IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

MONDAY, THE 25TH DAY OF JULY 2016/3RD SRAVANA, 1938

WA.No. 580 of 2015 () IN WP(C).23400/2014

AGAINST THE JUDGMENT IN WP(C) 23400/2014 of HIGH COURT OF KERALA DATED 27-02-2015

APPELLANT(S)/PETITIONERS:

1. PRADEEP U.R.
   (MEMBER NO. 9108), PRESIDENT,
   BOARD OF DIRECTORS OF THE DESAMANGALAM SERVICE CO-OPERATIVE BANK LIMITED NO. 134, DESAMANGALAM P.O., THRISSUR.

2. V.GANGADHARAN (MEMBER NO.1593),
   MEMBER OF BOARD OF DIRECTORS OF THE DESAMANGALAM SERVICE CO-OPERATIVE BANK LIMITED NO. 134, DESAMANGALAM P.O., THRISSUR.

   BY ADV. SRI.P.C.SASIDHARAN

RESPONDENT(S)/RESPONDENTS:

1. KERALA STATE CO-OPERATIVE ELECTION COMMISSION,
   THIRUVANANTHAPURAM 695 001.

2. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES,
   (GENERAL), THRISSUR 680 001.

3. THE ELECTORAL OFFICER
   APPOINTED FOR CONDUCT OF ELECTION TO THE BOARD OF DIRECTORS OF THE DESAMANGALAM SERVICE CO-OPERATIVE BANK LIMITED NO. 134, DESAMANGALAM P.O. - 679532, THRISSUR (ASSISTANT REGISTRAR(GENERAL), THALAPPILLY, THRISSUR)

4. THE RETURNING OFFICER
   APPOINTED FOR CONDUCT OF ELECTION TO THE BOARD OF DIRECTORS OF THE DESAMANGALAM SERVICE CO-OPERATIVE BANK LIMITED NO. 134, DESAMANGALAM P.O., THRISSUR (SALE OFFICER, OFFICE OF THE ASSISTANT REGISTRAR (GENERAL), THALAPPILLY, THRISSUR) - 679532

5. SRI.RAJESH,UNIT INSPECTOR, WADAKKANCHERY UNIT, OFFICE OF THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES, THALAPPALLY, THRISSUR-680582.

6. THE DESAMANGALAM SERVICE CO-OPERATIVE BANK LIMITED NO. 134 DESAMANGALAM P.O., THRISSUR, REPRESENTED BY ITS SECRETARY-679532.

7. SAHJI PALLOM,
S/O.MOHAMMED, VAYYATTUKAVIL HOUSE, PALLOM P.O., DESAMANGALAM, THRISSUR DISTRICT -679 532.

8. PART TIME ADMINISTRATOR, DESAMANGALAM SERVICE,
CO-OPERATIVE BANK LIMITED NO.134, DESAMANGALAM P.O., 679 532, THRISSUR (UNIT INSPECTOR, KUNNAMKULAM, OFFICE OF THE ASSISTANT REGISTRAR, THALAPPALLY) 679 532.

R1 TO R4 BY SPECIAL GOVERNMENT PLEADER SRI. D. SOMASUNDARAM
R6 AND R8 ADV. SRI.GEORGE POONTHOTTAM
R6 SRI.V.RAJENDRAN
KUM.ANJU CLETUS
R7 SRI.C.A.MAJEED

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 01-06-2016 ALONG WITH WA. 741/2015 AND CONNECTED CASES, THE COURT ON 25-07-2015 DELIVERED THE FOLLOWING:

[C.R.]

P.R. RAMACHANDRA MENON,
BABU MATHEW P. JOSEPH &
ANIL K. NARENDRAN JJJ.

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W.A. Nos. 580, 741 and 1457 of 2015 and **W.P.(C) Nos.** 17041, 17764, 19454, 19621, 21935, 22401 and 37640 of 2015 and 127 and 6097 of 2016

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Dated, this the 25th day of July, 2016

JUDGMENT

Ramachandra Menon, J.

Scope of amendment to the Kerala Co-operative Societies Act, 1969 [Act 29 of 1969] by introducing **Section 16A** and **Section 19A** as per the Kerala Co-operative Societies (Amendment) Act, 2013 [Act 8 of 2013] and to Kerala Co-operative Societies Rules, 1969 by introducing **Rule 18A** as per the Kerala Co-operative Societies (Second Amendment) Rules, 2014, in so far as the rights and liberties of members to continue as members of a Co-operative Society and to exercise their right as a member, including the right to vote in the election to the Board of Directors; forms the subject matter of challenge in these cases.

2. When one group asserts that the amendment cannot have any retrospective effect and will come into play only after two years

from the date of commencement of Rule 18A prescribing the requirements, the other group contends that the provisions have come into operation 'at once', as given in the amended provisions of the Act/Rules and as such, the voters' list has to be pruned, based on the qualification of members as per the amended provisions. The newly amended provisions of the Act (Section 16A and Section 19A) were brought into effect from 14.02.2013, whereas Rule 18A of the Kerala Co-operative Societies Rules was made operative from 26.11.2014. Postponement of election and subsequent developments leading to adverse consequences and the steps to conduct election with reference to the amended provisions of law made some of the parties to feel aggrieved, who contend that the election proceedings have to be continued from the stage where it was stopped and not on the basis of a fresh notification issued in conformity with the amended provisions. Contrary contention is raised by the other group, who contend that further proceedings can be pursued only in conformity with the amended provisions of law.

3. Coming to the nature of contentions raised, W.A No. 580 of 2015 arises from the judgment passed by a learned single Judge

reported in **2015 (1) KLT 911 [Pradeep Vs. Kerala State Co-operative Election Commission]**, whereby the writ petition was disposed of directing the Election Commission to issue a fresh notification for election in accordance with the amended Act/Rules. In W.A. No. 741 of 2015, grievance is mainly with regard to the direction given to prune the voters' list by including only the eligible members as per the amended provisions of law. The contention is that, the amended provisions of the Act were to be given effect to, in the manner 'as prescribed' and since such prescription was made by framing Rules (Rule 18A), only with effect from 26.11.2014, the amendment cannot have any effect in fixing the eligibility of members atleast till 25.11.2016, i.e., till expiry of two years from 26.11.2014 (when Rule 18A was introduced). In W.A. No. 1457 of 2015, the challenge is against the interference declined by the learned single Judge in the writ petition filed (seeking a direction to conduct election in terms of Ext. P1 judgment produced in the writ petition, questioning the list of 'active members') and in relegating the writ petitioner to urge all grounds in an 'Election Petition', since the election process had already commenced. Different writ petitions also came to be filed with rival contentions and they were

tagged along with these appeals, by virtue of the orders passed in the concerned proceedings.

4. In the meanwhile, the Government issued a Notification dated 25.05.2015, in exercise of the power under Section 101 of the Kerala Co-operative Societies Act, whereby exemption was given to all societies which were affected by sub Section 1 of Sections 16A and 19A of the Act for a period of one year, ten months and fifteen days from 14.02.2014 till 31.12.2015. W.P.(C) No. 17041 of 2015 was filed challenging the said notification, which also came to be posted along with the writ appeals, based on a common order passed by a Division Bench of this Court on 08.06.2015 in W.A. Nos. 580 and 741 of 2015. The other writ petitions came to be posted along with the appeals by virtue of separate 'orders of reference' passed by two learned Judges of this Court; the first one dated 09.07.2015 in W.P.(C) Nos. 17664, 19454 and 19621 of 2015 and the other one dated 21.07.2015 in W.P.(C) No. 21935 of 2015.

5. The main contention put forth by the appellants in W.A. Nos. 580 and 741 of 2015 is that the issue is squarely covered by the judgment rendered by a Division Bench of this Court reported

in **ILR 2015 (2) Ker. 339 (Surendran N. and another Vs. Poovathur East Service Co.op. Bank Ltd. and others)**, to the effect that the amended provisions cannot be pressed into service for the time being. On the other side, it was pointed out by the learned Special Government Pleader that the above judgment came to be rendered, unfortunately without noting the fact that the amendments were bought about to give effect to the **97th amendment** to the Constitution of India, whereby a new Chapter as **Part IX B,** dealing with Co-operative Societies was introduced, adding Articles 243ZH to 243ZT, among which Article **243ZO** and Article **243ZT** are relevant, so as to give effect to 'participation of members' in the management of Co-operative Societies. A learned Judge of this Court, who authored the judgment reported in **2015 (1) KLT 911** (cited supra) [which is the subject matter of challenge in W.A. 580 of 2015], subsequently passed an 'order of reference' doubting the correctness of the decision reported in **ILR 2015 (2) Ker. 339** (cited supra), placing reliance on the earlier decisions rendered by two Division Benches of this Court in **Vijayakumar Vs. Joint Registrar [1996 (1) KLT 285]** and **Rajendran Vs. State Co-operative Election Commission**

[2004 (1) KLT 1026] – though they were rendered prior to insertion of Sections 16A and 19A in the 'Act', and Rule 18A in the Rules. Referring to the sequence of events, the issue was referred by another learned Judge as well, vide order dated 09.07.2015 passed in W.P.(C) No. 17764 of 2015 and connected cases. These matters came up for consideration before a Division Bench of this Court, when the sequence of events and nature of contentions were noted. It was felt that, since the effect of the 97th amendment to the Constitution was not considered by the earlier Division Bench while rendering the decision in **ILR 2015 (2) Ker. 339** (cited supra) and since the scope of the amended provisions in the Act and the Rules in the light of the amendment to the Constitution had to be considered, besides the rulings rendered by the earlier Division Benches [in **Vijayakumar's case** and **Rajendran's case** - which were stated as not referred to in **ILR 2015 (2) Ker. 339** (cited supra)], it was found that exhaustive analysis was necessary to resolve the issue once and for all, and accordingly, the matters were referred to Full Bench.

6. We heard Mr. P. Ravindran, the learned senior counsel appearing for the appellants in W.A. No. 741 of 2015; Mr. P. C.

Sasidharan, the learned counsel appearing for the appellant in W.A. No. 580 of 2015 [both of whom led the arguments on behalf of the group who contend that the election has to be conducted as per the unamended provisions]; Mr. George Poonthottam, Mr. Swathi Kumar and Mr. V.G. Arun [who led the arguments on behalf of the other group who contend that the election can be conducted only in accordance with the amended provisions of law]; besides Mr. D Somasundaram, the learned Special Government Pleader, who appeared on behalf of the Government/Department. We heard the learned counsel for the parties in the other cases as well, including Mr. Narayanan, the learned counsel for the petitioner in W.P.(C) No. 6097 of 2016 and Mr. Subhash Chand, the learned counsel appearing for the petitioner in W.P.(C) No. 37640 of 2015. W.A. No. 741 of 2015 is treated as the lead case, as suggested from the Bar. The matters were heard elaborately and they were taken up reserving the verdict.

7. While so, this Court came across the fact that the 97th amendment to the Constitution of India had been challenged before the Gujarat High Court, in a public interest litigation, as to its constitutional validity, mainly for want of satisfaction of the

requirement under the 'proviso' to Article 368 (2) of the Constitution of India, which envisaged ratification of amendment by the Legislatures of not less than one half of the States. After hearing both the sides and after referring to the various judicial precedents, a Division Bench of the Gujarat High Court, headed by the Hon'ble Chief Justice, in **Rajendra N. Shah Vs. Union of India and another [CDJ 2013 GHC 045]** declared that the Constitution (97th Amendment) Act, 2011, inserting Part IX B containing Articles 243ZH to 243ZT, was ultra vires to the Constitution of India, for not taking the recourse to Article 368 (2) of the Constitution providing for ratification by the majority of the State legislatures. It was however made clear that the said order will not affect the other parts of the Constitution (97th amendment) Act, 2011. Eventhough, a stay of operation of the said judgment was sought for then and there, the prayer was refused as contained in the order. In the further enquiry made by us, it was revealed that an SLP was preferred before the Apex Court, which came up for consideration on 22.09.2014, when leave was granted, but no interim order of stay is reportedly given. In the said circumstances, we thought it appropriate to have the matters listed for further

consideration, giving an opportunity to both the sides to address the Court on this aspect and its consequences.

8. When the matters came up for further consideration, as ordered by this Court, it was pointed out by the learned Special Government Pleader that, even after the verdict passed by the Gujarath High Court declaring the 97th amendment to the Constitution - Part IX B, as ultra vires, the need to read the 97th constitutional amendment into the concerned enactment was asserted by the Apex Court in **Vipulbhai M. Chaudhary Vs. Gujarat Co-operative Milk Marketing Federation Limited and Ors. [(2015) 8 SCC 1]**, and that it would govern the situation. We found it difficult to agree, as the scope of the judgment rendered by the Gujarat High Court was never brought to the notice of the Apex Court and it was never dealt with by the Apex Court when the verdict was passed in **(2015) 8 SCC 1** (cited supra). The said judgment was rendered, as if all the new constitutional provisions pursuant to the 97th amendment were in existence; without noting that it had already been declared as ultra vires and disappeared from the Constitution of India. The matters were ordered to be listed for further arguments and they have been

heard accordingly.

9. Coming to the essential facts in W.A. No. 741 of 2015 (to understand and appreciate the scope of amendment in a better manner), the term of the Committee was to expire on 20.09.2014. But before that, the Board was superseded as per the orders issued by the Departmental authorities on 16.12.2013, which however was set aside, on intervention by this Court on 14.08.2014. Pursuant to the verdict passed by this Court, the Board was reinstated on 26.08.2014 and thereafter, a resolution was taken on 03.09.2014 to conduct election. Though necessary proceedings were forwarded to the Election Commission, the Commission refused to act upon the resolution to conduct election, presumably for the reason that, by virtue of the mandate of Rule 35A of the Rules, the resolution had to be passed 60 days before the date of expiry of the term, whereas in the instant case, only about 17 days were left. The intimation served in this regard by the Election Commission and the Assistant Registrars of the Co-operative Societies was subjected to challenge by filing W.P.(C) No. 26126 of 2014. The learned single Judge, observing that term of the Board had expired and an Administrative Committee had already assumed

the office, a writ of mandamus was issued to conduct election after passing a fresh resolution, simultaneously directing the Administrative Committee to prune the voters' list, ensuring that only eligible members, as per the amended provisions of the Act/Rules, were included in the voters' list. Pruning of the voters' list made the parties feel aggrieved and hence the challenge in W.A. 741 of 2015, placing reliance on the verdict passed by the Division Bench of this Court in **ILR 2015 (2) Ker. 339** (cited supra).

10. The learned senior counsel for the appellant submitted that 'Part IX B' dealing with Co-operative Societies was introduced by way of 97th amendment to the Constitution of India w.e.f. 15.02.2012. This is stated as the reason for amending the Kerala Co-operative Societies Act, by Act 8 of 2013, incorporating Section 16A and Section 19A w.e.f 14.02.2013. It is pointed out that the amended provisions of the Constitution, particularly Article 243ZO and Article 243ZT have not been properly read and understood by the legislature of the State. The amendment to the Constitution of India, by the 97th amendment, deals with various aspects in relation to the Co-operative field and when it comes to "members'

participation in management", the stipulations are never made mandatory, but left to the discretion of the State. The learned counsel submitted that the terminology used under Articles 243ZO and 243ZT is very important, in so far as the word used is "may", unlike the expression "shall" used in Articles 243ZJ, 243ZK, 243ZL and 243ZP. It is also contended that the entry in relation to 'co-operative society' is at serial No. 32 of the 'State list' in the 7th Schedule to the Constitution of India and hence the power to legislate is absolutely with the State Government. If an entry in a particular list is to be taken away and to be included in another list, approval by 50% of the States is necessary, by virtue of the 'proviso' to Article 368 (2) of the Constitution of India. Admittedly, no such approval has been obtained and hence the item still remains in the 'State list' and hence the 97th amendment has not varied the position in any manner, as to the power of legislation.

11. With reference to the contents of the newly inserted Article 243ZT, it is stated that the restriction as to the life of the existing provisions of law to 'one year' is made only in respect of the provisions which are inconsistent with the provisions of the Constitution. It is also pointed out that there is an ocean of

difference between the 'right of a member to continue as a member', as envisaged under Section 16A of the amended Act and the 'right to exercise the right of a member' as envisaged under Section 19A of the amended Statute. In respect of the provisions in the existing Co-operative Act, which are inconsistent with the provisions of the 97th amendment to the Constitution, as in the case of Articles 243ZJ, 243ZK, 243ZL and 243ZP, the stipulation in the said Articles of the Constitution is mandatory, whereas in the case of provisions in relation to 'participation of members in the management', it is only directory or discretionary as the expression used is 'may' as evident from Articles 243ZO and 243ZT. Since the said provisions are only directory, there is no inconsistency with the provisions in the Constitution, submitted the learned counsel.

12. With reference to the contents of Section 16A of the Act, the requirement under Sub section 1 (a) is to have availed service of the society for 'two consecutive years' or the 'minimum level' as prescribed by the Rules/Bye Laws. Sub section 1(b) of Section 16A says that the member should have at least attended 'three consecutive general meetings'. These stipulations are only for retaining membership in the society and not for any other purpose.

It is also pointed out that the non attending of 3 consecutive meetings by a member is not a taboo forever, as the lapse can be condoned by the General Body, by virtue of the power conferred under the said provision. It is also pointed out that the minimum level of service is such level 'as prescribed' and such prescription can be only by the Rules, by virtue of the definition of the term 'prescribed' under Section 2 (o). Since the minimum level of service was still to be prescribed, by formulating appropriate Rules, the provisions in the amended Act [Sections 16A and 19A] could only remain dormant and not operative. Reference to 'bye-law' only appears in Section 16A and not under Section 19A, which deals with the right of a member to exercise his right as a member. Rule 18A deals with the 'participation of members in management' and hence it is in connection with Section 16A of the Act and is having no connection or reference to Section 19A, submitted the counsel. It is argued that, reckoning of 'two consecutive years' can only be after 26.11.2014, when Rule 18A was introduced in the Rules and never before.

13. As a matter of fact, according to the learned senior counsel, the term 'year' refers to a 'Co-operative year' which is

defined under Section 2 (u) of the Act, by virtue of which, it starts from the 1st April onwards. Hence, on a reading of the provision in its entirety, it can only start from the next Co-operative year, after commencement of the Rule, i.e., from 01.04.2015 and not from 26.11.2014 when Rule 18A was introduced. As such, 'two consecutive years' will come to an end only by 31.03.2017 and hence it cannot be said that a member has not availed service at least till 31.03.2017. It is also pointed out that, even if a member is to be ousted/removed, it can be done only after affording an opportunity of hearing as stipulated in Sub section (2) of Section 16A and as such, the names of the members cannot be simply deleted from the voters' list, denying their vested right.

14. Yet another contention raised by the learned senior counsel is that, detailed procedure is given under Rule 18A of the Rules, with liability to maintain a register, making entries therein, forwarding the particulars to the Chief Executive/such other authority on completion of every year etc.; so as to effect necessary corrections and determine the eligibility to vote. Such process having been contemplated every year; the first co-operative year will be over only by 31.03.2016 (after the

commencement of Rule 18A) and hence the proceedings cannot stand detrimental to the rights and liberties of the existing members. In response to the case put forth by the respondents/State/contesting parties, that only 'active members' shall be included in the voters' list, as given in the 'explanation' added under Clause 4 (after Sub rule 3B) under Rule 35A, the learned counsel submitted that the 'explanation' has to be read along with Rule 18A. If so, the 'explanation' also can take effect only after 2 years from 01.04.2015 (taking two years from the commencement of the next co-operative year, after introduction of Rule 18A) i.e. only after 31.03.2017 and never before. It is stated that the term 'active member' is not defined either under the Act or the Rules.

15. Another important submission made by the learned senior counsel is that, 'every member' is having an absolute right to vote, by virtue of the mandate under Section 20 of the Act, which starts with a 'non-obstante clause'. It is also brought to the notice of this Court that the term 'active member' (which was in existence earlier under Section 20 of the Act) was deleted w.e.f. 04.05.2002. As a matter of fact, in the earlier provision (under

Section 20), the 'non-obstante clause' was not there. The term 'active member' was introduced under Section 20 on 01.01.2000. Subsequently, non-obstante clause was introduced and when the term 'active member' was deleted as per the amendment with effect from 04.05.2002, the 'non -obstante clause' under Section 20 was however retained. The net result is that, the legislature in its wisdom found that the member need not be an 'active member', so far as the voting right is concerned and as such, the matter has to be pursued in terms of the law declared by a Division Bench of this Court in **ILR 2015 (2) Ker. 339** (cited supra). Distinction is sought to be made with reference to the facts of **Vijayakumar's case** and **Rajendran's case** (both cited supra).

16. Mr. Rakesh Roshan, the learned counsel appearing for the appellant in W.A. No. 1457 of 2015 and the petitioners in one of the writ petitions virtually supported the arguments made by Mr. P. Ravindran, the learned senior counsel. It is stated that, as per Ext. P2, '2303' members had applied for identity cards and as per Ext. P4 G.O., implementation of the amendment was stayed till 31.12.2015. It was during the pendency of Ext. P4 G.O., that Ext.P5 Circular was issued (to identify the active members).

17. Mr. D. Somasundaram, the learned Special Government Pleader appearing for the State, highlighted the purpose and object of amendment of the Constitution and the consequences resulted. The 97th amendment to the Constitution of India got the assent of the President on 12.01.2012 and it was published in the gazette accordingly. Para 2 of the 'objects and reasons' prescribes, how the same came into existence, while para 3 deals with the consultation with the States and such other aspects. Section 1 of the Amendment Act says that it has come into force on 15.02.2012. With reference to Article 243ZO and Article 243ZT, the learned Government Pleader submitted that both the said provisions have to be read together and that any provision in the State Act, which is inconsistent with the mandate of the amended provisions of the Constitution, shall continue to be in force only till such provisions are amended or repealed or for a maximum period of one year, whichever is less. In other words, the 97th amendment to the Constitution having brought into effect from 15.02.2012, the existing inconsistent provisions could only be there for a period of one year from the said date and never beyond. It is also pointed out that, the terminology used under Section 16A

of the Act is in the 'present continuous tense'. By virtue of Rule 18A of the Rules, which came into force on 26.11.2014, Section 16A and Section 19A got activated automatically and as such, the minimum period of 'two years' stipulated requires to be reckoned from the date of coming into force of the amended Act. It is also stated that Rule 18A is a composite Rule to serve both Sections 16A as well as 19A, and hence no separate Rule is necessary with reference to Section 19A. It is asserted that, by virtue of the settled position of law, it is not the 'heading' of the provision that matters, but the contents. Hence only a member who continues as a member can exercise the right as a member.

18. According to the learned Special Government Pleader, 'Article 243ZT' basically stipulates that the State had no other option than to make suitable amendments within time, i.e., within 'one year' from the amendment to the Constitution, which came into force on 15.02.2012. It was accordingly, that the State Act was amended as per Act 8 of 2013, effecting gazette notification on 14.02.2013, thus bringing the amended provisions to effect 'at once' as stipulated therein. It is contended that the approach and analysis made by the Division Bench in **Surendran's case** (cited

supra) is not correct and that the scope of Section 20 of the Act, with regard to the 'non-obstante clause' therein has not been properly discussed or laid down. It is stated that 'member qualified' means a member qualified as per Section 16A of the Act, which if interpreted otherwise, will be repugnant to Article 243ZT of the Constitution. All the provisions of the Statute have to be interpreted harmoniously so as to give effect to the same and not otherwise, submitted the learned Government Pleader. This is more so, in view of the law declared by the Apex Court as per the decision reported in **(2015) 8 SCC 1 = 2015 (2) KLT 397** (paragraph 4 and 6) **[Vipulbhai M. Chaudhari Vs. Gujarat Cooperative Milk Marketing Federation Limited and others]**, holding that State enactment has to be read with the constitutional mandate in mind. In the State Act, Schedule 2 has been incorporated dealing the co-operative principles and by virtue of paragraph 7, it has to be 'effective membership'. Reliance is sought to be placed on paragraphs 11, 16, 24, 26 and 27 as well. With reference to paragraphs 45 and 47, it is stated that the voting right and the right to contest election are statutory rights and as such, when Section 20 is read in the light of the constitution, the

meaning given by the Bench in **Surendrans' case** (cited supra) cannot be correct. Reliance is sought to be placed on the observation of the Apex Court in paragraph 33 of the verdict in **Kotak & Co. Vs. State of U.P. [(1987) 1 SCC 455]** adding that interpretation has to be made based on texture and context. As it stands so, the election has to be conducted as per the amended provisions. Reference is made to the decisions rendered in **Narayanan Vs. Maloth Service Co-op. Bank [1986 KLT 957]** and **Kunhikrishnan Vs. Secretary, Nadapuram S. Co.op. Bank Ltd. [1987 (1) KLT 201]** as well.

19. With regard to the difference in terminology used, as "may" in Article 243ZO and the word 'shall' used in Articles 243ZJ, 243ZK, 243ZL and 243ZP, it is contended that the provisions of Articles 243ZO and 243ZT are to be read together. Considering the mandate of the above constitutional provisions and the purpose and object of the above enactment, the word 'may' appearing in Article 243ZO has to be read as 'shall', lest it should be otiose, particularly since the time limit prescribed in Article 243ZT is only 'one year'. It is stated in the said circumstances, that Section 20 of the Act has to be read along with Section 16A and Rule 18A. Reference is

made to the verdict passed by this Court reported in **1996 (1) KLT 285 [Vijayakumar Vs. Joint Registrar]**.

20. Mr. George Poonthottam, the learned counsel appearing for the respondents 6 and 8 in W.A. No. 580 of 2015, submitted that the different use of terminology ('may' and 'shall') is actually having no relevance at all. It is stated that, though it could be contended that by virtue of use of the term 'may', it is only optional for the State to bring about the amendment (in respect of 'participation of member in the management of the society'), in so far as the State has used the right of option and brought about the amendment, it has to be considered in the light of the amended provisions. So the question is, whether the amended provisions are inconsistent with the existing law, which, according to the learned counsel could be answered only in the 'positive'. As a natural consequence, the law which was in existence would continue only for a period of 'one year' from the date of amendment to the Constitution. Article 243ZO (2) is important, in so far as it prescribes the minimum level of participation/service to be availed. Thus, the constitutional intent is participation of members and not exclusion, which of course carries a rider as to

the minimum requirements. According to the learned counsel, only members can exercise the right of members and so long as Section 16A is there, Section 19A turns to be superfluous (the said proposition is however not supported by the learned Special Government Pleader, who refers to the different circumstances and the different roles to play, by both the provisions).

21. Restriction as to the right to vote is dealt with under Rule 28 of the Rules. Mr. George Poonthottam submitted that Section 16A (a) of the Act refers to the minimum level of service to be availed for being an 'effective/active member' of a society, which takes its origin from Article 243ZO (2) of the Constitution. Section 16A (b) (placing the bar, if continuously absent in three general meetings) is connected with the mandate of the Article 243ZO (1). This being the position, it is pointed out that, Section 19A is only a measure of reiteration of what has already been dealt with under Section 16A and there is a statutory installation of members to ensure participation. There is no arbitrary power to the Committee, to exclude any member without proper check/safe guard provided under the Statute, and opportunity of hearing is also conferred upon the members before they are ousted from the

membership. Besides referring to Sub rules (3) and (4) of Rule 16, reference is also made to other normal circumstances already in existence, in relation to ordinary removal from membership. The learned counsel submitted that, formation of the society alone is a fundamental right under Part III of the Constitution of India [Article 19 (1) (c)] and there is no fundamental right to be a member, which is only a statutory right. If so, who may become the members as per Section 16 is the question. Rule 16 (1) deals with the conditions for membership in normal circumstances. Conjoint reading of Section 16 with Rule 16 (1) and (2) will reveal that, it is well within the power of the State to prescribe how or what shall be the norms for membership. If the legislature can prescribe norms for membership, it can also prescribe the qualifications/participation/ continuance etc. as well. As such, a member cannot contend that 'once a member is always a member' and there of course can be statutory curtailment as to the right to be a member or to continue as a member. Section 20 has to be read and understood in the background of the constitutional amendment, along with Section 16 and Section 16A, read with the relevant Rules. Referring to Section 22 of the General Clauses Act, it is pointed out that, when Rules

are introduced, the Section gets activated with effect from the date of the Act.

22. Mr. V.G. Arun, the learned lawyer appearing on behalf of the petitioners in W.P.(C) No.22401 of 2015 referred to the definition of the term 'member' as given under Section 2(l) of the Act, who has to be qualified as per the Rules and Bye-laws. It is stated that the rights dealt with under Sections 19, 19A and 20 of the Act are not confined to the right to vote alone, but also with the affairs of the society, which includes election, convening a general body etc. Section 2(k) refers who are all entitled to vote in the general body, while Section 29 stipulates that the annual general meeting shall be there in every six months. The purpose of the society, to run profitably and progressively, can be achieved only if all the members participate in the affairs, which is not restricted to have membership just for voting. This is evident from the 'preamble' of the Co-operative Societies Act and the mandate of the 97th amendment to the Constitution of India. It is added that Section 19A is not superfluous and there may be cases when persons/members who are actually liable to be ousted may be continuing wrongfully with the help of the management, who may

later turn up claiming voting right, which is not intended and stands prevented by virtue of Section 19A.

23. The learned counsel appearing for the petitioner in W.P. (C) No. 22401 of 2015, who apparently sails along with the State Government, also submitted that Rule 18A, referring to the minimum level of service within a continuous period of two years, has to be read and understood in the light of Article 243ZT brought about by the 97th amendment to the Constitution. The said amendment was brought into force on 15.02.2012. As per Article 243ZT, all provisions which are inconsistent with the Constitutional mandate mentioned therein can stand only for a period of one year. The said period of one year, expired on 14.02.2013 and as such, no existing law could govern the situation. This being the position, only those persons who satisfy the requirements as per the amended provisions, particularly with reference to Sections 16A and 19A of the Act, can continue and exercise the right of members. Referring to the observations made by the Apex Court in **(2015) 8 SCC 1** (Paragraphs 11, 13 and 14) [cited supra], it is pointed out that all laws were to be restructured in view of the 97th amendment to the Constitution and that purpose of restructuring

has to be 'weighed', so as to promote the constitutional mandate. Reliance is sought to be placed on the decision rendered by the Apex Court in **Pratap Chandra Mehta Vs. State Bar Council of M.P. [(2011) 9 SCC 573** (paragraph 27)**]** in this regard.

24. Mr. Swathi Kumar, who is appearing for the respondent Bank in W.A.No. 741 of 2015 and for the respondents 4 and 5 in W.P.(C) No. 37640 of 2015, submitted that he was supporting the submissions made by the learned Special Government Pleader, adding that the amended provisions in the Statute contemplate availing of service to the stipulated extent, at least once in two years and not continuously for two years. It is stated that Section 16A and Section 19A are for two different purposes and that the minimum level of service specified is only in respect of the services as dealt with by Section 16A (first limb) as well as under Rule 18A. The minimum level of service stated to be availed as given in Clause (ii) of the 'Bill' and in turn as contained in Rule 18A is regarded as prospective. Rule 18A having come into force on 26.11.2014, the members had at least 4½ months before commencement of the next financial year on 01.4.2015, to have availed the minimum level of service. As such, a member who did

not choose to avail the minimum service, at least once after the commencement of the Rule on 26.11.2014, is not liable to be continued as a member, nor is he entitled to exercise any rights as a member. Since nobody has challenged the amendment and since the provisions of the amended Act and the Rules have already come into existence, it is no more open for anybody to contend that the election has to be conducted based on the unamended provisions. Referring to the observation of the Apex Court in paragraphs 26 and 27 of the decision reported in **(2015) 8 SCC 1** (cited supra), it is contended that, if no amendment is made by the State in terms of the constitutional mandate, the Court is required to interpret the provisions in terms of the Constitution. Reference is also made to paragraph 46 of the said judgment, adding that the restructuring of the Statute was very much necessary.

25. In response to the submission made by the learned senior counsel as to the effect of deletion of the word 'active' from section 20 of the Act (stipulating 'one member one vote'), the learned counsel submitted that the same did not have much relevance as it only stipulates that, not more than 'one vote' shall be there to a member, i.e., notwithstanding the number of shares

or such other traits. In so far as the right to participate in the election is concerned, only those persons who are 'active members' shall be included in the voters' list, as contained in the 'explanation' to Rule 35A (4) of the Rules, which is reproduced below:

> "Explanation - Only the active members shall be included in the voters list. The members who have utilized the minimum service provided by the society during the two consecutive years shall be considered as active members. The preliminary voters list and final voters list shall contain the name and address of the society where the member is a society or corporation or a statutory or non statutory board, committee or other body of persons which is a member of another society or Government."

The said Rule has not been subjected to challenge in any of these proceedings and hence the contention raised to the contrary is liable to be repelled.

26. The Mischief Rule in Heydon's case has been discussed by the Apex Court in **Indian Performing Rights Society Ltd. Vs. Sanjay Dalia & Ors. [(2015) 10 SCC 161],** wherein the following four points are evolved and subjected to scrutiny:

> "1st - What was the common law before the making of the Act ?
>
> 2nd - What was the mischief and defect for which the common law did not provide ?
>
> 3rd - What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth, and
>
> 4th - The true reason of the remedy;"

Placing reliance on the said Rule, it is contended that mischief has to be suppressed and interpretation advancing the remedy has to be accepted. As such, the 97th amendment to the Constitution envisages 'member participation' as a primary objective. Only those persons who satisfy the requirements in terms of the Constitutional amendment and the amended provisions of the Act/Rules can be members and continue to exercise their right as members to the Co-operative society. According to the learned counsel, the word 'may' under Article 243ZO must be read as 'shall'. Even otherwise, the State has already opted to amend the Statute, by incorporating Sections 16A and 19A in the Act w.e.f.14.02.2013, and Rule 18A w.e.f. 26.11.2014.

27. Reliance is sought to be placed on the decision of the Supreme Court reported in **AIR 1957 SC 912 [State of U.P. Vs.**

Manbodhan Lal Srivastava], to feel the difference between the two terms 'shall' and 'may'. Paragraph 11 of the verdict reads as follows :

> "11. An examination of the terms of Article 320 shows that the word "shall" appears in almost every paragraph and every clause or sub-clause of that article. If it were held that the provisions of Article 320 (3) (c) are mandatory in terms, the other clauses of sub-clauses of that article, will have to be equally held to be mandatory. If they are so held, any appointments made to the public services of the Union or a State, without observing strictly, the terms of these sub-clauses in clause (3) of Article 320, would adversely affect the person so appointed to a public service, without any fault on his part and without his having any say in the matter. This result could not have been contemplated by the makers of the Constitution. Hence, the use of the word "shall" in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding, would be invalid. On the other hand, it is not always correct to say that

> where the word "may" has been used, the statute is only permissive or directory in the sense that non-compliance with those provisions will not render the proceeding invalid. In that connection, the following quotation from Crawford on Statutory Construction - Article 261 p.516, is pertinent :
>
> > "The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other....."

28. This Court however finds it difficult to accept the proposition to read 'may' as 'shall'. The terminology used by the law makers in the different provisions under the very same amendment Bill has to be read and understood with reference to the object which is sought to be achieved. As mentioned already, in Articles 243ZJ, 243ZK, 243ZL and 243ZP, the word used is '**shall**', whereas under Article 243ZO dealing with 'member

participation', it was left to the discretion of the State, being a subject matter of the State, coming under List II of the 7th Schedule to the Constitution. This obviously is for the reason that, the situation prevailing in different States in India may differ much and the course and remedy suitable/feasible to one State may not be good for another State, because of various reasons; economical, educational, social, cultural, topographical and such other instances. The 'member participation' has to be considered and decided in the most appropriate manner, as found to be just and proper by the State. The Constitutional provision i.e. Article 243ZO also does not stipulate as to how, in what manner and to what extent such 'member participation' has to be made. Though it was mentioned as a Constitutional objective, what should be the extent and manner etc. were left to be decided by the State and hence the expression **'may'** as it appears under Article 243ZO. With regard to the other Articles, i.e. Articles 243ZJ, 243ZK, 243ZL and 243ZP, it has to be followed universally throughout the country and hence the law makers consciously used a different terminology as **'shall'**, leaving no discretion to the State. The conscious attempt of the law makers becomes more evident from Article 243ZQ dealing with

offences and penalties, which reads as follows :

> "**243-ZQ. Offences and penalties** - (1) The Legislature of a State may, by law, make provisions for the offences relating to the co-operative societies and penalties for such offences
>
> (2) A law made by the Legislature of State under clause (1) shall include the commission of the following act or omission as offences, namely: -
>
> (a) a co-operative society or an officer or member thereof wilfully makes a false return or furnishes false information, or any person wilfully not furnishes any information required from him by a person authorised in this behalf under the provisions of the State Act;
>
> (b) any person wilfully or without any reasonable excuse disobeys any summons, requisition or lawful written order issued under the provisions of the State Act;
>
> (c) any employer who, without sufficient cause, fails to pay to a co-operative society amount deducted by him from its employee within a period of fourteen days from the date on which such deduction is made.
>
> (d) any officer or custodian who wilfully fails to handover custody of books, accounts, documents, records, cash, security and other property belonging to

> a co-operative society of which he is an officer or custodian, to an authorised person; and
>
> (e) whoever, before, during or after the election of members of the board or office bearers, adopts any corrupt practice.

From the above, it is evident that Sub Article 1 of Article 243ZQ uses the terminology **'may'** when it comes to the legislation to be made. But coming to Sub Article 2 of Article 243ZQ it uses the word **'shall'**. The net result is that, even though it is the discretion of the State to formulate the legislation by virtue of the word used 'may', by virtue of using a different terminology under Sub Article 2, once it is decided by the State to legislate, the legislation shall contain the requirements as mentioned therein. This is a pointer as to the proper application of the mind on the part of the law makers in using different terminologies **'may'** and **'shall'** at appropriate place in the different provisions as aforesaid. As it stands so, the contentions of the concerned parties and the Government Pleader that the word **'may'** appearing in **Article 243ZO** has to be read as **'shall'** is devoid of any pith or substance and the same stands repelled.

29. As mentioned already, heavy reliance is sought to be

placed on the verdict passed by the Apex Court in **(2015) 8 SCC 1** (cited supra) by the learned Special Government Pleader to assert that the amendment to the Statute (Sections 16A, 19A and Rule 18A of the Act/Rules) has been brought about by the Government of Kerala, so as to give effect to the 97th amendment to the Constitution, particularly, in view of Articles 243ZO and 243ZT, ensuring 'member participation' in the management of the society. It was also in conformity with the mandate of **Article 43B**, to promote and control co-operative sector by the State introduced as part of the directive principles of the State policy. The verdict passed by the Apex Court in **(2015) 8 SCC 1** (cited supra), highlighting the salient features of the 97th amendment of the Constitution and the need to interpret the Statutes in terms of the constitutional mandate was much after passing the judgment by the Gujarat High Court, declaring the 97th amendment – inserting Part IX B as ultra vires to the constitution. The matter is pending consideration before the Apex Court, though no interim order of stay has been granted. According to the learned Special Government Pleader, the verdict passed by the Gujarat High Court can normally have application only within the territory of Gujarat

and the same is not relevant to decide the issue in hand, more so, in view of the subsequent judgment of the Apex Court **(2015) 8 SCC 1** (cited supra). The learned Special Government Pleader also seeks to rely on **(2002) 2 SCC 420 [Suganthi Suresh Kumar Vs. Jagdeeshan]** and **AIR 2008 SC 944 [Special Deputy Collector (L.A.) Vs. N. Vasudeva Rao & Ors.]** to contend that the legal proposition laid down by the Apex Court cannot be bypassed by the High Court contending that attention of the Apex Court has not been drawn to a specific statutory provision. Mr. P. Ravindran, the learned senior counsel appearing for the appellant in W.A. 741 of 2015, referred to a line of decisions with reference to the scope of Article 226 (2) of the Constitution involving the territorial jurisdiction and asserted that, as per the verdict passed by the Apex Court in **Kusum Ingots & Alloys Ltd. Vs. Union of India and another [(2004) 6 SCC 254]**, any High Court is having jurisdiction to declare the law as unconstitutional, even beyond its territories and it will be applicable throughout the country.

30. The right of High Court to issue prerogative writs under Article 226, as it stood earlier, confined firstly, within the territorial

jurisdiction of the concerned High Court and secondly, with reference to the seat of the respondents coming within the purview of such territory. The said jurisdiction, as confined within the territory, was highlighted by a Constitutional Bench of the Apex Court as per the decision in **Election Commission Vs. Saka Venkata Subba Rao [AIR 1953 SC 210]**. The legal position was reiterated by another Constitution Bench of the Apex Court in **K.S. Rashid and son Vs. Income Tax Investigation Commission [AIR 1954 SC 207]**. The matter became concluded forever, by virtue of the subsequent verdict passed by a '7 members Bench' of the Apex Court in **Lt. Col. Khajoor Singh Vs. Union of India and another [AIR 1961 SC 532],** whereby the earlier two verdicts were affirmed. Ultimately, the power of the High Court was widened to the requisite extent, as per the 15th amendment to the Constitution of India, whereby Article 226 (1A) was introduced (which is in pari materia with Article 226 (2) as it now stands]; whereby authority was given notwithstanding the seat of the Government/respondent. Scope of the said amendment was considered and explained by a Division Bench of the Rajasthan High Court in **Anwar Mohammad Vs. Managing Officer cum**

custodian of Evacuee Property Jaipur and Others [AIR 1964 Rajasthan 260] and by a Full Bench of the Allahabad High Court in **AIR 1970 All. 440 (F.B.) [Om Prakash Vs. Divisional Superintendent, Northern Rly.].** The scope of Article 226 (2) as it now stands was dealt with in detail by the Apex Court in the subsequent ruling reported in **(2004) 6 SCC 254** [cited supra]. The Apex Court held that the order passed in writ petition questioning the constitutionality of the Parliamentary Act [whether the order be interim or final], will have effect throughout the territory of India, subject to the applicability of the Act. This being the position, the declaration made by the Gujarat High Court that the 97th amendment to the Constitution inserting Part IX B - as ultra vires to the Constitution, in turn striking down the same, is having application all over India [which of course, will be subject to the verdict to be passed by the Apex Court in the matter pending consideration, involving the challenge against the said verdict]. Still the scope of the verdict passed by a Division Bench of this Court in **Surendran's case** (cited supra) [without any reference to the constitutional mandate as per the 97th amendment for deciding the applicability of Sections 16A and 19A and Rule 18A] can be

examined independently, even without the backing of the constitutional amendment.

31. By virtue of the declaration already made by this Court, the term 'may' as it appears in Articles 243ZO and 243ZT cannot be read as 'shall'. It only says about the option given to the Government to bring about the legislation, as desired. Whether it be based on the 97th amendment to the Constitution or otherwise, the State Government has already exercised the option and has brought about some amendment by way of introducing Sections 16A and 19A and Rule 18A in the Act/Rules. Having amended the provisions as above, and in so far as the validity of the said provisions has not been subjected to challenge in any of these cases, the point to be considered is, whether the relevant provisions have already come into operation (at once) as stipulated in the Act or whether the same became operative only when Rule 18A was introduced on 26.11.2014 or still whether a further cooling period of two years was necessary, enabling the members to have availed the service/minimum level of service satisfying the requirement to the requisite extent in terms of the provision, in a continuous period of two years thereafter.

32. The point considered by the Apex in **(2015) 8 SCC 1** (cited supra) was, whether, in the absence of a specific provision for removal by 'no-confidence' in the Act/Rules or even in the Bye-laws of a co-operative society, the Chairperson/elected office-bearer could be removed by a motion of no-confidence (para 1 of the judgment). The Bench observed that, removal of an elected member/office-bearer by 'no-confidence motion' was not expressly provided in the relevant Act/Rules/Bye-laws. But for the stipulation in the Bye-laws that, in case the office of the Chairperson of the Federation falling vacant before expiry of its term, for any reason, the Board has to elect a new person for the remaining term. Reference was made to a Full Bench decision of this Court reported in **AIR 2002 Ker. 325 [S. Lakshmanan Vs. V. Velliankeri]** to the effect that no such power of removal of the Chairperson by no-confidence should be read into the provisions of the Act/Rules/Bye-laws, as Section 33 (1) of the Kerala Co-operative Societies Act only envisaged passing of a 'no-confidence motion' by the general body which results wholesale removal of the committee and not any individual. Similarly, reference was also made to the verdict passed by the Andhra Pradesh High Court in **Veeramachaneni**

Venkata Narayana Vs. Registrar of Co-operative Societies [ILR 1975 AP 242] to the effect that, an office bearer of a Committee could not be removed by way of passing a no-confidence motion against him. Further reference was made to the verdict passed by the Mumbai High Court in **Hindurao Balwant Patil Vs. Krishnarao Parshuram Patil [AIR 1982 Bom. 216]** holding that the Act/Rules/Bye-laws did not confer any right upon the members of the Board of Directors to remove Chairman/Vice chairman by passing a mere 'vote of no-confidence'. A verdict, in almost similar lines rendered by a Full Bench of High Court of Punjab & Haryana in **Jagdev Singh Vs. Registrar, Co-op Societies [AIR 1991 P&H 149]**, holding that the Act/Rules/Bye-laws did not provide for moving a 'no-confidence motion' against the President of the Management Committee/Chairman of the Board of Directors, was also pressed into service. But it was observed that all the said judgments were dealing with "pre-97th amendment of the Constitution" and that the amendment had brought about radical changes in the concept of 'co-operative society', involving democratic functioning and autonomy as the core constitutional values of a co-operative

society. It was in the above background, that an observation was made by the Apex Court in para 46 of the verdict in **(2015) 8 SCC 1** (cited supra) that the question was not what the Statute does say, but what the Statute must say, also holding that if Act/Rules/Bye-laws did not say what they should say in terms of the Constitution, it is duty of the Court to read the constitutional spirit and concept into the Acts. Accordingly, the Apex Court declared the law as :

"*(a) It is permissible to remove an elected officer bearer through no-confidence motion.*

(b) In the co-operative societies registered under any Central/State law, a motion of no-confidence against an officer bearer shall be moved only after completion of two years after assumption of office.

(c) In case the motion of no-confidence is once defeated, a fresh motion shall not be introduced within the next one year.

(d) A motion of no-confidence shall be moved only in case there is a request from one-third of the elected members of the Board of Governors/Managing committee of the Co-operative society.

(e) Motion of no-confidence shall be carried in case the motion is supported by more than fifty percent of the elected members present in the meeting."

It was accordingly, that the views expressed by the High Courts of Kerala, Andhra Pradesh, Punjab and Haryana, and Bombay were held as no more good law, in view of the 97th amendment to the Constitution of India.

33. As mentioned already, declaration of the law was made by the Apex Court with reference to the radical changes brought about by the 97th amendment to the Constitution of India inserting Part IX B, however, without considering the verdict passed by the Gujarat High Court declaring the said amendment as 'unconstitutional' and striking down from the Constitution. Though an SLP is pending before the Apex Court, no stay has been granted therein. At the same time, by virtue of the principles of the judicial discipline explained by the Apex Court in **Suganthi Suresh Kumar Vs. Jagdeeshan [(2002) 1 SCC 420]** and **Special Deputy Collector (L.A.) Vs. N. Vasudeva Rao & Ors. [AIR 2004 SC 944],** this Court cannot say that the declaration of law made by the Supreme Court is bad in any manner. Even if the 97th

amendment (which was not there at the time of passing the verdict) is taken away, the declaration of the law made by the Apex Court is only on the points mentioned as (a) to (e) extracted in the previous paragraph and not whether the 97th amendment to the Constitution was valid or still in existence, even after striking down the same by the Gujarat High Court. This being the position, the aforesaid declaration of law on points "(a) to (e)" is not having much relevance as far as the issue involved in the present case is concerned. So much so, it requires to be independently examined when the amended provisions of the Act/Rules, which stand on their own legs, had become operative and what is the scope and effect.

34. As conceded by both the sides, the State Government had amended the Act by introducing sections 16A and 19A w.e.f from 14.02.2013. It is true that the relevant Rule (Rule 18A) was introduced only much later, i.e., on 26.11.2014. The question is, whether the provisions under Sections 16A and 19A could have been operated right from the date of its commencement, i.e., from 14.02.2013 or whether it could be operated only from 26.11.2014 - the date of introduction of Rule 18A or further, whether the cooling

period of two years to meet the requirements under the Statute is to be extended for a term of two years from the date of commencement of Rule 18A, i.e., 26.11.2014. It also requires to be considered whether further displacement of the relevant date will be there, if the term 'year' as mentioned in Section 16A and Rule 18A is reckoned as a 'co-operative year', as defined under Section 2(u) of the Act, i.e., from 1st of April.

35. For proper appreciation of the scope of the relevant provisions and its contents, it is necessary to have the same extracted:

Section 16A (w.e.f.14.02.2013)

> "**16A. Ensuring participation of members in the management of societies.**— (1) No member shall be eligible to continue to be a member of a co-operative society if he,—
>
> (a) is not using the services of the society for two consecutive years or using the services below the minimum level as may be prescribed in the rules or the bye-laws;
>
> (b) has not attended three consecutive general meetings of the society and such absence has not been condoned by the members in the general meeting.

(2) Where any person becomes ineligible for continuing as a member as per sub-section (1), the committee of the society may remove the person from membership after giving him an opportunity for making his representation, if any, and the person concerned shall thereupon cease to be a member of the society:

Provided that no member of the society removed as above shall be eligible for re-admission as a member of that society for a period of one year from the date of such removal."

Section 19A (w.e.f.14.02.2013)

"19A. Member participation.—No member of a society shall exercise the right of a member unless he has attended the minimum required general body meeting and minimum level of services as may be prescribed."

Rule 18A (w.e.f.26.11.2014)

"18 A. Ensuring participation of members.— (1) No member shall be eligible to continue to be a member of a co-operative society if he is not using the services of the society for two consecutive years in the following manner:

(a) In case of a credit society, a member who has made a deposit or has become a borrower or

surety or availed or purchased products or any other services made available by such society as specified in the bye-laws;

(b) In the case of any other society, a member who has involved in anyone of the objects specified in the bye-laws or has availed the products or using the service made available by such co-operative society as specified in the bye-laws;

(c) In the case of Central or Apex Societies / Banks / Federation, if the member society has not borrowed the amount from such Central or Apex Societies / Banks / Federation/and in the case of Apex societies Banks/Federations where the main object is to lend the amount to the member societies or if the member society is not using the services made available by such society/federation as specified in the bye-laws;

(2) (a) A register in Form No. 32, shall be maintained by every society. The Chief Executive of the society shall be responsible for the proper maintenance of the register.

(b) The details with regard to each and every member of a society shall be made up-to-date and place before the Committee within sixty days on completion of every year.

> (c) The Committee shall examine and certify the register as to the details so recorded by the Chief Executive, within thirty days from the date of placing it before the committee.
>
> (d) The Chief Executive of the Society shall forward a certificate to the Registrar, as to the up-to-date maintenance of the register within three months of the close of the year.
>
> (e) The Chief Executive of the society shall submit this register before the Electoral Officer for verifying the eligibility of members who are qualified to vote at the election."

36. Before analysing the contents of the above provisions of law, the dispute with regard to the term 'year' has to be resolved. The scope of the term was considered by a Division Bench of this Court in **Surendran's case** (cited supra) holding that a 'co-operative year' has to commence from 1st April and ending on 31st March of the succeeding year. The relevance for 'co-operative year' is only for the transactions, as the business of a society is to be accounted, audited and considered for the period from 1st April to 31st March of the succeeding year. It is true, that it is for the Legislature to stipulate as to what should be the effective date of

commencement of a Statute or an amended provision, either under the Act or the Rules. It is also true, that the tenure of a newly elected body to hold the office (for the stipulated term) is from the date of declaration of the election and not with reference to the 'co-operative year'. Unlike this, when it comes to the business/transaction of the society, it can only be with respect to 'co-operative year' as defined under Section 2 (u) of the Act. Since the requirement under Section 16A and Rule 18A is with reference to the 'service' to be availed by the member, during the continuous period of two years, it pertains to the business/transactions of the society, the time to be reckoned as to whether any such 'service' was availed or not could only be with reference to 'co-operative year'. But, since the amended Section as well as the amended Rule stipulated the commencement at once, availing of such service by the member cannot be protracted, leaving a vacuum till the expiry of the 'running co-operative year'; more so, when the stipulation is in the 'present continuous tense'. But the contention of the appellant is that the amended provisions of the Act (Sections 16A and 19A) were not in a position to be given effect to, till Rule 18A was introduced on 26.11.2014 prescribing the 'minimum level of

service' to be availed by a member. Here the point to be considered is, whether the mandate under Section 16A could have been given effect to immediately from the commencement of the said provision on 14.02.2013 or at least from 26.11.2014 when Rule 18A was introduced activating the provision in the Act at once.

37. Let us first deal with **Section 16A (1) (b)**, which stipulates that no member shall be eligible to continue to be a member of the society, if he has not attended three consecutive general meetings of the society and such absence has not been condoned by the members in the general meeting. As per Section 19A, no member of the society shall exercise the right of a member unless he has attended the 'minimum required general body meetings' and 'minimum level of service' as may be prescribed. Rule 18A does not deal with any prescription in relation to attending the minimum required general body meetings as it deals with only regarding the service to be availed. This being the position, the outcome of Section 16A (1) (b) was very much known to all members and there was no obscurity in any manner when Section 16A got activated by introduction of Rule 18A. This is obviously for the reason that the term "as prescribed" appears only

in Section 16A (1) (a) [with regard to the minimum level of service] and not with reference to Section 16A (1) (b) [absence in three consecutive meetings]. As such, the term "as may be prescribed", appearing in Section 19A has also to be considered as only in respect of 'minimum level of service' and nothing else.

38. Another important aspect to be noted with regard to the 'service/minimum level of service' under Section 16A (1) (a) is that, the said provision has got **two limbs;** the first one is that a member not using the service of the society for two consecutive years; and the second one is that a member using the services below the minimum level as may be prescribed in the Rules or the Bye-laws. What are the 'services' rendered by the society are discernible from the 'Bye-laws' and from nowhere else, which a member is supposed to know. The 'minimum level of service' can be either with reference to the extent mentioned in the Bye-laws or as may be prescribed in the Rules. Thus, the stipulation as to the 'minimum level of service', will be germane/relevant, to be satisfied only after prescription of such minimum level, as per the Rules apart from or beyond the level, if any, prescribed in the Bye-laws.

39. Now we may turn to Rule 18A, which has been

extracted already. Even a plain reading of the said Rule shows that no specific minimum level of service is prescribed anywhere in the Rule (in the case of individual member), but for mentioning that it will be enough, if any one instance of service rendered by the society as given in the Bye-laws is availed, by being a depositor, borrower or surety, if it is a Credit Society. In case of 'other Societies', it is enough, if the member is involved in any one of the objects mentioned in the Bye-laws, or avails the products or uses the service as specified in the Bye-laws. In other words, nothing else is stated in relation to the service other than those mentioned in the Bye-laws, in the case of a Credit Society and other Societies as coming under Clauses (a) and (b) respectively of Rule 18A (1) of the Rules. Nothing new is introduced as per the Rules stipulating the minimum level of services but for stipulating that any instance of service as mentioned in the Bye-laws will be enough; however low the output level may be. This being the position, it was quite open for the members to have availed any such service, at least to the minimum extent, to have the membership operative/ continued and to have exercised the right of a member.

40. In the reference order dated 24.07.2015 passed by the

learned single Judge in W.P.(C) No. 22401 of 2015 doubting the correctness of the ruling and declaration of law made by a Division Bench of this Court in **ILR 2015 (2) Ker. 339 (Surendran's case),** scope of amendment of the Act/Rule in the light of the 97th amendment to the Constitution (with reference to Articles 243ZO and 243ZT) has been projected to be considered. This has already been dealt with by this Court in the preceding paragraphs. However, the scope of **Section 20** of the Act [dealt with by the Division Bench in **Surendran's case** (cited supra) to the effect that a member can exercise his right to vote, so long as he continues to be a member and till expelled in terms of the relevant provisions of the law, after affording an opportunity of hearing] requires to be probed further. In the judgment reported in **2015 (1) KLT 911 [Pradeep Vs. Kerala State Co-operative Election Commission]** authored by the very same learned Judge [prior to the reference order], though reference has been made to the verdict passed by the Division Bench in W.A. Nos. 75 and 80 of 2015 [**Surendran's case**], it has been observed that the said decision was rendered on the peculiar facts of the case and that while rendering the said verdict, the decisions of two Division

Benches of this Court in **Vijayakumar's case (1996 (1) KLT 285)** and **Rajendran's case (2004 (1) KLT 1026)** were not seen referred to. The observation made with reference to **Rajendran's case** (cited supra) appears to be a mistake of facts, as the said case was referred to in paragraph 10 of the verdict passed in **Surendran's case** (cited supra). But the fact remains that, the verdict passed by the Division Bench in **Vijayakumar's case** (cited supra) was not brought to the notice of the Bench and hence requires detailed scrutiny.

41. The questions considered by the Division Bench in **Vijayakumar's case** (cited supra) as given in paragraph 2 are as follows :

> "(1) Whether the Returning Officer appointed under R. 35 of the Kerala Cooperative Societies Rules, 1969 has the power to make an enquiry into the question of eligibility of a voter before the publication of the final list of voters to elect members of a committee of the Society if and when an objection under R. 35 (3) (b) of the Rules is received in this regard and if so what is the scope of the enquiry.
>
> (2) Whether in these cases, there was any scope to hold an enquiry before publication of the final list of

voters."

After referring to the statutory provisions and the binding precedents, the Bench held that all voters, no doubt must be members; but all members may not necessarily be voters. The Bench further held that the right to vote must be distinguished from the right for admission as a member. The observations in paragraphs 14 and 15 are relevant and hence extracted below :

> "14. We are, however, of the view that all voters no doubt must be members, but all members may not necessarily be voters. Merely by virtue of being a member, one does not acquire the right to vote automatically. A member, for example, shall not be eligible to be a voter unless 30 days prior to the date of the meeting held for passing the resolution for the election to the committee of the society, he acquires the number of shares for membership as may be provided in the bye-laws of the society of which he is a member. If a member has not complied with the condition laid down in R. 28, he does not cease to be a member. What is restricted is his right to vote in the election.
>
> 15. The right to vote must be distinguished from admission as a member. While Rules 17 and 20 deal with

> conditions for admission, R. 26 deals with prohibition for admission to membership within a particular period. Ss. 16, 17, 19 and 20 deal with admission, expulsion, suspension of the rights and conferment of right to vote on members of the Society. (Vide Vasavan's Case). Rule 35 of the Rules on the other hand, lays down the duties and responsibilities of the Returning Officer to publish the final list of eligible voters, after considering the objections if any received, against any of the persons list as voters. If the Returning Officer declares a member to be an ineligible voter, he does not expel him thereby from the membership of the Society. A member who is disqualified as a voter may still continue to be a member of the Society if he is not otherwise disqualified to be a member."

It was made clear by the Bench that, by virtue of the mandate of Rule 28 of the Rules, if a member has not complied with the conditions laid down in Rule 28 he does not cease to be member and what is restricted is his right to vote in the election. By virtue of Rule 35, the duty cast upon the returning officer is to publish the final list of the eligible voters after considering the objections, if any, and if he declares a member to be ineligible to vote, he does not expel him thereby from the membership of the society. A

member who stands disqualified as a 'voter', may still continue to be a 'member' of the society, if he is not otherwise disqualified to be a member.

42. Coming to the verdict passed by the Division Bench in **Rajendran's case** (cited supra), right of a member to vote was examined in the context of Section 20, read with Rules 28 and 35 (A) of the Rules. Section 20 as it now stands reads as follows :

> "**20. Vote of members** — Notwithstanding anything contained in any other provision of this Act or any other law, every member of a society shall have one vote in the affairs of the society:
>
> Provided that ---
>
> (a) a member admitted within sixty days immediately prior to the date of election shall not have the right to vote;
>
> (b) a nominal or associate member shall not have the right to vote;
>
> (c) Where the Government is a member of a society, each person nominated by the Government on the committee of the society shall have one vote each including the right to vote for election of office bearers of the society;
>
> (d) an ex-officio member on the committee of a

> society shall have one vote but shall not have right to vote for election of office bearers of the society;
>
> (e) in the case of an equality of votes, the chairman shall have and exercise a second or casting vote."

43. Prior to 01.01.2000, every member of a society was to have one vote in the affairs of the society. Section 20 of the Act was amended w.e.f. 01.01.2000, as per the Act 1 of 2000, to the effect that notwithstanding anything contained in any other provisions of the Act or any other law, **every active member** of the society shall have one vote in the affairs of the society. Section 20 was again amended (as per Ordinance No. 6 of 2002, later substituted by Act 3 of 2002 w.e.f. 04.05.2002), deleting the word "**active"** and stipulating that every member shall have one vote in the affairs of the society; thus bringing back the position as it existed prior to 01.01.2000. The Bench in **Rajendran's case** observed that, despite the amendment of Section 20 w.e.f. 04.05.2002, the relevant Rules [proviso to Rule 28 and Rule 35A (4)] still provided that, only 'active member' shall be eligible to vote. The Bench observed that, though the said provisions in the Rules were not amended adequately, it could not have any legal

force, as they were contrary to the provision contained in Section 20 of the Act. It was accordingly held that, notwithstanding the apparent conflict between the provision in the Act and the provision in the Rules, w.e.f. 04.05.2002, every member of a society was to have one vote in the affairs of the society. Referring to the facts of the case, the Bench observed that the preliminary voters' list was published after the amendment brought about w.e.f. 04.05.2002, however including, only **active** members, and excluding the ordinary members. Hence, it was found that the preliminary voters' list was prepared in violation of the provisions contained in Section 20 of the Act and hence that, election shall be conducted only after including all the eligible members in the voters' list, so as to give effect to the statutory provision contained in Section 20 of the Act. In the said background, the remaining question as to whether the election proceedings were to be continued from the stage at which they were stopped, was also considered and it was found in the said case that, it was not possible to continue the election proceedings from the stage where it was stopped. Appropriate directions were issued in the said circumstances, to pass a resolution to conduct election to the

Managing Committee within the time as specified therein, complying with the various requirements as given in paragraph 17.

44. Coming to the doubted judgment of the Division Bench in **Surendran's case** (cited supra), reference to the factual position is also necessary to have an indepth analysis. The election notification was published by the Election Commission on 06.06.2014, to elect eleven members to the Board of Directors of the Bank stipulating the relevant dates; as 26.03.2014 – for publication of the preliminary voters list, 02.07.2014 – for publication of the final voters' list, 10.07.2014 - for accepting nomination and 27.07.2014 - to conduct election. While so, the Election Commission issued an order on 14.07.2014, indefinitely postponing the election, referring to a complaint preferred by Mr. Surendran. His grievance was that the preliminary voters' list contained names of many persons who were ineligible to vote. On forwarding a copy of the complaint, the Electoral Officer, as per his report dated 08.07.2014, intimated that he was unable to make a detailed enquiry for want of time and in the said circumstances, the election was temporarily postponed. Mr. Surendran and others filed W.P.(C) No. 17125 of 2014 on 03.07.2014, mainly seeking a

direction to the Returning Officer to permit the voters to exercise their voting right after identifying the voters with Form 6B Register and to direct that the election process, till counting of the votes, be videographed. The Board of Directors of the Bank filed W.P.(C) No. 18753 of 2014 on 18.07.2014, seeking to set aside the order dated 14.07.2014 issued by the Election Commission postponing the election and withdrawing the 'Election notification' dated 06.06.2014. Both the matters were considered by a learned Judge of this Court and as per common judgment dated 09.12.2014, the writ petition filed by Mr. Surendran and others was dismissed, holding that the complaint against the preliminary voters' list did not contain any specific ground with reference to each person mentioned therein (stated as disqualified to vote) and hence it was not liable to be looked into by the Electoral Officer. The other writ petition filed by the Board of Directors, was disposed of, directing the election to be conducted expeditiously on the basis of the preliminary/final voter's list, clarifying that the election would have to be resumed from the stage where it was stopped. This made Mr. Surendran and others to challenge the common verdict in both the writ petitions, by way of separate appeals.

45. The case projected by the appellants before the Bench was that the voters' list had to be pruned in terms of the amended provisions of the Act/Rules (Sections 16A, 19A, Rule 18A and other relevant Rules); pointing out that only 'active members' were entitled to cast their votes by virtue of the amended provisions in the Act [which came into force on 14.02.2013] and the amended provisions in the Rules [which came into effect on 26.11.2014]. This was resisted from the part of the respondents, pointing out that prescription of the minimum level of service was introduced for the first time, only as per Rule 18A brought into effect on 26.11.2014 and that, two years' continuous period for complying with the same would commence only w.e.f. the commencement of the next 'co-operative year', in terms of Section 2 (u) of the Act. After hearing both the sides, the Bench observed in paragraph 15, that the ineligibility for non compliance of clauses (a) and (b) to Section 16A (1) will not ipso facto result in automatic cessation of membership. On the other hand, Section 16A (2) made it abundantly clear, that despite such ineligibility, until the society removes the person concerned from its membership; that too, after giving an opportunity of hearing he will continue to be a member of

the society. It was accordingly declared that, by virtue of the mandate of Section 20, notwithstanding anything contained in any other provisions of the Act or any other law, every member of the society shall have one vote in the affairs of the society and that the only restriction to this right was as contained in Clauses (a) to (e) of the Section; more so, when Section 20 has not been amended by re-inserting the word "active" in the section.

46. Obviously, for arriving at such a conclusion, the learned Judges in **Surendran's case** have placed much reliance on Sub rules 3 and 4 of Rule 16. If the member admitted was ineligible to have membership or if he becomes ineligible thereafter, it is open to proceed against him and that he may be removed after giving an opportunity to make a representation. In other words, once a membership is given, even if it is illegal for some reasons, unless he is removed, following the procedure laid down in the Rules, the membership will continue, which was stated as a supporting reason to hold that every member was to have right to vote, notwithstanding the contents of Sections 16A, 19A and Rule 18A; to be in conformity with Section 20 of the Act.

47. In paragraphs 20 and 21 of the aforesaid judgment,

scope of Sub rule (2) of Rule 18A [brought into effect from 26.11.2014], as to the various steps/procedure to be pursued [insisting maintenance of Register in the particular form, recording the details of the members and to ascertain the eligibility of such members who qualify to vote at the election etc.] was considered. Since the time stipulated to complete the said process was 90 days from the close of every year, in terms of Section 2 (u) of the Act (co-operative year) and further since, Rule 18 had come into force only w.e.f. 26.11.2014, the Bench held that the time limit for the society to discharge the obligations under the Rule would run only after the 1st of April and if that be so, the obligatory period **in so far as the said cases were concerned** would start to run from 1st of April, 2015. The observations in paragraph 21 are in the following terms :

> "21. Reading of the aforesaid provisions of the Rule show that the Chief Executive of the society shall be responsible for the proper maintenance of register in Form No.32. In that register, the details with regard to each and every member of a society shall be made up-to-date and the register shall be placed before the committee of the society within sixty days on completion of every year. Once the

register is placed before the Committee as provided in sub rule 2(b), under clause (c), the committee is bound to examine the Register and certify the details recorded by the Chief Executive and the Committee is to discharge this duty within thirty days from the date of placing the register before the Committee. If the total period provided in clauses (b) and (c) are taken together, it can be seen that the Committee should complete this exercise within a period of ninety days from the close of the year. However, as per clause (d), the Chief Executive of the Society is also required to forward the certificate to the Registrar as to the up-to-date maintenance of the Register within three months of the close of the year. Therefore, for completing the entire process as contemplated under sub rule (2), the Committee has a total period of ninety days from the completion of every year. "Year" is defined in section 2(u) as the period commencing on the first day of April of any year and ending with 31st of March of the succeeding year. This, therefore, means that though the provisions of Rule 18A have come into force w.e.f. 26-11-2014, since the obligation of the society to complete the process as required under Rule 18A(2) commences only on close of the year, the time-limit for the society to discharge the obligations under

> the rule would run only after the 1st of April. If that be so, that obligatory period, in so far as these cases are concerned, would start to run from 1st of April, 2015. This, therefore, means that the question of ineligibility of a member to continue to be a member for the reasons stated in Section 16A for not attending annual general body meeting and not availing of the services of the society and the consequent removal can be ascertained or determined only after the close of year as contemplated under Rule 18A. If that be so, at this stage, it is premature to rely on Sections 16A or 19A. "

48. As mentioned already, the Bench has not considered the verdict passed by another Co-ordinate Bench of this Court in **Vijayakumar's case** (cited supra). The declaration of law, that once a member, he shall have the right to vote till removed from the membership, is made, based on the contents of Section 20 of the Act as it stood prior to 01.01.2000, the amendments of the said provisions in the year 2000 and thereafter w.e.f. 04.05.2002, whereby the term 'every active member' came to be changed as 'every member', thus taking away the distinction between 'active member' and 'inactive member'. It has been held that, the said provision [Section 20] has not suffered any amendment thereafter.

At the same time, it has to be noted that, the eligibility with regard to the right to continue as a member and as to the right to vote by the members of a society came to be reintroduced at other appropriate places by virtue of the amendment of the Act, introducing Sections 16A and 19A, which came into effect from 14.02.2013. There is no dispute with regard to the power of the Government to stipulate who could be the members or who could not be the members as provided in Section 16/Rule 16 of the Act/Rules. This being so, it is corollary to such power, that it is open for the Government to stipulate, what should be the qualification to exercise the right of a member to participate in the affairs of the society and the right to vote. Though the amended provisions in the Act (Sections 16A and 19A) came into effect on 14.02.2013, what should be the 'extent of service/minimum level of service' was still left in the dark, which was made clear by introduction of Rule 18A, which came into effect on 26.11.2014. In other words, what was taken away from Section 20, by virtue of the amendment in the year 2002, [with reference to active member] was virtually reintroduced in the Statute in a different form at different places [Sections 16A and 19A]. In so far as there

is no challenge against any of these provisions and the provisions have already come into force, they have to be given effect to. If the declaration made by the Division Bench in **Surendran's case** (cited supra) that: ***"once a member, he will continue as such and will be entitled to vote till he is removed from membership"*** is let to stand, it will virtually make the amended provisions in the Act/Rules otiose. It is settled law of interpretation, that each provision in the Statute has to be given effect to and a harmonious interpretation is to be made, unless the vires of the provision is challenged and the challenge is upheld.

49. Going by the scheme of the Statute, acquisition of membership is different from the right to vote. As held by the Division Bench of this Court in **Vijayakumar's case** (cited supra)**,** a voter has necessarily to be a member of the society, but all members may not be having the right to vote, due to various circumstances. It is true that there is a 'non-obstante clause' in Section 20 of the Act, that <u>every member</u> of the society shall have <u>one vote</u> in the affairs of the society, notwithstanding anything contained in any other provisions of the Act or any other law. But the said non-obstante clause is only to be read and understood as

having the extent/measure of say in the affairs of the society i.e. by limiting the same to one vote for a member. In other words, 'one member/one vote' is the principle; irrespective of caste, creed, gender, financial status, level of investment or shares held in the society. The term 'every member' obviously denotes every eligible member and not an ineligible member, which otherwise will only lead to perpetuate mischief; which is not the intention of law makers. If a membership is given to an ineligible person, or if a member becomes ineligible due to sustainable reasons, it is open for the society to have him removed from the membership, which requires much time (to comply with the procedural requirements and finalize the issue). It is perfectly correct when the Bench says that once a membership is given, such person will continue as member, till he is removed from the membership, completing the procedural requirements. But this does not mean, that every person who is continuing as a member will be having a right to vote, which right now stands qualified, by virtue of the mandate of Sections 16A & 19A and Rule 18A. Section 20 of the Act has to be read and understood in consonance of the above provisions of Statute as well, and it cannot be read in isolation. The extent of

differentiation by virtue of 'non obstante clause' in Section 20 is only to the effect that, not more than one vote can be claimed by any member under any circumstances. The law declared by the Division Bench in **Surendrans's case** (cited supra) requires to be intercepted to the said extent and we do so**.**

50. The declaration of law as above, however will not tilt the balance in any manner, in so far as the issue considered in the **Surendran's case** (cited supra) is concerned. This is for the obvious fact that the election notification therein was issued on 06.06.2014, preliminary voters' list was published on 26.03.2014, final voters list was published on 02.07.2014, nominations were accepted on 10.07.2014 and election was to be held on 27.07.2014. Had these proceedings in connection with the election been not interfered with by the Commissioner (as per the proceedings dated 17.02.2014 under challenge), it would have been over much prior to introduction of Rule 18A on 26.11.2014. As we have made it clear, the amended provisions in the Act (Sections 16A and 19A) were remaining dormant and got activated only on introduction of Rule 18A w.e.f 26.11.2014. This being the position, the amended provisions of the Act or the Rule were not

having any effect or relevance in declaring the eligibility of the members involved in **Surendran's case** (cited supra).

51. The gist of the discussions and conclusions arrived at are as given below:

i. Declaration of the 97th amendment to the Constitution of India inserting Part IX B as ultra vires by the Gujarat High Court, as per the decision rendered in **Rajendra N. Shah Vs. Union of India and another [CDJ 2013 GHC 045]**, is having application throughout India, in view of the law declared by the Apex Court in **Kusum Ingots & Alloys Ltd. Vs. Union of India and another [(2004) 6 SCC 254**]; which however is subject to the outcome of the verdict to be passed by the Apex Court in the pending matter challenging the declaration made by the Gujarat High Court.

ii. The amendment brought about by the State of Kerala by way of Sections 16A and 19A to the Act w.e.f. 14.02.2013 and Rule 18A in the Rules w.e.f. 26.11.2014 can stand on their own; being an entry in

the State list, notwithstanding the declaration of the 97th amendment to the constitution inserting Part IX B as ultra vires by the Gujarat High Court.

iii. Section 20 of the Act does not give any unfettered right to a member of a society to cast his vote, if he is otherwise not qualified and eligible to vote.

iv. The 'non-obstante clause' in Section 20 of the Act only denotes the maximum extent or measure of voting rights, restricting the same only to 'one vote' per member and the term 'every member' therein, has to be read and understood as **'every eligible member'**.

v. The term **'active'** deleted from Section 20 of the Act (pursuant to the amendment dated 04.05.2002) in relation to the qualification of a member to exercise his right to vote, now stands replenished/reintroduced elsewhere (specifying the qualifications to exercise such right) by virtue of Sections 16A and 19A of the Act and Rule 18A of the Rules.

vi. Though Sections 16A and 19A were introduced

w.e.f. 14.02.2013, the said provisions came to be operative only on introduction of Rule 18A on 26.11.2014.

vii. The service/minimum level of service to be availed in the 'year/s' is in respect of business/transactions of the society and hence, such instance has to be read and understood with reference to the meaning of the term 'co-operative year' as defined under section 2 (u) of the Act.

viii. Eligibility of the members who cast their vote has to be assessed with reference to the position as on the date of close of the 'co-operative year' after commencement of Rule 18A on 26.11.2014, i.e. as on 31.03.2015.

ix. The contentions raised by the parties concerned, that the provisions stipulating the qualifications to continue as a member and also to exercise the right as member, including the right to vote, will become operative only after two years from 26.11.2014 – the date of introduction of Rule 18A is unsustainable and is

repelled.

x. It is held that all the amended provisions of the Act and the Rules have become fully operative in all respects on the close of the 'co-operative year' 2014 – 2015 i.e. on 31.03.2015.

xi. In respect of cases where preliminary voters' list/final voters' list were published prior to 31.03.2015, the election has to be held based on the unamended provisions and under such circumstances, a fresh resolution shall be passed notifying the date of election to be proceeded with further steps from that stage.

xii. In respect of notifications issued prior to 31.03.2015 and where the preliminary voters' list was published after the said date, proceedings shall be pursued, assessing the rights of the members concerned to get included in the voters' list, based on the amended provisions of law.

xiii. The law declared by the Division Bench of this Court in **1996 (1) KLT 285** and **2004 (1) KLT 1026**

(Vijayakumar's case and **Rajendran's case** respectively) stands affirmed.

xiv. The verdict passed by the Division Bench in **Surendran's case [ILR 2015 (2) Ker. 339]** stands partly overruled; to the extent it declares: once membership is given, the member can exercise all rights, including the right to vote, till he is removed from the membership for disqualification, if any.

xv. A member continues to be a member, till he is removed from membership in accordance with law, after affording an opportunity of hearing. But his right to vote will depend on the qualifying requirements as per the Act/Rules/Bye-laws.

52. The factual position involved in **W.A. No. 741 of 2015** [arising from W.P. (C) No. 26129 of 2014] is that the resolution was taken by the Board of Directors to conduct election, on 03.09.2014, as the term of the Committee was to expire on 20.09.2014. Ext. P1 order superseding the committee was set aside by this Court as per the judgment dated 14.08.2014 in W.P. (C) No. 31566 of 2013 and the Board was reinstated as per Ext. P3

order dated 26.08.2014. As per Ext. P4 decision of the Board of Directors held on 05.09.2014, the election was sought to be held on 08.11.2014. All the relevant documents and proceedings in the requisite proforma were forwarded to the Election Commission, through the third respondent on 16.09.2014. A learned Judge of this Court as per Ext. P8 judgment in W.P.(C) No. 24170 of 2014, noting the appointment of the Administrative Committee, had directed the Election Commission to consider the conducting of election as resolved by the Managing Committee within 10 days. All these proceedings were prior to introduction of Rule 18A on '26.11.2014' [when the amended provisions of Sections 16A and 19A in the Act got activated]. The service/requirement in terms of the above provisions could be acquired/achieved till the close of the co-operative year after introduction of Rule 18A and as such, it could be upto '31.03.2015' as already declared by this Court. In the said circumstances, the case in hand is not covered by the amended provisions of the Act/Rules with regard to the qualification to vote and the proceedings have to be pursued and finalized based on the credentials of the members/voters as it existed prior to the amendment. Accordingly, the direction in paragraph 3 of the

judgment passed by the learned Single Judge in W.P.(C) No. 26129 of 2014, to have the voters' list pruned in accordance with Rule 18A of the Kerala Co-operative Societies Rules stands set aside. A fresh resolution shall be passed by the Administrative Committee to conduct the election, satisfying all the requirements within 'one month' and the Joint Registrar shall see that the new/elected managing committee assumes the office within a span of three months from the date of receipt of a copy of this judgment.

53. With regard to **W.A. 580 of 2015** [arising from W.P(C) No. 23400 of 2014], the term of the Committee was to expire on 13.09.2014 and the election was notified by the Election Commission, to be held on 31.08.2014. Accordingly, the preliminary voters' list was published on 25.07.2014 at 11.00 a.m.; period for submitting the objections was stipulated as from 11.00 a.m. on 25.07.2014 till 5.00 p.m. on 01.08.2014; final voters' list was published on 02.08.2014; the date for submitting the nomination papers was fixed as on 11.08.2014; date for scrutiny was shown as 12.08.2014 and the date for withdrawing nomination was notified as 13.08.2014. When the process was going on as above, the election was postponed by the second respondent, as

per order dated 28.08.2014, based on a complaint preferred by one Shaji Pallam before the second respondent on 20.08.2014 (i.e much after the date fixed for withdrawing the nomination and publication of final voters' list) with reference to the lapse/inadequacy on the part of the society in maintaining Form 6B register. The registers were called for, when time was sought for to trace out the same. Subsequently, most of the registers were stated as traced out and it was duly intimated to the Electoral Officer by the Secretary. There was serious dispute with regard to the identity of the members and the persons included in the voters' list. Factual verification was sought to be made, issuing Ext. P4 and postponing the election. Since all the above proceedings, including publication of provisional voters' list, final voters' list, submission of nomination papers, scrutiny of nomination papers and withdrawal of nomination, if any, etc. were completed much prior to the date of introduction of Rule 18A (on 26.11.2014), the proceedings are to be governed by the unamended provisions of law i.e as it existed prior to incorporation of Sections 16A and 19A and Rule 18A. In the above circumstances, the declaration made by the learned single Judge in paragraph 9 of the judgment in W.P.

(C) No. 23400 of 2014, that the election cannot be conducted keeping Sections 16A and 19A and Rule 18A in suspended animation and the direction given in paragraph 10 to have the election conducted in accordance with the amended Act/Rules stands set side. The Administrator/Administrative Committee in charge of the affairs of the Bank is directed to pass a fresh resolution fixing the date, time and venue of the election and necessary notification shall be issued by the competent authority, which shall be based on the qualification of the members/voters, based on their status as it was existing prior to the amendment of the Act and Rules in relation to Sections 16A and 19A and Rule 18A. The resolution as above shall be taken within 'one month' and election shall be conducted immediately thereafter and the elected management committee shall be put in office within a span of three months from the date of receipt of a copy of the judgment.

54. Coming to **W.A. 1457 of 2015** [arising from W.P.(C) No. 19322 of 2015], the appellant/petitioner had approached this Court earlier by filing W.P.(C) No. 16527 of 2014, wherein Ext. P1 judgment was passed on 25.02.2015, directing to take all necessary steps to conduct election to the management committee

within five months; making it clear that the exercise in preparing the list of members and construction of Form 6B register shall be completed within two months. Admittedly, Ext. P2 notice was published on 09.04.2015 in relation to issuance of fresh ID cards. In the course of further proceedings, Ext. P6 notice was issued on 12.06.2015 by the 4th respondent, as to the holding of general body meeting for the election of new committee members on 19.07.2015 between 9.00 a.m. and 4.00 p.m. intimating that all **active A class members** could participate in the meeting with their identity cards. This according to the writ petitioner was not correct, as the amended provisions of the Act/Rules to identify 'active members' for exercising their right as members including to vote, was ordered to be kept in abeyance till 31.12.2015 as per Ext. P4 G.O. dated 25.05.2015. Hence it was sought to be intercepted, confining the election to be effected from the voters, who had applied for the identity cards as per Ext. P2 publication and in conformity with Ext.P4. However, observing that the election process had already been commenced as per the notification/calendar issued in this regard and that the date of poll had to be finalized in compliance with the judgment in W.P.(C) No. 17870 of 2015, the writ petition

was disposed of reserving the rights and interest to challenge the election with reference to the list of 'active members' and such other grounds by filing an 'Election petition', once the election was over. This is under challenge in this appeal. Since the steps for election were being pursued pursuant to the verdicts passed in the concerned writ petitions as aforesaid and since Ext. P2 notification itself was issued only on 09.04.2015 i.e. after the close of the co-operative year 2014 - '15 and since the voters' list (both preliminary/final) were to be published only after the said date, the election would stand governed by the declaration of law already made by this Court in the preceding paragraphs. If the steps pursued by the concerned respondents are contrary to the law declared by this Court, it will be open for the appellant/writ petitioner to pursue the remedy by way of appropriate proceedings in accordance with law. This Court does not find any reason to interfere with judgment passed by the learned single Judge. W.A. No. 1457 of 2015 stands dismissed.

55. Based on the declarations as above, the reference made by the learned single Judge as per order dated 24.07.2015 in **W.P (C) No. 22401 of 2015** and the common reference order dated

09.07.2015 in **W.P.(C) Nos. 17764, 19454** and **19621 of 2015** are answered. The said writ petitions are remitted to the learned Single Judge to pass appropriate orders/verdicts in the light of the above declarations and applying the same to the given fact situation. The factual position in respect of **W.P.(C) Nos. 17041, 21935 & 37640 of 2015 and W.P.(C) Nos. 127 & 6097 of 2016** are to be analysed in the light of the declaration of law made by this Court as above. Accordingly, these matters are also remitted to the learned single Judge, to be dealt with in accordance with law.

sd/-
P. R. RAMACHANDRA MENON, JUDGE

sd/-
BABU MATHEW P. JOSEPH, JUDGE

sd/-
ANIL K. NARENDRAN, JUDGE

kmd /True copy/

P.A. to Judge

KVR