

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 4365 of 2026

Reserved on : 07.07.2026

Decided on : 08.10.2026

Uploaded on: 08.10.2026

Sundram Thakur and Another

...Petitioners.

Versus

State of Himachal Pradesh and Ors.

...Respondents.

Coram

Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Hon'ble Mr. Justice Ranjan Sharma, Judge.

Whether approved for reporting? ¹ Yes

For the Petitioners.

Mr. Sudhir Thakur, Senior Advocate with Mr. Karun Negi, Advocate.

For the Respondents:

Mr. Anup Rattan, Advocate General with Mr. Ramakant Sharma, Additional Advocate General, Ms. Swati Draik, Deputy Advocate General and Mr. Shalabh Thakur, Assistant Advocate General, for respondents No. 1 and 2-State.

Mr. M.A. Safee, Advocate, for respondents No. 3 to 6.

¹ Whether the reporters of the local papers may be allowed to see the judgment?

Vivek Singh Thakur, Judge

The present petition has been filed, seeking the following relief(s):-

“i) Writ in nature of certiorari or of similar nature to quash/set aside notification dated 16.03.2016 Annexure P-3 being violative of Section 35 of HP Cooperative Society Act and the Bye Laws of respondent No. 3 society.

ii) Restraining the private respondent 4 to 6 from acting as a Govt. nominee on the board of directors of respondent No. 3 society in any manner being nominated on the basis of illegal notification”.

2. Petitioners are elected Directors of respondent No. 3, The Solan District Cooperative Marketing and Consumers Federation Ltd. (hereinafter to be referred to as ‘Federation’) since 25.11.2025, from the date of declaration, vide Annexure P-1.

3. Petitioners are aggrieved by Notification dated 16.03.2026, issued by Department of Cooperation, Government of Himachal Pradesh (Annexure P-3), by exercising power vested under Section 35 of the Himachal Pradesh Cooperative Societies Act, 1968 (hereinafter to be referred to as the ‘Act’), whereby Government has nominated respondents No. 4 to 6 as Government nominees (non-official) on the Board of Directors of the Federation with immediate effect on the ground that as on date of Notification dated 16.03.2026, there was no subscription by the State Government-respondent to the share capital of

Co-operative Society and no guarantee extended by the State Government for repayment of principal and payment of interest on loans and advances to respondent No. 3, and there was no indirect assistance in formation or augmentation of share capital of respondent No. 3, as provided under Section 48 of the Act.

4. It is case of the petitioners that elections of Chairman and Vice-Chairman of respondent No. 3-Federation were time and again deferred by respondent No. 2, Registrar Cooperative Societies, as evident from letters dated 10.02.2026, 12.02.2026, 13.02.2026, 03.03.2026, 16.03.2026, placed on record as Annexure P-2 (Colly).

5. It is further case of the petitioners that the nomination of respondents No. 4 to 6, vide Notification dated 16.03.2026 was objected by the petitioners, vide letter dated 23.03.2026 (Annexure P-4), well before conducting the election of Federation. Further, the said objections have not been taken into consideration and neither Sections 35 and 48 of the Act, nor Bye-Laws of the Society gives any right to appoint its nominees, as on the relevant date, there was no share of Government in the Society, nor any assistance was provided by the State to the Society which could have empowered the State to nominate Government Nominees as Board of Directors by invoking provisions of Section 35 and Section 48 of the Act, or Bye-Laws of the Federation.

6. Letter and clarification by the Manager of the Society indicated that in respondent No. 3-Federation, Government does not have any share capital, guarantee of loan or any other financial assistance has been placed on record as Annexure P-6 (Colly).

7. In response, respondents No. 1 and 2 have filed common reply, whereas respondent No. 3-Federation and nominated appointees have filed a common reply.

8. In reply filed on behalf of respondents No. 1 and 2 (State), it has been stated that averments made in the petition are wholly incorrect and contrary to the record, with submissions that State Government has not only subscribed the share capital of respondent No. 3-Federation to the extent of approximately 99% from the year 1964-65 up to 2014, as against a meager contribution of 1% by other members, but has also extended indirect assistance by way of transfer of valuable land situated in the heart of Solan town for construction of godowns. Beside this, extending guarantee of repayment of principal and interest on loans and advances, and further providing substantial subsidies through Integrated Cooperative Development Project (ICDP) funded by National Cooperative Development Corporation (NCDC), a statutory body established by Government of India and, thus, the State has extended overwhelming

financial support for decades and, therefore, petitioners have no right to challenge the validity of Notification dated 16.03.2026.

9. It has been submitted by learned Advocate General that from the year 1964-65 up to 2014, in a phased manner, State Government invested substantial sum either directly from its own funds or through Central Sector Schemes under ICDP, backed by State guarantee for repayment of share capital. Further, that total investment by way of share capital aggregated to ₹59,68,752/-.

10. It has been further stated on behalf of respondents-State that as per audited balance sheet of respondent No. 3-Federation for the financial year 2012-13, out of total share capital of ₹60,36,702/-, the contribution of State Government was as at ₹59,68,752/-, constituting nearly 99% share, whereas other members collectively held share worth only ₹67,950/-, i.e., barely 1% of the total share.

11. It has been further submitted by learned Advocate General that though respondent No. 3-Federation commenced redemption of aforesaid share capital from the State Government w.e.f. 2014 and by the Financial Year 2023-24 entire amount stood redeemed, however, an undeniable fact remains that the State exchequer's funds to the tune of nearly ₹60 Lakhs remained invested in the share capital of the Federation since 1964 till 2023-24, which amounts to augmentation and fortification

of financial base of the Federation, and thereby squarely attracting the applicability of Section 35 of the Act.

12. It is further the case of respondents-State, that in addition to substantial subscription to share capital, the State Government extended further assistance by way of loans, subsidies, under guarantee for repayment of principal and interest, as detailed in the reply.

13. It has been stated by learned Advocate General that Government of India launched a Central Sector Scheme in 1985-86 through NCDC, New Delhi aimed at strengthening Co-operative Societies through an integrated area-based approach in selected Districts and to avail benefits thereunder, the State Government sponsored projects under ICDP, securing funds from NCDC on its explicit guarantee for repayment of principal and interest on loans and advances besides subsidies.

14. It has been further submitted on behalf of respondent-State that Himachal Pradesh has been a beneficiary since 1986-87, specifically qua respondent No. 3-Federation under ICDP in two phases, first in 2000-2001 and second during 2020-2022, with financial assistance by way of loans amounting to ₹65.29 Lakh and subsidies to the tune of ₹14.80 Lakhs. Sanction orders for the second phase have been placed on record as Annexure R-2/1 (Colly).

15. It has been further submitted on behalf of respondents-State that assistance in share-capital investment, and ICDP loans/subsidies, the State Government extended further assistance of the nature contemplated under Section 48(e) of the Act by transferring valuable Government land measuring 398 Square Meters in Solan City to respondent No. 3-Federation, vide transfer order dated 13.08.2024, issued by District Collector, Solan (Annexure R-2/2) for construction of godown.

16. With aforesaid submissions, it has been submitted that financial assistance as well as indirect assistance entitle the State to nominate its representative on Board of Directors under Section 35 of the Act.

17. It has been further submitted by learned Advocate General that in view of constitution of Managing Committee of Cooperative Society provided under Section 34 of the Act, and for extending extensive financial assistance detailed supra, the State Government indisputably holds a predominant stake in respondent No. 3-Federation and, therefore, as provided under Section 34 of the Act, the Managing Committee/Board of Directors remains incomplete, in absence of nomination of State representatives. It has been further submitted that qua the Federation,

State is entitled to nominate three members of BOD and, therefore, present petition is liable to be dismissed.

18. Learned Advocate General has further submitted that by giving harmonious construction to Sections 35 and 48 of the Act, empowers the State Government to nominate three members or 1/3rd of the Committee strength upon fulfilling any of the enumerated conditions therein, which are (i) subscription to share capital, (ii) indirect assistance in formation/augmentation of share capital, (iii) guarantee for repayment of principal/interest on loans/advances, (iv) grant of loans/advances, (v) guarantee for share capital repayment/dividend or (vi) financial assistance in any other form including subsidies. The share capital infusion satisfies the conditions for exercising power under Section 35 and Section 48 of the Act, the respondents-State has a right to nominate three members in the Board of Directors.

19. It has been further submitted by learned Advocate General that Bye-Laws of respondent No. 3-Federation placed on record as Annexure P-5 itself contemplate and validate the right of State Government to nominate the members and, therefore, it has been stated that Clause 4(a), (c) and (f) thereof enumerates sources of funds. Clause 28(b) expressly provides for three State Government nominees on BOD and, therefore, not only for the provisions under the Act, but the Bye-Laws

providing such nomination, respondents-State has acted well within its competence and jurisdiction and power vested in it.

20. To substantiate its claim, respondent-State has placed on record communication, documents Annexure R-1 (Corollary), including communication dated 13.08.2020 with respect to sanction of loan of Rs. 20,00,000/- by the General Manager ICDP Solan and Communication dated 28.12.2021, issued by Integrated Cooperative Development Project. Communication dated 30.05.2022 has also been placed on record to indicate sanction of loan of Rs. 30,00,000/- to respondent No. 3-Federation with Rs. 6,00,000/- subsidy against the loan amount. Lastly, order dated 13.08.2024 issued by District Collector, Solan, District Solan has been placed on record as Annexure R-2/2 with claim that valuable piece of land in the heart of Solan town has been transferred in favour of respondent No. 3 for construction of a godown.

21. In rejoinder, filed to the reply filed on behalf of respondents No. 1 and 2, pleadings of the petition have been reasserted with further submission that amount of share capital invested by the State has already been paid back to the Government, and therefore, the State Government has no share capital in the Federation, after receiving the amount from the Society. It has been further stated that ICDP is not a body constituted by the State and subsidy provided by the said organization under a

project cannot be constituted any assistance of the State Government. It has been further submitted that order dated 13.08.2024 (Annexure R-2/2), passed by the District Collector, clearly depicts that land has not been transferred in favour of Federation, but in favour of Cooperative Department of Government of Himachal Pradesh and, therefore, such transfer cannot be said an allotment of land to respondent No. 3-Federation. Copy of letter dated 01.03.2024, to substantiate the plea of the petitioners, that there is nothing due towards Society payable to the State, has been placed on record as Annexure P-9. Letter dated 07.08.2020 has been placed on record as Annexure P-10 to show that subsidy by the ICDP was sponsored by NCDC, which is not a State Government project. Copy of Jamabandi, to substantiate the claim that allotment of the land was not made in favour of respondent No. 3-Federation, has also been placed on record as Annexure P-11, which reflects that land remained in the ownership of Himachal Pradesh Government, and possession was transferred from Mandiyat Department to the Cooperation Department of the Government of Himachal Pradesh.

22. In reply filed on behalf of respondents No. 3 to 6, action of respondents No. 1 and 2 has been justified almost on similar grounds with further submissions that Government assistance extended to respondent No. 3-Federation was not confined merely direct share capital

contribution, but also included indirect financial assistance, guarantees, subsidies and infrastructural support, and further that interpretation to Section 35 of the Act, as claimed by the petitioners, is a narrow and restrictive interpretation, which is impermissible and contrary to the legislative intent.

23. Along with reply filed on behalf of respondents No. 3 to 6, documents Annexure R-3/A (Colly) have been placed on record, including Communication dated 07.08.2020, addressed to the Manager, Jogindra Central Co-operative Bank Ltd. by Integrated Cooperative Development Project, indicating amounts sanctioned in favour of respondent No. 3-Federation, amounting to Rs. 16,00,000/- with Rs. 4,00,000/- subsidy, total amounting to Rs. 20,00,000/-, Communication dated 28.12.2021, as also placed on record by respondent-State, indicating sanction of loan in favour of respondent No. 3-Federation, amounting to Rs. 24,00,000/- (19.20 loan + 4.80 subsidy), Communication dated 30.05.2022, indicating sanction of Rs. 30,00,000/-, including loan amounting to Rs. 24,00,000/- and subsidy amounting to Rs. 6,00,000/-.

24. Respondents No. 3 to 6 have also placed on record copy of resolution of respondent No. 3-Federation held on 18.04.2026, expressing their unwillingness to take part in discussion in objection

preferred by the petitioners with further submission that in the meeting petitioners were also present and they have signed the said resolution.

25. In rejoinder, to the reply filed on behalf of respondents No. 3 to 6, averments made in the petition and rejoinder filed to the reply of respondents No. 1 and 2, have been reasserted.

26. From the pleadings on record, it is evident that as on date, respondent-State is not having any share in the share capital of respondent No. 3-Federation.

27. Further, the core issue involved in the present petition is that as to whether power of the State to nominate members in Board of Directors shall also confer right on the Government to appoint its nominee (nominees) for assistance provided in past, irrespective of the fact that loan amount/shares etc. have been redeemed or returned prior to date of notification of nominating three members on Board of Directors by the State.

28. Sections 35 and 48 of the Act and provisions of Bye-laws of Federation referred to by parties placed on record with petition, would also be relevant to refer, which are as under:-

A. Himachal Pradesh Co-Operative Societies Act, 1968

“35. [(Nominees of the Government and other nominees on the committee of co-operative societies.-

1) **(a)** Where the State Government-

- (i) has subscribed to the share capital of a co-operative society;
or
- (ii) has assisted indirectly in the formation or augmentation of the share capital of a co-operative society as provided under section 48; or
- (iii) has guaranteed the repayment of a principal and payment of interest on loans and advances to a society;

the State Government or any authority specified by the State Government in this behalf shall have the right to nominate 1 [,having such qualifications and experience and in the manner as may be prescribed], not more than three members or one-third of the total number of the members of the committee of the society whichever is less [.]

(b) Where the employer has contributed to the share capital of a cooperative society of his employees to the extent of rupees five thousand or more, the employer shall have right to nominate two members or one-third of the total members whichever is less on the committee of such society.

(c) Where any financing institution notified in this behalf by the Government has provided finance to a co-operative society, such financing institution shall have the right to nominate one member on the committee.

(2) A member nominated on the committee of a co-operative society under sub-section (1) shall hold office during the pleasure of the State Government or the specified authority or the employer or the financing institution, as the case may be.

(3) Where in a co-operative society in which shares have been subscribed or liability by way of guarantee for borrowing has been undertaken by the Government, exceeding fifty per centum of the working capital of the society, a difference of opinion in respect of any matter arises between any member of the committee nominated under sub-section (1) (a) and other members thereof, the matter shall be referred by the

committee to the Government whose decision thereon shall be final and will operate as if same were a decision taken by the committee].

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48. Other forms of State aid to Co-operative societies.-

Notwithstanding anything contained in any law for the time being in force, the Government may-

- (a) subscribe to the share capital of a co-operative society;
- (b) give loans or make advances to a co-operative society;
- (c) guarantee the repayment of share capital of a co-operative society and dividends thereon at such rates as may be specified by the Government;
- (d) guarantee the repayment of principal and payment of interest on loans and advances to a co-operative society; and
- (e) give financial assistance in any other form, including subsidies to any society."

B. Relevant provisions of Bye-laws of respondent-Solan District Cooperative Marketing and Supply Federation Ltd., are as under:-

4. FUNDS:

Funds may be raised by:-

- a) Issue of shares.
- b) Receiving of deposits from members and non-members.
- c) Raising loans.
- d) Donations.
- e) Entrance Fees.
- f) Subsidy and other contributions.

Deposits and loans may be received for fixed periods at such rates of interest and to such an amount as may be determined by the Board of Directors, provided that the total of such liabilities shall not exceed ten times of the paid up share capital and the accumulated reserve fund and building fund minus accumulated losses.

The funds of the society when not utilised in the business of the society shall be invested or deposited as required under section 53 of the Act but no investment shall be made under section 20 (a) of the Indian Trust Act.

“5. MEMBERSHIP:

(I) The membership shall consist of:-

a)A-Class: Consisting of Cooperative Institutions, State Cooperative Bank, State Marketing & Development Federation, Tehsil Coop. Supply and Marketing Unions and other Cooperative Societies.

b)B-Class: Himachal Pradesh State Government.”

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17. GENERAL BODY.

The supreme authority of the society shall vest in the General body of members in General meeting, which shall consist of:-

- i) Ex-Officio president, if any.
- ii) Representatives returned by the member unions and primary societies at the rate of one representative for every constituents member society/union of the Solan District.
- iii) One representative of the Apex Bank, one representative of Apex Marketing Federation and nominees of the Himachal Pradesh State Govt., if they have acquired shares of the society.

[iv] Individual members duly qualified in member ship in Bye-law No. 5(d).

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28. BOARD OF DIRECTORS:

The Board of Directors shall consist of representative of:-

- a) Nine 'A' Class members exclusive of Apex institutions;
- b) Three representatives of the Himachal Pradesh Administration/State Government if it has acquired shares.
- c) One nominee of the Apex Bank;) (Provided they hold shares of the society.)
- d) One nominee of the Apex Marketing Federation.)

NOTE:- Nominee of the Government shall have a right to Appeal the Govt. against the decision of the Board which is likely to be prejudicial to the interests of the Government in the Federation and the decision as given by the Govt. shall be binding on the board. The Government before deciding their appeal shall give an opportunity the Board to clear the position.”

29. Right of the State Government to nominate members to the Board or Managing Committee of a Cooperative Society is based upon the principle that wherever there is involvement of public exchequer, the State not only should, but must have a supervisory role and control on the Institution, being funded by the Government. The Government's right to make nomination is directly tied to its ongoing financial stake or active current liabilities in the society.

30. Section 35 of the Act empowering the government to nominate members of the committee of the society is subject to the

condition that State Government has subscription to the share capital of Cooperative Society or has provided indirect assistance, in formation or augmentation of share capital of the Society, as provided under Section 48 of the Act, or has extended guarantee for repayment of principal and payment of interest of loan and advances to a Society.

31. The words used in clause (i), (ii), and (iii) of Rule 35(1)(a) are "has subscribed", "has assisted indirectly", and "has guaranteed". It refers to an action that began in the past and has either just been completed or continues into the present. In grammar, this is a present perfect tense. Depending upon the context of the sentence, it can lean towards either "previously" or "presently". In the context of provisions of the Act and right of the Government to nominate its nominees to the committees of Cooperative Society, and also with reference to Bye-laws of respondent No. 3-Federation and other provisions of the Act, means that subscription, assistance, and guarantee though started in the past, but still in existence.

32. In case of clause (ii) referred *supra*, if it is construed that indirect assistance may be in the past, then also such indirect assistance must be in formation or augmentation of the share capital of the Cooperative Society, that too as provided under Section 48 of the Act and State must have subsisting share in share capital.

33. Section 48 of the Act is part of Chapter VI dealing with privileges of Cooperative Society. This Chapter has numerous provisions extending direct or indirect benefit, exemptions, deductions, and aids to the Cooperative Societies as provided from Sections 42 to 52 of the Act. Section 48 of the Act, wherein, provides other forms of State aid to Cooperative Societies. These aids may or may not be assisting indirectly or directly in formation or augmentation of share capital of the Cooperative Society. In case the aid referred in Section 48 of the Act, has assisted indirectly in formation and/or augmentation of share capital of Cooperative Society, then only it shall create right in favour of the Government to nominate its nominees on the committees of Cooperative Society, otherwise not. The aid extended under Section 48 of the Act may be for formation or augmentation of share capital or may not be, unless the precondition that such aid has assisted indirectly in formation or augmentation of the share capital of the Society, is fulfilled, this aid shall not entitle the Government to nominate its nominee on the committee of Cooperative Society.

34. In Bye-laws, there is also provision for including nominees of Apex Bank, Apex Marketing Federation, i.e., two Apex institutions. However, inclusion of nominee or representative of the Government, Apex Bank, and/or Apex Marketing Federation is subject to condition that

they hold or acquire share of the society. In General Body also, there is also provision of representative of Apex Bank, Apex Marketing Federation, nominee of Himachal Pradesh Government, subject to acquiring share by them in the Society. The reason for including such nominees or members of Apex Bank, Apex Marketing Federation, and/or of the Government is very loud and clear, and such membership or representation has been provided on account of financial stakes of the Apex Bank, Apex Marketing Federation, or the Government. The Apex Bank extends loans and financial assistance to the Cooperative Society, and therefore, there is a direct interest of the Bank in the working and activities of the Federation. Same is the case of Apex Marketing Federation as well as State Government.

35. In absence of subscription in share capital, there are no stakes of the Government in the working of Society, and keeping in view the basic concept of cooperative movement and to encourage the cooperative societies, being run by its members with autonomy, in absence of financial interest or subscription of share capital in the society, there is no role or necessity of nominees of the Government either in the Board of Directors or in General Body of the Society/Federation. For that reason only, the right to the Government to nominate its member(s) on a committee of the Society has been extended under Section 35 read with

Section 48 of the Act, subject to certain terms and conditions involving financial implications, as well as financial stakes being a subscriber of the share capital. In absence of existence of subscription in the share capital or the assistance or guarantee as contemplated in Section 35 of the Act, the Government has no authority or entitlement or right to nominate its representatives in the Board of Directors or other committees of the Societies, including General Body.

36. It shall also be relevant to discuss share capital, formation of share capital, and augmentation of share capital to adjudicate the issue involved in this petition.

37. Share capital in normal parlance is divided into four hierarchical stages, such as authorized capital, issued capital, subscribed capital, and paid-up capital. Authorized capital is the maximum capital which a company can legally issue. Issued capital is a portion of authorized capital offered to investors. Subscribed capital is/are shares which investors agree to purchase, and paid-up capital is actual money received by the company.

38. Share capital, unlike debt and loan, does not require repayment, however, it can be repaid or redeemed. On subscribing share capital, investor receives partial ownership and voting rights. It is also recorded in balance sheet.

39. Share capital in cooperative is money contributed by members through the purchase of shares to fund the cooperative operation, buy assets, and provide services. Unlike regular corporate share capital, cooperative share capital functions under distinct rules focused on user ownership and democratic control.

40. Formation of share capital occurs during the incorporation stage when an entity is first created and it sets up the initial authorized and initial subscribed capital. It refers to initial pooling of funds generated when an entity is first incorporated. To establish an entity, founders set a maximum legal limit of capital the entity can issue, which is known as authorized capital. The founders buy the first set of shares to officially fund the initial operation.

41. Augmentation of share capital is expansion or increase of the entity's existing capital base, which is subsequent increase or expansion to the existing share capital. This process directly augments (adds to) the subscribed share capital. Augmentation of the share capital can be through various avenues, like selling new shares, offering new shares to existing shareholders proportionately, issuing free shares to existing shareholders by converting accumulated profits/reserves into share capital.

42. An allotment of land to an entity in exchange of equity shares represents the augmentation of share capital. It occurs when the entity accepts an asset like land and issues/allots fresh shares to the landowner as consideration, which is known as allotment for consideration other than cash. It creates new shares out of unissued capital and it will add new equity capital to the balance sheet. Entities routinely augment capital without cash by acquiring long-term assets directly in exchange for newly issued corporate securities.

43. Formation of share capital occurs at the birth/incorporation of the entity to give the entity a legal structure and baseline operational fund, which is required to be created in initial Memorandum of Incorporation, whereas augmentation of share capital occurs during the growth phase of an existing entity for the purpose to fund expansion, new projects, acquisitions, or pay off debts, which may require amending the Memorandum of Incorporation, if new issue exceeds authorized limits.

44. There is also a reference of guarantee of repayment of principal and payment of interest on loan and advances to the Federation as provided under Section 48(d) of the Act, with submissions that Federation had received a loan/assistance sanctioned, disbursed by the National Cooperative Development Corporation (NCDC) through its Integrated Cooperative Development Project (ICDP) scheme with further

submission that such funds were sanctioned and disbursed to the Society on the basis of security backed by State Government guarantee.

45. It is further case of the respondents-State that the financial assistance, sanctioned and disbursed under implementation of ICDP scheme launched by NCDC is also amounting to financial assistance in any other form, as referred in Section 48(e) of the Act.

46. NCDC is a Statutory Organization under the Ministry of Cooperation, Government of India, and it had launched a Central Sector Scheme as Integrated Cooperative Development Project (ICDP), which stands discontinued with effect from 01.04.2021.

47. Plea, that financial assistance provided by NCDC through ICDP amounts to financial assistance by the State Government, is not tenable as this financial assistance was provided by the NCDC, which is an organization under Ministry of Cooperation, Government of India, but not of the State Government. Therefore, Financial assistance provided by NCDC, which is an organization under the Ministry of Cooperation, Government of India, is not a financial assistance provided by the State Government. Therefore, financial assistance under the Central Sector Scheme, at no stretch of imagination, cannot be financial assistance provided by the State Government.

48. However, in case the said assistance is backed by State Government's guarantee, there shall be guarantee extended by the State Government as provided under Section 48(d) of the Act. But the loan under ICDP can be sanctioned and disbursed on the basis of collateral and security, which apart from State Government guarantee, also includes hypothecation of assets created, or bank guarantee/FDR securities.

49. In present case, no document has been placed on record to establish the claim of the State that sanction of loan by ICDP was backed by State Government guarantees. In absence of any material on record to substantiate the claim of the State regarding extension of guarantee, which defense appears to have been taken half-heartedly without any details thereof, is not tenable and, thus, it cannot be presumed that the loan was sanctioned and disbursed by ICDP on the basis of guarantee extended by the State Government.

50. Even otherwise, as already discussed supra, the aid to the Cooperative Societies provided under Section 48 of the Act, shall not entitle the State Government to nominate its nominee under Section 35 of the Act unless such aid has assisted indirectly in the formation or augmentation of share capital of Cooperative Society. In absence of any material on record to substantiate the claim of the State, the loan

sanctioned and disbursed by ICDP to respondent No. 3-Federation, even backed by State guarantee, cannot be the basis to claim nomination by the State Government in the Committees/Board of Directors of respondent No. 3-Federation.

51. It is also a fact brought on record by the petitioners, substantiated by Certificate dated 25.03.2026 (Annexure P-6) issued by Manager of respondent No. 3-Federation, accompanied by audit note for the year 2024 and general report on the audit of the Federation for the year 2023-2024, that as on date, there is no share capital subscribed by the Government, margin money provided by ICDP, Government loans pending repayment including the loan from ICDP and/or interest thereon. The certificate issued by the Manager of respondent No. 3-Federation (Annexure P-6), certifying that State Government has not subscribed to the share capital of respondent No. 3-Federation, has not assisted indirectly in the formation or augmentation of share capital of the Federation as provided under Section 48 of the Act, and the State Government has not guaranteed the repayment of principal and interest on loans and advances of the Federation.

52. The aforesaid certificate and documents filed therewith, including audit report and balance sheet as on 31.03.2025, have not been rebutted or disputed by the respondents. However, claim of the

respondents is that since the inception of the Federation from the year 1964-65 till 2014, the State was having 99% share capital in the Federation, and respondent No. 3-Federation commenced redemption of the said share capital with effect from 2014, and by the financial year 2023-24, entire amount stood redeemed. But the fact remains that investment of ₹60 Lakhs by the State undoubtedly augmented and fortified the financial base of Federation and, thus, attracting the applicability of Section 35 of the Act.

53. Legislative intention is very clear in Section 35 of the Act, which provides that the State Government shall have the right to nominate members on the committee of the Cooperative Society, where the State Government has subscribed to the share capital of the Cooperative Society. It is not the wording of the Act that the subscription of share capital can be at any point of time in the past. The sentence is in present perfect tense, which, in the context of the provisions of the Act, basis entitling the State to give right to nominate, read with Bye-laws of the Federation, definitely leans towards the meaning that subscription to the share capital of the Cooperative Society must exist on the date of notifying nomination of members on the committee of the Cooperative Society.

54. The right of the Government to nominate depends upon the subscription of the share capital. The moment subscription of the share capital is ended, the right to nominate vested in the State Government is vanished automatically and, therefore, from the date of redemption of the share capital by the Federation to the State Government, making Government subscription in the share capital of the Federation to zero, the State Government ceased to have any such right and, thus, precluded from nominating members on the Committee of Federation, unless indirect assistance or guarantee in terms of Clause (ii) and (iii) of Section 35(1)(a) of the Act subsists.

55. Respondents have also claimed allotment of land by District Collector, Solan, Himachal Pradesh, vide order dated 13.08.2024 in favour of respondent No. 3-Federation, with further claim that by way of this allotment, the State Government has given financial assistance in other form as provided under Section 48(e) of the Act, and thereby has assisted the Federation indirectly in augmentation of share capital of the Federation as contemplated in Section 35(1)(a)(ii) of the Act.

56. Undoubtedly, allotment of land by the owner of the land, in present case by the State Government, may be an indirect assistance in the formation or augmentation of share capital of a Cooperative Society, however, for that, the allotment must be in favour of the Federation, but in

exchange of equity shares representing the augmentation of share capital, and Federation must have accepted the land as an asset and has allotted fresh shares to the land owner, i.e., the State Government, as consideration. However, material on record is otherwise, which indicates that land has not been allotted to respondent No. 3-Federation.

57. Plea of the respondents in respect of allotment of land with reference to Section 35(1)(a)(ii) read with Section 48(e) of the Act, is also not sustainable for the reason that vide order dated 13.08.2024, land has not been allotted to respondent No. 3-Federation, but has been transferred by the Government from its one department, i.e., *Mandiyat Vibhag*, to another department, i.e., Cooperative Department, for godown of District Cooperative Marketing and Consumer 'Store', Solan. Firstly, ownership of the land remains with the State Government and possession thereof has been transferred from one department to another department of the Government, and the land has not been transferred or allotted to respondent No. 3-Federation. Moreover, nothing has been placed on record that it was transferred to Cooperative Department for godown of respondent No. 3-Federation, which is definitely not District Cooperative Marketing and Consumer 'Store'. Once it is clear that land has not been allotted or transferred in favour of respondent No. 3-Federation, the plea of the respondents that vide order dated 13.08.2024, State Government

has provided financial assistance in other form as provided under Section 48(e) of the Act, amounting to assisting indirectly in the formation and augmentation of the share capital of respondent No. 3-Federation, is also without any logic.

58. It is also apt to record that, as already has also been stated, the aid to the Cooperative Societies under Section 48 of the Act, in itself, does not entitle the State to nominate members on the Committee of the Cooperative Societies, but aid provided under Section 48 of the Act shall confer right on the State to nominate such members only if such aid has assisted indirectly in the formation or augmentation of the share capital of the Cooperative Society/Federation. Therefore, any or every aid under Section 48 of the Act shall not confer any right on the State to make nominations of members on the Committee of the Cooperative Societies, unless it fulfills mandatory ingredients of indirect assistance in formation and/or augmentation of the share capital of the Society.

59. The State Government, having subscription to the share capital at any point of time, shall not confer right on the State Government under Section 35 of the Act to nominate members of the Society forever, especially on the date, when there is no subscription of the Government to the share capital of the Cooperative Society/Federation, unless either of other conditions/ingredients for conferring such right are in existence.

In present case, none of the conditions is in existence, which dis-entitle the State Government to exercise right to nominate under Section 35 of the Act.

60. It is also apt to record that Section 48(e) of the Act contemplates extension of financial assistance in any other form, including subsidies to the society. Therefore, in our view, financial assistance in any other form does not include allotment of land by the State to a Cooperative Society, as under Section 48(e) of the Act, financial assistance should be financial assistance like subsidies, which have been included under this clause of Section 48 of the Act to demonstrate the nature of financial assistance, which shall be covered under this Clause/Section. However, as discussed supra, even if allotment/transfer of land is considered a financial assistance under Section 48(e), then also in present case, there is no allotment or transfer in favour of Society, much less assisting indirectly in formation or augmentation of share capital of respondent No. 3-Federation.

61. In absence of creating a right in the share capital of the Federation or allotment of land, if any, such allotment or transfer of land shall not become an assistance given indirectly in formation and augmentation of share capital of the Cooperative Society.

62. From the material placed on record, it is evidently clear that as on date, State Government has no subscription to share capital of respondent No. 3-Federation, and in present case, State has not assisted indirectly in formation or augmentation of the share capital of a Cooperative Society as provided under Section 35, read with Section 48 of the Act, and no guarantee of State Government for any repayment of principal or payment of interest on loans and advances to a Society, is subsisting. Therefore, on the date of impugned Notification, i.e., 16.03.2026, State Government had no right to nominate members on the Committee of respondent No. 3-Federation by issuing Notification dated 16.03.2026.

63. Similar view has been taken in findings recorded by a Division Bench of Karnataka High Court in **Ganapathy Seetharam Bhat vs. State of Karnataka (W.A. No. 211 of 1992, decided on 8th July, 1993)**, reported in **I.L.R. 1993 KAR 2413**, whereby almost the same provision of law and in similar facts, nomination of members by the State Government was quashed. Relevant paragraphs thereof are as under:-

“1. The second respondent before us is the Agricultural Produce Co-operative Marketing Society which was established to provide the marketing of the agricultural produce to its members. The appellant before us who was the Writ Petitioner, was elected as a Director and subsequently as the Chairman of the Managing Committee. Apart from the elected members the Government thought it fit to nominate respondents 3

to 5 as its nominees under Section 59 of the Karnataka Co-operative Societies Act, 1959 (the 'Act'). The nomination was done on 28th August 1991. The period of the nominees to function as the members of the Managing Committee was not stated in the nomination and it was to be "until further orders". The petitioner challenged these nominations on the ground that the State Government had no power at all to nominate them under Section 29 of the Act which was not at all attracted. Since the question involved before us is the interpretation of Section 29 we will refer to the relevant provisions which reads thus:

"29. Nominees of the Government on the committee of a Co-operative Society.- (1) Where the State Government-

- (a) has subscribed to the share capital of a co-operative society, or
- (b) has assisted indirectly in the formation or augmentation of the share capital of a co-operative society as provided in Chapter VI, or
- (c) has guaranteed the repayment, of principal and payment of interest on debentures issued by a co-operative society, or
- (d) has guaranteed the repayment of principal and payment of interest on loans and advances to a co-operative society,

the State Government or any authority specified by the State Government in this behalf, shall notwithstanding anything contained in this Act or the rules or the bye-laws of the Co-operative society, but subject to any notification or order, for the time being in force, issued or made under Section 54 or 121 have the right to nominate as its representatives not more than three persons or one-third of the total number of members of the committee of the co-operative society, whichever is less".

2. According to the petitioner there is no subsisting share capital subscribed by the State Government in the Society. The petitioner also pointed out that the State Government has not assisted indirectly in the formation or augmentation of the share capital of this Society as provided

in Chapter VI of the Act. Similarly, there has been no guarantee by the State Government for the repayment of the principal and payment of interest on debentures issued by this Society. Neither this society nor any other society has so far issued any debenture and that it has not obtained debentures from any other co-operative society which has issued debentures out of the loan given to the society, so also there was no guarantee on loans and advances. There is no loan incurred by the petitioner on which the State Government has offered guarantee.

3. The State Government has not filed any statement of objection. It is only respondents 3 to 5 i.e., the nominees who have filed an application in the Writ Petition considered as statement of objections. These nominees have pointed out that it is not necessary for the State Government to have a share in the share capital at the time of nominating the members. It is sufficient that the State Government had at any time subscribed to the capital, even though the said share capital had been returned to the Government by the Co-operative Society. In the instant case the Government had subscribed to the share capital which existed between the years 1960-61 to 1984-85. However, admittedly since the year 1985-86 Government ceased to have any share in the share capital of this society.

.....

6. That is not the situation contemplated by Section 29(1) of the Act. The purpose of Section 29(1)(a) is to enable the State Government to nominate to the Managing Committee of the Co-operative Society when the State Government has subscribed towards the share capital. It is by virtue of the contribution to the share capital the State Government gets the right to nominate. Its position is comparable to that of a member because of this subscription. Instead of contesting the election the State Government gets a power to nominate its nominees. We cannot read Section 29(1)(a), as conferring a power to the State Government to nominate members to the Managing Committee by adding the words 'at any time' between the words 'has subscribed' in Clause (a).

7. Admittedly, in the instant case, the State Government ceased to be a share holder because the subscription made to the share capital has

been returned. It cannot be considered that the State Government continues to be a member or it can be deemed to be a member only because at some time past the State Government had subscribed to the share capital. It was then contended that from the years 1960-61 to 1985-86 the State Government had assisted the Co-operative Society while constructing a godown. The State Government seems to have paid certain amounts by way of subsidy. Assuming that there was such a payment by the State Government such a payment cannot be brought under Clause (b), (c) or (d). To attract Clause (b) of sub-section (1) of Section 29; the assistance of the Government should be in the formation or augmentation of the share capital as provided in Chapter VI, provided that it is an indirect assistance.

8. Section 41 in Chapter VI provides for direct assistance; it refers to the State Government subscribing directly to the share capital. This situation has to be considered in the context of Section 29(1)(a) which we have already considered and found inapplicable to the present situation. The indirect assistance in the formation or augmentation of the share capital could be related to Section 42, found in Chapter VI. Under this provision, the State Government may provide moneys to a Co-operative Society, (referred to as Apex society), for the purpose of purchasing shares in other Co-operative Societies. Admittedly the State Government in the instant case has not provided any money to any apex society which in turn has purchased any shares in the second respondent's society. Section 44 is also inapplicable because the second respondent-Society is not concerned with any Subsidiary State Partnership Fund.

9. In the application filed by the nominees, (referred also as statement of objection) there is an assertion that the second respondent-Society has been taking loans every year from Canara District Central Co-operative Bank, Sirsi and that the said Bank had been advancing loans on security of mortgage of land etc., and Apex Bank advances loans to this DCC Bank.

10. This assertion of the nominees cannot be accepted at all because Chapter XI of the Act applies to the agriculture and rural development banks. The second respondent-Society is a marketing society. It has

nothing to do with the banks referred in Chapter XI of the Act. The assertions made by the nominees seem to be assertions made only to justify their nomination without any basis for the same.

11. There is no dispute that the D.C.C. Bank and the Apex Bank are not competent to issue any debentures. Even apart from this, the assertion of the learned Counsel for the appellant that no debenture has been issued, was not denied before us by any one. Not a single instance of Government standing guarantee either to the second respondent-society or to any society which advanced loan to the second respondent-society was placed before this Court to justify the nomination either under Section 29(1)(c) or (d) of the Act.

12. The learned Single Judge proceeded on the assumption that the provisions of Section 29 should be construed widely in favour of the Government. Section 29 gives a special power to nominate to the Managing Committee of a Co-operative Society; the normal rule is to have an elected Managing Committee; nomination to the Committee is an exception. This exceptional power should be given in clear terms. In fact there is no ambiguity in the language of Section 29. If for any reason the language is unclear, we would have certainly favoured a construction to justify the nomination provided the nomination is linked to any circumstances which could have been brought within the frame work of Section 29. We cannot read Section 29 in such a way as to vest an exceptional power in the Government to nominate members to the Managing Committee of a Society, irrespective of the factors stated in Section 29. Legislature has not said that the State Government may nominate to the Managing Committee of any Co-operative Society as and when the State Government deems fit to do so.

13. There are other provisions in the Act which vests several regulatory powers in the Government and its Officers. In fact the bye-laws of the Society in question provide for two Governmental officers to be in the Managing Committee.

14. In these circumstances, we are constrained to take a view different from the view taken by the learned Single Judge. This Writ Appeal

is allowed. The impugned order nominating respondents 3 to 5 to the second respondent's Society is quashed. No costs."

64. Similar view was also been taken in **Chamansab Madansab Kumbharwadi vs. Roshan, decided on 11th October, 1991**, reported in **ILR 1991 KAR 4303**. Relevant paragraphs thereof are as under:-

"2. The appellants were nominated by the State Government in exercise of its power under Section 29(1) of the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as the 'Act') on 30th April 1991 as Directors of the 7th respondent - The Muslim Co-operative Credit Society Ltd., Talikoti Taluk. The respondents-1 to 6 challenged the validity of the order of the State (government in W.P.No. 11424/1991 nominating the appellants. The learned Single Judge has held that the requirements of Section 29(1) of the Act were not satisfied; that the nominations did not fall either under Clause (a), or (c) or (d) of Section 29(1) of the Act.

.....

4. We are of the view that the contentions are not tenable and as such they cannot be accepted. No doubt Section 53 of the Act falls under Chapter VI of the Act, but it has nothing to do with the share capital of a co-operative society. It relates to other forms of State Aid to a co-operative society. The types of State Aids enumerated in Section 53 of the Act do not fall in Clauses (a) to (d) of Sub-section (1) of Section 29 of the Act. Therefore, the aid which falls under Section 53 of the Act does not enable the State Government to exercise the right to nominate its representative on the Committee of a co-operative society under Section 29 of the Act.

5. In order to attract Clause (b) of Sub-section (1) of Section 29 of the Act, the State Government must have either assisted indirectly in the formation of a co-operative society as per Section 40 of the Act or it must have augmented the share capital of a co-operative society. Section 41 of the Act provides for Direct Partnership of State Government in co-operative societies by subscribing to the share capital of a co-operative

society. Section 42 of the Act provides for indirect partnership of State Government in co-operative societies by providing moneys to a co-operative society for the purchase of shares in other co-operative societies with limited liability. Section 43 of the Act is not attracted because it relates to Principal State Partnership Fund. Section 44 relates to Subsidiary State Partnership Fund, Neither of these Sections is attracted because it is not the case of the appellants that the State Government has either encouraged the co-operative society in question for its formation nor it has subscribed directly to the share capital of a co-operative society. It is also not the case of the appellants that there is indirect partnership of the State Government as contemplated under Section 42 of the Act. There is no case pleaded attracting Sections 43 and 44 of the Act. Section 53 as already pointed out is not attracted as it deals with other forms of State Aid to co-operative societies.

6. Thus it is not possible to hold that merely because a loan is advanced by the State Government long after the formation of the 7th respondent-society, Clause (b) of Sub-section (1) of Section 29 of the Act is attracted as it was not an assistance given indirectly in the formation or augmentation of the share capital of the co-operative society in question.

7. Similarly, there is no material placed by the petitioners to prove that the State Government has guaranteed the repayment of principal and payment of interest on loans and advances to the 7th respondent-society. There is no material placed to show that the Apex Bank had advanced the loan to the 7th respondent-society which in turn was advanced by the National Bank for Agricultural and Rural Development. Therefore, viewed from any angle, it is not possible to hold that Clauses (b) and (d) of Sub-section (1) of Section 29 of the Act are satisfied. Therefore, the conclusion reached by the learned Single Judge that the nominations made by the State Government nominating the appellants as Directors of the 7th respondent co-operative society in the purported exercise of its power under Section 29(1) of the Act is without the authority of law, is well founded. Hence, it does not call for interference.”

65. Relying upon the verdict in *Ganapathy Seetharam Bhat's* case (*supra*), a similar view has been taken in **Seva Sahakari Bank Ltd. v. State of Karnataka and Ors. [ILR 2004 KAR 698 : 2004 AIR-KANT. H.C.R. 938, decided on 5th January, 2004]**, wherein the exercise of power by the Government to nominate members to the Managing Committee was held to be illegal on the ground that as on the date of Notification, Government had ceased to be a shareholder.

66. In view of above discussion, impugned nomination of respondents No. 4 to 6 is declared to be illegal, null and void *ab-initio* from the very date of their nomination. Accordingly, impugned Notification dated 16.03.2026 (Annexure P-3), notifying nomination of respondents No. 4 to 6, is quashed and set aside, and respondents No. 4 to 6 are declared to have ceased to be members of Board of Directors/respondent No. 3-Federation with effect from their induction. Consequently, any decision of respondent No. 3-Federation, influenced by opinion or voting right of these nominated members, including electing Chairman or any other office bearers, shall stand quashed and set aside, and such office bearers of respondent No. 3-Federation shall also cease to be as such office bearers/members forthwith. Fresh election of Chairman/other office bearer, if so required in view of aforesaid finding and direction, be conducted on or before 31.10.2026.

Petition is allowed and disposed of in aforesaid terms.

Pending application(s), if any, also stand disposed of.

***(Vivek Singh Thakur),
Judge.***

8th October, 2026 *(susheel)*

***(Ranjan Sharma),
Judge.***