REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2188 OF 2008

A.P. Dairy Development Corporation Federation ... Appellant

Versus

B. Narasimha Reddy & Ors. ...Respondents

WITH

CIVIL APPEAL NOS. 2189-2212 OF 2008

AND

CIVIL APPEAL NO. 4588 OF 2008

J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. All these appeals have been preferred against the impugned judgment and order dated 1st May, 2007 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Writ Petition No. 2214 of 2006, by which the High Court has struck down the provisions of

Andhra Pradesh Mutually Aided Co-operative Societies (Amendment) Act, 2006 (hereinafter called as 'Act 2006') as unconstitutional and further declared that even if the Act 2006 is to be considered constitutional, provisions providing that the Boards of Directors appointed under the Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995 (hereinafter called `Act 1995') shall be deemed to have been continued under the provisions of A.P. Co-operative Societies Act, 1964 (hereinafter called 'Act 1964'), and further G.O.Ms. No.10 Animal Husbandry, Dairy Development & Fisheries (Dairy-II) Department, dated 4.2.2006 and the consequential proceedings/orders of the Milk Commissioner and Registrar of Milk Co-operatives and the District Collectors concerned in these regards, are quashed.

2. **Facts**:

A. The Government of Andhra Pradesh introduced an integrated milk project in the State with the assistance of the UNICEF, according to which, the rural surplus milk produced in the villages was transported to chilling centres and supplied to consumers of Hyderabad. A milk conservation plant/milk products factory was established at Vijayawada in 1969 as a part of the project. In the meanwhile, the Act 1964 came into force w.e.f. 1.8.1964.

B. In years 1970-71, the Government of Andhra Pradesh set up an independent Dairy Development Department (hereinafter called the 'Department') and intensive efforts were made by the Government to give a boost to the Department taking various measures.

C. In year 1974, Andhra Pradesh Dairy Development Corporation Ltd. (hereinafter called the 'Corporation'), a company under the Indian Companies Act, 1956, fully owned by the State Government was constituted and the entire dairy infrastructure and assets of the Department of the State stood transferred to the said Corporation vide order dated 15.4.1974. The employees of the Department were absorbed in the Corporation. A huge amount has been contributed by the Government from year 1974 onwards to develop the dairy products.

D. The Andhra Pradesh Dairy Development Cooperative Federation Ltd. (hereinafter called `the Federation') was registered as a Cooperative Society and all the assets and dairy infrastructure were transferred to the Federation. The State Government vide order dated 10.12.1980 permitted the Federation to hand over the management of the respective units set up at the State expenses to the Societies subject to conditions stipulated in the agreement. Mainly the terms incorporated therein provided for transfer of assets on lease basis, and the State to

stand as a guarantor for the payment of loan component and financial assistance etc.

E. The Government further permitted the Federation to hand over the management of respective units and operation hitherto to various societies with the right of procurement and further dairy development activities such as manufacturing, processing, feed mixing plants alongwith the concerned employees to the District Milk Producers Co-operative Unions with effect from a mutually agreeable date.

F. During the years of 1991 and 1995, the benefits of financial assistance rendered to the units by the State and the Central Governments had been very huge i.e. Rs.159.45 lakhs and Rs.729.97 lakhs.

G. On commencement of the Act 1995 into force, the existing co-operative societies registered under the Act 1964 could opt to be covered by the Act 1995 with certain conditions, namely, the share capital from the Government, if any, had to be returned and the societies should not accept any Government assistance, and further the societies had to enter into the Memorandum of Understanding (hereinafter called the MoU) for outstanding loans and guarantees or return of the government assistance. These had been conditions

precedent for registration of a society under the Act 1995. A very large number of new societies came into existence and were registered under the Act 1995. Many societies already registered under the Act 1964 also got themselves registered under the Act 1995.

H. There had been some irregularities in getting the registration under the Act 1995 by certain societies registered under the Act 1964 and some of them did not execute the MoU. Thus, the Statutory Authority issued show cause notices to such societies under Section 4(3) of the Act 1995 on 29.11.2004 to show cause as to why their registration under the Act 1995 be not cancelled.

I. Eight writ petitions were filed by 8 District Milk Unions challenging the said show cause notices before the High Court. The Federation filed original petition in various Co-operative Tribunals seeking dissolution of its societies under Section 40 of the Act 1995 as the statutory requirements had not been complied with.

J. The Co-operative Tribunal vide its judgment and order dated 9.12.2004 dismissed the original petition against Visakha District Union on the premises that the Act 1995 had not mentioned about returns of assets and the Managing Director had no power to further delegate the power to some one to file the petition.

K. The Legislative Assembly of the Andhra Pradesh vide Resolution dated 8.2.2005 constituted a House Committee consisting of its members belonging to different political parties to investigate into irregularities committed by two of the eight District Unions, namely, Visakha and Ongole (Prakasham) Unions, who also got registered under the Act 1995. The Committee submitted its report pointing out certain irregularities by the said Unions. The Committee also opined that the Act 1995 had adverse consequences on the dairy co-operatives, as it had broken down 3-tier structure, reduced the brand value of Vijaya Brand, created conflict in marketing structures, weakened the financial position of some District Milk Unions etc. and had broken down the common cadre of employees.

L. After considering the said report, the State Government constituted a Committee consisting of Ministers to consider the recommendations of the House Committee vide order dated 23.8.2005. It was this Committee which recommended that dairy co-operatives be excluded from the purview of the Act 1995 and so far as the dairy co-operatives are concerned, it should be restored to 3-tier structure. Meanwhile, the order passed by the Co-operative Tribunal was challenged in the Writ Petition No. 1420 of 2006 in pursuance to the

policy decision of the Government to exclude the dairy societies from the purview of the Act 1995 and to bring them back under the Act 1964.

M. The State promulgated the Ordinance No.2/2006 excluding the milk dairy co-operative societies from the societies covered by the Act 1995 and imported the fiction that such dairies would be deemed to have been registered under the Act 1964, with effect from the date of registration under the Act 1995.

N. Government Order dated 4.2.2006 was issued to give effect to such amendments and also to take care of transitional position, particularly providing that District Collector would appoint the person in-charge under Section 32(7) of the Act 1964 to manage the affairs of all primary milk producers co-operative societies till further elections or until further orders, so that affairs of those societies would be managed properly.

O. Writ Petitions were filed before the High Court by various District Milk Producers Co-operative Unions challenging Ordinance No.2/2006 and consequential Government Order dated 4.2.2006. The High Court vide interim order dated 8.2.2006 stayed the operation of the Government Order dated 4.2.2006. Meanwhile, the Ordinance was

converted into the Act. By the impugned judgment dated 1.5.2007, the High Court allowed the writ petitions.

Hence, these appeals.

Rival Submissions:

3. Shri R. Venkataramani, Shri S.S. Prasad, learned senior counsel appearing for the appellants have submitted that the impugned judgment and order are untenable as the Legislature is competent to amend the Act and while doing so the Legislature in its wisdom had rightly decided to treat the milk dairy co-operatives distinctly from all other kinds of societies. Thus, no grievance of discrimination could be raised. More so, there is no discrimination among the milk dairies, as all such dairies have been treated as a separate class. The amendment had not taken away any vested or statutory right of the writ petitioners by the impugned Act. Both the Acts i.e. Act 1964 as well as Act 1995 are based on the same set of the co-operative principles and serve different sectors of the co-operatives in different ways. Both the Acts co-exist and are not mutually conflicting. Therefore, the question of doubting the validity of the Act 2006 merely on the ground of having retrospective application could not arise. The members of the management committee of the District Unions/writ petitioners could

again contest the election for the posts in their respective society under the Act 1964. Appointment of persons in-charge was merely a temporary/transitional phase to facilitate such elections and, therefore, there was no violation of fundamental rights of any of the writ petitioners. The High Court erred in recording the finding that the Act 2006 stood vitiated on the ground that it had breached promissory estoppel. The Government undoubtedly, had transferred the management of the assets to the District Unions and as the said District Unions would continue with such management of assets, there was no question of breach of any of the promises made by the State. Doctrine of promissory estoppel does not apply to legislature. There was a rational nexus to enact the Act 2006 as a large number of the milk dairy societies did not enter into the MoU as required under Section 4(4) of the Act 1995. Such legislative action could not be termed as arbitrary and warranting attraction of the provisions of Article 14 of the Constitution of India. There were valid reasons for excluding the milk/dairy societies from the provisions of the Act 1995. Dairy industry being peculiar and having distinct characteristics required State's moderation and intervention. Having regard to the special and distinctive features of the Dairy industry and the existence of large

number of financially weak and dependent primary milk Co-operative Societies, and the necessity of State funding of these societies, it has been found necessary to take dairy industry out of the purview of 1995 Act. The High Court failed to make distinction of dairy milk societies from other co-operative societies as the dairy milk societies are having with them substantial government interest, assets and government investments. All the societies including the primary societies are dependent on the government and its assets. Such a financial assistance has been granted in view of the provisions of Section 43 of the Act 1964 and the government control over such societies under the Act 1964 is minimal. It was not that the Act 2006 had been brought to have government control over milk dairy societies as under the Act 1995 the government control was negligible. The societies under the Act 1995 "have to be self reliant". Thus, the Act assured such societies a complete autonomy. The Act 2006 was enacted on the recommendation of the House Committee which suggested remedial measures for effective functioning of the dairies in the State. It was so necessary to reconfirm the 3-tier structure e.g. apex society, central society and primary society as such a classification was not available under the Act 1995. The Statement of Objects and Reasons of the Act 2006 clearly

provided for justification of amendment (impugned). Therefore, appeals deserve to be allowed and the impugned judgment and order of the High Court is liable to be set aside.

4. On the contrary, Mr. P.P. Rao, learned senior counsel, Mr. P. Venkat Reddy, Mr. Niranjan Reddy and Mr. S. Udaya Kr. Sagar, learned counsel appearing for the respondents have submitted that the Act 2006 suffered from vice of arbitrariness, and has taken away the accrued rights of the milk dairy co-operative societies. Act 2006 has given a hostile discrimination to milk dairy co-operative societies as no other kind of society i.e. Societies of Agro Processing, Fisheries, Sheep Breeding etc. has been excluded from the operation of the Act 1995. A large number of new societies had initially/directly been registered under the Act 1995. Therefore, the question of creating a fiction that the same shall also stand excluded from the operation of the Act 1995 and would be deemed to have been registered under the Act 1964 cannot be justified for the reason that such societies had not initially been registered under the Act 1964. It was a political decision of the State Authorities to amend the statute merely because of the change of the Government and to have control on such societies. The reasons for enacting the Act 2006 have been spelled out in the

Statement of Objects and Reasons of the said Act and none of them really existed in fact and in order to introduce the Act 2006, the State incorrectly construed the provisions of the Act 1995. A very few societies had the government benefits and the said societies had also ensured the compliance of the statutory provisions of the Act 1995. Almost all the societies have returned the assets of the Federation. Where it has not been returned, the matters are sub-judice, before the Co-operative Tribunal, between the Federation and the societies. More so, the character of the assets would not change upon conversion of a society into one under the Act 1995. The character of a 3-tier structure contemplated under the Act 1964 is different from one followed in the State of Gujarat under the "Anand Pattern" and such 3-tier structure is possible under the Act 1995 also. There can be no nexus in deeming fiction created for treating the societies as having been registered under the Act 1964 and it would definitely not bring back the 3-tier structure. The farmers had not been facing any problem for redressal of which the amendment was necessary. Thus, the facts and circumstances of the case do not require any interference with the impugned judgment and appeals are liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

6. Before we examine the merits of the arguments advanced by learned counsel for the parties, it may be necessary to make a reference to some of the relevant findings recorded by the High Court :

(i) The ordinance/Act suffers from vice of hostile discrimination against dairy farms and milk producers without scientific or rational basis for such distinction-merely because the National Dairy Development Board distinctly deals with dairy activities, cooperatives dealing with such activities cannot form a separate and distinct class in so far as co-operative activity is concerned.

(ii) The irregularities noted by the House Committee with regard to the Visakha Union, Prakasham Union are managerial lapses which are possible both under the `Act 1964' and the `Act 1995'.

(iii) Non-compliance with the terms and conditions of the transfer agreements regarding business and service matters and irregularities noted in the audit reports and House Committee is possible both under the `Act 1995' and the `Act 1964'.

(iv) The conclusion of the House Committee in respect of two of the district unions out of eight districts converted into `Act 1995' cannot be relevant material for any rational conclusion.

(v) Both Section 2(e) of the `Act 1964' and Section 2(k) of the `Act 1995' enable formation of Apex Societies, Central Societies and Primary Societies. Exclusion of the Dairy/Milk Cooperative Societies from `Act 1995' to achieve the object of a three-tier structure is a non-existent cause.

(vi) Both the `Act 1964' and `Act 1995' have procedure for auditing, enquiry, inspection and surcharge etc., it is nowhere stated as to how the `Act 1964' is more effective or comprehensive in the matter of protecting any government assets in possession of the societies or as to how the `Act 1995' is inadequate for the purpose.

(vii) Till June 2004, the Federation found everything positive and nothing negative in the functioning of the District Union.

(viii) Adverse effects on the interest of dairy farms due to registration or conversion of dairy/milk co-operative societies under `Act 1995' are not existing.

(ix) Fundamental right under Section 19(1)(c) of the Constitution of India to form association or union is infringed by the impugned Ordinance/Act.

(x) The retrospective legislation undoubtedly interferes with vested rights and accrued rights and such interference is based on classification not in tune with the parameters of equality under

Article 14 of the Constitution and not having any nexus with the objects sought to be achieved.

(xi) The agreement dated 8.1.1981 (between the State Government and the Indian Dairy Corporation); the letter of understanding dated 21.1.1988 (between the State Government and the National Dairy Development Board) and acted upon by the State Government and the concerned agencies estopped the State Government from backing out on the assurance.

(xii) Section 32(7) of the `Act 1964' does not confer power on the government to appoint person-in-charge. In the absence of any other provision, the government order (G.O.Ms No. 10 dated 4.2.2006) is not legal and enforceable.

7. Thus, the question does arise as to whether in view of the submissions advanced by the learned counsel for the parties, it is desirable to interfere with the aforesaid findings or any of them.

8. It is well settled law that Article 14 forbids class legislation, however, it does not forbid reasonable classification for the purpose of legislation. Therefore, it is permissible in law to have class legislation provided the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that differentia must have a rational

relation to the object sought to be achieved by the statute in question. Law also permits a classification even if it relates to a single individual, if, on account of some special circumstances or reasons applicable to him, and not applicable to others, that single individual may be treated as a class by himself. It should be presumed that legislature has correctly appreciated the need of its people and that its laws are directed to problems made manifest by experience and that **its discriminations are based on adequate grounds**. There is further presumption in favour of the legislature that legislation had been brought with the knowledge of existing conditions. The good faith on the legislature is to be presumed, but **if there is nothing on the face of the law or the surrounding circumstances** brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation. The law should not be irrational, arbitrary and unreasonable in as much as there must be nexus to the object sought to be achieved by it. (Vide: **Budhan Choudhry & Ors. v. State of Bihar,** AIR 1955 SC 191 ; and **Ram Krishna Dalmia v.**

Justice S.R. Tendolkar & Ors., AIR 1958 SC 538)

9. In **Harbilas Rai Bansal v. State of Punjab & Anr.,** AIR 1996 SC 857, this Court struck down the provisions of the East Punjab Urban Rent Restriction (Amendment) Act, 1956, on the ground that the amendment **had taken away the right of landlord** to evict his tenant from non-residential building even on the ground of bonafide requirement holding that such provisions of amendment were violative of Article 14 of the Constitution and the landlord was entitled to seek eviction on ground of requirement for his own use. The Court further held that it is obvious from the objects and reasons of introducing the said amended Act, that the primary purpose for enacting the Act was to protect the tenants against the malafide attempts by their landlords to evict them. Bona fide requirement of a landlord was, therefore, provided in the Act – as original enactment – a ground to evict tenant from the premises whether residential or non residential.

Thus, the issues require to be examined arise as to whether the Act 2006 is arbitrary, discriminatory or unreasonable or has taken away the accrued rights of the Milk Dairy Societies registered directly under the Act 1995 or got conversion of their respective registration under the Act 1964 to the Act 1995.

10. Article 19(1)(c) guarantees to all citizens, the right to form associations or unions of their choice voluntarily, subject to reasonable restrictions imposed by law. Formation of the unions under Article 19(1)(c) is a voluntary act, thus, unwarranted/impermissible statutory intervention is not desired.

11. Constitution Bench of this Court in **M/s. Raghubar Dayal Jai Prakash v. The Union of India & Anr.,** AIR 1962 SC 263, while dealing with a similar issue held as under:

> *"An application for the recognition of the association for the purpose of functioning under the enactment is a voluntary act on the part of the association and if the statute imposes conditions subject to which alone recognition could be accorded or continued it is a little difficult to see how the freedom to form the association is affected unless, of course, that freedom implies or involves a guaranteed right to recognition also."*

12. In **Smt. Damyanti Naranga v. The Union of India & Ors.,** AIR 1971 SC 966, this Court examined question related to the Hindi Sahitya Sammelan, a Society registered under the Societies Registration Act, 1860. The Parliament enacted the Hindi Sahitya Sammelan Act under which outsiders were permitted to become members of the Sammelan without the volition of the original

members. This court while examining its validity held that any law altering the composition of the Association compulsorily will be a breach of the right to form association because it violated the composite right of forming an association and the right to continue it as the original members desired. The Court held as follows :

> *"It is true that it has been held by this Court that, after an Association has been formed and the right under Art.19(1)(c) has been exercised by the members forming it, they have no right to claim that its activities must also be permitted to be carried on in the manner they desire. Those cases are, however, inapplicable to the present case. The Act* ***does not merely regulate the administration of the affairs of the Society, what it does is to alter the composition of the Society itself as we have indicated above****. The result of this change in composition is that the members, who voluntarily formed the Association, are* ***now compelled to act in that Association with other members who have imposed as members*** *by the Act and* ***in whose admission to membership they had no say. Such alteration in the composition of the Association itself clearly interferes with the right to continue to function as members of the Association which was voluntarily formed by the original founders****. The right to form an association, in our opinion, necessarily implies that the persons forming the Association* ***have also the right to continue to be associated with only those whom they voluntarily admit in the Association. Any law, by which members are introduced in the voluntary Association without any opinion being given to the members to keep them out****, or any law which takes away the membership of those who have voluntarily joined it,* ***will be a law violating the right to form an association****".* (Emphasis supplied)

13. In **Daman Singh & Ors. v. State of Punjab & Ors.,** AIR 1985 SC 973, this Court examined a case where an unregistered society was by statute converted into a registered society which bore no resemblance whatever to the original society. New members could be admitted in large numbers so as to reduce the original members to an insignificant minority. The composition of the society itself was transformed by the Act and the voluntary nature of the association of the members who formed the original society was totally destroyed. The Act was struck down by the Court as contravening the fundamental right guaranteed by Art. 19(1)(f).

14. In **Dharam Dutt & Ors. v. Union of India & Ors.**, (2004) 1 SCC 712, this Court held that the first test is the test of reasonableness which is common to all the clauses under Article 19(1), and the second test, is to ask for the answer to the question, whether the restrictions sought to be imposed on the fundamental right, fall within clauses (2) to (6) respectively, qua sub-clauses (a) to (g) of Article 19(1) of the Constitution, and the Court further held that a right guaranteed by Article 19(1)(c), on the literal reading thereof, can be subjected to those restrictions which satisfy the test of clause (4) of Article 19. The rights

not included in the literal meaning of Article 19(1)(c) but which are sought to be included therein as flowing therefrom i.e. **every right which is necessary in order that the association brought into existence fulfils every object for which it is formed, the qualifications therefor**, would not merely be those in clause (4) of Article 19, but would be more numerous and very different. Restrictions which bore upon and took into account the several fields in which the associations or unions of citizens might legitimately engage themselves, would also become relevant. Therefore, the freedom guaranteed under Article 19(1)(c) is not restricted merely to the formation of the association, but to the effective functioning of the association so as to enable it to achieve the lawful objectives.

15. In **The Tata Engineering and Locomotives Co.Ltd. v. The State of Bihar & Ors.,** AIR 1965 SC 40, Constitution Bench of this Court held, that a fundamental **right to form the association cannot be coupled with the fundamental right to carry on any trade or business.** As soon as citizens form a company, the right guaranteed to them by Article 19(1)(c) has been exercised, and no restrain has been placed on that right and no infringement of that right is made. Once a company or a corporation is formed, the business which is carried on

by the said company or corporation is the business of the company or corporation, and is not the business of the citizens who get the company or corporation formed or incorporated, and the rights of the incorporated body must be judged on that footing alone and cannot be judged on the assumption that they are the rights attributable to the business of individual citizens. Thus, right under Article 19(1)(c) does not comprehend any concomitant right beyond the right to form an association and right relating to formation of an association. (See also: **All India Bank Employees' Association v. National Industrial Tribunal (Bank Disputes) Bombay & Ors.,** AIR 1962 SC 171; **S. Azeez Basha & Anr. v. The Union of India etc.,** AIR 1968 SC 662; and **D.A.V. College, etc.etc. v. State of Punjab & Ors.,** (1971) 2 SCC 269.)

16. In view of the above, it becomes evident that the right of the citizens to form the association are different from running the business by that association. Therefore, right of individuals to form a society has to be understood in a completely different context. Once a co-operative society is formed and registered, for the reason that co-operative society itself is a creature of the statute, the rights of the society and that of its members stand abridged by the provisions of the

Act. The activities of the society are controlled by the statute. Therefore, there cannot be any objection to statutory interference with their composition or functioning merely on the ground of contravention of individual's right of freedom of association by statutory functionaries.

17. It is a settled legal proposition that Article 14 of the Constitution strikes at arbitrariness because an action that is arbitrary, must necessarily involve negation of equality. This **doctrine of arbitrariness** is not restricted only to executive actions, but **also applies to legislature**. Thus, a party has to satisfy that the action was reasonable, not done in unreasonable manner or capriciously or at pleasure without adequate determining principle, rational, and has been done according to reason or judgment, and certainly does not depend on the will alone. However, the action of legislature, violative of Article 14 of the Constitution, should ordinarily be manifestly arbitrary. There must be a case of substantive unreasonableness in the statute itself for declaring the act ultra vires of Article 14 of the Constitution. (Vide: **Ajay Hasia etc. v. Khalid Mujib Sehravardi & Ors. etc.** AIR 1981 SC 487; **Reliance Airport Developers (P) Ltd. v. Airports Authority of India & Ors.,** (2006) 10 SCC 1; **Bidhannagar**

(Salt Lake) Welfare Assn. v. Central Valuation Board & Ors. AIR 2007 SC 2276; **Grand Kakatiya Sheraton Hotel and Towers Employees and Workers Union v. Srinivasa Resorts Limited & Ors.** AIR 2009 SC 2337; and **State of Tamil Nadu & Ors. v. K. Shyam Sunder & Ors.** (2011) 8 SCALE 474).

18. In **State of Andhra Pradesh & Anr. v. P. Sagar,** AIR 1968 SC 1379, this Court examined the case as to whether the list of backward classes, for the purpose of Article 15(4) of the Constitution has been prepared properly, and after examining the material on record came to the conclusion that there was nothing on record to show that the Government had followed the criteria laid down by this Court while preparing the list of other backward classes. The Court observed as under:

> *"Honesty of purpose of those who prepared and published the list was not and is not challenged, but the validity of a law which apparently infringes the fundamental rights of citizens cannot be upheld merely because the law maker was satisfied that what he did was right or that he believes that he acted in manner consistent with the constitutional guarantees of the citizen. The test of the validity of a law alleged to infringe the fundamental rights of a citizen or any act done in execution of that law lies not in the belief of the maker of the law or of the person executing the law, but in the demonstration by evidence and argument before the Courts that the guaranteed right is not infringed."*

19. In **Indra Sawhney II v. Union of India**, AIR 2000 SC 498, while considering a similar issue regarding preparing a list of creamy layer OBCs, this Court held that **legislative declarations on facts are not beyond judicial scrutiny** in the constitutional context of Articles 14 and 16 of the Constitution, for the reason that a conclusive declaration could not be permissible so as to defeat a fundamental right.

20. In **Harman Singh & Ors. v. Regional Transport Authority, Calcutta Region & Ors.,** AIR 1954 SC 190, this Court held:

> *"....A law applying to a class is constitutional if there is sufficient basis or reason for it. In other words, a statutory discrimination cannot be set aside as the denial of equal protection of the laws if any state of facts may reasonably be conceived to justify it."*

21. In **D.C. Bhatia & Ors. v. Union of India & Anr.,** (1995) 1 SCC 104, this Court held:

> "*.....This is a matter of legislative policy. The legislature could have repealed the Rent Act altogether. It can also repeal it step by step.....It is well settled that the safeguard provided by Article 14 of the Constitution can only be invoked, if the classification is made on the grounds which are totally irrelevant to the object of the statute. But, if there is some nexus between the objects sought to be*

achieved and the classification, the legislature is presumed to have acted in proper exercise of its constitutional power. The classification in practice may result in some hardship. But, a statutory discrimination cannot be set aside, if there are facts on the basis of which this statutory discrimination can be justified….The court can only consider whether the classification has been done on an understandable basis having regard to the object of the statute. The court will not question its validity on the ground of lack of legislative wisdom.

Moreover, the classification cannot be done with mathematical precision. The legislature must have considerable latitude for making the classification having regard to the surrounding circumstances and facts. The court cannot act as a super-legislature…."

22. In **State of Gujarat & Anr. v. Raman Lal Keshav Lal Soni & Ors.,** AIR 1984 SC 161, this Court while dealing with a similar issue observed as under:

"……The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written' Constitution, and have to conform to the do's and don'ts of the Constitution neither prospective nor retrospective laws can be made so as to contravene Fundamental Rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say twenty years ago the parties had no rights therefore, the requirements of the Constitution will be satisfied if the law is dated back by twenty years. We are concerned with today's

rights and not yesterday's. A Legislature cannot legislate today with reference to a situation that obtained twenty years, ago and ignore the march of events and the constitutional rights accrued in the course of the twenty years. That would be most arbitrary, unreasonable and a negation of history… …… Today's equals cannot be made unequal by saying that they were unequal twenty years ago and we will restore that position by making a law today and making it retrospective……the provisions are so intertwined with one another that it is wellnigh impossible to consider any life saving surgery. The whole of the Third Amendment Act must go."

23. In **B.S. Yadav & Ors. v. State of Haryana & Ors.,** AIR 1981 SC 561, Constitution Bench of this Court similarly held that the date from which the rules are made to operate must be shown to have reasonable nexus with the provisions contained in the statutory rules specially when the retrospective effect extends over a long period.

24. In **Chairman, Railway Board & Ors. v. C. R. Rangadhamaiah & Ors.,** AIR 1997 SC 3828, this Court similarly held as under:

"…….an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution."

Thus, wherever the amendment purports to restore the status quo ante for the past period taking away the benefits already available, accrued and acquired by them, the law may not be valid. (Vide: **P. Tulsi Das & Ors. v. Government of A.P. & Ors.,** AIR 2003 SC 43)

25. In **National Agricultural Cooperative Marketing Federation of India Ltd. & Anr. v. Union of India & Ors.,** (2003) 5 SCC 23, this Court held that the legislative power to amend the enacted law with retrospective effect, is also subject to several judicially recognized limitations, *inter- alia*, the retrospectivity must be reasonable and **not excessive or harsh** otherwise it runs the risk of being struck down as unconstitutional.

26. Vested right has been defined as fixed; vested; accrued; settled; absolute; and complete; not contingent; not subject to be defeated by a condition precedent. The word 'vest' is generally used where an immediate fixed right in present or future enjoyment in respect of a property is created. It is a "legitimate" or "settled expectation" to obtain right to enjoy the property etc. (Vide: **Mosammat Bibi Sayeeda & Ors., etc. v. State of Bihar & Ors., etc.,** AIR 1996 SC 1936;

Howrah Municipal Corporation & Ors. v. Ganges Rope Co. Ltd. & Ors., (2004) 1 SCC 663; and **J.S. Yadav v. State of Uttar Pradesh & Anr.**, (2011) 6 SCC 570).

27. In the matter of Government of a State, the succeeding Government is duty bound to continue and carry on the unfinished job of the previous Government, for the reason that the action is that of the "State", within the meaning of Article 12 of the Constitution, which continues to subsist and therefore, it is not required that the new Government can plead contrary from the State action taken by the previous Government in respect of a particular subject. The State, being a continuing body can be stopped from changing its stand in a given case, but where after holding enquiry it came to the conclusion that action was not in conformity with law, the doctrine of estoppel would not apply. Thus, unless the act done by the previous Government is found to be contrary to the statutory provisions, unreasonable or against policy, the State should not change its stand merely because the other political party has come into power. "Political agenda of an individual or a political party should not be subversive of rule of law". The Government has to rise above the nexus of vested interest and nepotism etc. as the principles of governance have to be

tested on the touchstone of justice, equity and fair play. The decision must be taken in good faith and must be legitimate. [Vide: **Onkar Lal Bajaj etc. etc. v. Union of India & Anr. etc. etc.** AIR 2003 SC 2562; **State of Karnataka & Anr. v. All India Manufacturers Organization & Ors.** AIR 2006 SC 1846; and **State of Tamil Nadu & Ors. v. K. Shyam Sunder & Ors.** (Supra)].

28. In **State of Tamil Nadu & Ors. v. K. Shyam Sunder & Ors. (supra)**, this Court while dealing with the issue held as under:

> *"The Statement of Objects and Reasons appended to the Bill is not admissible as an aid to the construction of the Act to be passed, but it can be used for limited purpose for ascertaining the conditions which prevailed at that time which necessitated the making of the law, and the extent and urgency of the evil, which it sought to remedy. The Statement of Objects and Reasons may be relevant to find out what is the* ***objective*** *of any given statute passed by the legislature. It may provide for the reasons which induced the legislature to enact the statute. "For the purpose of* ***deciphering the objects and purport*** *of the Act, the court can look to the Statement of Objects and Reasons thereof". (Vide:* ***Kavalappara Kottarathil Kochuni @ Moopil Nayar v. The States of Madras and Kerala & Ors.****, AIR 1960 SC 1080; and* ***Tata Power Company Ltd. v. Reliance Energy Ltd. & Ors.****, (2009) 16 SCC 659)."*

Similar view has been reiterated in **A. Manjula Bhashini & Ors. v. Managing Director, Andhra Pradesh Women's Cooperative**

Finance Corporation Ltd. & Anr., (2009) 8 SCC 431 observing that for the purpose of construction of a provision, the wholesome reliance cannot be placed on objects and reasons contained in the Bill, however, the same can be referred to for understanding the background, the antecedent state of affairs and the mischief sought to be remedied by the statute. The Statement of Objects and Reasons can also be looked into as an external aid **for appreciating the true intent of the legislature** and/or the **object sought to be achieved** by enactment of the particular Act or for judging reasonableness of the classification made by such Act.

29. In **M. Ramanathan Pillai v. State of Kerala & Anr.,** (1973) 2 SCC 650, this Court relied upon American Jurisprudence, 2d. at page 783 wherein it has been stated as under:

> *"Generally, a State is not subject to an estoppel to the same extent as an individual or a private corporation. Otherwise, it might be rendered helpless to assert its powers in government. Therefore, as a general rule the doctrine of estoppel will not be applied against the State in its governmental, public or sovereign capacity."*

30. In **State of Kerala & Anr. v. The Gawalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. etc.,** (1973) 2 SCC 713, a similar view has been re-iterated by this Court observing as under:

> *"We do not see how an agreement of the Government can preclude legislation on the subject. The High Court has rightly pointed out that the surrender by the Government of its legislative powers to be used for public good cannot avail the company or operate against the Government as equitable estoppel."*

Therefore, it is evident that the Court will not pass any order binding the Government by its promises unless it is so necessary to prevent manifest injustice or fraud, particularly, when government acts in its governmental, public or sovereign capacity. Estoppel does not operate against the government or its assignee while acting in such capacity.

31. The Government has inherent power to promote the general welfare of the people and in order to achieve the said goal, the State is free to exercise its sovereign powers of legislation to regulate the conduct of its citizens to the extent, that their rights shall not stand abridged.

The co-operative movement by its very nature, is a form of voluntary association where individuals unite for mutual benefit in the production and distribution of wealth upon principles of equity, reason and common good. So, the basic purpose of forming a co-operative society remains to promote the economic interest of its

members in accordance with the well recognised co-operative principles. Members of an association have the right to be associated only with those whom they consider eligible to be admitted and have right to deny admission to those with whom they do not want to associate. The right to form an association cannot be infringed by forced inclusion of unwarranted persons in a group. Right to associate is for the purpose of enjoying in expressive activities. The constitutional right to freely associate with others encompasses associational ties designed to further the social, legal and economic benefits of the members of the association. By statutory interventions, the State is not permitted to change the fundamental character of the association or alter the composition of the society itself. The significant encroachment upon associational freedom cannot be justified on the basis of any interest of the Government. However, when the association gets registered under the Co-operative Societies Act, it is governed by the provisions of the Act and rules framed thereunder. In case the association has an option/choice to get registered under a particular statute, if there are more than one statutes operating in the field, the State cannot force the society to get itself registered under a statute for which the society has not applied.

32. The cases in hand require to be examined in the light of the aforesaid settled legal propositions.

The recommendations of the House Committee and the Group of Ministers, are not based on relevant material as there was no investigation of all the co-operative societies either converted to or registered under the Act 1995. The House Committee had primarily been assigned the task to look into the three District Milk Unions namely, Visakha, Ongole and Chittoor which had been running partly on the government aids. Out of the said three milk unions, Visakha and Ongole converted under the Act 1995, while Chittoor remained under the Act 1964 throughout and the material on record reveal that it was under liquidation even prior to the constitution of the House Committee. There is nothing on record to show that the House Committee had considered either the functioning of other more than 3500 societies registered under the Act 1995, or consensus thereof arrived at by the Government, the Federation and the Unions at the meeting convened by the Chief Secretaries on 26.8.2003 alongwith other high officials of the co-operative section to solve the problems faced by the Government, the Federation and the Milk Unions within the framework of the Act 1995 and consistent with the statutory co-

operative principles. The House Committee also placed a very heavy unwarranted reliance on the views of the Federation communicated vide its letter dated 20.8.2005, without ascertaining the views of the District Unions.

33. Be that as it may, the House Committee did not recommend the amendment with retrospective effect, particularly, for the conversion of dairy co-operative societies registered under the Act 1995 into societies deemed to have been registered under the Act 1964. More so, the Committee did not consider at all as to whether it was permissible in law, to provide for such a course, so far as the societies initially registered under the Act 1995, were concerned.

34. The restrictions so imposed by the Act 2006, with retrospective effect, extending over a decade and importing the fiction that the societies would be deemed to have been registered under the Act 1964, without giving any option to such societies suggest the violation of Article 19(1)(c) and are not saved by clause (4) of Article 19 of the Constitution. It is by no means conceivable, that the grounds on the basis of which reasonable restrictions could be invoked were available in the instant case.

35. It is evident from the record and elaborate discussion by the High Court that Mulkanoor Women Mutually Aided Milk Producers Co-operative Union Limited (W.P. No.3502 of 2006) increased its membership from 72 to 101 village dairy co-operative societies between 2000 and 2006, and increased milk procurement from 6000 litres to 17,849 litres from the value of Rs.24.24 lakhs to Rs.53.00 lakhs. The milk sales went up from Rs.9.30 lakhs to Rs.82.53 lakhs. The society declared bonus to the producers and substantially discharged its loans. It is encouraging thrift among the members by compulsorily organizing Vikasa Podupu scheme, which swelled from Rs.11.88 lakhs to Rs.1.13 crores. This society directly formed under the Act 1995 has to retain its character and there would be no justification to bring such a society with about 15,000 women members under a nominated agency.

36. The impugned provisions have no nexus with the object of enforcing the 3-tier structure inasmuch as (a) the 1964 and the 1995 Acts, both permit registration of Federations; (b) the Act 1964 does not contain any express provision providing for 3-tier structure; (c) the object of having a 3-tier structure could be achieved by the Federation

registering itself under the Act 1995 as decided at the meeting of cooperative milk unions convened by the Chief Secretary on 26.8.2003; and (d) even the Act 1964 does not treat Dairy Cooperatives as a separate class to be governed by a separate structure. As such from the stand point of structure and basic cooperative principles, all cooperative societies, are alike. The impugned provisions are arbitrary and violative of Article 14 as they deprived the Dairy Cooperative Societies of the benefit of the basic principles of cooperation. The amendments are contrary to the national policy on Cooperatives. They obstruct and frustrate the object of the development and growth of vibrant cooperative societies in the State.

37. After conversion into Mutually – Aided Societies under the Act 1995 with the permission of the Government as stipulated by Section 4 (3)(a), the cooperative societies originally registered under the Act 1964 cannot be treated as aided societies or societies holding the assets of the government or of the Federation. The Statement of Objects and Reasons itself shows that the government decided not to withdraw its own support suddenly. In fact, there was no aid given by the State after conversion. Chapter X of the Act 1964 which empowers the Registrar to recover dues by attachment and sale of property and execution of

orders having been expressly incorporated in the Act 1995 by Section 36, thereof there was no justification at all for the impugned Amendments.

38. After the incorporation of the cooperative principles in Section 4 of the A.P. Cooperative Societies Act, 1964 read with Rule 2(a) of the A.P. Cooperative Societies Rules, 1964, by Amendment Act No. 22 of 2001, the extensive control of cooperative societies by the Registrar under the Act 1964 has become incompatible and inconsistent with the said cooperative principles which mandate ensuring democratic member control and autonomy and independence in the manner of functioning of the cooperatives. These two, namely, extensive State control and ensuring operation of cooperative principles cannot be done at the same time. Therefore, the impugned Act 2006 which by a fiction in sub-section (1A) of Section 4 of the Act 1995 declares that all the dairy/milk cooperative societies shall be deemed to have been excluded from the provisions of the A.P. Cooperative Societies Act, 1964 is arbitrary and violative of Article 14 of the Constitution.

39. Comparative study of the statutory provisions of the Act 1964 with that of Act 1995 makes it crystal clear that Government has much more control over the co-operative societies registered under the Act

1964 and minimal under the Act 1995. The principles of co-operation adopted at international level have been incorporated in the Act 1995 itself, while no reference of any co-operative principle has been made in the Act 1964. The Government is empowered to make rules on every subject covered by the Act 1964, while no such power has been conferred on the Government to make rules under the Act 1995. The affairs of the co-operatives are to be regulated by the provisions of the Act 1995 and by the bye-laws made by the individual co-operative society. The Act 1995 provide for multiplicity of organisations and the statutory authorities have no right to classify the co-operative societies, while under the Act 1964 the Registrar can refuse because of non-viability, conflict of area of jurisdiction or for some class of co-operative. Under the Act 1964, it is the Registrar who has to approve the staffing pattern, service conditions, salaries etc. and his approval is required for taking some one from the Government on deputation, while under the Act 1995 the staff is accountable only to the society. Deputation etc. is possible only if a co-operative so desires. The size, term and composition of board fixed under the Act 1964 and the Registrar is the ultimate authority for elections etc. and he can also provide for reservations in the board. Under the Act 1995, the size,

term and composition of the board depend upon bye-laws of the particular society. For admission and expulsion of a member, Registrar is the final authority under the Act 1964, while all such matters fall within the exclusive prerogative of the co-operative society under the Act 1995. The Government and other non-members may contribute share capital in the societies registered under the Act 1964, wherein members alone can contribute share capital in a society registered under the Act 1995. Mobilisation of funds of co-operative society is permissible only within the limits fixed by the Registrar under the Act 1964, while such mobilisation is permissible within the limits fixed by the bye-laws in a co-operative society under the Act 1995. Subsidiary organisations may be up by a co-operative under the Act 1995, while it is not no permissible under the Act 1964. In resolving of disputes, Registrar or his nominee is the sole arbitrator under the Act 1964, while the subject is exclusively governed by the bye-laws under the Act 1995. Role of the Government and Registrar under the Act 1964 is much more than under the Act 1995 as under the Act 1964, the Registrar can postpone the elections; nominate directors to Board; can appoint persons in-charge for State level federations; frame rules; and handle appeals/revisions/reviews; can give directions to co-operatives

regarding reservations on staff and set up Special Courts and Tribunals, while so much control is not under the Act 1995. Similarly, Registrar has more say under the Act 1964 in respect of registering of bye-laws; approval of transfer of assets and liabilities or division or amalgamation or in respect of transfer of all members or disqualification of members etc.

40. Statement of objects and reasons of the Act 1995 clearly stipulate that State participation in the financing and management of cooperatives in the past had led to an unfortunate situation and the cooperative societies were not governed/guided by the universally accepted principles of cooperation. Thus, the purpose to enact the Act 1995 was to provide more freedom to conduct the affairs of the cooperative societies by its members. Clause 7 thereof clearly described the salient features of the legislation, *inter-alia*, to enunciate the cooperative principles which primarily place an assent on voluntarily self-financing autonomous bodies for removal from State control; to accept the cooperative societies to regulate their functioning by framing bye-laws subject to the provisions of the Act and to change the form or extent to their liability, to transfer their assets and liabilities

to provide for the constitution of board and functions of the board of directors.

Principles of co-operation as incorporated in Section 3 and given effect to in the other provisions of the Act 1995 permit better democratic functioning of the society than under the Act 1964. Whereas the Act 1995 provides for State regulation to the barest minimum, the Act 1964 provides for extensive State control and regulation of cooperative societies which is inconsistent with the national policy with regard to cooperative societies evolved in consultation and collaboration with the States which stands accepted by the State of A.P. and reflected in the Scheme of the Act 1995 which is based on the model law recommended by the Planning Commission of India.

Thus, reverting back to the cooperative societies under the Act 1964 is a retrograding process by which the government would enhance its control of these societies registered under the Act 1995. They would be deprived not only of benefits under the said Act, but rights accrued under the Act 1995 would also be taken away with retrospective effect.

41. Cooperative law is based on voluntary action of its members. Once a society is formed and its members voluntarily take a decision to get it registered under the Act X, the registration authority may reject the registration application if conditions prescribed under Act X are not fulfilled or for any other permissible reason. The registration authority does not have a right to register the said society under Act Y or even a superior authority is not competent to pass an order that the society would be registered under the Act Y. Such an order, if passed, would be in violation of the first basic cooperative principle that every action shall be as desired by its members voluntarily. Introducing such a concept of compulsion would violate Article 19(1)(c) of the Constitution of India. It is not permissible in law to do something indirectly, if it is not permissible to be done directly. (See: **Sant Lal Gupta & Ors v. Modern Co-operative Group Housing Society Ltd. & Ors.,** JT 2010 (11) SC 273)

42. Act 2006 had been enacted without taking note of the basic principles of co-operatives incorporated in Section 3 of the Act 1995 which provide that membership of a co-operative society would be voluntary and shall be available without any political restriction. The co-operative society under the Act would be a democratic organisation

as its affairs would be administered by persons elected or appointed in a manner agreed by members and accountable to them.

43. The legislature has a right to amend the Act 1995 or repeal the same. Even for the sake of the argument, if it is considered that legislature was competent to exclude the milk cooperative dairies from the operation of the Act 1995 and such an Act was valid i.e. not being violative of Article 14 of the Constitution etc., the question does arise as to whether legislature could force the society registered under the Act 1995 to work under the Act 1964. Importing the fiction to the extent that the societies registered under the Act 1995, could be deemed to have been registered under the Act 1964 tantamounts to forcing the members of the society to act under compulsion/direction of the State rather than on their free will. Such a provision is violative of the very first basic principles of cooperatives. More so, the Act is vitiated by non-application of mind and irrelevant and extraneous considerations.

44. In view of the above, we do not see any cogent reason to interfere with the impugned judgment and order. The appeals lack merit and are accordingly dismissed. No costs.

…….J.
(P. SATHASIVAM)

…….J.
(Dr. B.S. CHAUHAN)

New Delhi,
September 2, 2011