

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE
&
THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 15TH DAY OF DECEMBER 2014/24TH AGRAHAYANA, 1936

WA.NO. 764 OF 2010

AGAINST JUDGMENT IN WP(C) 12949/2010 OF HIGH COURT OF KERALA
DATED 20-04-2010

APPELLANT(S)/PETITIONER:

THE PALLICHAL FARMERS SERVICE CO-OP.
CO-OPERATIVE BANK LTD.NO.T.677, VEDIVECHANKOVIL, P.O.
THIRUVANANTHAPURAM, REPRESENTED BY THE
MANAGING DIRECTOR.

BY ADVS.SRI.T.M.RAMAN KARTHA
SMT.MANJU R.KARTHA

RESPONDENT(S)/RESPONDENTS:

1. STATE OF KERALA AND OTHERS
SECRETARY TO GOVERNMENT, LABOUR AND REHABILITATION
DEPARTMENT, THIRUVANANTHAPURAM.

2. N.K.RAJENDRAN,
RASALAYAM, PALLICHAL P.O., BALARAMAPURAM
THIRUVANANTHAPURAM.

3. THE DISTRICT LABOUR OFFICER,
THIRUVANANTHAPURAM.

BY SPECIAL GOVERNMENT PLEADER SMT. GIRIJA GOPAL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 13.11.2014
ALONG WITH WA. 2516/2009 AND WA. 184/2010, THE COURT ON
15.12.2014 DELIVERED THE FOLLOWING:

“C.R.”

ASHOK BHUSHAN, Ag. CJ,
A.M.SHAFFIQUE, J
&
A.K.JAYASANKARAN NAMBIAR, J.

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

Dated this the 15th day of December, 2014

REFERENCE ORDER

Ashok Bhushan, Ag.CJ.

The Division Bench hearing these Writ Appeals expressed doubt on the correctness of the earlier Division Bench judgment of this Court in **Thodupuzha Taluk General Marketing Co-operative Society v. Michael Sebastian** (2010 [1] KLT 939). By the following reference order dated 08.12.2010, the Division Bench made a reference for consideration by a Full Bench:

"The question raised in the connected writ appeals is whether industrial dispute between the management of a society and an employee should be

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

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

2. All the three Writ Appeals have been filed by the Registered Co-operative Banks which are registered under the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as “the 1969 Act”). Appellants are Co-operative Banks, i.e., Central Co-operative Societies within the meaning of the 1969 Act. All the Writ Appeals having raised same issue, it shall suffice to refer to the facts of Writ Appeal No.764 of 2010 in detail to decide all the Writ Appeals.

3. **Writ appeal No.764 (Pallichal Farmers Service Co-operative Bank Ltd. No.T.677, Thiruvananthapuram v. State of Kerala and Others)** has been filed against the judgment/order of the learned Single Judge dated 20.04.2010 by which order **Writ Petition No.1249 of 2010 (The Pallichal Farmes Service Co-operative Bank Ltd. No.T-677, Thiruvananthapuram v. State of Kerala and Others)** filed by the appellant was dismissed. The

second respondent was an employee of the appellant-Bank. He was placed under suspension after disciplinary enquiry. His service was terminated by order dated 05.06.2007. An appeal was filed by the 2nd respondent which too was dismissed as per the resolution passed by the Committee Meeting. The 2nd respondent moved an application before the District Labour Officer, Thiruvananthapuram for conciliation. Appellant Bank filed an objection before the District Labour Officer. In the objection it was stated that the 2nd respondent was dismissed from service under Rule 198(1)(h) of the Kerala Co-operative Societies Rules, 1969 and on a specific charge after conducting a domestic enquiry. It was stated that jurisdiction to entertain a dispute under the Co-operative Societies Act lies with the Co-operative Arbitration Court. Reference was made to Sec.69(2)(d) of the 1969 Act. Reference was also made to amendment dated

02.01.2003 made in the 1969 Act. It was pleaded that the District Labour Officer has no jurisdiction to entertain the application filed by the 2nd respondent. The State Government vide its order dated 30.12.2009 exercising powers under Sec.10(1)(c) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the 1957 Act") made a reference of the industrial dispute for adjudication to the Labour Court, Kollam. The State Government in its order stated that an industrial dispute exists between the appellant and the workman, the 2nd respondent. The Labour Court issued summons to the appellant on 17.02.2010. The 2nd respondent filed a claim statement before the Labour Court. Appellant filed the Writ Petition stating that in view of Sec.69 read with Sec.70A it is the Co-operative Arbitration Court which is competent to entertain the dispute between the appellant and the 2nd respondent and the order of the State Government, Ext.P6 is illegal. Following reliefs

were claimed by the appellant in the Writ Petition:

"(i) Call for the records leading to Exhibit P5 and quash the same by issuing a writ of certiorari.

(ii) To declare that the proceedings pending before the Labour Court, Kollam in I.D.7/2010 is ultravires to Section 69 of the KCS Act and hence not maintainable."

Learned Single Judge following the decisions of this Court in **A.R. Nagar Service Co-operative Bank v. State of Kerala (2010 [1] KLT 55)** and **Thodupuzha Taluk General Marketing Co-operative Society v. Michael Sebastian (2010 [1] KLT 939)** dismissed the Writ Petition vide his order dated 20.04.2010. Learned Single Judge held that in view of the principle laid down in the above cases, Labour Court and the Cooperative Arbitration Tribunal have concurrent jurisdiction to entertain disputes raised by employees of the Co-operative Societies, hence Ext.P5, order of reference passed by the Government cannot be challenged.

4. **W.A. No.2516 of 2009 (Chirayihkeezhu**

Service Co-operative Bank Ltd. No.115. v. K.Santhosh and Another) has been filed against the judgment/order of this Court dated 13.08.2009 passed in **W.P(C) No.30854 of 2007 (Chirayihkeezhu Service Co-operative Bank Ltd. No.115. v. K.Santhosh and Another)** by which order the Writ Petition filed by the appellant challenging the award of the Labour Court was dismissed. Learned Single Judge referring to the decision in **Dharappa v. Bijappur Co-op. Milk Producers Societies Union Ltd ([2007] 9 SCC 109)** held that only if Presidential assent is obtained for provisions repugnant to the provision in the 1947 Act, the said repugnant provision would prevail over the provisions of the 1947 Act in the State concerned. The learned Single Judge observed that the amendment of the year 2003 has not received the Presidential assent so far. Therefore in Kerala the Labour Court still has jurisdiction to entertain industrial

disputes between Co-operative Societies and their employees. Although the learned Single Judge noted an earlier judgment of a learned Single Judge reported in **Board of Directors, Edava Service Co-op. Bank v. The Co.op. Arbitration Court & Ors. (2008 [3] KLT 267)** where it was held that dispute relating to the dismissal of an employee of a co-operative society and who thereby becomes a past employee, is a matter that falls within the purview of disputes which are to be decided by the Co-operative Arbitration Court, but the learned Single Judge differed with the said view and he for the above reason left the question to be decided in appropriate cases. Writ Petition was dismissed against which appeal was filed by the Co-operative Bank.

5. **W.A. No.184 of 2010 (A.R. Nagar Service Co-op. Bank Ltd., No.F.583 v. State of Kerala and Another)** has been filed against the judgment/order

dated 04.12.2009 passed by the learned Single Judge in **W.P(C) No.27909 of 2009 (A.R. Nagar Service Co-op. Bank Ltd., No.F.583 v. State of Kerala and Another)**. Writ Petition was filed by the Bank challenging Ext.P1 order dated 17.07.2009 of the State Government by which the State Government finding a dispute between the Bank and the 3rd respondent made a reference under Section 10(1)(c) of the 1947 Act. The Bank after enquiry has dismissed the 3rd respondent vide order dated 27.03.2008. He filed a Writ Petition in which the High court directed the 3rd respondent to file appeal before the Managing Committee which appeal resulted in dismissal. Thereafter the 3rd respondent raised the dispute before the District Labour Officer, Malappuram. In the Writ Petition Ext.P1 order was prayed to be quashed and declaration was sought that Sec.69 of the 1969 Act excludes the jurisdiction of all other court/authorities in

the matter of adjudicating disputes between an employee/past employee of a society that arises in the course of the employment. Learned Single Judge by his judgment dated 04.12.2009 dismissed the Writ Petition observing that since none of the books relating to the 1969 Act contained any reference to Presidential assent for the 1969 Act and the learned Government Pleader also confirmed that no Presidential assent was received for the 1969 Act reference to such assent in the earlier decision in **Kaloor Vadakkummury Service Co-operative Society Ltd v. Assistant Registrar, Mukundapuram and Others (1973 KLT 523)** is clearly a mistake. Learned Single Judge held that without Presidential assent for the 2003 amendment, jurisdiction of the Labour Court and Industrial Tribunal cannot be excluded by the 1969 Act. It was also observed that since the amendment Act amending the 1969 Act has not obtained the

Presidential assent it does not exclude the jurisdiction of the Labour Court and Industrial Tribunal. Writ Petition was consequently dismissed against which the Writ Appeal has been filed.

6. We have heard Shri T.M. Raman Kartha, learned counsel for the appellants, Shri Bechu Kurian Thomas for the respondents, Advocate Shri Subramonian was heard as intervenor. Special Government Pleader Smt.Girija Gopal has appeared for the State Government.

7. Learned counsel for the appellant in support of the appeals submitted that the 1969 Act is a self contained Act making provision on several aspects of Co-operative Societies including resolution of dispute. It is submitted that Section 69 as enacted consciously excluded jurisdiction of courts including Civil Court, Labour Court and Industrial Tribunal and the disputes of the nature pertaining to the disciplinary proceedings

against the employees is fully covered by the dispute as referred to in Sec.69 of the 1969 Act. Hence it was the exclusive forum as provided in Sec.69 which was competent to decide the dispute. It is further submitted that the 1969 Act was passed by the Kerala Legislature for which Presidential Assent was also obtained on 09.04.1969. Hence the provisions of the 1969 Act shall override the provisions of the 1947 Act and the dispute contemplated under Section 9 of the 1969 Act could not have been decided by the Labour Court and Industrial Tribunal. It is further submitted that the amendment made in Sec.69 of the 1969 Act with effect from 02.01.2003 is clarificatory in nature and by the said amendment doubt, if any, has been removed regarding the Forum in which dispute pertaining to disciplinary action against the employees of the Bank can be raised. The Act having been passed with the Presidential assent, no further assent was

required to be obtained in carrying out any amendment in the 1969 Act. It is submitted that the the Division Bench judgment of this Court in **Thodupuzha Taluk General Marketing Co-operative Society v. Michael Sebastian** (supra) does not lay down the correct law. The Division Bench committed an error in holding that the Labour Court and the Co-operative Arbitration Tribunal shall have concurrent jurisdiction to deal with the industrial dispute.

8. Learned counsel for the employees refuted the submissions of the learned counsel for the appellants and contended that the disciplinary proceedings were never covered under Sec.69 of the 1969 Act and the amendment made in Sec.69 by Act 1 of 2000 is the amendment in the 1969 Act for the first time covering the disciplinary proceedings and the amendment having been effected without obtaining Presidential assent it can have no overriding effect over

the provisions of the 1947 Act. It is submitted that even the 1969 Act was not passed with the Presidential assent, learned Single Judge has so observed in his judgment dated 04.12.2009 against which W.A. No.184 of 2010 has been filed. It is submitted that the learned Single Judge in the above judgment has noted that the learned Government Pleader after instruction has stated that no Presidential assent was obtained. It is submitted that the Amendment Act 1 of 2000 is not clarificatory in nature and is an amendment bringing substantive change in the law.

9. Smt.Girija Gopal, learned Special Government Pleader submitted that by amendment new provisions have been substituted which shall have retro active effect. It is submitted that the word 'establishment' has wide meaning which can cover the dispute pertaining to disciplinary action also. It is submitted that the 1969 Act was enacted with Presidential assent. Learned

Special Government Pleader has referred to and relied on page No.105 of the 1969 Kerala Law Times. It is submitted that the Act was passed with the Presidential assent which is specifically mentioned in the 1969 Kerala Law Times 105 and the submission of the learned counsel for the party respondents that the 1969 Act was passed without obtaining the Presidential assent is not correct.

10. From the submissions made by the learned counsel for the parties and the pleadings on record, the following are the issues which arise for consideration by the Full Bench.

(i) Whether Sec.69 the 1969 Act as enacted contemplate disputes relating to service between the Co-operative Society and its employees to be referred to Labour Court for decision?

(ii) Whether Sec.69 as enacted intends to override any contrary provision in any law including the provisions of the 1947 Act by virtue of Sec.69(1) of the 1969 Act?

(iii) Whether the 1969 Act was enacted with Presidential assent?

(iv) Whether the Amendment Act 1 of 2000 by which amendments were made in Sec.69 of the 1969 Act are clarificatory in nature?

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

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

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

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

down the correct law?

11. All the above issues being interconnected are taken together. The core question which has come up for consideration is the ambit and scope of Sec.69 of the 1969 Act.

12. Kerala Co-operative Societies Act, 1969 was enacted to consolidate, amend and unify the law relating to the Co-operative Societies in the State of Kerala. Section 2(i) defines “dispute” which is to the following effect:

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

Co-operative Societies is included under Entry No.32 in List II of the VII Schedule of the Constitution which provides as follows:

“32. Incorporation, regulation and winding up

of corporation, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations, co-operative societies”.

Entry 22 of List III - Concurrent List provides for “Trade Unions; industrial and labour disputes.” The 1969 Act repealed the Madras Co-operative Societies Act, 1932 and Trav-Cochin Co-operative Societies Act, 1951. The object of the enactment as disclosed in the Preamble is that the 1969 Act was enacted to “consolidate, amend and unify the law relating to Co-operative Societies”. The 1969 Act is divided in different Chapters dealing with different parts of the Scheme. Chapter IX of the 1969 Act contains the Heading (Settlement of Disputes). Section 69 as originally enacted was to the following effect:

69. Disputes to be decided by Co-operative Arbitration Court and Registrar.- (1)

Notwithstanding anything contained in any law for the time being in force, if a dispute arises,-

(a) among members, past members and

persons claiming through members, past members and deceased members; or

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

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

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

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

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

(h) between the society and a creditor of the

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

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

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

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

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

Explanation:- A dispute arising at any stage of

an election commencing from the convening of the general body meeting for the election, shall be deemed to be a dispute arising in connection with the election;

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

(3) No dispute arising in connection with the election of the Board of Management or an officer of the society shall be entertained by the Co-operative Arbitration Court unless it is referred to it within one months from the date of the election

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

Section 70 deals with “decision and award on disputes”.

Section 70(3) which is relevant is quoted below:

“(3) The Registrar or such person shall decide the dispute or the arbitrator shall pass award, in accordance with the provisions of this Act and the rules and the bye-laws and such decision or award shall, subject to the provisions of S.82, be final. Pending decision or award, the Registrar, such

person or arbitrator, as the case may be, may make such interlocutory orders as he may deem necessary in the interest of justice”.

Under Section 82, against the order passed under Sec.70(3) a statutory appeal was provided to the Tribunal. Section 98 enumerated certain powers of the Civil Court which was to be exercised by the Tribunal, Registrar, etc. Section 98(1) is quoted as below:

98. Tribunal, Registrar, etc., to have certain powers of civil court.- *(1) In exercising the functions conferred on it or him by or under this Act, the Tribunal, the Registrar, the Arbitrator or any other person deciding a dispute and the liquidator of a society shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) in respect of the following matters, namely:-*

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits; and

(d) issuing commissions for examination of witnesses.

Section 100 provides for bar of jurisdiction of courts which is to the following effect:

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

13. The Rival submissions which have to be considered is as to whether under Sec.69, settlement of a dispute pertaining to service matter of an employee or officer including disciplinary action was contemplated or not ? The word "dispute" means "any matter touching the business, constitution, establishments or management of a Society capable of being the subject of litigation". Definition uses 4 phrases, namely, touching the business, constitution, establishment and management of the Society. One more concept which is discernible from the definition is that any matter, capable of being the subject of litigation. The subject of litigation is of wide import

which may include every action of challenge touching the business, constitution, establishment or management of the Society. Section 69 of the 1969 Act begins with a non-obstante clause “notwithstanding anything contained in any law for the time being in force”. The intendment of Sec.69 is thus clear that the said provision has been enacted with intend to override anything contained in any law for the time being in force. Section 69(c) specifically includes a dispute between the Society and any officer, agent or employee or any past agent or past employee or past Officer. Section 69(c) thus encompasses any dispute between the Society and any past agent, past employee or past Officer which clearly mean that those employees or Officers who have been terminated or no longer in service can also raise a dispute provided it is covered by the dispute within the meaning of Section 2(i) of the 1969 Act.

14. One more part of the provision of Sec.69(1) is relevant, i.e., dispute as enumerated in Sec.69(1) is mandatorily to be referred to the Registrar and “no court shall have jurisdiction to entertain suit or any other proceedings”. The intendment thus is very clear that all disputes referred to therein are required to be referred to the Registrar and no court shall have jurisdiction to entertain suit or any other proceedings in respect of such a dispute.

15. What was the legislative intention for enacting Sec.69? Had it contemplated exclusion of jurisdiction of all courts including Labour Court or Industrial Tribunal is the issue which is to be answered in these cases.

16. The 1969 Act was enacted with the assent of the President on 09.04.1969. Learned Single Judge in his judgment dated 04.12.2009 passed in W.P(C) No.27909 of 2009 against which W.A. No.184 of 2010 has been filed and which is for consideration before this

Full Bench had expressed certain doubts regarding the Presidential assent. With regard to the Presidential assent the learned Single Judge had made the following observations:

"The first is that contrary to the observation in the abovesaid case, even for the Act, Presidential assent was not received. Since none of the books relating to Kerala Co-operative Societies Act, 1969 contained any reference to Presidential assent for the Act, I directed the learned Government Pleader to ascertain from the Government as to whether the Act had in fact received Presidential assent. The learned Government Pleader, after getting instructions, confirmed that no Presidential assent was received for the Societies Act".

17. Learned Special Government Pleader has submitted before us that Presidential assent was received on 09.04.1969 for enactment of the 1969 Act. Learned Special Government Pleader placed before us page 105 of the 1969 Kerala Law Times. It is useful to quote the following extract of page 105 of the 1969

Kerala Law Times.

**"THE KERALA CO-OPERATIVE SOCIETIES ACT,
1969**

ACT 21 OF 1969

*(Published in Kerala Gazette Extra No.102 dated 11th
April 1969)*

(Received the assent of the President on 9-4-1969)

*An Act to consolidate, amend and unify the laws
relating to co-operative societies in the State of
Kerala."*

The first reason given by the learned Single Judge is that none of the books relating to Co-operative Acts contains any reference to the Presidential assent is unfounded. The Kerala Law Times which publishes all Acts published in the Official Gazette is the authentic book. A Division Bench of this Court in **Kaloor Vadakkummury Service Co-operative Society Ltd v. Assistant Registrar, Mukundapuram and Others (1973 KLT 523)** had stated the following in paragraph 1:

"The Act was passed with the assent of the President after the enactment of the 1947 Act".

The second reason given by the learned Single Judge is the learned Government Pleader after instruction informed that no Presidential assent was received for the 1969 Act does not appeal to us. When the 1969 Kerala Law Times has published the 1969 Act which expressly mentions about the Presidential assent and the Division Bench as early as in the year 1973 has already found that the Act was passed with the assent of the President there was no sufficient reason to doubt the assent. We thus have no doubt that the 1969 Act was passed with the Presidential assent and we proceed to examine the various issues accordingly.

18. The 1947 Act was enacted to make provision for the investigation and settlement of industrial disputes and for other purposes. The Parliament enacted the said Act in Entry 22 of List III of the VII

Schedule of the Constitution. When the 1969 Act contained separate Chapter of “settlement of disputes”, normal presumption would be that the said Chapter contains all aspects of settlement of disputes arising in a Co-operative Society. Further in Sec.69(1) there being express provisions that all disputes enumerated in Sec.69(1)(c) shall be referred to the Registrar and no court shall have jurisdiction to entertain any suit or other proceedings which is a clear indication that the 1969 Act was enacted by enacting Sec.69 to exclude jurisdiction of all courts. This coupled with the non-obstante clause under Sec.69(1) further reinforces that Sec.69 was enacted overriding all existing laws on the subject.

19. In **Kaloor Vadakkummury Service Co-operative Society Ltd v. Assistant Registrar, Mukundapuram and Others** (supra) a similar issue was raised before the Division Bench. In the above

case, the 4th respondent employee of the Co-operative Society was dismissed from service of the Co-operative Society. He raised a dispute before the Labour Court which gave an award in favour of the employee. The award was challenged by the Society in the High Court. One of the contentions raised was that dispute between the Society and its past employees relating to service is covered within the meaning of Sec.2(i) of the 1969 Act, hence the jurisdiction of the Industrial Tribunal or Labour Court shall be barred. The following observations are made by the Division Bench in paragraph 2 of the judgment.

“2. Counsel is well supported in his contention that if the subject matter of the dispute before the 2nd respondent is one falling within the term 'dispute' as defined in S.2(i) and within S.69 of the Act and therefore within the competence of the Registrar to decide, this provision must prevail over the provisions in the Industrial disputes Act which provides for the settlement of disputes such as that are referable to the Industrial Tribunals or Labour

Courts. It is unnecessary to cite authorities for this proposition, but we may as well refer to a passage from the decision of the Supreme Court in Cooperative Central Bank Ltd. and others etc. v. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad and others etc. reported in AIR 1970 SC 245:

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

The Division Bench however, proceeded to examine further the submissions and noticed that the real question is not whether the dispute is one touching the business, constitution, establishment or management of the Society but whether it is within the competence of the Registrar of the Society. The following was observed in paragraph 6:

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

Referring to the judgment of the Apex Court in **Co-operative Central Bank Ltd and Others v. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad ([1969 [2] SCC 43)** it came to the conclusion that the Registrar was not competent to deal with the question he could not have granted relief of reinstatement, hence it is not covered by the dispute defined in Sec.2(i) of the 1969 Act. The Division Bench had relied on the judgment of the Apex Court in **Co-operative Central Bank Ltd and Others v. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad** (supra). The aforesaid judgment was delivered by a three Judge Bench of the Supreme Court which has been referred to and relied by the subsequent judgments of this Court as well as the Supreme Court, hence it is necessary to refer to such judgments in detail.

20. An industrial dispute arose between Co-

operative Central Bank, in the State of Andhra Pradesh and their workman. The subject matter of the dispute included service conditions and transfer of some of the employees of the bank. Thus the Government of Andhra Pradesh made reference to the Industrial Tribunal, Hyderabad under Sec.10(1)(d) of the 1947 Act. The Bank raised a preliminary objection before the Tribunal that reference of the dispute was invalid because such dispute were required to be referred for decision of the Registrar of Co-operative Societies under Section 61 of the Andhra Pradesh Co-operative Societies Act, 1964. It was further submitted that effect of the provisions of the 1964 Act was to exclude the jurisdiction of the Industrial Tribunals to deal with the same disputes under the Industrial Disputes Act. The Tribunal rejected the above objection of the Bank. Order of the Tribunal was challenged in the High Court by a Writ Petition filed under Article 226 of the Constitution of India. The High

Court rejected the plea of the Bank. Writ Appeals were also dismissed and the matter was taken before the Apex Court by the Bank against the judgments of the High Court. The view taken by the Tribunal was that the dispute actually referred to the Tribunal was not capable of being decided by the Registrar under Sec.69 (1) of the 1969 Act and consequently reference to the Tribunal was competent. The legal submissions of the learned counsel for the Bank, that provisions of the 1969 Act clearly excludes applicability of other laws if they happen to be in conflict with the provisions of the Act as a legal proposition, was accepted by the Supreme Court. The following was observed in paragraph 2:

"2. The Tribunal, and the High Court, in rejecting the plea taken on behalf of the Banks, expressed the view that the disputes actually referred to the Tribunal were not capable of being decided by the Registrar of the Cooperative Societies under S.61 of the Act, and consequently, the reference to the Industrial Tribunal under the

Industrial Disputes Act was competent. Learned counsel appearing on behalf of the Banks took us through the provisions of the Act to indicate that, besides being a local and special Act, it is a self-contained Act enacted for the purpose of successful working of Cooperative Societies, including Cooperative Banks, and there are provisions in the Act which clearly exclude the applicability of other laws if they happen to be in conflict with the provisions of the Act. It is no doubt true that the Act is an enactment passed by State Legislature which received the assent of the President, so that, if any provision of a Central Act, including the Industrial Disputes Act, is repugnant to any provision of the Act, the provision of the Act will prevail and not the provision of the Central Industrial Disputes Act. The general proposition urged that the jurisdiction of the Industrial Tribunal under the Industrial Disputes Act will be barred if the disputes in question can be competently decided by the Registrar under S.61 of the Act is, therefore, correct and has to be accepted. The question, however, that has to be examined is whether the industrial dispute referred to the Tribunal in the present cases was such as was required to be referred to the Registrar and to be decided by him under S.61 of the Act”.

Section 61(1) of the Act as quoted in paragraph 3 of the

judgment is as follows:

61. Disputes which may be referred to the Registrar:-

(1) Notwithstanding anything in any law for the time being in force, if any dispute touching the constitution, management or the business of a society, other than a dispute regarding disciplinary action taken by the society or its committee against a paid employee of the society, arises -

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

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

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

(d) between the society and any other society; such dispute shall be referred to the Registrar for decision.

Explanation :- For the purposes of this sub-section a dispute shall include -

(i) a claim by a society for any debt or other amount due to it from a member past member, or the nominee, heir or legal representative of a deceased member, whether such debt or other amount be admitted or not;

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

(iii) a claim by a society against a member, past member or the nominee, heir or legal representative of a deceased member for the delivery of possession to the society of land or other immovable property resumed by it for breach of the conditions of assignment or allotment of such land or other immovable property.

(2) If any question arises whether a dispute referred to the Registrar under this section is a dispute touching the constitution, management or the business of a society, such question shall be decided by the Registrar.

(3) (a) Every dispute relating to, or in connection with, any election to a committee of a society referred to in Cl. (a) of sub-section (3) of S.31, shall be referred for decision to a Subordinate

Judge or where there is no Subordinate Judge, to the District Judge having jurisdiction over the place where the main office of the society is situated, whose decision thereon shall be final.

(b) Every dispute relating to or in connection with any election to a committee of such class of societies as may, by notification in the Andhra Pradesh Gazette, be specified by the Government in this behalf and referred to in Clause (b) of sub-section (3) of S.31, shall be referred for decision to a District Munsiff having jurisdiction over the place where the main office of the society is situated, and his decision thereon shall be final.

(4) Every dispute relating to, or in connection with, any election to a committee shall be referred under sub-section (1) or sub-section (3) only after the date of declaration of the result of such election”.

The Apex Court in the above case held that the dispute covered by the first issue (service conditions) could not possibly be referred for a decision to the Registrar under Section 61 of the Act. The Supreme Court further held that the dispute in respect of alteration of service conditions cannot be a dispute touching the business of the Society. Following was laid down in paragraph 7

of the judgment.

7. Applying these tests, we have no doubt at all that the dispute covered by the first issue referred to the Industrial Tribunal in the present cases could not possibly be referred for decision to the Registrar under S. 61 of the Act. The dispute related to alteration of a number of conditions of service of the workmen which relief could only be granted by an Industrial Tribunal dealing with an industrial dispute. The Registrar, it is clear from the provisions of the Act, could not possibly have granted the reliefs claimed under this issue because of the limitations placed on his powers in the Act itself. It is true that S.61 by itself does not contain any clear indication that the Registrar cannot entertain a dispute relating to alteration of conditions of service of the employees of a registered society; but the meaning given to the expression "touching the business of the society", in our opinion, makes it very doubtful whether a dispute in respect of alteration of conditions of service can be held to be covered by this expression. Since the word "business" is equated with the actual trading or commercial or other similar business activity of the society, and since it has been held that it would be difficult to subscribe to the proposition that whatever the society does or is necessarily required to do for the purpose of carrying

out its objects, such as laying down the conditions of service of its employees, can be said to be a part of its business, it would appear that that a dispute relating to conditions of service of the workmen employed by the society cannot be held to be a dispute touching the business of the society. Further, the position is clarified by the provisions of sub-section (4) of S.62 of the Act which limit the power to be exercised by the Registrar, when dealing with a dispute referred to him under S.61, by a mandate that he shall decide the dispute in accordance with the provisions of the Act and the Rules and bye-laws. On the face of it, the provisions of the Act, the rules and the bye-laws could not possibly permit the Registrar to change conditions of service of the workmen employed by the society. For the purpose of bringing facts to our notice in the present appeals, the Rules framed by the Andhra Pradesh Government under the Act, and the bye-laws of one of the appellant Banks have been placed on the Paper-books of the appeals before us. It appears from them that the conditions of service of the employees of the Bank have all been laid down by framing special bye-laws. Most of the conditions of service, which the workmen want to be altered to their benefit, have thus been laid down by the bye-laws, so that any alteration in those conditions of

service will necessarily require a change in the bye-laws. Such a change could not possibly be directed by the Registrar when under S.62 (4) of the Act, he is specifically required to decide the dispute referred to him in accordance with the provisions of the bye-laws. It may also be noticed that a dispute referred to the Registrar under S.61 of the Act can even be transferred for disposal to a person who may have been invested by the Government with powers in that behalf, or may be referred for disposal to an arbitrator by the Registrar. Such person or arbitrator, when deciding the dispute, will also be governed by the mandate in S.62 (4) of the Act, so that he will also be bound to reject the claim of the workmen which is nothing else than a request for alteration of conditions of service contained in the bye-laws. It is thus clear that, in respect of the dispute relating to alteration of various conditions of service, the Registrar or other person dealing with it under S.62 of the Act is not competent to grant the relief claimed by the workmen at all. On the principle laid down by this Court in the case of the Deccan Merchants Cooperative Bank Ltd., Civil Appeal No. 358 of 1967, dated 29-8-1968 = (AIR 1969 SC 1320) (supra) therefore, it must be held that this dispute is not a dispute covered by the provisions of S.61 of the Act. Such a dispute is not contemplated

to be dealt with under S.62 of the Act and must, therefore, be held to be outside the scope of S.61”.

21. In so far as applicability of the above said judgment for the present case is concerned, it is suffice to notice that in the above case under Sec.61(1) dispute regarding disciplinary action was expressly excluded from the jurisdiction of the Registrar under Sec.61(1) of the 1969 Act. Hence in the said case there was no question of the Registrar deciding about the disciplinary action. Hence the case was clearly distinguishable. Further in paragraph 7 of the judgment it was held that alteration of service conditions cannot be treated to be included in the expression 'touching the business of the Society'. It was held that the word business is equated with the actual trading. The said judgment was not relevant to decide the issue as to under Sec.69 of the 1969 Act the dispute pertaining to disciplinary action can be referred to the Registrar or not.

22. Another judgment of the Apex Court reported in **Gujrat State Co-op. Land Development Bank Ltd. P.R.Mankad (1979 [3] SCC 123)** is also to be noted. In the above case the appellant Bank had terminated the service of its employee. The second respondent filed an application in the Labour Court. The Bank filed written statement raising preliminary objection regarding the maintainability of the claim before the Labour Court. The Labour court overruled the objection. Bank filed Writ Petition which too was dismissed against which the matter was taken to the Apex Court. It was contended on behalf of the Bank that the dispute touching the business and management of the Society has got a wide expression which includes entire staff or establishment of the Society. Relevant provisions were quoted in paragraphs 17 and 18 which are to the following effect:

"17. The relevant part of S.54 of the Act of

1925, reads thus :

"(1) (a) If any dispute touching the constitution or business of Society arises between members or past members of the Society or persons claiming through a member or a past member or between members or past members or persons so claiming and any officer, agent or servant of the Society or its Committee, and any officer, agent, member or servant of the Society past or present, it shall be referred to the Registrar for decision by himself or his nominee....."

The corresponding S.96 of the Act of 1961 lays down:

"(1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, management or business of a Society shall be referred in the prescribed form..... if the parties thereto are from amongst the following :

(a) a Society, its committee, any past Committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the Society, or the Liquidator of the Society...."

18. A comparison between the portions of the two sections, extracted above, brings out two points of difference. Firstly, in S.54, there is no non obstante clause, while S.96 (1) begins with the words "Notwithstanding anything contained in any other law for the time being in force". Secondly, while in S.54, the word 'management' does not occur, in the corresponding S.96 (1) of the 1961 Act, the word 'management' has been inserted in between the words 'constitution' and 'business'".

The Apex Court held that the word 'dispute' used in the said provision has been used in narrower sense limited to the claims of civil nature which could have been decided by the civil or revenue courts. The Apex Court further noted that bar of jurisdiction is only to civil or revenue courts, hence there was no bar of jurisdiction to the Labour Court or Industrial Tribunal. It is useful to quote paragraphs 22, 23 and 26 which are to the following effect:

"22. A further clue to the interpretation of 'any dispute' used in S.96 (1) is available in S.97 (1) which prescribes periods of limitation for disputes of the kind specified in its cls. (a) and (b), referred to the Registrar under S.96. Sub-section (2) of S.97 which is in the nature of a residuary provision, states that the period of limitation in the case of any dispute other than those mentioned in sub-section (1) which are required to be referred to the Registrar under S.96, shall be regulated by the provisions of the Indian Limitation Act, "as if the dispute were a suit, and the Registrar a Civil Court". The last clause of sub-section (2) which has been underlined, unmistakably shows that only disputes

of a civil nature which could be the subject of the civil suits triable by ordinary civil courts, will fall within the scope of the expression 'any dispute' used in S.96 (1).

23. *Another definite pointer to the above being the right construction of 'any dispute', is available in sub-sec. (3) of S.98 which provides:*

"Notwithstanding anything contained in S.96, the Registrar may, if he thinks fit, suspend proceedings in regard to any dispute, if the question at issue between a society and a claimant or between different claimants, is one involving complicated question of law or fact, until the question has been tried by a regular suit instituted by one of the parties or by the society. If any such suit is not instituted within two months from the Registrar's order suspending proceedings, the Registrar shall take action as is provided in sub-section (1)."

It is noteworthy that this sub-section is substantially in the same terms as the substantially in the same terms as the proviso to sub-section (1) of S.54 of the Act of 1925, extracted earlier.

26. *Now, let us turn to the nature of the dispute raised by the second respondent. Is it a dispute relating to a right which he could establish by filing a suit in a Civil Court? - assuming for the moment that nothing in the relevant Cooperative*

Societies Act is a bar to such a suit. The answer must be in the negative. The respondent is not claiming a civil right arising from the contract of employment with the appellant Bank. What he is claiming is not enforcement of any term of the contract of his employment on the part of his employer. He is alleging that his services have been terminated unfairly and vindictively because of his legitimate trade union activities, as an act of victimisation. The relief claimed by him is of reinstatement in service with back wages. The rights and reliefs which he is claiming could not be determined and granted by a Civil Court in a suit. As Luding Teller puts it, "a Court of Law proceeds on the footing that no power exists in the Courts to make contracts for people and the parties must make their own contracts. The Courts reach their limit of power when they enforce contracts which the parties had made." (Quoted with approval in Rohtas Industries Ltd. v. Brijnandan Pandey, 1956 SCR 800 : (AIR 1956 SC 1)). The rights claimed by the second respondent are those which are conferred on workmen and employees under the Bombay Industrial Relations Act, to ensure social justice. Such rights which do not stem from the contract of employment can be enforced only in the Labour Court constituted under the B.I.R. Act. The

Labour Court is competent to grant the relief of reinstatement claimed by the respondent, while in view of S.21 (b) of the Specific Relief Act, then in force, the Civil Court was not competent to grant that relief".

23. The above judgment was given by the Supreme Court on the specific provisions of the 1969 Act which came up for consideration. In Sec.96 of the 1969 Act the word 'establishment' was not included. There is no reference in the judgment as to whether the State enactment was enacted with the Presidential assent or not, nor there is any reference to Article 254. Thus the said judgment was on its own facts.

24. Another judgment of the Apex Court which is relevant to be noted is **Dharappa v. Bijapur Co-operative Milk Producers Societies Union Ltd. ([2007] 9 SCC 107)**. The Apex Court had occasion to consider the provisions of the Karnataka Co-operative Societies Act, 1959 and the amendments made in the said Act in the year 1976 as well as in 2000. In the

said case Presidential assent was obtained for the enactment of the Act. Section 70 of the 1969 Act including amendments was quoted in paragraph 11 of the judgment which is to the following effect:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Act (relevant portion) reads thus:

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

(c) between the Society or its committee and any officer, agent or employee, or any past officer, past agent or past employee of the Society, _..

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

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

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

The Apex Court further considered the question of repugnancy between the State enactment as well as the Parliamentary enactment made under the relevant law. The Apex Court had laid down that in any event the State Legislature while making or amending law

relating to co-operative Societies makes provision regarding labour dispute falling under the concurrent list, and if there is repugnancy the State Act shall prevail in the State if same was passed with Presidential assent between the 1969 Act and the 1947 Act. It is useful to quote paragraph 12 which is to the following effect:

"12. "Co-operative societies" fall under Entry 32 of the State List. "Industrial and labour disputes" fall under Entry 22 of the Concurrent List. Industrial Disputes Act, 1947 is an "existing law" with respect to a matter enumerated in the Concurrent List, namely, industrial and labour disputes. A dispute between a co-operative society and its employees in regard to terms of employment, working conditions and disciplinary action, is an industrial and labour dispute squarely covered by an existing law (ID Act), if the employees are 'workmen' as defined in the ID Act. Clause (1) of Article 254 provides that if any provision of a law made by a State Legislature is repugnant to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the existing law shall prevail, and the law

made by the Legislature of the State shall, to the extent of the repugnancy, be void. Clause (2) of Article 254, however, provides that where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List, contains any provision repugnant to an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State. The question of repugnancy can arise only with reference to a legislation made by Parliament falling under the Concurrent List or an existing law with reference to one of the matters enumerated in the Concurrent List. If a law made by the State Legislature covered by an Entry in the State List incidentally touches any of the entries in the Concurrent List, Article 254 is not attracted. But where a law covered by an entry in the State List (or an amendment to a law covered by an entry in the State List) made by the State Legislature contains a provision, which directly and substantially relates to a matter enumerated in the Concurrent List and is repugnant to any provision of an existing law with respect to that matter in the Concurrent List then such repugnant provision of the State law will be void. Such a provision of law made by the State

Legislature touching upon a matter covered by the Concurrent List, will not be void if it can co-exist and operate without repugnancy with the provisions of the existing law. What is stated above with reference to an existing law, is also the position with reference to a law made by the Parliament. Repugnancy is said to arise when : (i) there is clear and direct inconsistency between the Central and the State Act; (ii) such inconsistency is irreconcilable, or brings the State Act in direct collision with the Central Act or brings about a situation where obeying one would lead to disobeying the other. If the State Legislature, while making or amending a law relating to co-operative societies, makes a provision relating to labour disputes falling under the Concurrent List, then Article 254 will be attracted if there is any repugnancy between such provision of the State Act (MCS Act) with the existing law (ID Act). We will have to examine the issue in this case keeping the above legal position in mind”.

25. The Apex Court in the said case held that since prior to 20.06.2000 there was no express exclusion of the jurisdiction of the Labour Court and Industrial Tribunal, as a result if an employee of a Co-operative Society answered the definition of workman

and the dispute between the Co-operative Society and its employee fell within the definition of an industrial dispute then the employee had the choice of two alternative forums - either to raise a dispute before the Registrar under Sec.70 of the 1969 Act or seek a reference to the Labour Court/Industrial Tribunal.

The following was laid down in paragraph 14:

"14. Even prior to 20.6.2000, having regard to the amendment to Section 70 of KCS Act by Act 19 of 1976 with effect from 20.1.1976, any dispute between a co-operative society and its employees or past employees or heirs/legal representatives of a deceased employee including a dispute regarding the terms of employment, working conditions and disciplinary action taken by a co-operative society, was deemed to be a dispute touching the constitution, management, or business of a co-operative society which had to be referred to the Registrar for adjudication. But prior to 20.6.2000, there was no express exclusion of the jurisdiction of the Labour Court and Industrial Tribunal. As a result, if an employee of a Co-operative Society answered the definition of 'workman' and the dispute between the co-operative society and its employee fell within

the definition of an 'industrial dispute', then the employee had the choice of two alternative forums either to raise a dispute before the Registrar under Section 70 of the KCS Act or seek a reference to the Labour Court/Industrial Tribunal under Section 10(1) (c) of the ID Act (or approach the Labour Court by an application under Section 10(4A) of ID Act)".

In the above case the Apex Court has also sounded a note of caution that while following the ratio of judgments delivered by the Apex Court in the context of different Acts, the principle laid down by the Apex Court with reference to another Act should not be mechanically followed to interpret cognate enactments of other States without first ascertaining whether the provisions of the two enactments are identical or similar. The following was observed in paragraph 19:

"19. ".....But before doing so, we have to note that many a time, a principle laid down by this Court with reference to the provisions of a particular State Act is mechanically followed to interpret cognate enactments of other States, without first ascertaining whether the provisions of the two

enactments are identical or similar. This frequently happens with reference to the laws relating to rent and accommodation control, co-operative societies and land revenue. Before applying the principles enunciated with reference to another enactment, care should be taken to find out whether the provisions of the Act to which such principles are sought to be applied, are similar to the provisions of the Act with reference to which the principles were evolved. Failure to do so has led to a wrong interpretation of section 70 of the KCS Act, in Veerashiva Co-operative Bank and Karnataka Sugar Workers Federation”.

The Apex Court in the said judgment thus laid down the following in paragraph 24:

“24. The resultant position can be summarized thus :

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

(b) The jurisdiction of Labour Courts and Industrial Tribunals to decide the disputes between co-operative societies and their employees was taken away only when sub-section (1) and sub-section (2)(d) of section 70 were amended by Act 2 of 2000 and the amendment received the assent of the President on 18.3.2000 and was brought into effect on 20.6.2000.

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

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

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

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

The ratio which can be culled out from the aforesaid case is that the State Legislature while enacting a law for the Co-operative Societies can make all provisions excluding jurisdiction of the Labour Court and the Industrial Tribunal and the provisions of the Parliamentary Act, i.e., the 1947 Act shall be overridden if the Act or enactment receives the assent of the President.

26. At this juncture we have taken note of another judgment of the Supreme Court in **R.C.Tiwari v. M.P. Co-operative Marketing Federation Ltd ([1997] 5 SCC 125)**. Petitioner in the said case was an employee of the Co-operative Society whose service was terminated for misconduct. On a reference made

under the Act, the Labour Court held that the enquiry was vitiated. The Labour Court set aside the dismissal. It was held that in view of Section 55 of the Madhya Pradesh Co-operative Societies Act, 1960, Labour Court had no jurisdiction. The judgment was challenged by the employee in the Apex Court. It was held that Section 55 of the Act gives power to the Registrar to deal with disciplinary matters and since Sec.64 begins with a non-obstante clause reference to the Labour Court was excluded. Following was laid down in paragraphs 2 and 3.

"2. The only question in this case is: whether the reference under S.10(1) of the Industrial Disputes Act, 1947 (for short, the "Act") is maintainable in view of the provisions contained in the M. P. Cooperative Societies Act, 1960 (for short, the 'Societies Act')? Admittedly, the petitioner was dismissed from service for his misconduct. Thereafter, he sought a reference under the Societies Act which was confirmed and became final. On a reference made under the Act, the Labour

Court in case No. 48/85 held that domestic enquiry was vitiated by illegality and accordingly it set aside the order of dismissal. In Writ Petition No. 2077/92 by judgment dated July 8, 1996, the High Court has held that in view of the provisions contained in S.55 of the Societies Act, the Labour Court has no jurisdiction and, therefore, the reference is bad. It is also held that since the finding was recorded by the Deputy Registrar, Cooperative Societies against the petitioner in the award, it operates as res judicata. The question is whether the view taken by the High Court is correct in law. S.55 of the Societies Act postulates thus :

"55. Registrar's power to determine conditions of employment in societies. - (1) The Registrar may, from time to time frame rules governing the terms and conditions of employment in a society or class of societies and the society or class of societies to which such terms and conditions of employment are applicable shall comply with the order that may be issued by the Registrar in this behalf.

(2) Where a dispute including a dispute regarding terms of employment working conditions and disciplinary action taken by a society, arises between a society and its employees, the Registrar or any officer, appointed by him not below the rank of Assistant Registrar shall decide the dispute and his decision shall be binding on the society and its employees.

Provided that the Registrar or the officer referred to above shall not entertain the dispute unless presented to him within thirty days from the date of the order sought to be impugned.

Provided further that in computing the period of limitation under the foregoing proviso the time requisite for obtaining copy of the order shall be excluded.

3. Learned counsel for the petitioner seeks to place reliance on S.64 of the Act dealing with disputes referable to the arbitration and contends

that the dispute of dismissal from service of the employee of the society being not one of the disputes referable to the arbitration under the Societies Act, the award of the Dy. Registrar is without jurisdiction. He relied on the decision of this Court in Cooperative Central Bank Ltd. v. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad, AIR 1970 SC 245. He also places reliance on S.93 of the Societies Act which states that nothing contained in the Madhya Pradesh Shops and Establishments Act 1958, the M. P. Industrial Workmen (Standing Orders) Act, 1959 and the M.P. Industrial Relations Act, 1960 shall apply to a Society registered under this Act. By necessary implication, application of the Act has not been excluded and that, therefore, the Labour Court has jurisdiction to decide the matter. We find no force in the contention. S.55 of the Societies Act gives power to the Registrar to deal with disciplinary matters relating to the employees in the Society or a class of Societies including the terms and conditions of employment of the employees. Where a dispute relates to the terms of employment, working conditions, disciplinary action taken by a Society, or arises between a Society and its employees, the Registrar or any officer appointed by him, not below the rank of Assistant Registrar, shall decide the dispute and his decision shall be binding

on the society and its employees. As regards power under S.64, the language is very wide, viz., "Notwithstanding anything contained in any other law for the time being in force any dispute touching the constitution, a management or business of a Society or the liquidation of a Society shall be referred to the Registry by any of the parties to the dispute." Therefore, the dispute relating to the management or business of the Society is very comprehensive as repeatedly held by this Court. As a consequence, special procedure has been provided under this Act. Necessarily, reference under S.10 of the Societies Act stands excluded. The judgment of this Court arising under Andhra Pradesh Act has no application to the facts for the reason that under that Act the dispute did not cover the dismissal of the servants of the society which the Act therein was amended".

Following are the ratios which can be culled from the aforesaid judgment of the Apex Court.

(a) That the State Legislature in its enactment relating to Co-operative Societies if makes provision which is repugnant to any existing law made by the Parliament under the Concurrent List the law if received the Presidential assent shall prevail over in the State

over Parliamentary enactment.

(b) Ratio of the judgment of the Supreme Court given interpreting the different State Acts is not to be mechanically applied and each provisions of each State Acts have to be examined and ratio to be applied thereafter.

(c) A legislative intendment regarding exclusion of jurisdiction has to be found out before determining the jurisdiction to entertain a dispute under the Forum provided either under the 1969 Act or the 1947 Act.

27. As noted above, the Division Bench has made a reference to the Full Bench for deciding the correctness or the Division Bench judgment reported in **Thodupuzha Taluk General Marketing Co-operative Society v. Michael Sebastian** (2010 [1] KLT 939) where the Division Bench has held that both the Industrial Tribunal and the Co-operative Tribunal shall have concurrent jurisdiction to decide the dispute

between the management and workers of the Society.

28. Another judgment following the said view is **Board of Directors, Edava Service Co-operative Bank v. The Co-operative Arbitration Court and others (2008 (3) KLJ 267)**. Apart from the above judgments, several other judgments were cited before us by the learned counsel for the parties in support of their submissions. A clear difference of opinion regarding the Forum to entertain the dispute pertaining to the disciplinary action against the employees of the Society is found. There are two earlier Full Bench judgments which had also made certain observations which also need to be noted and considered.

29. Before we note two Full Bench judgments of this court, and other judgment delivered by different Division Benches and learned Single Judge it is necessary to note the amendments made in Sec.69 by Act No.1 of 2000 which was enforced with effect from

2.1.2003. By the same amendment Sec.69 was amended and Sections 70A and 70B were also inserted. Section 69(1)(h) and 69(2)(d) which were amended are quoted below:

"69(1)(h) between the society and a creditor of the society, such dispute shall be referred to the Co-operative Arbitration Court constituted under section 70A in the case of nonmonetary disputes and to the Registrar, in the case of monetary disputes; and the Arbitration Court or the Registrar, as the case may be, shall decide such dispute and no other court or other authority shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute.

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

Amendments made in Sec.69 were not reserved for consideration of the President. A Division Bench of this Court in **Thodupuzha Taluk General Marketing Co-operative Society v. Michael Sebastian** (2010 [1]

KLT 939) had occasion to consider the amendment in Sec.69. Writ Petition was filed by the Co-operative Society challenging the award of the Labour Court setting aside the order of dismissal of the respondent employee. In the Writ Petition the Society contended that Labour Court has no jurisdiction to deal with the matter and the award is without jurisdiction. Amendment enforced with effect from 02.04.2003 was relied. The Division Bench noticed the amendments made and took the view that Labour Court and Co-operative Arbitration Court have concurrent jurisdiction. Division Bench further held that if Sec.69 of the 1969 Act was passed with the assent of the President, it may have overriding effect on the Central enactment. It is useful to quote the following observations made by the Division Bench in Paragraphs 3 and 4 of the judgment:

"3. ".....In view of sub-sections (1)(c) and (2)(d), it is clear that any dispute arising in connection with the employment of officers and

servants of a cooperative society is a dispute, which can be resolved under S.69(1). But, the office establishment of a cooperative society is an industry, as defined under S.2(j) of the Industrial Disputes Act. So, the dispute regarding denial of employment will be an industrial dispute, as defined under S.2(k) of the Industrial Disputes Act. The concerned worker can raise it as an industrial dispute under S.2A thereof. If S.69 of the Kerala Cooperative Societies Act was passed with the assent of the President, it may have overriding effect on central enactments, like the Industrial Disputes Act.

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

repelled by the learned Single Judge. So, the Writ Appeal fails and it is accordingly, dismissed”.

Now we come to the Full Bench decision of this Court reported in **Balachandran v. Deputy Registrar (1978 KLT 249 (F.B.))**. Issue raised before the Full Bench was whether the dispute as to seniority and promotion between two employees could have been referred to the Registrar under Sec.69 of the 1969 Act. The Deputy Registrar decided the dispute which was affirmed by the Appellate Tribunal. Writ Petition was filed by the employee to quash the orders. Argument raised before the learned Single Judge was that the dispute pertaining to service conditions, promotion and seniority are not disputes “touching the business of the Society and therefore not cognizable by the Registrar”. Full Bench referred to and relied on the decision of the Division Bench in **Kaloor Vadakkummury Service Co-operative Society Ltd v. Assistant Registrar, Mukundapuram and Others** (supra). The Full Bench

observed that the principle thus settled was that the Registrar will have jurisdiction to entertain all matters ordinarily and normally cognizable by civil court. The Full Bench held that since the dispute as to seniority or promotion cannot be entertained or made subject of a dispute in a civil court, the said dispute cannot be subject matter of arbitration by the Registrar. Following was laid down by the Full Bench in paragraphs 3 and 5:

“3. The question for decision is whether the dispute that has been decided by the 2nd respondent by Ext. P5 award is a dispute that can competently be resolved by the Registrar functioning under S.69 of the Act. For deciding this question, it is necessary to understand the scope and nature of the disputes that can be settled by an Industrial Tribunal or Labour Court We must, in their connection, refer to a passage from the decision of the Privy Council in The Labour Relations Board of Saskatchewan v. John East Iron Works Ltd. reported in AIR 1949 PC 129. The question therein was whether the provisions in the British North America Act, 1867, should be complied with in appointing the members of the Labour Relations Board under the Trade Union Act, 1944.

This question turned on the further question whether the Labour Relations Board could be termed a District and County Court. The members of the Judicial Committee, considered the scope and functions of the Labour Relations Board and we think that two paragraphs in the judgment are relevant. We shall extract those paragraphs:

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

27. In the Court of Appeal for Saskatchewan the learned Chief Justice (in whose opinion the other Judges concurred) accepted the view that the Board exercised a judicial power analogous to that of the Courts named on the ground that such Courts always had jurisdiction in connection with the enforcement of contracts of hiring and awarding damages for

the breaches thereof. But; as their Lordships think, this view ignores the wider aspects of the matter. The jurisdiction of the Board under S.5(e) is not invoked by the employee for the enforcement of his contractual rights: these, whatever they may be we can assert elsewhere. But his reinstatement, which the terms of his contract of employment might not by themselves justify, is the means by which labour practices regarded as unfair are frustrated and the policy of collective bargaining as a road to industrial peace is secured. It is in the light of this new conception of industrial relations that the question to be determined by the Board must be viewed, and, even if the issue so raised can be regarded as a justiciable one, it finds no analogy in those issues which were familiar to the Courts of 1867."

5. The same learned Chief Justice had to deal with this question again and we must refer to this decision as well for it settles another principle which we find has not been noticed in the numerous decisions that have been placed before us and which turns on the question whether a dispute was one "touching the business of the society" or affecting or relating to the business of the society. The decision we have in mind is the one in Kerala State Handloom Weavers' Cooperative Society Ltd. v. State of Kerala & Others reported in 1964 KLJ 175. After referring to the passage which we have just read, and a passage from the judgment of the Bombay High Court wherein Chief Justice Chagla had said this:

"Now Mr. Rane has very rightly pointed out that the disputes contemplated by S.54 are disputes of a civil nature which could have been decided by Civil Courts but for the provisions with regard to compulsory arbitration provided in S.45. Mr. Rane has also rightly pointed out that the present dispute between the second respondent and the petitioners could not have been the subject matter of a reference to arbitration under S.54. The second respondent is not claiming to assert any civil rights against the petitioners. What he is

claiming is certain rights which are now conferred upon workmen and employees as a result of principles of social justice, which are now almost universally acknowledged all the world over. There is no right of reinstatement under civil law which can be enforced by an employee against his employer. No contract of personal service can be specifically enforced by a civil court nor does a civil court determine whether the wages paid to an employee are proper wages or not. Civil Courts are bound down by the law of contract and it is under the law of contract that the Civil Courts decide disputes between a master and his servant."

the learned Chief Justice observed as follows:

"Emphasis was placed on the words "touching the business of a registered society" occurring in S.60(1) of the Travancore - Cochin Cooperative Societies Act, 1951, and various decisions bearing on those words like M. S. Madhava Rao and others v. D. V. K. Surya Rao (AIR 1954 Mad. 103) were brought to our notice. It is unnecessary to consider those decisions in this judgment. The question incases like this is not whether the dispute referred for adjudication touches the business of a cooperative society; the question really is whether that dispute comes within the category of disputes covered by S.60(1) of the Travancore Cochin Co operative Societies Act, 1951. The purpose of Chap.13 of the Travancore Cochin Cooperative Societies Act, 1951 the Chapter in which S.60(1) occurs is not to resolve all controversies touching the business of cooperative societies under the provisions of that Chapter; but resolve only such controversies as can be resolved in an ordinary court of law. In other words the arbitration provided by Chap.13 is an alternative to the normal processes of the ordinary courts and not to the extraordinary process of adjudication under the Industrial Disputes Act, 1947, which has been designed to deal with controversies which by their very nature are outside the purview of ordinary litigation."

With great respect, we fully agree with the views expressed in the above passage and in the light of that passage, we are not dealing with the numerous other decisions that have been quoted before us, on the question whether the dispute with which we are concerned here is a dispute touching the business of the cooperative society or touching the

establishment or management of the cooperative society. We will only therefore refer for the sake of completeness, to those decisions: GIP. Railway Employees Cooperative Bank Ltd. v. Bhikhaji Merwanji Employee reported in AIR 1943 Bombay 341, The Majoor Sahakari Bank Ltd. v. N. N. Majmudar and another reported in AIR 1957 Bombay 36, M/s. Cooperative Milk Societies Union Ltd v. State of West Bengal and others reported in AIR 1958 Calcutta 373, a later decision of the Calcutta High Court taking a different view from the decision in M/s. Cooperative Milk Societies Union Ltd. v. State of West Bengal and others reported in AIR 1958 Calcutta 373 in the decision in Workmen's Cooperative Industrial Home, Ltd. v. First Industrial Tribunal, West Bengal and others reported in 1968 II LLJ 772 and in South Arcot Cooperative Motor Transport, Society, Ltd. Devanam - Pattinam, Cuddalore v. Syed Batcha and others reported in AIR 1961 Mad. 217".

Next Full Bench Judgment which need to be noted is

Sherly v. Parappuram Milk Producers Co-operative Society Ltd. (2007 [1] KLT 809).

Question referred to the Full Bench has been noted in paragraph 1 of the judgment which is to the following

effect:

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

In the case before the Full Bench reference was made by the State Government under Sec.10(1)(d) of the 1947 Act referring the dispute for adjudication by the Industrial Tribunal. Question referred was whether the dismissal of the employee by the management was legal and justifiable. Society challenged the reference

order by means of a Writ Petition. The Tribunal has also passed an award holding that domestic enquiry against the workman is void and unsustainable, hence dismissal order was set aside. The Deputy Registrar of the Co-operative Society in exercise of the powers under Rule 176 of the Kerala Society Rules 1969 directed the Society to reconsider the matter. The Deputy Registrar subsequently rescinded the decision taken dismissing the appellant. The Society took up the matter to the High Court and this Court in the Writ Appeal quashed the order of the Deputy Registrar. The Deputy Registrar was directed to consider the matter afresh. The Division Bench also gave liberty to the employee to approach the Co-operative Arbitration Court against the disciplinary action. Subsequently, the Deputy Registrar reconsidered the matter and upheld the decision of the Society dismissing the employee. The employee took up the matter before the Co-operative

Arbitration Court. But the Co-operative Arbitration Court having not been constituted, the matter was not considered, the employee took up the matter before the Government under the provisions of the 1947 Act. Government referred the dispute for adjudication to the Tribunal. Objection was raised before the Tribunal regarding maintainability of the reference. Award was given by the Tribunal which was challenged in the Writ Petition by the Society. Learned Single Judge took the view that the Deputy Registrar having looked into the matter it is not open to the employee to take recourse to the remedies under the 1947 Act. Against the judgment of the learned Single Judge employee filed Writ Appeal. Following was laid down in Paragraphs 13 and 14:

"13. An employee subjected to a disciplinary action has right to have his grievance adjudicated before an independent Forum (a Forum, Tribunal, Labour Court etc.) having the trappings of a Court

after he has exhausted the departmental remedies. In the instant case, the employee did not get an opportunity before the Cooperative Arbitration Court since the same had not been notified and hence the reference of the dispute by the Government before the Industrial Tribunal is certainly valid. The decision of the Deputy Director cannot stand in her way. The worker must be conceded right to raise an industrial dispute contending that her dismissal affirmed by the managing committee and the Deputy Director is bad in law. However, we may clarify the legal position that if the remedy under the statute is before a forum akin to Court, which is bound to follow judicial procedure and its decision is made final by the statute, the position would be different.

14. On merits, it appears the matter has to be remitted to the Industrial Tribunal. The Tribunal rested its conclusions regarding the domestic enquiry leading to the disciplinary action on two grounds; (1) the High Court had already directed to conduct a fresh enquiry, in the judgment in OP No. 22912/97 and (2) the enquiry is conducted in violation of the principles of natural justice. As we have already noted above, one of the two reasons falls to ground since the direction by the learned Single Judge in the judgment in OP No. 22912/97 had already been set aside in WA 898/1998 in the reported decision

referred to above. We do not know whether the Tribunal would have reached the same conclusions on the remaining ground. Therefore, it will be only appropriate that the matter is remitted to the Tribunal with a direction to consider the preliminary point regarding the validity of the domestic enquiry, ignoring the judgment of this Court in OP No. 22912/97 Ordered accordingly and the Writ Appeal is allowed as follows:

(1) The judgment of the learned Single Judge is set aside.

(2) It is declared that Ext. P1 reference to the Industrial Tribunal is valid. Exts. P4 preliminary order as well as Ext. P5 award will stand quashed for the limited purpose of examining the case afresh in the light of the directions and observations contained in this judgment.

(3) The Tribunal shall dispose of the matter within a period of four months from the date of receipt of a copy of the judgment. We make it clear that we have not expressed any opinion as to the merits of the case in the matter of disciplinary action and it is for the Industrial Tribunal to adjudicate on the same and pass an award on merits. The same shall be done as expeditiously as possible, at any rate, within four months from the date of production of a copy of this judgment".

The Full Bench in above case thus found the reference before the Tribunal valid. However, clarification was also issued to the following effect:

"However, we may clarify the legal position that if the remedy under the Statute is before a forum akin to Court, which is bound to follow judicial procedure and its decision is made final by

the statute, the position would be different”.

30. A few more judgments of this Court need to be noted. In **Prakasini v. Joint Registrar (2006 [1] KLT 199)**, learned Single Judge of this Court took the view that after 2.1.2003 only Arbitration Court or Registrar can adjudicate the same. Said decision was rendered by the learned Single Judge with reference to Rule 176 of the Kerala Co-operative Rules. A Division Bench of this Court in **Raveendran v. State of Kerala (2007 [3] KLT 558)** had occasion to consider Sec.69 (2). An order was passed by the Joint Registrar determining seniority in the cadre of a junior clerk. The orders passed by the Joint Registrar and the Government confirming seniority was challenged by the employee. Learned Single Judge took the view that remedy open to the employee is to approach the Co-operative Arbitration Court against which Writ Appeal was filed. Following was laid down by the Division

Bench in paragraph 3:

"3. We are of the view, after the coming into force of Act 1 of 2000 with effect from 02/01/2003, the dispute in connection with the employment of officers and servants of different classes of societies specified in sub-section (1) of S.80 including their promotion and inter se seniority has to be decided by the Arbitration Court and not by the Joint Registrar or by the Government. The mere fact that this Court in a writ petition filed by the petitioners directed the Joint Registrar to decide the dispute cannot amount to conferring jurisdiction on the Joint Registrar to decide the dispute for which he has no jurisdiction. Judgment rendered by this Court would not confer any jurisdiction or authority on the Joint Registrar when legislature has conferred jurisdiction on the Arbitration Court. When this Court directs consideration of a matter by the Joint Registrar the Joint Registrar can decide that matter only in accordance with law. Legislature has conferred jurisdiction on the Arbitration Court to decide the question of seniority and promotion and therefore the order passed by the Joint Registrar is without jurisdiction. Learned Single Judge has rightly allowed the writ petition and quashed the order passed by the Government confirming the order of the Joint Registrar".

In **Board of Directors, Edva S.C.B. Ltd. v. Co-op.Arbitration Court** (supra) the learned Single Judge took the view that the dispute pertaining to dismissal is also fully covered by Sec.69(2)(d) of the 1969 Act. Following was laid down in paragraphs 3 and 7:

“3. S.69(1)(c) provides that notwithstanding anything contained in any law for the time being in force, if a dispute arises, between the Society and any officer, agent or employee or any past officer, past agent or past employee, such dispute shall be referred to the Cooperative Arbitration Court constituted under S.70A, in the case of non monetary disputes and to the Registrar, in the case of monetary disputes and the Arbitration Court, or the Registrar, as the case may be, shall decide such dispute and no other Court or other authority shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute. S.69(2)(d) provides that any dispute arising in connection with employment of officers and servants of the different classes of societies specified in sub-section (1) of S.80, including their promotion and inter se seniority, shall also be deemed to be disputes, for the purposes of S.69(1). A dispute regarding disciplinary proceedings and punishment, including an order of

dismissal is a dispute arising in connection with that employment since dismissal is a mode of termination of employment and the reliefs that could be granted to a person aggrieved by dismissal, are matters referable to the employment of the officer or the servant in question. Therefore, a dispute relating to the dismissal of an employee of a Cooperative Society and who thereby becomes a past employee is a matter that falls within the purview of disputes which are to be decided by the Cooperative Arbitration Court in terms of S.69(1) of the Act.

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

and inter se seniority' as the last limb of S.69(2)(d) only clarifies the position that notwithstanding any vagueness that may be pointed out in that regard in S.69(1)(c), such disputes also fall within the purview of that provision".

A judgment delivered by the learned Single Judge in **A.R. Nagar Service Co-op. Bank Ltd., No.F.583 v. State of Kerala and Another** (supra) is under challenge in W.A. No.184 of 2010 which is one of the appeals under consideration before this Full Bench. The learned Single Judge in the said case held that without Presidential assent for the Amendment Act 2000, jurisdiction of Labour Court and Industrial Tribunal cannot be excluded by the Societies Act. Following was laid down by the learned Single Judge in paragraph 4:

"4. Therefore, S.69 of the Societies Act can validly exclude the jurisdiction of Labour Courts and Industrial Tribunals under the Industrial Disputes Act, with reference to workmen of cooperative societies only if such provision has obtained the assent of the President of India as provided under Art.254(2) of the Constitution of India. Relying on a

sentence in the Division Bench decision of this Court in Kaloor Vadakkummury Service Cooperative Society Ltd. v. Assistant Registrar, Mukundapuram and Others, 1973 KHC 124 : 1973 KLT 523 : 1973 KLJ 510 : ILR 1973 (1) Ker. 542 : 1973 (2) LLJ 541 stating that 'The Act was passed with the assent of the President after the enactment of the Industrial Disputes Act, 1947', the learned counsel for the Society would raise an argument that since the Act itself had originally received the assent of the President, after introduction of sub-s.2(d), the jurisdiction under the Industrial Disputes Act would stand excluded since S.69 starts with the non obstante clause 'Notwithstanding anything contained in any law for the time being in force' and since sub-clause (h) of sub-section (1) of S.69, stipulated that 'no other Court or authority shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute.' This argument would not hold water for two reasons. The first is that contrary to the observation in the abovesaid case, even for the Act, Presidential assent was not received. Since none of the books relating to Kerala Cooperative Societies Act, 1969 contained any reference to Presidential assent for the Act, I directed the learned Government Pleader to ascertain from the Government as to whether the Act had in fact

received Presidential assent. The learned Government Pleader, after getting instructions, confirmed that no Presidential assent was received for the Societies Act. Therefore, the reference to such assent in 1973 KHC 124 : 1973 KLT 523 : 1973 KLJ 510 : ILR 1973 (1) Ker. 542 : 1973 (2) LLJ 541 is clearly a mistake. Further, Presidential assent should be obtained after the repugnancy comes into being. Prior to insertion of S.69(1)(h) and S.69(2) (d), there was no repugnancy between the Societies Act and the Industrial Disputes Act and therefore the question of requirement of Presidential assent prior to Amendment Act 1 of 2000 does not arise at all. Therefore, without Presidential assent for Amendment Act 1 of 2000, the jurisdiction of the Labour Courts and Industrial Tribunals under the Industrial Disputes Act for adjudicating industrial disputes raised by workmen of cooperative societies cannot be excluded by the Societies Act. That being so, in view of the fact that the Amendment Act 1 of 2000 amending S.69 of the Kerala Cooperative Societies Act has not received the assent of the President as provided under Art.254(2) of the Constitution of India, the said Section does not exclude the jurisdiction of the Labour Courts and Industrial Tribunals in respect of disputes raised by the workmen of cooperative societies in Kerala. But,

as laid down by the Supreme Court in Dharappa's case (supra), the jurisdiction to decide any dispute of the nature mentioned in S.69(2)(d) of the Kerala Cooperative Societies Act vests concurrently with Labour Courts/ Industrial Tribunals under the Industrial Disputes Act and with the Cooperative Arbitration Court and the Registrar as the case may be depending on whether the dispute is non monetary or monetary”.

Another judgment relevant to be noted is **Cheranallur Service Co-operative Bank Ltd v. State of Kerala (2012 [3] KHC 834)** where the Co-operative Society has challenged the order passed by the Co-operative Arbitration Court overruling the preliminary objection raised by the Society to the maintainability of arbitration case instituted by the 5th respondent against his dismissal from service. Preliminary objection was overruled by the Co-operative Arbitration Court against which Writ Petition was filed. Contention raised was that the term dispute occurring in Sec.2(i) of the 1969 Act cannot take the dispute pertaining to disciplinary

action. Therefore the arbitration case filed was not maintainable. The said argument was repelled referring to earlier judgments. Following was laid down in paragraphs 14, 15 and 16:

"14. The Division Bench held that the words "including their promotion and inter se seniority" are not meant to be exhaustive or restrictive, but only explanatory of what is already included and that, dismissal from service is indisputably a dispute in connection with employment. The Division Bench held that going by the plain meaning of the provisions contained in clause (d) of sub-section (2) of S.69 of the Act, it can be safely concluded that disputes concerning denial of employment, removal from service, dismissal from service, etc., will be disputes which could be adjudicated by the Co - operative Arbitration Court, that any other interpretation will not do justice to the scheme of the Act and that, by an interpretative exercise, this Court cannot take away the jurisdiction specifically conferred by the legislature. Interpreting the very same provisions, a learned Single Judge of this Court held in A.R.Nagar Service Co - operative Bank v. State of Kerala, 2010 (1) KHC 14 : 2010 (1) KLT 55 : ILR 2010 (1) Ker. 32 that insofar as employees

governed by the Industrial Disputes Act, 1947 are concerned, S.69 of the Act cannot exclude the jurisdiction of the Labour Court or the Industrial Tribunal for the reason that Presidential assent had not been obtained for Act 1 of 2000. It was held that the jurisdiction to decide any dispute of the nature mentioned in clause (d) of sub-section (2) of S.69 of the Act, vests concurrently with the Labour Courts or Industrial Tribunals under the Industrial Disputes Act, 1947 and with the Co - operative Arbitration Court and the Registrar as the case may be, depending on whether the dispute is a non - monetary dispute or a monetary dispute. The same view was taken by a Division Bench of this Court of which I was a member, in Thodupuzha Taluk General Marketing Co - operative Society v. Michael Sebastian, 2010 KHC 282 : 2010 (1) KLT 938, wherein the Division Bench held that in view of clause (c) of sub-section (1) read with clause (d) of sub-section (2) of S.69 of the Act, any dispute arising in connection with employment of officers and servants of a co - operative society is a dispute which can be resolved under S.69(1) of the Act.

15. The learned counsel for the petitioner however contended relying on the decision of the Apex Court in Sant Lal Gupta and Others v. Modern Co - operative Group Housing Society Limited and

Others (supra) that the Court has to ascertain for what purpose the fiction is created and the fiction must be limited to the purpose indicated by the context and cannot be given a larger effect. In that case, after holding that R.36(3) of the Delhi Co-operative Societies Rules, 1973 did not contain a deeming provision, the Apex Court held that it is the exclusive prerogative of the Legislature to create a legal fiction meaning thereby to enact a deeming provision for the purpose of assuming the existence of a fact which does not really exist. It was also held that even if a legal fiction is created by the Legislature, the Court has to ascertain for what purpose the fiction is created, and it must be limited to the purpose indicated by the context and cannot be given a larger effect. In the instant case, it is clear from the provisions contained in sub-section (2) of S.69 of the Act that the legislature intended to treat any dispute arising in connection with employment of officers and servants of the different classes of societies, including their promotion and inter se seniority as a dispute. The intention of the legislature was to bring a dispute arising in connection with the employment of officers and servants of the different classes of societies within the meaning of the term 'dispute' as defined in the Act. As held by the learned Single Judge in Edava

Service Co - operative Bank Ltd. v. Co - operative Arbitration Court (supra) which was affirmed by the Division Bench in WA No. 2057 of 2008, while a fiction cannot be extended beyond its legitimate field, full effect has to be given and the fiction carried to its logical end and the situation that is deemed to exist has to be permitted to flow freely. The interpretation placed by this Court in the aforesaid decisions on sub-section (2)(d) of S.69 of the Act does not in my opinion, enlarge the purpose for which the legislature created the fiction or give it a larger meaning. In the light of the authoritative pronouncement of this Court on the issue, I find no merit in the contention raised by the petitioner that clause (d) of sub-section (2) of S.69 of the Act does not take in its fold, a dispute arising out of the dismissal of an employee of a co - operative society from service. I accordingly overrule the said contention.

16. *That takes me to the question whether there is any merit in the contention of the petitioner that the Co - operative Arbitration Court cannot entertain the dispute for the reason that a Civil Court could not have entertained the dispute. It is relevant in this context to note that the petitioner does not challenge the validity of sub-section (2) of S.69 of the Act. His contention is that a Civil Court cannot*

enforce a contract of service, that only disputes which a Civil Court could have ordinarily entertained can be referred to arbitration under the provisions of S.69(1) of the Act as it stood before 02/01/2003 and therefore, the Co - operative Arbitration Court can have jurisdiction only in respect of such cases. In my opinion, the said contention is plainly untenable. It is open to the Legislature, as the Parliament did in the case of the Industrial Disputes Act, 1947 to enact a provision empowering a specified authority to interfere even with an order of dismissal from service and to order reinstatement. If that be so, in the absence of a challenge to the validity of sub-section (2) of S.69 of the Act, I find no merit in the contention of the petitioner that the Co - operative Arbitration Court has no jurisdiction to entertain the dispute. That apart, as held by this Court in A.R.Nagar Service Co - operative Bank v. State of Kerala (supra) and Thodupuzha Taluk General Marketing Co - operative Society v. Michael Sebastian (supra) in the case of employees who are governed by the Industrial Disputes Act, the jurisdiction is concurrent. If the Labour Court or the Industrial Tribunal constituted under the Industrial Disputes Act can order reinstatement in service of a workman who is governed by the Industrial Disputes Act, I find nothing wrong in the Co - operative

Arbitration Court directing reinstatement in service. That apart, under S.100 of the Act, the jurisdiction of a civil or Revenue Court is barred only in respect of any matter for which any provision is made in the Act. S.69 of the Act makes a provision for adjudication of disputes in connection with employment of officers and servants of the different classes of co - operative societies, which as held by this Court would take in disputes arising under disciplinary proceedings also. Therefore, merely because S.100 bars the jurisdiction of a Civil Court in respect of matters for which provision has been made in the Act, it cannot be said that the Co - operative Arbitration Court could not have entertained the dispute. In the absence of a challenge by the petitioner to the constitutional validity of sub-section (2) of S.69 of the Act, the contention that the Co - operative Arbitration Court cannot order reinstatement, is liable to be rejected".

The said judgment of the learned Single Judge was also affirmed by the Division Bench in W.A. No.184 of 2010. Shri Subramanian has raised the same submissions before us who was permitted to intervene in the matter which submissions were not accepted by the learned

Single Judge in the above case.

31. From the different judgments of this Court as noted above, it is clear that Sec.69 of the 1969 Act before its amendment by Act 1 of 2000 as well as after its amendment by Act 1 of 2000 had interpreted the scope and ambit of Sec.69.

32. The Full Bench of this Court (3 Judges Bench) in **Balachandran v. Deputy Registrar** (supra) took the view that the Registrar under Sec.69 of the 1969 Act has no jurisdiction to entertain any dispute pertaining to seniority and promotion. The Full Bench has also approved the earlier Division Bench judgment reported in **Kaloor Vadakkummury Service Co-operative Society Ltd v. Assistant Registrar, Mukundapuram and Others** (supra) where the Division Bench had taken the view that under Sec.69 of the 1969 Act for the dispute pertaining to service matters, Registrar has no jurisdiction to decide under

Sec.69.

33. We have already noticed that the 1969 Act was enacted by the State Legislature on a subject which is included in List II. Section 69(1) in Chapter IX of the 1969 Act dealing with settlement of disputes begins with a non-obstante clause “notwithstanding anything contained in any law for the time being in force”. The Apex Court in **Co-operative Central Bank Ltd and Others v. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad** (supra) had laid down that the enactment passed by the State Legislature which received the assent of the President shall prevail in a State despite the repugnancy with any enactment of the Parliament referable to the Concurrent List. The 1947 Act had been enacted for investigation and settlement of industrial disputes which was a Parliamentary Act under the Concurrent List. There is apparent conflict between Chapter IX of the 1969 Act

as well as the 1947 Act. The 1969 Act having enacted with Presidential assent dated 09.04.1969 it has to prevail in the State. We have also noted that the 1969 Act is comprehensive Act covering all aspects of the Co-operative Societies including settlement of disputes. Whether the State Legislature intended to override all provisions of the 1947 Act relating to employees and officers of the Co-operative Societies is the issue raised before this Full Bench.

34. As noted above Sec.69 (1) even before its amendment contemplated ..."all such disputes shall be referred to the Registrar for decision and "no court shall have jurisdiction to entertain any suit or any proceedings in respect of such proceedings". We have further noticed that Sec.100 of the 1969 Act is the provision which barred the jurisdiction of the civil or revenue courts of any matter for which provision is made in the Act. Section begins with the words "no civil

or revenue courts shall have any jurisdiction". It is relevant to note that in Sec.69(1) words used by the Legislature are "no court shall have jurisdiction whereas Sec.100 had used the words "civil or revenue courts". The Legislature has not used the words "civil or revenue courts" in Sec.69 and used the words "no courts" which supports the legislative intendment that the Legislature intended to exclude the jurisdiction of all courts including Industrial and Labour Court. There is no indication in the Act that the Legislature intended that the employees of the Society who are workman shall continue to raise their dispute before the Labour Court or Industrial Tribunal. Sec.69(1)(c) specifically includes a dispute between the society or its past officer or past agent or past employee which shall clearly include an employee who was dismissed from service. Section 2(i) which defines dispute does not confine to the matters touching the business or constitution of the society only

rather Sec.2(i) includes two more expressions i.e., touching the establishment and the management. The word 'establishment' has got wide meaning. 'Establishment' is defined in the Law Lexicon as follows:

"The word 'Establishment' means organised body of men maintained for a purpose and it applies to the factory or establishment or industrial organisation and not to changes in ownership or to the history of the organisation. Vittaldas v. R.P.F. Commissioner, AIR 1965 Madras 508, 511".

35. We are thus of the view that the word 'establishment' refers to all employees and officers on the roll of the society. Taking the plain meaning of the provision in Sec.2(i) read with Sec.69(1) (as unamended) leads to the inference that the enactment contemplated to exclude jurisdiction of all courts including Labour Court and Industrial Tribunal. The Apex Court in **Dharappa v. Bijappur Co-op. Milk Producers Societies Union Ltd** (supra) held that the principle laid down by the Apex Court that reference to

a particular Act should not be mechanically followed and each has to be looked into for applying the propositions laid down by the Apex Court. Provisions of Sec 2(i) and Sec.69(1) contains different phraseology to one which came for consideration before the Apex Court as noted above. We further notice that there is no such intendment in the Act which may indicate that the 1969 Act contemplated that the Forum provided in the 1969 Act shall take up all disputes of the Officers and for employees who are workman the matter should go before the Industrial Tribunal and Labour Court. In the event the submissions made by the learned counsel for the respondents is accepted, that Sec.69 as unamended does not embrace in itself the disputes regarding service matters of the employees, there will be no forum for resolving the dispute of the officers of the Society, since as per Sec.100 jurisdiction of Civil Court is barred. The interpretation by the respondents

would lead to a clear inconsistency which was never intended by the 1969 Act. The 1969 Act never contemplated that for two class of services of the society i.e., officers and employees there shall be different forum for resolution of disputes.

36. We are thus of the clear opinion that different judgments of this Court as noted above interpreting Sec.69 (unamended) requires reconsideration. It is observed that the 1969 Act (as unamended) intended to exclude jurisdiction of all the courts including Labour Court and Industrial Tribunal. The provisions of the 1947 Act shall stand overridden due to the Presidential assent dated 09.04.1969 and further amendments to the Act (Act 1 of 2000) has to be treated only clarificatory which needs no Presidential assent.

37. We have noticed that the two Full Benches of this Court as noted above have differently interpreted Sec.69 (as unamended). The judicial propriety

demands that the matter be referred to a Larger Bench for consideration of the ratio of above two Full Benches and other issues. In view of our discussion as made above, let the cases be placed before a Larger Bench to consider the issues as noted above with the following additional issue:

(ix) Whether the Full Bench judgments of this Court - Balachandran v. Deputy Registrar (1978 KLT 249 (F.B.) as well as Sherly v. Parappuram Milk Producers Co-operative Society Ltd. (2007 [1] KLT 809) lay down the correct law that under Sec.69 of the 1969 Act (unamended) the disputes of employees and officers of the Co-operative Societies regarding service matters

cannot be adjudicated?

Let the papers be placed before the Honourable
the Acting Chief Justice for constituting a Larger Bench.

**ASHOK BHUSHAN,
ACTING CHIEF JUSTICE.**

**A.M.SHAFFIQUE,
JUDGE.**

**A.K.JAYASANKARAN NAMBIAR,
JUDGE.**

Vsv