In the High Court of Punjab and Haryana, at Chandigarh

1. Civil Writ Petition No. 170 of 2021 (O&M)

The Ramdaspur Multipurpose Co-operative Agricultural Service Society Limited Ramdaspur and Others

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

2. Civil Writ Petition No. 173 of 2021

Parminder Singh Pannu and Others

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

3. Civil Writ Petition No. 176 of 2021

The Kapurthala Central Co-operative Bank Limited and Others

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

AND

4. Civil Writ Petition No. 198 of 2021

The Bachhauri Multipurpose Co-operative Agriculture Service Society Limited Bachhauri and Others

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

DATE OF DECISION: 12.05.2021

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. D.V.Sharma Senior Advocate
with Mr. Tushar Sharma, Advocate
for the petitioners.

Mr. S.P.S.Tinna, Additional Advocate General,
Punjab, for respondent No.1 and 2.

Mr. Ashwani Prashar, Advocate
for respondent No.3.

Anil Kshetarpal, J.

1. By this order, the following writ petitions shall stand disposed of:-

I) Civil Writ Petition No. 170 of 2021

II) Civil Writ Petition No. 173 of 2021

III) Civil Writ Petition No. 176 of 2021, And

IV) Civil Writ Petition No. 198 of 2021

2. Learned counsel representing the parties being common are *ad idem* that all these writ petitions involve identical questions of fact and law and therefore, the writ petitions, in this bunch, can be conveniently disposed of by a common judgment.

3. Civil Writ Petition No. 170 of 2021 has been filed by 12 multipurpose Co-operative service Societies whereas Civil Writ Petition No. 173 of 2021 has been filed by 6 authorized representatives of the Central Co-operative Banks, who claim to be the elected Directors of the Punjab State Co-operative Bank Limited, Chandigarh (hereinafter referred to as “the PSCB”). Civil Writ Petition No. 176 of 2021 has been filed by the Kapurthala Central Co-operative Bank and four other Societies whereas Civil Writ Petition No. 198 of 2021 has been filed by six Societies.

4. Through all these writ petitions, the petitioners assail the correctness of the order (29.12.2020) of the Registrar, Co-operative Societies, Punjab, (for short 'RCS') passed while rejecting the objection petitions against the proposed amalgamation the District Central Co-operative Banks (hereinafter referred to as "the DCCB") with PSCB.

5. On 03.12.2018, a proposal submitted to the Cabinet of the State of Punjab for amalgamation of various DCCBs with PSCB, Chandigarh, was approved with the following major objects and reasons for amalgamation:-

> *"A. Maintenance of Capital to Risk Weighted Assets Ratio (CRAR).*
>
> *B. Profitability of District Central Co-operative Banks is declining due to shrinking of banking business.*
>
> *C. Restrict flow of Credit by DCCBs in some areas of Punjab.*
>
> *D. Extra cost of computerization and other administrative expenses.*
>
> *E. Scheduled Bank Status – when DCCBs are restructured in to one unitary Bank, the bank will have the status of Scheduled Bank.*
>
> *F. Better tax management – The unitary system would provide a space of better tax management against the collective losses of all DCCBs.*
>
> *G. Better HR Management – After unitary structure, better utilization, deployment and the development of human resources can be done properly".*

Pursuant to the aforesaid decision of the Cabinet, on 29.12.2018 the RCS requested The Reserve Bank of India (hereinafter referred to as “the RBI”) to grant approval to the proposed amalgamation of the 20 DCCBs with PSCB which was "in principal” granted subject certain conditions and conveyed vide a communication dated 08.06.2020. However, the final approval and the consequential licensing of the branches is still pending with the RBI. The office of the Registrar got published a notice dated 10.06.2020 in two newspapers, namely “the Indian Express” and “Jagbani” inviting the objections, to the proposed amalgamation from any stakeholder, latest by 29.06.2020. The Registrar received 12 sets of objections. Out of 20 DCCBs, the Board of Directors of 14 DCCBs passed a resolution in favour of the amalgamation. The Board of Directors of the PSCB also supported the amalgamation. The General Body of 16 DCCBs also passed resolutions in favour of the amalgamation whereas 4 DCCBs did not support the amalgamation. On 29.12.2020, the RCS, after hearing the concerned parties, has rejected the objections by an order which is being impugned in these writ petitions.

6. Before this Bench proceeds to examine the arguments of learned counsel representing the parties, it would be appropriate to take note of certain relevant provisions of the Constitution of India, The Punjab Co-operative Societies Act, 1961 (hereinafter referred to as “the 1961 Act”) and the Bye-laws of PSCB.

Article 31A(1)(c) and 43(B) of the Constitution of India read as under:-

> *“31A. **Saving of laws providing for acquisition of estates, etc.**—(1) Notwithstanding anything contained in article*

13, no law providing for—

(a) and (b) XXXX XXXX XXXX

(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or

(d) and (e) XXXX XXXX XXXX

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by [article 14 or article 19]:

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent:

Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

31A(2) to 43A XXXX XXXX XXXX XXX

43B. Promotion of co-operative societies.—The State shall *endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies".*

Section 3, 13, 15A, 19, 26A and 70A of the 1961 Act read as under:-

*"**3. Registrar and other officers and their powers**. - (1) The Government may appoint a person to be the Registrar of Co-operative Societies for the State.*

(2) To assist the Registrar in his function under this Act the Government may appoint such number of Additional Registrars Joint Registrars, Deputy Registrars, Assistant Registrars and other persons with such designations as it may think fit.

(3) The Government may, by general or special order, confer on any person appointed under sub-section (2), all or any of the powers of the Registrar under this Act.

(4) Every person appointed under sub-section (2) shall exercise his powers subject to the general superintendence and control of Registrar.

(5) Notwithstanding anything contained in this Act, where any power of the Registrar is exercised by any person by virtue of the order issued by the Government under sub-section (3), the order passed or decision made by such person shall, for the purposes of appeal be deemed to be the order or decision of that person and not of the Registrar.

Section 4 to 12 XXXX XXXX XXXX XXX

13. Amalgamation, transfer of assets and liabilities and

***division of co-operative societies**. - (1) A co-operative society may with the previous approval of the Registrar and by a resolution passed by a two-thirds majority of the members present and voting at a general meeting of the society:-*

(a) transfer its assets and liabilities in whole or part to another co-operative society provided the co-operative society to which the assets and liabilities are to be transferred also passes a resolution in the aforesaid manner to accept such assets and liabilities in whole or in part, as the case may be;

(b) divide itself into two or more co-operative societies.

(2) Any two or more co-operative societies may, with the previous approval of the Registrar and by a resolution passed by a two-third majority of the members present and voting at a general meeting of each such society, amalgamate themselves and form a new co-operative society.

(3) The resolution of a co-operative society under sub-section (1) or sub- section (2) shall contain all particulars of the transfer, division or amalgamation, as the case may be.

(4) When a co-operative society has passed any such resolution, it shall give notice thereof in writing to all its members and creditors and notwithstanding any bye-laws or contract to the contrary, any member or creditor shall during the period of one month of the date of service of the notice upon

him; have the option of withdrawing his shares, deposits or loans, as the case may be.

(5) Any member or creditor who does not exercise his option within the period specified in sub-section (4) shall be deemed to have assented to the proposal contained in the resolution.

(6) A resolution passed by a co-operative society under this section shall not take effect until, either -

(a) the assent thereto of all the members and creditors has been obtained ; or

(b) all claims of members and creditors who exercise the options referred at in sub-section (4) within the period specified therein have been met in full.

(7) Where a resolution passed by a co-operative society under this section involves the transfer of any assets and liabilities, the resolution shall, notwithstanding anything contained in any law, for the time being in force, be a sufficient conveyance to vest the assets and liabilities in the transferee without any further assurance.

(8) Where the Registrar is satisfied that it is necessary in the interest of the co-operative society or co-operative societies that -

(i) any co-operative society be divided to form two or more co- operative societies; or

(ii) one or more co-operative societies be amalgamated with any other co- operative society; or

(iii) two or more co-operative societies be amalgamated to form a new co- operative society,

then, notwithstanding anything herein before contained, the Registrar may, after consulting the financing institution, if any, provide for -

(a) the division of that co-operative society into two or more co- operative societies; or

(b) the amalgamation of society or societies -

(i) with any other co-operative society; or

(ii) to form a new co-operative society;

with such constitution including representation on the committee, property rights, interests, liabilities, duties and obligations, as may be specified in the order.

(9) No order shall be made under sub-section (8), unless -

(a) a copy of the proposed order has been sent under certificate of posting to the society or societies concerned and the creditors;

(b) the Registrar has considered the objections received from the society or societies concerned or from any member or creditor of such society or societies within such period, being not less than fifteen days from the date of posting of the proposed order, as may be specified by the Registrar in this behalf in the proposed order.

(10) The Registrar may after considering the objections

referred to in sub- section (9), make such modification in the proposed order as he may deem fit and the order may contain such incidental, consequential and supplemental provisions as the Registrar may deem necessary to give effect to the same.

(11) In case a member or a creditor who had objected to the proposed order under sub-section (9) remains aggrieved with the orders of the Registrar, may make second reference to the Government within thirty days of passing of such order. The Government shall, after affording due opportunity of hearing to the members and creditors who have made second reference to the Government, annul, modify or uphold the order of the Registrar passed under sub-section (9). The decision of the Government in this regard shall be final.

(12) The order passed by the Registrar under sub-section (9) or by the Government under sub-section (11), as the case may be, shall be final and where such an order involves the transfer of any assets and liabilities, the same shall, notwithstanding anything contained in any law for the time being in force, be a sufficient conveyance to vest the assets and liabilities in the society in which these are vested under that order without any further assurance.

Section 14 to 15 XXXX XXXX XXXX XXX

***15A. Restrictions on individuals in becoming members of certain co-operative societies**. - (1) No individual shall be admitted as member of a central or apex society unless such a* *society has been exempted by the Registrar in this behalf, by a general or special order.*

(2) The Central and apex societies having individuals as members on the date of commencement of the Punjab Co-operative Societies (Amendment) Act, 1969 shall retire the shares of such individuals within a period of three years of such commencement in the prescribed manner.

Explanation - For the purpose of this Section, Section 26, Section 26-B and Section 84-A -

(a) "primary society" means a co-operative society whose membership consists exclusively of individuals;

(b) "Central society" means a co-operative society whose membership includes primary societies;

(c) "apex society" means a co-operative society whose membership includes central societies.

Section 15B to 18 XXXXXXXXXXXXXXX

***19. Manner of exercising vote.** - (1) Every member of a co-operative society shall exercise his vote in person and no member shall be permitted to vote by proxy.*

(2) Notwithstanding anything contained in sub-section (1), a co-operative society which is a member of another co-operative society, may, subject to the rules, appoint one of the members who is eligible to vote on its behalf in the affairs of that other society.

Explanation. - In case the member appointed by a society, to *vote on its behalf in the affairs of another society of which such society is a member, gets elected to the committee of that society, his term of office shall be co-terminus with the term of committee of that society.*

Section 20 to 26 XXXX XXXX XXXX XXX

26A. Co- option of members. *- (1) Notwithstanding anything in section 26, the Registrar may, by an order in writing, direct the committee of any co-operative society or any class of co-operative societies to co-opt in the prescribed manner for serving on the committee such number of members not exceeding two as may be specified in the direction.*

(2) Where a direction is issued under sub-section (1), co-option shall be made from amongst members of the co-operative society belonging to scheduled castes, scheduled tribes or backward classes or from amongst members who as landowner or tenant or as both do not hold more than the prescribed area of agricultural land and fulfill the prescribed conditions.

(3) Members co-opted under sub-section (2) for serving on the committee of a co-operative society shall have the same rights and privileges and shall be subject to the same liabilities as elected members of the committee of that society.

Section 26B to 70 XXXX XXXX XXXX XXX

70A. Order for winding up reconstruction, supersession of Committee etc. of [insured Co-operative Bank] *-*

Notwithstanding anything contained in this Act in the case of a [insured]Co-operative bank, -

(1) an order for winding up or an order sanctioning a scheme of compromise or arrangement or of amalgamation or reconstruction [including division or reorganisation] of the bank may be made only with the previous sanction in writing of the Reserve Bank of India;

(2) an order for the winding up of the bank shall be made by the Registrar if so required by the Reserve Bank of India in the circumstances referred to in Section 13-D of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (Central Act 47 of 1961);

(3) if so required by the Reserve Bank of India in the public interest or for preventing the affairs of the bank being conducted in the manner detrimental to the interests of the depositors or for securing the proper management of the bank an order shall be made by the Registrar for supersession of the committee of the bank and the appointment of an administrator therefor for such period or periods not exceeding five years in the aggregate, as may from time to time be specified by the Reserve Bank of India, and the administrator so appointed shall after the expiry of his term of office continue in office until the day immediately preceding the date of the first meeting of the committee of such bank;

(4) an order for winding up of the bank or an order

sanctioning a scheme of compromise or arrangement or of amalgamation or reconstruction [including division or reorganisation] or an order for the supersession of the committee of the bank and the appointment of an administrator therefor made with the previous sanction in writing or on the requisition of the Reserve Bank of India shall be final and shall not be liable to be called in question in any manner in any court, and

(5) the liquidator or the insured [co-operative] bank or the transferee bank, as the case may be, shall be under an obligation to repay to the Deposit Insurance and Credit Guarantee Insurance and Credit Guarantee Corporation Act, 1961 (Central Act 47 of 1961) in the circumstances to the extent and in the manner referred to in Section 21 of that Act.

Explanation - In this section,

(a) the expression "co-operative bank" shall have the meanings assigned to in the Deposit Insurance and Credit Guarantee Corporation Act, 1961;

(b) the expression "insured co-operative bank" means a co-operative [Society] which is an insured bank under the provisions of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (Central Act 47 of 1961);

(bb) the expression "Reserve Bank of India" means the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934 (Central Act 2 of 1934);

(c) expression "transferee bank" in relation to an insured co-operative bank means a co-operative bank -

(i) with which such insured co-operative bank is amalgamated, or

(ii) to which the assets and liabilities of such insured co-operative bank is transferred; or

(iii) into which such insured co-operative bank is divided under sub-section (1) of section 13".

Bye-laws 20, 29.4 and 29.7 of PSCB, as reproduced by the petitioners in the writ petition, read as under:-

"20. GENERAL BODY:

The General Body shall consist of the following:

20.1 Representatives of the member Cooperative Societies.

20.2 Nominees of the Government on the Board.

20.3 Registrar or his nominee not below the rank of Additional Registrar.

21 to 29.3 XXXX XXXX XXXX XXX

29.4 Registrar or his nominee not below the rank of Additional Registrar.

29.5 to 29.6 XXXX XXXX XXXX XXX

29.7 Two professionals to be co-opted as Directors by the Board of Directors from amongst the persons who are eligible as per fit and proper criteria fixed by Reserve Bank of India for co-option of Directors. Such Directors shall not have any voting right".

7. This Bench has heard the learned counsels for the parties at length and with their able assistance, perused the respective paper-books.

8. On liberty granted, the learned counsel representing the petitioners, has also filed the written synopsis along with the gist of arguments wherein the following arguments have been put forth:-

> “1. The proposed amalgamation of the DCCBs is against the voluntary formation and autonomous functioning of the Co-operative Societies.
>
> 2. The RBI has granted “in-principal” approval for voluntary amalgamation vide Annexure P-4 dated 08.06.2020.
>
> 3. Necessary ingredients of Section 13(8) of the Act have not been fulfilled.
>
> 4. There is non compliance of Section 13(9) of the Act.
>
> 5. The personal hearing was granted on 11.09.2020 by the Registrar where as scheme of amalgamation was prepared by the PSCB on 14.09.2020.
>
> 6. The Elected members of the Board of Directors did not agree with the amalgamation (Resolution dated 14.09.2020 Annexure P-10),
>
> 7. The General Body resolution dated 14.12.2020 (Annexure P-11) has not been passed by the Members of the Apex Bank”.

9. Per contra, the learned counsel representing the State of Punjab and PSCB have defended the writ petitions. In Civil Writ Petition No. 170 of

2021, which is the lead case, respondent No.1 and 2 filed a joint written statement, whereas the respondent No.3 filed a separate written statement. The petitioners have also filed separate replications to the both the written statements..

10. Mr. S.P.S.Tinna, Additional Advocate General, Punjab, while drawing the attention of the Court to the aims and objects of the amalgamation, points out that the DCCBs of Mansa, Gurdaspur and Amritsar have CRAR less than 9% and therefore, the National Bank for Agriculture and Rural Development (hereinafter referred to as "the NABARD") has stopped the refinancing of these DCCBs It has further been pointed out that the profitability of the DCCBs is consistently coming down and hence these DCCBs are no longer in a position to advance high yielding loans. The accumulated deficit of 10 DCCBs is ₹ 25,98,00,000/-. Some of the DCCBs do not have funds to advance loans for the development work whereas others have distribution surplus and One DCCB cannot provide financial assistance to another DCCB. It has further been pointed out that the RBI has only given "in-principal" approval and final approval is still awaited.

11. On the other hand, Mr. Ashwani Parashar, Advocate, while drawing the attention of the Court to Article 31-A(c) of the Constitution of India and the judgment passed by a five-Judge Bench of the Hon'ble Supreme Court in ***Daman Singh and Others v. State of Punjab and Others (1985) 2 SCC 670***, contends that the power of the State to pass an order of amalgamation of two or more Co-operative Societies was upheld. As per Section 70-A of the 1961 Act, the procedure to pass orders for the winding

up, reconstruction, super-session of the Committees etc. of an insured Co-operative Bank has been laid in detail.

12. After having heard the arguments of learned counsel for the parties, this Bench now proceeds to analyze the same.

13. First contention of the learned counsel representing the petitioner is with regard to the Scheme of the Constitution with respect to the Co-operative Societies. It would be noted here that the Hon'ble Supreme Court in ***Daman Singh*** *(supra)* after examining the entire matter has opined that the provision enabling the Government or its officials to order amalgamation, transfer of assets and liabilities and the division of the Co-operative Societies is constitutionally valid. The relevant discussion is given in paragraph 9 to 11, which are extracted as under:-

> *"9. The answer to the principal question raised by Shri Ramamurthi appears to us to be so plain as to merit, no further discussion. We must however notice here Damyanti Naranga v. Union of India which reliance was placed by the learned counsel on the basis that Article 31-A(1)(c) did not afford any protection to Section 13(8), (9) etc. That case has no application whatever to the situation before us. It was a case where an unregistered society was by statute converted into a registered society which bore no resemblance whatever to the original society. New members could be admitted in large numbers so as to reduce the original members to an insignificant minority. The composition of the society itself was transformed by the Act and the voluntary nature of the*

association of the members who formed the original society was totally destroyed. The Act was, therefore, struck-down by the court as contravening the fundamental right guaranteed by Article l9(1)(f). In the cases before us we are concerned with co-operative societies which from the inception are governed by statute. They are created by statute, they are controlled by statute and so, there can be no objection to statutory interference with their composition on the ground of contravention of the individual right of freedom of association.

10. The second submission of the learned counsel was that Section 13(8) of the Punjab Co-operative Societies Act for amalgamation of Co-operative Societies if the Registrar was satisfied that it was necessary to do so in the interest of the Co-operative Societies whereas the Constitutional protection was available only if the legislation was in the public interest or in order to secure the proper management of any of the corporations. According to the learned counsel the protection of Article 31-A(1)(c) was, therefore, not available to Section 13(8) of the Punjab Co-operative Societies Act as the interest of a Cooperative Society may not necessarily be in the public interest or for the proper management of the society. This submission is no more than a play with words. The very philosophy and concept of the Cooperative movement is impregnated with the public interest and the amalgamation of Co-operative Societies when such amalgamation is in the *interest of the Co-operative Societies is certainly in the public interest or can only be to secure the proper management of the societies. The argument of the learned counsel is an attempt at hair- splitting and is rejected.*

11. The next submission of the learned counsel was that Section 13 A (8), (9) and (10) did not make express provision for the issue of notice to the members of the concerned Co-operative Societies and were, therefore, violative of the principles of natural justice. He argued that in the absence of any provision, the rules of natural justice may be read into the provisions and notice to the members of the affected societies was imperative. Otherwise, he argued, 13 members of one society would be formed against their will and without being heard to associate themselves with members of another society. We have no hesitation in rejecting this submission also. Once a person becomes a member of a co- operative society, he loses his individuality qua the society and he has no independent rights except those given to him by the statute and the by-laws. He must act and speak through the society or rather, the society alone can act and speak for him qua rights or duties of the society as a body, So if the statute which authorises compulsory amalgamation of cooperative societies provides for notice to the societies concerned, the requirement of natural justice is fully satisfied. The notice to the society will be deemed as notice to all its member. That is why Section 13(9)(a) Provides for the *issue of notice to the societies and not to individual members. Section 13(9)(b), however, provides the members also with an opportunity to be heard if they desire to be heard. Notice to individual members of a. cooperative society, in our opinion, is opposed to the very status of a cooperative society as a body corporate and is, therefore, unnecessary. We do not consider it necessary to, further elaborate the matter except to point out that a member who objects to the proposed amalgamation within the prescribed time is given, by Section 31(11), the option to walk-out, as it were, by withdrawing his share, deposits or loans as the case may be".*

14. Still further, it is apparent that Section 13 of the 1961 Act is in two parts. The first part is in Section 13(1) to (7) which lays down the procedure for voluntary amalgamation of the Societies whereas the second part is in Section 13(8) to (12) which enables the RCS to bifurcate or amalgamate the Co-operative Societies. The legislature has used the non-obstante provision in Sub-Section (8). In other words, Sub-Section (8) has been placed at a higher pedestal, giving it an overriding effect over the other provisions contained therein-before. Still further, Section 70-A of the 1961 Act again starts with a non-obstante provision. It provides that an order for winding up or an order sanctioning a scheme of compromise or arrangement or of amalgamation or reconstruction of the bank may be made only with the previous sanction in writing of the RBI. Keeping in view the aforesaid statutory provisions to which there is no challenge, this Bench does not find any substance in the argument of the learned counsel for the petitioner.

15. The next argument of the learned counsel for the petitioner is based upon the “in-principal” approval granted by the RBI on 08.06.2020. The learned senior counsel contends that since the RBI has laid down certain conditions while granting the “in-principal” approval, therefore, it is a case of 'voluntary amalgamation' and not 'compulsory amalgamation'. In the considered opinion of this Bench, the argument suffers from a fundamental flaw. The proposal for amalgamation stems out from the resolution of the Cabinet of the State adopted on 03.12.2018. It was never the case of the respondent that the process of voluntary amalgamation has been commenced in terms of sub-Section (1) to (7) of Section 13 of the 1961 Act. In view thereof, merely because the RBI, while granting the “in-principal” approval, has directed to send the scheme of amalgamation to various DCCBs and place the same in the General Body meetings of the DCCBs and seek approval therefrom, would not convert the proposal for amalgamation from the second part to the first part of Section 13. The procedure prescribed under sub-Section (1) to (7) is different from the procedure prescribed under sub-Section (8) to (12). Thus, there is no substance in the argument of the learned counsel representing the petitioners.

16. The next argument of the learned counsel is with regard to the non-compliance of the provisions of sub-Section (8) of Section 13. The learned counsel contends that in the impugned order, the RCS has failed to record its satisfaction that it is necessary in the interest of the Co-operative Society or Co-operative Societies to amalgamate. The answer to the aforesaid argument lies in the order passed by the Registrar on 29.12.2018. In more than one paragraph, the RCS has recorded that the scheme is in the

interest of DCCBs and PSCB. It would be noted here that the Statute does not require the usage of a particular language. From the reading of the detailed order passed by the RCS, it is apparent that the RCS even while concluding has recorded that it would be in the overall interest of all the stakeholders if the various DCCBs are amalgamated with PSCB. Hence, this Bench expresses its inability to accept the argument of the learned counsel representing the petitioner.

17. The subsequent contention of the learned counsel is with reference to the violation of the provisions made in sub-Section 9 of Section 13 of the 1961 Act. On a careful examination of Section 13, it becomes clear that there are two requirements. The first is that a copy of the proposed order has to be sent under the certificate of posting to the Societies concerned and the creditors. The second requirement is that the Registrar, after considering the objections received from the Societies or from any member or creditor of such Societies, has to pass an order. As regards the first part, it is not in dispute that the notice inviting objections to the amalgamation was published in two newspapers i.e. the Indian Express and Jagbani on 13.06.2020. The Registrar has also recorded that the memorandum of understanding containing the proposal to amalgamate was sent to all the DCCBs while giving details of the scheme of amalgamation. It is also not in dispute that the postal department has already discontinued with the certificate of posting which was known as "UPC". Thus, the Registrar has published the notice inviting objections to all the stakeholders. Hence there is substantial compliance.

18. As regards the second part, it is also not in dispute that as many

as 12 objections were received and have been examined by the Registrar after granting an opportunity of hearing to the objectors. Thus, there is no violation of the provisions of sub-Section 9.

19. The next argument of the learned counsel is also without any substance because it is an admitted fact that the personal hearing was granted on 11.09.2020, whereas the scheme of amalgamation was prepared on 14.09.2020. The argument of the learned senior counsel is that during this short time of three days, the Registrar could not have examined the entire aspect and therefore, the Court must assume that the grant of hearing by the Registrar was not only farce but an empty formality. In the considered view of this Bench, the argument of the learned senior counsel is far-fetched from the reality. Merely because the Registrar has passed the orders expeditiously, itself, cannot be viewed with suspicion particularly when pursuant to the public notice the objections had already been received. It has been considered that the proposal had already suffered a huge delay on account of the time taken by the RBI, therefore, in these circumstances, if the RCS, has passed the order swiftly after following the procedure, the same cannot be viewed with suspicion.

20. The subsequent argument of the learned counsel representing the petitioners is factually incorrect. The Board of Directors of 14 DCCBs as well as PSCB had passed the resolutions in favour of the amalgamation of DCCBs with PSCB. In the general body meeting of 16 DCCBs, as well, the resolutions have been passed in favour of the amalgamation.

21. The learned counsel representing the petitioners, while relying upon Bye-law 29.7 of the Bye-laws framed by the PSCB, contends that two

professionals, who were co-opted as Directors by the Board of Directors were not entitled to vote in the meeting. The argument suffers from an error. On a careful perusal of Section 26-A of the 1961 Act, which has been extracted above, it can be observed that a provision has been made in the principal Statute itself that co-opted members shall be entitled to vote except to vote in any election of the Co-operative Society. Thus, in view of the provisions of Section 26-A, which was added by the Punjab Act No. 26 of 1969, it is apparent that co-opted members are entitled to vote except in the election of the Co-operative Society. Thus, the bye-law which is a subordinate legislation has to be read in accordance with the principal Statute. Learned counsel has further submitted that Smt. Barjinder Kaur is a Joint Registrar who has been required to look after the work of the post of Additional Registrar (Credit) and since she has never been appointed as an Additional Registrar by the Government in accordance with Section 3(2) of the 1961 Act, therefore, not entitled to vote. Although, even if her vote is excluded from consideration, still the resolution is valid because in the proceedings of the Board of Directors of the Bank, 8 Directors supported the amalgamation whereas 6 voted against it. In any case, it is apparent that she had participated in the meeting as a nominee of the Registrar. Still further, since she was discharging the functions of an Additional Registrar and nominated by the Registrar, himself, to attend the meeting, therefore, entitled to participate in the voting process.

22. The last argument of the learned counsel is with respect to the correctness of the resolution passed by the general body of the PSCB. The argument is that since various officials of PSCB who were/are deputed with

DCCB, have voted, therefore, they were not members of the general body and as such, their votes cannot be counted. The answer to the aforesaid argument lies in the careful perusal of Section 19 of the 1961 Act, which provides that if a Co-operative Society is a member of another Co-operative Society then one of the members of its Committee is entitled to vote on its behalf in the affairs of that other society. It may be noted here that the petitioners have not pleaded that the aforesaid officers/fresh employees were not the representatives of the DCCBs. The DCCBs have not been arrayed as parties in the writ petitions. The decision of the DCCBs to nominate these officers as their authorized representatives has not been questioned. In these circumstances, there is hardly any substance in the submission of the learned counsel for the petitioners.

23. Still further, it is apparent that sub-Section 8 to Section 13 of the 1961 Act is not dependent upon the resolutions of the DCCBs or the PSCB. The legislature has authorized the Registrar to pass order of amalgamation. On a careful perusal of sub-Section 8 to Section 13 of the 1961 Act, it is apparent that the RCS, is required to consult with the financial institution before taking a decision to amalgamate one or more Co-operative Societies. Besides the aforesaid obligation, the Registrar is required to follow the procedure laid down in sub-Section 9 of the 1961 Act. On a careful examination of the Scheme of the Statute for amalgamation under the orders of the Registrar, it can be observed that the consent of the Societies, proposed to be amalgamated, is not required. Sub-Section 11 only enables a member or creditor, who objects to the proposed order, to withdraw his share, deposits or loans within a period of 30 days of such order. Thus, if the

members or the creditors object to the amalgamation, they have been given an option to withdraw their share, deposits or loans in order to safeguard the interest of the member or the creditor. In view of the aforesaid Scheme of the Statute, it is not possible to read that prior approval of the DCCBs proposed to be amalgamated was required. However, even if there is some insignificant irregularity in following the procedure exist, that would not, itself, be sufficient to vitiate the proposal. The over-riding effect of the power of compulsory amalgamation, in contrast to the option of voluntary amalgamation, has already been upheld by the Hon'ble Supreme Court in ***Daman Singh*** *(supra)*.

24. Still further the proposed amalgamation is the realm of fiscal policy decision of the State. The scope of judicial review is extremely narrow. The courts are expected to very careful before interfering in it.

25. Keeping in view the aforesaid discussion, there is no substance in all these writ petitions. Hence, dismissed.

26. The miscellaneous application(s) pending, if any, in Civil Writ Petition No. 170 of 2021, shall also stand disposed of.

(Anil Kshetarpal)
Judge

May 12, 2021
"DK"

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No