

**N.E. Region**

**CO-OPERATIVE SOCIETIES ACTS &  
RULES**

# **The Assam Co-operative Societies Act, 1949\***

**(Assam Act 1 of 1950)**

**[ *Passed by the Assembly* ]**

*[Received the assent of the Governor-General on the 25th January, 1950]*

**An Act to facilitate the formation and working of  
Co-operative Societies and to consolidate and  
amend the law relating to Co-operative  
Societies in the Province of Assam.**

**Preamble.** Whereas it is expedient further to facilitate the formation and working of Co-operative Societies for the purpose of thrift, self-help, mutual aid and creating the quality of credit worthiness among agriculturists, artisans and other persons with

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common economic needs so as to bring about a higher standard of living, better business, better methods of production, equitable distribution and exchange and for that purpose to consolidate and amend the law relating to Co-operative Societies in the Province of Assam.

It is hereby enacted as follows:

## **COMMENTS**

*Preamble.* This act has been enacted to facilitate the formation and working of Co-operative Societies and to consolidate and amend the law relating to the Co-operative Societies in the State of Assam. There is a Central Act, viz., the Co-operative Societies Act, 1912, which amended the Co-operative Credit Societies Act, 1904. The Act of 1904 applies to Societies for the purpose of Co-operative Credit only and not to Co-operative Societies of other kinds. The Central Act has been repealed in its application to Assam and Nagaland by the present Assam Act 1 of 1950.

The policy of the Co-operative Societies Act is to save the person concerned from protractive, expensive and sometimes ruinous litigation of the civil courts and its object is to encourage, help and

bring co-operation among the persons having limited means. The object of the Co-operative Societies is also to create the quality of credit-worthiness among agriculturists, artisans and other persons with common economic needs so as to bring about a higher standard of living, better business, better methods of production, equitable distribution and exchange.

The Supreme Court in the case of *British India Corporation Limited v. Collector of Central Excise* [AIR 1963 SC 104], was concerned with the question as to whether exemption of excise duty to the factory run by a Co-operative Society, when exempted on payment of such duty was discriminatory or not. Their Lordships held that such exemption does not fall under discrimination. Similar question also arose in the cases of *P.V. Shivarajan v. The Union of India* [1959 Supp (1) SCR 779] and *Gordhandas v. Assistant Collector of Central Excise and Customs*. [(Unreported, decided on 27-9-68 in CA No. 1040 of 1965)].

## **CHAPTER 1**

### **Preliminary**

#### **1. Short title, extent and commencement.**

- (1) This Act may be called the Assam Co-operative Societies Act, 1949.
- (2) It extends to the whole of the State of Assam.
- (3) It shall come into force on such date as the State Government may appoint.

### **COMMENTS**

The Act came into force from 1<sup>st</sup> April, 1950, vide Notification No. CG 6/50/ 40, dated 3-3-1950.

#### **1. Definitions.** In this Act, unless there is anything repugnant in the subject or context —

- (a) **“Administrative Council”** means a body intermediary between a Managing Body and the General Assembly of registered society:

- (b) **“Affiliating Society”** means the registered society of which a particular society is a member and “Affiliated Society” means the particular society which is a member of the affiliating society.
- (c) **“Arbitrator”** means a person appointed under the provisions of this Act to decide any dispute referred to him.
- (d) **“Audit Officer”** means a person appointed under the provisions of this Act to audit the accounts of a registered society.
- (e) **“By-law”** refers to the registered by-laws for the time being in force and includes a registered amendment of bye- laws.
- (f) **“Co-operative Years”** means the period beginning and ending on such dates as may be fixed by the Registrar for the purpose of drawing up the balance sheets of registered societies;
- (g) **“Co-operative Demand Certificate”** means a certificate as defined in S. 83.
- (h) **“Employee”** means a person, not being an office-bearer, employed by a registered society on a salary or similar form of remuneration other than advance

patronage dividend or payment for goods sold to or through such society.

- (i) **“General Assembly”** means the supreme body of a registered society as defined in S.31.
- (j) **“Managing Body”** means the body to which the management of the affairs of a registered society is directly entrusted and does not include the Administrative Council;
- (k) **“Member”** means a person admitted to membership after registration in accordance with the bye-laws and rules of the society and includes a promoter;
- (l) **“Office-bearer”** means a member duly elected by the appropriate body of a registered society, according to its bye-laws to any office of such society, including the office of the President, Chairman, Vice-President, Vice-Chairman, Secretary , Managing Director and Treasurer : provided that any officer appointed by Government to hold charge of any office of a registered society shall be deemed to be an office-bearer unless specifically stated to be contrary;
- (m) **“Prescribed”** means prescribed by rules;
- (n) **“Promoter”** means any eligible person or registered society signing the application of a society;

- (o) **“Registered society”** means a co-operative society registered or deemed to have been registered under this act and includes a society formed after amalgamation of such two or more societies or by division of such an existing society;
- (p) **“Registrar”** means a person appointed to perform the duties of a register of a co-operative societies under this act;
- (q) **“Rules”** means rules made under this act;
- (r) **“Signature”** includes the thumb-impression of an illiterate person;
- (s) **“Bank”** means –
  - (i) A banking company as defined in the banking regulation act, 1949.
  - (ii) The State Bank of India constituted under the State Bank of India Act, 1955.
  - (iii) A subsidiary Bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959.
  - (iv) A corresponding new Bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970;

- (v) The Agricultural Refinance Corporation constituted under the Agricultural Refinance Corporation Act, 1963;
- (vi) Agricultural Finance Corporation Limited, a company incorporated under the Indian Companies Act, 1956; and
- (t) A “Financing Bank” means a bank as defined in Cl. (s) of S.2 of this Act or a Co-operative Bank providing working capital to a registered Co-operative Society.

## **COMMENTS**

Sub-sections (s) and (t) have been inserted by Assam Act XIII of 1975, having received the assent of the President of India on the 17<sup>th</sup> day of October, 1975.

“Officer” and “office-bearer” – distinction between [Section 2(h) and (i) ]. It was held in *Bisheshwar Neog v. State of Assam*, [1993(i) GLR 184 ] that there is a distinction between the words “Officer” and “office-bearers” in the sense that the “Officer is an employee of a co-operative society employed by the Managing committee of the society and “office-bearer” is an elected person coming up by election.

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## **CHAPTER II**

### **Registration of Societies**

#### **3. The Registrar.**

- (1) The State Government may appoint a person to be a Registrar of Co-operative Societies for the Province or any portion of it for the registration supervision, assistance, counsel and control of registered societies and for the development of the co-operative movement and control over all co-operative education and with such other powers and responsibilities as may be provided under this Act or rules or bye-laws framed thereunder.
- (2) The state Government may also appoint persons to assist the Registrar and may, by general or special order in writing, delegate to any such person or to any other Government Officer all or any of the powers of the Registrar under this Act.
- (3) The State Government may also appoint non-official helpers with such designations and functions as prescribed to aid in the organization of Co-operative Societies.



## **COMMENTS**

Under sub-S. (1) of this section the State Government is empowered to appoint a person to be the Registrar of the Co-operative Societies for (1) registration, (2) supervision, (3) assistance, (4) counsel, (5) control of registered societies, (6) for the development of co-operative movement, (7) control of overall co-operative education, and (8) all such powers and responsibilities which may be provided under this Act or rules or bye-laws framed thereunder.

Under sub-S. (2) the Government is also empowered to appoint such Persons to assist the Registrar to whom any of the powers of the Registrar Under this Act may be delegated.

Under sub-S. (3) the Government is empowered to appoint non-official helpers whose designations and functions may be prescribed.

Section 3 of the Co-operative Societies Act, 1912 also prescribes the appointment of a Registrar by the State Government.

#### **4. Societies which may be registered.**

- (1) A society which has as its objects the promotion of the economic interests or general welfare of its members or of the public in accordance with the co-operative principles, or a society established with the object of facilitating the operations of any society may be registered under this Act with limited liability.
- (2) No society shall be registered if in the opinion of the Registrar, its declared objects are unlikely to be achieved or if it is likely to be economically unsound or if it may have an adverse effect upon any registered society or the co-operative movement as a whole.

### **COMMENTS**

This section is similar to S.4 of the Central Act.

This section has however been substituted by Assam Act XIII of 1975, and the substituted section read as follows:

“4. *Societies which may be registered.* Subject to the provisions hereinafter contained a society which has as its chief object the promotion of the economic interest and general welfare of its members in accordance with co-operative principles, or a society established with the object of facilitating the operations of such a society including a society formed by the division of an existing registered society or amalgamation of existing two or more societies may be registered under this Act with or without initial liability:

Provided that unless the State Government by general or special order otherwise directs—

- (1) the liability of a society of which a member is a registered society shall be limited;
- (2) the liability of a society of which the primary object is the creation of funds to be lent to its members and of which the majority of the members are agriculturists or artisans, and of which no member is a registered society, shall be unlimited and the members of such a society, shall be on its liquidation, be jointly and severally liable for and in

respect of all obligations of such a society;

Provided further that no society shall be registered if in the opinion of the Registrar, its declared objects are unlikely to be achieved or if it is economically unsound or if it may have an adverse effect upon any registered society or the co-operative movement as a whole.”

[See R. 5 for application for registration, R. 6 for conditions of registration.]

**5. Age, qualification of a member.** No person may be an individual member of a registered society if he is less than eighteen years of age; provided that the bye-laws of a society may prescribe a higher minimum age.

## **COMMENTS**

In this section the words “unless he is above” were substituted by the words. “if he is less than”, *vide* Assam Act No. XX of 1974, effective from 11-7-1974 .

## **6. Conditions of registration.**

- (1) No society, other than a society of which a member is a registered society shall be registered under this Act which does not consist of at least ten eligible persons and, in case where the primary object of the society is the creation of funds to be lent to its members, unless such persons reside in the same town, village or in the same Panchayat Area.
- (2) The word "Limited" shall be the last word in the name of every society with limited liability registered under this Act.

## **7. Restriction on acquisition of shares in a society.**

- (1) No member of a registered society shall hold more than such portion of the share capital of the society as may be prescribed by the rules, or the bye-laws of the society.
- (2) No member shall be allowed to acquire an additional share until he has paid in full the value of the whole or that portion of his share holding which he is required to pay in accordance with the bye-laws of his society.

**8. Power of Registrar to decide certain questions.**

All disputes regarding membership for the purpose of the formation, registration or continuance of a society under this Act shall be decided by the Registrar.

**9. Change of liability.**

- (1) Subject to the proviso to S.4 and to any rules made in this behalf, a registered society may, with the previous sanction of the Registrar, change its liability from limited to unlimited or from limited to unlimited or from unlimited to limited :

Provided that —

- (i) the society shall give notice in writing of its intention to change its liability to all its members and creditors;
- (ii) any member or creditor shall, notwithstanding any bye-law or contract to the contrary , have the option of withdrawing his shares, deposits or loans, as the case may be, within three months of the service of such notice on him and the change shall not take effect until all such claims have been satisfied; and

- (iii) any member or creditor, who does not exercise his option within the period aforesaid, shall be deemed to have assent to the change.
- (2) Notwithstanding anything contained in the proviso to sub-S. (1) no change shall take effect at once if all the members and creditors assent thereto.
- (3) The Registrar shall register the amendment of the bye-laws consequent on the change of liability; provided that no person who ceases to be a member of the society before such amendment is registered shall be adversely affected by the change of liability.

## **10. Application for registration.**

- (1) An application for registration shall be made to the Registrar in the prescribed form.
- (2) The application shall be signed—
  - (a) in the case of society of which no promoter is a registered society , by at least ten eligible persons; and
  - (b) in the case of a society of which at least one promoter is a registered society , by a duly authorised person on behalf of such registered

society and at least one other individual promoter or one other duly authorised person on behalf of another registered society.

- (3) The application shall be accompanied by four copies of the proposed by-laws of the society signed on behalf of the promoters by the president of the inaugural general meeting. Promoters by whom or on whose behalf such application is made shall furnish such information in regard to the society as the Registrar may require and they shall be liable to the full extent of the share money which they have undertaken to subscribe with effect from the date of registration of the society.

## **COMMENTS**

(See R. 5 for application for registration).

### **11. Registration.**

- (1) The Registrar shall decide all questions as to whether the application complies with the provisions of this Act and rules thereunder and whether the objects of the society are in accordance with S. 4.



- (2) When he is satisfied that the application is in order under sub-S. (1) and the society and bye-laws are not contrary thereto, he may register the society and bye-laws ; provided that the Registrar shall have powers to register the bye laws with such modifications as he thinks are necessary to bring about uniformity in the main with provisions of the bye-laws of societies which have similar objects or functions.
- (3) The Registrar shall endorse the by-laws in token of registration. Each society shall have a copy of its by-laws so endorsed.
- (3) If the Registrar refuses to register a society or an amendment of the by-laws of a registered society he shall record his reasons in writing and communicate these reasons and his decision to the promoters or the Secretary of a registered society by a registered letter to their office. The Registrar may at any time review his orders in this respect.

## **12. Evidence of registration.**

A certificate of registration signed by the Registrar shall be issued to the society and shall be conclusive evidence that the co-operative society therein mentioned is a co-operative society duly registered under this Act and that its bye-laws are as attached to the certificate, unless it

is proved that the registration of the society has been cancelled or that amended bye-laws have been registered or that the society has been cancelled or that amended bye-laws have been registered or that the society's copy of the certificate or bye-laws has been tampered with.

**13. Amendment of the by-laws of a registered society.**

- (1) No amendment of the by-laws of a registered society, whether by way of addition, alteration, omission, recession or change of name shall be valid until such amendment has been registered under this Act.
- (2) Every proposal for such amendment shall have to be approved by a resolution at a meeting of the General Assembly in accordance with the bye-laws of the society and be forwarded within a month from the date of the resolution at the Registrar and if the Registrar is satisfied that the proposed amendment is not contrary to the provisions of this Act or rules, he shall, unless for reasons to be recorded in writing he considers fit to refuse, register the amendment.
- (4) When the Registrar registers an amendment of the bye-laws of a registered society, he shall issue to the society a copy of the amendment certified by him, which shall be conclusive evidence that the same has been duly registered, unless it is proved that the of the society has been cancelled or that further

amendments have been registered or that the society's copy of the amendments have been tampered with, the amendment shall be binding upon the society with effect from the date of registration.

(5)

## **COMMENTS**

This section deals with the amendments of the by-laws of a registered society. All the amendments of the by-laws shall have to be registered under this Act and in absence of such registration such amendment shall not be valid. The Registrar shall allow the amendment if he is satisfied that the proposed amendment is not contrary to the provisions of the Act or rules framed thereunder. When such amendment is allowed, it would be registered. Rules 8,9,10,11 and 12 may be referred.

### **14. Power of Registrar or affiliating society or financing bank to direct amendment of by-laws or adoption of rules of procedure.**

- (1) (i) When it appears to the Registrar that an amendment of the bye-laws of a registered society is necessary in the interests of such society or of the co-operative movement as a

whole or for the purpose of bringing about uniformity in the main with the provisions of the bye-laws of societies which have similar objects or functions, he may, by an order in writing, direct the society to amend its bye-laws in accordance with the amendment drafted and forwarded to the society by him within such time as he may specify in the order.

- (ii) if the society fails to make such amendment within the time specified, the Registrar shall, after giving the society an opportunity of representing its case, make such amendment himself and register the same. The Registrar shall then forward a copy thereof to the society together with a certificate signed by him which shall be effective as prescribed in S. 13 (3).
- (iii) The Registrar shall not register any amendment of the bye-laws of a society, whether under this section or S. 13 of this Act, without the consent of the Provincial Government, if the effect of such amendment is to lessen the degree of control of the Government or of the Registrar as already provided for in the bye-laws.

- (iv) The Registrar may require any registered society to frame rules of procedure under its by-laws to govern any part of its business and to send such rules to him for prior approval.
- (2)
  - (i) When it appears to an affiliating society or a financing bank that an amendment of the bye-laws of a registered society which is a member of such society or debtor of financing bank is necessary in the interest of the society it may suggest to the affiliated society or the debtor society , as the case may be , to make such amendment within such time as it may specify. The affiliating society, or the financing bank shall forward to the affiliated society, or the debtor society, as the case may be, a draft of the suggested amendment of the by-laws.
  - (ii) If the society fails to make the amendment within the time specified the affiliating society or the financing bank may forward to the Registrar the amendment; and the Registrar, if satisfied that the amendment is necessary in the interest of the society and not contrary to the provisions of this Act or the rules may thereupon after giving an opportunity of showing cause to the society concerned against the proposed amendment register the amendment and forward to the society a copy

thereof together with a certificate signed by him. The certificate shall be conclusive evidence that the amendment has been registered and such amendment shall thereupon be binding upon the society and its members.

- (iii) If the Registrar considers that the amendment referred to in Cl. (ii) above is not acceptable, he shall submit a report to the Government.
- (iv) An affiliating society or a financing bank or the registered society if aggrieved by a decision of the Registrar may prefer an appeal to the Government. The orders of the Government on such appeal shall be final.
- (v) The State Government may out of its own motion or the Registrar subject to such direction as may be given by the Government, amend the bye-laws of any society or group of societies in the interest of public service.

## **COMMENTS**

In this section, in the heading, in between the words, “society” and “to”, the words “or financing Bank” have been inserted by Assam Act XIII of 1975 and by the same

amendment Act, the Cls. (i), (ii), (iii), (iv) and (v). The substituted clauses read as follows:

- “(2) (i) When it appears to an affiliating society that an amendment of the bye-laws of a registered society which is a member and debtor of such society, is necessary in the interests of such society it may suggest to the affiliated society that it makes the amendment within such time as it may specify. The affiliating society shall forward to the affiliated society a draft of the suggested amendment of the by-laws.
- (ii) If the society fails to implement the suggestion within the time specified, the affiliating society may forward to the Registrar the amendment which it consider necessary, and not contrary to the provisions of this Act or the rules, may thereupon register the amendment and forward to the society a copy thereof together with a certificate signed by him. The certificate shall be conclusive evidence that the amendment has been registered and such amendment shall thereupon be binding upon the society and its members.”

## **15. Division and amalgamation of societies.**

- (1) (i) Any registered society may, at a meeting of its General Assembly specially called for the purpose, resolve to divide into two or more societies. At least fifteen clear days' notice of such meeting with the agenda shall be given to its members together with a copy of the proposed resolution.
- (ii) Such a resolution shall contain the proposal as to how to divide the assets and liabilities of the society among the newly proposed societies, their areas of operation and the members who will constitute each of the newly proposed societies with draft new bye-laws.
- (iii) A copy of the resolution shall be sent to the Registrar within thirty days of its adoption and subject to the Registrar's non-interference within thirty days of the despatch to him of the resolution, the resolution shall be circulated among the members and creditors of the society.
- (iv) Notwithstanding any agreement to the contrary, any member of the society, and notwithstanding any agreement to the contrary, any creditor of the society may, by



notice given to the society within thirty days of the receipt of the resolution, intimate in case of a member his intention not to become a member of any of the societies, and in case of a creditor his intention to demand a return of the amount due to him.

- (v) After the expiry of ninety days from the aforesaid resolution, a meeting of the General Assembly shall be convened for finally deciding the resolution. At least fifteen clear days' notice with the agenda of meeting shall be given to all members of the society.
- (vi) If the General Assembly decides by a three-fourth majority finally to divide the society and if the Registrar approves of the decision, the members, who will constitute each of the newly proposed societies subscribing to the new draft bye-laws shall apply to the Registrar under S.10 for registration of the new societies and the Registrar shall register the societies under S.11.
- (vii) The Registrar shall not register the new societies if the application for registration is not accompanied by a certificate of re-payment of share capital to members and certificate of

satisfaction of claims to creditors referred to in Cl.(iv).

(viii) From the date on which the new societies are registered under Cl. (vi) the registration of the old society shall be deemed to have been cancelled.

(ix) The registration of the new societies shall be a sufficient conveyance to vest the assets and liabilities of the original society according to the aforesaid resolution in the new societies.

(2) (i) Two or more registered societies may, at a meeting of their respective General Assemblies specially convened for the purpose, by giving at least fifteen clear days' notice to the respective members of the societies, resolve to amalgamate into one society by adopting common bye-laws.

(ii) A copy of such resolutions of each society shall be circulated forthwith among all members and creditors thereof.

(iii) Notwithstanding any bye-laws to the contrary, any member of any such societies and, notwithstanding any agreement to the contrary, any creditor of any such societies,

may within a period of thirty days from the receipt of the aforesaid resolution, intimate his intention not to become a member of the new society, in the case of a member, and to demand a return of the amount due to him, in case of a creditor.

- (iv) After the expiry of ninety days from the date of the aforesaid resolution, a joint meeting of the members of such societies shall be convened to decide finally the aforesaid resolution.
- (v) At least fifteen clear days' notice shall be given to all the members of the societies. If at such meeting the aforesaid resolution is confirmed by a majority of three-fourths of the members of each society present and the common bye-laws are accepted with or without any alterations, the Registrar shall be moved by an application under S. 10 for registration and he shall register the new society under S.11 if he approves.
- (vi) The Registrar shall not register the new society if the application for registration is not accompanied by a certificate of repayment of share capital to members and a certificate of creditors referred to in Cl. (iii).

- (vii) From the date on which the new society is registered the registration of the old societies shall be deemed to have been cancelled.
  - (viii) The registration of the new society shall be a sufficient conveyance to vest in all the assets and liabilities of the original societies.
- (3) (a) Notwithstanding anything contained in sub-Ss. (1) and (2) of this section if the Registrar is of opinion that for reasons of ensuring economic liability of any registered society or societies or avoiding, over lapping or conflict of jurisdictions of registered societies in any area or in order to secure proper management of any co-operative society or in the public interest or in the interest of the co-operative movement in the State as a whole, or in the interest of the depositors and the Co-operative Banking System in the State as a whole, it is necessary to divide, amalgamate or merge fully or partially any such society or societies with any specified society, he may, by an order published in a Official Gazette make a scheme for division, amalgamation or merger, with prior approval of the State Government.

*Explanation.* In this section the society which is divided, amalgamated or merged shall be referred to as “Transferor” society and the societies which are formed out of any division, amalgamation or merger under this section shall be referred to as “Transferee” society or societies.

- (b) A scheme referred to in sub-S.(3) (a) in respect of division, amalgamation or merger may provide for all or any of the following matters namely:
  - (i) The transfer of the business, properties, movable or immovable, assets including cash balance and reserve fund, rights, privileges, liabilities, debts and obligations of the transferor society or societies to the transferee society or societies on such terms and conditions as may be specified in the said scheme;
  - (ii) The reduction of interest or rights which the members, depositors and other creditors have in or against the transferor society or societies before division, amalgamation or merger to such extent as the Registrar considers necessary in the public interest of the members, depositors and other creditors for the maintenance of the business of such society or societies having due regard to the

assets and liabilities of the transferor society or societies;

(iii) The payment in cash or otherwise to the depositors and other creditors in full satisfaction of their claims—

(a) in respect of their interests or rights in or against the transferor society or societies before or after division, merger or amalgamation, or

(b) where the interests or rights as aforesaid, in or against the transferor society or societies has or have been reduced under Cl. (ii) ,in respect of such interest or right as so reduced;

(iv) (a) The allotment of shares in the transferee society to the members of the transferor society against the shares held by them in the transferor society or societies, before the division, amalgamation or merger; or

(b) where it is not possible to allot shares in the transferee society or societies to such members against the shares held by

them in the transferor society or societies;

the payment to such members in cash in full satisfaction of their claims in respect of their interest in the shares of the transferor society or societies or where such interest has been reduced under Cl. (ii), in respect of their interest in the shares so reduced :

Provided that the aforesaid scheme shall secure—

- (i) that allotment of shares or payment in cash in favour of the members of the transferor society or societies under the clause shall not be made until all the depositors and creditors of the transferor society or societies have been paid under sub-Cl. (b) of Cl.(iii) ; and
- (ii) that such allotment of shares or payment in cash in favour of the members of the transferor society or societies shall be made only out of the surplus of the assets of the transferor society or societies, if any, that may be left after payment to the depositors and the creditors as indicated in sub-Cl. (i) ;
- (iii) the continuance of the service of all or any of the employees of the transferor society or societies in the transferee society or societies

on such terms and conditions of service as may determined in this behalf

Provided that, if any employee is found to be ineligible for continuance in service of the transferee society under the terms and conditions of the scheme, the services of such employee shall stand terminated on or from the date on which the division, amalgamation or merger takes effect and the transferee society or societies shall within three months of the aforesaid date, make payment to such employee such compensation as such employee may be entitled under any law relating to industrial dispute in force in the State and pension, gratuity, provident fund and other retirement benefits as are ordinary admissible to him under the rules of the transferor society in force immediately before the division, amalgamation or merger.

(iv) The scheme for the division shall provide division of the assets and liabilities, the area of operation, the employees and the members of such society among the new societies into which such society is to be divided.

(c) (i) No order referred to in sub-S. (a) shall be made unless a copy of the proposed order including



the scheme is sent to the societies affected calling upon them to invite objection or suggestions from the members, creditors and suggestions together with their own suggestions and objections, if any, to the Registrar within thirty days from the date of receipt of the copy of the proposed order by such societies.

- (ii) The Registrar shall consider the suggestions and objections which may be received under (i) above within the period referred to therein and may make such modifications in the proposed order including the scheme as he thinks just and fit and finalise the proposed order including the scheme in accordance with the State Government:

Provided that such order shall not be passed without the prior approval of the Reserve Bank of India in case of any society coming under the preview of the Banking Regulation Act, 1949 (as applicable to Co-operative Societies) (Central Act No. 10 of 1949).

- (d) An order referred to in Cl. (a) may contain such incidental, consequential and supplemental provisions as the Registrar in consultation with the

State Government may consider necessary to give effect to the proposed division, amalgamation or merger and shall have effect on and from such date as may be specified in the final order referred to in sub. Cl. (ii) of Cl. (c).

- (e) On and from the date from which the division, amalgamation, or merger takes effect, the assets and liabilities of the societies referred to therein shall stand divided, amalgamated or merged with the assets and liabilities of the societies formed out of such division or amalgamation or merger and the members, creditors and debtors of such societies shall be deemed to be members, creditors and debtors, as the case may be, of the new society or societies as ordered by the Registrar.
  
- (f) (i) Notwithstanding anything contained in this Act, the Registrar shall register all new societies created after division of an existing society under this Act and such registration shall be effective from the date on which the division takes effect and the registration shall be effective from the date on which the division takes effect and the registration of the society ordered to divided shall be deemed to have been cancelled from the said date and such registration and cancellation shall be effective

from the date on which the division takes effect notwithstanding the actual registration is done later on.

- (ii) In case of the society directed to amalgamate or merge, the registration of the transferor society or societies shall be deemed to have been cancelled from the date on which the amalgamation or merger takes effect.
- (g) The provision of this section shall have notwithstanding anything to the contrary elsewhere in this Act or in any other law or agreement, award or other instrument for the time being in force.
- (h)
  - (i) Notwithstanding anything contained in the Transfer of Property Act, 1882, or the Registration Act, 1908, an order issued under this section shall be sufficient conveyance to divide or to transfer the assets and liabilities of the society or societies covered by any order passed under sub-Cl.(ii) of Cl. (c).
  - (ii) Notwithstanding any contained in any other law for the time being in force no civil court shall exercise any jurisdiction in respect of any action taken or order passed under this section and nothing done or order passed in exercise of

any power under this section shall be called in question in any such court.

## **COMMENTS**

In this section, sub-S. (3) has been substituted by Assam Act XIII of 1975. The sub-S.(3) was originally inserted by Assam Act XX of 1974 effective from 11-7-1974.

### **15-A. Insured Co-operative Banks.**

Notwithstanding anything contained in this Act, in the case of an Insured Co-operative Bank—

- (i) an order for the 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 ;
- (ii) 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 its circumstances referred to in S. 13-D of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 ;

- (iii) if so required by the reserve Bank of India in the public interest or for preventing the affairs of the Bank being conducted in a manner detrimental to the interested of the depositors or for securing the proper management of the bank, an order shall be made for the supersession of the committee of management or other managing body (by whatever name called) of the bank and the appointment of an administrator therefore for such period or periods, not exceeding five the aggregate, as may from time to time, be specified by the Reserve Bank of India, and the administrator so appointed shall, after expiry of his term of office, continue in office until the day immediately proceeding (*sic*) the date of the first meeting of the new committees ;
- (iv) no appeal, revision or review shall lie or be permissible against an order such as is referred to in Cls. (i), (ii), (iii) made with the previous sanction in writing or on the requisition of the Reserve Bank of India and such order or sanction shall not be liable to be called in question in any other manner ;
- (v) the liquidator or the insured co-operative bank of transferee bank, as the case may be, shall be under an obligation to repay the Deposit Insurance and

Credit Guarantee Corporation established under the Deposit Insurance and Credit Guarantee Corporation established under the Deposit Insurance and Credit Guarantee Corporation Act, 1961 in the circumstances, to the extent and in the manner referred to in S. 21 of that Act.

*Explanation.*

- (i) For the purposes of this section **“a Co-operative Bank”** means a bank as has been defined in the Deposit Insurance and Credit Guarantee Corporation Act, 1961.
- (ii) **“Insured Co-operative Bank”** means a society which is an insured bank under the provisions of the Deposit Insurance and Credit Guarantee Corporation Act, 1961.
- (iii) **“Transferee Bank”** in relation to an Insured Co-operative Bank means a Co-operative Bank—
  - (a) with which such Insured Co-operative Bank is amalgamated, or
  - (b) to which the assets and liabilities of such Insured Co-operative Bank are transferred, or

- (c) into which such Insured Co-operative Bank is divided or converted under the provisions of Assam Co-operative Societies Act, 1949.

## **COMMENTS**

Section 15-A has been inserted *vide* Assam Act No. 1 of 1990.

## **CHAPTER III**

### **Rights and liabilities of members of registered societies**

#### **16. Member not to exercise rights till due payment made and conditions fulfilled.**

No member of a registered society shall exercise the rights of a member unless or until he has made such payment to the society in respect of membership or acquired such interest in the society, as may be prescribed by the rules or by-laws.

#### **COMMENTS**

This section is similar to S. 12 of the Central Act, and under this section the disqualification attaches not only to non-payment of his membership fees but also to other defaults as may be prescribed by the rules or by-laws.[See R. 15 in this connection].

#### **17. Votes of members.**

- (1) Irrespective of the shares he holds in the society and subject to any temporary disqualifications from



voting which may be prescribed in bye-laws and to the provisions of S. 31 (2) (b) relating to voting by representatives, a member of a registered society shall have one vote only in the affairs of the society:

Provided that in the case of an equality of votes the Chairman at any meeting shall have a second or casting vote;

Provided further that the bye-laws of a society may provide for more than one vote in the case of an affiliated society.

- (2) A registered society which is a member of another registered society may appoint one of its members qualified under any rule or bye-laws to vote in the affairs of such other society as its representative.
- (3) Voting by proxy shall not be allowed except as prescribed in a registered society's bye-laws:

Provided that in registering the bye-laws of a society the Registrar shall not permit voting by proxy except in case, such as those involving a wide area of operation, where it would be difficult for members to exercise their rights to vote, if voting by proxy were not permitted.

- (4) Notwithstanding anything contained in this Act, a registered society may, by specific provisions made in its by-laws, admit certain class of members without any voting right.

### **COMMENTS**

Sub-section (4) of this section was inserted by Assam Act XX of 1974 effective from 11-7-1974 .

### **18. Members of unlimited society to furnish information as to his financial position.**

- (1) A full, true and accurate statement of his assets including his immovable properties and liabilities shall be furnished -
- (a) by an applicant for membership of a registered society with unlimited liability, together with his application ;
  - (b) by a member of a registered society with unlimited liability when required to do so by the Registrar or any person authorized by him in this behalf or by the affiliating society.

- (2) No member of a registered society with unlimited liability shall be a member of more than one such society.
- (3) A member of a registered society with unlimited liability shall furnish to the society full, true and accurate information regarding his intention to transfer his immovable property, in whole or in part by way of sale, mortgage or gift at least fifteen days before completion of each such transaction.

**19. Loan to be utilised for the purpose for which advanced.**

The loan advanced by a registered society to a member thereof shall be utilised by him for the purpose for which it was advanced and for no other purpose. The society shall have power to recover the advance as prescribed if the member does not so utilize it.

**20. Restrictions on transfer of share or interest.**

- (1) The transfer or charge of the share or interest of a member in the capital of registered society shall be subject to such conditions as to maximum holding as may be prescribed by this Act or by the rules.

- (2) Except as otherwise provided in this Act no transfer or charge of his share or interest by a member of society with unlimited liability shall be valid unless-
  - (a) he has held charge or interest for not less than one year; and
  - (b) the transferee or mortgagee is either a member of such society or a person whose application for membership has been accepted.

### **COMMENTS**

This section is similar to S. 14 of the Central Act and imposes specific restrictions on a member to a transfer or charge his share or interest in the capital of a registered society. Such transfer or charge can be made subject to such conditions as to a maximum holding as may be prescribed by this Act or the rules framed thereunder. [See R. 19 in this connection].

## **21. Liability of past member and his estate.**

- (1) The liability of a past member and of the estate of a deceased member for the debts of a registered society as they existed at the date of his ceasing to be a

member or on his death, as the case may be, shall continue for a period of four years from the said date.

- (2) No past member of a registered society with unlimited liability shall be eligible for membership of another such society with unlimited liability except with the special permission of the Registrar.

**22. Share or interest not liable to attachment.**

Notwithstanding anything contained in any law for the time being in force but subject to the provision of S. 44 of this Act, the share or interest of a member in the capital of a registered society or in any fund under S. 53 shall not be liable to attachment or sale under any decree or order of a court in respect of any debt or liability incurred by such member nor be subject to any claim by a receiver under the Provincial Insolvency Act, 1920 (V of 1920).

**23. Nomination of transferee.**

If the bye-laws of a registered society so permit, any member of the society may, in accordance therewith, nominate a person or persons in whose favour the society shall dispose of the shares or interest of such member on his death

## **COMMENTS**

Nomination – Provision regarding, if not in the Society, [Sections 23 and 24] As found in the case of Karuna Kanta v. State of Assam [AIR 1976 Assam 33], when the nomination was made there was no provision in the bye-laws of the society for nomination and that being so, such nomination even if made will not come within the scope of Ss. 23 and 24 of the Act. Hence held that the petitioner, claiming to be the nominee of his father will not get any right whatsoever as a nominee as contemplated under Ss. 23 and 24 of the Act. In the absence of any provision for nomination in the bye-laws at the relevant time, the provision of nomination of transferee as contemplated under S. 23 of the Act was not available and so the petitioner as a nominee was not entitled to any right of transfer of the shares of the society as contemplated under Ss. 23 and 24 of the Act.

### **24. Transfer of interest on death of a member.**

When a member of a registered society dies, his shares and interest in the society shall, subject to the provisions of this Act, be transferred-

- (a) to the person, if any, nominated in accordance with the provisions of S. 23; or

- (b) if there be no such nominee or if the nominee is not available or is difficult to be ascertained by the managing body, or if for any other cause such transfer cannot be made without unreasonable delay, difficulty to the person as may appear to the managing body to be the heir or legal representative of the deceased member; provided that ninety days have elapsed from the date of the member's death. No new claim shall be entertained after the said prior of ninety days.

**25. Disposals of shares or interest of ceased members.**

When a member of a registered society is expelled for withdrawn or otherwise ceases to be a member under this Act, rules or bye-laws, his share or interest shall be transferred to another eligible person, and the value thereon, determined in accordance with the rules, shall be paid to such ceased member if his share or interest is not forfeited under the provisions of this Act, rules or bye-laws or if he is insane, to any person appointed to manage his properties under the Indian Lunacy Act, 1912 (IV of 1912); provided that if there is no eligible transferee and if the bye-laws of the society so provide the value of his share or interest determined in accordance with the bye-laws shall be paid to him or, if he is insane, to any person appointed

to manage his properties under the Indian Lunacy Act, 1912.

## **COMMENTS**

Under S. 23 of the Act, a member of co-operative society may nominate a person or persons in whose favour the society shall dispose of the shares or interest of such members on the death; provided that the by-laws of the registered society so permit and the nomination also shall be in accordance with the by-laws. It was held in the case of *Karuna Kalita v. State of Assam* [AIR 1976 Gauhati 33] that in the absence of any provision for nomination in the bye-laws at the relevant time, the provisions of nomination of transferee as contemplated under S. 23 of the Act is not available. The transfer of shares to a legal heir other than a nominee as contemplated under Cl. (b) of S. 24 is also subject to other provisions of the Act. Under S. 25 a member ceases to be a member if it is so provided by the Act or rules or by-laws. The section also provides that the shares or interests of a ceased member are to be transferred to another eligible person. The eligibility of the person will be determined by the society, that is, its Managing Committee. It was further held by their Lordships that the provisions that a nominee may become a member only if admitted by the Managing Committee is not beyond the scope of Ss. 23 and 24, in as much as, the nomination itself is conditioned by the bye-laws.



*Section 25-Scope of-Nomination-Member dying-Petitioner refusing to file application for membership as asked by Managing Committee-Legal validity of nomination.* Section 25 lays down that a member ceases to be a member if it is not so provided by the Act or Rules or Bye-laws. Bye-laws of the society provide that on the death of member he ceases to be a member. So when *Kaliram Karikar* died, he ceases to be a member. There was no legally valid nomination in this case. So, the disposal of the share and interest of a ceased member are to be transferred to another eligible person. The eligibility of the person will be determined by the society, that is its Managing Committee. Hence the Managing Committee asked the petitioner to file a petition for membership to be considered, but the petitioner doggedly refused to file any application for membership. That being so, the society might not consider his case at all because Cl. (b) of S. 24 is subject to S. 23 and S. 25, which brings in force fully the bye-laws as well. So in the absence of a valid nomination, and in view of the by-laws, on his death *Kaliram Karikar* ceased to be a member and his share or interest, as held, was to be disposed of under S. 25, where the question of eligibility to membership arises and the petitioner has refused to file the application for membership. [*Karuna Kanta v. State of Assam* AIR 1976 Assam 33]

**26. Liability of members on winding up of society.**

The members of a registered society shall, in the winding up of the society, be jointly and severally liable to contribute towards any deficiency in the assets of the society:

- (a) in the case of a society with unlimited liability-without limit; and
- (b) in the case of a society with limited liability-subject to such limitation of amount as may be provided in the by-laws.

**27. Restriction on transfer of possession of land held under a society.**

Notwithstanding anything in any law for the time being in force -

- (1) a member of a registered society, the object of which is to develop co-operative or Collective farming, shall not be entitled to transfer his possession or interest in any land held by him under the society, except to the society or with the previous approval of the managing body and in accordance with its bye-laws, to a member thereof or to a person who will be admitted as a member of the society.

- (2) On the death of such a member, his possession of an interest in any such land held by him under the society shall come to his nominee in accordance with the provisions of S. 23 or in the first eligible heir according to seniority in age willing to become a member of the society.
- (3) If no nominee or heir becomes a member, the possession of an interest in such land of the deceased, shall vest in the society, which shall pay to the nominee or the heir, a sum equivalent to the value of the share and interest of the deceased member and any other sum due from the society as determined in accordance with this Act or rules framed thereunder after deduction the dues which the deceased member owed to the society:
- (4) If there is no person qualified to succeed to the share or interest of the deceased member the society shall pay to his heir, executor or the legal representative, as the case may be, a sum equivalent to the value of the share and interest of the deceased member as determined in accordance with the rules after deduction the dues of the deceased to the society:
- (5) When in any other case a member ceases to be a member of such a society under this Act, rules or bye-laws, his possession of, and interest in, any such land held by him under the society shall come to the

society, if the bye-laws allow and if the share and interest of the member is not forfeited under this Act or rules framed thereunder, the society shall pay to the ceased member a sum equivalent to the value of the share and interest of such member and any other sum due to him from the society after deduction his debts to the society, if any.

- (6) No land held under a registered society specified in sub-s. (1) by a member thereof, or vested under sub. S. (2) in the heir or nominee of such member, shall be attachable in any suit or proceeding for the recovery of any debt other than a debt due to the society or to a member thereof;
- (7) No land shall vest in such a society by reason of the provisions of this section unless it is owned by the society or has been leased to the society and, if the society holds the land by lease or contract, the land shall vest in the society only during the pendency of lease or contract.

**28. Right of a registered society to pay prior debts of a mortgagor.**

- (1) Where a mortgage is executed in favour of a registered society for payment of prior debts or part thereof, of the mortgagor secured on the mortgaged property, the registered society may, notwithstanding

the provisions of Ss. 83 and 84 of the Transfer of Property Act, 1882 (IV) of 1882), by notice in writing and served by registered post with acknowledgement due, require any person to whom any such debt is due to receive payment of such debt or part thereof from the society as its registered office within such period as may be specified in the notice.

- (2) The person on whom such notice is served shall be bound to receive payment of the amount offered by the society, but where there is disagreement or dispute between the mortgagor and such person as regards the amount of the debt, or where the society tenders less than the agreed amount of debt, the receipt of the sum offered by the society shall not debar such person from enforcing his right to recover the balance claimed by him.
- (3) If any such person refused to receive such notice or such payment, such debt or part thereof, as the case may be, shall cease to carry interest from the expiration of the period specified in the notice and the property mortgaged under sub-S. (1) shall be deemed to have been freed from the encumbrance of such prior mortgage.
- (4) No society shall advance a loan on a mortgage without taking a declaration from the prospective

mortgagor as to the names of prior mortgages of the property in question, if any.

**29. Restriction on mortgaged property.**

- (1) Where land is mortgaged to registered society, the mortgagor shall not be entitled without the approval of the society to transfer or mortgage his equity of redemption or to create a charge upon or lease out such property for a period exceeding three years.
- (2) If the mortgaged property at any time is wholly or partly destroyed or the security is rendered insufficient due to fall in value or for any other reason and the mortgagor having been given a reasonable opportunity by the society of providing or further security sufficient to cover the loan or of repaying the loan with interest or such portion of the loan as may be determined by the supervisory, managing or controlling body and the mortgagor having failed to provide such security or repay such security or repay such portion of the loan the whole of the loan or such uncovered portion shall be deemed to fall due at once and recoverable through a co-operative demand certificate.
- (3) Notwithstanding anything contained in the Transfer of Property Act, 1882 (IV of 1882), the mortgaged property, in case of default of payment of mortgage

money or any part thereof, any be sold by the society as prescribed by rules in addition to any other remedy available to it, without the intervention of the court, if a power of sale without the intervention of Court is expressly conferred by the mortgage deed; provided that the society serves a notice in writing by registered post demanding payment of the mortgage money with interest, or part thereof, upon the mortgagor or, any person having an interest in or charge upon the mortgaged property or the equity of redemption who has previously notified the society of such interest or charge in writing or any surety, and if default after such service of notice; provided that any party aggrieved by an action taken by a registered society under this section may prefer an appeal to the Registrar within thirty days from the date of the sale. His decision shall be final.

**30. Bar to certain claim.**

All payments and transfers made by a registered society under this chapter shall be valid and effectual against any demand made upon the society by any other person.

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## **CHAPTER IV**

### **Management**

#### **31. General Assembly.**

- (1) The General Assembly of a registered society shall consist of all those who are eligible to vote at general meeting of the society.
- (2) (a) Every member of a registered society and every ex-officio member of the Administrative Council or managing body of such society, unless under some temporary disqualification, shall have the right to attend any general meeting of the society and to exercise his vote at such meeting; Provided that the bye-laws of a registered society may prescribe-
  - (i) that a registered society affiliated to such society may have more than one representative entitled to vote at general meeting of the society ; and
  - (ii) that only one-third of the members of the General Assembly, excluding *ex-officio* members, may be individual members,



the other two-thirds being representatives of affiliated registered societies.

- (b) When the by-laws of a registered society contain the provision of sub-s. (2)(a) (i), if the member of individual members exceed one-third of the total membership of the society, the individual members shall elect at a special meeting, to be called by the Secretary of the society not more than one month before the annual general meeting in the manner prescribed in the bye-laws for annual general meetings, those individual members who, as the representatives of the body of individual members, shall form the one-third membership of the General Assembly for the purpose of voting at the annual and other meetings of the General assembly during the ensuing year, only such elected representatives having the right to attend and vote at such general meetings.
- (3) The supreme authority of a registered society shall be vested in the General Assembly: Provided that during the pendency of any loan or service from the Government or any other creditor secured at the instance of the Government, the supreme authority in respect of any matter adversely affecting the

interest of the Government or said creditor touching such loan or service shall be vested in the State Government or the Registrar, as may be provided in the bye-laws, or any person authorised by them in writing, and may extend to the appointment of officers to hold any of the offices of the society or any persons to be *ex-officio* members of the society even if not members of the society. This supreme authority of the Government or Registrar may also be exercised in the absence of any loan or service when the Government or Registrar, as the case may be deem their intervention to be necessary in the interests of the members of the society or of the co-operative movement in general. The Government or the Registrar, as the case may be, may fix the salary of any such appointed officer and declare it to be a charge on the society. They may cancel any such appointments by them.

- (4) An annual or special meeting of the General Assembly shall be summoned and shall exercise its authority and perform its functions in such manner as may be prescribed in the bye-laws of the society.

## **COMMENTS**

*Section 31 (3) - Whether Government as superior statutory authority can issue direction to Registrar of another statutory authority.* It was held in *Suruz Ahmad v State of*

*Assam*, [(1992) 1 **GLR** 69] that one statutory authority, though superior in nature, cannot issue any direction to another statutory authority in regard to the matters on which the statutory authority has to exercise its own judgment and discretion. The Registrar purporting to exercise his statutory power cannot exercise it as per direction of Minister of Government, and if he does so, his action is invalid. This view finds support from a decision of Supreme Court in *Purtabpur Co., Ltd. V. Cane Commissioner of Bihar*, **AIR** 1970 SC 1896].

*Exercise of powers under S. 31(3).* Power under S. 31(3) is exercised in respect of an “appointed officer” and the power to cancel the appointment is thus vested in the appointing authority without attaching thereto any pre-condition. Officers appointed under S. 31(1) “to hold any office of the Secretary” hold such office during the pleasure of the appointing authority subject to the provisions of the Rules and the Bye-laws. [*Saidur Rahman v. State of Assam*, 1985 (1) GLR 238].

### **32. Annual meeting of General Assembly.**

- (1) A general meeting to be termed the annual general meeting of the General Assembly of a registered society shall be held at least once in every co-operative year for the purpose of-

- (a) electing members to the Administrative Council, managing body and other committees of the society, the Chairman, Vice-Chairman and other office bearers, as may be provided in the bye-laws, and fixing such fees, salaries or other remuneration as prescribed in the bye-laws:

Provided that,

[ORIGINAL PRINTED MATTER OF THE DOTTED PORTION BELOW IS NOT VISIBLE.]

..... prescribe by rules the tenure.....  
Members of the Administrative Council, managing  
..... Committees and also the  
qualifications necessary for the office bearers and the  
employees;

- (b) electing internal auditor or auditors, who shall not be members of the Administrative council of governing body, and fixing the remuneration;
- (c) considering the annual report of the administrative Council or if there be no Administrative Council of the managing body, audit report and audited annual accounts and balance sheets and reviewing the working of

the society during the preceding co-operative year;

- (d) deciding how profits are to be distributed in accordance with the bye-laws;
- (e) passing the annual budget and approving the Programme of work for the ensuing year;
- (f) fixing the maximum amount of liability to be incurred during the ensuing year and the maximum rate of interest payable on deposits; and
- (g) considering such other business as may be placed before the meeting in accordance with the bye-laws;

Provided that notwithstanding anything to the contrary contained in this act or rules made thereunder or bye-laws of any society, the Registrar may direct that the first annual general meeting of any registered society shall be held on a date to be fixed by him (which shall be a date within one hundred and eighty days of the registration of the society) to elect the office bearers of the society, according to the procedure and manner prescribed in the bye-laws of the society and the office bearer so elected shall assume office on the conclusion of the

general meeting in which they are elected in replacement of the managing committee elected at the time of inaugural general meeting of the society.

- (2) Such a meeting shall be held within 60 days from the date of expiry of the preceding co-operative year:

provided that if for any reason the meeting cannot be held within the date fixed by the Registrar, any society may, be application made within the aforesaid period of 60 days and addressed to the Registrar, pray for extension of time for holding the meeting stating the grounds for which, in the opinion of the society, the meeting cannot be held. The grounds for which the Managing Body should not stand dissolved under sub-S. (4) below should also be stated in the application, if any made for extension. The period for which the extension is sought for shall also be specifically stand in the application.

- (3) When an application for extension is made under the preceding sub-section, the Registrar may, if he is of opinion that extension should be granted and that there are good grounds for which the Managing Body should not stand dissolved under sub-S. (4) below, by order grant extension for any period not exceeding 30 days from the date of passing the order. If the Registrar is of opinion that no extension should be granted he shall, by an order passed to that ....., the order passed shall be

communicated.....to the society applying for extension.

- (4) If any society fails to hold the meeting within the period of 60 days mentioned in sub-S. (2) or when an application is made for extension under the proviso to sub-S. (2) within the period so extended or when no extension is granted, before the expiry of 20 days from the date on which the order rejecting the application for extension is communicated, the Administrative council and/ or the Managing Body of the society shall stand dissolved from the date of expiry of the aforesaid period.
- (5) When the Administrative Council and/or Managing Body are dissolved under sub-S. (4), the Registrar may appoint an officer or officers or any ad hoc body to manage the affaires of the Administrative council and Managing Body till the new Body is elected of formed.
- (6) The officer of officers or the ad hoc body appointed by the Registrar under sub-S. (5) shall arrange to hold the annual meeting of the general assembly, which shall be held within ninety days of such appointment:

Provided that the State Government may allow in its discretion such further time, as my be considered

necessary but not exceeding one year for holding of such meeting.

## **COMMENTS**

The proviso to sub-S. (1) of this section was inserted by Assam Act XX of 1974 effective from 11-7-1974 and also sub-Ss. (2) to (6) were substituted for the following sub-S. (2)

“(2) Such meetings shall be held not more than fifteen months after the date of the last preceding meeting held under sub-S. (1) and unless the Registrar on special grounds extend the period, within three months of the receipt of the statutory annual audit report.”

Clause (a) to sub-S. (1) was substituted by Assam Act XIX of 1990.

*Adjourned meeting if to come within the mischief of S. 32 (2)- if to amount to not holding a meeting.* In *Md. Abdul Hussain v. State of Assam* [1990 (1) **GLI** 337] it was observed that the Annual General Meeting was adjourned for lack of quorum within the appointed hour of the meeting as well as incessant rains all over and resolved to hold the said meeting as adjourned as per the previous agenda on an another appointed day, venue and time. The adjourned meeting was held, as resolved, after observing all formalities as per statute. The notified Annual



General Meeting having been duly and competently adjourned on reasonable grounds and followed by the State Government appointing Returning Officer who conducted election of the adjourned Annual General Meeting on the appointed day throughout the day and night and declared the election of the President and all then Executive members of the Board, after publicly counting the polled votes and signed/endorsed the proceedings of the Annual General Meeting in token of his approval as Presiding Officer. The Assistant Registrar made a feeble attempt to fall back upon the general provisions of S. 32 (2) of the act by taking plea that the Annual General Meeting was not held within 60 days from the close of the Co-operative year, and as such the impugned order setting aside the proceedings of the said Annual General Meeting was held to be manifestly *malafide* and illegal. The Annual General Meeting dated 28-5-1989 was adjourned as resolved in the said meeting wherein the next Annual General Meeting was fixed at the same hour and venue and the resolution had been duly signed by the President. Also that the adjourned meeting was conducted by Government's appointed Returning Officer and as such it was held that the adjourned meeting does not come within the mischief of the provisions of S. 32 of the Act for not holding the Annual General Meeting within the period of 60 days from the expiry of Co-operative year. So also was held in *Nalin Chandra Hazarika v. State of Assam* [1994 (1) GLR 1].

*Interference by the Minister in election of the society.* The High Court did not appreciate the manner in which the Minister interfered in the business and election of the Co-operative

Societies. The unwarranted interference by the Minister compelled the subordinate officers to succumb to the acts in contravention of the statutes. To such action of the Minister were discouraged by the High Court, naming it as “interference manifestly indecent”. [*Md. Abdul Hussain v. State of Assam, supra*].

*Power to reconstitute ad hoc body-whether in the Registrar-whether Government has power to issue direction to the Registrar.* [Section 32 (5)]. The legislature has not invested the Government with power to issue any such direction to the Registrar. The Registrar, acting under sub-S. (5) of S. 32 of the Act has to exercise power on his own an independent consideration and appreciation of the facts and circumstances of each case and uninfluenced by any extraneous considerations and by any extraneous authority. So far as the power under sub-S. (5) of S. 32 is concerned, the Government has to be regarded as an extraneous authority as the power to constitute or reconstitute under S. 32 (5). What the Government cannot do, the Minister also cannot do. Since the impugned order has been passed by the Registrar on a direction of Government, it is illegal. [*Muzibur Rahman Barbhuiya v. State of Assam*, (1992) 1 Gau LJ 225].

*Appointment of officer or officers or ad hoc body to manage affairs of the society-Power of the Registrar.* [Section 32 (5)]. Section 32 (5) empowers the Registrar to appoint an officer or officers to any *ad hoc* body to manage the affairs of the society and to perform the functions of Administrative council or Managing Body till the new body is elected or formed. But the

sub-section does not indicate the source from which the members of the *ad hoc* committee are to be drawn or the qualifications of eligibility for being considered for appointment as such. Ordinarily, when an *ad hoc* committee is constituted, nominated members should be drawn from members of the society as they will be suited to manage the affairs of the society. The choice of the members should be made solely on the bases of merit and the extraneous considerations should not interfere. But if a member is a defaulter of the society it means that he is a member who is yet to fulfill his obligations as a member of the society and as such a person should not be picked up for being nominated as a member of the *ad hoc* committee. [*Gobinda Ch. v. State of Assam*, 1992 (1) GLJ 245 : (1992) 1 **GLR** 400].

*Power of the Registrar to dissolve the managing committee of the society-Notice served on the member about the general meeting not mentioning about election of office bearers. [Sections 32 and 36].* Section 32 (4) of the Act empowers the Registrar to dissolve a Managing Committee or body, if the society fails to hold the Annual General Meeting within the period specified in sub-S. (2) thereof or when the society fails to hold the meeting within the extended period; or where the prayer for extension has been refused when the Managing Committee is so dissolved the Registrar may appoint any officer or an *ad hoc* body to manage the affairs of the society and perform the Registrar under S. 36 (1) of the Act. Where a managing body fails to function properly or in accordance with the provisions of the Act, Rules and by-laws the provisions of S. 36 (1) come into play. In that event an enquiry and recording of finding to that effect are must. Similarly

the offending committee must be given the opportunity to state its case. In the case of *Baladurari Samabay v. State of Assam* [1984 (2) GLR 265], no enquiry was made nor did he give an opportunity to the body to state its case. If the Registrar was not satisfied with the case put up by the Managing Committee, he was to direct the co-operative society to call a Special General Meeting of the General Assembly within a prescribed period to dissolve the existing Managing Committee and to elect to new one in its place. This was also not complied with in the instant case. Further, if the Register considered it a case of “ emergency” he could have suspended the offended body and appointed a person to take charge of the suspended body until a new body was elected or action taken under S. 37 of the Act. There was nothing that any emergency existed. Hence held, that the purported action of the dissolution taken under S. 36 (1) of the Act. was invalid as there was no enquiry under Ss. 60 and 61 of the Act. This view finds support from the decision in *Joint Registrar of Co-operative Society, madras v. P. S. Rajugopal Naidu* [AIR 1970 SC 992].

Section 32 (1) specifies the business to be transacted in the Annual General Meeting. It was not the first of such meeting Notices were issued to all the members informing them that Annual General Meeting would be held on a fixed date, at the venue and time specified in the notices. Such a notice implied that the members were to exercise their rights prescribed in S. 32 (a), (b), (c), (d), (f) and (g) of the Act in the said meeting. Notices informing the members that there would be an Annual General Meeting of the General Assembly was clear enough to indicate

that election of the members to committee would be held on that date. Election of members to the Managing committee could be made only in an Annual General Meeting and in no other meeting. As such all the members were fully aware that on the date fixed they would transact the business of election of the members of the Managing Committee.

Hence *held*, that the notices served on the members sufficiently notified that the business referred to in S. 32 (1) (a) to (g) would be transacted.

Further *held*, that the impugned order of the Registrar dissolving the Managing committee is void, illegal and without jurisdiction. The impugned order of the Deputy Registrar constituting an Ad hoc Committee was also declared void, illegal and without jurisdiction.

*Adjourned meeting if in continuation. [Section 32 and Rule 24].* Sub-rule (1) of Rule 24 of the Rules provides that the quorum of a meeting of the general assembly shall be one-fifth of the total number of members. Sub-rule (2) provides that no business shall be transacted at any meeting of the general assembly unless there is a quorum at the time when the business of the meeting is due to commence. Sub-rule (3) provides, *inter alia*, that the meeting shall stand adjourned ordinarily on the same day in the next week at the same time and place but the Chairman of the meeting may, however, decide to adjourn the meeting to a date not later than fourteen days or as may be provided in the bye-laws of the society. Sub-rule (4) provides, *inter alia*, that the

business can be transacted at the adjourned meeting even without a quorum. The meeting in the case of *Nalin Chandra Hazarika v. State of Assam* [1994 (1) **GLR 1**] was convened within 60 days as required but only 23 share-holders were present and so the business could not be transacted for was transacted for want of quorum. The meeting was adjourned and the business was transacted in the adjourned meeting.

In the case of *Chandrakant Khaire v. Dr. Shantaram Kale* [1988 (4) SCC 577] reference was made to the passage in the book. "The Law and Practice of Meeting" by Shackleton, where it was stated that an adjournment, if bona fide, is only a continuation of the meeting. It is deemed to be a continuation of the former meeting and no new notice is necessary unless the regulations so prescribe or the adjournment has been *sine die*.

Hence, where the meeting stood adjourned for want of quorum and the adjourned meeting took place after a few days, it was held that the requirements of S. 32 (2) of the Act have been abided by.

Where the proceedings of that annual general meeting have been submitted to the Registrar as require by law, the Registrar will apply his mind in accordance with law and pass an order in regard to approval and communicate the order to the society. It was also held that till the communication to the society, the administrative council shall be allowed to function.

**33. Special meeting of General Assembly.**

- (1) A special meeting of the General Assembly shall be called-
  - (a) at the instance of the Administrative Council or if there be no Administrative Council, of the managing body;
  - (b) at the request of the Chairman of the society;
  - (c) on a requisition signed by one-tenth of the members of the general Assembly or twenty members, whichever is less; or
  - (d) at the instance of the Registrar.
- (2) The Registrar himself or any person authorized by him in this behalf in writing may, by special order call a special meeting at the General Assembly at any time and shall call such a meeting upon the failure of the society to call a meeting on the requisition by the members or at the instance of the Registrar under sub-S. (1).
- (3) Notwithstanding any rule or bye-law prescribing the method of summoning or period of notice for a General Assembly, the Registrar or any person authorised by him in this behalf, may specify the

time, place, business for the meeting and manner of convening it.

**34. Administrative Council.**

The management of every registered society shall vest in the managing body of the society, except in the case of a society, which for administrative convenience necessitated by reasons such as wide area of operation that responsibility shall vest in Administrative Council. The Administrative Council, the managing body and committees of a society shall be constituted in accordance with the bye-laws of the society which shall specify the composition of such bodies their powers, functions, duties, method of summoning meetings and procedure.

**35. Power to depute Government servant to manage the affaires of a society.**

The State Government may, on the application of a registered society and on such conditions as may be determined, depute Government officials to the service of the society for the purpose of managing its affairs and the officials shall exercise such powers and perform such duties as may be determined.

**35-A.** Notwithstanding anything contained in any law for the time being in force, the Registrar may at any time direct a particular society or a class of societies to appoint only



persons having such qualifications as may be prescribed by him from time.

## **COMMENTS**

This section has been newly inserted vide Assam Act XIII of 1975.

### **36. Dissolution or reconstruction of the Administrative Council, managing body or any committee of a society.**

- (1) When the Registrar is satisfied, after an inspection or inquiry under S. 60 or 61 for reasons to be recorded in writing, that the Administrative Council, managing body or any committee of a registered society is not functioning properly or according to this Act, rules or bye-laws, he may, after giving the offending body an opportunity to state its case, direct under CI (d) of sub-S. (1) of S. 33, that a special general meeting of the General assembly be called within a time to be specified to dissolve the administrative Council, managing body or committee concerned and to elect a new one; Provided that, if in the opinion of the Registrar, it is necessary as an emergent measure to suspend the offending body forthwith, he may do so and shall appoint a person or persons, on such conditions as prescribed by him to be in full control of the suspended body until a new body has been

elected or action has been taken in accordance with S. 37.

- (2) The Registrar may, for reasons to be recorded, specify in the direction made under sub-s. (1) that all or any of the outgoing members of the dissolved body shall be disqualified for such period not exceeding three years as he may determine for election or appointment as an officer of the society or for service on any of its bodies.
- (3) An appeal shall lie to the Provincial Government against an order of the Registrar disqualifying a member of a society for election or appointment within two months from the receipt of the order.

## **COMMENTS**

Under this, section, the Registrar is empowered to appoint a new Managing Committee but before doing so, he would be required to give reasonable opportunity to such offending body and accordingly it was held by the Supreme Court in the case of *Moirengjan Paka Singh v. Abongaengbam Baduysims Sing* [Unreported, decided on 12<sup>th</sup> January, 1965, CA No. 942 of 1964].

The Supreme Court was concerned with Madras Co-operative Societies Act in the case of *Joint Registrar of Co-operative Societies. Madras v. P. S. Rajagopal Naidu* [AIR 1970 SC 991], and observed that before the Registrar is taking action to supersede the society, it need not have an audit and need not give any opportunity to the outgoing body to rectify the defects which might come to light as a result of any audit, enquiry or inspection. The registrar is only required to form an opinion that such body is not functioning properly or had willfully disobeyed or failed to comply with any lawful order or direction issued by him. So far as the question of the society not functioning properly is concerned, that may depend on what the Registrar discovers after a proper audit, enquiry and inspection. But he can form that opinion even on a material *aliunde* and the language of this section does not warrant by the necessary implication of the taking of the view that he is found to form that opinion after following the entire procedure prescribed by the other sections (of the Act). Their Lordships further held that the High Court could not act as an appellate court and reapprised and re-examined the relevant facts and circumstances which lead to the making of the orders of supersession as if the matter before it had been brought by way of appeal.

**37. Dissolution of Administrative Council, managing body or any committee and appointment of persons to manage the affairs of a society.**

If the Administrative Council, managing body or any committee, as the case may be, of a society is not dissolved and reconstituted within the time specified by the Registrar under S. 36, he may, by order in writing, dissolve such body and shall thereupon appoint a person or persons, on such conditions as prescribed by him, to manage the affairs of the society for such period not exceeding one year where he shall arrange for the constitution of a new body to take the place of the dissolved body. The Registrar may extend this period from time to time as he may deem fit; provided that the aggregate of such periods shall not exceed three years.

**38. Tenure of office of the person appointed under S. 37.**

The person appointed under S. 37 shall hold office until the Administrative Council, managing body or the committee, as the case may be, is reconstituted or his appointment is cancelled by the Registrar.

**39. Powers of person appointed under S. 37.**

During the tenure of office of a person appointed under S. 37 such person shall, subject to the control of the Registrar, exercise all the powers and perform all the

functions and duties which may be exercised or performed by the superseded body under the provisions of this act, rules or bye-laws.

- 39-A.** (1) Notwithstanding anything contained in this Act, the State Government may, if it is of opinion that the Administrative Council the managing body, any other Committee or body of a registered society is not competent to perform or persistently makes default in the performance of the duties imposed by or under this Act or exceeds or abuses the powers imposed by or under this Act, any time, after giving an opportunity of showing cause against the action proposed, remove any such Council, Body or Committee.
- (2) The State Government may, at any time, suspend any such Council, Body, Committee pending its removal under sub-S. (1) from office, if in the opinion of the State Government immediate action is necessary and the continuance of such Council, Committee or Body in office is inadvisable any of the grounds on which it could be removed under sub-S. (1) or on ground of public interest.
- (3) When an Administrative Council, managing body, Committee, officer body of a registered society is suspended under sub-S. (2) the State Government may make such arrangements as may be deemed

necessary for discharging the duties, functions and obligations of the Administrative Council, Managing Body, Committee or other body so suspended till the termination of the order of suspension or, when a body or person is removed under sub-S. (1), till the vacancy is filled up in accordance with the provisions made by or under this Act.

- (4) Notwithstanding anything contained in this Act, if the term of office of any Administrative Council, managing body, committee or other body expires during the continuance of any order passed under sub-S. (2) placing any such Council, Body or Committee under suspension , such council ,Body or committee shall cease to function with effect from the date of such expiry and the arrangement made by the State Government under sub-S. (3) will continue till the vacancies caused by such expiry are filled up in accordance with the provisions made by or under this Act.

## **COMMENTS**

This section has been inserted by Assam Act XVI of 1973.

The present amendment by way of insertion of this new section became essential because the present provisions of the

Act were not sufficient to meet the new situation demanding highest standard of performances from the Co-operative Societies. In order to rationalize the public distribution system of food-grains it was decided to hand over the wholesale wheat and wheat products to the Co-operative Society with effect from 1<sup>st</sup> June, 1973.

**39-B. (1)** The State Government may, after giving an opportunity of showing cause remove the Chairman, the Vice-Chairman, the Secretary, and other member or office bearer or employee of a registered society from the office or membership held by him on any one or more of the following grounds, namely:

- (a) doing any act in violation of the provisions of the Act, the rules framed thereunder, the registered by-laws of the society and other lawful orders of the Government or of the Registrar of Co-operative Societies;
- (b) doing any act which is prejudicial to the interest of the Co-operative movement;
- (c) misuse and defalcation of funds of the society;
- (d) misconduct and willful neglect in the discharge of his duties;

(e) refusal to act or incapability of acting.

- (2) The State Government may, at any time, suspend a Chairman, a Vice-Chairman, a Secretary or any other member, office bearer or employee of a registered society pending his removal under sub-S. (1) if the State Government is of opinion that immediate actions are necessary and his continuance as such Chairman, Vice-Chairman, Secretary, member, office bearer or employee is inadvisable on any of the grounds for which he may be removed under sub S. (1) or on the ground of public interest.
- (3) When a Chairman, Vice-Chairman or any other member of office bearer or employee is suspended under sub S. (2) of this section, the State Government may make such arrangements as may be deemed necessary for discharging the duties, functions and obligations of the person so suspended till the termination of the order of suspension or, when a person is removed under sub-S. (1) above, till the election or appointment of a person to the office or membership which was held by the person so removed.
- (4) Notwithstanding anything contained in this act, if the term of office of any Chairman, Vice-Chairman, member, other office-bearer, or employee of any registered society expires during the continuance of



any order passed under sub-S. (2) of this section placing any such person under suspension, such person shall cease to function with effect from the date of such expiry and the arrangements made by the State Government under sub- S. (3) will continue till the vacancies caused by such expiry are filled up in accordance with the provisions made by or under this Act.

### **COMMENTS**

This section has been inserted by Assam Act XVI of 1973.

## **CHAPTER V**

### **Duties of Registered Society**

#### **40. Address of society.**

Every registered society shall have a registered address, to which all notices and communications may be sent and shall send notice in writing of every change thereof, within thirty days of such change, to the Registrar and to the affiliating society, if any.

#### **41. Prescription and inspection of documents.**

(1) Every registered society shall keep and allow inspection free of charge by any member of the society and such other persons as may be prescribed at all reasonable times at the office of the society-

- (a) a copy of this Act;
- (b) a copy of the rules framed under this Act;
- (c) a copy of the by-laws of society;
- (d) a copy of all rules framed under the bye-laws of the society;
- (e) annual balance sheet authenticated by the Audit Officer; and

(f) such other books, forms, registers or other documents as may be prescribed by the Registrar.

(2) A society shall deliver to every member on payment of a sum prescribed by the society's by-laws or rules, copies of documents certified to be true copies.

**42. Restriction on borrowing.**

A registered society may receive deposits and may borrow from its members and from persons who are not members to such extent and on such conditions as may be prescribed in the Act and by-law.

**42-A.** Notwithstanding any provision contained in this Act, the State Government may, by general or special order, direct transfer of any Co-operative Society from one financing bank to another after prior consultation with these banks and the society for the purpose of availing finance by the society for its credit and no-credit operation, on such terms and conditions as may be considered necessary.

## **COMMENTS**

This section has been inserted by Assam Act XIII of 1975, effective from 22-10-1975.

**43. Power of Government to give financial assistance.**

Notwithstanding anything contained in any law for the time being in force, the State government may grant loans to, take shares in, guarantee the principal or the interest or both in respect of debentures issued by, or give financial assistance in any other form to, any registered society, with put forward a satisfactory scheme for the utilisation of the funds so raised. The State Government may recover from any society out of its net profit in any year all or any part of such financial assistance.

**44. Restriction on loans.**

- (1) A registered society shall not give loan -
  - (a) to any person other than a member except with the general or special sanction of the Registrar; provided that a loan may be given to a depositor of the society out of his deposit; or
  - (b) to a member in excess either of maximum or of the normal credit determined by the society for that member in accordance with its bye-laws; provided that in assessing normal credit the managing body shall take a full statement as to the member's means of earning;

- (c) on the security of movable property or future movable property, unless the movable property is charged, hypothecated or pledged with the society.
- (d) on personal security without sureties, unless the borrowing member has unencumbered immovable property or attachable funded assets sufficient to cover the loan and a full statement of such securities is submitted by the borrower and the truth of statement is ascertained by the managing body;
- (e) on personal security with sureties unless the borrowing member and his sureties together have unencumbered immovable property or attachable funded assets sufficient to cover the loan and a full statement of such securities is submitted by the borrower and the sureties separately and the truth of the statement of ascertained by the managing body;
- (f) on personal security, with or without sureties, unless the loan is for a short period and not exceeding the time required to reap the benefit of the loan and in no case exceeding three years.

- (2) (a) Notwithstanding the provisions of sub-Cls. (1) (b) and (e) a loan may be given on personal security; provided that the managing body of the society is satisfied as to the credit of the borrower and has taken from him a scheme for the utilisation of the loan and has ascertained the truth of the statements contained in the scheme and the bona fide of the borrowing member.
  - (b) The resolution of the managing body granting a loan under this section contain the names of all assenting members; provided that, if such names are omitted from the proceedings of the meeting, the Chairman and Secretary shall be held jointly and severally responsible for issue of the loan.
  - (c) Notwithstanding the provisions of sub-Cls. (1) (b) to (f) and (2) (a) and (b), a registered society may issue a loan on mortgage or valuable security.
  - (d) No person shall be accepted as a surety for any borrower unless he is also a member of the same registered society.
- (3) A registered society, the primary object of which is not the issue of loans, shall open a separate

accounting or finance or banking branch in accordance with its bye-laws and frame rules for the conduct of business in such branch before it issues any loans and such rules shall first be approved by the Registrar.

## **COMMENTS**

In this section, in sub-S. (1) (c) for the words “placed with the society”, the following words have been substituted by Assam Act XIII of 1975 effective from 1-11-1974:

“charged, hypothecated or pledged with the society”

### **45. Office bearer of a society is required to furnish information and produce documents.**

- (1) Every office bearer of a registered society shall produce documents and books of account, cash balance in his custody, and appear before and furnish such information in regard to the transactions or working of the society as may be required of him by the Registrar, or persons authorized by the Registrar in this behalf, and audit officer, arbitrator, liquidator or any persons conduction an inspection or inquiry under the provisions of this Act and the rules made thereunder.

- (2) (a) At any sale of property, movable or immovable, held under this Act or rules framed thereunder, no office bearer of the registered society concerned or any person having any duty to perform in connection with such sale, shall either directly or indirectly bid for, acquire or attempt to acquire, any interest in such property.
  - (b) Any office bearer of a society or a liquidator may, on behalf of the society, bid and purchase at a sale of mortgaged property.



## **CHAPTER VI**

### **Privileges of Registered Societies**

#### **46. Prior claims of a society.**

(1) Notwithstanding anything contained in Ss. 60 and 61 of the Code of Civil Procedure, 1908 (V of 1908), any debt or outstanding demand due to a registered society by any member, surety, past member, or the estate of any deceased member shall be a first charge —

(a) if such debt or demand is due in respect of the supply, or any loan to provide the means of such supply, of seed, manure labour, fodder for cattle or any other thing incidental to the conduct of agricultural operations-upon the crops or agricultural produce of such member, past member, or belonging to the estate deceased member, at any time within two years from the date of such supply or loan or from the date on which the last installment of such supply or loan became repayable;

(b) if such debt or demand is due in respect of the supply of, or any loan for the purchase of cattle, agricultural implements or warehouses for the storage of agricultural produce-in the

manner and to the extent aforesaid upon the crops or agricultural produce of such member, past member or belonging to the estate of such deceased members and also upon the cattle, agricultural implements or warehouse thus supplied or purchased wholly or in part from any such loan;

- (c) if such debt or demand is due in respect of the supply of, or any loan for the purchase of raw materials, industrial implements, machinery, workshop, warehouses or business premises- upon the raw materials or other things supplied or purchased by such member, past member or the deceased member wholly or in part from any such loan and also upon any articles manufactured from raw materials or with implements or machinery so supplied or purchased wholly or in part from any such loan;
- (d) if such debt or demand is due in respect of any loan for the purchase, improvement or redemption of land or for the purchase or construction of any house, building or any portion thereof- upon the land purchased, improved or redeemed or the house or building so purchased or constructed by such member, past member from any such loan.

(2) Notwithstanding anything contained in this Act or any other law for the time being in force-

- (a) a member who makes an application for a loan to a Co-operative Society of which the majority of the members are agriculturists shall, if he owns any land or has any interest in any land as a tenant, make in such form as may be prescribed a declaration that he thereby creates a charge upon such land or such interest or such portion thereof, as may be specified in the declaration for securing the repayment of the loan which the society may make to the members on the application and of future loans, if any, that may be made to him, from time to time, by the society together with interest on such loan or loans;
- (b) a declaration made under Cl. (a) may be varied or cancelled at any time by the members making it, with the consent of the society in whose favour it is made;
- (c) any land or interest in land in respect of which a declaration has been made under Cl. (a) or any part of such land or interest, shall not be sold or otherwise transferred by the member making the declaration until the entire amount

of the loan or loans taken by the member from the society together with interest thereon is paid to the society:

Provided that nothing in this clause shall apply to any such part of such land or interest as may have been released from the charge created under this section under the proviso to Cl. (d);

- (d) subject to any claim of the State Government in respect of land revenue or any sum recoverable as land revenue or as public demand, there shall be a first charge in favour of the society on the land or interest in land specified in the declaration made under Cl. (a) for and to the extent of the dues recoverable from the member making the declaration on account of the loan or loans together with any interest thereon made to him by the society;

Provided that if a part of such dues is paid by the member, the society may, on the application of the member and with the approval of the financing bank to which it may be indebted release from the charge such part of the land or interest in the land specified in the declaration made under Cl. (a) as the society may, having due regard to the security of the outstanding amount of the loan or loans made to the member, deem proper;

- (e) every record of rights prepared and maintained under the Assam Land and Revenue Regulation, 1886, or any other law for the time being in force shall also include the particulars of every charge on any land or any interest thereon created under Cl. (a).

## COMMENTS

In this section, sub-S. (2) has been substituted by Assam Act XIII of 1975 and the substituted section read as follows:

“(2) Nothing in this section shall affect the claims of any *bona fide* purchase or transferee for value without notice”.

### **47. Charge and set off in respect of shares or interest of members.**

A registered society shall have a charge upon the share of interest in the capital and on the deposits of a member or past member or deceased member and upon any dividend, bonus or surplus payable to a member or past member or the estate of a deceased member in respect of any debt due from such member or past member or estate of such deceased member to the society, and may set off any sum credited or payable to a member or past member or estate

of a deceased member in or towards payment of any such debt.

**48. Deduction of dues from salary of members.**

If a member of a registered society, who is an employee of the government or any local authority, takes a loan from a society and contracts to repay it by installments, and authorize the society to recover such installments by deduction from his salary, the person who disburses any amount payable to such member as salary or remuneration in respect of such employment shall, on demand from the society, deduct the amount of such installment from the amount disbursed to such member as salary and shall forthwith remit to the society the amount so deducted.

**49. Exemption from compulsory registration and personal attendance for registration of instruments.**

Nothing in Cls. (b) and (c) of sub-S. (1) of S. 17 of the Indian Registration Act, 1908 (XVI of 1908), shall apply to-

- (1) any instrument relating to shares in a registered society, notwithstanding that assets of such society consist in whole or in part of immovable property ; or
- (2) any debenture issued by any such society and not crediting, declaring, assigning, limiting or extinguishing any right, title or interest to or in

immovable property, except in so far as it entitles the holder to the security afforded by a registered instrument whereby the society has mortgaged, conveyed or otherwise transferred the whole or part of immovable property or any interest therein to trustees upon trust for the benefit of the holder of such debentures; or

- (3) any endorsement upon or transfer of any debenture issued by any such society;
- (4) notwithstanding anything contained in the Indian Registration Act, 1908 it shall not be necessary for any office bearer of a registered society or a liquidator of a society to appear in person or by agent at any registration office in any proceeding connected with the registration of any instrument executed by him in his official capacity or to sign as provided in S. 58 of that Act;
- (5) where any instrument is so executed, the registering officer to whom such instrument is presented for registration may, if he thinks fit, refer to such office bearer or liquidator for information regarding the same and on being satisfied of the execution thereof, shall register the instrument.

**49-A. Exemption from registration of mortgage deeds executed in favour of Co-operative Land Development Bank or Primary Society.**

- (1) Notwithstanding anything contained in the Indian Registration Act, 1908, it shall not be necessary to register mortgages executed in favour of the Co-operative Land Development Bank or a Primary Society of which the majority of the members are agriculturists, for the purpose of securing the repayment of a concerned loans within such time and in such manner, as may be prescribed, a copy of the instrument whereby immovable property is mortgaged for the purpose of securing repayment of the loan to the registering officer within the local limits of whose jurisdiction the whole or any part of the property mortgaged is situate.
- (2) On receipt of the copy of the instrument under the preceding sub-section, the registering authority shall file a copy or copies, as the case may be, in his Book No. 1 prescribed under S. 51 of the Indian Registration Act, 1908.
- (3) The mortgages executed in favour of and all other assets transferred to a Co-operative Land Development Bank or a Primary Society of which the majority of members are agriculturists, by the members thereof, as security for repayment of loan,



before or after commencement of this Act shall, with effect from the date of such execution or transfer be deemed to have been executed or transferred by such society in favour of or to the financing Bank.

## **COMMENTS**

This section has been newly inserted by Assam Act XIII of 1975, effective from 22-10-1975.

### **50. Power to remit certain dues, fees, etc.**

- (1) The State Government may, be general or special order in the case of a registered society or class of registered societies, remit any tax, cess or fee payable under any law for time being in force or the rules thereunder in respect of which they are competent to remit such tax, cess or fee.
- (2) The State Government may, in respect of any registered society or class of registered societies, by notification in the official Gazette, remit -
  - (a) the stamp duty other than stamp duties [26 Geo. 5, Ch. 2] falling within item 91 or item 96 in list 1 in the Seventh Schedule to the Constitution of India in respect of any

instrument executed by, or on behalf of, or in favour of, a registered society or by an officer or on behalf of a member thereof, and relating to the business of such society or any class of such instruments, co-operative demand certificates or decisions, awards or orders of Registrar or arbitrators under this Act, in cases where, but for such remission, the registered society, officer or member thereof, as the case may be, would be liable to pay the stamp duty chargeable under any law for the time being in force, in respect of such instrument, and

- (b) any fee payable by a registered society under any law for the time being in force for the registration of documents or of court fee for the time being in force.

## **COMMENTS**

In this section, the words “item 91 or item 96 in list 1 in the 7<sup>th</sup> Schedule to the Constitution of India” have been substituted by Assam Act XIX of 1953 for the following words :

“Item 57 or item 59 in list in the Seventh Schedule to the government of Indian act, 1935 (as adopted and modified)”

## **CHAPTER VII**

### **Property and Funds of Registered Society**

#### **51. Investment of Funds.**

- (1) A registered society may invest or deposit its funds -
  - (a) in a Government Savings Bank, or
  - (b) in any of the securities specified in S. 20 of the Indian Trust Act, 1882, other than specified in Cl. (e) of that section, or
  - (c) with the sanction of the Registrar, in the shares or debentures or in the security of any other registered society, or
  - (d) with any registered society bank or persons carrying on the business of banking approved for this purpose by the Registered or
  - (e) in any other mode permitted by the bye-laws.
- (2) Such investment shall be accounted for separately from the Reserved Fund of the registered society.

## **52. Reserve Fund.**

- (1) Every registered society shall maintain a Reserve Fund [\* \* \*], and carry to find in each year not less than twenty-five per centum of its net profits.
- (2) The Reserve Fund shall be invested separately in any of the ways prescribed in S. 51 or, with the sanction of the Registrar, in immovable property required for the furtherance of the activities of the society. Any such investment shall be deemed to constitute Reserve Fund. No instrument securing a loan on a Reserve Fund shall be valid.
- (3) The reserve Fund shall not be utilised for any purpose whatsoever except with the sanction of the Registrar, who shall accord such sanction only in exceptional circumstances.

## **COMMENTS**

The words “formed from its profit”; were deleted by Assam Act XX of 1975, w.e.f. 11-7-1974.

In sub-S. (1) the word “twenty” has been substituted by the word “twenty-five” by Assam Act XIII of 1975.

### **53. Distribution of net profit.**

After making the allocation to the Reserve Fund as prescribed in S. 52, the remaining net profit of a registered society may be distributed according to the by-laws of the society:

Provided that a registered co-operative society of which the majority of members are agriculturists and one of the objects is the creation of fund to be lent to its members shall carry not less than 15 per cent of its net profits in any year to the Agricultural Credit Stabilisation Fund as may be prescribed.

## **COMMENTS**

The proviso has been inserted by Assam Act XIII of 1975, with effect from 22-10-1975.

### **54. Restriction on distribution of profit.**

- (1) Save as may be prescribed, to distribution of profit shall be made in the case of a registered society with unlimited liability and no part of the net profit or of a fund of any society shall be divided by way of dividend, bonus, patronage dividend, rebate or otherwise among its members.

- (2) No dividend, bonus, patronage dividend, or rebate shall be paid-
  - (a) otherwise than out of net profits certified by the audit officer or have been actually realised; provided that the advance patronage dividend may be paid in accordance with the directions of the Registrar and on the certificate of an internal auditor approved by the Registrar; or
  - (b) without the previous sanction of the Registrar, if the audit officer reports that any asset is bad or doubtful and also recommends that such sanction is necessary.
- (3) Notwithstanding anything contained in this section payments may be made to members as a fixed interest on share capital if so provided in the by-laws.

## **CHAPTER VIII**

### **Audit**

#### **55. Registrar is responsible for audit.**

- (1) The Registrar shall audit or cause to be audited by some person authorized by him by general or special order in writing in this behalf, the accounts or every registered society and society under liquidation once at least in every year.
- (2) The Registrar or the person authorized by him in this behalf shall at all reasonable times have free access to the books, accounts, documents, securities, cash and other properties belonging to or in the custody of the society and may summon any person in possession or responsible for custody of any such books, accounts, documents, securities, cash or other properties to produce the same and furnish such information in regard to the transactions and working of the society at any convenient place or at the headquarters of the society or any branch thereof by the same means and, so far as may be, in the same manner as provided in the Code of Civil Procedure, 1908 (V of 1908).

- (3) In respect of every and audit of the accounts, a registered society shall pay such audit fee as may be prescribed and such fee shall be deemed to be outstanding dues from the society.

**56. Power of the Registrar to have the accounts written up.**

If at the time of the audit the account of a registered society are not complete, the Registrar or with his sanction, the audit officer, may cause the accounts to be written up at the expense of the society.

Such expenses shall at the first instance be met from the grant under the head "Contingencies" be the Registrar and shall be reimbursed later on from the society concerned along with audit fee.

## **COMMENTS**

The second paragraph of this section has been inserted by Assam Act XIX of 1954, effective from 9-6-1954.

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## **57. Nature of audit.**

The audit shall include-

- (i) a verification of the balance and securities;
- (ii) a verification of the balance at the credit of the depositors and creditors and the amounts due from the debtors of the society;
- (iii) an examination of overdue debts, if any;
- (iv) valuation of the assets including stock verifications, and liabilities of the society;
- (v) an examination of the statement of accounts and balance sheets to be prepared by the managing body of the society in such forms as may be prescribed;
- (vi) a certification of the realized profits; and
- (vii) any other relevant matter.

## **58. Audit report.**

The audit officer shall, within a week from the date of completion of audit, submit to the registered society, and to the Registrar, together with the statement of accounts audited, and audit report including a statement of-

- (i) every transaction which appears to him to be contrary to law or to the rules or bye-laws;

- (ii) every sum which ought to have been but has not been brought into account;
- (iii) the amount of deficiency or loss which appears to have resulted from any negligence or misconduct or to require further investigation;
- (iv) any money or property belonging to the society which appears to have been misappropriated or fraudulently retained by any person;
- (v) any of the assets which appears to him to be bad or doubtful;
- (vi) any irregularity in maintaining account; and
- (vii) any other relevant matter.

## **59. Rectification of defects.**

A registered society shall be afforded by the Registrar an opportunity of explaining any defects, or irregularities pointed out and objected to by the audit officer, and thereafter, the society shall, within such time and in such manner as the Registrar may direct, remedy such defects and irregularities and report to the Registrar, the action taken by it thereon.

## **CHAPTER IX**

### **Inquiry and inspection**

#### **60. Inquiry by Registrar.**

- (1) The Registrar may, at any time, of his own motion or shall at the request of the administrative hand in charge of the Civil Sub-division or other administrative area, hold an inquiry or direct some person authorized by him by order in writing in this behalf, to hold an enquiry into the constitution, working and financial condition of a registered society.
- (2) Such an inquiry shall also be held on the application of —
  - (i) the affiliating society, if any, of which the society is a member and a debtor;
  - (ii) a majority of the members of the managing body;
  - (iii) one-third of the members of the society, who shall have deposited such security for costs, if any, as the Registrar may direct;

- (iv) creditors representing not less than one-half of the borrowed capital of the society, who shall deposit such security for costs, if any, as the Registrar may direct.
- (3) The Registrar shall communicate the result of any inquiry under this section to the society and to the person at whose request such enquiry was made.

## **COMMENTS**

The Supreme Court held in the case of *The Registrar Co-operative Societies v. Dharam Chand and others* [**AIR** 1963 SC 1743], that where bank fund have been defalcated and show cause notice has been given to the members of the committee by the Registrar, the Registrar has the power to act as a judge or arbitrator.

This section empowers the Registrar to hold any enquiry into the constitution, working and financial condition of a registered society.

## **61. Inspection of society.**

- (1) Every registered society shall be liable to inspection at any time by the registrar or any person authorized by him in this behalf by general or special order; and by any affiliating society, if so provided in its by-laws.
- (2) An inspection of a registered society shall be made by the Registrar or any person authorized by him in this behalf by an order in writing at any time on the application of a creditor of a registered society.

Provided that no inspection shall be made under this such-section unless (i) the creditor deposits with the Registrar such sum as security for the cost of the proposed inspection as the Registrar may require, and (ii) the creditor satisfies the Registrar that the alleged debt is a sum then due and that he has demanded payment thereof and has not received satisfaction within a reasonable time;

Provided further that no inspection shall be conducted under this sub-section without giving the society an opportunity of being heard.

- (3) The result of an inspection under this section shall be communicated to the society and if held at the instance of a creditor, to the creditor.

- 61-A.** (i) A financing bank shall have the right to inspect the books of any co-operative society which has either applied to the bank for financial assistance or is indebted to the bank on account of financial assistance granted earlier.
- (ii) The inspection may be carried out by an officer or any other member of the paid staff of the financing bank with previous sanction of the Registrar in writing.
- (iii) The officer or any other member of the paid staff of the financing bank undertaking such inspection, shall, at all reasonable times, have access to the books of account, documents, securities, cash and other properties belonging to or in the custody of the co-operative society inspected by him, and shall also be supplied by such society such information, statements and returns as may be required by him to assess the financial conditions of the society and the safety of the financial assistance to be made to the society or already made to it.

## **COMMENTS**

This section has been inserted by Assam Act XIII of 1975, with effect from 22-10-1975.

## **62. Cost of inquiry and inspection**

- (1) When an inquiry is held under S. 60 (2) or an inspection is made under S. 61 (2), the Registrar may, after giving the parties an opportunity of being heard, apportion the cost or such part of the cost as he may deem fit, between the society, the members thereof or the affiliating society or the creditor or creditors applying for such inspection or inquiry, as the case may be, and the officers, former office, members and past members of the society.
- (2) No expenditure from the fund of a registered society shall be incurred for the purpose of defraying any cost in support of any appeal preferred by any person other than the society itself against an order under sub-S. (1).
- (3) Any person authorized by the Registrar under Ss. 60 and 61 shall have all the powers of the Registrar when acting under these sections.
- (4) Recovery of costs. Any sum awarded by way of cost under this section shall be recoverable through a Co-operative Demand Certificate.

## **CHAPTER X**

### **Settlement of disputes**

#### **63. Reference of dispute.**

Any dispute touching the business of a registered society, other than a dispute regarding disciplinary action taken by a society against an employee of the society, or of the liquidator of a society shall be referred to the Registrar for decision if the parties thereto are among the following:

- (a) the society, its past or present controlling or managing body, any past or present officer, agent or employee or the liquidator of the society; or
- (b) member, past member or persons claiming through a member, past member or deceased member or the society; or
- (c) a surety of a member, past member or deceased member of a society; or
- (d) any other registered society or the liquidator of the society;
- (e) a registered society and a financing bank.



## COMMENTS

*Service conditions of the employee of a Co-operative Bank- Powers of the Registrar. [Section 63]. In Ram Krisna Bhattacharjee v. State of Assam [(1995) 1 GLR 261: 1995 (1) GLI 426]* the point of decision was whether the Registrar appointed under S. 3 of the Act has jurisdiction to entertain a petition under S. 63 of the Act to settle matters involving service conditions of an employee of the co-operative bank. The appointment of the bank staff is not made by the Registrar but by the Board of Directors under the Staff Rules. The admitted position is that the staff of the bank, their appointments and conditions of service are controlled under the provisions of the Staff Rules, which is adopted by the Administrative Council and recommended by the Registrar under the Act. Mere recommendation under the provisions of S. 14 of the Act, cannot give jurisdiction to the Registrar to overstep its powers and functions, which is not expressly given by the Act. The Registrar has not given power of appointment under the Act nor under the Staff Rules. In this view of the matter the Registrar cannot council the administrative matter of the bank, particularly, conditions of service of the employees of the bank. Being the supreme appellate authority any appeal regarding conditions of service lies before it to which the Registrar is a member of the appellate committee. The Act nowhere contemplates dual authority of the Registrar of Co-operative Societies, or of the Bank, which has been constituted under the guidelines and provisions of the Banking Regulation Act, 1949

and registered under the Co-operative Societies Act. A co-operative bank raises working funds by floating debentures the payment of which is to be guaranteed by the State Government, which is the principal share-holder. Forum of appeal is contemplated under S. 63 of the Act to dispose of the dispute arising from the business of the registered society (whether a financial bank or consumers society) and for decision of the service conditions of employees of the bank there is distinct and independent forum and jurisdiction of both the forum has been provided and ascertained under the State Rules. Hence cognizance of dispute by the Registrar under S. 63 of the service conditions of an employee of the bank has not been contemplated in the Act therefore maintainability of the same cannot be sustained under the law.

#### **64. Settlement of dispute.**

- (1) The Registrar shall on receipt of a reference under S. 63 —
  - (a) decide the dispute himself or authorize any other Government office to decide the dispute;  
or
  - (b) refer it for disposal to an arbitrator appointed by the Registrar or to three arbitrators one to be nominated by each of the parties to the dispute and the third, who shall be nominated by the Registrar, to act as Chairman. Where

any party to the dispute fails to nominate an arbitrator within fifteen days after the communication of this notice, the Registrar may himself make the nomination. No legal practitioner may be nominated as an arbitrator by any party to a dispute or by the Registrar;

- (c) an arbitrator appointed under the previous sub-clause shall be governed by the Indian Arbitration Act, 1940 (X of 1940), with such statutory re-enactment or modification thereof as shall, from time to time, be made.

- (2) The Registrar may withdraw any reference of such dispute referred to under sub-S. (1) and may deal with it himself under the said sub-section.

- (3) Where the Registrar is satisfied that a party to any reference made to him under S. 63 with intent to defeat or delay the execution of any decision that may be passed thereon-

- (a) is about to dispose of the whole or any part of his property; or
- (b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Registrar;

the Registrar may direct the conditional attachment of the said property or such part thereof as he deems necessary; and such attachment shall have the same effect as if it had been made by a competent Civil Court.

## **COMMENTS**

The sections under Chapter X specifically empower the Registrar to act as an arbitrator where any dispute touching the business of a registered society arises among the following:

- (1) the society, its past and present controlling or managing body;
- (2) any past or present officer;
- (3) agent or employee;
- (4) the liquidator of the society or member;
- (5) past member or person claiming to a member, past member or deceased member of the society;

- (6) surety of a member, a past member or deceased member of a society or any other registered society; or
- (7) the liquidator of any other registered society.

While the Registrar is action as an arbitrator as being empowered and appointed under these sections, his appointment as such etc. would be governed by the provisions of the Indian Arbitration Act, 1940.

Clause (e) of S. 63 has been inserted by Assam Act XIII of 1975 effective from 22-10-1975.

In sub-S. (3) (b) of S. 64, the words “unless adequate security is furnished” have been deleted.

## **CHAPTER XI**

### **Dissolution of society**

#### **65. Cancellation of registration.**

- (1) If the Registrar, on receipt of an application made upon a resolution adopted in a meeting of the General Assembly by a three-fourth majority of the members present at the meeting provided that the notice of dissolution was included in the circulated agenda of the meeting, is of opinion that the society ought to be dissolved, he may, by an order in writing, cancel the registration of the society.
- (2) The Registrar, after an enquiry has been held under S. 60 or after an inspection has been made under S. 61, may cancel the registration of a society which-
  - (i) as not commenced working; or
  - (ii) as ceased working; or
  - (iii) has ceased to comply materially with any condition as to registration in this Act, rules or by-laws ; and

(iv) in his opinion to be dissolved .

- (3) A copy of the order cancelling the registration of a society shall forthwith be published in the official Gazette by a notice, which shall be commenced to the society and to any affiliating society concerned by registered post. The notice shall contain the name of the liquidator appointed under S. 66, who shall take full charge of the society forthwith and shall require all claims against the said society to be made to the liquidator within two months of the publication of the notice. All liabilities recorded in the account books of the society shall be deemed *ipso facto* to leave so claimed.
- (4) When the cancellation of the registration of a society takes effect, the society shall cease to exist as a corporate body, but shall vest in the liquidator.
- (5) Any member of the society may, within two months, from the publication of an order cancelling the registration, appeal to the State Government from such order.
- (6) Where no appeal is presented within two months from the publication of an order canceling the

registration of the society, the order shall take effect on the expiry of that period.

- (7) When an appeal is presented within two months of an order of cancellation, the order shall not take effect until it is confirmed by the State Government and such confirmation is communicated to the society by registered post.

## **66. Winding up.**

- (1) Where an order of cancellation of the registration of the registration of a society is made by the Registrar under S. 65, he may appoint any person to be the liquidator of society and may remove such person and appoint another in his place.
- (2) The liquidator appointed under sub-S. (1) shall have power from the date of his appointment to take immediate possession of all assets, properties, effects and actionable claims of the society or to which the society is entitled and of all books, records, cash other documents pertaining to the business of the society and, in the interest of the society, shall hold charge of the society notwithstanding the provisions of S. 65; provided that no step shall be taken for the winding up of the society during the pendency of any stay order.



- (3) The liquidator shall, under the general control of the Registrar have power, so far as is necessary for the winding up of the society, on behalf of the society to carry on the business thereof and to do all acts and execute all documents necessary to such winding up, and in particular shall exercise the following powers:
- (a) to institute, compromise and defend suits and other legal proceedings on behalf of the society by his name of office;
  - (b) to make any compromise or arrangement with any person between whom and the society there exists any dispute;
  - (c) to determine the debts due to the society by a member, past member of the estate, nominees, heirs or legal representatives of a deceased member;
  - (d) to determine from time to time the contribution to be made or remaining to be made by the members, past members or by the estates or nominees, heirs or legal representatives of deceased members or by any officers or former officers, to the assets of the society and to

determine the debts due from such members or persons and the cost of liquidation;

- (e) to calculate the cost of liquidation and to determine by what persons and in what proportion they are to be done;
- (f) to investigate all claims against the society and, subject to the provisions of this Act, to decide questions of priority arising between claimants;
- (g) to pay claims against the society including interest up to the date of cancellation of registration according to their respective priorities, if any, in full or rateably as the assets including the reserve fund of the society, permit; the surplus, if any, remaining after payment of claims being applied in payment of interest from the date of such cancellation of the rate fixed by him but not exceeding the contract rate in any case;
- (h) to take step to recover dues according to the provisions of S. 83, if necessary; and
- (i) to dispose of the surplus, if any, remaining after paying the claims against the society in accordance with S. 67 of this Act.

- (4) Subject to the provisions of this Act and rules made there under, a liquidator appointed under this section shall, in so far as such powers are necessary for carrying out the purposes of this section, have powers to summon and enforce the attendance of the witnesses and to compel the production of any books, accounts, documents, securities, cash or other properties belonging to or in the custody of the society by the same means and so far as may be in the same manner as is provided in the case of a civil court under the Code of Civil Procedure, 1908 (V of 1908).
- (5) Notwithstanding anything contained in any law for the time being in force, if any landed property is held by a liquidator as such the title over the land shall be complete as soon as the mutation of the name of his office is effaced and no court shall question the title on the ground of dispossession, want of possession or physical delivery of possession.

**67. Distribution of fund of a dissolved society.**

On dissolution of a society, the reserved fund and any undisbursed cash in hand shall be applied to discharging liabilities of the society and the repayment of the share capital. Any sum that may remain may be applied to such object of local and public utility as may be selected by the

members of the dissolved society and approved by the Registrar. If, within three months of the notice published in the official Gazette under S. 68, notifying the closing of the liquidation proceedings of the society, the members fail to select any object as aforesaid, the Registrar shall, with the approval of the Government apply the fund to such local public utility as may be determined by him or credit the remaining sum to the reserve fund of a society, to be formed to replace the dissolved society or if there be no such society to any other deserving society existing within the same area of operation and having objects similar to those of the dissolved society or if there be no such society to any other registered society in Assam as may be determined by the Registrar.

## **COMMENTS**

This section has been substituted by Assam Act XIX of 1954 with effect from 6-6-1954. The old section of the principal Act was as follows:

*“67. Distribution of fund of a dissolved society.* On dissolution of a society, the Reserve Fund and any undisbursed cash in hand shall be applied to discharging the liabilities of the society and the repayment of the share capital. Any sum that may remain shall be credited to the reserve fund of the society, to be formed to replace the

dissolved society or, if there be no such society to any other deserving society similar to those of dissolved society or, if there be no such society to any other registered society in Assam, may be determined by the Registrar”

**68. Liquidator to deposit the books and submit a final report.**

When the affairs of a registered society have been wound up, the liquidator shall make a report to the Registrar, who when satisfied shall order the liquidation proceedings to be closed and direct the liquidator to deposit the records wheresoever the Registrar thinks fit and the Registrar shall issue a notice in the official Gazette, notifying the closing of the liquidation proceedings of the society.

## **COMMENTS**

The following words have been inserted by Assam Act XIX of 1954 with effect from 9-6-1954:

“and the Registrar shall issue a notice in the official Gazette notifying the closing of the liquidation proceedings of the society”.

**69. Bar of suit.**

Save in so far as is expressly provided in this Act, no Civil Court shall take cognizance of any matter connected with the winding up or dissolution of a society under this Act and when a liquidator has been appointed no suit or other legal proceedings shall lie or be proceeded with against him except by leave of the Registrar and subject to such terms as he may impose.

## **CHAPTER XII**

### **Recovery of sums due and enforcement of obligations**

#### **70. Power of Registrar to direct payment of dues.**

Notwithstanding anything contained in Chapter X, the Registrar or such other person as may be authorised by him in this behalf may, on his own motion or on the written requisition of a registered society or an affiliating society or a financing bank for the recovery of any loan or any other demand due by a defaulting member, after making such enquiry as he deems fit, grant a Co-operative Demand Certificate for the recovery of the amount found to be due.

### **COMMENTS**

This section has been substituted by Assam Act XIII of 1975 with effect from 22-10-1975. The substituted section reads as follows:

*“70. Power of Registrar to direct payment of dues. Notwithstanding anything contained in*

Chapter X, the Registrar or such other person as may be authorised in this behalf, may, on his own motion or on the written requisition of a registered society or an affiliating society for the recovery of any loan due by a defaulting member, after due enquiry, make an award directing payment by such member of the amount found to be due.”

- 70-A.** (1) If any installment of loan or interest payable by a member of a co-operative society or any part of such installment has remained unpaid for more than 30 days from date on which it fell due, the managing committee of the society may, in addition to any other remedy available to it, apply to the Registrar or any other officer authorized by him for the recovery of such installment of part thereof by distraint and sale of the produce of the charged land including the standing crop.
- (2) On receipt of such application the Registrar or the person authorised by him may, notwithstanding anything contained in the Transfer of Property Act, 1882 take action in the manner as prescribed for the purpose of distraining and selling such produce :

Provided that no distraint shall be made after the expiry of twelve months from the date on which the installment fell due.



- (3) The value of the property distrained shall be, as nearly as possible, equal to the amount due and the expenses of the distraint and the costs of the sale.

## **COMMENTS**

This section has been inserted by Assam Act XIII of 1975, with effect from 22-10-1975.

### **71. Charge and Surcharge.**

- (1) Where, as the result of an audit under S. 55, or an enquiry under S. 60 or an inspection under S. 61 or a report made in the course of the winding up of a registered society, it appears to the Registrar that any member, officer or employee, past or present, of society has at any time within a period of four years prior to the date of such audit, inspection, inquiry or report, as the case may be —
  - (a) Intentionally, whether individually or as an assenting member of any managing or other controlling body, made or authorised any payment of or granted any loan which is contrary to the provisions of this Act or to the rules or bye-laws or failed to take timely steps

to recover any loan at the due date or if it was being improperly utilised; or

- (b) was grossly negligent in respect of any loss or deficiency; or
- (c) failed to bring into account any sum which ought to have been brought into account; or
- (d) misappropriated or fraudulently retained any property of the society; or
- (e) committed breach of trust in relation to the society;

the Registrar may inquire into the conduct of such office or members of the managing other controlling body.

- (2) The Registrar may similarly inquire into the conduct relating to the affairs of the society of any members, officer or employee, past or present, of a registered society on the application of the present controlling or managing body of the society, or liquidator, or any creditor, or any other registered society to which the society is affiliated or any contributory.
- (3) Upon such enquiry, after giving such member, officer or employee an opportunity of being heard and, in the case of payment made contrary to the provisions

of this Act or rule or bye-laws, after affording such member, officer or employee, time to recover the amount of such payment from the payee and credit it to the funds of the society, the Registrar may by an order in writing require such member, officer or employee to pay such sum with interest at such rate as the Registrar may direct, to the society by way of compensation in respect of such payment or loss or to restore such property as the Registrar thinks fit, and to pay such sum as the Registrar may fix to meet the cost of the proceedings under this section.

- (4) Any award made by the Registrar under sub-S. (3) shall be reduced to the form of a co-operative demand certificate by the officer authorized to issue such certificates.
- (5) This section shall apply notwithstanding that such member, officer or employee may be his act or omission have incurred in addition to criminal liability under this Act or any other law for time being in force.
- (6) An appeal shall lie to the State Government against an order passed under sub-Cl. (1) (a) within thirty days of the communication of the order.

## **CHAPTER XIII**

### **Penalty**

#### **72. Prohibition of the use of the word “Co-operative” or “Samabaya”.**

- (1) No person other than a society registered under this Act or any other Co-operative Societies Act shall trade or carry on business under any name or title of which the word “Co-operative” or its vernacular equivalent “Samabaya” is a part:

Provided that nothing in this section shall apply to the use by any person or by his successors in interest of any name or title under which he lawfully traded or carried on business at the commencement of this Act.

- (2) Whoever contravenes the provisions of this section shall be punishable with fine, which may extend to fifty rupees, and in the case of a continuing offence with further fine of five rupees for each day on which the offence is continued after conviction thereafter.

**73. Punishment for false return, false information, disobeying summons, orders, etc.**

If a registered society or an officer or member thereof or any liquidator, -

- (a) Willfully makes a false return or furnishes false information or willfully neglects or refuses to do any Act required by this Act or any rules or bye-laws; or does anything contrary to this Act or the rules or bye-laws; or
- (b) any person willfully or without reasonable excuse disobeys any summons, requisition or lawfully written order issued under the provisions of this Act or does not produce documents or cash balance of the society or furnish any information lawfully required from him by a person authorised in this behalf under the provisions of this Act or fails to maintain up-to-date account, records and other documents of the society required to be maintained by him under this Act or rules or bye-laws;

he shall be punishable with fine which may extend to five hundred rupees; and in the case of a continuing offence a further fine of five rupees for each day on which the offence is continued after conviction therefore.

## **COMMENTS**

In Cl. (b) the words “or failed to maintain up-to-date account, records and other documents of the society required to be maintained by; him under this Act or the rules or by-laws” have been inserted by the Assam Act XIX of 1953.

### **74. Punishment for disposing property in contravention of S. 46.**

Any member, past member or the nominee, heir or legal representative of a deceased member removing or otherwise disposing of, or suffering to be removed or otherwise disposed of, any property on which a registered society holds a first charge under S. 46 with intent to defraud the society or with such intent doing any other act to the prejudice of the society's first charge, shall be punishable with fine not exceeding five hundred rupees.

- (a) by sitting or voting or exercising his rights as a member, or as a member of any managing or controlling body, or voting in the affairs of a registered society as a representative of another society which is a member of such society, when such person was not entitled so to sit, vote or exercise such rights, as the case may be, or

(b) by utilizing a loan for a purpose different from that for which it was granted,

the Registrar may, after affording such person an opportunity to be heard by an order in writing, direct him, to pay from the assets of the society by way of penalty such sum not exceeding fifty rupees as the Registrar thinks fit.

**76. Power to enforce performance of obligations.**

Notwithstanding anything contained in this Act, where any registered society is required to take any action under this Act, the rules or bye-laws and such action is not taken within the time provided in this Act, the rules or bye-laws or within such time as the Registrar may specify by a notice in writing where no time is so provided, the Registrar may call upon any officer of the society whom he considers to be responsible for the carrying out the directions, and after giving such officer an opportunity to be heard, may require him to pay to the assets of the society such sum not exceeding twenty-five rupees as the Registrar may think fit for each day until the Registrar's direction are carried out.

**77. Cognizance of offences.**

- (1) No court inferior to that of a Magistrate of the second class shall try any offence under this Act.
- (2) No prosecution for an offence under this Act shall be instituted without the previous sanction of the Registrar.
- (3) Offences under this Act may be tried summarily.



## **CHAPTER XIV**

### **Jurisdiction**

#### **78. Indemnity.**

No suit, proceeding or prosecution whatever shall lie against the Registrar or any person acting on his authority, or against any liquidator in respect of anything done or purporting to be done in good faith under this Act.

#### **79. Bar to jurisdiction of Courts.**

- (1) Save as provided in this Act, no Civil or Revenue Court shall have any jurisdiction in respect of-
  - (a) registration of a registered society or its bye-laws or amendments of bye-laws; or
  - (b) the dissolution of a managing or controlling body and the management of the affairs of the society on dissolution thereof; or
  - (c) any dispute referred to the Registrar; or
  - (d) any matter in relation to the winding up and dissolution of registered society.
- (2) Save as provided in this Act, no order, decision or award under this Act, or working of the affairs of a registered society shall be liable to be challenged, set aside, modified, revised or declared void in any court

on any ground whatsoever except on grounds of jurisdiction.

## COMMENTS

In the case of *Abdul Gafur Darbhuyan v. Mustakim Ali* [AIR 1970 Assam & Nagaland 96], their Lordships held that by virtue of sub-S. (2), the jurisdiction of the civil court is not barred where the question of jurisdiction is involved regarding the subject matter of the suit. In this case the plaintiff filed a suit for declaration that the election of a Chairman of the society was void and illegal and that the said Chairman was not entitled to hold the office as such. The question arose as to whether such a suit is barred in view of sub-S. (2) of this section. Their Lordships finally held that the suit cannot be said to be *prima facie* barred under S. 79 (2) of the Act.

*Scope and power under S. 79. In Anipur Co-operative Society Limited v. Sudarsana Sen* [(1984 1) GLR 451] the Court had occasion to consider S. 79 (2) of the Act in respect of an injunction issued by lower appellate Court interfering the process of election to co-operative societies and it was held that it will be patently erroneous for any Civil Court to consider any prayer for temporary injunction for interfering with a process of any election under the Act without directing its attention to S. 79 of the Act more particularly sub-S. (2). In *Bhuban Chandra Das v. Bapu*

*Ram Das* [(1993) 1 GLR 259] the issue of temporary injunction interfering with the management of the co-operative society by the Civil Court is not vested in it, in view of the provisions contained in S. 79 of the Act.

*Jurisdiction of the Civil Court.* Under S. 79 (2) of the Act, Civil Court jurisdiction was not barred, when the jurisdiction itself was the subject matter of the election of the defendant No. 1 as Chairman of the Society as illegal. So whether the constitution of the Managing Committee was or was not legal was to be decided in the suit, Even though the election of the petitioner might have been approved by the Registrar, it would be a matter of consideration in the suit itself whether such approval could remove the alleged illegality or irregularity in the constitution of the Managing Committee, if there be any. Hence held that the plaintiff had a prima facie case for the purpose of grant of injunction. [See *decision in Abdul Gafur v. Mustakim Ali* [AIR 1970 A & N 96; and *Saidur Rahman v. State of Assam*, (1985) 1 GLR 438].

*Bar to jurisdiction of Civil Court.* [Section 79]. The validity or otherwise of an award made under the Assam Co-operative demand certificate issued by the Registrar on the basis of an award is to be submitted of the head of local administration having jurisdiction for recovery of the amount as arrear of land revenue and that the Civil Court cannot exercise its jurisdiction in any claim connected with or arising out of the collection of land revenue, or any process for the recovery of an arrear of land revenue or any

enactment for the realisation of the land revenue. Hence, the Civil Court has no jurisdiction to entertain any suit relating to the execution of the award in question. [*Bahadur Tea Co. (p) Ltd. V. Prafulla Chandra Bezbaruah*, (1989) 2 GLR (NOC) 11].

*Power of Civil Court to interfere with the process of election under the Act [Section 79 (2)].* It will be patently erroneous for any court to consider any prayer for temporary injunction for interfering with a process of any election under the Act without directing its attention to the relevant provisions under the Act [*Anipur Co-operative Society Ltd. v. Sudarsan Sen*, (1984) 1 GLR 451].

#### **80. Appeal or review.**

- (1) Except where otherwise expressly provided to the contrary an appeal shall lie to the Registrar from the decisions made under this Act or rules framed thereunder, by any Government Officer, liquidator or non-official helper appointed under sub-S. (3) of S. 3.
- (2) The Registrar may review any order passed by him at any time within two months from the communication of such order.
- (3) Save as provided in this Act or rules, no appeal shall lie to the State Government against any order of the Registrar, except on a question of law, and provided

such appeal is preferred within two months of the communication of such order.

- (4) Any Appellate Authority and the Registrar in case of review may pass any stay order pending any appeal or review before such an authority, and may award cost against any party appealing or petitioning for review if such appeal or review petition is considered false, vexatious or frivolous by the authority concerned.

## **COMMENTS**

*Entertainment of appeal against order of Registrar.* [Section 80 (3)]. Sub-section (3) of S. 80 provides that the State Government can entertain an appeal against the order of the Registrar when there is a question of law involved and thereby the State Government itself becomes an appellate authority, and sub-S. (4) also provides for jurisdiction of the appellate authority to pass stay order in appeal/review. [Ram Krishna Battacharjee v. State of Assam, 1995 (1) **GL.T** 426].

### **81. Power of attachment of property.**

Where the Registrar or such gazetted officer as may have powers delegated to him under S. 83 is satisfied that any person holding property within his jurisdiction with intent

to defeat or delay the execution of any order, under a co-operative demand certificate for recovery of dues, or with intent to avoid payment of dues from such person under this Act, rules or bye-laws-

- (a) is about to dispose of the whole or any part of such property; or
- (b) is about to remove the whole or any part of such property from the local limits of the jurisdiction of the Registrar or of such gazetted officer.

the Registrar or such gazetted officer may, unless adequate security is furnished, as he may require, direct the conditional attachment of the said property or such part thereof as he thinks necessary, notwithstanding that the claimant or owner of the property may reside elsewhere, and such attachment shall have the same force and effect as if it had been made by a competent Civil Court and shall continue in force until withdrawn or cancelled.

**82. Registrar to be Civil Court for certain purposes.**

The Registrar or any person empowered by him in this behalf shall be deemed, when exercising any powers under this Act for the recovery of any amount by attachment and sale or by the sale without attachment of any property, or when passing any orders on any application made to him for such recovery or to take any step in aid of such

recovery; to be a Civil Court for the purpose of Act, 182 of the First Schedule to the Indian Limitation Act, 1908 (IX of 1908).

**83. Recovery of sums due.**

- (1) All dues recoverable under this Act or Rules framed thereunder shall be reduced to the form of a co-operative demand certificate, as in Schedule A over the signature of the Registrar or of such gazetted officers as may have powers delegated to them by the Registrar in this behalf and shall be recovered as an arrear of land revenue and shall be paid to the certificate holder or his authorized nominee. Such certificate shall be in the name of the claimant and shall be delivered to him.
- (2) Notwithstanding anything contained in sub-S. (1), all the said dues shall also be recoverable as a public demand in accordance with the procedure laid down in the Bengal Public Demands Recovery Act, 1913 (Bengal Act III of 1913). On a written requisition sent to the certificate officer in the prescribed form over the signature of the Registrar or of such gazetted officer as may have powers delegated to him by the Registrar in this behalf.

*Explanation* The '**certificate officer**' means the officer so defined in and the '**prescribed form**' means form so prescribed under the Bengal Public Demands Recovery Act, 1913.

- (3) For the purpose of this section a member of an affiliated society shall be deemed to be a member of the affiliating society and loans due to the affiliated society shall be deemed also to be loans due to the affiliating society to the extent that loan from the affiliating society to the affiliated society are outstanding and cannot be recovered from the affiliated society directly: provided that not more than one demand certificate may be executed against a single loan.

## **COMMENTS**

Sub-section (2) has been substituted by Assam Act XIX of 1953.

- 83-A.** (1) A copy of the Co-operative Demand Certificate prepared under Ss. 70 and 83 of this Act shall be served in the manner prescribed upon the person from whom the amount is due.



- (2) On receipt of a copy of; the Co-operative Demand Certificate the person from whom the amount is due shall pay the same within a period of thirty days from the date of service of the Certificate; provided that the period during which the payment is to be made may be extended by the Registrar for another period no exceeding thirty days for reasons to be recorded in writing.
- (3) Any person violating the provisions of sub-S. (2) above shall, on conviction be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

## **COMMENTS**

This section has been inserted by Assam Act XIII of 19/5, with effect from 22-10-1975.

*Period of limitation under S. 168 of Cr. P.C. 1973-whether applicable to offences under Assam Co-operative Societies Act. [Section 83-A (3)].* Under sub-S. (3) of S. 83-A of the Act, the period of punishment prescribed is for a term which may extend to six months or with fine which may extend to one thousand rupees or with both. The period of limitation shall, therefore, be one year. In the instant case, the prosecution having been launched after more than one year, the learned court was justified in rejecting the prayer

on the ground of limitation. [*State of Assam v. Abdul Samad*. (1985) 2 **GLR** 500].

**84. Registrar may order a meeting of creditors.**

- (1) Notwithstanding anything contained in this Act, where a compromise or arrangement is proposal between a registered society and its creditor or creditors or any class of them, the Registrar, upon an application made by a registered society or by liquidator in case of a society in respect of which an order has been passed for the winding up thereof, or by a creditor or creditors or any class of creditors, may order a meeting of the creditors.
- (2) If a majority in number of creditors or the class of creditors, as the case may be, representing claims to three-fourths of the debt due by the society to the creditors or class of creditors, at a meeting agree to any compromise or arrangement and if the Registrar agrees to such compromise or arrangement and gives his sanction, then the compromise or the arrangement shall be binding on all the creditors on class of creditors and also on the society or on the liquidator in the case of a society in respect of which an order has been passed for the winding up thereof, and on all persons who may be required by the liquidator to contribute to the assets of the society.

## **CHAPTER XV**

### **Miscellaneous**

#### **85. Society to be a body corporate.**

Every registered society shall be deemed to be a body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to hold property, to enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it was constituted.

#### **86. Register of members.**

Any register or list of members or shares kept by any registered society shall be *prima facie* evidence of any of the following particulars entered therein:

- (a) the date on which the name of any person was entered in such register or list as a member; and
- (b) the date on which any such member ceased to be a member.

**87. Entries in books of registered society shall be received as *prima facie* evidence.**

- (1) A copy of any entry in a book of a registered society, regularly kept in the course of business shall, if certified by the Chairman or Secretary of the society, be received in any suit or legal proceeding as *prima facie* evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as the original entry itself, is admissible.
- (2) No officer or liquidator of a registered society and no officer in whose office the books of a registered society are deposited after liquidation shall in any legal proceedings to which the society are the liquidator is not a party, be compelled to produce any of the society's books the contents of which can be proved under sub-S. (1) or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless specially so directed by an order of the Court of the arbitrator.

**88. Savings of existing societies.**

- (1) Every society existing at the commencement of this Act which has been registered or deemed to have been registered under the Co-operative Societies Act, 1912 (II of 1962), shall be deemed to be registered under this Act; and its bye-laws shall, in so far as

they are not inconsistent with the provisions of this Act, continue in force until altered or rescinded and shall to such extent be deemed to be registered under this Act.

- (2) All appointments, rules and orders made, notifications and notices issued, all transactions entered into and all suits and other proceedings instituted under the said Act shall continue and shall, so far as may be, deemed to have been respectively made, issued, entered into or instituted under this Act.

**89. Construction of reference to Act II of 1912.**

All references to the Co-operative Societies Act, 1912, occurring in any enactment made by any authority in India and for the time being in force in Assam, shall in the application of any such enactment thereto, be construed as reference to this Act, and anything done, or any proceeding commenced in pursuance of such enactment on or after the commencement of this Act shall be deemed to have been done or to have commenced and to have had effect as if the reference in such enactment to Co-operative Societies Act, 1912, had been a reference to this Act, and no such thing or proceeding shall be deemed to have been invalid on the ground that such enactment did not refer to this Act.

**90. Act VII of 1913 not to apply.**

The provisions of the Indian Companies Act, 1913 shall not apply to registered societies.

**91. Acts of societies, etc. not to be invalidated by certain defects.**

- (1) No act of a registered society or of a managing or controlling body or of any officer or liquidator done in good faith in pursuance of the business of the society shall be deemed to be invalid by reason only of some of defect subsequently discovered in the organisation of the society or in the constitution of any such body or 8in the appointment or election of the officer or liquidator or on the ground that such officer or liquidator was disqualified from appointment.
- (2) No act done in good faith by any person appointed under this Act shall be invalid merely by reason of the fact that his appointment has been cancelled or in consequence of any order subsequently passed under this Act.
- (3) The Registrar shall decide whether any act was done in good faith in pursuance of the business of a society.

**92. Power to exempt societies from provisions of this Act.**

The State Government may, by general or special order, exempt any registered society, or class of registered societies for any of the provisions of this Act or may direct that such provisions shall apply to such society with such modifications as may be specified in the order.

**93. Rules and bye-laws not to be deemed to go beyond the Act.**

Rules framed under this Act and bye-laws registered under this Act shall not be deemed to go beyond the provisions of this Act if their effect is not to lessen the degree of control expressly provided for in the Act.

**94. Power to exempt societies from conditions as to registration.**

Notwithstanding anything contained in this Act, the State Government may by special order and subject to such conditions, if any, as it may impose, exempt any society from any of the requirements of this Act as to registration.

**95. Power to order recoupment of expenditure.**

Notwithstanding anything contained in any law for the time being in force the State Government may, by a general or special order, require of every registered society or a class of registered societies to make contribution of such sum annually to be fixed by the Registrar towards the recoupment of administrative expenditure incurred by the

Government in respect of inspection, supervision and guidance of a society or class of society or class of societies or of any service to such society or class of societies.

**96. Power to seize records of society.**

- (1) If the Registrar or any person authorised by him in this behalf, while making audit, inspection, inquiry or supervision, as the case may be, believes or has reason to believe that the registered society is not keeping or maintaining the accounts, books and records of the society properly or finds or reasonably suspects gross negligence of duties, misappropriation or misuse of funds of the society, irregularity in recording proceedings or keeping accounts or books, he shall have power to take possession of any or all books registers or documents, cash in hand or account books of the society and remove such seized property or keep in proper custody such seized property till it is disposed of in any manner as may be directed by the Registrar.
- (2) The person seizing the property of the society under sub-S. (1) shall prepare an inventory of the properties seized in duplicate with his signature and require the officer or member of the society from whose possession or custody the property is seized to put his signature in witness thereof and, if such officer or member refuses to sign, then the person seizing the property shall call upon, two or more



persons to sign the seizure list. A copy of the list prepared under this section, signed by the witnesses shall be delivered to the officer of the society.

- (3) The Registrar shall take immediate steps by way of audit or inspection and pass such orders as he may think fit.
- (4) The administrative head of a civil sub-division or administrative area shall give police help to all officers mentioned in sub-S. (1) of this section when sought for.

**97. Power of the managing body of an affiliating society to enquire into the affairs of a member society.**

When a registered society takes loan from an affiliating society and defaults payment of the debt or any installment thereof, any member of the managing body of the affiliating society, may examine and look into the accounts and working of such borrowing society and report the result of his enquiry or examination particularly with reference to the said loan to the affiliating society and may recommend any suggestion in his report. The borrowing society shall furnish such information and produce such documents, books, and accounts as the member of the managing body may require.

**98. Limitation.**

- (1) Notwithstanding any of the provisions of the Indian Limitation Act, 1908, the period of limitation for the institution of a claim to recover any sum, including the interest thereon, due to a registered society by a member thereof shall be computed from the date on which such member dies or ceases to be a member of a society.
- (2) The Indian Limitation Act, 1908 (IX of 1908), shall not apply to any debt or liability due by any member, past member or deceased member to any society in respect of which an order of dissolution has been passed under this Act.

**99. Power to exempt societies from the operation of the Assam Money Lender's Act.**

The State Government by notification in the official Gazette may exempt a registered society from any or all the provisions of the Assam Money Lender's Act (Assam Act IV of 1934) for the time being in force.

**100. Power to make Rules.**

The State Government may, after previous publication, make rules to carry out the purposes and objects of this Act, and such rules may provide a penalty not exceeding fifty rupees for a breach thereof.

**101. Repeal.**

The Co-operative Societies Act, 1912 (II of 1912) is hereby repealed in so far as it applies to Assam to the extent specified in column 4 of Schedule B.

## **SCHEDULE “A”**

### **FORM (Under Section 83)**

**Co-operative Demand Certificate granted under S. 83 (1) of  
the Assam Co-operative Societies Act, 1949 (Act I of 1950)**

**as amended**

*(To be realized as an arrear of land revenue by the revenue  
authority within whose jurisdiction the judgment debtor's property  
is situated)*

Case No \_\_\_\_\_ of 19

District/Sub-division

In the matter of.....

*versus*

.....

Whereas as a result of my enquiry I decide that a sum of  
Rs.....(Rupees.....) by way of  
.....under S. 70 of the Assam Co-operative Societies  
Act, 1949 (Act I of 1950) as amended and a sum of  
Rs.....(Rupees.....) by  
way of interest is/are due from you and you have not paid;

Whereas .....has made a reference in writing to me complaining/determining that a sum of Rs.....(Rupees.....) by way of ..... under section .....of the Assam Co-operative Societies Act, 1949 (Act I of 1950) as amended and a sum of Rs.....(Rupees.....) by way of interest is/are due from you and you have evaded payment of the same and whereas a notice of demand calling on you to pay the dues within the specified time was served with notice to show cause;

And whereas you have not paid up your dues specified in the notice;

And whereas you have not submitted explanation/you explanation is unsatisfactory;

Now, therefore I, under authority of S. 70 of the Assam Co-operative Societies Act, 1949 as amended/sub-S. (1) of S. 83 of the Assam Co-operative Societies Act, 1949 as amended do hereby order that the above mentioned sum of Rs.....is due to the above-named from you and that you will pay further interest on the principal sum at the rate of.....per cent per annum from.....together with all costs till the date of realisation.

I further order that right, title and interest of.....in the properties set out and described in the schedule below be sold as an arrear of land revenue under the provisions of the Assam Land Revenue Regulation, 1886 (Regulation I of 1886) and that, if the sale proceeds should be

found insufficient to discharge the dues with subsequent interest at the above rate till the date of realization and costs in full, the balance be realised by attachment and sale of other movable and immovable property of the judgment-debtor as an arrear of land revenue.

Further take notice that if you fail to pay the amount as ordered above within a period of thirty days from the date of service of the Certificate you shall also be liable to prosecution under sub S. (3) of S. 83 (1) of the Assam Co-operative Society Act, 1949 as amended in addition to other measures for recovery of the amount payable by you.

### **Schedule**

Dated Gauhati

The .....

Registrar

Co-operative Societies, Assam/  
Office empowered under S. 70  
S. 83 (1) of Assam Co-operative  
Societies Act, 1949 (Act of 1950)  
as amended.

**N.B.** The irrelevant words/portions may be struck off and relevant entries may be made where necessary.

## **COMMENTS**

The Form in Schedule A has been substituted by Assam Act XIII of 1975, with effect from 22-10-1975. Earlier it was also substituted by Assam Act XIX of 1953.

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## **SCHEDULE “B”**

[See Section 10]

<b>Year</b>	<b>No.</b>	<b>Short title</b>	<b>Extent of repeal</b>
1912	II	The Co-operative Societies Act, 1912	The whole, with the exemption of sub-S. (a) of S. 28, and of sub-S. (b) of S. 28, so far as it relates to the stamp duties specified in the second paragraph thereof.

----- **X** -----