IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937

WA.NO. 2516 OF 2009 ( )

AGAINST JUDGMENT DATED 13.08.2009 IN W.P(C) NO.30854 OF 2007 OF THE HIGH COURT OF KERALA

APPELLANT(S)/PETITIONER:

CHIRAYINKEEZHU SERVICE CO-OPERATIVE BANK BANK LTD.NO.1155, CHIRAYINKEEZHU, REP. BY ITS SECRETARY.

BY ADV. SRI.LIJU. M.P

RESPONDENT(S)/RESPONDENTS:

1. K.SANTHOSH
RAILWAY STATION, CHIRAYINKEEZHU.

2. LABOUR COURT, KOLLAM.

R2 BY ADV. SRI.BECHU KURIAN THOMAS
R. BY ADV. SRI.PAUL JACOB (P)
R. BY ADV. SRI.ENOCH DAVID SIMON JOEL
R. BY ADV. SRI.S.SREEDEV
R. BY ADV. SRI.RONY JOSE
R. BY ADV. SRI.GEORGE A.CHERIAN
BY SPECIAL GOVERNMENT PLEADER SMT. GIRIJA GOPAL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 12.03.2015 ALONG WITH W.A. NOS.184 AND 764 OF 2010, THE COURT ON 14.09. 2015 DELIVERED THE FOLLOWING:

"C.R."

ASHOK BHUSHAN, C.J.,
THOTTATHIL B.RADHAKRISHNAN,
ANTONY DOMINIC, A.M. SHAFFIQUE
AND
ALEXANDER THOMAS, JJ.

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W.A. No.2516 of 2009,
W.A. No.764 of 2010
&
W.A. No.184 of 2010

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Dated this the 14th day of September, 2015

J U D G M E N T

(Ashok Bhushan, C.J. for himself and for A.M.Shaffique, J.)

This Larger Bench has been constituted on a reference dated 15.12.2014 made by a Three Judge Bench. While hearing the Writ Appeals, a Division Bench expressed its doubt regarding the correctness of an earlier Division Bench Judgment reported in **Thodupuzha Taluk General Marketing Co-operative Society v. Michael Sebastian** (2010 [1] KLT 938). The Division Bench referred the matter for consideration by a Full Bench vide its order dated 08.12.2010. Before the Division Bench in the Writ Appeals and Writ Petitions, the challenge was to the

proceedings/orders passed by the State Government and Labour Courts in exercise of the jurisdiction under the Industrial Disputes Act, 1947 (hereinafter referred to as "the 1947 Act"). Appellants/Writ Petitioners are Co-operative Banks, i.e., Central Co-operative Societies who challenged the orders/proceedings under the 1947 Act on the ground that the proceedings initiated by the employees of the Co-operative Societies under the 1947 Act are without jurisdiction since jurisdiction under the 1947 Act is excluded by virtue of Section 69 of the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as "the 1969 Act"). The Division Bench in **Thodupuzha Taluk General Marketing Co-operative Society v. Michael Sebastian** (supra) held that jurisdiction of the Arbitration Court under the 1969 Act and Industrial Tribunal and Labour Court under the 1947 Act is concurrent. The Division Bench expressed its doubt over the view taken in **Thodupuzha Taluk General Marketing Co-operative Society v. Michael Sebastian** (supra) in the following words:

"The question raised in the connected writ appeals is whether industrial dispute between the management of a society and an employee should be settled before the Labour Court or Industrial Tribunal to which it is referred by Government or whether it should be decided by the Arbitration Court under Section 69(2)(d) of the Co-operative Societies Act. A Division Bench of this Court in the decision in Thodupuzha Taluk General Marketing Co-op.Society v. Michael Sebastian reported in (2010 (1) K.L.T. 938) held that both the Industrial Tribunal and Co-operative Arbitration Court have concurrent jurisdiction for settling industrial disputes between management and workers of a society. This position is also supported by a earlier single Bench decision of this Court reported in Board of Directors, Edava Service Co-operative Bank v. The Co-operative Arbitration Court and others (2008 (3) K.L.J 267). It is seen from the judgments that the Government Pleader conceded before the Division Bench that the amendment introduced in the year 2000 under Section 69(2)(d) of the Co-operative Societies Act was not assented to by the President. However, before us, counsel appearing for the society and the Government Pleader submitted that amendment may be only clarificatory and even the original provision of Section 69 (1)(c) takes in industrial disputes between societies and employees and with these provisions of the Act got the assent of the President. Section 69(1)(c) of the Act will prevail over the provisions of the Industrial Disputes Act by virtue of the operation of Article 254(2) of the

> Constitution of India. We find force in the contention of the counsel because, if the amendment made in 2000 is only clarificatory in nature, then the original provision in the statue takes in all industrial disputes which have to be settled exclusively by Arbitration Courts constituted under the Co-operative Societies Act. Prima facie, we are not able to concur with the view expressed by the Division Bench that the Arbitration Court, Industrial Tribunal and Labour Courts have concurrent jurisdiction in the matter. In our view, if the provision of the Co-operative Societies Act is valid, then the Industrial Tribunal and Labour Court will not have jurisdiction in the matter and the jurisdiction of the Co-operative Arbitration Court will be exclusive by virtue of the operation of Article 254(2) of the Constitution. We, therefore, refer these cases for consideration by a Full Bench. Since counsel for the respondents pointed out that disputes are pending in various Forums, including Labour Court and the proceedings are stayed by this Court, we feel there is an urgent need to dispose of these cases by a Full Bench. The Registry will, therefore, take orders from the Honourable Chief Justice for decision of the issue by a Full Bench".

2. The Three Judge Bench was constituted in pursuance of the above reference made by the Division Bench. The Three Judge Bench noticed that there are two earlier Full Bench judgments of this Court which also needed

consideration before answering the issues raised. The Three Judge Bench thus formulated eight issues which have arisen before the Full Bench and framed one more question, i.e., issue No.ix as to whether the two earlier Full Bench judgments of this Court lay down the correct law? It is useful to re-produce the 9 Issues framed by the Three Judge Bench which are up for consideration before this Larger Bench:

> **(i) Whether Sec.69 the 1969 Act as enacted contemplate disputes relating to service between the Co-operative Society and its employees to be referred to Labour Court for decision?**
>
> **(ii) Whether Sec.69 as enacted intends to override any contrary provision in any law including the provisions of the 1947 Act by virtue of Sec.69(1) of the 1969 Act?**
>
> **(iii) Whether the 1969 Act was enacted with Presidential assent?**
>
> **(iv) Whether the Amendment Act 1 of 2000 by which amendments were made in Sec.69 of the 1969 Act are clarificatory in nature?**

(v) Whether the Amendments made in Sec.69 of the 1969 Act by the Amendment Act 1 of 2000 are repugnant to the provisions of the 1947 Act and hence inoperative?

(vi) Whether for entertaining a dispute regarding disciplinary proceedings against employees and officers of the Co-operative Bank both the Co-operative Arbitration Court as well as the Labour Court shall have concurrent jurisdiction?

(vii) Whether the Co-operative Arbitration Court alone has exclusive jurisdiction to decide the dispute pertaining to the disciplinary action initiated against the officers and employees of the Co-operative Bank and the Labour Court shall have no jurisdiction to entertain any such dispute?

(viii) Whether the Division Bench judgment of this Court in Thodupuzha Taluk General Marketing Co-operative Society v. Michael Sebastian (2010 [1] KLT 939) lays down the correct law?

(ix) Whether the Full Bench

judgments of this Court - Balachandran v. Deputy Registrar (1978 KLT 249 (F.B.) as well as M.U.Sherly v. President, Parappuram Milk Producers Co-operative Society Ltd. (2007 [1] KLT 809) lay down the correct law that under Sec.69 of the 1969 Act (unamended) the disputes of employees and officers of the Co-operative Societies regarding service matters cannot be adjudicated?

The Larger Bench concluded the hearing in these Writ Appeals and orders were reserved.

3. I had the advantage of going through the opinion prepared by esteemed Brother Justice Antony Dominic. Justice Antony Dominic in his elaborate opinion has concluded that jurisdiction of the Labour Court under the 1947 Act and that of the Arbitration Court under the 1969 Act regarding service matters of the employees of the Co-operative Societies are concurrent. The view expressed by the Division Bench in **Thodupuzha Taluk General Marketing Co-operative Society v. Michael Sebastian** (supra) has been re-iterated with further observation that the

earlier two Full Bench judgments do not require reconsideration. I regret my inability to agree with the above opinion, hence I proceed to consider the Issues in the following manner:

FACTS

4. Facts in brief giving rise to these Writ Appeals are: Reference of facts in W.P(C) No.12949 of 2010 (**The Pallichal Farmes Service Co-operative Bank Ltd. No.T-677, Thiruvananthapuram v. State of Kerala and Others)** shall be sufficient to decide the Issues raised before us. The parties shall be referred to as arrayed in W.P (C) No.12949 of 2010. The second respondent was an employee of the Bank whose service was terminated by the Bank by order dated 05.06.2007. Appeal filed to the Committee was also dismissed. The second respondent initiated process of conciliation under the 1947 Act. The Bank raised an objection that jurisdiction to entertain a dispute lie with the Co-operative Arbitration Court under Section 69 of the 1969 Act and jurisdiction under the 1947 Act is barred. The State Government by Order dated

30.12.2009 made a reference of the industrial dispute for adjudication before the Labour Court. The Labour Court issued summons to the Bank. Writ Petition No.12949 of 2010 was filed by the Pallichal Farmers Service Co-operative Bank praying for the following reliefs:

> "(i) Call for the records leading to Exhibit P5 and quash the same by issuing a writ of certiorari.
>
> (ii) To declare that the proceedings pending before the Labour Court, Kollam in I.D.7/2010 is ultravires to Section 69 of the KCS Act and hence not maintainable."

The above Writ Petition was dismissed by a learned Single Judge vide judgment dated 20.04.2010 relying on the judgments in **A.R. Nagar Service Co-operative Bank v. State of Kerala (2010 [1] KLT 55**) and **Thodupuzha Taluk General Marketing Co-operative Society v. Michael Sebastian** wherein it was held that both the Labour Court and the Co-operative Arbitration Tribunal have concurrent jurisdiction to entertain disputes raised by employees of the Co-operative Societies. Writ Appeal No.764 of 2010 has been filed against the above judgment of the learned Single Judge. Writ Appeal No.2516 of 2009 has been

filed against the judgment of the learned Single Judge dated 13.08.2009 in W.P(C) No.30854 of 2007 (**Chirayihkeezhu Service Co-operative Bank Ltd. No.115. v. K.Santhosh and Another)** by which Writ Petition the award of the Labour Court in favour of the employee of the Co-operative Society was challenged. The learned Single Judge while dismissing the Writ Petition relied on the judgment of the Apex Court in **Dharappa v. Bijapur Co-op. Milk Producers Societies Union Ltd ([2007] 9 SCC 109**) and held that the amendment in the 1969 Act in 2000 has not received the Presidential Assent, hence the Labour Courts will have jurisdiction to entertain industrial dispute between Co-operative Societies and their employees. Writ Appeal No.184 of 2010 has been filed by **A.R. Nagar Service Co-op. Bank Ltd., No.F.583** against **State of Kerala and Another** against the judgment dated 04.12.2009 passed in W.P(C) No.27909 of 2009 filed by **A.R. Nagar Service Co-op. Bank Ltd.** reported in **A.R. Nagar Service Co-op. Bank Ltd.** v. **State of Kerala** (2010 [1] KLT 55) in which Writ Petition order of the State Government dated

17.07.2009 referring the industrial dispute under the 1947 Act was under challenge. The Bank had dismissed the 3rd respondent therein after conducting enquiry. In the Writ Petition apart from challenging the order of reference, a declaration was also sought that Section 69 of the 1969 Act excluded the jurisdiction of all other court/authorities in the matter of adjudicating disputes between an employee/past employee of a Society that arises in the course of the employment. The learned Single Judge dismissed the Writ Petition holding that since none of the books contained any reference to Presidential assent while enacting the 1969 Act, jurisdiction of Labour Court and Industrial Tribunal cannot be excluded.

5. From the above it is clear that the main issue which arise for consideration in all the Writ Appeals is as to whether jurisdiction of the Labour Court under the 1947 Act is barred under the 1969 Act or whether both the Labour Court and Co-operative Arbitration Court have concurrent jurisdiction regarding service disputes of the employees of the Co-operative Societies.

SUBISSIONS

6. Learned counsel for the appellants representing different Co-operative Banks which are Central Co-operative Banks under the 1969 Act contended that the 1969 Act having been enacted with the Presidential assent, provisions of the 1947 Act are overridden and excluded. By virtue of Article 254 (2) of the Constitution of India, jurisdiction to entertain dispute between the employees and Co-operative Societies shall be in accordance with the Forum provided under the 1969 Act. It is submitted that the definition of the word 'dispute' in Section 2(i) of the 1969 Act is comprehensive to include all disputes between the Society or its Committee and Officers/past Officers or employees/past employees of the Society. Officers and employees are part of the 'establishment' and the dispute pertaining to the 'establishment' having been included in definition 2(i), the Forum provided under the Societies Act shall encompass such dispute. Provisions of the 1969 Act as enacted clearly indicate that the said provisions were given overriding effect to any other contrary law regarding

settlement of disputes. Section 69(1) of the 1969 Act begins with a non-obstante clause 'Notwithstanding anything contained in any law for the time being in force'. Further Section 69(1) after enumerating various kinds of disputes provides that 'such disputes shall be referred to Registrar for decision and no court shall have jurisdiction to entertain any suit or such proceedings in respect of such dispute.' The 1969 Act was amended by Act 1 of 2000 enforced with effect from 02.01.2003 where specifically by Section 69(2)(d) dispute arising in connection with employees and Officers of the Co-operative Societies has been deemed to be disputes within the meaning of Section 69(1). The amendment has been incorporated to explain and clarify the intendment of the statutory scheme which was already delineated by the 1969 Act as originally enacted. It is submitted that there was no necessity to obtain any Presidential assent for amendment Act 1 of 2000 since the Amendment Act 1 of 2000 was not impinging any provision of 1947 Act, the said Act having already been overridden by the 1969 Act. It is submitted that in view of the provision of Section 69 of the 1969 Act

proceedings under the 1947 Act is barred and the learned Single Judge in dismissing the Writ Petition filed by the Co-operative Society committed error. It is submitted that all decisions rendered by the Single Bench, Division Bench and Full Bench taking contrary view does not lay down the correct law.

7. Learned counsel for the respondents-employees refuting the submissions of the learned counsel for the appellants contended that disciplinary proceedings against the employees of the Co-operative Societies were never covered by the provisions of the 1969 Act. It is submitted that definition of the dispute as given in Section 2(i) does not contemplate the dispute regarding service matters of the employees of the Co-operative Society hence there was no occasion for making a reference of service dispute under Section 69(1) of the 1969 Act, the said dispute being not within the ambit of Section 69 of the 1969 Act. It is submitted that jurisdiction of the Labour Court under the 1947 Act is available for employees of the Societies who are workmen within the meaning of the 1947 Act and no error

was committed by the State Government in making reference under the 1947 Act and no error can also be found in the award rendered by the Labour Court. Learned Single Judge rightly dismissed the Writ Petition filed by the Co-operative Banks. It is submitted that for the first time service dispute between the employees of the Society has been brought within the purview of the Section 69(1), by Amendment Act 1 of 2000 which amendment having not been enacted with the Presidential assent jurisdiction of the Labour Court cannot be held to be barred. The 1947 Act being a Parliamentary enactment under the concurrent list, provisions brought by Amendment Act 1 of 2000 cannot have overriding effect over the 1947 Act in the absence of Presidential assent. Amendments brought by Act 1 of 2000 is not clarificatory in nature and are amendments by which substantive changes in law have been brought. The provisions of the 1947 Act are more beneficial to the employees of Co-operative Societies.

8. Smt.Girija Gopal, learned Special Government Pleader submitted that the 1969 Act was enacted with

Presidential assent. Kerala Gazette dated 11.04.1969 has been placed before us by the learned Special Government Pleader which contains recital that "the Bill as passed by the Legislative Assembly has received the Presidential assent on 09.04.1969." It is submitted that the 1969 Act as originally enacted clearly envisaged the comprehensive procedure for settlement of disputes and expressly overrides any contrary provisions in any other law which clearly means that provisions of the 1947 Act stood overridden by virtue of the express intendment of the 1969 Act. Referring to Amendment Act 1 of 2000 it is submitted that the Amendment Act do not require any Presidential assent and further new provisions substituted by Act 1 of 2000 shall have retroactive effect.

9. Learned counsel for the parties in support of their submissions have referred to various decisions of this Court and the Apex Court which shall be referred to while considering the submissions in detail.

10. All the Issues being interconnected are taken together.

DISCUSSION

11. For considering the various Issues as noted above, it is useful to refer to the relevant statutory provisions regulating the field in the State of Kerala which shall throw considerable light for arriving at correct conclusion. The 1969 Act was enacted to consolidate, amend and unify the law relating to Co-operative Societies in the State of Kerala. The Act was published in the Kerala Gazette dated 11.04.1969. The Bill as passed by the Legislative Assembly received the assent of the President on 09.04.1969. Act 21 of 1969 enacted by the State Legislature is referable to List II under entry 32 which includes "Co-operative Societies." At the time of enactment of the 1969 Act, Parliamentary enactment, i.e., the 1947 Act which is referable to List III - Concurrent List, entry 22: provided for "Trade Unions; industrial and labour disputes". The 1947 Act was enacted by the Parliament to make provisions for the settlement of industrial disputes and for certain other purposes.

12. By Section 110 of the 1969 Act, earlier two enactments operating in the State relating to Co-operative

Societies have been repealed. The Madras Co-operative Societies Act, 1932 was in force in the Malabar District whereas the Trav.-Cochin Co-operative Societies Act, 1951 was operating in the rest of the area. For interpreting a statutory provision an earlier pari materia enactment can always be used as external aid to interpret the legislation. What was the statutory scheme of the 1932 and 1951 Acts thus is relevant to be noted which shall throw considerable light while interpreting the provisions of the 1969 Act. We shall note the relevant provisions and scheme of both the above Acts with regard to settlement of disputes which are up for consideration in these Writ Appeals.

13. The 1932 Act did not define dispute. Section 51 contains the heading “Arbitration”. Section 51(1) which contained a provision for reference of the dispute to the Registrar for decision was as follows:

> “(1) "If any dispute touching the business of a registered society (other than a dispute regarding disciplinary action taken by the society or its committee against a paid servant of the society) arises--
>
> (a) among members, past members and persons

claiming through members, past members and deceased members, or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or servant of the society or,

(c) between the society or its committee and any past committee, any officer, agent or servant or any past officer, past agent or past servant, or the nominee, heirs or legal representatives of any deceased officer, deceased agent or deceased servant of the society."

Section 51(2) provided that the Registrar on receipt of the such reference either may decide the dispute himself or transfer the same to another person who has been invested by the State Government with powers in that behalf. Under Section 51(5), the Registrar was empowered to revise any decision of the Arbitrator or Arbitrators to whom the dispute was referred. Section 51(6) provided that any decision by the Registrar under clause (a) of sub-section (2) or order under sub-section (5) shall be final and shall not be called in question in any court. Section 51(5) and (6) is quoted below:

"5. The Registrar, may, of his own motion or on the application of a party to a reference, revise any decision thereon

by the person to whom such reference was transferred or by the arbitrator or arbitrators to whom it was referred.

6(a) Any decision that may be passed by the Registrar under clause (a) of sub-section (2) or under sub-section (5) shall be final and shall not be called in question in any civil or revenue court.

(b) Any decision that may be passed by the person to whom a reference is transferred or by the arbitrator or arbitrators to whom it is referred shall, save as otherwise provided in sub-section (5), be final and shall not be called in question in any civil or revenue court.

To the similar effect are the provisions of 1951 Act. Section 60(1) is the same provision as contained in Section 51(1) of the 1932 Act. Section 60(1) is quoted as follows:

"(1) "If any dispute touching the business of a registered society (other than a dispute regarding disciplinary action taken by the society or its committee against a paid servant of the society) arises--

(a) among members, past members and persons claiming through members, past members and deceased members, or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or servant of the society or,

(c) between the society or its committee and any past committee, any officer, agent or servant or any past officer, past agent or past servant, or the nominee, heirs or legal

representatives of any deceased officer, deceased agent or deceased servant of the society, or

(d) between the society and any other registered society,

such dispute shall be referred to the Registrar for decision."

Section 60(5) empowered the Registrar to revise any decision of Arbitrator or Arbitrators to whom it was referred. Section 61 provides for finality of the decision of the Registrar subject to decision by the Government under Section 86. Section 61 is quoted as follows:

"61. Any decision passed by the Registrar under clause (a) of sub-section (2) of Section 60 or under sub-section (5) of the same section or in case the said decision has been revised by Government under Section 86, the order of Government, as the case may be, shall be final and shall not be called in question in any civil court.

2. Any decision that may be passed by the person to whom a reference is transferred or by the arbitrator or arbitrators to whom it is referred under sub-section (2) of Section 60 shall, save as otherwise provided in sub-section (5) of Section 60 shall, save as otherwise provided in sub-section (1) of this Section, be final and shall not be called in question in any civil court."

Section 86 empowered the Government and Registrar to call for and examine the record of any inquiry or the proceedings of any officer subordinate to them.

14. Now we refer to the provisions of the 1969 Act. Section 2 of the 1969 Act is the definition clause which defines 'dispute' by Section 2(i) in the following manner:

> "2(i) "dispute" means any matter touching the business, constitution, establishments or management of a society capable of being the subject of litigation and includes a claim in respect of any sum payable to or by a society, whether such claim be admitted or not".

15. The above definition indicated that the matter touching the (i) business; (ii) constitution; (iii) establishment or (iv) management of a Society capable of being the subject of litigation have been included in the definition. One of the words used in Section 2(i) is '**establishment**'. Whether the dispute between the Society and its employees is a dispute touching the establishment is the key question to be answered. Chapter XII of the 1969 Act contains the heading "Establishment". Section 80 under the heading "Establishment" provides as follows:

> "**CHAPTER XII**
>
> **ESTABLISHMENT**
>
> **80. Officers, etc. of co-operative societies.-** (1) The Government shall classify the societies in the State according to

their type and financial position.

(2) the Government shall, in consultation with the State Co-operative Union, fix or alter the number and designation of the officer and servants of the different classes of societies specified in sub-section (1).

(3) The Government shall, in consultation with the State Co-operative Union, make rules regulating the qualification, remuneration, allowances and other conditions of service of the officers and servants of the different classes of societies specified in sub-section (1)."

16. The most important provision of the 1969 Act is Section 69 which is contained in Chapter IX with heading "Settlement of Disputes". Section 51 of the 1932 Act and Section 60 of the 1951 Act which were repealed by the 1969 Act have been re-enacted as Section 69 with certain changes. Section 69(1) is as follows:

"**69. Disputes to be referred to Registrar**.- (1) Notwithstanding anything contained in any law for the time being in force, if a dispute arises,-

(a) among members, past members and persons claiming through members, past members and deceased members; or

(b) between a member, past member or person claiming through a member, a past member or deceased member and the society, its committee or any officer, agent or employee of the society; or

(c) between the society or its committee and any past

committee, any officer, agent or employee or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the society; or

(d) between the society and any other society; or

(e) between a society and the members of a society affiliated to it ; or

(f) between the society and a person, other than a member of the society, who has been granted a loan by the society or with whom the society has or had business transactions or any person claiming through such a person; or

(g) between the society and a surety of a member, past member, deceased member or employee or a person, other than a member, who has been granted a loan by the society, whether such a surety is or is not a member of the society; or

(h) between the society and a creditor of the society, such dispute shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute."

As per Section 70, the Registrar has to decide the dispute himself or refer it to the Arbitrator. As per Section 70 decision of the Registrar or Arbitrator is final subject to Section 82. Chapter XIII of the 1969 Act include various matters under the heading "appeals, revision and review". Section 81 provides for constitution of Tribunal. Section 82 provides for appeal to the Tribunal. An order passed by the

Registrar or Arbitrator under Section 70(3) was made appealable under Section 82. Power of revision was also conferred to the Tribunal under Section 84. Section 85 provided for power of review by the Tribunal. Government has also been given power of revision under Section 87. The Tribunal has also been empowered to exercise various powers of a civil court by Section 98 of the 1969 Act. Section 100 create a bar of jurisdiction. Sections 98 and 100 are to the following effect:

> "98. **Tribunal, Registrar, etc. to have certain powers of civil court**.- (1) In exercising the functions conferred on it or him by or under this Act, the Tribunal, the Registrar, the arbitrator or any other person deciding a dispute and the liquidator of a society shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely:-
>
> (a) summoning and enforcing the attendance of any person and examining him on oath;
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> (b) requiring the discovery and production of any document;
>
> (c) receiving evidence on affidavits; and
>
> (d) issue commissions for examination of witnesses.
>
> (2) In the case of any affidavit, any officer appointed by the Tribunal, the Registrar, the arbitrator or any other person deciding a dispute or the liquidator, as the case may be, in this

behalf may administer the oath to the deponent.

100. **Bar of jurisdiction of courts**.- No civil or revenue court shall have any jurisdiction in respect of any matter for which provision is made in this Act."

17. The 1969 Act thus contained changes in the statutory scheme as contained in the 1932 and 1951 Acts. It is relevant to note the noticable changes in the 1969 Act which are as follows:

(1) As noted above, Section 51 of the 1932 Act and Section 61 of the 1951 Act expressly excluded **"a dispute regarding disciplinary action taken by the society or its committee against a paid servant of the society"**. Disciplinary action thus against an employee was not under the scope of reference to the Registrar under the earlier enactments. Section 69 has done way with the above exception.

(2) The 1932 and 1951 Acts made the order of the Registrar/Arbitrator as final subject to power of revision. Under the 1951 Act a provision empowering the State Government to revise the order of the Registrar was included. There was no Forum provided for an appeal

against the order of the Registrar under the earlier enactments. The 1969 Act contemplates establishment of a Tribunal under Section 81. The 1969 Act thus provided a right of appeal to the Tribunal which has also been invested with certain powers of the civil court. Provision of revision and review was also provided for by the 1969 Act as noted above. Thus the 1969 Act has envisaged a complete mechanism for settlement of disputes including right of appeal and revision.

(3) Section 51 of the 1932 Act and Section 60 of the 1951 Act did not contain a non-obstante clause nor there was an injunction that such dispute shall not be entertained by any court. Section 69(1) begins with a non-obstante clause, i.e., “Notwithstanding anything contained in any law for the time being in force”. Further in the same Section 69 (1) after sub-clause (h) it was provided that “no court shall have jurisdiction to entertain any suit or proceeding in respect of such dispute.” Provision of 1969 Act expressly excluded jurisdiction of other courts to entertain a dispute which is to be referred under Section 69 whereas there was

no such exclusion in the 1932 and 1951 Acts rather dispute regarding disciplinary action against a paid servant were expressly excluded from reference to Registrar which permitted employees to avail other Forum including Forum under the 1947 Act.

18. The 1969 Act thus contained a changed statutory scheme pertaining to settlement of disputes. It is well established rule of statutory interpretation that the changes made in the Statute have to be accepted as deliberate to qualify or enlarge the pre-existing law. In **Lalu Prasad Yadav v. State of Bihar** (([2010] 5 SCC 1) the following was laid down by the Apex Court in paragraphs 36 and 39:

> "36. .....It is familiar rule of construction that all changes in wording and phrasing may be presumed to have been deliberate and with the purpose to limit, qualify or enlarge the pre - existing law as the changes of the words employ. Any construction that makes exception (clause) with which section opens unnecessary and redundant should be avoided.
>
> 39. However, if the latter statute does not use the same language as in the earlier one, the alteration must be taken to have been made deliberately. In his classic work, Principles of Statutory Interpretation by G. P. Singh, 12th Edition, 2010 at page 310, the following statement of law has been made:
>
> 'Just as use of same language in a later statute as was used in an

> earlier one in pari materia is suggestive of the intention of the Legislature that the language so used in the later statute is used in the same sense as in the earlier one, change of language in a later statute in pari materia is suggestive that change of interpretation is intended.' The learned author also refers to the observations of Lord MacMillan in D. R. Fraser & Co. Ltd. v. The Minister of National Revenue, AIR 1949 PC 120 : 'When an amending Act alters the language of the principal Statute, the alteration must be taken to have been made deliberately.'"

19. The submission, which has been pressed by the learned counsel appearing for the respondents- employees is that the definition of the word 'dispute' under Section 2(i) does not contemplate dispute pertaining to service matters of employees of Co-operative Societies. It is submitted that service dispute of the employees cannot be regarded as the dispute touching the business, constitution, establishment or management of the Society. The word 'dispute' has been defined in P.Ramanathan's Law Lexicon in the following manner:

> "A conflict or contest; sometimes used in the sense of controversy. "Controversy, debate, heated contention, quarrel, difference of opinion."

20. As per Section 80 of the 1969 Act, the word

'establishment' consists of the officers and employees of Co-operative Societies. Section 80(2) makes the specific reference to the number and designation of the officers and servants of different classes of Co-operative Societies. Thus, the officers and servants of the Society are part of the establishment as per the statutory scheme of the 1969 Act. Section 80(3) further provides that the Government shall make Rules regulating the qualification, remuneration, allowances and other conditions of service of the officers and servants of the different classes of Societies. Thus, the statute also contemplates making of rules regulating the conditions of service of officers and servants, who are part of the establishment.

21. When the officers and servants are part of the establishment and the Statute provides for Rules regulating their conditions of service, it can be safely concluded that dispute touching establishment, i.e., touching the officers and servants of the society squarely falls within any matter touching the establishment of a Society.

22. A judgment of the Apex Court reported in **Co-**

operative Central Bank Ltd. and others v. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad and others (AIR 1970 SC 245) had been relied on by the learned counsel for the respondents, wherein the Apex Court had occasion to consider the provision of Section 61 of the Andhra Pradesh Co-operative Societies Act, 1964. Section 61 (1) provided as follows:

> *"61.* ***Disputes which may be referred to the Registrar****:-*
>
> (1) Notwithstanding anything in any law for the time being in force, if any dispute touching the constitution, management or the business of a society, other than a dispute regarding disciplinary action taken by the society or its committee against a paid employee of the society, arises - (a) among members, past members and persons claiming through members, past members and deceased members; or
>
> (b) between a member, past member or person claiming though a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society; or
>
> (c) between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heir or legal representative of any deceased officer, deceased agent, or deceased employee of the society; or
>
> (d) between the society and any other society; such dispute shall be referred to the Registrar for decision."

In the above case an industrial dispute between the Co-operative Central Banks and their workmen was referred by the government of Andhra Pradesh to the Industrial Tribunal. The subject matter of the dispute consisted of service conditions and transfer of employees. One of the objections raised on behalf of the Bank was that the provisions of the Andhra Pradesh Co-operative Societies Act exclude the jurisdiction of the Industrial Tribunal to deal with the same dispute under the Industrial Disputes Act. In the above case, the Apex Court considered the expression “touching the business of the Society”. Referring to two earlier judgments, the Apex Court held as follows:

> “It is true that Section 61 by itself does not contain any clear indication that the Registrar cannot entertain a dispute relating to alteration of conditions of service of the employees of a registered society; but the meaning given to the expression "touching the business of the society", in our opinion, makes it very doubtful whether a dispute in respect of alteration of conditions of service can be held to be covered by this expression. Since the word "business" is equated with the actual trading or commercial or other similar business activity of the society, and since it has been held that it would be difficult to subscribe to the proposition that whatever the society does or is necessarily required to do for the purpose of carrying out its objects, such as

> laying down the conditions of service of its employees, can be said to be a part of its business, it would appear that a dispute relating to conditions of service of the workmen employed by the society cannot be held to be a dispute touching the business of the society."

23. In the present case the submissions pressed by the learned counsel for the appellant is not on the basis of the expression 'touching the business of Society', rather, dispute regarding service matters of employees is sought to be included in the term 'establishment'. The Apex Court in ***Central Bank Co-operative Bank (supra)*** thus held that the dispute pertaining to service conditions of employees was not covered by Section 61, hence it was held that consequently the reference to the Industrial Tribunal was competent. The above case is not applicable in the present case, since Section 2(i), which defines the word 'dispute' is wider in term than the definition of the word 'dispute' given in Section 61(1) of the Andhra Pradesh Co-operative Societies Act.

24. From the above discussion, the conclusion is irresistible that the definition of the word 'dispute' given in

Section 2(i), which encompasses in itself matter touching the establishment shall as per a statutory scheme include the dispute touching the establishment, i.e., touching the officers and servants of the Co-operative Societies, since the officers and servants of Co-operative Societies are part of the establishment.

25. Discontinuation of the exception as engrafted in Section 51 of the 1932 Act and Section 60 of the 1951 Act, i.e., “other than the dispute regarding disciplinary action taken by the society or its committee against the paid servant of the society” clearly intends that such disputes now are within the fold of Section 69(1). The above conscious change in the statutory scheme speaks for itself and cannot be ignored. Conscious change in the statutory scheme has to be given its full effect for implementing the provisions of the 1969 Act.

26. The 1969 Act as enacted contained Chapter IX, “Settlement of Disputes”. Section 69(1) provided that notwithstanding anything contained in any law for the time being in force, if a dispute arises as enumerated in Section

69(1) the same shall be referred to the Registrar for decision and no Court shall have jurisdiction to entertain any suit or other proceedings in respect of the said dispute.

27. The main issue before us is as to whether the provisions of Section 69 of the 1969 Act excludes the jurisdiction of the Labour Court under the Industrial Disputes Act, 1947 (hereinafter referred to as 'the 1947 Act'). As noted above, the 1947 Act was an existing law made by Parliament in reference to the concurrent list where a Forum has been provided to a workman working in an industry to raise an industrial dispute under the 1947 Act and avail the forum and benefits as provided in the 1947 Act. Whether there was any conflict between the Forum provided for dispute under the 1969 Act and those provided under the 1947 Act is the question to be looked into.

28. As per Article 254 of the Constitution of India, if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters

enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void. Article 254(2) provides that where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State. The 1969 Act was enacted with the Presidential assent as noted above. By virtue of Article 254 (2) of the Constitution, the provisions of the 1969 Act shall prevail in the state notwithstanding anything inconsistent in the Industrial Disputes Act, 1947.

29. The issue of inconsistency between the provisions of the Co-operative Societies Act enacted by different States in the country in context of the provisions of the 1947 Act has come up for consideration before the Apex Court in large

number of cases. The judgment of the Apex Court in ***Co-operative Central Bank Ltd.'s case*** (supra) was a case where the above issue came up for consideration. The Apex Court in the above case has held that the Act is an enactment passed by the State Legislature which received the assent of the President, so that, if any provision of a Central Act, including the Industrial Disputes Act, is repugnant to any provision of the Act, the provision of the Act will prevail and not the provision of the Central Industrial Disputes Act. The following was observed by the Apex Court in paragraph 2 of the judgment:

> "2. ....It is no doubt true that the Act is an enactment passed by State Legislature which received the assent of the President, so that, if any provision of a Central Act, including the Industrial Disputes Act, is repugnant to any provision of the Act, the provision of the Act will prevail and not the provision of the Central Industrial Disputes Act. The general proposition urged that the jurisdiction of the Industrial Tribunal under the Industrial Disputes Act will be barred if the disputes in question can be competently decided by the Registrar under Section 61 of the Act is, therefore, correct and has to be accepted. The question, however, that has to be examined is whether the industrial dispute referred to the Tribunal in the present cases was such as was required to be referred to the Registrar and to be decided by him under Section 61 of the

Act."

30. The judgment of the Apex Court in **Dharappa v. Bijapur Coop. Milk Producers Societies Union Ltd.** (supra) was a case where the Apex Court had occasion to consider the Karnataka Co-operative Societies Act, 1959. A similar dispute regarding the jurisdiction of the Labour court under the Industrial Disputes Act, 1947 and under the Forum provided by the Karnataka Co-operative Societies Act came up for consideration. The above case in detail shall be noted a little later. The Apex Court in the above case has clearly laid down that in case a State Legislation has been enacted with Presidential assent, it shall override any inconsistent provision in the Industrial Disputes Act, 1947. The following was laid down in paragraph 12 of the judgment:

> "12. 'Co-operative societies' fall under Entry 32 of the State List. "Industrial and labour disputes" fall under Entry 22 of the Concurrent List. Industrial Disputes Act, 1947 is an "existing law" with respect to a matter enumerated in the Concurrent List, namely, industrial and labour disputes. A dispute between a co-operative society and its employees in regard to terms of employment, working conditions and disciplinary action, is an industrial and labour dispute squarely covered by an existing law (ID Act), if the

employees are 'workmen' as defined in the ID Act. Clause (1) of Article 254 provides that if any provision of a law made by a State Legislature is repugnant to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the existing law shall prevail, and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void. Clause (2) of Article 254, however, provides that where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List, contains any provision repugnant to an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State. The question of repugnancy can arise only with reference to a legislation made by Parliament falling under the Concurrent List or an existing law with reference to one of the matters enumerated in the Concurrent List. If a law made by the State Legislature covered by an Entry in the State List incidentally touches any of the entries in the Concurrent List, Article 254 is not attracted. But where a law covered by an entry in the State List (or an amendment to a law covered by an entry in the State List) made by the State Legislature contains a provision, which directly and substantially relates to a matter enumerated in the Concurrent List and is repugnant to any provision of an existing law with respect to that matter in the Concurrent List then such repugnant provision of the State law will be void. Such a provision of law made by the State Legislature touching upon a matter covered by the Concurrent List, will not be void if it can co-exist and operate without repugnancy with the provisions of the existing law. What is stated above with reference to an existing law, is also the position with reference to a law made by the Parliament. Repugnancy is said to arise when : (i) there is

> clear and direct inconsistency between the Central and the State Act; (ii) such inconsistency is irreconciliable, or brings the State Act in direct collision with the Central Act or brings about a situation where obeying one would lead to disobeying the other. If the State Legislature, while making or amending a law relating to co-operative societies, makes a provision relating to labour disputes falling under the Concurrent List, then Article 254 will be attracted if there is any repugnancy between such provision of the State Act (MCS Act) with the existing law (ID Act). We will have to examine the issue in this case keeping the above legal position in mind."

31. We have to find out from the statutory scheme in the 1969 Act as to whether the provision of settlement of disputes as contained in the 1969 Act intended to exclude the provision of settlement as contained in the Industrial Disputes Act, 1947?

32. We refer back to Section 69(1) of the 1969 Act, which begins with a non-obstante clause, i.e., "**Notwithstanding anything contained in any law for the time being in force**". Thus, the above provision clearly indicates that the provision of settlement of disputes as envisaged under Section 69 was to prevail notwithstanding anything contained in any law for the time being in force. Justice G.P.Singh in the Statutory Interpretations, 13th Edition,

while elaborating interpretation of non-obstante clause said as follows:

> "A clause beginning with 'notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force', is sometimes appended to a section in the beginning, with a view to give the enacting part of the section in case of conflict an overriding effect over the provision or Act mentioned in the non-obstante clause. It is equivalent to saying that in spite of the provision or Act mentioned in the non obstante clause, the enactment following it will have its full operation or that the provisions embraced in the non obstante clause will not be an impediment for the operation of the enactment. Thus a non-obstante clause may be used as a legislative device to modify the ambit of the provision or law mentioned in the non-obstante clause or to override it in specified circumstances.

33. The use of non-obstante clause in Section 69 is with a purpose and object. The Co-operative Societies Act being a self contained and composite Act, providing for a complete mechanism of settlement of disputes, the Legislature intended that the provision of settlement of disputes as contained in Chapter IX shall override any other law for the time being in force.

34. The Apex Court had occasion to consider the

statutory provision beginning with non-obstante clause in **Orient Paper and Industries Ltd. and another v. State of Orissa and others** ([1991] Supp. 1 SCC 81). In the Orissa Forest Produce (Control of Trade) Act, 1981 amendment was made substituting Section 5(1) with non-obstante clause. The Apex Court held that the words "any provision to the contrary in any other law law" has been overridden by Section 5(1) has to be given widest amplitude which engulfed all rules having the force of law. The following was laid down in paragraphs 11 and 12:

> "11. During the pendency of the proceed. rigs in this Court, Act 22 of 1981 was amended by Act 4 of 1989 with retrospective effect. Subsequent to this amendment. Writ Petition No. 1132 of 1988 was amended. S.2 of the Amending Act provides:
>
> "2. In S.5 of the principal Act, for sub-s.(1) excluding clause (b) and the explanations thereunder, the following shall be substituted, namely:-
>
> '5. (1) Notwithstanding any provision to the contrary in any other law, on the issue of a Notification under sub-s.(3) of S.1 in respect of any area,-
>
> (a) all contracts for the purchase, sale, gathering or collection of specified forest produce grown or found in the said area and all grants of profits a prendre including the right to enter upon the land, fell, cut and remove the specified forest produce from the

said area, shall stand rescinded, whether such forest produce is grown or found on land owned by private persons or on land owned by the State Government or in Government forests provided that rescission of such contracts and grants shall not affect the customary rights, if any, of the local Tribals to gather and collect the specified forest produce;

....."

This amendment, beginning with the non obstante clause, provides that, on the coming into force of Act 22 of 1981 by notification issued under S.1 (3), all contracts relating to any specified forest produce for the purchase, sale, collection etc., including grants of profits a prendre, whether such produce is grown or found private land or on Government land or in Government forest, would stand rescinded, but such rescission would not affect customary right, if any, enjoyed by the local tribals to gather and collect specified forest produce.

12. This sub-section overrides "any provision to the contrary in any other law". These words are an expression of the widest amplitude engulfing all rules having the force of law, whichever be the source from which they emanate ' statutory, judicial or customary - the only exception, in the context, being the Constitution of India. This means, once brought into force the sub-section will, subject to the Constitution, operate with full vigour, notwithstanding any statute or judicial decision or any other rule recognising any right or interest or grant inconsistent with or contrary to the provisions of the sub-section."

35. There is one more indication in Section 69(1) of the 1969 Act itself, which clearly indicates that the State Legislation intended that settlement of any dispute as

referred to under Section 69(1) read with Section 2(i) shall not be taken by any other Court. The last portion of Section 69(1) reads that “such dispute shall be referred to the Registrar for decision and no Court shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute”. The Legislature intended that no court shall have jurisdiction to entertain any suit or other proceedings. As noted above, Section 100 of the Act, which provides for the bar of jurisdiction of courts reads, “no civil or revenue court shall have any jurisdiction in respect of any matter for which provision is made in the Act”, but, while enacting the provision of Section 69(1), the Legislature used the phrase 'no Court'. There is a clear intendment of excluding the jurisdiction of all Courts. The statutory scheme does not thus indicate that the jurisdiction of the Labour Court under the Industrial Disputes Act, 1947 to take cognizance of dispute falling within the Industrial Disputes Act regarding employees or workmen in the Co-operative Society, was exempted from such exclusion. Section 69(1) does not admit any exception regarding jurisdiction of the forum provided under Section 69.

As noted above the exception provided for in the 1932 Act and 1951 Act in the words “other than a dispute regarding disciplinary action taken by the society or its committee against a paid servant of the society” was withdrawn and not continued in the settlement of Dispute as delineated by Section 69 of the Act. As noted above, the Co-operative Societies Act, 1969 contains the provision for settlement of disputes including right of appeal, revision and the procedure. Detailed provisions have also been laid down in the 1969 Rules. Some powers of the Civil Court while deciding a dispute under Section 70 has also been specifically given. The 1969 Act and the Rules provided for a complete mechanism for settlement of disputes. Hence, the Legislature intended to exclude the jurisdiction of all Courts in the context of settlement of disputes. The Industrial Disputes Act, 1947 having provided for settlement of disputes of workmen, the Forum so provided under the Industrial Disputes Act, 1947 is clearly inconsistent with the forum provided for under Section 69 of the 1969 Act. The provisions of the 1969 Act as noted above clearly indicate that the object and purpose of

the provision was to exclude and override any other Forum for settlement of disputes including the Forum of Labour Court as provided under the Industrial Disputes Act, 1947. As noted above, the 1969 Act having been enacted with the Presidential assent, the Act clearly intended to do away with the forum provided under the Industrial Disputes Act, 1947. The provisions of Section 69 are clear and unambiguous and full effect has to be given to the plain and ordinary meaning of the words used therein.

36. There is one more reason for not accepting the submission of the learned counsel for the respondents that service disputes of Officers and employees cannot be referred under Section 69 of the 1969 Act. In case the submission of learned counsel for the appellants that service disputes pertaining to employees and Officers of a Co-operative Society are covered by the definition in Section 2(i) and competent to be referred under Section 69, the statutory scheme of the 1969 Act does not indicate any classification with regard to service disputes relating to employees and that of Officers. There is no denial to the fact

that Officers of the Co-operative Society cannot take recourse to the provisions of the 1947 Act. Can the Statutory Scheme be read in a manner as to exclude the service disputes of the employees from the purview of Section 69 although Section 69 can be availed by the Officers of the Society who cannot invoke the 1947 Act? The answer is obviously no. Either service disputes of Officers and employees are referable under Section 69 or not at all. In event it is accepted that service disputes of the employees and Officers cannot be referred to under Section 69, there is no Forum provided by the 1969 Act for the service disputes of the Officers in view of the jurisdiction of the civil court having been excluded, it cannot be assumed that by providing comprehensive mechanism for settlement of disputes the Legislature would have left out the service disputes of the Officers from the purview of the 1969 Act. This lead to the conclusion that Section 69 did not create any exception permitting the employees to raise their service disputes under the 1947 Act. Service disputes of both Officers and employees of the Co-operative Society were

contemplated to be referred under Section 69 of the 1969 Act.

37. Now we proceed to note the amendments made in Section 69 of the 1969 Act by Act 1 of 2000. By the Amendment Act 1 of 2000, Section 69, 70, 70A and 70B were substituted. The Amending Act was given effect to with effect from 02.01.2003. Section 69(1) and (2) in so far as relevant for the present case are extracted as under:

> "**69. Disputes to be decided by Co-operative Arbitration Court and Registrar**.- (1) Notwithstanding anything contained in any law for the time being in force, if a dispute arises,-
>
> .....
>
> .....
>
> (c) between the society or its committee and any past committee any officer, agent or employee or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the society; or
>
> .....
>
> .....
>
> (h) between the society and a creditor of the society, such dispute shall be referred to the Co-operative Arbitration Court constituted under section 70A in the case of non-monetary disputes and to the Registrar, in the case of monetary disputes; and the Arbitration Court or the Registrar, as the case may be,

shall decide such dispute and no other court or other authority shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute.

(2) For the purposes of sub-section (1), the following shall also be deemed to be disputes, namely:-

.....

.....

(d) any dispute arising in connection with employment of officers and servants of the different classes of societies specified in sub-section (1) of section 80, including their promotion and inter se seniority."

38. Section 70A which provides for constitution of Arbitration Courts is quoted below:

70A**. Co-operative Arbitration Courts**.- (1) The Government shall constitute such number of Co-operative Arbitration Courts as are necessary to exercise the powers and discharge the functions conferred on it under this Act.

(2) The qualifications, term salary and allowances and other conditions of service of the person to be appointed as the Co-operative Arbitration court shall be such as may be decided by the Government from time to time.

(3) The Government shall make rules for regulating the procedure and disposal of business of the Co-operative Arbitration Court.

(4) The Registrar or the Government shall lend the service of such number of officers and employees as may be necessary to assist the Co-operative Arbitration Court.

(5) The officers and employees referred to in sub-section

> (4) shall continue to be Government servants for all purposes and their terms and conditions of service shall continue to be the same as applicable to them under the Government."

Section 70B provides for transfer of all pending disputes in respect of non-monetary disputes to the Arbitration Court. Consequent amendments were also made in the Kerala Co-operative Societies Rules, 1969 (for short, "the 1969 Rules") providing for procedure and mechanism and to decide the dispute by the Co-operative Arbitration Court.

39. It is relevant to note that the Amendment Act 1 of 2000 was not enacted with any Presidential assent. The effect and consequences of the Amendment Act 1 of 2000 came for consideration before a learned Single Judge in **A.R. Nagar Service Co-op. Bank Ltd. v. State of Kerala** (2010 [1] KLT 55) against which judgment W.A. No.184 of 2010 is before us for consideration. The issue which arose for consideration before the learned Single Judge was as to whether Section 69 of the 1969 Act as amended by Amendment Act 1 of 2000 oust the jurisdiction of the labour Courts and Industrial Tribunal under the 1947 Act in respect

of service matters of workmen of Co-operative Societies answering the definition of dispute as defined under the 1947 Act. Writ petition was filed challenging the order of the State Government referring a dispute of a workman of a Society to the Labour Court for adjudication. The learned Single Judge had noticed Section 69 of the 1969 Act before and after amendment. Learned Single Judge referred to Article 254 of the Constitution of India and held that Section 69 of the Act can validly exclude the jurisdiction of the Labour Courts and Industrial Tribunals under the 1947 Act with reference to the workmen of Co-operative Societies only if such provision has obtained the assent of the President as provided under Article 254(2) of the Constitution of India. The learned Single Judge however, proceeded to give two reasons for not accepting the submissions that provisions of the 1969 Act shall override the provisions of the 1947 Act. Firstly, it was stated that none of the books relating to the relevant aspects contained any reference to Presidential assent for the 1969 Act and reference of Presidential assent in **Kaloor Vadakkummury**

Service Co-operative Society Ltd v. Assistant Registrar, Mukundapuram and Others (1973 KLT 523) is clearly a mistake and secondly, it is stated that Presidential assent would be obtained after the repugnancy coming into being. Prior to insertion of Section 69(1)(h) and 69(2)(d) there was no repugnancy between the Societies Act and the Industrial Disputes Act and therefore the question of requirement of Presidential assent prior to Amendment Act 1 of 2000 does not arise at all. Learned Single Judge held that without Presidential assent for Amendment Act 1 of 2000, the jurisdiction of the Labour Courts and Industrial Tribunals under the Industrial Disputes Act cannot be excluded. The following has been laid down by the learned Single Judge in paragraph 4:

> "4. Therefore, S.69 of the Societies Act can validly exclude the jurisdiction of Labour Courts and Industrial Tribunals under the Industrial Disputes Act, with reference to workmen of cooperative societies only if such provision has obtained the assent of the President of India as provided under Art.254(2) of the Constitution of India. Relying on a sentence in the Division Bench decision of this Court in Kaloor Vadakkummury Service Cooperative Society Ltd. v. Assistant Registrar, Mukundapuram and Others, 1973 KHC 124 : 1973 KLT 523 : 1973 KLJ 510 : ILR

1973 (1) Ker. 542 : 1973 (2) LLJ 541 stating that 'The Act was passed with the assent of the President after the enactment of the Industrial Disputes Act, 1947', the learned counsel for the Society would raise an argument that since the Act itself had originally received the assent of the President, after introduction of sub-s.2 (d), the jurisdiction under the Industrial Disputes Act would stand excluded since S.69 starts with the non obstante clause 'Notwithstanding anything contained in any law for the time being in force' and since sub-clause (h) of sub-section (1) of S.69, stipulated that 'no other Court or authority shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute.' This argument would not hold water for two reasons. The first is that contrary to the observation in the abovesaid case, even for the Act, Presidential assent was not received. Since none of the books relating to Kerala Cooperative Societies Act, 1969 contained any reference to Presidential assent for the Act, I directed the learned Government Pleader to ascertain from the Government as to whether the Act had in fact received Presidential assent. The learned Government Pleader, after getting instructions, confirmed that no Presidential assent was received for the Societies Act. Therefore, the reference to such assent in 1973 KHC 124 : 1973 KLT 523 : 1973 KLJ 510 : ILR 1973 (1) Ker. 542 : 1973 (2) LLJ 541 is clearly a mistake. Further, Presidential assent should be obtained after the repugnancy comes into being. Prior to insertion of S.69(1)(h) and S.69(2)(d), there was no repugnancy between the Societies Act and the Industrial Disputes Act and therefore the question of requirement of Presidential assent prior to Amendment Act 1 of 2000 does not arise at all. Therefore, without Presidential assent for Amendment Act 1 of 2000, the jurisdiction of the Labour Courts and Industrial Tribunals under the Industrial Disputes Act for adjudicating

> industrial disputes raised by workmen of cooperative societies cannot be excluded by the Societies Act. That being so, in view of the fact that the Amendment Act 1 of 2000 amending S.69 of the Kerala Cooperative Societies Act has not received the assent of the President as provided under Art.254(2) of the Constitution of India, the said Section does not exclude the jurisdiction of the Labour Courts and Industrial Tribunals in respect of disputes raised by the workmen of cooperative societies in Kerala. But, as laid down by the Supreme Court in Dharappa's case (supra), the jurisdiction to decide any dispute of the nature mentioned in S.69 (2)(d) of the Kerala Cooperative Societies Act vests concurrently with Labour Courts / Industrial Tribunals under the Industrial Disputes Act and with the Cooperative Arbitration Court and the Registrar as the case may be depending on whether the dispute is non monetary or monetary."

40. The judgment on which much reliance has been placed by the learned counsel for the respondents to buttress their submission that Amendment Act 1 of 2000 having not been enacted with the Presidential assent it cannot exclude the jurisdiction of Labour Courts under the 1947 Act is a judgment of the Apex Court in **Dharappa v. Bijapur Coop. Milk Producers Societies Union Ltd.** (supra). It is necessary to note the relevant facts and law as laid down by the Supreme Court in the aforesaid case. Service of the appellant was terminated with effect from 01.03.1980. An

application was made by the appellant to the Labour Court seeking declaration that his termination from service with effect from 01.03.1980 was null and void and a direction be issued for reinstatement with full back wages. The respondent, Co-op. Milk Producers Society filed an objection denying the claim of the appellant. The Labour Court made an award on 15.10.1986 directing reinstatement. The Society challenged the award by means of Writ Petition. In the meanwhile a Division Bench of the Karnataka High Court delivered a judgment in **Veerashaiva Coop.Bank Ltd. v. Presiding Officer, Labour Court** ([2001] Lab. IC 269) holding that Karnanataka Co-operative Societies Act, 1959 being comprehensive, the jurisdiction of Labour Courts was excluded. The decision of the Division Bench was approved by the Full Bench of the **Karnatka High Court in Karnataka Sugar Workers Federation v. State of Karnataka** ([2003] Lab.IC 2352). Following the above judgment, the learned Single Judge allowed the Writ Petition of the respondent setting aside the award. Writ Appeal was filed which was dismissed. The said decision was challenged

in the Apex Court. The Apex Court framed two questions which fell for consideration.

> "(i) Whether the jurisdiction of Labour Court under the ID Act, was barred by S.70 of the KCS Act with reference to cooperative societies and if so, from when.
>
> (ii) Even if Labour Court had jurisdiction, whether the appellant was entitled to file an application under S.10(4A) of ID Act in respect of a cause of action which occurred in 1978."

Section 70 of the KCS Act has been extracted by the Apex Court in paragraph 11 of the judgment. Section 70 was amended by Amendment Act 1976 by which clauses (d) and (e) were added. A further amendment was made in sub-section (1). The Amendment Act 2 of 2000 received the assent of the President on 18.03.2000 and brought into force on 20.06.2000. In paragraph 11 of the judgment all the relevant provisions including necessary amendments have been extracted which is extracted hereunder:

> "11. It is necessary to refer to the metamorphosis of section 70 of the KCS Act, before considering this question. The said section originally stood as follows :
>
> "70. Disputes which may be referred to Registrar for decision. (1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management, or the business of a co-operative society arises.
>
> (a) and (b) x x x x x (omitted as not relevant)

(c) between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs, or legal representatives of any deceased officer, deceased agent, or deceased employee of the society, or

(d) x x x (omitted as not relevant)

such dispute shall be referred to the Registrar for decision and no Court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

(2) For the purposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or the business of a co-operative society, namely.

(a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;

(b) a claim a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor, as a result of the default of the principal debtor whether such debt or demand is admitted or not;

(c) any dispute arising in connection with the election of a President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer or Member of Committee of the society.

(3) x x x (omitted as not relevant).

Section 70 was amended by Karnataka Co-operative Societies (Amendment) Act, 1976 (Karnataka Act 19 of 1976). The Amendment Act received the assent of the Governor on 7.3.1976. It was brought into effect from 20.1.1976. The Amendment Act added the following as clauses (d) and (e) in sub-section (2) of section 70 :

"70. (2)(d) any dispute between a co-operative society and its employees or past employees or heirs or legal representatives of a deceased employee, including a dispute regarding the terms of employment, working conditions and disciplinary action taken by a co-operative society;

(e) a claim by a co-operative society for any deficiency caused in the assets of the co-operative society by a member, past member, deceased member or deceased officer, past agent or deceased agent or by any servant, past servant or deceased servant or by its committee, past or present whether such loss be admitted or

not."

Section 70 was again amended by Karnataka Co-operative Societies (Second Amendment) Act, 1997 (Karnataka Act No. 2/2000) in the following manner:

(i) In sub-section (1), for the words "no court", the words "no civil or Labour or Revenue Court or Industrial Tribunal" were substituted.

(ii) At the end of clause (d) of sub-section (2), the words "notwithstanding anything contrary contained in the Industrial Disputes Act, 1947 (Central Act 14 of 1947)" were inserted"

The said Amendment Act (Act 2 of 2000) received the assent of the President on 18.3.2000 and was brought into force on 20.6.2000. After the said amendments in 1996 and 2000, Section 70 of KCS Act (relevant portion) reads thus:

"70. Disputes which may be referred to Registrar for decision.- (1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management, or the business of a Co-operative Society arises .... (c) between the Society or its committee and ..... any officer, agent or employee, or any past officer, past agent or past employee ..... of the Society, _..

such dispute shall be referred to the Registrar for decision and no Civil or Labour or Revenue Court or Industrial Tribunal shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

For the purposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or the business of a Co-operative Society, namely

(d) any dispute between a Co-operative Society and its employees or past employees or heirs or legal representatives of a deceased employee, including a dispute regarding the terms of employment, working conditions, and disciplinary action taken by a Co-operative Society notwithstanding anything contrary contained in the Industrial Disputes Act, 1947(Central Act 14 of 1947)".

The Apex Court after noticing Article 254 of the Constitution of India held that where a law covered by an entry in the State List (or an amendment to law covered by the entry to State List) made by the State Legislature contains a provision which directly and substantially relates to a matter enumerated in the Concurrent List then such repugnant provision of the State law will be void. Such a provision of law made by the State Legislature touching upon a matter covered by the Concurrent List will not be void if it can coexist and operate without repugnancy with the provisions of the existing law. The observations made in paragraph 12 has already been extracted above.

41. Referring to the 1976 Amendment it was held by the Apex Court that the said Amendment having not received the assent of the President, it cannot be said that Section 70(1)(c) of the KCS Act would prevail over the provisions of the 1947 Act. Consequently, even after the 1976 Amendment Act, the Labour Courts and Industrial Tribunals functioning under the 1947 Act continued to have

jurisdiction in regard to disputes between a Society and its workmen. But when sub-section (1) of Section 70 of the KCS Act was further amended by Act 2 of 2000 by specifically excluding the jurisdiction of Labour Courts and Industrial Tribunals which was enacted with the assent of the President with effect from 20.06.2000, jurisdiction of the Labour Courts and Industrial Tribunals would be excluded. It is useful to quote paragraphs 16 and 24:

> "16. Though the Karnataka Cooperative Societies Act, 1959 was reserved for the assent of the President and received his assent on 11.8.1959, the Amendment Act 19 of 1976 which added clause (d) to sub-section (2) of S.70, (whereby a dispute between a Cooperative Society and its present or past employee/s in regard to any disciplinary action or working conditions was deemed to be a dispute touching the constitution, management, or the business of a cooperative society), was neither reserved for, nor received the assent of the President. In the absence of the assent of the President, clause (d) of S.70(2) could not be called in aid to contend that S.70(1)(c) of the KCS Act would prevail over the provisions of the Industrial Disputes Act. Consequently, even after the 1976 amendment to the KCS Act, the Labour Courts and Industrial Tribunals functioning under the ID Act continued to have jurisdiction in regard to disputes between a Society and its workmen if the cooperative society answered the definition of an 'industry' and the dispute was an 'industrial dispute'. But when sub-section (1) of S.70 of KCS Act was further amended by Act 2

of 2000 by specifically excluding the jurisdiction of Labour Courts and Industrial Tribunals with the simultaneous addition of the words "notwithstanding anything contrary contained in the Industrial Disputes Act, 1947" in clause (d) of S.70(2) of KCS Act, the said Amendment Act (Act 2 of 2000) was reserved for the assent of the President and received such assent on 18.3.2000. The amended provisions were given effect from 20.6.2000. Therefore, only with effect from 20.6.2000, the jurisdiction of Labour Courts and Industrial Tribunals were excluded in regard to disputes between a cooperative Society and its employees (or past employees) relating to terms of employment, service conditions or disciplinary action. It follows therefore that in the year 1996, the Labour Court had the jurisdiction to make an award in regard to such a dispute. The High Court could not have interfered with it on the ground that S.70 of the KCS Act was a bar to the jurisdiction of the Labour Court to decide the dispute.

24. The resultant position can be summarized thus:

(a) Even though clause (d) was added in Section 70(2) with effect from 20.1.1976, section 70(1) did not exclude or take away the jurisdiction of the Labour Courts and Industrial Tribunals under the I.D. Act to decide an industrial dispute between a Society and its employees. Consequently, even after insertion of clause (d) in Section 70(2) with effect from 20.1.1976, the Labour Courts and Industrial Tribunals under the I.D. Act, continued to have jurisdiction to decide disputes between societies and their employees.

(b) The jurisdiction of Labour Courts and Industrial Tribunals to decide the disputes between co-operative societies and their employees was taken away only when sub-section (1) and sub-section (2)(d) of section70 were amended by Act 2 of 2000 and the amendment received the assent of the President on 18.3.2000 and was brought into effect on 20.6.2000.

(c) The jurisdiction to decide any dispute of the nature mentioned in section 70(2)(d) of the KCS Act, if it answered the definition of industrial dispute, vested thus :

(i)exclusively with Labour Courts and Industrial Tribunals till 20.1.1976;

(ii)concurrently with Labour Courts/Industrial Tribunals under ID Act and with Registrar under section 70 of the KCS Act between 20.1.1976 and 20.6.2000; and

(iii) exclusively with the Registrar under section 70 of the KCS Act with effect from 20.6.2000".

Submission pressed is that in view of the law laid down by the Apex Court in the aforesaid judgment, the Amendment Act 1 of 2000 amending the 1969 Act having not been assented by the President, jurisdiction of the Labour Courts shall not be excluded. Thus one of the questions to be looked into and answered is as to whether it was necessary to obtain assent of the President for enacting the Amendment Act 1 of 2000 with intend to exclude the jurisdiction of the Labour Courts under the 1947 Act.

42. Now reverting back to the judgment in **Dharappa v. Bijapur Coop. Milk Producers Societies Union Ltd.** (supra) it is relevant to notice that Section 70 prior to the 1976 and 2000 amendments, did not exclude any dispute pertaining to service matters of employees of Officers. Section 70(1) contains the dispute touching the constitution, management, or the business of co-operative societies. No

one has contended before us that service disputes of employees or Officers of the Co-operative Society can be covered by constitution, management or business of a Co-operative Society. It was for the first time that the 1976 and 2000 amendments in the KCS Act that the disputes between the Co-operative Societies, employees/past employees including dispute regarding terms of employment, working conditions and action were expressly included.

43. Before proceeding further a caution which has been sounded by the Apex Court in **Dharappa v. Bijapur Coop. Milk Producers Societies Union Ltd.** (supra) regarding cognate enactments in other States has to be noticed. The Apex Court held that the principle laid own by the Apex Court with reference to the provisions of a particular State Act is not to be mechanically followed to interpret cognate enactments of other States without first ascertaining whether the provisions of the two enactments are identical or similar. It is relevant to quote paragraph 19 of the judgment:

> "19. .....But before doing so, we have to note that many

> a time, a principle laid down by this Court with reference to the provisions of a particular State Act is mechanically followed to interpret cognate enactments of other States, without first ascertaining whether the provisions of the two enactments are identical or similar. This frequently happens with reference to the laws relating to rent and accommodation control, co-operative societies and land revenue. Before applying the principles enunciated with reference to another enactment, care should be taken to find out whether the provisions of the Act to which such principles are sought to be applied, are similar to the provisions of the Act with reference to which the principles were evolved. Failure to do so has led to a wrong interpretation of section 70 of the KCS Act, in Veerashiva Co-operative Bank and Karnataka Sugar Workers Federation".

Thus for following a ratio of the judgment in **Dharappa v. Bijapur Coop. Milk Producers Societies Union Ltd.** (supra) or any other judgment of the Apex Court, Statutory provisions of the State which fell for consideration before the Apex Court is necessary to be noted.

44. As noted above in **Dharappa v. Bijapur Coop. Milk Producers Societies Union Ltd.** (supra) Section 70 as originally enacted did not contemplate exclusion of disputes pertaining to service matters of Officers and employees of the Society which was sought to be inserted by

the 1976 and 2000 Amendment Acts. In the above context the Apex Court held that Presidential assent was necessary for excluding the jurisdiction of the Labour Courts under the 1947 Act. There cannot be any dispute to the proposition of law laid down by the Apex Court in the said case that Presidential assent is necessary for such a legislation which impinged upon any Parliamentary legislation referred to the Concurrent List.

45. However, in the case before us, Section 69 as originally enacted read with Section 2(i) gives clear indication that service disputes of Officers and employees shall be referred under Section 69 of the 1969 Act to the Registrar notwithstanding anything contrary to any other law for the time being. Section 69 begins with a non-obstante clause and there was further injunction in Section 69(1)(h) that no other court or other authority shall have jurisdiction to entertain any suit or other proceedings. We have held that provisions of Section 69 of the 1969 Act originally enacted clearly indicate to override contrary provisions of 1947 Act which was the existing law and governing the field of

industrial disputes of workmen working in a Co-operative Society. When the Act originally enacted, Section 69 itself has excluded the jurisdiction of Labour Courts under the 1947 Act as held by us, we are of the view that there was no necessity for obtaining Presidential assent for Amendment Act 1 of 2000. Jurisdiction of the Labour Court having already been excluded by Section 69, Amendment Act 1 of 2000 do not impinge upon the 1947 Act. Nor the said amendment can be said to be void and inoperative in reference to the provisions of the 1947 Act.

46. The Division Bench judgment of this Court in **Thodupuzha Taluk General Marketing Co-operative Society v. Michael Sebastian** (2010 [1] KLT 939) which was referred by the Division Bench for consideration by Full Bench and is up for consideration before us was also a judgment taking the view that amendments brought by Act 1 of 2000 having not passed with the assent of the President it may not have overriding effect on the 1947 Act. It is useful to extract the following observations of the Division Bench in paragraphs 3 and 4:

"3. We heard the learned counsel for the appellant and also the learned Government Pleader. Section 69 of the Kerala Cooperative Societies Act reads as follows:

.....

In view of sub-sections (1)(c) and (2)(d), it is clear that any dispute arising in connection with the employment of officers and servants of a co-operative society is a dispute, which can be resolved under Section 69(1). But, the office establishment of a co-operative society is an industry, as defined under Section 2 (j) of the Industrial Disputes Act. So, the dispute regarding denial of employment will be an industrial dispute, as defined under Section 2(k) of the Industrial Disputes Act. The concerned worker can raise it as an industrial dispute under Section 2A thereof. If Section 69 of the Kerala Co-operative Societies Act was passed with the assent of the President, it may have overriding effect on central enactments, like the Industrial Disputes Act.

4. But, the learned Government Pleader told us that the amendment to Section 69 of the Kerala Co-operative Societies Act was notified without obtaining the assent of the President, as contemplated under Article 254(2) of the Constitution of India. If that be so, the amendment to Section 69 of the Kerala Co-operative Societies Act cannot have the effect of overriding the provisions of the Industrial Disputes Act. Therefore, the Labour Court and the Co-operative Arbitration Court have concurrent jurisdiction to deal with the industrial disputes. In view of the above position, the challenge against Ext.P1 raised by the appellant, on the ground of lack of jurisdiction has been rightly repelled by the learned Single Judge. So, the Writ Appeal fails and it is accordingly, dismissed."

47. In view of the discussion made above where we

have held that there was no necessity to obtain Presidential assent for the Amendment Act 1 of 2000, the judgment of the Division Bench in **Thodupuzha Taluk General Marketing Co-operative Society v. Michael Sebastian** and that of the learned Single Judge in **A.R. Nagar Service Co-operative Bank v. State of Kerala** cannot be said to have laid down a good law.

48. In all the cases before us the cause of action arose to the respondents-employees subsequent to the enforcement of Act 1 of 2000, i.e., subsequent to 02.01.2003. Thus the legal position as after Amendment Act 1 of 2000 shall govern the cases before us. There are several judgments of this Court both by learned Single Judges and Division Benches holding that service matters of employees of Co-operative Societies has to be considered by the Co-operative Court as envisaged by Section 69 of the 1969 Act. It is useful to briefly refer to a few such cases.

49. In **Prakashini v. Joint Director** (2006 (1) KLT 199), a learned Single Judge had occasion to consider the

provisions of Section 69 as amended by Act 1 of 2000. The issue which arose for consideration in the Writ Petition was as to whether the dispute pertaining to promotion of employees can be entertained under Section 69(1) by the Co-operative Arbitration Court. The learned Single Judge held that there cannot be any statutory adjudication by any authority other than the Arbitration Court of any dispute relating to the decision as to inter se seniority between the employees. Following was laid down in paragraph 2 of the judgment:

> "2. Before the said P1 decision was taken, amendments made as per Act 1 of 2000 to S.69 of the Cooperative Societies Act were given effect to, with effect from 2-1-2003. Thereby Clause (d) of sub-s.2 of S.69 brought all disputes in connection with the employment, including their promotion and inter se seniority under the canopy of the word 'disputes' for the purpose of S.69(I). The last limb of S.69(I) provides that such disputes shall be decided by the arbitration court or the Registrar, as the case may be and no other court or authority shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute. In my considered view, this is a clear statutory exclusion of the authority under R.176 of the KCS Rules, which otherwise was being exercised in relation to such disputes. So much so, there cannot be any statutory adjudication by any authority other than the arbitration court or the Registrar, as the case may be of any dispute in relation to a decision as to inter se seniority

> between employees, taken by the employer on or after 2-1-2003. In that view of the matter, Ext. P4 decision of the Joint Registrar of Cooperative Societies in purported exercise of authority under R.176 of the Rules and Ext. P5 appellate order passed by the Government lack in jurisdiction and they cannot, therefore, stand, they being void."

The above judgment of the learned Single Judge was approved by a Division Bench in **Raveendran v. State** (2007 (3) KLT 558). Before the Division Bench question arose as to whether the dispute pertaining to inter se seniority of the employees of the Co-operative Society can be decided under Section 69. The Division Bench held that after the coming into force of the Amendment Act 1 of 2000 disputes between employees and Officers of different classes of a Society has to be decided by the Arbitration Court. The following was observed in paragraphs 3 and 4:

> "3. We are of the view, after the coming into force of Act 1 of 2000 with effect from 02/01/2003, the dispute in connection with the employment of officers and servants of different classes of societies specified in sub-section (1) of S.80 including their promotion and inter se seniority has to be decided by the Arbitration Court and not by the Joint Registrar or by the Government.....".
>
> 4. On a reading of the above mentioned statutory

> provisions it is clear that any dispute arising in connection with employment of officers and servants of the different classes of societies specified in sub-section (1) of S.80 including their promotion and inter se seniority is to be decided by the Arbitration Court. On the constitution of Cooperative Arbitration Court, every dispute pending before the Registrar or any person invested with the power to dispose of the same by the Government or the arbitrator appointed by the Registrar in respect of non monetary disputes relating to the local area of jurisdiction of the Arbitration Court, shall be transferred to such Arbitration Court and the Court shall dispose of the same as if it were a dispute referred to it under S.69. Same is the view taken by the Division Bench of this Court in WA No. 2116 of 2006. We therefore fully endorse the view taken by the learned Judge in Prakasini's case. Consequently writ appeal lacks merits and the same would stand dismissed."

Another judgment of a learned Single Judge in **Edava Service Co-operative Bank Ltd. v. Co-operative Arbitration Court** (2008 (3) KLT 780) has considered the provisions of the 1969 Act as amended by Act of 2000. The Court also considered the ambit of deeming provision under Section 69(2)(d). In the above case employee was dismissed from the service of the Bank. The employee invoked the jurisdiction under Section 69(1). The Bank raised objection that the dismissal is not a matter that could fall

under Section 69(1). Plea was turned down against which the Bank filed Writ Petition. Contention raised by the Bank was rejected. It was held that such dispute shall be referred to the Co-operative Arbitration Court. The following was laid down in paragraph 3:

> "3. S.69(1)(c) provides that notwithstanding anything contained in any law for the time being in force, if a dispute arises, between the Society and any officer, agent or employee or any past officer, past agent or past employee, such dispute shall be referred to the Cooperative Arbitration Court constituted under S.70A, in the case of non monetary disputes and to the Registrar, in the case of monetary disputes and the Arbitration Court, or the Registrar, as the case may be, shall decide such dispute and no other Court or other authority shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute. S.69(2)(d) provides that any dispute arising in connection with employment of officers and servants of the different classes of societies specified in sub-section (1) of S.80, including their promotion and inter se seniority, shall also be deemed to be disputes, for the purposes of S.69(1). A dispute regarding disciplinary proceedings and punishment, including an order of dismissal is a dispute arising in connection with that employment since dismissal is a mode of termination of employment and the reliefs that could be granted to a person aggrieved by dismissal, are matters referable to the employment of the officer or the servant in question. Therefore, a dispute relating to the dismissal of an employee of a Cooperative Society and who thereby becomes a past employee is a matter that falls

within the purview of disputes which are to be decided by the Cooperative Arbitration Court in terms of S.69(1) of the Act."

The learned Single Judge also dwelled upon the deeming provision of Section 69(2)(d) and held that the deeming fiction cannot be extended beyond its legitimate purpose. In paragraphs 5, 6 and 7 the following was stated:

"5. Sub-section (2) of S.69 opens with a deeming provision, which is a legislative device applied to create a legal fiction; to give a term a particular meaning by the application of such deeming provision, it is settled law that where a legal fiction is created, full effect must be given to it and it should be carried to its logical end. Boucher Pierre Andre v. Superintendent, Central Jail, AIR 1975 SC 164 : 1975 CriLJ 182 : 1975 (1) SCC 192 : 1975 SCC (Cri) 70 : 1975 (2) SCJ 523. In construing and applying a deeming provision, the limits of that deeming provision have to be determined and within those limits, the situation that is to be deemed has to be permitted to flow freely. While a fiction cannot be extended beyond its legitimate field, it must be allowed full operation within its intended sphere - Ali v. Kunjannamma, 1975 KHC 47 : 1975 KLT 527 : ILR 1975 (2) Ker. 334.

6. So understood, the legislative mandate contained in the opening words of sub-section (2) of S.69 read with Clause (2) of that sub-section is to treat any dispute arising in connection with employment of officers and servants as a dispute for the purpose of sub-section (1) of S.69. The object of that fiction is to bring all disputes in connection with employment in a Cooperative Society under the purview of arbitration to the exclusion of other Courts and authorities. Therefore, in interpreting the said provision, that

fiction has to be carried to its logical conclusion, subject only to the inhibition that such fiction should not be extended beyond its legitimate field. The mode in which the deeming provision is used in S.69 is only to give full play to the fiction and the object of its creation, namely, the exclusive conferment of authority with the Cooperative Arbitration Courts or Arbitrators, as the case may be, to decide the disputes.

7. Not only that, the words relied on, on behalf of the petitioners, only further enlarge the scope of the term 'dispute'. All that is provided is that any dispute as to promotion and inter se seniority would also fall within the scope of the term 'dispute' for the purpose of S.69(1). There appears to be a reason for such an inclusion. A plain reading of S.69(1)(c) may generate an argument that disputes between officers or employees or between past officers or past employees of a Society are not disputes which fall within the sweep of that provision, though disputes between officers or employees of a Society are intricately connected with the affairs of the Society and matters touching its business and therefore that could fall within S.69(1)(c) of the Act. The inclusion of the words 'including their promotion and inter se seniority' as the last limb of S.69(2)(d) only clarifies the position that notwithstanding any vagueness that may be pointed out in that regard in S.69(1)(c), such disputes also fall within the purview of that provision."

Against the above judgment of the learned Single Judge, the Bank filed W.A. No.2057 of 2008 (**Board of Directors, Edava Service Co-operative Bank Ltd. v. The Co-operative Arbitration Court and Others**). The Division

Bench by its judgment dated 09.06.2009 dismissed the appeal confirming the judgment of the learned Single Judge. The Division Bench considered the phrase 'any matter touching the establishment' and opined that that shall include all service conditions of the employees. The following was stated in paragraphs 6 and 8:

> "6. The words 'any matter touching establishments' used in the above definition will include all disputes concerning the service conditions of employees working under a Society. Section 69(1)(c) of the Act reads as follows:
>
> (c) between the society or its committee and any past committee, any officer, agent or employee or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the society:"
>
> Going by the above provision, the Arbitration Court, has jurisdiction to deal with a dispute between the Society and a past (dismissed) employee of the Society.
>
> 8. Going by the above quoted clause (d), any dispute arising in connection with employment of officers and servants of different classes of society will be a dispute. Dismissal from service is indisputably a dispute in connection with employment. As a measure of abundant caution, it was further added that disputes relating to promotion and seniority will also be covered by the term, service. Even without the words "promotion and inter se seniority", the disputes concerning, promotion, seniority, etc., will be covered by clause (d), being disputes in connection with

> employment. The above words were not meant to be exhaustive or restrictive, but only explain what is already included. So, the decision of the Apex Court relied on by the appellants has no application, whatsoever, to the facts of this case. Going by the plain meaning of the above quoted provision, it can be safely concluded that all disputes concerning denial of employment, removal from service, dismissal from service, etc., will be disputes which could be adjudicated by the Co-operative Arbitration Court. Any other interpretation will not do justice to the scheme of the Act. The jurisdiction specifically conferred by the legislature cannot be taken away by this Court, by undertaking an exercise of interpretation. So, we agree with the reasons and conclusions of the learned Single Judge."

50. We have already noticed above that the Division Bench of this Court in **Thodupuzha Taluk General Marketing Co-operative Society v. Michael Sebastian** and **A.R. Nagar Service Co-operative Bank v. State of Kerala** (supra) has held that the jurisdiction of the Labour Court and Co-operative Arbitration Court is concurrent even after the amendment made by Act 1 of 2000.

51. Two more decisions need to be noted in this context. In **Cheranallur Service Co-operative Bank Ltd. v. The State of Kerala and Others** (2012 (3) KHC 834), the learned Single Judge after noticing the provisions of

Section 69(2)(d) held that the dispute arising out of service matter of an employee of Co-operative Society is fully covered by Section 69. One of the submissions that the disputes cannot be entertained under Section 69(1) since the civil court could not have entertained such disputes was considered and rejected in paragraph 16 which is quoted as below:

> "16. That takes me to the question whether there is any merit in the contention of the petitioner that the Co - operative Arbitration Court cannot entertain the dispute for the reason that a Civil Court could not have entertained the dispute. It is relevant in this context to note that the petitioner does not challenge the validity of sub-section (2) of S.69 of the Act. His contention is that a Civil Court cannot enforce a contract of service, that only disputes which a Civil Court could have ordinarily entertained can be referred to arbitration under the provisions of S.69(1) of the Act as it stood before 02/01/2003 and therefore, the Co - operative Arbitration Court can have jurisdiction only in respect of such cases. In my opinion, the said contention is plainly untenable. It is open to the Legislature, as the Parliament did in the case of the Industrial Disputes Act, 1947 to enact a provision empowering a specified authority to interfere even with an order of dismissal from service and to order reinstatement. If that be so, in the absence of a challenge to the validity of sub-section (2) of S.69 of the Act, I find no merit in the contention of the petitioner that the Co - operative Arbitration Court has no jurisdiction to entertain the

> dispute. That apart, as held by this Court in A.R.Nagar Service Co - operative Bank v. State of Kerala (supra) and Thodupuzha Taluk General Marketing Co - operative Society v. Michael Sebastian (supra) in the case of employees who are governed by the Industrial Disputes Act, the jurisdiction is concurrent. If the Labour Court or the Industrial Tribunal constituted under the Industrial Disputes Act can order reinstatement in service of a workman who is governed by the Industrial Disputes Act, I find nothing wrong in the Co - operative Arbitration Court directing reinstatement in service. That apart, under S.100 of the Act, the jurisdiction of a civil or Revenue Court is barred only in respect of any matter for which any provision is made in the Act. S.69 of the Act makes a provision for adjudication of disputes in connection with employment of officers and servants of the different classes of co - operative societies, which as held by this Court would take in disputes arising under disciplinary proceedings also. Therefore, merely because S.100 bars the jurisdiction of a Civil Court in respect of matters for which provision has been made in the Act, it cannot be said that the Co - operative Arbitration Court could not have entertained the dispute. In the absence of a challenge by the petitioner to the constitutional validity of sub-section (2) of S.69 of the Act, the contention that the Co - operative Arbitration Court cannot order reinstatement, is liable to be rejected."

The learned Single Judge also rejected the contention that the Co-operative Arbitration Court cannot order reinstatement. The above decision of the learned Single Judge was challenged in W.A. No.1818 of 2012 (**Cheranallur Service Co-operative Bank Ltd. v. The State of Kerala and**

Others) which was dismissed on 06.07.2012 following the judgment in **A.R.Nagar Service Co-operative Bank v. State of Kerala** and **Thodupuzha Taluk General Marketing Co-operative Society v. Michael Sebastian** (supra). Thus almost all the judgments of this Court interpreting Section 69 of the 1969 Act as amended by Act 1 of 2000 have stated that disputes pertaining to service matters of employees including disputes regarding dismissal under Section 69 can be entertained by the Co-operative Court. However, there is difference of opinion regarding the jurisdiction of the Labour Court to entertain disputes regarding dismissal after such amendment.

52. We may also notice two Three Judge Bench judgments which need re-consideration by this Larger Bench. First judgment is the one reported in **Balachandran v. Deputy Registrar** (1978 KLT 249). In the Writ Petition there was a dispute between the petitioner and the 4th respondent both being employees of the 3rd respondent Bank. The Bank passed a resolution promoting the petitioner and the 4th respondent declaring the petitioner senior to the 4th

respondent. The 4th respondent initiated proceedings under Section 69 of the 1969 Act. Objection was raised by the petitioner that the Registrar has no jurisdiction to entertain such dispute under Section 2(i) read with Section 69. Preliminary objection was overruled by the Deputy Registrar. An appeal was filed by the petitioner before the Tribunal under Section 82(2) which was dismissed. Thereafter Writ Petition was filed. Learned Single Judge held that question of relative seniority is the subject touching the 'establishment' relating to conditions of service as mentioned in Section 80 of the Act and is within the competency of the Registrar to resolve. The learned Single Judge held that the Registrar was competent to resolve the dispute. The matter was taken in appeal by the petitioner. Looking into the importance of the question, the matter was referred to the Full Bench. The Full Bench laid down the following in paragraph 2 i.e., “the principle thus settled was that the Registrar will have jurisdiction to entertain all matters ordinarily and normally cognizable by the civil courts. The same principle was re-iterated in **Sankaran v. Deputy Registrar** (1975 KLT 861).

" The Full Bench further held that it is beyond the dispute that no rules or bye-laws regulating seniority and promotion as between the appellant and the 4th respondent have been framed and in the absence of such rules and bye-laws dispute as to seniority or promotion cannot be entertained or made subject to litigation in civil court. The Full Bench thus opined that the matter was not cognizable by the Registrar under Section 69(1) of the 1969 Act. The following was laid down in paragraph 3:

> "3. The jurisdiction of the Registrar in regard to arbitration under the Co-operative Societies Act, having been thus sketched by the decisions of this Court, the question is whether, on the facts disclosed in this case, the Registrar had jurisdiction or not. The learned Judge found jurisdiction in the Registrar on the addition of the word 'establishments' in the definition of the word 'dispute', which we have extracted earlier. In so finding the learned Judge has lost sight of the important principle stated by the decisions to which we have just made reference, that the jurisdiction of the Registrar is co-terminous with the jurisdiction of the ordinary civil courts. It is beyond dispute that no rules or bye-laws regulating seniority and promotion as between the appellant and the 4th respondent, or in respect of the employees of the Co-operative Society have been framed. In the absence of such rules, regulations or bye-laws, a dispute as to seniority or promotion cannot be entertained or made the subject of litigation

> in a civil court. The provisions of S.14(1)(b) of the Specific Relief Act and the inability to grant the relief of reinstatement would exclude them from the purview of the ordinary civil courts, as stated in the decision already noticed. Ex hypothesi such a dispute cannot be a subject matter of arbitration by the Registrar."

As noted above, the Full Bench came to the above conclusion on the premise that no rules or bye-laws regulating seniority or promotion have been framed and in the absence of such rules or bye-laws disputes regarding seniority or promotion cannot be entertained or made subject to litigation in civil court. The above was the basis for holding by the Full Bench that the dispute was not covered by Section 69. However, with regard to disciplinary action against the employees of the Co-operative Society, now the subject is regulated by the statutory provisions. In this context it is useful to refer to the 1969 Rules framed under the 1969 Act where Rule 185 deals with promotion and other rules regulating service conditions and Rule 198 deals with disciplinary action. Rule 198(1) and 198(2) which are relevant are extracted below:

"198(1) **Disciplinary Action**.-(1) Any member of

the establishment of a Co-operative Society may, for good and sufficient reasons, be punished by imposing any of the following penalties, namely:-

(a) Censure;
(b) Fine (in the case of employees in the last grade)
(c) Withholding of increments with or without cumulative effect.
(d) withholding of promotion;
(e) Recovery from pay of the whole or apart of any pecuniary loss caused to the society; by negligences or breach of orders or otherwise;
(f) Reduction to a lower rank;
(g) Compulsory retirement;
(h) Dismissal from service.

(2) No kind of punishment shall be awarded to an employee unless he has been informed in writing of the grounds on which it is proposed to take action against and he has been afforded an opportunity including a personal hearing to defend himself. Every order awarding punishment shall be communicated to the employee concerned in writing stating the grounds on which the punishment has been awarded."

In view of the fact that there is statutory provision regulating the disciplinary action against employees of the Co-operative Society, there cannot be any dispute that violation of such statutory conditions can be made subject matter of litigation in civil court and hence on the ratio as laid down by the Full Bench, disciplinary action can very well be made subject matter of disputes under Section 69(1). Thus the above judgment of the Full Bench was based on its own facts and

observations as noted above and the Full Bench cannot be held to lay down any ratio to the effect that the dispute pertaining to service matters of the employees cannot be made subject matter of disputes under Section 69(1) and in event any such ratio is sought to be read in the judgment that shall not be laying down good law.

53. Next Full Bench judgment which need to be noted is the judgment in **M.U.Sherly v. The President, Parappuram Milk Producers Co-operative Society Ltd.** (2007 [1] KLT 809). In the above case disciplinary proceedings against employees of the Co-operative Society was initiated. The Registrar exercised his power under Rule 176 of the Rules. Question arose as to whether it is open to the aggrieved employee to take recourse to the remedy available under the 1947 Act. Question has been posed by the Full Bench itself in paragraph 1 which is to the following effect:

> "1. In the matter of disciplinary proceedings against an employee of a cooperative society registered under the provisions of the Kerala Cooperative Societies Act, 1969, (hereinafter referred to as 'the KCS Act') once the Registrar exercises his

> power under R.176 of the Kerala Cooperative Societies Rules, 1969 (hereinafter referred to as 'the KCS Rules'), is it open to the aggrieved employee to take recourse to the remedies under the Industrial Disputes Act, 1947 (hereinafter referred to as 'the I.D. Act') is essentially the question referred to the Full Bench. To pose a general question, is an employee subjected to disciplinary proceedings entitled to have his grievance adjudicated before an authority, Forum, Tribunal or Court, which is independent of the executive?"

54. In the above case State Government made reference of the dispute for adjudication before the Industrial Tribunal. The Tribunal passed an order setting aside the dismissal order against which the writ petition was filed by the Society. The learned Single Judge held that relief having been obtained by an adverse decision at the hands of Deputy Director on his statutory petition under Rule 176 of the 1969 Rules, it was not open for him to have recourse from any other forum. No relief was granted to the employee against which judgment appeal was filed by the employee, which came to be decided by Full Bench. The Full Bench observed that dispute in connection with service of an employee was not an item enumerated under Section 69 originally, however, the same was given effect to only from 02.01.2003

after setting up the Co-operative Arbitration Court which was introduced by Act 1 of 2000. The Full Bench held that an employee subjected to disciplinary action has right to raise grievance before an independent Forum (a Forum, Tribunal, Labour Court, etc) having the trappings of the Court after he has exhausted the departmental remedies. The Full Bench in paragraph 13 has laid down as follows:

> "13. An employee subjected to a disciplinary action has right to have his grievance adjudicated before an independent Forum (a Forum, Tribunal, Labour Court etc.) having the trappings of a Court after he has exhausted the departmental remedies. In the instant case, the employee did not get an opportunity before the Co-operative Arbitration Court since the same had not been notified and hence the reference of the dispute by the Government before the industrial Tribunal is certainly valid. The decision of the Deputy Director cannot stand in her way. The worker must be conceded right to raise an industrial dispute contending that her dismissal affirmed by the managing committee and the Deputy Director is bad in law. However, we may clarify the legal position that if the remedy under the statute is before a forum akin to Court, which is bound to follow judicial procedure and its decision is made final by the statute, the position would be different."

55. The Full Bench in the above case took the view that since the Co-operative Arbitration Court has not been notified, reference of the dispute by Government before the

Tribunal is valid. However, the Full Bench clarified the legal position that if remedy under the Statute is before a Forum akin to Court which is bound to follow judicial procedure and its decision is made final by the Statute, the position would be different." In the above judgment Full Bench made the following observations: (i) dispute with employees officers and servant was not enumerated as a dispute under Section 69 of the Act as originally enacted, the jurisdiction came to be vested to the Arbitration Court under Section 69 only after amendment with effect from 02.01.2003. (ii) an employee subjected to disciplinary action has the right to have his grievance adjudicated before an independent Forum, since in the above case the employee did not get an opportunity before the Co-operative Arbitration Court, as the same having been not notified, the reference of the Government before the Industrial Tribunal is certainly valid. With regard to the first observation made as above by the Full Bench, we have already noticed the provisions of Section 69 as originally enacted. Section 69 as originally enacted read with Section 2(i) of the Act clearly embraces in itself the service

dispute as held above. Thus the observation of Full Bench that 1969 Act as originally enacted did not include disciplinary action against the employee cannot be approved. With regard to the second observation that the employee has right to have his grievance adjudicated before an independent Forum, the Full Bench held that the Co-operative Arbitration Court is an independent Forum. But in view of the fact that Co-operative Arbitration Court was not notified by that time, reference to Industrial Tribunal was upheld. Prior to 02.01.2003 the reference under Section 69 (1) was to be made to the Registrar. The Registrar was conferred with the power to decide the dispute under Section 69(1) which is a quasi-judicial function. Can it be said that adjudication by Registrar prior to the amendment dated 02.01.2003 was not adjudicated by an independent Forum? Answer to the above is to be found out in law as laid down by the Apex court in **Satya Pal Anand v. State of Madhya Pradesh and another** [(2014) 7 SCC 244]. In the case before the Apex Court the writ petition was filed challenging the provision for appointment of Registrar of Co-operative

Societies by Government. It was contended that the power under the Act empowers the Government to make appointment of a person not having education in law for discharging the judicial function which was impermissible. Under the M.P. Co-operative Societies Act 1960, the power was given to the Registrar to entertain certain kind of disputes and take decision as provided under Section 64 of 1960 Act. In the M.P. Act against the order of Registrar, an appeal was provided to Tribunal as provided under Section 82 of the 1969 Act. The Apex Court held that adjudication by Registrar of the Society cannot be faulted, that there being a complete Forum provided including appeal to a judicial forum. Paragraph 8 of the judgment stated as follows:

> "8. However, limited powers are given to the Registrar to entertain certain kinds of disputes and take decision thereupon as well. One such provision is Section 55 of the Act which, inter alia, provides that regarding terms of employment, working conditions and disciplinary action taken by a society, if a dispute arises between a society and its employees, the Registrar or any officer appointed by him (not below the rank of Assistant Registrar) shall decide the dispute. Likewise, Section 64 of the Act provides that the Registrar shall decide the dispute touching upon the Constitution, management or business, terms and conditions of

employment of a society or the liquidation of the society."

56. The law laid down by the Apex Court as above clearly proves that the Registrar, prior to the amendment of Section 69 by Act 1 of 2000 and the Co-operative Arbitration Court, after the amendment, are competent independent Forum to exercise the quasi-judicial power and decide the dispute and no fault can be found with the above provision nor it can be held that 1969 Act does not provide adequate mechanism for disposal of dispute by independent Forum. Thus the reference of dispute under the 1947 Act on the contention that 1969 Act does not provide an independent Forum to decide the dispute cannot be accepted. Thus the justification of reference to the Industrial Tribunal on the above ground cannot be sustained. Hence the ratio of Full Bench in **Sherly's case** (supra) if read that Tribunal under the 1947 Act can be invoked, due to non-availability of independent Forum for deciding the dispute is unsustainable. In view of the above judgment of the Apex Court in **Satya Pal Anand**'s it is held that the Registrar an independent Forum is fully entitled to exercise quasi-judicial power but

that cannot be a ground for justifying reference of dispute to the Labour Court under the 1947 Act.

57. Whether the amendment incorporated under sub-section (2) of Section 69 by adding sub-clause (d) is the substantive provision added for the first time or the said amendment is clarificatory and explanatory to explain the position already existing is the next question to be answered. As noted above, the contention of the employee is that for the first time the dispute arising in connection with the employment of officers and servant have been brought into the Act by the aforesaid amendment. It is further submitted that a legal fiction has been created by deeming such dispute and legal fiction so created clearly indicates that in fact such disputes were never covered by Section 69. It is well settled that the court has to ascertain for what purpose the fiction is created. It has been held that in so construing the fiction it is not to be extended beyond the purpose for which it is created. The concept of legal fiction and its consequence were considered by House of Lords in a celebrated case, **East End Dwellings Company Ltd v. Finsbury Borough**

Council [1952 AC 109]. Following observations were made by Lord Asquith:

> "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corrollaries of that state of affairs."

58. The Apex Court in **State of Bombay v. Pandurang Vinayak and others** [AIR 1953 SC 244] has quoted the above observation of House of Lords with approval. It was held by the Supreme Court that when a statute enacts something shall be deemed to have been done which in fact was not done, the court is entitled and bound to ascertain for what purpose the fiction is to be resorted to and full effect must be given to the statutory fiction. Following was laid down by the Apex Court in paragraph 5:

> "5. xx xx xx
>
> When a statute enacts that something shall be deemed to

> have been done, which in fact and truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion."

59. Thus the purpose and object for which the legal fiction has been created has to be ascertained to give full meaning to the legal fiction. Section 69(1)(c) describes that a dispute between the society or its committee and any past committee any officer, agent or employee or any past officer, past agent or past employee or the nominee, heirs or legal representative of any deceased officer, deceased agent or deceased employee of the society need to be referred to the Registrar. The definition of 'dispute' under Section 2(i) clearly embraced in the Act itself the dispute pertaining to "establishment" which consist of employees and officers. As observed above, Section 69(1) read with Section 2(i) as originally enacted has also clearly contemplated the dispute pertaining to service matter of the employees. However, after the enactment of 1969 Act, there has been several judgments of this Court where it was found that dispute

pertaining to service matters of the employee shall not fall under Section 69. Some of the judgments have already been noticed by us as above. We have held as above that the dispute regarding service matters of the employee was clearly covered by Section 69(1) read with Section 2(i). The addition of Section 69(2)(d) is only reiteration of an existing situation and it cannot be said that something new or substantive have been for the first time included by the amendment. The addition of Section 69(2)(d) is by way of abundant caution to dispel the doubt created regarding the scope and ambit of the dispute within the meaning of Section 69(1) read with Section 2(i). Sub-section (2) of Section 69 which with the words "for the purposes of sub-section (1), the following shall also be deemed to be disputes, namely .....". Thus the enumeration of certain disputes under sub-section (2) of Section 69 is only for the purposes of illustration and explanation. In the above context reference to a judgment of Apex Court is pertinent, i.e., **Ghaziabad Zila Sahkari Bank Ltd. v. Addl. Labour Commissioner and others** ((2007] 11 SCC 756). In the above case

employees of the Bank had made an application under Section 6-H(1) of U.P. Industrial Disputes Act, 1947, to the Additional Labour Commissioner for recovery of certain amounts claiming to be under an agreement. The Additional Labour Commissioner passed an order on 15.03.2003 allowing the application by directing payment as ex-gratia payment. The Bank filed the writ petition challenging the order of Additional Labour Commissioner. Before the High Court the submission was made by the Bank that a full fledged remedy and mechanism to agitate the grievances of the employees of co-operative societies was already contained in U.P. Co-operative Societies Act, 1965 which being a special enactment, will prevail over the U.P. Industrial Disputes Act and the application filed by the employee was not maintainable. The Apex Court, holding the U.P. Co-operative Societies Act as Special Act, held that it shall prevail over the general Act, i.e. U.P. Industrial Disputes Act, 1947. Following was observed in paragraph 61 (relevant portion):

"61. The general legal principle in interpretation of statutes is

> that "the general Act should lead to the special Act". Upon this general principle of law, the intention of the U.P. Legislature is clear, that the special enactment U.P. Co-operative Societies Act, 1965 alone should apply in the matter of employment by co-operative societies to the exclusion of all other labour laws. It is a complete code in itself as regards employment in cooperative societies and its machinery and provisions. The general Act, the U.P. Industrial Disputes Act, 1947 as a whole has and can have no applicability and stands excluded after the enforcement of the U.P. Cooperative Societies Act. This is also clear from necessary implication that the legislature could not have intended *head-on conflict and collision* between authorities under different Acts. Xx xx xx"

60. In the U.P.Co-operative Societies Act, Section 70 provides for the Disputes which may be referred to arbitration and Section 71 provides for reference of dispute to the Arbitration. There was a specific provision under the U.P. Co-operative Societies Act, 1965 i.e., Section 135 providing that the provisions of U.P. Industrial Disputes Act 1947 and the 1947 Act shall not be applied. Section 135 is to the following effect:

> "135. Certain Acts not to apply to cooperative societies - The provisions contained in the Industrial Disputes Act, 1947 (Act XIV of 1947) and the U.P. Industrial Dispsutes Act, 1947 (U.P. Act XVIII of 1947) shall not apply to Cooperative Societies."

Section 135 though was part of the statute but Section 135

had not been brought into force which fact has been specifically noted by the Supreme Court in paragraph 42 which is quoted as follows:

> "42. The learned Senior Counsel submitted that the legislature has specifically provided in the provisions of the U.P. Cooperative Societies Act itself that the labour laws will apply to the employees of the cooperative societies, in Regulation 103 and in non-enforcement of Section 135. The fact that Section 135 has not been brought into force indicates clearly that (a) in order to exclude labour laws there must be statutory exclusion, (b) failing such an exclusion labour law will apply. In this case, there is a fact that an exclusion however under Section 135 has not been brought into force."

61. The question which arose for consideration before the Apex Court was as to whether the application filed by the employee under Section 6-H(1) (which is *pari materia* provision to Section 33C of the 1947 Act) is maintainable or barred. Referring to the general legal principle of interpretation as extracted above, the Apex Court, referring to two earlier judgments of Supreme Court, held that it is immaterial whether Section 135 of the Act has been enforced or not. It was held that jurisdiction of Additional Labour Commissioner was wrongly invoked and the order passed

was null and void. Following was held by the Apex Court in paragraphs 64 and 65:

> "64. A general Act's operation may be curtailed by a later Special Act even if the general Act will be more readily inferred when the later Special Act also contains an overriding non obstante provision. S.446(1) of the Companies Act 1956 (Act 1 of 1956) provides that when the winding up order is passed or the official liquidator is appointed as a provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of winding up order shall be proceeded with against the company except by leave of the Court. Under S.446(2), the company Court, notwithstanding anything contained in any other law for the time being in force is given jurisdiction to entertain any suit, proceeding or claim by or against the company and decide any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in the course of the winding up. The Life Insurance Corporation Act, 1956 (Act 31 of 1956) constituted a Tribunal and S.15 of the Act enabled the Life Insurance Corporation to file a case before the tribunal for recovery of various amounts from the erstwhile Life Insurance Companies in certain respects. S.41 of the LIC Act conferred exclusive jurisdiction on the tribunal in these matters. On examination of these Acts, it was held that the provisions conferring exclusive jurisdiction on the tribunal being provisions of the Special Act i.e. the LIC Act prevailed over the aforesaid provisions of the general Act, viz., the Companies Act which is an Act relating to Companies in general and, therefore, the tribunal had jurisdiction to entertain and proceed with a claim of the Life Insurance Corporation against a former insurer which had been ordered to be wound up by the Company Court. This case was

followed in giving to the provisions of the Recovery of Debts due to Banks and Financial Institutions Act 1993 (RDB Act) overriding effect over the provisions of the Companies Act, 1956. The RDB Act constitutes a tribunal and by Ss.17 and 18 confers upon the tribunal exclusive jurisdiction to entertain and decide applications from the banks and financial institutions for recovery of debts (defined to mean any liability which is claimed as due). The Act also lays down the procedure for recovery of the debt as per the certificate issued by the tribunal. The provisions of the RDB Act, which is a special Act, were held to prevail over Ss.442, 446, 537 and other sections of the Companies Act which is a general Act, more so because S.34 of the RDB Act gives over riding effect to that Act by providing that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

65. We are therefore of the view that the Asst. Labour Commissioner (ALC)'s jurisdiction was wrongly invoked and his order dated 15.03.2003 under S.6H, U.P. Industrial Disputes Act, 1947 is without jurisdiction and hence null and void and it can be observed that, in view of the said general legal principle, it is immaterial whether or not the government has enforced section135 (UPCS Act) because, in any case the said provision (S.135) had been included in the Act only by way of clarification and abundant caution."

The Apex Court in the above judgment held that the provision of Section 135 has been <u>included in the Act only by way of clarification and abundant caution</u>. In the present case the provision of Section 69(2)(d) is also clearly added by

way of abundant caution and by way of clarification. The above judgment of the Apex Court clearly reinforces our view that provisions of Section 69(2)(d) is not a new or substantive provision which has been brought by way of amendment. Such provision was inserted as by way of abundant caution and by explaining and clarifying the legal position.

62. One of the reasons which has been repeatedly given in various judgments of this Court holding that the dispute pertaining to service matters of the employee are not capable to be decided by the Registrar under Section 69 is that dispute pertaining to service matters are not capable to be decided by the Civil Court which jurisdiction has been transferred to Registrar under Section 69(1). It has been held that the jurisdiction of Registrar under Section 69(1) is akin to that of civil court. It has been further noticed that in so far as the employees who are workmen, cannot be granted relief of reinstatement of service by civil court hence it is only Labour Court which is entitled to grant such relief to the employee which indicate that such dispute are not covered by Section

69(1).

63. In an earlier judgment of this Court reported in **Kerala State Handloom Weavers' Co-operative Society Ltd. v. State of Kerala & others** (1964 KLJ 175), the Division Bench of this Court was considering the provisions of Trav.-Cochin Co-operative Societies Act, 1951. In the above case reference was made by the State Government under the 1947 Act regarding the pay scale, DA, Bonus, HRA etc. An award was given by the Industrial Tribunal which was challenged by the Co-operative Society. It was held that the Arbitration provided by Chapter XIII is an alternative to the normal processes of the ordinary courts and not to the extraordinary process of adjudication under the 1947 Act.

64. The **Kaloor Vadakkummury Service Co-operative Society Ltd. v. Assistant Registrar, Mukundapuram & others** [1973 KLT 523] was a case of dismissal of an employee of the Society in which the Labour Court has passed an award directing for reinstatement of the employee which was under challenge in the writ petition before the Court. The contention raised before the Court was

that services of the employee was a matter falling under Section 69 of the 1969 Act read with Section 2(i) hence the Registrar alone was competent to decide it. The above contention was accepted by the Division Bench holding that the provisions of Section 69 must prevail over the provisions of settlement of dispute under the Industrial Disputes Act. Following was laid down in paragraphs 1 and 2:

> "1. The question is whether the Labour Court, the 2nd respondent to this petition, has jurisdiction to pass the award Ext.P5 relating to the dismissal of the 4th respondent, one P.P.Chacko, from the services of the petitioner-Co-operative Society. By Ext.P5 award, the 2nd respondent has directed reinstatement of the 4th respondent as an employee of the petitioner-society. Without going into the merits of the decision in Ext.P5 excepting in referring to the incompetency of the President of the petitioner-Society in giving consent to the reinstatement of the 4th respondent counsel urged that the dispute about the correctness or otherwise of the dismissal of the 4th respondent from the services of the petitioner-society is a matter falling within S.69 of the Kerala Co-operative Societies Act, 1969 (hereinafter called the Act) that the dispute is one falling within the definition of that term in S.2(i) of the Act and that the Registrar alone was competent to decide it. The Act was passed with the assent of the President after the enactment of the industrial Disputes Act, 1947. Therefore, it was submitted that the provisions of the Act must prevail. We are therefore asked to set aside Ext.P5 award as having been passed without jurisdiction.

2. Counsel is well supported in his contention that if the subject-matter of the dispute before the 2nd respondent is one falling within the term 'dispute' as defined in S.2(i) and within S.69 of the Act and therefore within the competence of the Registrar to decide, this provisions must prevail over the provisions in the Industrial Disputes Act which provides for the settlement of disputes such as that are referable to the Industrial Tribunals or Labour Courts. It is unnecessary to cite authorities for this proposition, but we may as well refer to a passage from the decision of the Supreme Court in **Co-operative Central Bank Ltd. And others etc. V Additional Industrial Tribunal, Andhra Pradesh, Hyderabad and others etc**. reported in AIR 1970 SC 245:

> "The general proposition urged that the jurisdiction of the Industrial Tribunal under the Industrial Disputes Act will be barred if the disputes in question can be competently decided by the Registrar under S.61 of the Act is, therefore, correct and has to be accepted."

65. The Division Bench however, held that the real question is not whether the dispute is one touching the business of the Society or its management or establishment, but whether it is a dispute to be decided by the Registrar. The Division Bench held in paragraphs 6, 7 and 9 (relevant portion) as follows:

> "6. The real question is not whether the dispute is one touching the business of a society or its management or establishment but whether it is a dispute within the competence of the Registrar to decide.

7. The same view has been expressed by the Supreme Court in the decision in **Deccan merchants Co-operative Bank Ltd. V. M/s. Dalichand Jugraj Jain and others** reported in AIR 1969 SC 1320. Having referred to the matter as to whether the dispute was one touching the business of the Society, their Lordships observed:

> "Further the word 'dispute' covers only those disputes which are capable of being resolved by the Registrar of his nominee. It is very doubtful if the word "dispute" would include a dispute between a landlord society and a tenant when the landlord society has not been set up for the purpose of constructing or buying and letting out houses. In the presence of various rent Acts, which give special privileges to tenants it would be difficult to state that such disputes were intended to be referred to the Registrar.
>
> 9. For the same reasoning, the powers of the Labour Court, the 2nd respondent, functioning under the Industrial Disputes Act, 1947, are unaffected by the powers of the Registrar under S.69 of the Act. The dispute that was resolved by the 2nd respondent by passing Ext. P5 award could not have been dealt with by the Registrar. He was not competent to deal with that question. He could not grant the relief of reinstatement which has been granted by the 2nd respondent. We also hold that this dispute which has been resolved by Ext. P5 award is not one falling within the term 'dispute' as defined in S.2(i) of the Act and is not one falling within the competence or jurisdiction of the Registrar functioning under S.69 thereof. It follows that this petition has to be dismissed."

66. The Full Bench, in **Balachandran's case**(supra)

as noted above, has held that the Registrar has jurisdiction to entertain all matters which can be entertained ordinarily and normally by civil court. Similar is the observations made by another learned Single Judge in **Sankaran v. Deputy Registrar** [1975 KLT 861]. It is useful to quote the following observations in pages 863 and 867 (relevant portion) in the judgment:

> "Under the common law the court will not ordinarily force an employer to retain the services of an employee whom he no longer wishes to employ. But this rule is subject to certain well recognised exceptions. It is open to the courts in an appropriate case to declare that a public servant who is dismissed from service in contravention of Art.311 continues to remain in service even though by so doing the State is in effect forced to continue to employ the servant whom it does not desire to employ. Similarly, under the industrial law jurisdiction of the labour and industrial tribunals to compel the employer to employ a worker whom he does not desire to employ is recognised. The courts are also invested with the power to declare invalid the act of a statutory body, if by doing the act the body has acted in breach of a mandatory obligation imposed by statute, even if by making the declaration the body is compelled to do something which it does not desire to.
>
> If the civil court cannot grant the relief to the petitioner, then the first respondent also cannot. The arbitration provided in S.69 of the Act is only an alternative to the normal processes of the ordinary courts. The disputes contemplated in S.69 of the Act are disputes of a nature which could have been decided by civil court but for that

> provision. The power that could be exercised by an Industrial or Labour Court under the Industrial Disputes Act cannot be exercised by the Registrar. ”

67. Learned counsel for the employees has also reiterated the above submission before us. It is submitted that the Labour Court is competent to direct reinstatement, which relief can neither be granted by Civil Court nor by Registrar under Section 69. The beneficial provision to the employees be permitted to operate. There cannot be any dispute that power of Labour Court under the 1947 Act is in wider term and the Labour Court is empowered to grant relief of reinstatement and other reliefs to advance the cause of social justice. But on the premise that since the Labour Court can grant wider reliefs to employees, the jurisdiction of Labour Court should be allowed to be continued as a concurrent jurisdiction, despite overriding effect given to Section 69(1) does not appeal to us. Whether the Co-operative Arbitration Court can grant relief of setting aside termination or dismissal order is not the question which has arisen before us. The learned Single Judge in **Cheranallur**

Service Co-operative Bank Ltd (supra) has rejected the contention that the Co-operative Arbitration Court cannot order reinstatement. As noted above, the 1969 Rules contain a statutory provision as amended with effect from 1974 regulating the disciplinary enquiry against the employees by certain statutory requirement whether breach of statutory provision shall not invalidate action of the Co-operative Societies is also to be looked into in appropriate cases. We thus leave the question open as to whether the action of Co-operative Society, even it violates any statutory provisions, cannot be declared by the Arbitration Court to be inoperative and void. But present is a case where the statutory scheme of 1969 Act bar the jurisdiction of any other Court regarding service dispute of employees of a Co-operative Society. As observed above, the Kerala Co-operative Societies Act, 1969 being a complete Code and a Special Act regulating all acts of Co-operative Societies including settlement of dispute, if the legislative Scheme decides to bar the adjudication of dispute of its employees by any court including the Labour Court, the contention that the civil court or Co-operative

Court cannot grant reinstatement is not a factor which may dilute the statutory bar as contemplated by 1969 Act. Co-operative Court exercising quasi-judicial function is fully competent to decide all issues pertaining to service matters of the employees of the Co-operative Society. The dispute which is contemplated by Section 69 is of service dispute which includes various kinds of service disputes including salary, wages, leave and disciplinary action. Except submitting that Co-operative Court/Registrar cannot grant reinstatement, no other fetters in its power to decide the dispute or grant relief has been contended or suggested. When the Legislature by legislative scheme decides a special Forum for adjudication of all disputes barring jurisdiction of all courts, the question of availability or non-availability of any particular relief by the Co-operative Court/Registrar can have no bearing on the statutory scheme. Before the Labour Court it is the workmen who can raise their grievance and officers are not capable of raising their grievances before the Labour Court. Thus can it be said that Co-operative Act contemplates different kinds of reliefs in context of

employees and the officers of the Co-operative Society. If the submission of employees are accepted, the relief of reinstatement will be available only to the employees which is not envisaged for the officers since they cannot go to the Labour Court. It cannot be said that there is any such dichotomy with regard to the relief to the employees and officers under the parameter provided under the 1969 Act. All the disputes of employees or officers have to be decided and appropriate reliefs as per the provisions of the Act and the Rules can be granted under the 1969 Act and on this argument we are not persuaded to accept that the Labour Court shall continue to have jurisdiction to decide the service dispute of the employees despite the scheme delineated under Section 69 as amended from time to time.

68. One more judgment which has been relied on by the counsel for the employees need to be noted i.e., **The Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke of Bombay and others.** ([1976] 1 SCC 496). In the above case the Apex Court had occasion to consider the jurisdiction of civil court to entertain certain disputes. The

provisions of Section 9 of the Civil Procedure Code, 1908 and provisions of 1947 Act were considered. After considering several cases of Apex Court and other courts the principles applicable to the jurisdiction of the civil court in relation to a industrial dispute were stated in paragraph 23 which is to the following effect:

> "23. To sum up, the principles applicable to the jurisdiction of the Civil Court in relation to an industrial dispute may be stated thus:
>
> (1) If the dispute is not an industrial dispute nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil Court.
>
> (2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.
>
> (3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.
>
> (4) If the right which is sought to be enforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either S.33C or the raising of an industrial dispute, as the case may be."

69. The proposition as laid down above cannot be

disputed but in the case before the Apex Court in **Premier Automobiles Ltd**.(supra), the question of creation of any bar for entertaining the dispute by any other court, except the Forum provided under the Special Act was not in issue. The question as to whether the provisions under the Industrial Disputes Act, 1947 overrides the State Act by virtue of State Legislation passed with the assent of President was not under consideration. The preposition in **Premier Automobiles Ltd**. (supra), shall be applicable in a case where it is open for the workmen to elect any of the two remedies permissible to him. The above case has no application in the facts of the present case in view of the fact that the 1969 Act being a special enactment containing the mechanism for settlement of dispute notwithstanding anything contrary to any existing law including the Industrial Disputes Act, 1947. In view of the foregoing discussions our **answer** to the questions which have come up for consideration are as follows:

i. Section 69 of 1969 Act as originally enacted

contemplates that disputes relating to service between Co-operative Society and its employees be referred to Registrar under Section 69 of the Act and there is no contemplation of reference of dispute of employees to the Labour Court for decision.

ii. Section 69 of the 1969 Act as originally enacted intended to override other contrary provision in any existing law including the provisions of Industrial Disputes Act, 1947.

iii. The Kerala Co-operative Societies Act, 1969 was enacted with the Presidential assent.

iv. The amendment Act 1 of 2000, amending Section 69 of the 1969 Act was made in abundant caution for explaining and clarifying the statutory scheme. Amendments made to Section 69 of the Act by amendment Act 1 of 2000 are not repugnant to any provisions of the 1947 Act and the amendment cannot be held to be inoperative.

v. The provision of Act 1 of 2000 did not impinge any provisions of the 1947 Act and cannot be held to be void or inoperative, since the

inconsistent provisions of the 1947 Act regarding settlement of disputes of workman of a co-operative society had already been overridden by Section 69 of the 1969 Act as originally enacted.

vi and vii. For entertaining a dispute regarding service matters including disciplinary proceedings against the employees, officers of the Co-operative Society it is the Co-operative Arbitration Court under Section 69 which alone is entitled to exercise the jurisdiction. The Labour Court has no jurisdiction to entertain any such dispute.

viii. The Division Bench judgment of this Court in Thodupuzha Taluk General Marketing Co-operative Society v. Michael Sebastian as well as other judgments laying down the proposition that Co-operative Arbitration Court and Labour Court shall have concurrent jurisdiction do not lay down the correct law.

ix. The Full Bench judgment of this Court in Balachandran V. Deputy Registrar does not lay down the correct law in so far as it held that as per Section 69 of the Act the service dispute of the employees

and officers of the Co-operative Societies cannot be adjudicated by the Registrar. The judgment of the Full Bench in Sherly's case (supra) in so far as it holds that Labour Court shall have jurisdiction to decide the disputes of dismissal of employee of Co-operative Societies does not lay down the correct law.

70. In view of our answers as above, we allow all the Writ Appeals and Writ Petitions in the following manner:

A. W.A. No.184 of 2010 is allowed. The judgment of learned Single Judge dated 04.12.2009 is set aside and W.P. (C) No.27909 of 2009 is allowed holding that the 1st respondent has no authority to refer the dispute between the petitioner and 3rd respondent by Ext.P1 reference order dated 17.07.2009. It shall however be open for the 3rd

respondent to invoke the provisions of Section 69 of the 1969 Act within one month from today.

B. W.A. No. 2516 of 2009 is allowed. The judgment of learned Single Judge dated 13.08.2009 is set aside and W.P. (C) No.30854 of 2007 is allowed and the award Ext.P1 dated 17.10.2009 is set aside. It shall however be open for the 1st respondent to invoke the provisions of Section 69 within a period of one month from today.

C. W.A. No. 764 of 2010 is allowed. The judgment of learned Single Judge dated 20.04.2010 is set aside and W.P. (C) No.12949 of 2010 is allowed. The

reference order Ext.P5 and all consequential proceedings are set aside. It shall however be open for the 2nd respondent to invoke the jurisdiction under Section 69 within one month from today.

All the writ appeals are decided accordingly. Parties shall bear their costs.

ASHOK BHUSHAN,
CHIEF JUSTICE.

A.M. SHAFFIQUE,
JUDGE.

Thottathil B.Radhakrishnan, J.

71. I have studied the opinion expressed by brother Justice Antony Dominic and the view penned by the Hon'ble the Chief Justice.

72. To put pithily, the issue is as to whether the effect of Section 69(1) of the Kerala Co-operative Societies Act, 1969, hereinafter referred to as the “KCS Act” read with Section 100 of that Act excludes the jurisdiction of labour courts in terms of the provisions of the Industrial Disputes Act, 1947.

73. The distinction between 'civil courts', 'revenue courts', 'tribunals' etc. have come to stay through different pronouncements by different High Courts and also as per the law laid by the Hon'ble Supreme Court of India. All civil courts are courts but all courts are not civil courts. Similarly, revenue courts have always been treated as courts of limited and restricted jurisdiction.

74. Section 69(1) of the KCS Act, even as it originally stood, concluded saying that “no court shall have jurisdiction .....”. Section 100 of that Act from its

enactment in 1969 is to the effect that “no civil or revenue court” shall have any jurisdiction in respect of any matter for which provision is made in that Act. The KCS Act thus uses the terms 'court', 'civil court' and 'revenue court' in different sections of the legislation, particularly relating to exclusion of jurisdiction. When the Legislature uses such different terms in different parts of a statute, it has to be necessarily presumed that the Legislature intentionally did so. This is part of the legislative wisdom which the courts will presume while construing statutory provisions. Thus, the use of the word 'court' in the last part of Sub-section 1 of Section 69 of the KCS Act, even as it originally stood, clearly indicates that the said term was intended to exclude all 'courts', including civil courts and revenue courts from adjudicating on any matter falling under Section 69. That term 'court' in Section 69 has to be understood in the widest sense to mean an adjudicating body which performs functions of rendering definite decisions on the disputes between the parties. Therefore, the term 'court' in the last part of Section 69(1) of the KCS Act, as it originally stood, has to be understood as an exclusion of all

courts, including the civil courts and revenue courts, from adjudicating upon any dispute which falls within Section 69 of that Act. Disputes that fall under Section 69 stand wholly excluded from adjudication by 'courts', whatever be its nature.

75. Reverting to Section 100 of the KCS Act, it has to be emphasized that what stands excluded from civil courts and revenue courts by the operation of that provision will take in those barred under Section 69 as well. But, the bar created under Section 69 is not thereby confined to civil courts and revenue courts. It applies to all courts of whatever quality, content and jurisdiction they have. To assume to the contrary would be to treat the bar of jurisdiction created by Section 69 to be superfluous.

76. To treat a statutory provision as superfluous, is the last among the recourses that would be taken in the process of interpretation and construction of statutes because courts start with a presumption that every portion of a statute has some purpose and its presence is necessary to effectuate that purpose - See for support **J.K.Cotton**

Spinning and Weaving Mills Co. Ltd. v. State of Uttar Pradesh [AIR 1961 SC 1170]. The field of precedent law relating to rules of interpretation of statutes necessarily points out that even if a superfluous provision is noted as a result of the interpretation of all the provisions of an Act, such a superfluous provision could also be one introduced under the influence of what may be 'abundant caution' - See **Principles of Statutory Interpretation by G.P.Singh, Seventh Edition, page 66** making reference to **Inland Revenue Commissioners v. Dowdell O'Mahoney & Co. Ltd**.[**(1952) 1 All ER 531]** and **Gokaraju Rangaraju v. State of A.P.[AIR 1981 SC 1473]**. However, here, there is no question of any superfluous provision having been inserted because the matters that stand excluded from jurisdiction of civil courts and revenue courts as per Section 100 of the KCS Act are “any matter” for which provision is made in that Act while exclusion of jurisdiction in Section 69 is regarding the matters which are enumerated in Section 69(1); which are not the only matters in relation to which disputes may arise, as is conceived by the Legislature while making Section 100.

77. For the aforesaid reasons, I would answer the reference holding that even under the provisions of Section 69 read with Section 100 of the KCS Act as it stood from the inception of that legislation, there was clear exclusion of jurisdiction of all other courts including the labour courts. I would, therefore, concur with the views of the Hon'ble the Chief Justice.

(Thottathil B. Radhakrishnan, Judge)

Antony Dominic, J.(for himself and on behalf of Alexander Thomas, J.)

78. By order dated 8.12.1010, a Division Bench of this Court referred these writ appeals for the consideration of the Full Bench, doubting the correctness of the Division Bench judgment in ***Thodupuzha Taluk General Marketing Co-operative Society*** v. ***Michael Sebastian*** [2010 (1) KLT 939]. Accordingly, the cases were heard by the Full Bench and by its order dated 15.12.2014, the Full Bench referred the cases for the consideration of the Larger Bench. The

questions framed for consideration in the order dated 15.12.2014 are the following:

> "(i) Whether Sec.69 of the 1969 Act as enacted contemplate disputes relating to service between the Co-operative Society and its employees to be referred to Labour Court for decision?
>
> (ii) Whether Sec.69 as enacted intends to override any contrary provision in any law including the provisions of the 1947 Act by virtue of Sec.69(1) of the 1969 Act?
>
> (iii)Whether the 1969 Act was enacted with Presidential assent?
>
> (iv) Whether the Amendment Act 1 of 2000 by which amendments were made in Sec.69 of the 1969 Act are clarificatory in nature?
>
> (v) Whether the Amendments made in Sec.69 of the 1969 Act by the Amendment Act 1 of 2000 are repugnant to the provisions of the 1947 Act and hence inoperative?
>
> (vi) Whether for entertaining a dispute regarding disciplinary proceedings against employees and officers of the Co-operative Bank both the Co-operative Arbitration Court as well as the Labour Court shall have concurrent jurisdiction?
>
> (vii) Whether the Co-operative Arbitration Court alone has exclusive jurisdiction to decide the dispute pertaining to the disciplinary action initiated against the officers and employees of the Co-operative Bank and the Labour Court shall have no jurisdiction to entertain any such dispute?
>
> (viii) Whether the Division Bench judgment of this Court in ***Thodupuzha Taluk General Marketing Co-operative Society*** v. ***Michael Sebastian*** [2010 (1) KLT 939] lays down the correct law?
> (ix) Whether the Full Bench judgments of this Court - ***Balachandran*** v. ***Deputy Registrar*** [1978 KLT 249 (FB)]

> as well as ***Sherly*** v. ***Parappuram Milk Producers Co-operative Society Ltd.*** [2007 (1) KLT 809] lay down the correct law that under Sec.69 of the 1969 Act (unamended) the disputes of employees and officers of the Co-operative Societies regarding service matters cannot be adjudicated?

It is accordingly that these cases were heard by this Bench.

79. W.A.184/10 has been filed against the judgment dated 4.12.2009 in W.P(C).27909/09. That writ petition was filed by A.R.Nagar Service Co-operative Bank Ltd. challenging the validity of Ext.P1 order dated 17.7.2009 passed by the State Government, referring an industrial dispute under section 10 (1)(c) of the Industrial Disputes Act, 1947 (hereinafter, the 'ID Act', for short) for adjudication of the Labour Court, concerning the legality and validity of dismissal of a workman of the bank. In the writ petition, the prayer was to quash the order referring the dispute for adjudication under the ID Act and a declaration that section 69 of the Kerala Co-operative Societies Act, 1969 (hereinafter, the '1969 Act', for short), excluded the jurisdiction of all other courts/authorities in the matter of adjudication of disputes between the

employee/past employee of a society that arises in the course of employment was also sought for.

80. Learned single Judge dismissed the writ petition finding that there was no material to show that the 1969 Act was introduced after receiving the assent of the President as provided under Article 254(2) of the Constitution of India and that the learned Government Pleader had also confirmed that no Presidential assent was received. According to the learned single Judge, without the assent of the President for the 2000 amendment to the 1969 Act, jurisdiction of Labour Court and Industrial Tribunal could not be excluded and that therefore, the Labour Court and Industrial Tribunal also had jurisdiction to entertain an industrial dispute raised by a past employee of a co-operative society.

81.W.A.2516/09 is filed against the judgment dated 13.8.2009 in W.P(C).30854/07. By this judgment, the writ petition filed by the Chirayinkeezhu Service Co-operative Bank Ltd. challenging the award of the Labour Court was dismissed holding that the 2000 amendment to section 69 of the 1969 Act had not received presidential assent and that

therefore, the Labour Court had jurisdiction to entertain an industrial dispute between co-operative societies and their workmen. In this judgment, though the judgment in ***Board of Directors, Edava Service Co-op. Bank*** v. ***The Co-op. Arbitration Court*** [2008 (3) KLT 267], where it was held that dispute relating to dismissal of an employee of a co-operative society is a matter that falls within the purview of Arbitration Court was noticed, learned single Judge disagreed with this view.

82.W.A.764/10 is filed against the judgment dated 20.4.2010 in W.P(C).12949/10, whereby the writ petition filed by the Pallichal Farmers Service Co-operative Bank Ltd. was dismissed. In this case, after disciplinary proceedings, the second respondent who was an employee of the appellant bank, was terminated from service. He raised an industrial dispute before the District Labour Officer where the bank contended that in view of section 69(2)(d) of the 1969 Act, the jurisdiction to entertain a dispute under the 1969 Act was with the Co-operative Arbitration Court and that therefore, the District Labour Officer did not have jurisdiction to

entertain the dispute. However, acting upon the failure report submitted by the District Labour Officer being the conciliation officer, the State Government passed order dated 30.12.2009 under section 10(1)(c) of the ID Act, referring the dispute for adjudication to the Labour Court, Kollam. The Labour Court entertained the dispute as I.D.No.7/10 and it was thereupon the writ petition was filed with a prayer to quash the order of reference and to declare that the proceedings before the Labour Court were ultra vires section 69 of the 1969 Act. In this judgment, following the judgments of this Court in ***A.R.Nagar Service Co-operative Bank*** v. ***State of Kerala*** [2010 (1) KLT 55] and ***Thodupuzha Taluk General Marketing Co-operative Society*** v. ***Michael Sebastian*** [2010 (1) KLT 939], taking the view that the Labour Court and Co-operative Arbitration Court have concurrent jurisdiction to entertain such disputes, the writ petition was dismissed.

83. The questions raised for the consideration of this Court are interconnected and the basic question is whether, in view of the provisions contained in section 69 of the 1969 Act, the

provisions of the ID Act stands excluded in the matter of adjudication of disputes that arise between co-operative societies registered under the 1969 Act and its employees or past employees.

84. The 1969 Act was enacted by the State of Kerala in exercise of its legislative power under entry 32 of list II of schedule VII to the Constitution of India, viz., incorporation, regulation and winding up of corporations, other than those specified in list I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies. Section 2(i) of the 1969 Act defines 'dispute' as “any matter touching the business, constitution, establishments or management of a society capable of being the subject of litigation and includes a claim in respect of any sum payable to or by a society, whether such claim be admitted or not”.

85. Section 69 of the 1969 Act occurring in Chapter IX which provides for settlement of disputes, prior to its amendment by Act 1 of 2000 with effect from 2.1.2003, read as follows:

"69. Disputes to be referred to Registrar.- (1) Notwithstanding anything contained in any law for the time being in force, if a dispute arises,-

(a) among members, past members and persons claiming through members, past members and deceased members; or

(b) between a member, past members or person claiming through a member, a past member or deceased member and the society, its committee or any officer, agent or employee of the society; or

(c) between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the society; or

(d) between the society and any other society; or

(e) between a society and the members of a society affiliated to it; or

(f) between the society and a person, other than a member of the society, who has been granted a loan by the society or with whom the society has or had business transactions or any person claiming through such a person; or

(g) between the society and a surety of a member, past member, deceased member or employee or a person, other than a member, who has been granted a loan by the society, whether such a society is or is not a member of the society; or

(h) between the society and a creditor of the society, such dispute, shall be referred to the Registrar for decision, and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

[Explanation:- In this section and in S.70, the term"Registrar" means the Registrar of Co-operative Societies appointed under sub-sec.(1) of S.3 and includes any person on whom the powers of the Registrar under this

Section and S.70 are conferred].

(2). For the purposes of sub-section (1), the following shall also be deemed to be disputes, namely:--

(a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;

(b) a claim by a surety against the principal debtor, where the society has recovered from the surety and amount in respect of any debt or demand due to it from the principal debtor, as a result of the default of the principal debtor, whether such debt or demand is admitted or not;

(c) any dispute arising in connection with the election of the Board of Management or any officer of the society;

Explanation.- A dispute arising at any stage of an election commencing from the convening of the general body meeting for the election shall be deemed to be a dispute arising in connection with the election;

(3) No dispute arising in connection with the election of the Board of Management or an officer of the society shall be entertained by the Registrar unless it is referred to it within one month from the date of the election.

(4) If any, question arises whether a dispute referred to the Registrar under the section is a dispute as defined in clause (i) of Sec.2 the decision thereon of the Registrar shall be final."

86. The 1969 Act was implemented by notification No.10687/F2/68/Law dated 11.4.1969 and this notification, a copy of which was made available by the learned senior Government Pleader, specifically states

that "the Bill as passed by the Legislative Assembly received the assent of the President on the 9th of April, 1969".

87. Subsequently, by Act 1 of 2000, the provisions of the 1969 Act were substantially amended. Section 69 of the 1969 Act, substituted by Act 1 of 2000 with effect from 2.1.2003, reads thus:

> **"69. Disputes to be decided by Co-operative Arbitration Court and Registrar.-**
>
> (1) Notwithstanding anything contained in any law for the time being in force, if a dispute arises.-
>
> (a) among members; past members and persons claiming through members, past members and deceased members; or
>
> (b) between a member, past member or person claiming through a member, a past member or deceased member and the society, its committee or any officer, agent or employee of the society; or
>
> (c) between the society or its committee and any past committee, any officer, agent or employee or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the society; or
>
> (d) between the society and any other society; or
>
> (e) between a society and the members of a society affiliated to it; or
>
> (f) between the society and a person, other than a

member of the society, who has been granted a loan by the society or with whom the society has or had business transactions or any person claiming through such a person; or

(g) between the society and a surety of a member, past member, deceased member or employee or a person, other than a member, who has been granted a loan by the society, whether such a surety is or is not a member of the society; or

(h) between the society and a creditor of the society; such dispute shall be referred to the Co-operative Arbitration Court constituted under Section 70A, in the case of non-monetary disputes and to the Registrar, in the case of monetary disputes and the Arbitration Court, or the Registrar, as the case may be, shall decide such dispute and no other Court or other authority shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute.

(2). For the purposes of sub-section (1), the following shall also be deemed to be disputes, namely:--

(a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;

(b) a claim by a surety against the principal debtor, where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor, as a result of the default of the principal debtor, whether such debt or demand is admitted or not;

(c) any dispute arising in connection with the election of the Board of Management or any officer of the society;

Explanation.- A dispute at any stage of an election commencing from the convening of the general body meeting for the election shall be deemed to be a dispute arising in connection with the election.

(d) any dispute arising in connection with employment of officers and servants of the different classes of

> societies specified in sub- section (1) of S.80, including their promotion and *inter se* seniority.
>
> (3) No dispute arising in connection with the election of the Board of Management or an officer of the society shall be entertained by the Co-operative Arbitration Court unless it is referred to it within one month from the date of the election."

88.Section 69, prior to its amendment by Act 1 of 2000 and as amended, open with a *non-obstante* clause which provide that "notwithstanding anything contained in any law for the time being in force". Disputes as provided in the section were to be decided by the Registrar as per the 1969 Act as enacted and by the Co-operative Arbitration Courts and Registrar, as per the Act as amended by Act 1 of 2000. By section 69(1)(c) of the 1969 Act, disputes between the society or its committee and any past committee, any officer, agent or employee or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the society was brought within the coverage of section 69. Sub section (h) of the amended section 69(1) further provides that such dispute shall be referred to the Co-operative Arbitration Court constituted under section 70A in

the case of non-monetary disputes and to the Registrar in the case of monetary disputes and the Arbitration Court or the Registrar as the case may be, shall decide such disputes and that no other court or other authority shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute. Here it may be mentioned that section 69(1)(h) of the unamended Act also provided that no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

89. Section 69(2) provides that for the purpose of section 69 (1), the matters that are enumerated in clauses (a) to (d) shall also be deemed to be disputes. In so far as it is relevant, it is necessary to notice that by Act 1 of 2000, section 69(2) (d) providing that any dispute arising in connection with the employment of officers and servants of the different classes of societies specified in section 80(1), including their promotion and *inter se* seniority, shall also be deemed to be disputes for the purpose of section 69(1) was inserted. Act 1 of 2000 was implemented with effect from 2.1.2003. Sections 70, 70A and 70B were also substituted by Act 1 of

2000. Section 70 of the 1969 Act provides for award on disputes and section 70A provides for the constitution of Co-operative Arbitration Courts. Section 70B provides that on the constitution of a Co-operative Arbitration Court, every dispute pending before the Registrar or any person invested with the power to dispose of the disputes by the Government or the arbitrator appointed by the Registrar, in respect of non-monetary disputes, relating to the local area of jurisdiction of the Arbitration Court, shall be transferred to such Arbitration Court and the Court shall dispose of the same as if it were a dispute referred to it under section 69. section 82 provides for appeals to the Tribunal constituted by the Government under section 81 of the 1969 Act and section 98 provides that in exercising the functions conferred on it under the Act, the Tribunal, the Registrar, the Arbitrator or any other persons deciding a dispute shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 in respect of the matters enumerated in clauses (a) to (d) thereof. Section 100 of the Act provides

that no civil or revenue court shall have any jurisdiction in respect of any matter for which provision is made in this Act.

90. We shall now examine the principles laid down by the Full Bench of this Court in ***Balachandran*** v. ***Deputy Registrar*** [1978 KLT 249]. The dispute in that writ petition related to seniority and promotion as between the appellant and the 4th respondent therein. The committee of the bank where the appellant and the 4th respondent were employed, referred the dispute for the decision of the Deputy Registrar of Co-operative Societies. The Deputy Registrar considered the dispute and decided in favour of the 4th respondent. Accordingly, the appellant was reverted and the 4th respondent was promoted. The appellant sought re-consideration of the decision. The matter was again referred to the Deputy Registrar and the dispute was again decided in favour of the 4th respondent. This decision of the Deputy Registrar was confirmed by the appellate Tribunal. The writ petition was filed challenging these decisions. The main question that was canvassed before the learned single Judge was that the jurisdiction of the Registrar to arbitrate under

section 69 was not attracted in so far as the dispute in question was concerned. This contention was repelled and the writ petition was dismissed. The appeal filed against this judgment came to be referred and heard by a Full Bench of this Court.

91. The question considered by the Full Bench was whether the dispute decided by the Registrar was a dispute that could be competently resolved by the Registrar, functioning under section 69 of the 1969 Act. In this judgment, the Full Bench referred to the judgments of the Apex Court in ***D.M. Co-op. Bank*** v. ***Dalichand*** [AIR 1969 SC 1320], ***Co-op. Cr. Bank*** v. ***Industrial Tribunal, Hyderabad*** [AIR 1970 SC 245] and judgments of this Court in ***Malabar Co-operative Central Bank Limited, Kozhikode*** v. ***State of Kerala*** [1963 KLT 705] and ***Kerala State Handloom Weavers' Co-operative Society Ltd.*** v. ***State of Kerala*** [1964 KLJ 175] and ***Kaloor Vadakkummury Service Co-operative Society Ltd.*** v. ***Assistant Registrar*** [1973 KLT 523]. Thereafter, the Full Bench held that the jurisdiction of the Registrar in regard to arbitration under the 1969 Act is co-

terminus with the jurisdiction of ordinary civil courts and that a dispute as to seniority or promotion cannot be entertained or made subject of litigation in a civil court and therefore, such a dispute could not be the subject matter of arbitration before the Registrar. The relevant findings of the Full Bench contained in paragraphs 2 and 3 of the judgment, read as under:

> "2. Before the learned Judge the main question that was canvassed was that the jurisdiction of the Registrar to arbitrate under S.69. ia regard to the matter referred was not attracted and therefore had not been properly invoked. The question depends upon the provisions of the Co-operative Societies Act. S.2(1) of the Act and S.69(c) read:
>
> "2(i) "Dispute" means any matter touching the business, constitution, establishments or management of a society capable of being the subject of litigation and includes a claim in respect of any sum payable to or by a society, whether such claim be admitted or not." (underlining ours)
>
> "69. Notwithstanding anything contained in any law for the time being in force if a dispute arises
>
> (a) and (b) xx xx xx
> (c) between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee, or the nominee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the society; or
>
> xx xx xx

such dispute shall be referred to the Registrar for decision, and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute".

The pattern of these provisions is somewhat different from what has till recently been followed under the provisions of the Co-operative Societies' Acts, where almost uniformly, the Registrar's jurisdiction related, broadly speaking, to matters touching the business of the Society, without any independent definition of the term 'dispute'. Under the present Act of 1969 while the requirement of a 'dispute touching the business of the Society' is undoubtedly indicated, the definition makes it clear that the 'dispute' may touch the business, constitution, establishments or management of a Society etc. The argument advanced before the learned Judge, based on the trend of opinion rendered with respect to the pattern of the provisions of the various Co-operative Societies Acts, till then in force, was that a dispute regarding service conditions, promotion and seniority etc. of employees in a Co-operative Society was not a matter 'touching the business' of the Society, and therefore not cognisable by the Registrar for arbitration as it is called under the Co-operative Societies Act. The argument derives support from two decisions of the Supreme Court in D.M. Co-op. Bank v. Dalichand (AIR. 1969 S. C. 1320) and Co-op. Cr. Bank v. Ind. Tri., Hyderabad (AIR. 1970 S. C. 245). Those have laid down the limitation that a matter 'touching the business' of the Society must relate to the trade and commercial activities of the society. More important, is the decision of this Court in Kaloor Vadakkummury Service Co-operative Society Ltd. v. Assistant Registrar (1973 KLT. 523). After examining the position elaborately, the Division Bench stated at page 525 as follows:

"3. The question for decision is whether the dispute that has been decided by the 2nd respondent by Ext. P5 award is a dispute that can competently be resolved by the Registrar functioning under S.69 of the Act. For deciding this question, it is necessary to understand the scope and nature of the disputes that can be settled by an Industrial Tribunal or Labour Court. We must in this connection, refer to a passage from the decision of the Privy Council in The Labour Relations Board of

Saskatchewan v. John East Iron Works Ltd reported in AIR 1949 P. C. 129. The question therein was whether the provisions in the British North America Act, 1867, should be complied with in appointing the members of the Labour Relations Board under the Trade Union Act, 1944. This question turned on the further question whether the Labour Relations Board could be termed a District and County Court. The members of the Judicial Committee, considered the scope and functions of the Labour Relations Board and we think that two paragraphs in the judgment are relevant. We sha|l extract those paragraphs:

"26. It is a truism that the conception of the judicial function is inseparably bound up with the idea of a suit between parties, whether between Crown and subject or between subject and subject, and that it is the duty of the Court to decide the issue between those parties, with whom alone it rests to initiate or defend or compromise the proceedings. Here at once a striking departure from the traditional conception of a Court may be seen in the functions of the appellant Board. For, as the Act contemplates and the Rules made under it prescribe, any trade union, any employer, any employers' association or any other person directly concerned may apply to the Board for an order to be made (a) requiring any person to refrain from a violation of the Act or from engaging in an unfair labour practice, (b) requiring an employer to reinstate an employee discharged contrary to the provisions of the Act and to pay such employee the monetary lots suffered by reason of such discharge, (c) requiring an employer to disestablish a company dominated organisation or (d) requiring two or more of the said things to be done. Other rules provide for the discharge by the Board of other functions. It is sufficient to refer only to (b) supra, which clearly illustrates that, while the order relates solely to the relief to be given to an individual, yet the controversy may be raised by others without his assent and, it may be, against his will, for the solution of some far reaching industrial conflict. It may be possible to describe an issue thus raised as a "lis" and to regard its determination as the exercise of judicial power. But it appears to their Lordships that such an issue is indeed remote from those which at the time of confederation occupied the superior or district or county Courts of

> Upper Canada.
> 27. In the Court of Appeal for Saskatchewan the learned Chief Justice (in whose opinion the other Judges concurred) accepted the view that the Board exercised a judicial power analogous to that of the Courts named on the ground that such Courts always had jurisdiction in connection with the enforcement of contracts of hiring and awarding damages for the breaches thereof. But, as their Lordships think, this view ignores the wider aspects of the matter. The jurisdiction of the Board under S.5 [e] is not invoked by the employee for the enforcement of his contractual rights; these whatever they may be we can assort elsewhere. But bis reinstatement which the terms of his contract of employment might not by themselves justify, is the means by which labour practices regarded as unfair are frustrated and the policy of collective bargaining as a road to industrial peace is secured. It is in the light of this new conception of industrial relations that the question to be determined by the Board must be viewed, and, even if the issue so raised can be regarded as a justiciable one, it finds no analogy in those issues which were familiar to the Courts of 1867."

92. ***M.U.Sherly*** v. ***The President, Parappuram Milk Producers Co-operative Society Ltd.*** [2007(1) KLT 809] is the other judgment of the Full Bench, the correctness of which is also to be considered. ***M.U.Sherly***'s case was an appeal filed by an employee of a co-operative society. The writ petition was filed by the society challenging the order of reference passed by the State Government under section 10(1)(c) of the ID Act, referring an industrial dispute as to whether the dismissal of Smt.M.U.Sherly by

the management of the society was legal and justifiable. On receipt of the reference, the Industrial Tribunal, Alappuzha issued notice to the parties and considered the validity of the domestic enquiry conducted by the society as a preliminary issue. The Tribunal passed an order holding that the domestic enquiry conducted was illegal and unsustainable. Thereafter, since the management had not sought for an opportunity to justify its action by adducing evidence, the Tribunal passed an award setting aside the dismissal and ordering reinstatement of the workman with 50% backwages. In the writ petition, the reference order, the order of the Tribunal setting aside the domestic enquiry and the final award were challenged by the society.

93. The issues considered by the learned single Judge and the findings thereon are contained in paragraphs 3 and 4 of the judgment, which reads as under:

> "3. The learned Single Judge framed the following issues for consideration.
>
> "(i) Is the initiation of proceedings under the I.D. Act,

after the Deputy Director had rejected the application of the delinquent, is within authority?

(ii) Is the impugned Ext. P4 preliminary order is contrary to the findings in the inter-partis judgment in WA No. 898 of 1998?

(iii) Whether the Industrial Tribunal has the jurisdiction to decide the question of dismissal and reinstatement, in view of S.7 read with Second Schedule to the I.D. Act?

(iv) In passing the impugned Ext. P5 award, did the Industrial Tribunal act in excess of jurisdiction under S.11A of the I.D. Act?"

4. On the first issue, it was held by the learned Single Judge that ..... "the delinquent, having obtained an adverse decision at the hands of the Deputy Director on his statutory petition under R.176 of the Kerala Co-operative Societies Rules (hereinafter referred to as the KCS Rules), is not entitled to have the said issue reopened before any other forum". On the second issue, it was held that the reliance of the Tribunal on the direction in O.P. No.22912/97 to conduct a fresh enquiry was wrong since the judgment had already been set aside by the Division Bench. Regarding the jurisdiction of the Tribunal, in view of S.7-A(1) of the I.D. Act, it was held that Industrial Tribunals have jurisdiction to adjudicate on disputes relating to any matter whether specified in the Second Schedule or in the Third Schedule and on the fourth issue, learned Single Judge was of the view that exercise of power under S.11A of the I.D. Act was justified. However, no relief was granted to the employee in view of the finding on issue No. 1 that the Deputy Director having looked into the matter, it was not open to the employee to take recourse to the remedies under the I.D. Act."

94.The Full Bench considered the validity of the reference of the dispute to the Industrial Tribunal and held the issue in favour of the workman. The issues considered and the

conclusions of the Full Bench thereon are in paragraphs 1, 9 and 13 of the judgment, which read thus:

> " In the matter of disciplinary proceedings against an employee of a co-operative society registered under the provisions of the Kerala Co-operative Societies Act, 1969, (hereinafter referred to as 'the KCS Act') once the Registrar exercises his power under R.176 of the Kerala Co-operative Societies Rules, 1969 (hereinafter referred to as 'the KCS Rules'), is it open to the aggrieved employee to take recourse to the remedies under the Industrial Disputes Act, 1947 (hereinafter referred to as 'the I.D. Act') is essentially the question referred to the Full Bench. To pose a general question, is an employee subjected to disciplinary proceedings entitled to have his grievance adjudicated before an authority, Forum, Tribunal or Court, which is independent of the executive?"
>
> "9. The provisions as extracted above would clearly indicate that an employee of a co-operative society registered under the provisions of the KCS Act is entitled to have his grievance, if the same constitutes a dispute under S.69(2)(d), adjudicated before the Co-operative Arbitration Court. Prior to the introduction of S.69(2)(d), the only recourse, after the appeal before the managing committee of the society, was under R.176, where the power of the Registrar is cribbed, cabined and confined to the extent only of factors indicated under the rule, which have been succinctly dealt with in *Parappuram M. P. Co-operative Society's* case (supra) and extracted above. The question is whether in such a situation an employee did have any right to have his case adjudicated before an independent forum in the face of the decision under R.176."
>
> "13. An employee subjected to a disciplinary action has right to have his grievance adjudicated before an independent Forum (a Forum, Tribunal, Labour Court etc.) having the trappings of a Court after he has exhausted the departmental remedies. In the instant case, the employee did not get an opportunity before the

> Co-operative Arbitration Court since the same had not been notified and hence the reference of the dispute by the Government before the Industrial Tribunal is certainly valid. The decision of the Deputy Director cannot stand in her way. The worker must be conceded right to raise an industrial dispute contending that her dismissal affirmed by the managing committee and the Deputy Director is bad in law. However, we may clarify the legal position that if the remedy under the statute is before a forum akin to Court, which is bound to follow judicial procedure and its decision is made final by the statute, the position would be different."

95. We heard the learned counsel for the parties. While according to the counsel for the societies, in view of the provisions contained in section 69 of the 1969 Act, the jurisdiction of the Industrial Tribunals and Labour Courts stand excluded, the counsel for the workmen contended that the ID Act is still applicable to the workmen of the societies governed by the 1969 Act and that the jurisdiction of the Labour Courts and Industrial Tribunals is concurrent. Our answer to this question would answer the questions that are to be considered by this Court and this would also answer the question regarding the correctness of the Full Bench decisions and the Division Bench judgment noticed in the first paragraph of this judgment.

96.ID Act is an existing Act falling under Entry 22 of List III to Schedule VII of the Constitution of India, viz., trade unions; industrial and labour disputes. ID Act was enacted to make provisions for the investigation and settlement of industrial disputes and for the other purposes that are mentioned in the Act. In so far as it is relevant, section 2(j) defines 'industry', 2(k) defines 'industrial dispute' and 2(s) defines 'workman'. Chapter II of the ID Act provides for the authorities under the Act and Chapter III provides for reference of disputes to Boards, Courts or Tribunals. Chapter IV provides the procedure, powers and duties of authorities under the Act.

97.The extent of jurisdiction of the Industrial Tribunals and Labour Courts to deal with industrial disputes referred for adjudication came to be considered by the Apex Court in the judgment in ***The Premier Automobiles Ltd.*** v. ***Kamlekar Shantaram Wadke of Bombay*** [(1976) 1 SCC 496]. That was a case where a suit was filed in a civil court by two members of a trade union in a representative capacity. In the plaint they based their claim on a memorandum of

settlement, which, according to them, on being acted upon, became the condition of service of the workmen of the establishment. The plaintiffs attacked another settlement entered into between the management and the trade unions under section 18(1) of the ID Act and the first relief claimed in the suit was that the settlement under section 18(1) was not binding on the plaintiffs and other concerned daily rated and monthly rated workmen of the Motor Protection Department who were not members of the signatory union. Second relief sought for was a decree for permanent injunction to restrain the management from enforcing and implementing the settlement.

98.Defendants in the suit challenged the jurisdiction of the civil court to entertain the suit in relation to a dispute which was an industrial dispute and they further argued that in that view of the matter, no decree for permanent injunction could be made. The trial court held that the court had jurisdiction to try the suit. In an appeal filed by the company before the Bombay High Court, the jurisdiction of the civil court to entertain the suit was upheld. This question was answered

by the Apex Court by holding that there was no express bar in taking cognizance of a suit in relation to an industrial dispute for the enforcement of any kind of right and that if the suit relates to enforcement of a right created under the ID Act, by necessary intendment, jurisdiction of the civil courts is barred. On this basis, it was held that in India, the jurisdiction of the civil court is barred for all purposes, except in regard to matters which are alluded thereafter in the judgment.

99.The Apex Court considered the issue in detail and in paragraph 23, summed up the principles applicable to the jurisdiction of civil courts in relation to industrial disputes by laying down thus:

> "23. To sum up, the principles applicable to the jurisdiction of the civil court in relation to an industrial dispute may be stated thus:
>
> (1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil court.
>
> (2)If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief

> which is competent to be granted in a particular remedy.
>
> (3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.
>
> (4) If the right which is sought to be enforced is a right created under the Act such as Chapter VA then the remedy for tis enforcement is either Section 33C or the raising of an industrial dispute, as the case may be.

100.The above principles show that if a dispute has arisen out of a right or liability under the general or common law and not under the ID Act, the jurisdiction of the civil court is alternative and the right of election is available to the suitor concerned to choose his remedy. It is also made clear that if the dispute relates to enforcement of a right or obligation created under the ID Act, then, the only remedy available to the suitor is to get the dispute adjudicated under the ID Act.

101. Bearing in mind the above principles laid down by the Apex Court, which stood the test of time, we shall now proceed to examine the correctness of the judgment in ***Balachandran*** (*supra*).

102. We have already referred to section 2(i) of the 1969 Act which defines the term 'dispute' as any matter touching the

business, constitution, establishments or management of a society capable of being the subject of litigation and includes a claim in respect of any sum payable to or by a society, whether such claim be admitted or not. Therefore, to be a dispute, the matter should be touching upon the business, constitution, establishments or management of a society first. Even if it is accepted that an employment dispute between a society and its employees is one touching upon the establishments of the society, such a dispute should also be capable of being “subject of litigation”. The definition of dispute in section 2(i) is still as introduced way back in 1969. When the legislature introduced section 69 in the Act for resolution of disputes, the legislature also qualified the term 'dispute' by providing that the disputes should be those which are capable of being subject of litigation. Such a qualified definition of the term 'dispute', as we will shortly demonstrate, was intentional.

103. The judgment in ***Balachandran*** (*supra*) was rendered by the Full Bench in the context of the unamended section 69 of the 1969 Act. Section 69, as interpreted in ***Balachandran***

(*supra*), to the extent it is relevant, provided that notwithstanding anything contained in any law for the time being in force, if a dispute arises between the society or its committee and any past committee, any officer, agent or employee or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the society, such dispute shall be referred to the Registrar for decision, and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute. As per section 69(2), for the purposes of sub-section (1), the disputes enumerated thereunder shall also be deemed to be disputes. The disputes enumerated therein, prior to its amendment by Act 1 of 2000, did not include clause (d), viz., any dispute arising in connection with the employment of officers and workmen of the societies including their promotion and *inter se* seniority.

104.In ***Balachandran*** (*supra*), the dispute involved was with respect to the seniority and promotion of the employees and award was passed by the Registrar, which, on appeal, was

confirmed by the Co-operative Arbitration Tribunal. The contention raised before this Court was that the Arbitrator did not have jurisdiction under section 69 of the 1969 Act to arbitrate a dispute regarding the service conditions of employees. Reading of the judgment of the Full Bench, paragraphs 2 and 3 of which have already been extracted supra, shows that the principle laid down is that the arbitration provided in section 69 of the 1969 Act is an alternative to the normal process of ordinary courts and not to the extra-ordinary process of adjudication under the ID Act which has been designed to deal with controversies which are outside the purview of ordinary litigation.

105.We have already referred to section 2(i) which defines the term 'dispute' as touching the business, constitution, establishments or management of a society capable of being the subject of litigation and includes a claim in respect of any sum payable to or by a society. Therefore, one of the essential requirements for a dispute to be a dispute as defined in section 2(i), it should be capable of being the subject of litigation. The expression “subject of litigation”

should necessarily mean subject of litigation in the civil court and in view of the principles laid down in ***The Premier Automobiles Ltd.*** (*supra*), such a litigation should also be arising out of a right or liability under the general or common law.

106. The principle laid down in ***The Premier Automobiles Ltd.*** (*supra*) is that if the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the ID Act, jurisdiction of the civil court is alternative, leaving the choice to the suitor concerned to choose his remedy. It is also clear that if the dispute is not an industrial dispute for enforcement of any right under the ID Act, the remedy lies only in the civil court. On the other hand, if the dispute relates to enforcement of a right or obligation under the ID Act or if the right which is sought to be enforced is created under the ID Act, remedy is available only under the ID Act. Considering the provisions of section 69 as it stood before amendment by Act 1 of 2000, in the light of the qualified definition of the term 'dispute', contained in section 2(i), we are inclined to think that the

forums that are created under section 69 are only for adjudicating those disputes between the society or its committee and any officer or employee or past officer or past employee as provided under section 69(1)(c) and that such disputes are those which are capable of litigation before the ordinary civil courts. In other words, the forum created under section 69 are only an alternative to civil courts and were meant only for adjudication of disputes which would have been subjects of litigations before civil courts. Therefore, the principles laid down in ***Balachandran*** (*supra*) is consistent with the principles laid down by the Apex Court in ***The Premier Automobiles Ltd.*** (*supra*).

107.In so far as section 100 of the 1969 Act relied on by the societies which provide for bar of jurisdiction of courts is concerned, this provision only states that no civil or revenue court shall have any jurisdiction in respect of any matter for which provision is made in the 1969 Act. Civil courts are those courts which are conferred the jurisdiction to try all suits of civil nature and whose classes are provided in part II of the Kerala Civil Courts Act, 1957 which deals with

establishment and constitution of subordinate civil courts. As far as revenue courts are concerned, these courts only exercise such jurisdiction conferred on it by the statute which creates it. In other words, even by section 100 of the 1969 Act, what is excluded is only the jurisdiction of the civil or revenue courts. This provision, if read in the light of section 69 and section 2(i) defining the term 'dispute', it is obvious that a dispute which is capable of litigation in a civil court or revenue court which would, but for section 69, have been within the purview of the civil court or revenue court, are brought within the purview of the authorities created under section 69. Therefore, even section 100 of the Act and the provision in Section 69 that no court shall have jurisdiction to entertain any suit or other proceeding in respect of such a dispute, do not lead to a conclusion that by this provision, the jurisdiction of the Labour Courts and Industrial Tribunals are excluded in any manner.

108. The further issue that needs to be considered is whether the jurisdiction of the Industrial Tribunals and Labour Courts created under the ID Act stands excluded with the

amendment to section 69 by Act 1 of 2000. As far as section 69 before its amendment is concerned, as we have already stated, despite the *non obstante* clause, it did not specifically include disputes arising in connection with the employment of officers and servants within sub-section (2). It was by Act 1 of 2000 that clause (d) was inserted to section 69(2) and disputes arising in connection with the employment of officers and servants of different classes of societies specified in section 80(1), including their promotion and *inter se* seniority were also brought within the scope of sub-section (2). It is trite that if under the VII schedule to the Constitution of India, a State is empowered to legislate on a particular subject, the State is also empowered to legislate creating forums for resolution of disputes arising thereunder. However, if such a legislation comes in conflict with any existing central law traceable to the entries in the concurrent list, unless such State law is reserved for the assent of the President and has received the assent, the State law, to the extent it is repugnant to the central law, shall be void. On the other hand, if the State law has been reserved for the

assent of the President and has received the assent, the State law will prevail in that State.

109. Although the aforesaid issue has come up for consideration of the Apex Court on various occasions, in the context of the Karnataka Co-operative Societies Act, a similar issue came up for consideration by the Apex Court in ***Dharapa Sangappa Nandyal*** v. ***Bijapur Cooperative Milk Producers societies Union Ltd.*** [(2007) 9 SCC 109]. Therefore, we deem it necessary only to make reference to that judgment, where, the question considered was whether the jurisdiction of the Labour Courts under the ID Act was barred by Section 70 of the Karnataka Co-operative Societies Act with reference to co-operative societies. After examining the provisions of section 70 of the Act, including its amendments, and the relevant precedents, the Apex Court held that at the relevant point of time, the Labour Court had jurisdiction to try the dispute. The relevant part of the judgment reads thus:

"9. It is necessary to refer to the metamorphosis of section 70 of the KCS Act, before considering this question. The said section originally stood as follows :

"70. Disputes which may be referred to Registrar for decision. (1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management, or the business of a co-operative society arises.

(a) and (b) x x x x x (omitted as not relevant)

(c) between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs, or legal representatives of any deceased officer, deceased agent, or deceased employee of the society, or

(d) x x x (omitted as not relevant)

such dispute shall be referred to the Registrar for decision and no Court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

(2) For the purposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or the business of a co-operative society, namely.

(a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand be admitted or not;

(b) a claim a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor, as a result of the default of the principal debtor whether such debt or demand is admitted or not;

(c) any dispute arising in connection with the election of a President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer or Member of Committee of the society.

(3) x x x (omitted as not relevant).

Section 70 was amended by Karnataka Co-operative Societies (Amendment) Act, 1976 (Karnataka Act 19 of 1976). The Amendment Act received the assent of the Governor on 7.3.1976. It was brought into effect from 20.1.1976. The Amendment Act added the following as clauses (d) and (e) in sub-section (2) of section 70 :

(d) any dispute between a co-operative society and its employees or past employees or heirs or legal representatives of a deceased employee, including a dispute regarding the terms of employment, working

conditions and disciplinary action taken by a co-operative society;

(e) a claim by a co-operative society for any deficiency caused in the assets of the co-operative society by a member, past member, deceased member or deceased officer, past agent or deceased agent or by any servant, past servant or deceased servant or by its committee, past or present whether such loss be admitted or not."

Section 70 was again amended by Karnataka Co-operative Societies (Second Amendment) Act, 1997 (Karnataka Act No. 2/2000) in the following manner:

(i) In sub-section (1), for the words "no court", the words "no civil or Labour or Revenue Court or Industrial Tribunal" were substituted.

(ii) At the end of clause (d) of sub-section (2), the words "notwithstanding anything contrary contained in the Industrial Disputes Act, 1947 (Central Act 14 of 1947)" were inserted.

The said Amendment Act (Act 2 of 2000) received the assent of the President on 18.3.2000 and was brought into force on 20.6.2000. After the said amendments in 1996 and 2000, Section 70 of KCS Act (relevant portion) reads thus:

"Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management, or the business of a Co-operative Society arises ..... between the Society or its committee and ..... any officer, agent or employee, or any past officer, past agent or past employee ..... of the Society, _.. such dispute shall be referred to the Registrar for decision and no Civil or Labour or Revenue Court or Industrial Tribunal shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

For the purposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or the business of a Co-operative Society, namely ..... (d) any dispute between a Co-operative Society and its employees or past employees or heirs or legal representatives of a deceased employee, including a dispute regarding the terms of employment, working conditions, and disciplinary action taken by a Co-operative Society notwithstanding anything contrary contained in the Industrial Disputes Act, 1947(Central Act 14 of 1947)."

10. "Co-operative societies" fall under Entry 32 of the State List. "Industrial and labour disputes" fall under

Entry 22 of the Concurrent List. Industrial Disputes Act, 1947 is an "existing law" with respect to a matter enumerated in the Concurrent List, namely, industrial and labour disputes. A dispute between a co-operative society and its employees in regard to terms of employment, working conditions and disciplinary action, is an industrial and labour dispute squarely covered by an existing law (ID Act), if the employees are 'workmen' as defined in the ID Act. Clause (1) of Article 254 provides that if any provision of a law made by a State Legislature is repugnant to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the existing law shall prevail, and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void. Clause (2) of Article 254, however, provides that where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List, contains any provision repugnant to an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State. The question of repugnancy can arise only with reference to a legislation made by Parliament falling under the Concurrent List or an existing law with reference to one of the matters enumerated in the Concurrent List. If a law made by the State Legislature covered by an Entry in the State List incidentally touches any of the entries in the Concurrent List, Article 254 is not attracted. But where a law covered by an entry in the State List (or an amendment to a law covered by an entry in the State List) made by the State Legislature contains a provision, which directly and substantially relates to a matter enumerated in the Concurrent List and is repugnant to any provision of an existing law with respect to that matter in the Concurrent List then such repugnant provision of the State law will be void. Such a provision of law made by the State Legislature touching upon a matter covered by the Concurrent List, will not be void if it can co-exist and operate without repugnancy with the provisions of the existing law. What is stated above with reference to an existing law, is also the position with reference to a law made by the Parliament. Repugnancy is said to arise when : (i) there is clear and direct inconsistency between the Central and the State Act; (ii) such inconsistency is

irreconciliable, or brings the State Act in direct collision with the Central Act or brings about a situation where obeying one would lead to disobeying the other. If the State Legislature, while making or amending a law relating to co-operative societies, makes a provision relating to labour disputes falling under the Concurrent List, then Article 254 will be attracted if there is any repugnancy between such provision of the State Act (MCS Act) with the existing law (ID Act). We will have to examine the issue in this case keeping the above legal position in mind.

11. The effect of the amendments to Section 70 of KCS Act, by Act 2 of 2000 is that if any dispute (including any dispute relating to the terms of employment, working conditions and disciplinary action), arose between a co-operative society and its employees or past employees or heirs/legal representatives of a deceased employee, on and from 20.6.2000, such dispute had to be referred to the Registrar for decision and no Civil Court or Labour Court or Industrial Tribunal would have jurisdiction to entertain any suit or proceeding in respect of such dispute.

12.Even prior to 20.6.2000, having regard to the amendment to Section 70 of KCS Act by Act 19 of 1976 with effect from 20.1.1976, any dispute between a co-operative society and its employees or past employees or heirs/legal representatives of a deceased employee including a dispute regarding the terms of employment, working conditions and disciplinary action taken by a co-operative society, was deemed to be a dispute touching the constitution, management, or business of a co-operative society which had to be referred to the Registrar for adjudication. But prior to 20.6.2000, there was no express exclusion of the jurisdiction of the Labour Court and Industrial Tribunal. As a result, if an employee of a Co-operative Society answered the definition of 'workman' and the dispute between the co-operative society and its employee fell within the definition of an 'industrial dispute', then the employee had the choice of two alternative forums either to raise a dispute before the Registrar under Section 70 of the KCS Act or seek a reference to the Labour Court/Industrial Tribunal under Section 10(1)(c) of the ID Act (or approach the Labour Court by an application under Section 10(4A) of ID Act).

13. In Co-operative Central Bank Ltd. v. Additional Industrial Tribunal, A.P. (AIR 1970 SC 245), this Court

considered Section 61 of the Andhra Pradesh Co-operative Societies Act, 1964, which dealt with disputes which could be referred to the Registrar. The said section was in pari materia with Section 70 of KCS Act, as it originally stood, before the amendments under Act 19 of 1976 and Act 2 of 2000. This Court held that where a State Co-operative Societies Act had received the assent of the President, if any provision of such State Act was repugnant to any provision of the ID Act, the provisions of the State Act will prevail over the provisions of the ID Act. This Court accepted the general proposition that the jurisdiction of the Industrial Tribunal/Labour Court under the Industrial Disputes Act will be barred if the disputes can be competently decided by the Registrar under section 61 of the Andhra Pradesh Act, in view of the fact that the Andhra Pradesh Act had received the assent of the President. This Court then proceeded to examine whether disputes relating to service conditions of workmen could be referred to the Registrar for decision under Section 61 of the State Act and held that the disputes could only be decided by an Industrial Tribunal dealing with an industrial dispute. This Court held that the Registrar under the Co-operative Societies Act, could not grant the relief in respect of such disputes because of the limitations placed on his powers under the Act itself, and having regard to the expression "touching the business of the society" in Section 61 which did not include a dispute in regard to conditions of service of workmen.

14. Though the Karnataka Co-operative Societies Act, 1959 was reserved for the assent of the President and received his assent on 11.8.1959, the Amendment Act 19 of 1976 which added clause (d) to sub-section (2) of Section 70, (whereby a dispute between a Co-operative Society and its present or past employee/s in regard to any disciplinary action or working conditions was deemed to be a dispute touching the constitution, management, or the business of a co-operative society), was neither reserved for, nor received the assent of the President. In the absence of the assent of the President, clause (d) of Section 70(2) could not be called in aid to contend that section 70(1)(c) of the KCS Act would prevail over the provisions of the Industrial Disputes Act. Consequently, even after the 1976 amendment to the KCS Act, the Labour Courts and Industrial Tribunals functioning under the ID Act continued to have jurisdiction in regard to disputes between a Society and its workmen if the co-

operative society answered the definition of an 'industry' and the dispute was an 'industrial dispute'. But when sub-section (1) of section 70 of KCS Act was further amended by Act 2 of 2000 by specifically excluding the jurisdiction of Labour Courts and Industrial Tribunals with the simultaneous addition of the words "notwithstanding anything contrary contained in the Industrial Disputes Act, 1947" in clause (d) of Section 70(2) of KCS Act, the said Amendment Act (Act 2 of 2000) was reserved for the assent of the President and received such assent on 18.3.2000. The amended provisions were given effect from 20.6.2000. Therefore, only with effect from 20.6.2000, the jurisdiction of Labour Courts and Industrial Tribunals were excluded in regard to disputes between a Co-operative Society and its employees (or past employees) relating to terms of employment, service conditions or disciplinary action. It follows therefore that in the year 1996, the Labour Court had the jurisdiction to make an award in regard to such a dispute. The High Court could not have interfered with it on the ground that Section 70 of the KCS Act was a bar to the jurisdiction of the Labour Court to decide the dispute.

15. The 1976 Amendment to the KCS Act did not bring about any inconsistency with the provisions of the ID Act nor did it purport to prevail over the provisions of the ID Act. Its effect was merely to provide an additional or alternative forum for adjudication of the disputes between co-operative societies and its employees, relating to employment, working conditions and disciplinary action. The 1976 Amendment Act, therefore, was valid, even in the absence of the assent of the President. On the other hand, the 2000 Amendment specifically excluded the jurisdiction of Industrial Tribunals and Labour Courts under the ID Act, and intended to prevail over the provisions of the ID Act in regard to adjudication of disputes. The said Amendment required the assent of the President and was, in fact, reserved for the assent of the President and obtained his assent. If the 1976 Amendment was to be read as excluding the jurisdiction of the Industrial Tribunals and Labour Courts, then it was necessary to read the provisions of Section 70, as amended by the 1976 Act, as prevailing over the provisions of the ID Act. In which event, it would have required the President's assent, and in the absence of such assent, the Amendment to the extent it purported to prevail over the Central enactment, would have been

void. Therefore, the only way to read the 1976 Amendment is to read it in a literal and normal manner, that is, as not excluding the jurisdiction of the Industrial Tribunals and Labour Courts but as merely conferring a concurrent jurisdiction on the Registrar under Section 70 of the KCS Act.

16. This aspect has been completely overlooked by the Division Bench of the Karnataka High Court in Veerashiva Co-operative Bank. It misled itself to an erroneous assumption that two decisions of this Court in R.C. Tiwari v. Madhya Pradesh State Co-operative Marketing Federation Ltd. (1997 (5) SCC 125) and Sagarmal v. District Sahkari Kendriya Bank Ltd., Mandsaur and another [1997 (9) SCC 354] laid down the proposition that once a specific procedure and effective remedy is provided under a Co-operative Societies Act, it ipso facto excluded the settlement of disputes under section 10 of the Industrial Disputes Act. On that assumption, the High Court held that Section 70 of the KCS Act, excluded the jurisdiction of Labour Courts/ Industrial Tribunals in regard to references under Section 10 of the ID Act stood excluded. The High Court held so in view of clause (d) of sub-section (2) of Section 70 which provided that any dispute between a co-operative society and its employees (past or present) in regard to terms of employment, working conditions and disciplinary action will be deemed to be a dispute to be decided by the Registrar under sub-section (1) of Section 70, overlooking the fact that Amendment Act 19 of 1976 by which clause (d) was inserted in Section 70(2), had not received the assent of the President and therefore the jurisdiction of the Registrar under Section 70(1) of the KCS Act as expanded by section 70(2)(d), could not prevail over the provisions of the ID Act. If the amendment to section 70(2) by Act 19 of 1976 should be read or construed as having the effect of enabling section 70(1) of KCS Act to prevail over the provisions of ID Act, then the said Amendment Act (Act 19 of 1976) would have required the assent of the President under Article 254(2). But there was no such assent.

17. As the Division Bench had relied on two decisions of this Court in R.C. Tiwari (supra) and Sagarmal (supra), it is necessary to refer to them. But before doing so, we have to note that many a time, a principle laid down by this Court with reference to the provisions of a particular State Act is mechanically followed to interpret cognate

enactments of other States, without first ascertaining whether the provisions of the two enactments are identical or similar. This frequently happens with reference to the laws relating to rent and accommodation control, co-operative societies and land revenue. Before applying the principles enunciated with reference to another enactment, care should be taken to find out whether the provisions of the Act to which such principles are sought to be applied, are similar to the provisions of the Act with reference to which the principles were evolved. Failure to do so has led to a wrong interpretation of section 70 of the KCS Act, in Veerashiva Co-operative Bank and Karnataka Sugar Workers Federation.

18. R.C. Tiwari (supra) related to Madhya Pradesh, where ID Act itself was inapplicable (except to the extent indicated in M.P. Industrial Relations Act, 1960). In that case, an employee of a co-operative society who had been dismissed from service for misconduct, raised a dispute under the Madhya Pradesh Co-operative Societies Act, 1960. The concerned Deputy Registrar held that the dismissal was proper and rejected the reference. Thereafter the employee sought a reference under section 10(1) of the ID Act. The Labour Court held that the domestic inquiry was vitiated and set aside the order of dismissal. The said order was challenged by the employer-Society before the Madhya Pradesh High Court. The High Court held that in view of the provisions of Section 55 of the Madhya Pradesh Co-operative Societies Act, 1960, the Labour Court had no jurisdiction and therefore the reference to the Labour Court was bad. It also held that the findings recorded by the Deputy Registrar, Co-operative Societies against the employee in the award made under Section 55 of the Madhya Pradesh Co-operative Societies Act, would operate as res judicata. This Court upheld the said decision of the High Court and dismissed the special leave petition. The decision was rendered with reference to the special provisions of the M.P. Co-operative Societies Act, 1960 and the M.P. Industrial Relations Act, 1960. Having regard to Section 110 of the M.P. Industrial Relations Act, the provisions of the Central Act - Industrial Disputes Act, 1947 (except Chapters V-A, V-B and V-C relating to lay off and retrenchment, special provisions relating to lay off, retrenchment and closure in certain establishments and unfair labour practices), did not apply to any industry to which the said M.P. Industrial Relations Act applied. ID

Act did not apply in the State of Madhya Pradesh for adjudication of disputes between the employer and employees, not because of any bar in the MP Co-operative Societies Act, but because of the State having made a law relating to industrial disputes, namely the M.P. Industrial Relations Act, 1960 which had received the assent of the President. The M.P. Co-operative Societies Act, 1960, vide section 55, specifically provided that where a dispute including a dispute relating to terms of employment, working conditions and disciplinary action by a Society arises between a Society and its employees, the Registrar or any officer appointed by him shall decide the dispute and his decision shall be binding on the Society and its employees; and Section 93 of the M.P. Co-operative Societies Act provided that nothing contained in the M.P. Industrial Relations Act, 1960 shall apply to a Society registered under that Act (M.P. Co-operative Societies Act). It is in those circumstances that in R.C. Tiwari, this Court held that the I.D. Act did not apply to a dispute between a Society and its employees in regard to any disciplinary action. In that case, the question of any repugnancy between a State Act (Madhya Pradesh State Co-operative Societies Act) and the Central Act (the Industrial Disputes Act, 1947) did not arise. The State of Karnataka does not have a State Act governing industrial disputes as in Madhya Pradesh and therefore, the question of Karnataka Co-operative Societies Act excluding the applicability of a State law relating to industrial disputes did not arise. The decision in R.C.Tiwari was not, therefore, relevant or applicable. The Division Bench of Karnataka High Court committed an error in following the decision in R.C. Tiwari to hold that the jurisdiction of Labour Court under the ID Act was barred, in view of section 70 as amended by the Amendment Act 19 of 1976, even prior to the amendment of Section 70(1) and (2) by Act 2 of 2000.

19. The decision of this Court in Sagarmal (supra) also related to Madhya Pradesh. In that case, the appellant was an employee of a Co-operative Bank and he was removed from service after a disciplinary inquiry. The employee challenged his removal by seeking a reference to the Labour Court under section 10 of the Industrial Disputes Act, 1947. A reference was made and the Labour Court granted him relief of reinstatement with back-wages. The employer Bank challenged the award in a writ petition and the High Court quashed the award on

the ground that it was a nullity, having been made in an incompetent reference. While affirming the decision of the High Court, this Court held that the provisions of the ID Act, did not apply to the respondent co-operative bank, and the only question was about the availability of remedy either under the Madhya Pradesh Co-operative Societies Act, 1960 or under the Madhya Pradesh Industrial Relations Act, 1960. This Court observed that if such a question had arisen, section 93 of the Madhya Pradesh Co-operative Societies Act would have come into effect, but no occasion arose for consideration of such question inasmuch as the employee did not resort to the remedy either under the Madhya Pradesh Co-operative Societies Act, 1960 or under the Madhya Pradesh Industrial Relations Act, 1960, but chose the remedy of a reference under Section 10 of the ID Act, which was inapplicable in the State of Madhya Pradesh. This Court reiterated that as the only question before the High Court was the competence of a reference under Section 10 of the Industrial Disputes Act, 1947, and not the availability of the remedy under the Madhya Pradesh Co-operative Societies Act, 1960 or the Madhya Pradesh Industrial Relations Act, 1960, the view taken by the High Court that the reference under Section 10 of the ID Act was incompetent, and the award made therein a nullity, did not suffer from any infirmity. In short, Section 10 of the ID Act was held inapplicable not because the Madhya Pradesh Co-operative Societies Act, 1960 prevailed over the provisions of the Industrial Disputes Act, 1947 but because in Madhya Pradesh, the provisions of the ID Act, 1947 (except certain specified provisions relating to lay off etc.) did not apply in view of the provisions of the Madhya Pradesh Industrial Relations Act, 1960. Therefore, the decision in Sagarmal was also of no assistance. Therefore the decision in Veerashiva Co-operative Bank was erroneous.

20.The Full Bench of the Karnataka High Court in Karnataka Sugar Workers Federation, decided two issues. Firstly, it upheld the constitutional validity of amendment of Section 70 of the KCS Act, by Act 2 of 2000. That question does not arise for our consideration and the decision thereon does not require to be disturbed. Secondly, it upholds and reiterates the decision in Veerashiva Co-operative Bank (supra). To that extent, it is not good law.

21. In Management of Hukkeri v. S.R. Vastrad [ILR 2005 Karnataka 3882], a learned Single Judge of the Karnataka High Court held that even before the amendment of Section 70 by Act 2 of 2000, the legal position was that Labour Courts and Industrial Tribunals under ID Act did not have jurisdiction in regard to disputes between society and its employees because of insertion of clause (d) in Section 70(2) of KCS Act introduced with effect from 20.1.1976, relying on Veerashiva Co-operative Bank and Karnataka Sugar Workers Federation. The said decision also, therefore, stands overruled.

22.The resultant position can be summarized thus :

(a) Even though clause (d) was added in Section 70(2) with effect from 20.1.1976, section 70(1) did not exclude or take away the jurisdiction of the Labour Courts and Industrial Tribunals under the I.D. Act to decide an industrial dispute between a Society and its employees. Consequently, even after insertion of clause (d) in Section 70(2) with effect from 20.1.1976, the Labour Courts and Industrial Tribunals under the I.D. Act, continued to have jurisdiction to decide disputes between societies and their employees.

(b) The jurisdiction of Labour Courts and Industrial Tribunals to decide the disputes between co-operative societies and their employees was taken away only when sub-section (1) and sub-section (2)(d) of section70 were amended by Act 2 of 2000 and the amendment received the assent of the President on 18.3.2000 and was brought into effect on 20.6.2000.

(c)The jurisdiction to decide any dispute of the nature mentioned in section 70(2)(d) of the KCS Act, if it answered the definition of industrial dispute, vested thus :

(i)exclusively with Labour Courts and Industrial Tribunals till 20.1.1976;

(ii)concurrently with Labour Courts/Industrial Tribunals under ID Act and with Registrar under section 70 of the KCS Act between 20.1.1976 and 20.6.2000; and

(iii)exclusively with the Registrar under section 70 of the KCS Act with effect from 20.6.2000.

23. We therefore hold that the award of the Labour Court was not without jurisdiction. We, however, make it clear that this decision shall not be applied to re-open matters decided relying on Veerashiva Co-operative Bank and Karnataka Sugar Workers Federation, which have attained finality."

110.Reading of the above, particularly paragraph 10 of the judgment, shows that if a co-operative society is an industry and its employees are workmen as defined in the ID Act, a dispute between the society and such of its employees in regard to terms of employment, disciplinary action etc will be an industrial dispute as defined in the ID Act. Examining the scope of Article 254 of the Constitution of India, the Apex Court has also laid down that where a law covered by an entry in the State list or an amendment to such a law made by the State Legislature contains a provision which directly and substantially relates to a matter enumerated in the concurrent list or is repugnant to any provision of an existing central law with respect to that matter in the concurrent list, then such repugnant provision of the State law will be void. It has also been laid down that if the State Legislature, while making or amending the law relating to co-operative societies, makes a provision relating to labour disputes falling within the concurrent list, Article 254 will be attracted if there is repugnancy between such provision in the Co-operative Societies Act with the ID Act.

111.After laying down the aforesaid principles, the Apex Court has taken note of the amendment to section 70 of the Karnataka Co-operative Societies Act by Act 19 of 1976, which *inter alia* provided that for the purposes of section 70 (1), any dispute between a co-operative society and its employee or past employee or heirs or legal representatives of a deceased employee, including a dispute regarding the term of employment, working conditions and disciplinary action taken by a co-operative society, shall be deemed to be a dispute touching the constitution, management or the business of a co-operative society. Subsequently, section 70 was again amended by Act 2 of 2000, as per which, a non obstante clause to the effect that section 70 shall be notwithstanding anything contained in the ID Act, was also inserted. Referring to this provision, which had received the assent of the President on 18.3.2000, the Court held that prior to 20.6.2000 when Act 2 of 2000 was implemented after receiving the assent of the President, there was no express exclusion of the jurisdiction of the labour Courts and Industrial Tribunals. As a result, the disputes which were

industrial disputes, between co-operative societies and its employees who are workmen, could be raised in any of the two alternative forums viz., either the forum under section 70 or by seeking reference to the Labour Court or Industrial Tribunal, as the case may be.

112.Thereafter, in paragraph 14 of its judgment, the Apex Court took note of the fact that the Karnataka co-operative Societies Act, 1959 was reserved for the assent of the President and received assent on 11.8.1959. It has also taken note of the fact that though by Act 19 of 1976, clause (d) was added to section 70(2), whereby the dispute between a co-operative society and its employees in regard to any disciplinary action or working condition were deemed to be disputes touching the constitution, management or business of a co-operative society, the said Amendment Act was neither reserved nor received the assent of the President and that in the absence of the assent of the President, the amendment could not be called in aid to contend that section 70 would prevail over the ID Act. On that basis, the Apex Court held that even after the 1976 amendment, the Labour

Courts and Industrial Tribunals under the ID Act continued to have jurisdiction in regard to disputes between a society and its workman, provided they answer the definition of 'industry', 'dispute' and 'industrial dispute'. Proceeding further, the Court took note of the amendment by Act 2 of 2000 specifically excluding the jurisdiction of the Labour Courts and Industrial Tribunals and the addition of the *non obstante* clause. It has also taken note of the fact that Act 2 of 2000 was reserved for the assent of the President and received assent on 18.3.2000. On this basis, the Apex Court held that only with effect from 20.6.2000, when the amended provisions were given effect, the jurisdiction of the Labour Courts and Industrial Tribunals were excluded in regard to disputes between a society and its employees.

113. From ***Dharappa Sangappa Nandyal*** (*supra*), it is clear that the language of section 70 of the KCS Act, 1959 and section 69 of the 1969 Act, as enacted, is in similar terms and both sections begin with *non obstante* clauses. Clause (d) to Section 70(2), a provision similar to section 69 (2)(d) inserted by Act 1 of 2000, was introduced in the KCS

Act, 1959 by Act 19 of 1976. However, Act 19 of 1976 was neither reserved for the assent of the President nor received the assent as provided under Article 254(2) of the Constitution of India. Therefore, the Apex Court held that section 70(2)(d) of the KCS Act did not exclude ID Act and instead, what is held is that the effect of the amendment is that it provided an additional or alternative forum for adjudication of disputes under section 70 of the KCS Act. Thereafter, reference has been made to Act 2 of 2000, whereby the words "no court" in section 70(1) was substituted with the words "no Civil or Labour or Revenue Court or Industrial Tribunal" and the *non obstante* clause excluding ID Act were inserted in section 70(2)(d).The Apex Court then took note of the fact that Act 2 of 2000 had received the assent of the President on 18.3.2000 and that it was brought into force with effect from 20.6.2000. Taking into account these facts and having regard to Article 254(2) of the Constitution of India, it is held in paragraph 11 of the judgement that jurisdiction of the Labour or Revenue Court and Industrial Tribunals to entertain the disputes as

contemplated under section 70 of the KCS Act stood excluded only with effect from 20.6.2000, when Act 2 of 2000 was brought into force.

114. In so far as the 1969 Act is concerned, though the Act as implemented in 1969 had received the assent of the President, it is important to note that Act 1 of 2000, incorporating section section 69(2)(d), was neither reserved for the assent of the President nor received the assent. Secondly, the 1969 Act does not even now contain any specific exclusion of the ID Act or the Industrial Tribunals or Labour Courts, unlike the amended section 70(2)(d) of the KCS Act 1959.

115.Thus, if the principles laid down in the judgement in ***Dharappa Sangappa Nandyal*** (*supra*) are applied to the facts of the cases under consideration, it can be safely concluded that despite the *non obstante* clause and the provision in section 69 of the 1969 Act that no court shall have jurisdiction to entertain any suit or other proceeding in respect of disputes as contemplated therein and the assent of the President that the 1969 Act had received, section 69 of

the 1969 Act, as originally enacted, did not have the effect of excluding the jurisdiction of the Industrial Tribunals or Labour Courts. Further, in the absence of Presidential assent to Act 1 of 2000, section 69(2)(d) also did not result in exclusion of jurisdiction of the forums created under the ID Act, 1947, but has provided an additional or alternative forum for such disputes also.

116.However, it was argued before us that the amendment to section 69 by Act 1 of 2000 is only a clarificatory amendment and as the Act, as enacted, has received assent of the President on 9.4.1969, such assent will apply to the clarificatory amendment as well. In determining the nature of the Act, regard must be had to the substance rather than to the form. An amending Act may be purely clarificatory to clear the meaning of the provisions of the Principal Act which was already implicit. If a new Act is to explain an earlier Act, it being clarificatory, would be construed retrospectively. A clarificatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or

merely declaratory of the previous law retrospective operation is generally intended. A clarificatory amendment will have retrospective effect and therefore, such amendment will be deemed to be part of the Principal Act. In the absence of clear words indicating that the amending Act is clarificatory or declaratory, it would not be so construed when the pre amended provision was clear and unambiguous. (See Principles of Statutory Interpretation by Justice G.P.Singh, 13th Edition). The Apex Court had also occasion to take note of these principles in its judgment in ***Union of India*** v. ***Martin Lottery Agencies Ltd.*** [(2009) 12 SCC 209]. From the above, it is evident that a clarificatory amendment merely clarifies the existing position and makes explicit what is implicit.

117.Leaving aside the issue whether the amendment was clarificatory or not for the time being, we may also refer to section 69(2), which states that, for the purposes of sub-section (1), the disputes enumerated therein shall also be deemed to be disputes. Section 69, as it was originally enacted, had enumerated clauses (a), (b) and (c). By Act 1 of

2000, clause (d) providing that any dispute arising in connection with the employment of officers and servants of different classes of societies specified in section 80(1), including their promotion and *inter se* seniority, was also inserted to section 69(2) and as a result, such disputes are also deemed to be disputes for the purposes of section 69.

118.A deeming provision might be made to include what is obvious or what is uncertain or to impose for the purpose of a statute an artificial construction of a word or phrase that would not otherwise prevail. But in each case, it would be a question as to with what object the legislature has made such a deeming provision. In ***M/s.J.K. Cotton Spinning and Weaving Mills Ltd.*** v. ***Union of India*** [AIR 1988 SC 191], the effect of a deeming provision was again considered in the context of the explanation to Rule 9 and 49 of the Central Excise Rules, 1944 and it was held thus:

> "40. It is well settled that a deeming provision is an admission of the non-existence of the fact deemed."

119. In ***Bangaru Laxman*** v. ***State*** [(2012) 1 SCC 500], the judgment in ***M/s.J.K. Cotton Spinning and Weaving Mills Ltd.*** (*supra*) was followed and it was held thus:

> "20. It is well known that a deeming provision is a legal fiction and an admission of the non-existence of the fact deemed. (See *M/s. J.K. Cotton Spinning and Weaving Mills Ltd. and another v. Union of India and others*, AIR 1988 SC 191 at 202). Therefore, while interpreting a provision creating a legal fiction, the Court has to ascertain the purpose for which the fiction is created.
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> 21. The law on this aspect has been very neatly summed-up by Lord Justice James in Ex Parte Walton, in re Levy (1881) 17 Ch D 746. At page 756, the learned Judge formulated as follows:
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> ". . When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to."
>
> 22. The aforesaid formulation has been approved by Constitution Bench of this Court in *State of Travancore Cochin and others v. Shanmugha Vilas Cashewnut Factory, Quilon* reported in AIR 1953 SC 333. At page 343 of the report the aforesaid principles have been referred to by this Court along with the various other decisions and which are set out:
>
> "38. . .'When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to.'
> The above observations were quoted with approval by Lord Cairns and Lord Blackburn in Arthur Hill v. East and West India Dock Co., (1884) 9 AC 448. Lord Blackburn went on to add at page 458:

> "I think the words here 'shall be deemed to have surrendered' ..... mean, shall be surrendered so far as is necessary to effectuate the purposes of the Act and no further;....." (Emphasis added)"

120.Similarly, in the judgment in ***State of Uttar Pradesh*** v. ***Hari Ram*** [(2013) 4 SCC 280], the Apex Court reiterated the above principles by holding thus:

> "18. The Legislature is competent to create a legal fiction, for the purpose of assuming existence of a fact which does not really exist. Sub-section (3) of Section 10 contained two deeming provisions such as "deemed to have been acquired" and "deemed to have been vested absolutely". Let us first examine the legal consequences of a 'deeming provision'. In interpreting the provision creating a legal fiction, the Court is to ascertain for what purpose the fiction is created and after ascertaining this, the Court is to assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction. This Court in Delhi Cloth and General Mills Company Limited v. State of Rajasthan (1996) 2 SCC 449 : (AIR 1996 SC 2930 : 1996 AIR SCW 855) held that what can be deemed to exist under a legal fiction are facts and not legal consequences which do not flow from the law as it stands.
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> 19. James L.J. in *Levy, In re*, *ex p Walton* [(1881) 17 Ch D 746] speaks on deeming fiction as:
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> ". . When a statute enacts that something shall be deemed to have been done, which in fact and in truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to".
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> 20. In *Szoma* v. *Secretary of State for Work and Pensions* (2006) 1 All ER 1 (at 25), court held:
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> "25. . . . it would . . . be quite wrong to carry this fiction beyond its originally intended purpose so as to deem a person in fact lawfully here not to be here at all. 'The intention of a deeming provision, in laying down a hypothesis is that the hypothesis shall be carried so far

> as necessary to achieve the legislative purpose but no further'....." (see also *DEG Deutsche Investitions v. Koshy* (2001) 3 All ER 878."

121.From the above judgments, it is clear that for the purposes of assuming the existence of a fact which does not really exist, legal fiction is created by Legislature. By virtue of the provisions contained in section 69(2)(d) of the 1969 Act as amended, disputes which are enumerated in clause (d) are also deemed to be disputes. In other words, by the deeming provision, a legal fiction is created by the legislature and as a result, a category of disputes which were outside the purview of section 69 are now brought within its purview and such disputes are also now deemed to be disputes. Such inclusion of a category of disputes, which were till then outside the purview of section 69, by an amendment by Act 1 of 2000, cannot be said to be merely clarificatory or explanatory. If that be so, it is idle to contend that the assent obtained to the 1969 Act on 9.4.1969 would extend to Act 1 of 2000 also. Evidently therefore, the conclusion is irresistible that even inspite of the amendment by Act 1 of 2000, jurisdiction of the Labour Courts and Industrial

Tribunals functioning under the ID Act are not excluded and the disputes of the nature which are explained in the judgment of the Apex Court in ***Premier Automobiles Ltd.*** (*supra*) would still be within the purview of the Labour Courts and Industrial Tribunals also. In other words, the legal position is that the jurisdiction of the Labour Courts and Industrial Tribunals is concurrent even in spite of the amendment to the 1969 Act by Act 1 of 2000.

122.Having clarified the position as above, we shall now refer to the judgment of the Full Bench of this Court in ***M.U.Sherly*** v. ***The President, Parappuram Milk Producers Co-operative Society Ltd.*** [2007(1) KLT 809]. The question that was considered by the Full Bench has been formulated in paragraph 1 of the judgment itself, which has already been extracted. Facts of the case show that the disciplinary proceedings were initiated against the employee of the society on 25.8.1996. An *ex parte* enquiry was conducted in which 13 out of 15 charges were reported to be proved. Acting upon the findings in the enquiry, the employee was dismissed from service on 30.1.1997. Appeal

filed before the Managing Committee was rejected. The matter was taken before the Deputy Director who was authorized to exercise all the powers of the Registrar under Rule 176 of the 1969 Rules. The Deputy Director passed an order directing the management to reconsider the matter. This order also contained a finding that the punishment of dismissal was disproportionate. The society refused to act upon the directions and therefore, the employee again approached the Deputy Director. The Deputy Director rescinded the decision of the society dismissing the employee from service. The society approached this Court where the order passed by the Deputy Director was set aside and the society was directed to conduct a fresh enquiry with opportunity to the employee. The society filed a writ appeal in which, a Division Bench of this Court took the view that the Registrar acted in exercise of his power under Rule 176 of the Rules and that the Registrar did not have power to consider the adequacy of the punishment or findings of the enquiry officer. The appeal was finally disposed of with direction to the Deputy Director to consider the matter in the light of the

observations contained in the judgment. The Deputy Director, accordingly, reconsidered the matter and confirmed the decision of the society to dismiss the employee from service. The employee thereupon took up the matter before the Co-operative Arbitration court. The dispute was rejected as not maintainable since the arbitration court had not been set up. The employee then took up the matter before the State Government. Accordingly, the dispute was referred for adjudication. That led to a preliminary order holding the enquiry vitiated and award directing reinstatement of the workman.

123.Reading of the judgment in ***M.U.Sherly***'s case (*supra*) shows that though the Full Bench has taken note of the amendment to section 69 and held that disputes in connection with the employment of officers and servants was not an item enumerated as a dispute under section 69 originally. However, nowhere in the judgment has the full Bench posed or examined the question, whether, with the amendment to section 69, the jurisdiction of the Labour Courts and Industrial Tribunals are excluded, Instead, from

paragraph 13 of the judgment, it would appear that the Full Bench has decided the issue on the basis that an employee subjected to a disciplinary action has the right to have his grievances adjudicated before an independent forum and that since the employee did not get such an opportunity before the Co-operative Arbitration Court since the same had not been notified, reference of the dispute by the Government to the Industrial Tribunal was valid. Therefore, the Full Bench judgment is not an authority for any proposition that may be of relevance in these cases.

124.Learned Government Pleader placed considerable reliance on the judgment of the Apex Court in ***R.C.Tiwari*** v. ***M.P. State Cooperative Marketing Federation Ltd.*** [(1997) 5 SCC 125]. The issue raised in that case was whether reference under section 10(1) of the ID Act was maintainable in view of the provisions contained in the Madhya Pradesh Co-operative Societies Act, 1960. Facts of the case are that the petitioner before the Supreme Court, an employee of the society, was dismissed from service for misconduct. At his instance, a reference was made to the

Deputy Registrar of Co-operative Societies and in the award passed, his dismissal was confirmed. The award had become final also. Thereafter, the dispute was referred to the Labour Court which passed the order holding that the domestic enquiry was vitiated by illegality and accordingly, the dismissal was set aside. In the writ petition filed by the society, the High Court held that in view of the provisions contained in section 55 of the Madhya Pradesh Co-operative Societies Act, 1960, Labour Courts had no jurisdiction and therefore, the reference of the industrial dispute was bad. It also held that since the findings recorded by the Deputy Registrar against the petitioner operated as *res judicata*.

125.In the appeal filed, the Apex Court upheld the judgment of the High Court and held thus:

> "3. Learned counsel for the petitioner seeks to place reliance on Section 64 of the Act dealing with disputes referable to the arbitration and contends that the dispute of dismissal from service of the employee of the society being not one of the disputes referable to the arbitration under the Societies Act, the award of the Dy. Registrar is without jurisdiction. He relied on the decision of this Court in Co-operative Central Bank Ltd. v. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad, AIR 1970 SC 245. He also places reliance on Section 93 of the Societies Act which states that nothing contained in the Madhya Pradesh Shops and Establishments Act 1958, the M. P. Industrial Workmen (Standing Orders)

Act, 1959 and the M.P. Industrial Relations Act, 1960 shall apply to a Society registered under this Act. By necessary implication, application of the Act has not been excluded and that, therefore, the Labour Court has jurisdiction to decide the matter. We find no force in the contention. Section 55 of the Societies Act gives power to the Registrar to deal with disciplinary matters relating to the employees in the Society or a class of Societies including the terms and conditions of employment of the employees. Where a dispute relates to the terms of employment, working conditions, disciplinary action taken by a Society, or arises between a Society and its employees, the Registrar or any officer appointed by him, not below the rank of Assistant Registrar, shall decide the dispute and his decision shall be binding on the society and its employees. As regards power under Section 64, the language is very wide, viz., "Notwithstanding anything contained in any other law for the time being in force any dispute touching the constitution, a management or business of a Society or the liquidation of a Society shall be referred to the Registry by any of the parties to the dispute."Therefore, the dispute relating to the management or business of the Society is very comprehensive as repeatedly held by this Court. As a consequence, special procedure has been provided under this Act. Necessarily, reference under Section 10 of the Societies Act stands excluded. The judgment of this Court arising under Andhra Pradesh Act has no application to the facts for the reason that under that Act the dispute did not cover the dismissal of the servants of the society which the Act therein was amended.

4. Admittedly, there is a finding recorded by the Dy. Registrar upholding the misconduct of the petitioner. That constitutes res judicata. No doubt, Section 11, CPC does not in terms apply because it is not a Court, but a Tribunal, constituted under the Societies Act is given special jurisdiction. So, the principle laid down thereunder mutatis mutandis squarely applies to the procedure provided under the Act. It operates as res judicata. Thus, we find that the High Court is well justified in holding that the Labour Court has no jurisdiction to decide the dispute once over and the reference itself is bad in law."

126.Reading of the judgment shows that though the judgment of the High Court was upheld by the Apex Court, the question of repugnancy or the assent under Article 254 (2) of the Constitution of India was neither raised nor considered by the Apex Court. Moreover, in paragraph 18 of ***Dharappa Sangappa Nandyal*** (*supra*), the judgment in ***R.C.Tiwari*** (*supra*) was distinguished by the Apex Court itself. The reasons assigned by the Apex Court for distinguishing ***R.C.Tiwari*** (*supra*) applies in full force to the facts of the appeals under consideration. For both these reasons, we are unable to place reliance on the judgment in ***R.C.Tiwari*** (*supra*) relied on by the learned Government Pleader.

127.Certain other judgments which were cited before us and are relevant to the controversy also need to be noticed. ***Prakasini*** v. ***Joint Registrar*** [2006 (1) KLT 199] is the judgment of a single Bench where it was held that after the amendment of section 69 by Act 1 of 2000, only the Registrar or Arbitrator Court has jurisdiction to adjudicate on the disputes between a society and its

employees. A Division Bench of this Court in ***Raveendran*** v. ***State of Kerala*** [2007 (3) KLT 558] also took a similar view.

128.***A.R.Nagar Service Co-operative Bank Ltd.*** v. ***State of Kerala*** [2000 (1) KLT 55] is a single Bench judgment of this Court where it was wrongly held that the 1969 Act did not receive assent of the President. The fact that the amendment by Act 1 of 2000 did not receive assent was also taken note of. On that basis, it was held that the Labour Courts and Industrial Tribunals and the authorities under section 69 have concurrent jurisdiction. It is this judgment which is challenged in W.A.764/14.

129. Similar view has been taken by another single Bench of this Court in ***Cheranallur Service Co-operative Bank Ltd.*** v. ***State of Kerala*** [2012 (3) KHC 834]. This judgment was confirmed by a Division Bench by dismissing W.A.1818/12.

130. In a dispute concerning dismissal of an employee, a single Bench of this Court in ***Edava Service Co-operative Bank Ltd.*** v. ***Co-operative Arbitration***

Court [2008 (3) KLT 780] held that the issue is covered by section 69(2)(d) and on that basis, the maintainability of an adjudication of a dispute under section 69(2)(d) was upheld. This judgment was confirmed by a Division Bench of this Court in the judgment in W.A.2057/08.

131. We also find that in the judgment in ***Thodupuzha Taluk General Marketing Co-operative Society*** v. ***Michael Sebastian*** [2010 (1) KLT 938], a Division Bench of this Court has taken the view that since Act 1 of 2000 did not have Presidential assent, the jurisdiction of the forum under the ID Act are not ousted and is concurrent.

132.The upshot of the above discussion is that the Division Bench judgment in ***Thodupuzha Taluk General Marketing Co-operative Society*** v. ***Michael Sebastian*** [2010 (1) KLT 938] and the Full Bench judgments in ***Balachandran*** v. ***Deputy Registrar*** [1978 KLT 249 (FB)] as well as ***Sherly*** v. ***Parappuram Milk Producers Co-operative Society Ltd.*** [2007 (1) KLT 809] do not require re-consideration and the legal position, as it obtains under section 69 of the 1969 Act prior to its amendment by Act 1

of 2000 and after its amendment by the said Act, is that the jurisdiction of the Labour Courts and Industrial Tribunals constituted under the ID Act is not ousted and is concurrent. Judgments of this Court, taking the contrary view, do not lay down the law correctly and are overruled.

In the light of the above, these writ appeals in which reference orders passed under section 10(1)(c) of the ID Act and the awards passed by the Labour Courts are under challenge, are only to be dismissed and we do so.

ANTONY DOMINIC, Judge.

ALEXANDER THOMAS, Judge.

kkb.

By the Court

In view of the opinion of the majority of Judges, the reference is answered and all the Writ Appeals are allowed in terms of the judgment pronounced by the Chief Justice.

ASHOK BHUSHAN,
CHIEF JUSTICE.

THOTTATHIL B.RADHAKRISHNAN,
JUDGE.

ANTONY DOMINIC,
JUDGE.

A.M. SHAFFIQUE,
JUDGE.

ALEXANDER THOMAS,
JUDGE.

vsv/vgs/ttb