) thereof, such members of the Committee shall be elected from the area in a meeting of the members of that area in accordance with the provisions of the bye-laws on a date prior to that general meeting." Sub-section (7-A) provides that "the term of the committee shall be five years from the date on which first meeting of the Committee is held." The proviso is not relevant; hence omitted. Clause (ii) of sub-section (7-A) envisages that *"the term of the representative elected by the Committee of the Society shall be co-terminus with the term of the Committee of the Society for which representative is elected."* However, the proviso thereto provides that *"the representative of a Committee shall continue*

- A *to hold his office till the expiry of the term of the Committee of which he is a member.*" (emphasis supplied) Sub-section (7-AA) of Section 49 provides that the State Government may, by notification, for reasons to be stated therein, extend the term of the Committee of a Society or a class of Societies from time to time for a total period not exceeding twelve months.
- B Sub-section (7-AAA) of Section 49 envisages that "notwithstanding the expiry of the maximum period of eighteen months specified in sub-section (7-AA), in respect of the committees between the period commencing on the 7th May, 1988 (hereinafter referred to as the said date) and ending on the date of publication of the Madhya Pradesh Co- operative Societies (Amendment) Ordinance, 1988, in Gazette the period in respect of such
- C Committees shall be deemed to have been extended for a period of six months with effect from the said date as if the notification for the extension of the period were issued under sub-section (7-AA) on the said date". Sub-section (8) has already been extracted and needs no repetition.

- D A conjoint reading of the above-referred provisions would manifest the legislative intention that it shall be obligatory on the outgoing Committee of the Society to hold elections prior to the expiry of the term under sub-section (7-A) or before the expiry of the extended time under sub-section (7-AA). The outgoing committee shall apply to the Registrar to hold elections within a reasonable time "*which shall not be in any case*
- E *less than ninety days before the expiry of the term of the Committee.*" (emphasis supplied) Thus, it could be seen that it is the duty of the outgoing Managing Committee of the Society to have its elections held prior to the expiration of the term of the Committee not less than ninety days before expiry of the term of the Committee.

- F Under the first proviso, if the outgoing committee had resolved and requested the Registrar to hold elections and the Registrar had failed to conduct elections on its request, there is a legislative injunction issued against the Registrar that "he shall not assume charge of the Committee and the members of the Committee shall continue to hold the office".

- G Under the second proviso, if the Registrar fails to conduct elections of the committee within ninety days from the date of the expiry of the term of the committee the committee of the Society shall appoint returning officer who shall conduct the election of the committee within 180 days from the date of expiry of the term. The combined operation of sub-section (8)(i) and
- H the second proviso is that though the members of the committee are

entitled, by operation of the first proviso, to continue to hold the office, it is equally obligatory on the part of the committee that, if the Registrar fails to conduct elections as envisaged hereinbefore, the returning officer should be appointed whose duty shall be to conduct elections of the committee within 180 days before the date of the expiry of the term. By operation of sub-section (8)(ii) if the members of the Committee having continued to hold office by operation of the first proviso to sub-section (8)(i), fails to appoint a returning officer under the second proviso and, if the committee thereby, commits default to hold elections and does not hand over the charge, on expiry of the term under sub-section (7-A) or extended term under sub-section (7-AA) to the Registrar or any officer authorised by him on his behalf, they all shall be deemed to have vacated their seats and the Registrar shall assume charge and hold elections as early as possible. Thus the combined reading of the sections envisages that elections to the Managing Committee shall be held by the Registrar, at the request by the Committee, before expiry of the term of the outgoing committee within the time schedule prescribed therein. If the Registrar fails to perform the said duty, the Managing Committee, while remaining in office, is enjoined to have the elections conducted within 180 days or at least not less than 90 days before the expiry of the term of the Managing Committee. But if the committee commits default in conducting the elections, the members of the committee are deemed to have vacated their seats. Thereby, by statutory operation, no Managing committee remains in office. The Registrar, therefore, should assume charge of the Society. On assumption thereof, while conducting the business of the Society simultaneously he should hold elections as expeditiously as possible so that the Managing Committee elected on democratic principle immediately assumes office and conducts the business of the Society in the manner laid down under the Act, Rules and the bye-laws of the Society and achieves the object of the Society and realises the collective aspiration of the members of the Society.

In response to our request, the learned counsel for the State of Madhya Pradesh, has supplied to us the Hindi as well as the relevant translated English version of the bye-laws of the Apex bank as amended till 5th May, 1997. Initially, we were provided with a copy of the unamended bye-laws. On comparative consideration, we find that major changes have been made in the amended bye-laws supplied by learned counsel for the Government.

A Bye-law 2(c) defines "Bank" to mean "The Madhya Pradesh State Co-operative Bank Limited", as already stated (the "Apex Bank" for short).

Bye-law 2(d) defines "Board" to mean the Board of Directors duly constituted under these bye-laws for the management of the functioning of the Bank.

B

Bye-law 2(e) defines "Member" to mean District Co-operative Societies of the Apex level or any such Co-operative Society without an Apex Institution or the Apex Institution of which is not a member of the Bank but which has been given membership under these bye-laws or is likely to be given membership and shall exclude the nominal members. This definition comprises Central Bank.

C

Clause (2) of bye-laws defines "person" to mean private ownership or registered or unregistered partnership firm or joint Hindu family or a registered 'Pramandal'.

D

Bye-law 8 deals with Membership.

The membership of the Apex Bank shall be open to :

E

"(Ka) Distt. Co-operative Central Bank.

(Kha) Co-operative Societies at the Apex level.

(Ga) Other Co-operative Societies which do not have a separate Apex Institution or the Apex Institution of which are not members of the Bank.

F

(Gha) Registrar Co-operative Societies or the Officers nominated by them, not below the rank of Joint Registrar.

G

(Da) State Government.

Any such person or Co-operative Society which is not eligible for membership of the Bank according to these bye-laws or is excluded, shall not be member of the Bank, such share shall be returned to the person or Co-operative Society concerned by the Bank after registration of these

H

bye-laws.



A *through the representatives elected by them for the general assembly of the Bank (Central Bank), Apex Co-operative Society. Each member shall have only one vote, but the nominated person shall be precluded from casting vote for election of "office bearer" of the Committee. (emphasis supplied)*

B Clause (2) of bye-law 37 is material for the purpose of this case which says "A representative of any Central Bank or other Co-operative Organisation who is a member of the Board/Management of another Society shall not be eligible to cast his vote if a matter related to that organization or organisations of which he is a representative, is pending before the Board or any Committee for consideration. This disqualification is not material for the purpose of this case. It is noted for continuity that C a member of the Central Bank gets disqualified to vote or to election of the Board of Directors or Officer of the Committee, if their matter relating to the Officers of the Central Bank are pending consideration before the Apex Bank. Clause (2) of Bye-law 37 is not material and hence omitted.

D Bye-law 38 deals with the constitution of the *Board of Directors*. It postulates thus :

"(1) Registrar-Co-operative Societies, Madhya Pradesh or his representative who is not below the rank of Joint Registrar.

E (2) Person nominated by the State Government as Director provided that the number of such Directors, nominated by the State Government in the Elected Board of Directors of the Bank "Shall not exceed two". In other words the State Government shall not nominate more than two Directors.

F (3) *One representative of each concerned Central Bank, who is elected by the Managing Committee of the concerned Central Bank.....* We are informed and the High Court found that for the entire 45 Districts, each Central Bank sent its elected representative as member of the Apex Bank as well as also as a G member of the Board of Directors.

(4) Omitted.

H (5) "President of such Apex Co-operative Societies or his nominee, where there is a provision under the bye-laws of the said Society for the President to become the *ex-officio* Director, such Banks are

required to have minimum share for a value of Rs. 10 thousand for this purpose". The details of minimum share holding for a value of Rs. 10 thousand is not necessary, hence omitted. A

"(6) Managing Director-*Ex-Officio*.

(7) Incharge Regional Office, National Agricultural and Rural Development Bank (Nabard), Bhopal or an officer nominated by him who is not below the rank of Deputy General Manager." B

It would thus be seen that the Board of Directors consist of Registrar, or his nominee, Government nominees not exceeding to two, nominee of Nabard Branch, Bhopal as official Board of Directors : 45 Board of Directors one each representing each respective Central Bank elected by its general body along with its office bearer of the Managing Committee; and the President of the Apex Co-operative Societies as *ex officio* Directors and Managing Director. The Board of Directors of the Apex Bank manages the officers of the Apex Bank and its administration as in bye-law No. 46. C D

By-law 38(a) also deals with the suspension of the Office Bearer of the Board of Directors of the Apex Bank after giving him full opportunity for presenting his case. It provides thus :

"(1) If the District Co-operative Central Bank falls within the category of a Sick Bank according to the yardsticks prescribed by the Reserve Bank of India/Nabard, the Registrar may grant relaxations in the above requirements of provisions on the basis of the recommendations of the Board or for any valid and sufficient reason. E

(2) If the District Co-operative Central Bank disapproves of the posting of an officer in the District Co-operative Central Bank in the Cadre constituted under Section 52(2) of the Bank or prohibits him from taking charge or relieves a cadre officer without prior appeal of the Bank. F

(3) Not relevant. Hence it is omitted." G

By-law 39 declares that the election of the Board of Directors shall be in accordance with the rules approved by the Board of the Apex Bank and the Registrar. It would mean that after the constitution of the Board of Directors of the Apex Bank, it in turn elect its office bearers in accordance with the approved rules. We are not concerned with its present H

A relevance after the amendments to the bye-laws.

By-law 40 declares that one President and two Vice-Presidents shall be elected by the Board of Directors from among the Directors. The other details contained therein are not material for the purpose of this case, hence omitted. It is important to note that for the election of the office bearers the Government nominees are ineligible to vote as per bye-law No. 37.

By-law 41(1) states that the term of the Board shall be five years from the date of the first general meeting. The other details are not necessary for the purpose of this case, hence omitted.

Clause (2) of bye-law 41 postulates that which is material for the purpose of this case thus :

"Notwithstanding anything contained, in regard to the expiry of the term of the President, Vice-President and the Directors, *they shall continue to function till their successors takeover charge under the provisions of these bye-laws.*"

(emphasis supplied)

The shortfall in the composition of the Board of Directors due to demise or interim vacancy arising for any other reason can be filled in accordance with the provisions of the bye-laws of the Board. The vacant post may be filled up by Registrar or the State Government from the Directors nominated by the Registrar or the State Government. The other details are not necessary for the purpose of this case, hence omitted.

Bye-law 43 deals with disqualification to remain as a Director of the Board of Directors or ceases to be a Member and the details thereof are not material for the purpose of this case, hence omitted.

Bye-law 44, describes about the meeting of the Board of Directors. It says that the meeting of the Board of Directors *shall be called as per requirement at least twice a year.* The other details are not necessary for the purpose of this case, hence omitted.

Bye-law 46 empowers the Board of Directors to carry on and manage the business of the Apex Bank and exercises the powers enumerated thereunder.

Bye-law 47 deals with the powers and functions of the Board of Directors. It says thus : A

All the powers of the Bank shall vest in the Board of Directors and Managing Committee appointed by the Board of Directors. Without prejudice to the General powers provided in the Act, the Board of Directors will have the following rights and duties :- B

Clause (23) postulates :

"Constitution of a Committee by the name of Managing Committee comprising the following members : C

- 'Ka' President of the Board. C
- 'Kha' Vice President of the Board.
- 'Ga' Registrar Co-operative Societies or a person nominated by him who is not below the rank of Joint Registrar, D
- 'Gha'" One Director nominated by the State Government to be appointed by the State Government.
- 'Da' Two Directors from the Directors representing the Central Banks, Apex Societies in the Board of Directors. E
- 'Ca' The Directors shall be elected by the Board in the ratio of one from the representatives of the Central Co-operative Banks by each Divisional Commissioner. For this purpose, the Divisional Commissioner (Hoshangabad) Tawa, Chambal & Bastar will be treated as a part of Bhopal, Gwalior, and Raipur Divisions respectively. F
- 'Cha' Managing Director-*Ex-Officio*." G

Bye-law 47(23) makes the matter clear that there would be a Managing Committee of the Apex Bank consisting of *Ex-officio* as well as elected members. For the purpose of clause (Da) of bye-law 47(23), the 45 delegates of Central Banks and Apex Societies is one constituency which elects two Directors of the Board from among themselves. Similarly for H

- A 'Ca' 45 delegates representing Central Banks are divided into three Divisions. Those Directors representing the Central Co-operative Bank are divided into Bhopal, Gwalior and Raipur divisions. The Directors hailing from each division should elect one member of the Committee to each Division. This is to be done only after the constitution of the Board of Directors at its first annual meeting. From the Government nominates, one will be a member of the Managing Committee for the reason that bye-law 37 prohibits them from exercising franchise which includes right to contest as a member of the Managing Committee.

- C The term of the Managing Committee appointed by the Board of Directors will be co-terminus with Board of Directors and continues to function till their successors assume charge. In case there is a vacancy of any elected Director, the same may be got filled up by appointing some other person from the same cadre as per bye-laws.

- D Bye-law 48 envisages that the President of the Board of Directors shall also be the President of the Managing Committee. The meetings of the Managing Committee shall be presided over by the President, in his absence by any one of the two Vice-Presidents. In the event of the President and both the Vice-Presidents being absent, the Meeting of the Managing Committee shall be presided over by a member elected by the Members present. By operation of this bye-law, the President and the Vice-Presidents elected by the Board of Directors, by virtue of membership of the Managing Committee would become President and Vice-Presidents of the Managing Committee without further getting elected to the Managing Committee.

- F Meetings and transactions of business and the convening the meeting by the Managing Committee are dealt with in Bye-law 49 which is not relevant for the purpose of this case, hence omitted.

- G Bye-law 52 deals with powers and duties of the President with which we are not concerned and which are not relevant for the purpose of this case, hence omitted.

- H Bye-law 54(1) deals with the appointment of a Manager who shall be appointed by the Managing Committee with the previous approval of the Registrar, Co-operative Societies.

Bye-law 54(2) deals with the appointment of Managing Director and clause (3) of bye-law 54 deals with powers and duties of the Managing Director, the details thereof are not material for the purpose of this case, hence omitted. A

A resume of these bye-laws would contemplate that the members of the Apex Bank as well as the elected Board of Directors are the same. They and the nominated members manage the affairs of the Apex Bank. The Registrar of Co-operative Societies or his nominee; one nominated member of the State Government; Board of Directors and the elected representatives of the Central Banks or Apex level Co-operative Societies, if any, etc. are the members of the Managing Committee. The elected Board of Directors alone is entitled to elect among themselves the President and two Vice- Presidents. The Board of Directors is also entitled to constitute Managing Committee. The Board of Directors, elected from two sources, elect 5 Members of the Committee. As discussed supra, the Managing Committee is headed and presided over by the President. In his absence, one of the Vice-Presidents and in the absence of both, one elected member of the Committee would preside over meeting of the Committee. The term of the Board of Directors and the Managing Committee is co-terminus with the expiry of the term of five years. However, they shall be entitled to remain in office until their successor of the Board of Directors, the President and two Vice-Presidents and Managing Committee respectively assume the offices. The relevant provisions of the Act extracted hereinbefore and the byelaws of the Apex Bank should be read together. The Act and the rules made thereunder and the byelaws of the society constitute an integral scheme for the purpose of management of the society registered or deemed to be registered under the Act. It is settled principle of interpretation that all the provisions should be harmoniously interpreted to give effect to all the-provisions and no part thereof rendered surplusage or otiose. B  
C  
D  
E  
F

It would, therefore, be clear that the Board of Directors headed by the President and two Vice-Presidents elected by the Board of Directors itself has statutory duty to ensure conduct of elections to the Committee of the Board of Directors (Managing Committee) and the management of the Apex Bank. The Managing Committee again is headed by the President of the Apex Bank contemplated in bye-law 47(3), for the purpose of internal management on behalf of the Board of Directors. The ultimate G  
H

A power and responsibility in managing the affairs of the Apex Bank by the Committee of the Apex Bank is that of the Board of Directors. So the Managing Committee discharges the functions and performs the duties for and on behalf of the Board of Directors. Therefore, the Managing Committee shall ensure passing of a resolution by the Board of Directors

B requesting the Registrar to conduct elections to the Board of Directors within the specified period as per the Act, rules or bye-laws enumerated hereinbefore. The term of the Board of Directors is 5 years from the date of the first General Meeting of the members of the Apex Bank. Each Central Bank is represented by its elected representative. For the purpose of the Apex Bank, they are designated as Directors. Under sub-section(7A)

C or (7AA) of Section 49, within the period or the extended period, the Managing Committee should pass a Resolution within 90 days before the expiry of the term of the Board of Directors and request the Registrar, Co-operative Societies to conduct elections to the posts of President and two Vice-Presidents of the Board of Directors and immediately thereafter the

D Board of Directors would constitute the Managing Committee as elected by the Board of Directors in the manner detailed above. If the Registrar fails to do so, the Managing Committee shall also ensure that the Board of Directors appoints an Election Officer to conduct elections, as per the bye- laws, to the posts of President, two Vice-Presidents and members of the Managing Committee immediately thereafter.

E

The question immediately, therefore, arises : whether due to failure to conduct elections to the President, two Vice- Presidents for among the elected Board of Directors and continuation of the managing committee of the Apex Bank, on expiry of the period of 5 years from the date of

F election of the Board, whether the Board of Directors, President and two Vice-Presidents and the members of the Managing Committee shall be deemed to have vacated their office? It is already seen that apart from the Registrar and not more than two Directors nominated by the Government and one nominee of NABARD, Bhopal Branch, other members of the

G Board of Directors shall be elected as Directors by the 45 Central Banks, i.e., respective representatives and the elected President of the Apex Co-operative Societies, if any. They represent as members of the Apex Bank for and on behalf of the respective Central Banks and also as Board of Directors for the purpose of the Act. The representatives of the concerned Central Bank or the President of the Apex Co-operative Societies or any

H other Apex societies shall constitute Board of Directors for composition of

membership of the Apex Bank. They would elect and get from among themselves, elected one President and two Vice-Presidents. For the election of 5 members of the Managing Committee, two members from the total elected constituency and one member each of the three Divisions, i.e., Bhopal, Gwalior and Raipur, representing the Central Banks of the respective Divisions, are necessary to constitute the Managing Committee. For completion of the electoral process of Apex Bank, election to the Primary Societies and in turn election to the managing Committee of each of the District Central Banks and election of one representative from each of the 45 Central Banks as members of the Apex Bank, as two steps are condition president and is necessary. Until then, constitution of the Board of Directors and the Managing Committee of the Apex Bank cannot be done. As a pre-condition for completion of these two sequential steps, i.e., (i) election of the President and two Vice-Presidents; and (ii) election of 5 elected member-Directors to the Management Committee, the election of a representative by the General Body of the Managing Committee along with members of its Managing Committee is mandatory and are necessary concomitant. For the latter election, the elections to the Primary Societies, which in turn simultaneously elect the Managing Committee and representatives to Central Bank, is also necessary. That is how the three-tier system of election has got inter-linked and become inseparable. That is also the admission of the State Government as extracted earlier from the counter-affidavit.

It would, therefore, be mandatory that by operation of Sections 48 and 49, elections to the Managing Committee of the Central Banks or Apex Co-operative Societies as per their bye-laws, as representative of Central Bank or President of the Apex Co-operative Societies to represent the Apex Bank who are called, under the bye-laws of the Apex Bank, Directors, shall be necessary. The term of the representatives is co-terminus with the term of the Managing Committee of the Central Bank or the Apex Co-operative Societies. They shall, however, be entitled to remain in office along with other nominated members of the Board of Directors of the Apex Bank under the bye-laws of the Apex Bank until the respective successors assume office. The constitution of the Board of Directors and also constitution of the Board of Directors and also constitution of the Managing Committee of the Apex Bank is not complete without the election of the representatives by the concerned Central Banks or President of Apex Cooperative Societies. The President and Vice-President of the Apex Bank cannot be elected. The Managing Committee cannot be

A constituted without electing the members of the Managing Committee from  
among the Board of Directors, as per the bye-laws. In view of the unbreak-  
able inter-link, the Board cannot be saddled with the liability of statutory  
vacation of the office on expiry of the term, unless the Registrar had the  
elections conducted to the Central Banks or Apex Co-operative Societies,  
B as the case may be. Preceding thereto, the election to the Managing  
Committee of Primary Societies is mandatory.

Moreover, under the bye-laws of the Apex Bank, there is no  
obligation or duty cast on it to have the elections to the Managing  
Committee or representation of the Central Bank or Apex Co-operative  
C Society conducted. It is the power, the function and duty under the Act of  
the Registrar, on a request made by the respective Committees of the  
Central Banks or Apex Co-operative Society concerned to conduct  
elections. Under these circumstances, it is difficult to give acceptance to  
the contention of the respondents that on expiry of the term of the  
D President, two Vice-Presidents of the Board of Directors and the term of  
the Managing Committee which being co-terminus with the Board of  
Directors must be deemed to have vacated their offices. Thereby the  
Registrar is not entitled to assume office of the Board of the Directors and  
the Managing Committee. It is also difficult to visualise that President, two  
E Vice-Presidents, the Board of Directors and the Managing Committee of  
Apex Bank should be saddled with the liability to vacate the office, on  
expiry of the term for non- conducting elections thereof, when they have  
no statutory obligation to ensure conduct of elections to Primary Societies  
and Central Banks. The Registrar does not in the above situation get the  
F power to assume office as per the statutory obligation. One important fact  
to be noted is that the bye-laws of the Apex Bank ensure that the Board  
of Directors and the Members of the Managing Committee elect the  
President and Vice-President and remain in office till their respective  
successors assume office. Thereby there would be no hiatus created in the  
management of the affairs of the Apex Bank in accordance with law, nor  
their actions in the management of the Apex Bank would be illegal. The  
G admission of the State Government in the counter affidavit that elections  
were not conducted to the Central Banks by or before the date of the expiry  
of the term of the office of the Board of Directors and the Managing  
Committee of the Apex Bank, pre-empted the Registrar to resume  
management of the Board of Director of the Apex Bank and its Managing  
H Committee.

Moreover, the Division Bench of the High Court in *A.P. Sastri & Others v. State of Madhya Pradesh*, (1993) 2 M.P.J.R. 33 issued mandamus with the declaration that the Officers of the Managing Committee of the petitioner Society would continue to function till elections are held in accordance with the law. "They would be entitled to get the charge of the Society where charge had been taken from them by the Registrar or his nominee pursuant to this amendments." In view of the above mandamus, without conducting the elections in accordance with the provisions of the Act, Rules and bye-laws, the Registrar cannot assume *suo motu* power to terminate the term of the Board of Directors and the Managing Committee by statutory declaration and assume charge of the management of the Apex Bank.

So the power of the Board of Directors, the President, two Vice-Presidents, the Managing Committee of the Apex Bank to remain in office and to manage the affairs of the Society is founded on the mandamus issued by the High Court and is not derived merely by operation of the statute. Can a Court issued writ of *quo warranto* to disobey the writ of mandamus already issue by the High Court and allowed it to become final. In our view, it cannot be issued as long as the writ of mandamus is not complied with and remains in operation. We were informed at the time of hearing that elections were conducted to the Central Banks and consequently the Board of Directors (representatives of Central Bank) as representing the Central Banks and the President of the Apex Co-operative Societies, were elected. The elections to the President and two Vice-Presidents of the Board of Directors and Managing Committee of Apex Bank were to be held on April 11, 1997 as per the bye-laws referred to hereinbefore to constitute Board of Directors and the Managing Committee.

In view of the above legal and factual situation expressed in the judgment, it would be obvious that the Registrar was unjustified to assume charge of the Board of Director and Managing Committee of the Apex Bank. However, the new Board of Directors elected the President, two Vice-Presidents and five members of the Managing Committee of the Apex Bank must have, by now, been elected and assumed the office. It is futile to issue the writ as prayed for. No futile writ would be issued. Suffice it is to state that we have given declaration of the true legal position so as to be followed in future cases.

A The appeal is accordingly dismissed with no order as to costs.

**D.P. WADHWA, J.** I agree that the appeal be dismissed. However, I do not entirely agree with my learned Brother on the interpretation put by him to some of the provisions of the M.P. Co-operative Societies Act, 1960 (for short 'the Act') and the byelaws of the M.P. State Co-operative Bank Ltd. (Madhya Pradesh Rajya Sahkari Bank Maryadit). The M.P. State Co-operative Bank Ltd. has been varyingly referred to in this judgment as the apex society or apex body or even the apex bank. This is how I look at the things.

C It will be advantageous to refer to some of the definitions as mentioned in Section 2 of the Act, "Apex Society" means a society whose principle object is to provide facilities for the operation of other societies affiliated to it and whose area of operation extends to the whole State of Madhya Pradesh. "Central Society" means a Co-operative Land Development Bank or any other society whose area of operation is confined to a part of the State and which has as its principle object the promotion of the principle objects and the provisions of facilities for the operation of same type of societies and for other societies affiliated to it and not less than five members of which are societies. "Primary Agricultural Credit Cooperative Society" means a society organised with the main objective of making credit available for agriculture production and includes a Primary Service Cooperative Society and Adimjati Sewa Sahkari Samiti. "Co-operative Bank" means a State Co-operative Bank, a Central Co-operative Bank, and a Primary Co-operative Bank, registered or deemed to be registered under this Act. "Primary Society" means a society which is neither an Apex Society nor a Central Society. "Committee" means the Board of a management by whatever name called constituted under Section 48. "Representative" means a member of the society to represent the society in other societies.

G Under sub-section (1) of Section 48 final authority in a society vests in the general body of members. Subject to this the management of every society vests in the committee constituted in accordance with the Act or Rules made thereunder or byelaws of society and it exercises such powers and performs such duties as may be conferred or imposed by the Act or Rules of society.

H Under byelaws of the apex body it is the Board which means the Board of Directors duly constituted under the byelaws for the management of the functioning of the bank bye-law 2(d). Under byelaw 47 powers and

functions of the Board have been described. One of such functions of the Board is to constitute the Managing Committee. This power is vested in the Board under clause (23) of byelaw 47. The Managing Committee is comprising :

(1) President of the Board.

(2) Vice President of the Board,

(3) Registrar Cooperative Societies or a person nominated by him who is not below the rank of Joint Registrar.

(4) One Director nominated by the State Govt. to be appointed by the State Govt.

(5) Two Directors from the Directors representing the Apex Societies in the Board of Directors.

(6) The Directors shall be elected by the Board in the ratio of one from the representatives of the Central Co-operative Bank by each Divisional Commissioner. For this purpose, the Divisional Commissioner (Hoshangabad) Tawa, Chambal & Bastar will be treated as a part of Bhopal, Gwalior and Raipur Divisions respectively.

(7) Managing Director - *Ex-officio*

Under clause (24) of byelaw 47 the Board can delegate some or all of its functions to the Managing Committee. It will thus be seen that the Managing Committee is not the same thing as the Board and it is also not the committee as defined in clause (d) of Section 2 of the Act. Any reference to Managing Committee therefore in these proceedings, in my view, would not be relevant as when sub-section (8) of Section 49 talks of election of the Committee, it is of the Board.

"Member" under the byelaws of the apex body means District Cooperative Societies Central Bank or the Co-operative Societies of the Apex level or any such co-operative Society without an Apex Institution or the Apex Institution of which is not a member of the Bank but which has been given membership under these byelaws or is likely to be given membership and shall exclude the nominal members (clause (c) of Byelaw 2). Under byelaw 8 "Membership" to the apex body is open to :

- A        "(1) Distt. Co-operative Central Bank.
- (2) Co-operative Societies at the Apex level.
- (3) Other Co-operative Societies which do not have a separate Apex Institution or the Apex Institution of which are not members of the Bank.
- B        (4) Registered Co-operative Societies or the officers nominated by them, not below the rank of Joint Registrar.
- (5) State Government, -
- C        Any such person or Co-operative Society which is not eligible for membership of the Bank according to these byelaws or is excluded, shall not be member of the Bank, such shall be returned to the person or co-operative society concerned by the Bank after registration of these byelaws."
- D        Byelaw 23 provides that all the general meetings of the members of the Bank shall be held in the Registered Office of the Bank and it postulates at least one meeting to be known as annual meeting and one of the functions of the annual meeting is the election of Directors according to byelaws. The management of the Bank which vests in the Board is constituted under byelaw 38 and is as follows.
- E        "38 Constitution of Board :- The Management of the Bank shall vest in the Board of Directors constituted as follows :
1. Registrar, Co-operative Societies, Madhya Pradesh or his representative, who is not below the rank of Joint Registrar.
- F        2. Person nominated by the State Govt. as Director provided that the number of such Directors nominated by the State Govt. in the Elected Board of Directors of the Bank shall not exceed two.
- G        3. One representative of each concerned Central Bank, who is elected by the Board of Directors of the concerned Central Bank.....
4. Omitted
- H        5. President of such Apex Co-operative Societies or his nominee,

where there is a provision under the Byelaws of the said society for the President to become the *ex-officio* director, such banks are required to have minimum share for a value of Rs. 10 thousand for this purpose. A

6. Managing Director, *Ex-Officio*. B

7. Incharge Regional Office, National Agricultural and Rural Development Bank (NABARD), Bhopal or an officer nominated, by him who is not below the rank of Deputy General Manager."

Now the Board to my mind becomes a continuous body and the general body of the apex bank has no role to play in the constitution of the Board. It may also be noted that the words "Board and Board of Directors" are synonymous. C

Under Section 47-A of the Act the apex society for servicing its constituents and in accordance with byelaws can perform various functions mentioned therein and one of such function is to ensure timely conduct of elections in member societies. This is clause (k). Under byelaw 3(2)(ta) one of the duties of the apex body is to ensure that election process of member societies is held on time. Primary society is not a member society of the apex body. Any duty cast on the apex body to hold election of primary society is therefore not there and the whole edifice on which the case of the appellants is based that unless elections of the Committees of the primary and central society are not complete election to the Board of the apex body cannot be held, falls to the ground. D E

There are apparent contradictions in some of the byelaws of the apex body. It says the term of the Board would be five years from the date of its first meeting when it also elects one President and two Vice-Presidents. I have already taken the view that the Board is a continuous body. The five years term would therefore apply only to the election of President and two Vice-Presidents. When sub-section (1-A) of Section 49 provides that the election of the members of the society, President, Vice-President and representative, if any, shall be conducted by the Returning Officer in the prescribed manner, it refers to elections of all the societies whether primary, central or apex and this provision is general in nature. The apex society is not to send any representative to any society and since the members of the Board automatically take their place in the Board under F G H

A clauses (3) and (5) of byelaw 38 election to the members of committee can also not be there. The election can only be of President and two Vice-Presidents. If the apex society commits default in not ensuring the timely conduct of elections of the committees of the member central societies as per the Act and the byelaws it can be proceeded against under Section 53 of the Act which provides that if in the opinion of the Registrar, the committee of any society is negligent on the performance of its duties etc. B the committee can be removed by Registrar after following the procedure prescribed. That is however not the case here. Here the action of the Registrar which has been challenged is under clause (ii) of sub-section (8) of Section 49 of the Act. Clause (i) of sub-section (8) which puts obligations C on the outgoing committee of the society to hold elections prior to the expiration of its term would apply, in the case of the apex society only to the election of President and two Vice-Presidents as per its byelaws.

Provisions of the Act apply to all cooperative societies whether primary, central or apex and each society may have different byelaws. It is D not necessary that all the provisions of the Act would apply to all the societies whatever their nature. For example under Selection 48-B every committee of society shall at the time of election of Chairman or Vice-Chairman also elect two representatives who shall represent it in other society and representatives so elected shall not be withdrawn by the E committee till the next election of the committee. This provision cannot have any application to the apex body which, as noted above, has not to send any representative to any of the societies. This provision may be applicable to primary and central societies.

F Since the Board failed to take steps to hold elections of the President and two Vice-Presidents in terms of sub-section (8) of Section 49 of the Act, the impugned action of the Registrar would therefore appear to be right and in accordance with law.

G The respondents in their counter affidavit have taken a stand that elections of primary and district bodies have taken place and now election of the board of the apex body would be held by April 11, 97, meaning, perhaps, thereby that the election of the new board is dependent on the elections first to be held of the primary society and then of the central society. This interpretation to my mind is not correct and the Court is not bound by the interpretation put by any of the parties. The parties can be H under some misconception or some *bona fide* mistake. If the election to

the Board of the apex body is to be dependent on the election first to be held by the primary and then by the district bodies, possibly with different byelaws, it can be anybody's guess as to when the election to the Board of the apex body would be held. There are numerous primary bodies and also district bodies. There can be intervention by the court in the election process of any of the societies and as a matter of fact it has been mentioned in the counter affidavit that the courts have stayed the elections of primary bodies of three places. All this is apart from the fact that the byelaws of the apex body do not contemplate any election to the Board by the members of the apex body. A B

I have gone through the judgments in M.P. No. 908/90 and M.P. No. 1111 of 1990 and to my mind these do not touch upon conclusion which I have reached and are not quite relevant. C

In any case since it is stated that the whole process of election to primary and central societies is complete and that election to the Board of the apex body was to be held on April 11, 1997, the writ petition filed by the appellants, therefore becomes infructuous and it would be futile to issue any writ at this stage. The appeal is, therefore, dismissed. No costs. D

N.J.

Appeal dismissed.