IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

WA.NO. 1895 OF 2015 () IN WP(C).19146/2015

AGAINST THE ORDER/JUDGMENT IN WP(C) 19146/2015
OF HIGH COURT OF KERALA DATED 10-08-2015

APPELLANT(S)/RESPONDENTS 4 AND 5:
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1. THE PRESIDENT, PEECHI SERVICE CO-OPERATIVE BANK
PEECHI, PATTIKKAD P.O, THRISSUR DISTRICT -680 652.

2. THE PEECHI SERVICE CO-OPERATIVE BANK
PEECHI, PATTIKKAD P.O, THRISSUR DISTRICT
REPRESENTED BY ITS SECRETARY -680 652.

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENT(S)/PETITIONERS AND RESPONDENTS 1 TO 3:
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1. TESSY VARGHESE
VATTAMKONDATHIL HOUSE, ASSARIKADU PO, THRISSUR -680751

2. JASMINE SHAJI
PERUMANA HOUSE, CHENNAIPPARA PO, THEKKEKKULAM
THRISSUR DISTRICT.

3. MOHANAN C.
MULLAPILLY HOUSE, VAZHUKKUMPARA, CHUVANNAMANNU P.O.
THRISSUR -680 562.

4. THE SECRETARY TO GOVERNMENT
CO-OPERATIVE DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM 695001

WA.NO. 1895 OF 2015

5. THE REGISTRAR OF CO-OPERATIVE SOCIETIES
OFFICE OF REGISTRAR OF CO-OPERATIVE SOCIETIES
TRIVANDRUM 695001.

6. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES
(GENERAL), O/O.JOINT REGISTRAR
THRISSUR DISTRICT 680001.

BY ADVOCATE SHRI M.P.ASHOK KUMAR
BY SPECIAL GOVERNMENT PLEADER SHRI D.SOMASUNDARAM

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 14.09.2015, THE COURT ON 23.09.2015 DELIVERED THE FOLLOWING:

"C.R."

ASHOK BHUSHAN, C.J.
and
A.M. SHAFFIQUE, J.

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W.A. No.1895 of 2015

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Dated this the 23rd day of September, 2015

J U D G M E N T

Ashok Bhushan, C.J.

This Appeal has been filed by a Co-operative Bank and its President who were respondent Nos.5 and 4 to the Writ Petition filed by three petitioners, members of the Managing Committee of the Bank, challenging the proceedings initiated by the Bank for their expulsion from primary membership of the Bank. The learned Single Judge allowed the Writ Petition directing that the petitioners shall continue to be the members of the Bank.

2. The parties shall be referred to as described in the Writ Petition.

3. Brief facts of the case giving rise to this Writ Appeal are: Writ Petitioners were elected as members of the Managing Committee of the Bank (Directors of Board of

Management of the Bank) on 05.09.2012. Petitioners 1 to 3 and other members of the Managing Committee sent a complaint dated 15.07.2013 to the Joint Registrar of Co-operative Societies, Thrissur making allegations against the Secretary of the Bank. Again a complaint dated 07.09.2013 was submitted by the petitioners complaining against the President and Secretary who according to petitioners were not permitting them to sign the attendance register. The Joint Registrar issued an order dated 21.04.2014 on the complaint submitted by the petitioners after hearing all the parties. The Joint Registrar observed that President and Secretary should recognize the rights of the complainants as members of the Managing Committee, the Bank should also make available the petitioners the monthly income and expenditure account of the Bank. A first information report was also lodged by the second petitioner against the Secretary and President of the Bank under Sections 509, 294B, 506(i) and 34 of the Indian Penal Code. The Board of Directors passed a resolution on 02.05.2015 taking a decision to expel the petitioners from the primary membership of the Bank under Section 17 of the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as "the Act") read with Rule 18 of the Kerala Co-operative Societies Rules, 1995 (hereinafter referred to as "the Rules') by convening an extraordinary general body meeting before which an explanation was also sought within 15 days, from the petitioners. Petitioners aggrieved by the resolution dated 02.05.2015 filed appeal before the Registrar of Co-operative Societies under Rule 176 of the Rules praying for rescinding the resolution dated 02.05.2015. The Bank issued a show cause notice dated 05.05.2015 to all the petitioners alleging that petitioners have been working against the interest of the Bank. Seven instances were narrated in the show cause notice on which explanation of the petitioners was asked within 15 days after receipt of the notice failing which it was to be deemed that petitioners have no explanation to be given and further proceedings will be taken under Section 17 of the Act read with Rule 18 of the Rules. Notice was received by the petitioners on 08.05.2015. By letter dated 09.05.2015 petitioners prayed for some documents to be given. It was prayed that time limit be also extended for a period of 30 days. Forty four documents sought for by the petitioner were given to them on 28.05.2015. By letter dated 12.06.2015 petitioners further prayed that they be given 30 days' time from that day for submitting reply to the show cause notice dated 05.05.2015. In reference to the show cause notice and reply dated 12.06.2015, petitioners were informed that documents having already been forwarded to them, their prayer for granting further 30 days' time cannot be accepted. Bank issued a notice dated 20.06.2015 for convening special general body meeting of the Bank on 28.06.2015 at 3.00 p.m. Agenda of the meeting included the matter regarding expelling the primary membership of the petitioners. Petitioners filed W.P(C) No.19146 of 2015 praying for the following reliefs:

> i. Issue a writ of mandamus or other appropriate writ order or quashing Ext.P5 and Ext.P8 series of show cause notices.
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> ii. Declare that the board of directors of a co-operative society has no authority or jurisdiction to expel other Directors of the board from the primary member of a society.
>
> iii. Declare a director elected to the board of directors

of a co-operative society is entirely continue as director as a direct board member till the expiry of his elected term.

iv. declare that the special general body meeting of a co-operative society can be convened only on receipt of a requisition in writing from 1/5th of the total number of members or on requisition writing from the register under section 30 read with rule 36 of the co-operative societies Act and rule.

v. Declare that a member has got a statutory right of making representation before expulsion and the board has no right to waive section 17(2) of the Kerala Cooperative Societies Act.

vi. issue a writ of mandamus or other appropriate writ or order directing the 4 to consider.

vii. issue a writ of certiorari or any other appropriate writ or order quashing Exhibit P12, P12(a) and P12(b).

viii. Declare that the Special General Body Meeting of a Co-operative Society has no authority under the Co-operative Societies Act and Rules to expel the directors/officers from the primary membership of the Co-operative Society.

ix. Issue a writ of mandamus or other appropriate writ or order declaring that director/an officer of a Co-operative Society cannot be expelled from the director board of a bank by invoking Section 17 of the Co-operative Societies Act.

x. Declare that the Special General Body Meeting of the Peechi Service Co-operative Bank convened on 28.04.2015 was convened in violation of Section 30 of the Co-operative Societies Act read with Rule 36 of the Co-operative Societies Rules and the resolution passed in that meeting is null and void.

xi. Issue appropriate writ or order restraining the respondents from expelling the petitioners from the board of directors and also from the membership of Peechi Sevice Co-operative Bank."

Learned Single Judge after entertaining the Writ Petition issued an interim direction dated 26.06.2015 directing the Joint Registrar or an Officer authorized by the Joint Registrar to be present in the general body meeting dated 28.06.2005 as Observer. In pursuance of the direction of the learned Single Judge, the Assistant Registrar was present in the meeting of the general body held on 28.06.2015. In the general body meeting out of 540 members present, 527 members supported the resolution to expel the petitioners from the primary membership. Only 13 members disagreed with the resolution. The general body meeting expelled the petitioners from the primary membership of the Bank.

4. In the Writ Petition counter affidavit has been filed by respondents 4 and 5. A memo was also filed by the Assistant Registrar of Co-operative Societies as per the direction of the learned Single Judge dated 26.06.2015. The Assistant Registrar in the Memo stated that the three petitioners were present in the meeting dated 28.06.2015. Total 540 members were present in the meeting. The President offered the petitioners opportunity to speak before

the general body. But the petitioners were reluctant to use the opportunity. Out of the 540 members present, 527 members showed their hands in approval of the motion for the expulsion of the petitioners and only 13 members showed their hands disapproving the motion. The President declared the resolution of expulsion of petitioners passed. Resolution dated 28.06.2015 has also been brought on record. Learned Single Judge heard the parties and framed the following three issues:

> "1. whether a writ petition is maintainable against the expulsion of the petitioners from the primary membership of the Society?
>
> 2. Whether a member of the Managing Committe3e can be removed from the primary membership of the Society for his alleged misfeasance in the capacity as being the member of the Managing Committee.
>
> 3. Whether the petitioners have acted against the interests of the Society in terms of Section 17 of the Act?"

While considering issue No.1, the learned Single Judge held that Rule 176 of the Rules does not extend to the resolution passed to expel the primary membership. Learned Single Judge held that the Registrar has no jurisdiction to annul the resolution expelling the petitioners from the primary membership under Rule 176. Learned Single Judge, however relying on the Larger Bench Judgment of this Court in **Association of Milma Officers Ksheera Bhavan, Tvm. and another v. State of Kerala and Others** (2015 (1) KHC 779) held the Writ Petition as maintainable. On issue Nos.2 and 3, learned Single Judge held that Section 28AB read with Rule 43A provided for an efficacious mechanism for removal of members of Managing Committee by expressing no confidence in him/her. Petitioners' right, not be removed arbitrarily is constitutionally accepted. It was further held that there cannot be any expulsion of petitioners from the primary membership apart from removal from the Managing Committee on resorting to no confidence by majority of the members. It was further held that even in terms of Section 17 of the Act, respondent Bank failed to establish that the petitioners have indulged in any act against the interest of the Bank. Learned Single Judge held that invocation of Section 17 of the Act is impermissible which power was not available to the Bank under the given facts situation. The learned Single Judge held that petitioners shall continue to be members of the Bank. However, it was observed that the adjudication in the Writ Petition shall not come in the way of the majority members of the Managing Committee expressing their no confidence in the petitioners if they chose to after following the due procedure. Challenging the judgment of the learned Single Judge, the present Writ appeal has been filed.

5. We have heard Shri George Poonthottam, learned counsel for the appellant, Shri M.P. Ashok Kumar for the Writ Petitioners and Shri D.Somasundram, learned Special Government Pleader for the State respondents.

6. Learned counsel for the appellants challenging the judgment of the learned Single Judge contended that the Writ Petition itself was not maintainable. It is submitted that the Writ Petition was basically directed against the resolution passed by the Board of Management and proceedings undertaken for expelling the petitioners from the primary membership of the Bank. It is not pleaded or proved that the Bank is a State within the meaning of Article 12 of the Constitution of India. For challenging the resolution of the

Board of Management or general body of the Bank, the Writ Petition could not have been entertained. It is submitted that the Writ Petition was liable to be dismissed on this ground alone. It is further submitted that Section 28AB of the Act was not applicable in the present case since no confidence motion can be passed under Section 28AB only against the members who are elected by Committee of Management as Officer. The word 'Officer' used in Section 28AB relates to the Officers elected by the Committee of Management and not the members of the Committee of Management who are elected by the General Body. It is submitted that the very basis of the judgment of the learned Single Judge that proceedings ought to have been taken against the petitioners under Section 28AB is fallacious. It is submitted that Section 17 of the Act empowers the general body to expel any member of the Bank. The mere fact that petitioners were elected members of the Managing Committee by the general body in no manner denude the power of the general body to expel the petitioners from the primary membership of the Bank. There is no statutory violation in expelling the petitioners, hence the Writ Petition was not entertainable. Section 17 of the Act read with Rule 18 of the Rules provided the manner of giving opportunity to the members who are sought to be expelled. Show cause notice was given to the petitioners giving 15 days' time to which no reply was submitted by the petitioners. Statutory requirement of giving opportunity was fulfilled. It is further submitted that remedy against the resolution passed by the general body was available to the petitioners to invoke Rule 176 of the Rules. Observation of the learned Single Judge that Rule 176 cannot be invoked against the resolution expelling the petitioners is incorrect. It is submitted that proceedings dated 28.06.2015 having been held in the presence of Observer under the orders of this Court who reported that out of 540 members, 527 supported the resolution of expulsion, there is no error in the decision of the general body. Learned Single Judge committed error in interfering with the expulsion of the petitioners from the primary membership. The Writ Petition was liable to be dismissed.

7. Shri M.P. Ashok Kumar learned counsel for the Writ

Petitioners refuting the submissions of learned counsel for the respondents supported the judgment of the learned Single Judge. It is submitted by the learned counsel for the petitioners that petitioners being members of the Managing Committee of the Bank they could have been proceeded only under Section 28AB by passing a no confidence motion. Section 17 cannot be invoked with regard to members who are elected as members of the Committee of Management. It is submitted that resolution dated 28.06.2015 expelling the petitioners is without jurisdiction. He further submitted that removal of petitioners has been done without following the statutory provisions of the Act and Rules hence the Writ Petition was clearly maintainable. He submitted that no opportunity as required by Section 17 including hearing in person was afforded to the petitioners. The entire proceeding being violative of the statutory provisions, petitioners could have very well invoked the jurisdiction of this Court under Article 226 of the Constitution of India. It is further submitted that no reason has been given nor it has been proved that petitioners have acted against the interest of the Bank. Relying on the provisions of the Constitutional (97th) Amendment Act, 2011 it is submitted that under Article 243ZJ the term of Office bearers of the Managing Committee is 5 years from the date of election which cannot be curtailed. It is further submitted that Section 28A of the Act provides for reservation for women members and members belonging to Scheduled Castes or Scheduled Tribes in the Committee. Petitioners 1 and 2 being women members of the Committee of Management, their expulsion violates the provision for reservation of women as provided in Section 28A.

8. Shri D. Somasundaram, learned Special Government Pleader submitted that the general body of the Bank is the final authority as provided under Section 27 of the Act. The Committee is empowered to enroll the members of the Bank whereas it is the general body which is empowered to expel the members from the Bank. As per the interim order of this Court dated 26.06.2015, the Assistant Registrar was present in the general body meeting and he submitted a report. Statement filed by the Assistant

Registrar dated 01.07.2015 which was filed along with the memo in the Writ Petition has been referred to by the learned Special Government Pleader.

9. Learned counsel for the parties placed reliance on various judgments of the Apex Court and this Court which we shall refer to while considering the submissions.

10. We have considered the submissions of learned counsel for the parties and perused the records. From the pleadings on record and submissions made by the learned counsel for the parties, the following are the issues which arose for consideration in this Writ Appeal.

1. Whether the Writ Petition is maintainable against the expulsion of the petitioners from the primary membership of the Co-operative Society?

2. Whether an elected member of the Managing Committee of a Co-operative Society can not be expelled from the primary membership of the Co-operative Society and the action of the Bank for expulsion of the petitioners from the primary membership of the Bank was without jurisdiction? Section 17 of the Act could not have been invoked by the Bank in the facts of the present case?

3. Whether for removal of the members of the Managing Committee the only provision which can be invoked is Section 28AB read with Rule 43 of the Rules?

4. Whether against the resolution by the General Body of the Society under Section 17, the provision of Rule 176 cannot be invoked?

5. Whether Setting aside a resolution of expulsion by the general body is beyond the power of the Registrar under Rule 176?

6. Whether in expelling the petitioners from the primary membership of the Bank the statutory provisions under Section 17 and Rule 18 have been violated by the Bank?

7. Whether as per the provisions of the Constitution under Article 243ZJ petitioners whose tenure is co-terminus with the term of the Board could not have been expelled from the primary membership of the Managing Committee resorting to Section 17?

8. Whether expulsion of the petitioners from the primary membership is violative of the reservation provided under Section 28A?

Issue No.1.

11. The first issue is regarding the maintainability of the Writ Petition against the impugned action. It is not the case of the petitioners that the Peechi Service Co-operative

Bank is the State within the meaning of Article 12. Neither there are pleadings nor materials to establish above. Learned Single Judge relying on the Larger Bench decision of this Court in **Association of Milma Officers Ksheera Bhavan, Tvm. and another v. State of Kerala and Others** held the Writ Petition maintainable. Before the Larger Bench one of the issues was "whether the Writ Petition under Article 226 of the Constitution of India is maintainable against Co-operative Societies registered under the Co-operative Societies Act, 1969." Answering the reference, the Larger Bench held the following in paragraph 19:

> "19. Coming to Part IXB of the Constitution which has been inserted by the 97th amendment, it contains several constitutional provisions which regulate incorporation, number and term of members, election of the members of the Board and superannuation. Obviously, any action of any Co - operative Society if it is in breach of any of the constitutional provisions, that can be made subject - matter of the writ petition. Present is not a case where there is any issue pertaining to any violation of Part IXB. In view of the foregoing discussion, our answer to the above questions are as follows:
>
> i) The writ petitions against Co - operative Societies are maintainable in certain circumstances. When the action complained in the writ petition is of any statutory violation on the part of the Co - operative Society, a writ petition will lie. The action of the Co - operative Society, if falls in a public domain or breach

of the public duty is complained of, writ may also lie. However, in the absence of breach of any statutory duty or public duty, a writ petition cannot be entertained against a Co - operative Society.

ii) The judgment of the Full Bench in Bhaskaran (supra) confines to only consideration of a Co - operative Society under Art.12. In regard to Co - operative Society which does not fall under Art.12, writ cannot be maintainable against the Co - operative Society on that basis. However, as we have already observed by considering issue No. (i), writ petition may be maintainable against Co - operative Society in the circumstances mentioned therein. Thus the ratio of the judgment in Bhaskaran (supra) is approved only to above extent.

iii) The Full Bench judgment in John (supra) lays down the correct law and we approve the said judgment.

iv) The present writ petition is not maintainable under Art.226 of the Constitution of India."

We have now to consider whether as per the law laid down by this Court in the above case, the present Writ Petition can be held to be maintainable. The Challenge in the Writ Petition is the proceeding for expulsion of petitioners who were members of the Committee of Management of the Bank from the primary membership of the Bank. Expulsion from primary membership of a Co-operative Society is regulated by Section 17 of the Act. Section 17(1) and (2) is quoted below:

"**17. Expulsion of members.-**(1) Any member of a society, who has acted adversely to the interests of the society, may be expelled upon a resolution of the general body passed at

> a special meeting convened for the purpose by the votes of not less than two-thirds of the total number of members present and voting at the meeting.
>
> (2) No member shall be expelled under sub-section (1) without being given an opportunity of making his representation."

In the Rules also there is statutory provision under Rule 18 laying down the procedure for the expulsion of members. Rule 18 is quoted below:

> "18. **Procedure for the Expulsion of members**: A member who has acted adversely to the interest of the society [or has failed to comply with the provisions of the bye-law] may be expelled from the society as per S.17, adopting the following procedure:-
>
> (a) Where any member or a society proposes to bring a resolution for the expulsion of any other member, he shall give written notice thereof, to the Chairman of the society. On receipt of such notice or when the Committee itself decides to bring in such resolution, the Committee shall send a registered notice to the member concerned to furnish his explanation, if any, on the matter within 15 days from the date of receipt of the notice. The member shall also be given an opportunity of being heard in person, if he so desire.
>
> (b) On obtaining the explanation. if any, and on being heard in person, if he so desires and on giving opportunity to the complainant, to substantiate his allegation or after taking into consideration any written representation which he might have sent to the Committee or General Body, the committee shall decide as to the course of action to be adopted against the member concerned. If the committee decides to expel the member it shall

> convene a special General Body meeting after issuing due notice appending the agenda thereto and place the matter before it for decision under Section 17."

Expulsion from primary membership of the Co-operative Society is thus regulated by statutory provisions. A statutory violation can always be complained in proceedings under Article 226 of the Constitution of India.

12. Now we revert to the pleadings of the petitioners in the Writ Petition and the grounds on which the petition was founded. Petitioners' case in the Writ Petition is that petitioners were denied to submit reply to the show cause notice. The following was pleaded in paragraph 16 of the Writ Petition:

> "But the President rejected the request for time and denied the right of the petitioners to submit the reply to the show cause notice and continued the proceeding to expel the petitioners from primary membership of the society. Photocopy of the reply dated 17.06.2015 issued by the President 2o the 2nd petitioner is produced herewith and marked as Ext.P10. Similar reply was given to petitioners 1 and 3. Exhibit P10 order passed by the President denying the right of the petitioners is in violation of Section 17(2) of the Act. Immediately thereafter a notice was published in the Malayala Manorama daily to convene a special general body meeting on 28.06.2015 for the sole purpose of expelling the petitioners from the primary membership of the

> society. Photocopy of the notice published in the Malayala Manorama daily dated 21.6.2015 is produced herewith and marked as Exhibit P11. The Ext.P11 notice published in News Paper by the society convening extraordinary general body meeting on 2.06.2015 is in violation of Sec 30 and 36 of cooperative society act and rule. Under rule 36 the committee of a society shall call a special board general body meeting within 1 month from the date of receipt of a requisition in writing of 1/5th of total number of members. In the incident case there was no such requisition."

In the grounds also petitioners have alleged statutory violation while proceeding to expel the petitioners from the primary membership. The Writ Petition thus was founded on the grounds alleging statutory violation. Statutory violation can very well be examined and adjudicated in proceeding under Article 226 of the Constitution. It is another question as to whether petitioners have sufficiently pleaded and proved the statutory violation or not which in the present case shall be considered a little later. But looking to the Writ Petition and the grounds on which the Writ Petition was founded, the Writ Petition cannot be thrown out at the threshold on the ground that the Writ Petition is not maintainable. Thus issue No.1 is answered in favour of the petitioners.

Issue Nos.2 and 3:

13. These issues being interrelated are taken together. Submission which has been pressed by the learned counsel for the petitioners is that Section 17 cannot be resorted to for expulsion of primary membership of a member of the Managing Committee. It is submitted that a member of the Managing Committee can be removed only by resorting to no confidence motion as contemplated under Section 28AB. It is submitted that expulsion of primary membership of the member of the Managing Committee is virtually removing him from the office of the Managing Committee which could not have been done otherwise in accordance with Section 28AB. Hence the entire proceedings initiated by the Bank under Section 17 were without jurisdiction. Section 17 could not have been invoked with regard to a member of the Managing Committee of the Bank. For consideration of the above submission statutory scheme as delineated by the Act has to be looked into.

14. Chapter III of the Act contains a heading "Rights and Liabilities of Members of Co-operative Societies". Section 16 of the Act provides for the procedure for granting membership. As per Rule 16(1)(b) no person shall be admitted as member of the Society unless his application is approved by the Committee of the Society. Thus for enrollment of a member, approval of the Committee is necessary. Section 17 provides for expulsion of members. For expulsion of a member resolution of the general body passed in a special meeting convened for the purpose by the votes of not less than two thirds of the total number of members present and voting at the meeting is required. Section 17(2) required that no member shall be expelled under Section 17(1) without giving an opportunity of making his representation. Section 28 provides for Constitution of Committee. Section 28(1) provides as follows:

> "**28. Appointment of committee.-**(1) The general body of a society shall32 "constitute a committee, for a period not exceeding [33] [five years]"] in accordance with the bye-laws and entrust the management of the affairs of the society to such committee."

The Committee is thus constituted by a general body of the Society in accordance with the bye-laws which is entrusted with the management of Society. Section 28AB provides for election and removal of President, Vice President, i.e. Section 28AB which is material for the present case is quoted below:

> "28AB. **Election and Removal of President, Vice President, etc.**(1) A committee constituted under sub-section (1) of Section 28 shall elect from themselves a President, a Vice President, a Treasurer or any other officer by whatever he is designated in the manner as may be prescribed.
>
> (2) A committee shall remove from office the President, Vice President or the Treasurer or any other officer of the committee if a motion expressing want of confidence in any or all of them is carried with the support of the majority of the members of such committee in accordance with the procedure as may be prescribed."

Section 28AB(1) provided that a Committee constituted under Section 28 shall elect from themselves a President, Vice President, a Treasurer or any other officer by whatever name he is designated. Election of the President, Vice President, Treasurer or any other officer has to be by the Committee constituted under Section 28(1). Section 28AB(2) provides that the Committee shall remove from office the President, Vice President or the Treasurer or any other officer of the committee if a motion expressing want of confidence is carried with support of majority of members of the Committee. Submission of petitioners **veeround** the aforesaid provision and Section 28AB is the sheet anchor of arguments of the petitioners in contending that for member of the Managing Committee, Section 28AB is the only recourse and recourse to Section 17 is prohibited. Submission of the petitioners is that Section 28AB uses the word officer and in view of the definition of officer as contemplated in Section 2(n) member of the Managing Committee is the officer. Section 2(n) is quoted below:

> "2(n)*"officer"* means the president, vice-president, chairman, vice chairman, secretary, manager, member of committee or treasurer and includes a liquidator, administrator and any other person empowered under the rules or the bye-laws to give directions in regard to the business of a cooperative society."

Section 2 begins with "in this Act, unless the context otherwise requires-. Thus the definition given in Section 2 are normally to be read in the manner as mentioned unless the context otherwise required . We have to see that the phrase "other officer" used in Section 28AB(1) has been used in what context. Section 28AB(1) contemplates election by the Committee of Management of President, Vice President, Treasurer or any other officer. Thus 'other officer' which is mentioned in Section 28AB(1) is an officer who is elected by the Committee of Management constituted under Section 28. The above persons are thus office bearers of the Committee of Management. A member of the Committee of Management under Section 28(1) is elected by the general body whereas an officer of the Committee of Management is elected by the Managing Committee constituted under Section 28. Section 28AB(1) thus referred to President, Vice President, Treasurer or any other officer as elected by the Committee of Management constituted under Section 28(1). Thus for applicability of Section 28AB(2), i.e., for removal of the President, Vice President, Treasurer or any other officer the precondition is that those officers have to be elected by the Managing Committee constituted under Section 28(1). In the present case there is no pleading that the petitioners are elected as office bearers of the Committee of Management of the Bank. They only claim to be members of the Committee of Management elected under Section 28(1). Section 28AB (2) shall apply only when an officer is elected as the officer bearer of the Committee of Management by the members of the Committee of Management.

15. There are two more reasons which supports our interpretation of Section 28AB. Section 28AB refers to President, Vice President, Treasurer or any other Officer by whatever name. All the above officers have to be <u>elected from themselves</u>. There cannot be any dispute that President, Vice President or Treasurer are office bearers of the Committee of Management. The word any other officer used in the same sequence has to be given the same meaning as applied to earlier words.

16. The Rule of *ejusdem generis* is applicable in the present case. When particular words pertaining to class, category or genus are followed by general words, the general words are construed limited to those of the same kind as those specified are well known principle of the rule of ejusdem generis. The word "other officer" has been used in

the sequence of President, Vice President, Treasurer and other officer, hence the word other officer shall take genus as those of President, Vice President, Treasurer or other officer. President, Vice President, Treasurer or other officer are all elected by the Committee of Management themselves. The Apex Court in **M/s.Siddeshwari cotton Mills (P) Ltd v. Union of Indian and another** ([1989] 2 SCC 458) had occasion to consider the rule of ejusdem generis. Explaining the rule of ejusdem generis the following was held in paragraphs 12, 13, 14, 18 and 19:

> "12. The expression ejusdem generis -'of the same kind or nature' - signifies a principle of construction whereby words in a statute which are otherwise wide but are associated in the text with more limited words are, by implication, given a restricted operation and are limited to matters of the same class or genus as preceding them. If a list or string or family of genus describing terms are followed by wider or residuary or sweeping - up words, then the verbal context and the linguistic implications of the preceding words limit the scope of such words.
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> 13. In 'Statutory Interpretation' Rupert Cross says :
>
> "...... The draftsman must be taken to have inserted the general words in case something which ought to have been included among the specifically enumerated items had been omitted ...."

14. The principle underlying this approach to statutory construction is that the subsequent general words were only intended to guard against some accidental omission in the objects of the kind mentioned earlier and were not intended to extend to objects of a wholly different kind. This is a presumption and operates unless there is some contrary indication. But the preceding words or expressions of restricted meaning must be susceptible of the import that they represent a class. If no class can be found, ejusdem generis rule is not attracted and such broad construction as the subsequent words may admit will be favoured. As a learned author puts it :

".............. if a class can be found, but the specific words exhaust the class, then rejection of the rule may be favoured because its adoption would make the general words unnecessary; if, however, the specific words do not exhaust the class, then adoption of the rule may be favoured because its rejection would make the specific words unnecessary."

18. In U. P. S. E. Board v. Hari Shanker, AIR 1979 SC 65 it was observed :

".......... The true scope of the rule of "ejusdem generis" is that words of a general nature following specific and particular words should be construed as limited to things which are of the same nature as those specified. But the rule is one which has to be "applied with caution and not pushed too far"....

19. The preceding words in the statutory provision which, under this particular rule of construction, control and limit the meaning of the subsequent words must represent a

genus or a family which admits of a number of species or members. If there is only one species it cannot supply the idea of a genus."

In the above case the words "any other process" as used in Section 2(f)(v) of the of the Central Excise and Salt Act came for consideration. The word any other process was used with many preceding words which contemplates the process which impart a change of lasting character to the fabric holding that the Apex Court held that the expression any other process is used in the context of what constitutes manufacture applying the rule of ejusdem generis.

17. Applying the rule of ejusdem generis, other officers are those officers who are elected by the Committee of Management themselves. Thus for applicability of Section 28AB a member of the Committee of Management has to be elected as office bearer of the Committee of Management., only then his removal can be made by the Committee of Management by no confidence motion. Second reason which supports our above interpretation is that Section 28AB (1) and (2) uses two different phrases, "other officers and members of such committee". Members of the Committee

has been used in contradiction to the word other officer. Thus the above use of the two phrases clearly indicate that all members of the Committee are not other officers. Members of such Committee has a different meaning than the word “other officer” used in Section 28AB(2). Providing mechanism of expressing no confidence against member of the Committee of Management is in accordance with the well known principle of giving right of no confidence to the body which has elected a person. It being not the case of the petitioners that they have been elected as office bearers of the Committee of Management Section 28AB was clearly inapplicable in the present case.

18. For the purpose of this case let us assume that Section 28AB(2) is applicable, in the case of petitioners also and they could have been removed by passing a no confidence motion under Section 28AB(2) of the Act. Question is as to whether when a person is elected a member of the Managing Committee whether he is insulated from the applicability of Section 17. Whether a member of the Committee of Management cannot be proceeded under

Section 17 is the question to be answered. Section 28AB which has been inserted by the Act 2 of 2002 is with the object for providing mechanism for no confidence motion against the office bearers of the Committee of Management. Even if it is accepted for argument sake that the said provision will apply to all members of the Committee of Management, i.e., a special right has been provided to the members of the Committee of Management to express no confidence. There is no indication in the statutory scheme that when a member of society becomes a member of the Committee of Management, his membership is immuned from expulsion under Section 17. Power of the general body to expel a member as provided under Section 17(1) is a special power given to the general body which is not excluded by Section 28AB nor the statutory scheme indicate any such statutory interpretation. Power given under Section 17 of the Act continue with the general body even if a person has been elected as member of the Committee of Management or office bearer of the Committee of Management constituted under Section 28(1).

19. Rule 44 of the Rules provides for disqualification of membership of Committee. Rule 44(1) provides disqualifications for being elected as member of the Committee of Management under Section 28 of the Act. Rule 44(2) provides that a member of the Committee shall cease to hold his office in the circumstances as enumerated. One of the circumstances is when he 'cease to be a member of the Society'. Rule 44(2) is quoted below:

> "…..
>
> 44(2) Member of the committee shall ceases to hold his office as such if he-
>
> (a) ……….
>
> (b) ceased to be member of the society."

The above statutory scheme indicates that it is contemplated by the Legislature that member of the Committee of Management can be disqualified to continue when he ceases to be member of the Society. The above provision is a clear indication that there is no prohibition for expelling a member from the primary membership of the Bank even though he is a member of the Committee of management. Both the issues are answered accordingly.

Issue Nos.4 and 5:

20. The above issues being interconnected are taken together. Learned Single Judge held that resolution under Section 17 expelling the petitioners from primary membership of the society cannot be made subject matter of adjudication under Rule 176. Rule 176 is contained in Chapter XIV (Miscellaneous) which is as follows:

> "176. **Registrar's power to rescind resolution**:-- Notwithstanding anything contained in the bye-laws of a registered society, it shall be competent for the Registrar to rescind any resolution of any meeting of any society or the committee of any society, if it appears to him that such resolution is ultra vires of the objects of the society, or is against the provisions of the Act, Rules, Bye-laws or of any direction or instructions issued by the Department, or calculated to disturb the peaceful and orderly working of the society or is contrary to the better interest of the society."

The above Rule begins with the words “notwithstanding anything contained in the bye-laws of a registered society.“ Registrar of Co-operative Societies, by the above Rule has been given power to rescind any resolution of any meeting of any society or the committee of any society, if it appears to him that such resolution is ultra vires of the objects of the society, or is against the provisions of the Act, Rules, Bye-laws or any direction or instruction issued by the Department, or calculated to disturb the peaceful and orderly working of the society or is contrary to the better interest of the society. From the statutory scheme of the Act and Rules, it is clear that the Registrar is vested with vast powers over the entire working of the Co-operative Society beginning from its registration. It is the Registrar who has registered the society can also cancel the registration. We have referred to Rule 44 which provides for disqualification of membership of committee. When a person is seen to be disqualified under Rule 44(1) it is the Registrar who has been empowered to disqualify such member after giving opportunity to him. Rule 44(3) provides as follows:

> "44(3) If any person is or becomes disqualified to be a member of the committee, the Registrar may on his own motion or on a representation made to him by any member of the society or by its Financing Bank by an order in writing declare that he shall cease to be a member of the committee of the society concerned from the date of such disqualification, if any, against the proposed action and if the person wishes to be heard he shall be given an opportunity to be heard."

It is not necessary to enumerate the various powers which has been entrusted with the Registrar. Rule 176 of the Rules provides power to the Registrar to rescind a resolution either of the society or of the committee. No exception can be taken on conferring of such power to the Registrar. View of the learned Single Judge that Rule 176 is to annihilate an autonomous institution which enjoins a constitutional status cannot be accepted. Statutory regulation has been provided on the functioning of the society and entrusting the Registrar with the power to rescind any resolution which is contrary to the Act cannot be said to be any act towards annihilating the autonomous institution. Observations of the learned Single Judge that Rule 176 does not speak any safeguard cannot also be accepted. Rule 176 itself enumerates the relevant circumstances under which resolution can be rescinded. Thus the parameters of exercise of power under Rule 176 are engrained in the rule. We do not thus approve the view of the learned Single Judge that Rule 176 could not have been resorted against the resolution passed by the Committee of Management or general body of the society. We thus hold that petitioners had a statutory remedy under Rule 176 against the resolution passed by the general body of the society expelling from primary membership of the bank. The issues are decided accordingly.

Issue No.6

21. This issue is as to whether in expelling the petitioners from the primary membership of the Bank the statutory provisions under Section 17 of the Act and Rule 18 have been violated by the Bank? As noted above, Section 17 (2) provides that "no member shall be expelled under sub-section (1) without being given an opportunity of making his representation." Rule 18 provides the procedure for expulsion of members. Rule 18 is quoted above. Rule 18(a) provides that when the Committee itself decides to bring in such resolution, the Committee shall send a registered notice to the member concerned to furnish his explanation within 15 days from the date of notice. Rule 18(a) further provides that the member shall also be given an opportunity of being heard in person, if he so desires. Submission of the

petitioners is that Section 17(2) and Rule 18(a) were violated while expelling them. We have to examine the above submission in the light of the materials brought on record. Show cause notice as contemplated by Section 17(2) read with Rule 18(a) has been given to all the petitioners dated 05.05.2015 which has been brought by petitioners themselves on record as Ext.P8. The show cause notice clearly alleges that petitioners have been working against the interest of the Bank. Seven instances were narrated in the show cause notice. The show cause notice further directed as follows:

> "This act is against the interest of the bank. If you have any explanation or suggestions to be made regarding the above mentioned facts, you are hereby directed to explain it within 15 days after receiving this notice. Or else it will be deemed that you have no explanation to be given and you will be proceeded U/S 17 and rules 18 of co-operative societies Act."

After receiving the notice petitioners sent letter dated 19.05.2015 for certain documents and requesting for time for a period of 30 days. Petitioners were provided the documents on 26.05.2015 and 28.05.2015. After receipt of the 44 documents petitioners again sent a letter dated

12.06.2015 praying for further 30 days' time from the date of the letter. The request was not acceded by the President and reply dated 17.06.2015 was sent which is extracted below:

> "Consequent to reference 1 show cause notice you submitted reference 2 request and based on that request reference 3 reply and 44 documents weighting 635 gram consisted of 102 sheets were forwarded to you. In that letter you are granted permission to verify the documents with the original and other connected records. But you did not come to the Bank or verify the documents. Now by reference 2 letter you asked 30 days time to submit reply to the show cause notice. The said letter is without bona fide. Despite the receipt of the records relating to the show cause notice you did not come to the bank and give reply to the show cause notice. Hence your application for enlargement of time cannot be recognized. Your intention is to get over from the proceedings and to delay the matter unsuccessfully. As your application for enlargement of time is without bona fide and causing inconvenience to the bank you are informed that your application is rejected. As you are not given reply to the reference 1 show cause notice it is presumed that you have no reply to be submitted and further proceedings to be continued."

Statutory requirement is to give opportunity to submit a representation. In the present case opportunity of written notice was given to the petitioners to submit a representation against the show cause notice. Request of the petitioners to supply certain documents was accepted and documents provided. In spite of providing documents, petitioner did not submit any reply. In the facts of the case it cannot be said that petitioners were not given opportunity to submit their representation within 15 days. Thus it cannot be accepted that there is violation of the statutory provisions. Learned counsel for the petitioners has further submitted that the statute also requires an opportunity of personal hearing. As noted above, as per the interim order dated 26.06.2015, the Assistant Registrar was directed to be present in the meeting as an Observer. The Assistant Registrar of Co-operative Societies under orders of this Court dated 26.06.2015 submitted a report on 01.07.2015 which has been filed through a memo dated 14.07.2015 by the Special Government Pleader in the Writ Petition. The report clearly stated that President offered opportunity to the petitioners to speak before the general body which they were reluctant to make use of the opportunity. Following was stated in the report:

> "The President offered them opportunity to speak before

> the General body. But they were reluctant to make use of the opportunity and the members presented approved the motion by loud applause. President then appealed to the members who approved the motion for expulsion to show their hands. Of the members present 527 members in total showed their hands in approval of the motion for the expulsion. President then appealed the members who disapprove the motion to show their hands and 13 members in total including Smt.Jasmin Shaji, Smt.Tessy Varghese and Shri C.Mohanan showed their hands in disapproval of the motion. President then declared that the resolution for expulsion of 3 members Smt.Jasmin Shaji, Smt.Tessy Varghese and Shri C.Mohannan from the membership of the Peechi SCB has been passed by more than 2/3 majority of the members present and above 3 members stand expelled from the membership of the society. President declared that resolution will be implemented as per the order of this Honourable Court.
>
> The Special General Body concluded on 05.20. p.m.
>
> I humbly report that the General Body meeting proceedings were totally peaceful."

Thus we are of the view that petitioners have failed to prove statutory violation so as to exercise jurisdiction of this Court under Article 226 of the Constitution of India. The issue is answered accordingly.

Issue No.7

22. Now we come to issue No.7. Petitioners' case is that under Article 243ZJ term of Directors is coterminous

with the term of of the society, i.e., 5 years. Submission is that petitioners' term is constitutionally fixed, it could not have been curtailed. Article 243ZJ (2) is quoted below:

> "243ZJ. **Number and term of members of board and its office bearers**:- (2) The term of office of elected members of the board and its office bearers shall be five years from the date of election and the term of office bearers shall be coterminous with the term of the board."

Same Chapter in the Constitution, i.e., Part IXB which deals with Co-operative Societies inserted by the (97th Amendment) Act 2011. provisions contained in Article 243ZT is to the following effect:

> "243ZT. Continuance of existing laws.- Notwithstanding anything in this Part, any provision of any law relating to Co-operative (Ninety-seventh Amendment) Act, 2011, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is less."

The above provision clearly indicates that the law relating to Co-operative Society in force in a State which is inconsistent with the provisions of the Part IXB shall continue to be in force until amended or repealed by a competent

Legislature or until the expiration of one year from such commencement whichever is less. The provisions of Section 17 in no manner are inconsistent with any of the Constitutional provisions under Part IXB. Thus the provision of Section 17 has to continue and it is not affected by the provisions of Part IXB. The provision pertaining to Article 243ZJ pertains to the normal tenure of Board of Directors. This does not militate against any provision for removal by no confidence motion or where there is expulsion from the primary membership of the society. Learned counsel for the petitioners has placed reliance on the judgment of the Apex Court in **Ravi Yashwant Bhoir v. District Collector, Raigad and Others** ([2012] 4 SCC 407). The Apex Court in the above case was considering the case where the President of the Municipal Council was removed by the State Government exercising power under Section 55A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. In the above context the following was laid down by the Apex Court in paragraphs 22, 23, 30, 34 and 35:

"22. Amendment in the Constitution by adding Parts IX and IX - A confers upon the local self Government a complete autonomy on the basic democratic unit unshackled from official control. Thus, exercise of any power having effect of destroying the Constitutional Institution besides being outrageous is dangerous to the democratic set - up of this country. Therefore, an elected official cannot be permitted to be removed unceremoniously without following the procedure prescribed by law, in violation of the provisions of Art.21 of the Constitution, by the State by adopting a casual approach and resorting to manipulations to achieve ulterior purpose. The Court being the custodian of law cannot tolerate any attempt to thwart the Institution.

23. The democratic set - up of the country has always been recognized as a basic feature of the Constitution, like other features e.g. Supremacy of the Constitution, Rule of law, Principle of separation of powers, Power of judicial review under Art.32, Art.226 and Art.227 of the Constitution etc. (Vide: His Holiness Keshwananda Bharti Sripadagalvaru & Ors. v. State of Kerala & Anr., AIR 1973 SC 1461; Minerva Mills Ltd. & Ors. v. Union of India & Ors., AIR 1980 SC 1789; Union of India v. Association for Democratic Reforms & Anr., AIR 2002 SC 2112; Special Reference No. 1 of 2002 (Gujarat Assembly Election Matter), AIR 2003 SC 87; and Kuldip Nayar v. Union of India & Ors., AIR 2006 SC 3127).

30. There can also be no quarrel with the settled legal proposition that removal of a duly elected Member on the basis of proved misconduct is a quasi - judicial proceeding in nature. (Vide: Indian National Congress (I) v. Institute of Social Welfare & Ors., AIR 2002 SC 2158). This view stands further fortified by the Constitution Bench judgments of this Court in Bachhitar Singh v.

State of Punjab & Anr., AIR 1963 SC 395 and Union of India v. H.C. Goel, AIR 1964 SC 364. Therefore, the principles of natural justice are required to be given full play and strict compliance should be ensured, even in the absence of any provision providing for the same. Principles of natural justice require a fair opportunity of defence to such an elected office bearer.

34. In a democratic institution, like ours, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law or he is removed by the procedure established under law. The proceedings for removal must satisfy the requirement of natural justice and the decision must show that the authority has applied its mind to the allegations made and the explanation furnished by the elected office bearer sought to be removed.

35. The elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further stipulated period, but it also takes away the right of the people of his constituency to be represented by him. Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the provisions provided by the legislature for his removal (Vide: Jyoti Basu & Ors. v. Debi Ghosal & Ors., AIR 1982 SC 983; Mohan Lal Tripathi v. District Magistrate, Rai Barelly & Ors., AIR 1993 SC 2042; and Ram Beti etc. etc. v. District Panchayat Rajadhikari & Ors., AIR 1998 SC 1222).

23. There cannot be any dispute to the proposition of

law laid down by the Apex Court in the above case. Removal of elected office bearer has to be made in accordance with the statutory provisions for which there cannot be any dispute. Present is a case where the petitioners were expelled from the membership of the society following the statutory provisions under the Act and Rules. The above judgment in no manner help the petitioners. The issue is answered accordingly.

Issue No.8

24. Learned counsel for the petitioners submitted that petitioners 1 and 2 were elected to the Committee of Management of the Bank as women members of the Society. It is submitted that under Section 28A there is reservation for women members. Section 28A(1) is quoted below:

> "**28A Reservation for women members and members belonging to Scheduled Castes or Scheduled Tribes in the committee.—** (1) Notwithstanding anything contained in this Acts the rules or the bye-laws, there shall be reserved in the committee of every society, one seat for a woman member and one seat for a member belonging to the Scheduled Castes or the Scheduled Tribes.".

25. There is no inconsistency between the provisions

of Sections 28A, 17 and 28AB. Provision for reservation is made at the time of election of a member in the Committee of Management. Provision of Section 28A cannot be read in the manner that once SC/ST/women member is elected other provisions of the Act including Section 17 and 28AB are not applicable on them. Section 28A has been enacted for different purpose and object and Section 28A cannot insulate a member from being proceeded under Section 17. Submission of the learned counsel for the petitioners on the basis of Section 28A is thus wholly misconceived and cannot be accepted. The issue is answered accordingly.

26. In view of the forgoing discussion we are of the view that the resolution expelling the petitioners from the primary membership of the Bank having been passed in accordance with the procedure prescribed under the Act and Rules, the learned Single Judge committed error in directing the petitioners to continue in the Committee of Management by allowing the Writ Petition.

In the result, the Writ Appeal is allowed. Judgment of the learned single Judge in W.P(C) No.19146 of 2015 is set aside and the Writ Petition is dismissed.

Parties shall bear their costs.

ASHOK BHUSHAN,
CHIEF JUSTICE.

A.M. SHAFFIQUE,
JUDGE.

vsv