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VINESHKUMAR MAVJIBHAI PARMAR

v.

DETHALI GOPALAK VIVIDH KARYAKARI

SAHAKARI MANDALI LTD. AND ORS.

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(Civil Appeal No. 3888 of 2015)

NOVEMBER 16, 2016

[J. CHELAMESWAR AND PRAFULLA C. PANT, JJ.]

Agricultural Produce Market Committees:

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Gujarat Agricultural Produce Markets Act, 1963 (the Markets Act) – ss.9,10 and 11 – Gujarat Co-operative Societies Act, 1961 (the Societies Act) – ss.107,108(3)(b) and 110 – Plea of appellant that members of the Managing Committees of co-operative societies (Officers of the Society) cannot participate in the election process of Agricultural Produce Marketing Committee constituted under the Markets Act, when liquidation proceedings u/s.107 of the Societies Act are pending against them – Held: The legislature of Gujarat by s.11(1) of the Markets Act conferred on officers of a class of Credit Societies (dispensing agriculture credit) to have an additional function of electing members of the market committees – Further, Legislature expressly provided under the Societies Act for the curtailment of certain rights of the officers of societies facing liquidation proceedings – However, at the same time it also declared that such officers cease to be officers of the Society only when a final order of winding up is passed – Therefore, merely because the officers of Credit Society facing liquidation are disabled from enforcing certain rights attached to the office, it does not necessarily follow that they are disabled from performing every function entrusted by law – Debarring managing committee members from discharging their statutory obligation under the Markets Act would be productive of public mischief – Such an interpretation of the statute must be avoided – Agriculture Produce Market Rules,1965 – r.7 – Co-operative Societies.

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Dismissing the appeals, the Court

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HELD: 1. The powers of the liquidator are specified under Section 110 of the Gujarat Co-operative Societies Act, 1961

(Societies Act), the liquidator virtually becomes the caretaker manager of the society whose winding up is impending. At the same time, Sec. 108(3)(b) of the Societies Act stipulates that the officers of the cooperative society vacate their offices only on the passage of the final order of winding up. Obviously, they continue to be the office bearers but are disabled from enjoying certain rights attached to the office and performing certain functions to be performed by the holders of the office. [Para 21][875-E-F; 876-A]

2. The rights and functions of the OFFICERS of a co-operative society are many. Some of them are created by the statute under which the office is created. Others could be the creation of subordinate legislation (in the context of the present case, even the bye laws of the society). The existence or lack of such rights and functions depend upon the scheme and tenor of the SOCIETIES ACT and the subordinate legislation made thereunder. Such rights and functions are put an end to only by the operation of law i.e., the SOCIETIES ACT. [Para 22][876-B-C]

3. Apart from that, nothing prevents the legislature from conferring by another law additional rights or functions on a person holding an office created under the SOCIETIES ACT. The legislature of Gujarat by Section 11(1) of the Gujarat Agriculture Produce Markets Act, 1963 (Markets Act) conferred on the OFFICERS of a class of CREDIT SOCIETIES (dispensing agriculture credit) an additional function of electing members of the market committees. Such function is neither conferred on the OFFICERS of all the societies functioning under the SOCIETIES ACT nor such function includes the right to elect every member of the concerned market committee. Such a function obviously creates a right in the officers of the societies. Such a statutory right could not be taken away in the absence of any express authority of law. [Paras 23, 24][876-C-E]

4. The Gujarat legislature expressly provided under the SOCIETIES ACT for the curtailment of certain rights of the officers of societies facing liquidation proceedings. At the same time it also declared that such OFFICERS cease to be the officers of the Society only when a final order of winding up is passed. In

A a given case if the Registrar after an appropriate enquiry following the interim order of winding decides not to finally wind up the society, the OFFICERS of the society would once again be entitled to exercise all the rights associated with it and perform all the functions attached to the office. Therefore, merely because the
 B officers of CREDIT SOCIETY facing liquidation are disabled from enforcing certain rights attached to the office or perform certain obligations appended to the office, it does not necessarily follow that they are disabled from performing every function entrusted by law to such office. [Para 25][876-F-G; 877-A]

C 5. Credit Societies against which there is an ‘interim order’ of winding up are temporarily debarred from dispensing agricultural credit, by virtue of the operation of law. The embargo imposed by such interim order may or may not fructify into a final order of winding up. On the face of such possibility of the society resuming its activity of “dispensing agricultural credit” - to debar
 D its managing committee members from discharging their statutory obligation under the MARKETS ACT would be productive of public mischief. Such an interpretation of the statute must be avoided. [Para 31][878-E-G]

E *M.C.V.S. Arumachala Nadar v. The State of Madras and Ors.* AIR 1959 SC 300 : 1959 Suppl. SCR 92 – referred to.

Case Law Reference

1959 Suppl. SCR 92 referred to Para 13

F CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3888 of 2015.

From the Judgment and Order dated 17.03.2015 of the High Court of Gujarat at Ahmedabad in Special Civil Application No. 3700 of 2015

WITH

G C.A. Nos. 3889, 3890, 3891, 3892, 3893, 3894 and 3896 of 2015.

V. Giri, Sr. Adv., Satyam Chahya, Ms. Srishti Agnihotri, Ms. Dharani Subramanian, Ms. Anitha Shenoy, Advs. for the Appellant.

H D. N. Ray, Lokesh K. Choudhary, Ms. Sumita Ray, Advs. for the Respondents.

The Judgment of the Court was delivered by

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CHELAMESWAR, J. 1. All these eight appeals are preferred by the unsuccessful respondents in various special civil applications (writ petitions under Article 226 of the Constitution) before the High Court of Gujarat at Ahmedabad disposed of by a common judgment dated 17.3.2015.

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2. Whether the members of the Managing Committees of co-operative societies (against whom proceedings under Section 107 of the Gujarat Co-operative Societies Act, 1961 are pending) have a right to participate in the election process of an Agricultural Produce Marketing Committee constituted under the Gujarat Agricultural Produce Markets Act, 1963. The two enactments mentioned above are referred to hereinafter as “the SOCIETIES ACT” and “the MARKETS ACT”.

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3. The facts leading to the present litigation:

Sec. 9 of the MARKETS ACT contemplates the establishment of a “Market Committee” for every “market area”. Both expressions are defined under Section 2(xiii) and 2 (xiv)¹.

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Section 10 of the MARKETS ACT declares market committees to be bodies corporate with perpetual succession and a common seal. Section 11 stipulates that every market committee shall consist of 17 members falling into 5 categories. Section 11(1)(i) stipulates that eight agriculturist members shall be elected by an electoral college consisting of the members of the managing committees of the “co-operative societies dispensing agricultural credit” (hereafter CREDIT SOCIETIES) in the market area.

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Section 11(1)(i) of the MARKETS ACT reads as follows:

“eight agriculturists who shall be elected by members of managing committees of co-operative societies (**other than co-operative marketing societies and milk produce co-operative societies**) dispensing agricultural credit in the market area;”

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4. The activity of co-operative societies in the State of Gujarat is regulated by the SOCIETIES ACT. Section 107 of the SOCIETIES

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¹ Section 2 (xiii) “market area” means any area declared or deemed to be declared to be a market area under this Act;
Section 2(xiv) “market committee” means a market committee established or deemed to be established under this Act;

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A ACT provides for the liquidation and winding up of the societies functioning under the Act. Section 107(1) authorises the Registrar to pass an interim order directing a cooperative society to be wound up for any one of the reasons specified in clauses (a), (b) and (c) of Section 107(1). Sub-Section(3), thereof authorises the Registrar to pass a final order after granting a hearing to the society against which an interim order under sub-Section(1) is made. Such a final order could be one either finally winding up the society by confirming the interim order or vacating the interim order passed earlier, whichever is appropriate in law having regard to the facts and circumstances of the case.

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C 5. In exercise of the power under Section 107 of the SOCIETIES ACT proceedings were initiated by the Registrar² against eleven Co-operative societies (established for the purpose of dispensing agricultural credit) operating in the market area of a market committee known as SIRPUR market committee, the details of which are not necessary for the present purpose.

D 6. We are concerned with only eight of the eleven co-operative societies mentioned above. Admittedly, with reference to each of the said eight co-operative societies, interim orders were passed initially under Section 107(1)³ of the SOCIETIES ACT directing them to be wound

E ² Section 2(17) of the Gujarat Co-operative Societies Act, 1961 - "Registrar" means a person appointed to be the Registrar of Co-operative Societies under this Act; and includes to the extent of the powers of the Registrar conferred on any other person under this Act, such person and includes an Additional or Joint Registrar;

³ Section 107 Winding up - (1) [Except as otherwise provided in sub-section (1A) if the Registrar, -

F (a) after an inquiry has been held under section 86, or an inspection has been made under any of the provisions of sub-section (8) of section 84, section 87 or section 88 or on the report of the auditor auditing the accounts of the society, or]

(b) on receipt of an application made upon a resolution carried by three-fourths of the members of a society present at a special general meeting called for the purpose, or (c) of his own motion, in the case of a society which -

(I) has not commenced working, or

(ii) has ceased working, or

G (iii) possesses shares of members deposits not exceeding five hundred rupees, or

(iv) has ceased to comply with any conditions as to registration and management in this act or [the rules or the bye-laws, or]

(v) has failed to comply with any directions issued under sub-section (1) of Section 160 or such directions as modified under sub-section (2) of that section.]

H is of the opinion that a society ought to be wound up, he may make an interim order directing it to be wound up.

up. Subsequently, final orders directing the winding up of each one of the said cooperative societies were also passed. The said orders were challenged before the Appellate authority. The matters eventually reached the High Court, complete details of the litigation may not be necessary except to say that the High Court had set aside the final orders with a further direction to the Registrar to conduct an inquiry afresh under Section 107 of the SOCIETIES ACT and pass appropriate final orders. Admittedly the said enquiry is pending.

7. Elections to the SIRPUR market committee fell due in the year 2015. A voters list (under Rule 7 of the Gujarat Agricultural Produce Market Rules, 1965) came to be prepared consisting the names of the members of the managing committee of the above-mentioned 8 cooperative societies (alongwith other societies) operating within the market area of the SIRPUR market committee.

8. In view of the pendency of the liquidation proceedings, objections for the inclusion of the names of the members of the managing committees of the 8 cooperative societies were raised. Objections were upheld by the proceedings dated 26.2.2015 of the Additional Registrar and Co-operation Officer (Market), Patan, directing the deletion of the names of the members of the managing committee of the above-mentioned 8 cooperative societies⁴. Operative portion of the order dated 26.2.2015 w.r.t. one of the 8 societies reads;

“I, Mr. H.G. Rawal, Authorized Officer & Co-operation Officer [Market], Patan & in exercise of the powers conferred in me and as per the provisions of the Gujarat Agriculture Produce Market Committee Act, 1963 and Market Committee Rules, 1965 allow the application by the objector Mr. Parmar Vineshkumar Mavjibai and Prajapati Manishbai Khemabhai for deleting the names of the Managing Committee members of the Shri Kalyana Group Gopalak Vividh Karyakari Sahkari Mandali Ltd. at Kalyana, Taluka Siddhpur from the Agriculturist constituency voters list and accept the just and proper objections raised, and in the voters list Sr. 259 to 279 voters names are ordered to be deleted. The said orders will be subject to the orders passed by the Hon. High Court and Additional

⁴ We take the facts of the first respondent society in Civil Appeal No. 3891/2015 as representative facts of the 8 appeals.

A Registrar[Appeal], Co-operative society, Gujarat State,
Gandhinagar.

-sd-

[S.G. Rawal]

Additional Registrar &

B Co-operation Officer [Market]
Patan”

C 9. Aggrieved by such a decision, the members of the managing committee of the said society filed special civil applications invoking Article 226 of the Constitution of India. By the judgment impugned in these appeals, the special civil application was allowed setting aside the orders of the Additional Registrar dated 26.2.2015.

10. We are informed that the facts relating to the other 7 societies are substantially similar.

11. It is argued by the appellant;

D Since the 8 societies in question are in the process of being wound up, they ceased to be CREDIT SOCIETIES within the meaning of Section 11(1)(i) of the MARKETS ACT because their activities are limited under Section 110 of the SOCIETIES ACT i.e., the business of the societies can be carried only so far as may be necessary for the beneficial winding up of the society. It is, therefore, submitted that the members of the managing committees of these 8 societies would be disentitled to be voters at an election for the agricultural market committee.

F According to the appellants, permitting the members of the managing committees of CREDIT SOCIETIES which are in the process of being wound up, to participate in the election process and elect agriculturist members to the market committees, would be inconsistent with the spirit of the MARKETS ACT, in view of the declaration contained in Section 108(2)⁵ of the SOCIETIES ACT.

G It is, therefore, submitted that the High Court erred in interfering with the orders of the Registrar directing the deletion of the names of the members of the managing committees of the 8 societies from the voters list.

H ⁵ See F/N 9 *infra*

12. None appears for anyone of the respondents.

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13. The purpose of the establishment of the market committees was examined and explained by this Court in *M.C.V.S. Arunachala Nadar v. The State of Madras & Others*, AIR 1959 SC 300. A constitution bench of this court made an elaborate inquiry into the legislative history of the subject and held that:

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“The object of such legislation is to protect the producers of commercial crops from being exploited by the middlemen and profiteers and to enable them to secure a fair return for their produce”

(See Para 6)

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14. For achieving the said purpose, market committees are constituted under the laws made by the legislatures of various States giving representation considered appropriate by the concerned legislature to various classes of persons who have an interest in achieving the purpose of the market committees.

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15. The legislature of the State of Gujarat thought it fit to give representation under the MARKETS ACT to 5 classes of persons: (i) agriculturists, (ii) traders holding general licences⁶ (iii) representatives of the cooperative marketing societies⁷ (iv) a nominated member by the concerned local authority⁸ within whose jurisdiction the “principal market yard” is situated and (v) two nominated members of the State Government.

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⁶ Section 2(ix) – “licence” means a licence granted under section 6 or, as the case may be, a general or special licence granted under section 27;

⁷ Section 2(v) – “co-operative marketing society” means a society registered or deemed to be registered as such under the Gujarat Co-operative Societies Act, 1961 (Guj. X of 1962), and engaged in the business of buying or selling of agricultural produce or of possessing of agricultural produce and holding a licence;

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⁸ Section 2(xi) – “local authority” means –

(a) a corporation constituted under the Bombay Provincial Municipal Corporation Act, 1949 (Bom. LIX of 1949); or

(b) a municipality constituted or deemed to be constituted under –

(i) the Bombay District Municipal Act, 1901 (Bom. III of 1901), or that Act as adapted and applied to the Saurashtra area; or

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(ii) the Bombay Municipal Boroughs Act, 1925 (Bom. XVIII of 1925), or that Act as adapted and applied to the Saurashtra area or that Act as applied to the Kutch area; or

(c) a village panchayat constituted or deemed to be constituted under the Bombay Village Panchayats Act, 1959 (Bom. III of 1959), or a gram panchayat or nagar panchayat constituted under the Gujarat Panchayat Act, 1961 (Guj. VI of 1962);

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A 16. Of the above-mentioned 5 classes of members, the first three classes consist of elected members and the later two are of nominated. Three distinct electoral colleges are created under sub-clause (i), (ii) and (iii) of Section 11(1) for electing the 3 classes of elected members.

“Section 11. Constitution of market committee –

B (1) Every market committee shall consist of the following members namely:-

C (i) eight agriculturists who shall be elected by members of managing committees of co-operative societies other than co-operative marketing societies and milk produce co-operative societies dispensing agricultural credit in the market area;

D (ii) four members to be elected in the prescribed manner from amongst themselves by the traders holding general licenses;

E (iii) two representatives of the Co-operative marketing societies situate in the market area and holding general licenses, to be elected from amongst the members (other than nominal, associate or sympathizer members) of such societies by the members of the managing committees of such societies:

Provided that where the number of co-operative marketing societies so situate does not exceed two, only one representative shall be so elected.”

F 17. While the elected representatives to the market committee belonging to classes (ii) and (iii) mentioned above are required to be members of the concerned electoral college, the Act does not insist upon such requirement w.r.t. those who are to be elected under the class (i) mentioned above. In other words, the members of the market committee belonging to the 1st of the abovementioned 5 classes need not be members of the electoral college which elects them.

H 18. The right to elect ‘agriculturists’ to a market committee is conferred under Section 11 of the MARKETS ACT upon the electoral college consisting of members of the managing committees of cooperative

societies operating in the market area which are dispensing agricultural credit (hereafter CREDIT SOCIETIES). A

19. The reason for the above, as we understand, is that those who seek election under the category of agriculturists belong to a very nebulous class, whereas the persons falling under classes (ii) and (iii) mentioned above can be identified with certainty based upon public records. Therefore, the legislature, in its wisdom, though it fit to create an electoral college which, by virtue of its very activity, would be in a better position to identify agriculturists eligible to contest for the membership of a market committee. By the very nature of the office held by them, members of the managing committees of "cooperative societies dispensing agricultural credit" would have an opportunity to interact with the agriculturists. B C

20. The pendency of the liquidation proceedings in law⁹, compels the elected members of the managing committee (OFFICERS of the Society) of a co-operative society to hand over the custody and control of all the property and assets, etc. of the society to the liquidator appointed under Section 107(1) of the SOCIETIES ACT. According to the appellants, the necessary implication flowing therefrom is that the members of the managing committee of a society facing liquidation proceeding are debarred from anyway dealing with the affairs of their society. Therefore, they should also not be permitted to exercise the right to participate in the election of a market committee. D

21. The powers of the liquidator are specified under Section 110, the details of which may not be necessary except to state that the liquidator virtually becomes the caretaker manager of the society whose winding up is impending. At the same time it is equally important to note that Sec. 108(3)(b)¹⁰ stipulates that the officers¹¹ of the cooperative society vacate E

⁹ Section 108. Appointment of Liquidator - (1) When an interim or final order is made under Section 107 for the winding up of a society, the Registrar may, in accordance with the rules appoint a person to be the liquidator of the society, and fix his remuneration. F

(2) Where an interim order is made the officers of the society shall hand over to the liquidator the custody and control of all the property, effects and actionable claims to which the society is or appears to be entitled, and of all books, records and other documents pertaining to the business of the society and, shall have no access to any of them. G

¹⁰ 108 (3) When a final order is made confirming the Interim, order, the officers of the society

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(b) shall vacate their offices and while winding up order remains in force the general body of the society shall not exercise any powers.

¹¹ Section 2(14) of the SOCIETIES ACT. - "officers" means a person elected or appointed H

A their offices only on the passage of the final order of winding up. Obviously, they continue to be the office bearers but are disabled from enjoying certain rights attached to the office and performing certain functions to be performed by the holders of the office

B 22. The rights and functions of the OFFICERS of a co-operative society are many. Some of them are created by the statute under which the office is created. Others could be the creation of subordinate legislation (in the context of the present case, even the byelaws of the society). The existence or lack of such rights and functions depend upon the scheme and tenor of the SOCIETIES ACT and the subordinate legislation made thereunder. Such rights and functions are put an end to only by the operation of law i.e., the SOCIETIES ACT.

C 23. Apart from that, nothing prevents the legislature from conferring by another law additional rights or functions on a person holding an office created under the SOCIETIES ACT.

D 24. The legislature of Gujarat by Section 11(1) of the MARKETS ACT conferred on the OFFICERS of a class of CREDIT SOCIETIES an additional function of electing members of the market committees. Such function is neither conferred on the OFFICERS of all the societies functioning under the SOCIETIES ACT nor such function includes the right to elect every member of the concerned market committee. Such a function obviously creates a right in the officers of the societies. Such a statutory right could not be taken away in the absence of any express authority of law.

E 25. The Gujarat legislature expressly provided under the SOCIETIES ACT for the curtailment of certain rights of the officers of societies facing liquidation proceedings. It must be remembered that at the same time it also declared that such OFFICERS cease to be the officers of the Society only when a final order of winding up is passed. In a given case if the Registrar after an appropriate enquiry following the interim order of winding decides not to finally wind up the society, the OFFICERS of the society would once again be entitled to exercise all the rights associated with it and perform all the functions attached to the office. Therefore, merely because the officers of CREDIT SOCIETY

F by a society to any office of such society according to its bye-laws; and includes a chairman, vice-chairman, president, vice-president, managing director, manager, secretary, treasurer, 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

G society.

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facing liquidation are disabled from enforcing certain rights attached to the office or perform certain obligations appended to the office, it does not necessarily follow that they are disabled from performing every function entrusted by law to such office. A

26. We now deal with the submission that the society ceased to be a CREDIT SOCIETY in view of the pendency of the winding up proceedings. B

27. We are of the opinion that the phrase “co-operative societies dispensing agricultural credit in the market area” in Section 11(1)(i) of the MARKETS ACT is only descriptive of the purpose for which the societies are established. Section 11(1)(i) cannot be construed as imposing an incessant obligation of “dispensing agricultural credit” in order to enable the members of the managing committee of CREDIT SOCIETIES to participate in the election to the market committee. The obligation, if any, to “dispense agricultural credit” arises under the bye-laws of the society subject of course to the availability of funds and various other factors. We are of the opinion that the above quoted words are only descriptive of the class of society the members of whose managing committees are entitled to participate in the election of the market committee. It is obvious from the language of the sub-section that there can exist more than one class of co-operative societies functioning under the Act. The very fact that the legislature took care to expressly exclude members of the managing committees of two classes of societies i.e. “Co-operative Marketing Societies” and “Milk Produce Co-operative Societies”, definitely indicates that there can exist more than one class of societies – apart from the common knowledge. C
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28. Section 4¹² of the SOCIETIES ACT contemplates that societies could be registered for different purposes. They are – “the promotion of the economic interests of its members or general welfare of its members or economic interest of the general welfare of the public”. F

29. Since Section 11(1)(i) of the MARKETS ACT is establishing an electoral college for the election of a certain class (agriculturists) of members of the market committees, the legislature thought it fit that G

¹² Section 4. Societies which may be registered.— A society, which has as its object the promotion of the economic interests or general welfare of its members or of the public, in accordance with co-operative principles, or as society established with the object of facilitating the operations of any such society, may be registered under this Act.

A only the members of the managing committees of those co-operative societies which have a nexus to agricultural activity should be members of the electoral college.

B 30. The submission of the appellant that Section 11(1)(i) imposes a legal obligation that the members of the managing committees of only those co-operative societies which are currently dispensing agricultural credit in the market area are entitled to participate in the electoral process of the concerned market committee (in other words, the phrase “co-operative societies dispensing agricultural credit” is indicative of the current activity of the societies but not the purpose for which the society is established), would lead to various difficult questions:

- C (i) What is the period to which the currency of such activity would relate to? Whether the activity should be current when the voters’ list is prepared or the activity should continue even on the date of voting?
- D (ii) Whether credit societies which do not dispense agricultural credit for a certain period of time because of either paucity of funds or borrowers are debarred from “dispensing agricultural credit” because of some legal prohibition or any other reason operating temporarily cease to be societies whose objective is to provide agricultural credit?

E 31. Credit Societies against which there is an ‘interim order’ of winding up are temporarily debarred from dispensing agricultural credit, by virtue of the operation of law. The embargo imposed by such interim order may or may not fructify into a final order of winding up. (We have already discussed this aspect of the matter at para 21 *supra*). On the face of such possibility of the society resuming its activity of “dispensing agricultural credit” - to debar its managing committee members from discharging their statutory obligation under the MARKETS ACT would be productive of public mischief. Such an interpretation of the statute must be avoided.

F 32. For the above reasons, we do not see any merit in the appeals. Therefore, the appeals are dismissed.