passed *ex parte*, is also appealable. A person aggrieved by an order made under rule 3 of Order 17 has also a remedy by way of appeal as held in *Panna Lal Mandwari v. Mt. Bishen Dei* (6), and *Pitamber Prasad* v. *Sohan Lal and others* (7).

For all the reasons given above, the conclusion is that the view of the lower appellate Court as to the appeal before it being *per se* incompetent is not correct. The appeal is accordingly allowed but in the circumstances of the case with no order as to costs. The parties are directed to appear before the lower appellate Court on 5th December, 1966.

*R.N.M.*

CIVIL MISCELLANEOUS

*Before R. S. Narula, J.*

RAM CHANDER SINGH,—*Petitioner*

*versus*

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

**Civil Writ No. 2024 of 1966**

November 15, 1966

*Punjab Co-operative Societies Act (XXV of 1961)—S. 29—Act of society or its committee or officers—Grounds on which can be challenged—Resolution of co-operative society—Whether amounts to 'act' of the society—A resolution of the society passed in utter disregard of the statutory provisions—Whether saved by section 29—"Defect of procedure"—Meaning of—Whether covers violation of mandatory and statutory provision—Punjab Co-operative Societies Rules (1963)—Rule 80(1)(i)—Shorter notice—Whether can be equated to no notice at all—Registrar—Whether can permit complete dispensation with the requirement as to notice.*

*Held*, that an analysis of section 29 of The Punjab Co-operative Societies Act, 1961, shows that it is only an act of the society itself, or of its committee or officer which is made immune to an attack on its validity on the following grounds and no others—

(*a*) the existence of any defect in procedure; or

(*b*) the existence of any defect in the constitution of the co-operative society or its committee, as the case may; or

(c) in a case where the act of an officer of the society is sought to be declared invalid—

(*i*) the existence of any defect in the appointment or election of the officer concerned; or

(*ii*) the existence of any disqualification for the appointment of such officer.

(6) A.I.R. 1946 All. 353 (F.B.).

(7) A.I.R. 1957 All. 107.

The section does not save a mere purported act of the society or its committee or officers. Nor does the section save the acts of a group of its officers, unless such group of officers constitutes a committee of the society. Nor is any act of co-operative society saved by section 29 against an attack on its validity on any ground other than those enumerated above.

*Held*, that a resolution of a co-operative society amounts to its "decision" on the matters covered by it, but cannot be called "an act" of the society within the meaning intended to be ascribed to the expression in section 29 of the Act. What the society will do in pursuance of the decision will possibly be called its act. A resolution is a mere determination of a deliberative body and is not an act within the meaning of section 29 of the Act.

*Held*, that even if a decision of the society arrived at in its general meeting in the form of a resolution is an act of the society, section 29 of the Act will cover only such decision as is not contrary to any provision of the Act or of the statutory rules framed thereunder.

*Held*, that the phrase "defect of procedure" includes in its purview the defect of want of proper notice or of insufficiency of the period of notice as well as the taking up of a matter which is not on the agends in a meeting of the society. But the meaning which is to be assigned to a particular expression depends, amongst other things, on the family in which the words are found, i.e., on the environment of the particular expression and the context in which it is used. Judged from the point of view of the company in which the phrase "defect of procedure" occurs in section 29 of the Act, the expression is not intended to cover violation of mandatory and salutary provisions of the Act or the rules framed thereunder.

*Held*, that shorter notice envisaged by rule 80(1)(i) of The Punjab Co-operative Societies Rules (1963) cannot be equated to no notice at all. Clause (i) of sub-rule (1) of rule 80 does not authorise the Registrar to direct or permit complete dispensation with the requirement of notice. It only means that in special circumstances the Registrar may direct or permit notice of less than fifteen clear days for a meeting of the general body. This clause has nothing to do with the necessity or otherwise of including in the agends the items to be discussed in the meeting.

*Petition under Articles* 226 *and* 227 *of the Constitution of India, praying that a writ of* certiorari, mandamus *or any other appropriate writ, order or direction be issued quashing the proceeding of the Board of Directors, dated* 27*th August,* 1966 *and of the alleged general meeting, dated* 3*rd September,* 1966.

M. C. Jain, Advocate, for the Petitioner.

Bhagirath Dass and B. K. Jhingan, Advocates, for the Respondents.

ORDER

NARULA, J.—The ultimate result of this petition under Articles 226 and 227 of the Constitution impugning the validity of the alleged resolution dated September 3, 1966, said to have been passed in a general meeting of the members of the Panipat Co-operative Sugar Mills, Limited (hereinafter called the Society), purporting to amend a bye-law of that society relating to the election of its Chairman, will depend on the true scope and proper interpretation of section 29 of the Punjab Co-operative Societies Act, 1961 (hereinafter referred to as the Act).

The circumstances leading to the filing of this petition may first be summarised. The Society, which is registered under the Act, owns its sugar mill and other property at Panipat. It has to elect its Chairman from time to time according to its bye-laws framed under the relevant provisions of the Act and the rules made thereunder. The last date for filing nomination papers for election to the office of the Chairman during 1965-66 was December 28, 1965. The petitioner as well as respondents Nos. 4 and 5 (Choudhry Hardwari Lal and Choudhry Dharam Singh Rathi, respectively) filed their respective nomination papers within time. Respondent No. 5 subsequently withdrew his nomination. By his order dated December 29, 1965 (copy Annexure 'A' to the writ petition), the Returning Officer rejected the petitioner's nomination papers, thus allowing Choudhry Hardwari Lal, respondent No. 4, being declared elected unopposed. The petitioner's Civil Writ No. 226 of 1966 against the said order of rejection of his nomination papers was allowed by a Division Bench of this Court (Shamsher Bahadur, J., and myself), on August 26, 1966, and the then impugned order of the Returning Officer was quashed by us. Consequently the election of respondent No. 4 was set aside and it was left to the Society to hold fresh elections to the office of its Chairman according to the relevant rules.

The relevant bye-law 8 (iv) (e), which was in force at the time of the filing of the nomination papers, was in the following terms:—

"The general meeting shall transact the following business:—

(a) * * * * *

(b) * * * * *

(c) * * * * *

(d) * * * * *

(e) the election, suspension and removal of the elected members of the Board of Directors, including the

Chairman and one or more Vice-Chairmen. The election shall be held in accordance with the rules framed by the Registrar in this behalf and adopted by the Board of Directors."

The previous case was argued in this Court on the admitted basis that the Chairman of the Society had to be elected by the members of the Society in its general meeting under bye-law 8 (iv)(e), reproduced above, and not by its Board of Directors. In fact an attempt had been made to amend the above quoted bye-law so as to leave the election of the Chairman to the Board of Directors instead of electing the Chairman in the general meeting, but the said amendment had been rejected by the general meeting of the Society held on January 5, 1966. After the decision in the previous writ petition an agenda for a general meeting of the Society to be held on September 3, 1966 (copy Annexure 'B' to the writ petition), was issued on August 20, 1966, by respondent No. 3, the General Manager of the Society. The agenda contained seven items, but it is the admitted case of both sides that there was no item in the agenda (copy Annexure 'B' to the writ petition) relating to any proposed amendment of bye-law 8 (iv)(e) or any other bye-law of the Society. According to the petitioner, the said agenda for the meeting to be held on September 3, 1966, was received by the members on August 23, 1966, as is disclosed by the postal stamps on the cover of notice of the meeting received by one of its members (copy Annexure 'C' to the writ petition). The petitioner's case is that Choudhry Hardwari Lal, respondent No. 4, and Choudhry Dharam Singh Rathi, respondent No. 5 conspired with the Registrar, Co-operative Societies (respondent No. 2), and adopted a novel method of taking over the entry cards from the members without getting their signatures on the attendance register with a sinister motive and that as the consensus of the house was against the respondents, the Vice-Chairman of the Board of Directors (respondent No. 5) and some other Directors slipped away from the meeting and took away the minute-book of the Society with them and the members dispersed after holding their own meeting after waiting for the return of the Vice-Chairman, who did not turn up. A police report to that effect was lodged at the Police-station Panipat, at 5 p.m. on September 3, 1966, to guard against the apprehension of the Vice-Chairman and his supporters not making any forgeries in the minute-book. Copy of the police report is Annexure 'D' to the writ petition. On September 17, 1966, the petitioner received a notice from the General Manager to the effect that a meeting of the Board of Directors of the Society would be held on September 24, 1966. Item No. 3 in the agenda for

the meeting related to the election of the Chairman of the Board of Directors from amongst and by the members of the Board only. It had been stated in the notice of the meeting that the shareholders had in their general meeting held on September 3, 1966, amended bye-law 8(iv) of the bye-laws of the Society so as to omit the words "including the Chairman and one or more Vice-Chairmen" from clause (e) of the said bye-law and had added a new clause 9(B) (vi) (a) in the following words:—

> "The Chairman and one or more Vice-Chairmen of the Board of Directors and mentioned in clause (vi) above, shall be elected annually by the Directors from among themselves."

Item No. 8 in the said agenda of the proposed meeting of the Directors, which was to be held on September 24, 1966 (copy Annexure 'E' to the writ petition) was in the following words:—

> "To consider the note of the Vice-Chairman concerning the conduct of some of the shareholders. The note will be placed at the table."

Since the copy of the agenda for the general meeting of the Society to be held on September 3, 1966, did not contain any item relating to the proposed amendment of the bye-laws of the Society, and according to the petitioner no such amendments had been passed in the meeting, the specified impugned amendment having admittedly been rejected by the general house on January 5, 1966, the petitioner got apprehensive of the intention of the respondents. The case of the petitioner, as brought out in the writ petition, was that in fact no such amendments were passed in the meeting and that the respondents had in collusion with one another merely made forgeries to that effect *mala fide* and in a surreptitious manner in the minute-book of the Society. It is impossible to enter into any such controversy in the present proceedings. The parties, therefore, argued this case on the basis that such amendments had in fact been put to vote in the general meeting of September 3, 1966. Copy of the proceedings of the said general meeting, which is correct according to the respondents, had been produced (Annexure 'F' to the writ petition). The petitioner further understood that the three members against whose conduct the

Vice-Chairman (respondent No. 5) was expected to put up note in the meeting, included the petitioner himself as he apprehended that the respondents Nos. 4 and 5 would in conspiracy with the other respondents try to get rid of the petitioner by expelling him from the Society on one pretext or the other. The petitioner, therefore, submitted an application dated September 17, 1966 (copy Annexure 'G' to the writ petition), to the General Manager of the Society requesting for the supply of a copy of the alleged note of the Vice-Chairman concerning the conduct of some of the share-holders, which matter was at item No. 8 in the agenda for the Board's meeting scheduled to be held on September 24, 1966. The application was returned by the General Manager to the petitioner with an endorsement to the effect that the note in question had not yet been received by the General Manager. It was at that stage that this writ petition was filed on September 20, 1966, to quash the proceedings of the meeting held on September 3, 1966 (copy Annexure 'F" to the writ petition), and in any case the proceedings of that date relating to the above-mentioned amendment of the bye-laws of the Society, and to prohibit the respondents from holding any meeting of the Directors on September 24, 1966, for electing the Chairman of the Board and to restrain the respondents from discussing item No. 8 in the agenda for the said meeting of the Board (copy Annexure 'E' to the writ petition). A further direction of the Court to respondents Nos. 1 and 2 to hold the election of the Chairman between the petitioner and respondent No. 4 in accordance with the previous decision of this Court dated August 26, 1966, was prayed for. While admitting this writ petition on September 23, 1966, the Motion Bench (Mehar Singh, C.J., and D. K. Mahajan, J.), directed issue of notice returnable for October 3, 1966, and meanwhile stayed the election of the Chairman scheduled to be held on September 24, 1966. Respondents Nos. 1 and 2 (The State of Punjab and the Registrar, Co-operative Societies, Punjab) have not filed any written statement in reply to the writ petition. The return of respondents Nos. 3 to 5 dated October 1, 1966, has been filed in the shape of the affidavit of the General Manager of the Society, respondent No. 3. Besides taking up certain preliminary objections, which will be dealt with separately, the case set up by the contesting respondents on the merits of the controversy is that the Registrar had in exercise of his powers under the proviso to clause (i) of rule 80(1) of the Punjab Co-operative Societies Rules, 1963, made by the Governor of Punjab in exercise of the powers conferred on him by section 85 of the Act, directed by his order dated August 30, 1966 (copy Annexure 'R 2' to the written statement), the inclusion in the agenda of the general meeting fixed for

September 3, 1966, the following items for consideration of the general body:—

"(i) From the existing bye-law 8(iv)(e) the words 'including the Chairman and one or more Vice-Chairmen' should be omitted.

(ii) After clause (vi) of bye-law 9(B) of the bye-laws of the Society, the following new clause namely, clause (vi)(a) shall be added:—

(vi) (a) The Chairman and one or more Vice-Chairmen of the Board of Directors, mentioned in clause (vi) above, shall be elected annually by the Directors from among themselves'.

(iii) At the end of bye-law No. 2, the following new bye-law be added:—

'2(viii). To do any other processing activity with a view to encourage its members and to promote their economic interest.' "

Paragraph 2 of the letter of the Registrar, dated August 30, 1966 (copy Annexure R. 2), addressed to the General Manager of the Society, is in the following terms:—

"2. The above direction is being issued to you under proviso to clause (i) of sub-rule (1) of rule 80 of the Punjab Co-operative Societies Rules, 1963, as amended,—*vide* Punjab Government notification No. GSR 205/P. A-25/61/S. 85/Amd(2)/65, dated September 3, 1965. The draft amendment in the bye-laws of the Mills has also my approval."

The defence of the respondents is that want of notice of the agenda for the amendment of the bye-laws was covered by the proposal of the Registrar dated August 30, 1966, though admittedly no notice of the said proposal or of the additional items sought to be included in the agenda of the general meeting by that proposal was ever issued or served upon any of the members of the Society. As a last resort refuge has been sought by the respondents for protecting the impugned resolutions under section 29 of the Act, to which reference will hereinafter be made.

Before dealing with the merits of the controversy involved in this case, it is necessary to dispose of four preliminary objections to the maintainability of this writ petition raised before me by Mr. Bhagirath Dass, learned counsel for respondents Nos. 3 to 5. The first objection is that this Court should refuse to entertain this petition on the ground that the petitioner has failed to exhaust the alternative remedies available to him under sections 55, 56, 68 and 69 of the Act. It does appear to me that the petition could, if so advised, approach the Registrar under section 55 of the Act to settle this dispute. But under section 56 (1) of the Act it would have been in the discretion of the Registrar either to decide the dispute himself or to refer it for disposal to an arbitrator or to transfer it for disposal to any person who might have been invested by the Government with powers in that behalf. In view of the alleged conspiracy between the Registrar himself on the one hand and respondents Nos. 4 and 5 on the other, the remedy by way of arbitration under sections 55/56 of the Act does not appear to me to be an equally beneficial or effective alternative remedy, the non-availment of which would disentitle the petitioner to invoke the writ jurisdiction of this Court. In fact going to the Registrar with the allegations made before me would have been nothing but a farce and could not normally be expected to yield any results. The further remedies under section 68 or 69 of the Act by way of appeal or revision lie against the order of the Registrar or his nominee and could not possibly have been invoked without first going through the proceedings under section 56 of the Act. Proceedings under those sections cannot, therefore, be even described as alternative remedies to the one actually adopted by the petitioner in this case. Any suit in a civil Court claiming the redress which has been sought for by the petitioner in the present writ petition is admittedly barred under section 82 of the Act. That being so, I hold that there is no bar to the filing of this writ petition by the petitioner on account of other possible alternative remedies referred to above.

The second preliminary objection of Mr. Bhagirath Dass was that this Court does not ordinarily interfere with the day to day internal management of societies registered under the Act. Reliance for that proposition was placed on the judgment of the Lahore High Court in *Bharat Insurance Company, Limited* v. *Kanhaya Lal Gauba* (1). wherein it was held that the general rule is that in all matters of internal management of a company the company itself is the best judge of its affairs and the Court should not interfere. That

(1) A.I.R. 1935 Lahore 792.

case related to a joint stock company and not to a society registered under the Act. Even then Sale, J., who wrote the judgment of the Lahore High Court for the Division Bench consisting of Dalip Singh, J., and himself, held that where the main point involved before the Court relates to the interpretation of a certain clause in the memorandum of association relating to the application of the assets of the company, it was not a matter of mere internal management and a single member of the company could maintain a suit against the company for a declaration as to the true construction of the Article in question. In the instant case no interference of this Court in the internal management of the Society is called for. As stated in the opening sentence of this judgment, the fate of the case depends upon the interpretation of certain statutory provisions which will govern not only the particular proceedings of this Society, but will settle a possible controversy which is likely to arise again and again in connection with similar matters. The second case to which Mr. Bhagirath Dass referred in support of his said objection was the judgment of this Court in *Kirpa Ram* v. *Shriyans Prasad* (2), J. L. Kapur, J. (as he then was), held in that case that it is an elementary principle of the law relating to joint stock companies that the Court will not interefere with the internal management of companies acting within their powers. The only question which is to be decided by me in this writ petition is whether the Society was acting within its powers in passing the impugned resolutions purporting to amend their bye-laws or not. Even, according to Kapur, J's judgment in *Kirpa Ram's case*, such a course if adopted by a Court is not prohibited. There is, therefore, no force even in the second contention of the learned counsel for respondents Nos. 3 to 5.

The third preliminary objection of Mr. Bhagirath Dass was that this Court cannot in exercise of its jurisdiction under Article 226 of the Constitution embark upon an inquiry as to whether on September 3, 1966, a meeting was in fact held or not and if it was held whether it was regularly conducted or not, as these controversies involved disputed questions of fact. As observed in an earlier part of this judgment, I am not going to embark on any such inquiry and I am proceeding to decide this case on the basis that the meeting scheduled to be held on September 3, 1966, was duly held and that the impugned resolutions were passed therein without there being any advance notice of the same.

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(2) 1951 P.L.R. 469.

The last objection of preliminary nature raised by the respondents was that this writ petition is premature inasmuch as it was filed before the holding of the meeting on September 24, 1966, and that the petitioner should have first raised all the objections, which he wants to press here, in the meeting of the Board itself and should have invoked the extraordinary jurisdiction of this Court only if the Directors themselves did not give adequate relief to the petitioner. This objection, in the circumstances of the present case, appears to me to be wholly misconceived. The petitioner wants to challenge the validity and legality of the impugned resolutions amending the bye-laws. Those resolutions having been passed by the general body, the Directors would have been bound by the same and I have not been able to see how the Directors could hold the resolutions of the general body to be *ultra vires* the Society. The Directors of a Co-operative Society are merely delegates of the general body under the proviso to sub-section (1) of section 23 of the Act and cannot question the validity of the resolutions purporting to have been passed in a general meeting of the members. Moreover, the petitioner has come to this Court on the allegation of a deep-rooted conspiracy between respondents Nos. 4 and 5 and their supporters as well as the Registrar. This was not a matter which could in the circumstances of this case be properly agitated before the smaller body of Directors with any possible hope of getting any redress. The fourth objection of the respondents also, therefore, fails.

Stage is now set for dealing with the merits of the case. The first point pressed by Shri M. C. Jain, the learned counsel for the petitioner, was that the general meeting of September 3, 1966, was held without the requisite proper notice of 15 clear days and, therefore, all the business transacted in the said meeting is *ultra vires* clause (i) of rule 80(1) of the Punjab Co-operative Societies Rules, 1963, and the said business is, therefore, liable to be declared invalid and non-existent in the eye of law. Rule 80(1)(i) of the Punjab Co-operative Societies Rules, 1963 as amended by Punjab Government, Co-operative Department Notification No. GSR-205/P.A. 25/61/S. 85/Amd (2)/65, dated September 3, 1965, reads as follows:—

> "At least fifteen days' clear notice specifying the date, place, time and agenda for a meeting of a general body/committee and at least seven days' clear notice for a meeting of any smaller body set up by either of them, whether convened by the Registrar, the President or

otherwise, shall be given to all the members of the general body/committee or smaller body, as the case may be:

Provided that a shorter notice may be given to all the members of the general body/committee or smaller body, as the case may be, with the permission of the Registrar or under his direction."

There is no doubt that the notice dated August 20, 1966, for meeting to be held on September 3, 1966, could not amount to "fifteen days' clear notice" as only thirteen clear days are left between the two dates. So far as the agenda of the items covering the impugned resolutions is concerned, it was not there at all in the notice dated August 20, 1966. It is, therefore, not necessary to pronounce finally upon the effect of less than fifteen days' clear notice of the general meeting in question having been given. If I find that disputed items relating to the impugned amendments of the bye-laws were properly brought before the house, it may become necessary to go back to the question of the validity of the meeting itself. But in the view I am taking of the question of legality of the introduction of those items into the business actually transacted by the general body on September 3, 1966, it is unnecessary to deal with the effect of insufficiency of notice of the meeting.

It is no doubt true that under the amended rule quoted above, shorter notice of a meeting than that prescribed by the rule can be given to the members of the general body with the permission of the Registrar or under his direction. If this is done, no complaint can be made, except on the ground of *mala fides*, against the insufficiency of notice. In this case the Registrar had specifically exercised his powers under the proviso to clause (i) of sub-rule (1) of rule 80 of the 1963 rules in so far as the impugned items are concerned. He is, therefore, deemed to have permitted the service of a shorter notice of the items on the members. If on the receipt of the communication dated August 30, 1966 (copy Annexure 'R2' to the written statement), from the Registrar, the General Manager had issued a notice to all the members and served it on them at any time before September 3, 1966, informing them of the meeting being held for considering those items, the objection as to want of proper notice of the meeting for consideration of those items would not have been tenable in law. But the unfortunate thing that happened in the present case was that the

General Manager kept the communication (Annexure R. 2) with him and did not give any notice of the same or of the items mentioned therein to any of the members at any time before the actual holding of the meeting on September 3, 1966. That being so, the permission of the Registrar granted under the proviso to clause (i) of sub-rule (1) of rule 80 became useless and ineffective as the action required under law pursuant to the said permission was not taken by the General Manager. It is, therefore, held that the meeting held on September 3, 1966, in so far as it dealt with the impugned matters, and the passing of the impugned resolutions were *ultra vires* clause (i) of sub-rule (1) of rule 80 and their validity is not saved by the proviso to the said sub-clause. Shorter notice envisaged by rule 80(1)(i) cannot, in my opinion, be equated to no notice at all. Clause (i) of sub-rule (1) of rule 80 does not authorise the Registrar to direct or permit complete dispensation with the requirement of notice. It only means that in special circumstances the Registrar may direct or permit notice of less than fifteen clear days for a meeting of the general body. This clause has nothing to do with the necessity or otherwise of including in the agenda the items to be discussed in the meeting.

Reliance is then placed by Mr. Bhagirath Dass on clause (ii) of sub-rule (1) of rule 80 as amended by the aforesaid Punjab Government Notification, dated September 3, 1965. Clause (ii), as amended, reads as follows:—

> "No matter shall, except with the permission or direction of the Registrar, be considered either in a meeting of a general body/committee or in a meeting of any smaller body set up by either of them, unless that matter is specifically included in the agenda which is circulated to all members at least fifteen clear days or seven days in advance, respectively."

The defence based under the above-mentioned provision is to the effect that the Registrar, who was present in the general meeting in question, is deemed to have permitted or directed the consideration of the impugned items, though they were not in the original agenda and though no shorter notice of the same had even been given to the members. The misfortune of the respondents, however, is that it is neither stated in the admittedly correct proceedings of the meeting dated September 3, 1966 (Annexure 'F' to the writ petition), nor even in the written statement filed in this Court that the Registrar exercised his

powers under clause (ii) of rule 80(1) and either permitted or directed the consideration of the items in question in the said general meeting, in spite of the fact that no agenda of the same had been circulated to the members at all. In fact the provisions of clauses (i) and (ii) of rule 80(1) are intended to deal with different situations which would not ordinarily co-exist for the same item. When the Registrar permitted the serving of shorter notices of the disputed items by his order, dated August 30, 1966, it could not be said that he had thereby exercised the powers under clause (ii) of rule 80(1). Question of exercise of power under clause (ii) can arise only if a new matter is raised in the meeting for which no proper agenda has been issued or served. Any item of an agenda, which had either not been circulated or of which lesser than the prescribed notice had been issued without the Registrar's permission, may be permitted to be raised at the meeting with the permission or under the direction of the Registrar. But no such permission or direction was in fact given or even pleaded by the respondents to have been given in this case. The validity of the impugned resolutions is, therefore, not saved even by clause (ii) of sub-rule (1) of rule 80.

After the discussion on the above-said two subjects had concluded, Mr. Bhagirath Dass almost conceded that, but for the provisions of section 29 of the Act, the validity of the resolutions in question could not be supported or sustained. He, however, laid great emphasis on section 29 of the Act, which is reproduced below, to save the impugned resolutions from the petitioners attack:—

> "29. No act of a co-operative society or of any committee or of any officer shall be deemed to be invalid by reason only of the existence of any defect in procedure or in the constitution of the society or of the committee or in the appointment or election of an officer or on the ground that such officer was disqualified for his appointment."

An analysis of this section shows that it is only (1) an "act" (2) of the society itself, or of its committee or officers, which is made immune to an attack on its validity on (3) the following grounds and no others:—

(a) the existence of any defect in procedure; or

(b) the existence of any defect in the constitution of the co-operative society or its committee, as the case may be; or

(c) (in a case where the act of an officer of the society is sought to be declared invalid) :

(i) the existence of any defect in the appointment or election of the officer concerned; or

(ii) the existence of any disqualification for the appointment of such officer.

The section does not save a mere purported act of the society or its committee or officers. Nor does the section save the acts of a group of its officers, unless such group of officers constitutes a committee of the society. Nor is any act of a co-operative society saved by section 29 against an attack on its validity on any ground other than those enumerated above.

This study of the ingredients of section 29 leads to the necessity of answering two questions, namely:—

(1) Can the passing of the impugned resolution No. 7 by the general meeting of the members of the Society in utter disregard of the statutory requirements of clause (i) of sub-rule (1) of rule 80 of the rules be called 'an act of the Society'; and

(2) Whether non-compliance with the aforesaid clause amounts to a mere 'defect of procedure within the meaning of Section 29'.

It appears to me that the resolution of the Society amounted to its decision on the matters covered by it, but could not be called 'an act of the Society' within the meaning intended to be ascribed to that expression in section 29 of the Act. It was a mere proceeding of the Society. What the Society might have done in pursuance of the said decision could possibly be called its act. In this sense the impugned resolution cannot be saved by section 29 of the statute as it is only the acts of the Society and not its decisions or proceedings which are covered by that provision. A resolution is a mere determination of a deliberative body and is not an act within the meaning of Section 29 of the Act.

Even if it could be argued that a decision of the Society arrived at in its general meeting in the form of a resolution is 'an

act of the Society', I think Section 29 would cover only such a decision as is not contrary to any provision of the Act or of the statutory rules framed thereunder. Such a decision may be a mere purported act of the Society, but is not really the act of the Society in the eye of law. The expression 'act' in section 29 does not, in my opinion, include a purported act of the Society or its committee or officers.

Clause (i-a) of sub-rule (1) of rule 80 of the 1963 rules is in the following terms:—

> "The Registrar may, of his own motion or on a reference made to him, declare the proceedings of the meeting referred to in clause (i) as invalid, if he is satisfied that the meeting was held without proper notice or without all the members having received the notice for the meeting or if the meeting was not conducted at the appropriate place and time."

The above-quoted statutory rule expressly empowers the Registrar to declare the proceedings of a meeting of the general body of members of a co-operative society as invalid if the Registrar is satisfied—

(i) that the meeting was held without proper notice; or

(ii) that the meeting was held without all the members having received notice for the same; or

(iii) that the meeting was not conducted at the appropriate place and time.

If the grounds on which the impugned resolution is attacked can be called procedural defects, it cannot in any case be denied that the grounds on which the Registrar is authorised to annul the proceedings of any meeting of a society by declaring the same invalid are also members of the same family, i.e., those defects are also merely procedural. The *vires* of rule 80(1)(i-a) have not been challenged before me by Mr. Bhagirath Dass. Section 29 binds the Registrar as much as it binds the Courts. Once it is held that the Registrar can declare the proceedings of a meeting as invalid on account of the procedural defects mentioned in clause (i-a) of sub-rule (1) of rule 80, and that such declaration by the Registrar would not be hit by section 29 of the Act, it is apparent that the legislature did not intend proceedings of the meeting of a society being brought within the purview of the

expression "act of the society" as used in section 29. If section 29 is construed in the way in which the learned counsel for the respondents wants to interpret it, it would be impossible for the Registrar to exercise the powers vested in him by rule 80(1)(i-a). For this additional reason I hold that the validity of the impugned resolution is not made immune against an attack on its validity by section 29 of the Act.

Taking up the second question, I am inclined to hold that in the widest sense the phrase "defect of procedure" may include within its purview the defect of want of proper notice or of insufficiency of the period of notice as well as the taking up of a matter which is not on the agenda in a meeting of the society. But the meaning which is to be assigned to a particular expression depends, amongst other things, on the family in which the words are found, i.e., on the environment of the particular expression and the context in which it is used. Judged from the point of view of the company in which the phrase "defect of procedure" occurs in section 29 of the Act, I think the expression is not intended to cover violation of mandatory and salutary provisions of the Act or the rules framed thereunder.

The kinds of defects in procedure intended to be covered by section 29 appear to be such defects which could not have been known at the time of the performance of the relevant act of the co-operative society or such defects as are merely directory and technical in nature. Rule 10 of the 1963 Rules framed under section 85 of the Act provides that no amendment of the bye-laws can be carried out save in accordance with a resolution passed at a general meeting of the co-operative society of which due notice of the intention to discuss the amendment has been given. Besides the other safeguards mentioned in the provisos to rule 10, it is apparent that the contents of the rule are mandatory and not merely directory. To distinguish between the kind of technical procedural defects intended to be covered by section 29 and those which are not intended to be so covered, it would be appropriate to notice that if a meeting in which the act of the society is performed is held on fifteen lays' notice but not on fifteen clear days' notice, it may be said that the invalidity of the act cannot be claimed on account of such a defect of procedure. On the other hand, if the very constitution of a society is sought to be changed by making substantial amendments in its bye-laws and the same are purported to have been made without giving any notice at all of the intended amendments to the members of the society, who were merely

furnished with the original agenda, and without even obtaining the permission or direction of the Registrar in the meeting itself, the defect would not be merely procedural but would go to the root of the matter. In addition to the general safeguard provided in clause (ii) of sub-rule (1) of rule 80 about no matter being permitted to be considered in a meeting of the general body unless the matter is specifically included in the agenda which is circulated to all the members at least fifteen clear days in advance, rule 10 lays down a further fetter on the consideration of any resolution relating to amendment of the bye-laws of a society. Whereas under rule 80 a mere mention of the item in the agenda, may be sufficient to satisfy its requirements, it would be necessary to circulate a verbatim copy of the proposed amendment of the bye-laws in question to all the members of a co-operative society with a notice of the intention to discuss the said amendment at the general meeting so as to satisfy the requirements of rule 10. Non-compliance with the mandatory provisions of rule 10 cannot, in my opinion, be described as 'procedural defect' covered by section 29 of the Act. Section 29 appears to cure procedural defects which are in the nature of mere irregularities and not illegalities of the kind committed in this case. Rule 10 reads as follows:—

> "No amendment under rule 9 shall be carried out save in accordance with a resolution passed at a general meeting of the co-operative society of which due notice of the intention to discuss the amendments has been given:
>
> Provided that no such resolution shall be valid unless it is passed by a majority of members present at the general meeting at which not less than two-third members for the time being of the co-operative society are present.
>
> Provided further that model bye-laws for amendments previously approved by the Registrar may be adopted by a majority at an ordinary general meeting."

Rule 9 provides for amendment of bye-laws of a society. A perusal of the first provsio to rule 10 (quoted above) shows that no resolution for an amendment of bye-laws of a society can be passed otherwise than by a majority of the members present at a general meeting at which not less than two-thirds members of the society for the time being are present. Though the allegations of the petitioner in this respect were not very specific, it has been stated in the return filed on behalf of the contesting respondents that the Society had on its rolls about 16,000 members at the time of its

general meeting on September 3, 1966, and that only 1,971 out of them attended. One thousand, nine hundred and seventy-one out of 16,000 cannot possibly be said to constitute two-thirds of the members of the society. On this additional ground the impugned resolution has to be struck down. The bye-laws of a Society are sacrosanct and cannot be allowed to be amended in an unauthorised manner.

The only other point urged by the counsel for the petitioner against the impugned resolution was the one contained in the following passages occurring in paragraph 14 of the writ petition:—

> "Assuming though not admitting, that the general meeting could be and was held on September 3, 1966, no amendment of the bye-laws could be discussed in the meeting unless due notice of it was given to all the members. The Society had about 20,000 members and all have to be informed about the proposed amendment. No amendment of the bye-laws can be surreptitiously introduced, even on the recommendation of the Registrar, on the day of the general meeting called for an agenda which did not include that item, particularly when this amendment was unanimously rejected in the last annual general meeting held on January 3, 1966. Respondents' action in doing this is *mala fide* as they wanted to bypass the orders dated August 26, 1966, of this Hon'ble High Court * * * * * * * * * * * *
>
> Respondents are in such indecent haste that they are not only indirectly flouting the directions of this Hon'ble Court but trying to expel certain members, including the petitioner. Item 8 of the agenda for the meeting of September 24, 1966, is an indication in that direction. Neither names of the members (shareholders) have been specified, nor note of the Vice-Chairman sent to the office by September 17, 1966. Respondents Nos. 4 and 5 are thus abusing their powers and their majority in the Board of Directors."

The charge of *mala fides* is very easy to be levelled and very difficult to be repelled. I am, therefore, normally very reluctant to label any action of a public official as *mala fide*. But in this particular case I am constrained to find substantial force in the allegations of the petitioner. The Registrar of Co-operative

Societies is a responsible Officer on whom the Act enjoins the duty of seeing to the proper functioning of co-operative societies under his jurisdiction and for compelling compliance with the provisions of the Act and the rules. That he was persuaded to issue a special order, dated August 30, 1966, so as to circumvent rule 80(1) (i) without there being any apparent reason for such indecent haste in trying to bring out a crucial amendment in the constitution of the Society, which particular amendment had already been rejected by the general body of the society only a few months before (i.e., on January 5, 1966), shakes the judicial confidence which is otherwise expected to be placed in an officer of that status regarding matters of the type covered by the present petition. It does appear to me that the Registrar played into the hands of respondents Nos. 4 and 5 by helping them to bring out this surreptitious amendment of the relevant bye-laws of the Society which would probably have nullified the effect of the decision of this court in the earlier writ petition. To say the least, I should not have expected such an action from an officer of the status of the Registrar of Co-operative Societies. It is a matter of regret that in spite of having notice of the writ petition and particularly in view of the definite allegations of conspiracy with respondents Nos. 4 and 5 and of *mala fides* having been made against him, the Registrar has chosen not to rebut any of the allegations made against him by filing a return to the rule issued to him. I am, therefore, left with no option but to accept the allegations made against him as correct; as he has not availed of the opportunity afforded to him to rebut the same. It is normal for members of a society, which has on its rolls a large number of shareholders, to avoid bothering themselves about a general meeting in which the agenda contains only routine items. If the agenda of the proposed amendment of the bye-laws had been circulated, many other members might have attended the meeting to take part in the controversial subject. Whether they would actually have done so or not, is not my concern. But that is the object of the relevant rules, to which reference has already been made. For the foregoing reasons I hold that the impugned resolution (No. 7), if at all passed in the meeting held on September 3, 1966, was introduced from the back door by the Registrar in a *mala fide* manner and, therefore, the sanctity which could normally attach to his purported order under clause (i) of sub-rule (1) of rule 80 also does not attach to the particuar resolution. So far as the first matter involved in this writ petition is concerned, it is, therefore, held—

(i) that the impugned resolution was passed in violation of

the express and mandatory provisions of rule 80(1)(i) and rule 10 of the 1963 rules;

(ii) that there was no valid order of the Registrar in respect of the said resolution under the proviso to rule 80(1)(i);

(iii) that no direction or permission was issued or granted by the Registrar at all under clause (ii) of sub-rule (1) of rule 80;

(iv) that the impugned proceedings of the general meeting of the Committee did not amount to an act of the Society within the meaning of section 29 of the Act;

(v) that the defects consisting of non-compliance with the above-said rules were not merely procedural but rendered the proceedings relating to the said resolution illegal; and

(vi) that the item in dispute was introduced by the Registrar in the agenda without any notice to the members in a surreptitious and *mala fide* manner, which is wholly repugnant to the principles of natural justice.

Resolution No. 7, dated September 3, 1966, purporting to have been passed by the Society is, therefore, quashed and declared to be non-existent in the eye of law.

On the second point pressed by the petitioner, there is not much controversy. This relates to item No. 8 in the agenda of which the petitioner sought details from the General Manager, which were not given to him. The fear of the petitioner was that the Directors might have sought to expel the petitioner and two of his supporters in some proceedings of disciplinary nature while deciding the said item. Rule 22(c) of the 1963 rules provides that the general meeting of a co-operative society alone shall have the power to expel any of its members. Bye-law 4(1) of the Bye-laws of the society provides as follows:—

"A member may be expelled from the membership of the Society for any of the following reasons after he had been given one month's notice of such intention by the Board of Directors and his explanation has been considered—

(a) if he is a persistent defaulter; or

(b) if he does any act calculated to prejudice the interest of the Society and its management; or

(c) if he is declared bankrupt; or

(d) if he is convicted of any offence involving dishonesty or moral turpitude; or

(e) if he fails to carry out the obligations imposed under these bye-laws.

Any expelled member may appeal to the Registrar, Co-operative Societies, within one month from the date of receipt of such communication against the decision of the Board of Directors."

No such proceedings as are envisaged by bye-law (4)(1) have taken place so far. Respondents Nos. 3 to 5 have also averred in their written statement that they have no intention to take any action against the petitioner otherwise than according to the rules and they have no intention to expel the petitioner. Mr. Bhagirath Dass conceded at the bar that no such action is intended to be taken against the petitioner.

No other point was argued before me in this case.

In the above circumstances this writ petition is allowed. The impugned resolution of the general body of the Society, dated September 3, 1966 (resolution No. 7), purporting to amend the bye-laws of the Society, is quashed and set aside and it is directed that election of the Chairman of the Society shall be held between the petitioner and respondent No. 4 alone, as directed in the previous case in accordance with the provisions of the Act, the 1963 rules and the bye-laws of the Society. No direction is necessary regarding item No. 8 in the agenda for the meeting of the Board of Directors which was fixed for September 24, 1966, in view of the assurance given by the respondents. The petitioner would be entitled to have his costs from the respondents.

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*K.S.K.*

CIVIL MISCELLANEOUS

*Before S. B. Capoor and Gurdev Singh, JJ.*

HARJIT SINGH AND ANOTHER,—*Petitioners.*

*versus*

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

**Civil Writ No. 197 of 1966**

November 23, 1966

*Pepsu Tenancy and Agricultural Lands Act (VIII of 1955)—S. 32-FF and Pepsu Tenancy and Agricultural Lands Rules (1958)—Rule 23-A—Whether*