

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

WP(C).No. 25215 of 2012 (B)

PETITIONER(S) :

1. G. UNNIKRISHNAN NAIR,
MEMBER AND FORMER PRESIDENT,
THE THAMARAKUDY SERVICE CO-OPERATIVE BANK LTD. NO. 2815
RESIDING AT VELUTHAKUNNIL VEEDU, INCHAKKAD, MYLOM P.O-
691 560, KOTTARAKKARA.

2. P.VIJAYALAKSHMI,
MEMBER AND FORMER DIRECTOR
THE THAMARAKUDY SERVICE CO-OPERATIVE BANK LTD. NO. 2815
RESIDING AT VIJAYA VILASOM, THAMARAKUDY P.O, 691 531
KOTTARAKKARA.

3. G.GOPI
MEMBER AND FORMER DIRECTOR
THE THAMARAKUDY SERVICE CO-OPERATIVE BANK LTD. NO. 2815
RESIDING AT PAYYALLOOR HOUSE, KALAYAPURAM P.O, 691 531
KOTTARAKKARA.

BY ADVS.SRI.P.K.VIJAYAMOHANAN
SRI.ALAN PAPALI
SRI.GILBERT GEORGE CORREYA
SRI.NISHIL.P.S.
SMT.DHANYA P.ASHOKAN
SMT.O.V.BINDU
SRI.J.VIMAL

RESPONDENT(S) :

1. THE STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT
CO-OPERATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM 695 001.

2. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL)
KOLLAM, CIVIL STATION, KOLLAM - 691 013.

3. THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES
(GENERAL, KOTTARAKKARA 691 531.

4. THE PART-TIME ADMINISTRATOR
THE THAMARAKUDY SERVICE CO-OPERATIVE BANK LTD. NO. 2815
THAMARAKUDY P.O, 691 531, KOTTARAKKARA.

5. THE THAMARAKUDY SERVICE CO-OPERATIVE
BANK LTD. NO. 2815,
THAMARAKUDY P.O,
KOTTARAKKARA-691 531, REPRESENTED BY ITS SECRETARY.

R4,R5 BY ADV. SRI.P.N.MOHANAN
R2 BY ADV. GOVERNMENT PLEADER NOUSHAD THOTTATHIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 26-05-2015, THE COURT ON 18-06-2015 DELIVERED THE
FOLLOWING:

A P P E N D I X

PETITIONERS' EXHIBITS

EXT.P1: TRUE COPY OF THE COMMUNICATION NO.K 1477/2011 DATED 12.10.2011 FROM THE 3RD RESPONDENT.

EXT.P2: TRUE COPY OF THE COMMUNICATION NO.K 2815/2011 DATED 29.10.2011 OF THE 3RD RESPONDENT ADDRESSED TO THE SECRETARY, PRESIDENT AND COMMITTEE MEMBERS OF THE BANK.

EXT.P3: TRUE COPY OF THE STATEMENT DATED 21.11.2011 SUBMITTED BY THE PRESIDENT OF THE BANK BEFORE THE 2ND RESPONDENT.

EXT.P4: TRUE COPY OF THE ORDER DATED 24.11.2011 ISSUED BY THE 2ND RESPONDENT APPOINTING THE UNIT INSPECTOR, KOTTARAKARA AS THE ENQUIRY OFFICER.

EXT.P5: TRUE COPY OF THE NOTICE NO.C.R.P(2) 7464/12 DATED 25.7.2012 OF THE 2ND RESPONDENT.

EXT.P6: TRUE COPY OF THE EXPLANATION DATED 7.8.12 SUBMITTED BY THE PRESIDENT OF THE BANK.

EXT.P7: TRUE COPY OF THE NOTICE NO.C.R.P(2) 7464/2011 DT.27.8.12 OF THE 2ND RESPONDENT.

EXT.P8: TRUE COPY OF THE REQUEST DATED 13.09.2012 FROM THE DIRECTORS OF THE BANK BEFORE THE 2ND RESPONDENT.

EXT.P9: TRUE COPY OF THE EXPLANATION DATED 17.09.2012 SUBMITTED BY THE 1ST PETITIONER.

EXT.P10: TRUE COPY OF THE ORDER NO.C.R.P(2) 7464/11 DATED 01.10.2012 OF THE 2ND RESPONDENT.

RESPONDENTS' EXHIBITS

NIL.

/true copy/

P.S to Judge

P.V.ASHA, J.

W.P(c) No.25215 of 2012-B

Dated this the 18th day of June, 2015

JUDGMENT

The petitioners, who were members of the Managing Committee of the Thamarakudy Service Co-operative Bank Ltd. are challenging Ext.P10 order of supersession issued by the Joint Registrar of Co-operative Societies, on 01.10.2012. The learned counsel for the petitioners submitted that the term of the committee is already over. However if the legality of the supersession is left undecided, they will have to incur disqualification from contesting election/from being nominated as members, for two successive terms.

2. The learned counsel for the petitioners pointed out that he is pressing the contentions in paragraphs 9 and 10 and grounds H and M alone of the Writ Petition. However the main thrust in his argument is that the impugned order is bad for want of proper consultation, as provided under Section 32 of the Kerala Co-operative Societies Act, 1969 (hereinafter referred to

as “the Act”. Ext.P10 does not reveal any discussion or consideration as to the objections filed by the President. There is no consultation with the financing bank and circle co-operative union or State Co-operative Union before passing the impugned order. On that ground itself, the impugned order is liable to be set aside. The contentions in paragraph 10 are to the effect that there is no consistency in the approach of the 2nd respondent while issuing Ext.P10 order. While the Joint Registrar was of the view that the amount in question were to be recovered from the Secretary while issuing Ext.P2 notice, he changed his approach in Ext.P7 show cause notice and the order of supersession making the committee of the society as primarily responsible for the loss and hence proceeded against the committee for misappropriation. In ground H the petitioners allege total non application of mind and violation of the principles of Natural Justice in issuing Ext.P10 order and the impugned order is liable to be set aside as the one issued entirely on extraneous consideration and none of the grounds enumerated under sub clauses (a) to (d) of Sub-section (1) of Section 32 of the Kerala

Co-operative Societies Act exist for ordering supersession of the committee of the petitioners.

3. The main ground urged is regarding the non-compliance of requirement of consultation as provided under Section 32, especially on consideration of the consequence of supersession provided in Section 32(1)(e), which provides that every member of the committee superseded shall from the date of order of supersession stand disqualified to contest in the election to or to be nominated to the committee of any society or to be appointed as an administrator in any society for two consecutive terms. Therefore before orders of supersession are issued, there must be objective as well as subjective satisfaction on the part of the Joint Registrar as to the involvement of the conditions prescribed in Section 32 of the Act.

4. Facts leading to the case relevant for the purpose of considering the issue raised herein are as follows:

The 1st petitioner was the President of the 5th respondent Bank. The 2nd petitioner was the Member and Director of the elected committee to the office of the 5th respondent. They had

taken charge as members of the Committee on 5.01.2009. The normal term of the committee expired on 4.1.14 on completion of 5 years. On 25.07.2012, Ext.P5 show cause notice was issued to petitioners proposing an enquiry under Section 65 and directing the petitioners to appear before the Joint Registrar for a hearing on 10.08.2012. The 1st petitioner-President of the Bank submitted Ext.P6 explanation. Thereafter Ext.P7 notice was issued directing to show cause why the committee should not be superseded under Section 32(1) of the Act. The copies of this show cause notice are seen marked to the Assistant Registrar (General), Kottarakkara, Assistant Director (Audit), Kottarakkara, General Manager, District Co-operative Bank, Kollam, Circle Co-operative Union, District Co-operative Bank and Secretary, Thamarakudy Service Co-operative Bank Ltd. Ext.P7 notice contains details of various financial irregularities found to have been committed in the Bank, in the enquiry conducted by the Assistant Registrar (General), Kottarakkara under Section 65. The then President, the 1st petitioner, submitted his explanation - Ext.P9. At the same time, other

members of the Board sought time, as per Ext.P8, for submitting explanation. Ext.P10 order of supersession was issued thereafter, dissatisfied with the explanation. The allegations against the committee relate to appointments made against non existent posts, correction in minutes book, promotions made in violation of feeder category rules, inaction in realisation of amounts due from the Secretary of the Bank, etc. Proceedings were initiated on the basis of the report of the Assistant Registrar in which serious irregularities, mismanagement and corruption were found in the conduct of the affairs of the Bank, likely to result in closure of the bank. Since the explanations received from the President and the members of the committee in answer to the notices issued, were not found satisfactory, the Assistant Registrar of Co-operative Societies, Kottarakkara was deputed to conduct an enquiry, in which also, the preliminary findings were found proved. The explanations obtained from the members of the committee thereafter were again found not satisfactory. In Ext.P10 it was alleged that the committee in office of the Bank failed to discharge their duties and

responsibilities and committed very serious lapses contrary to the interests of the bank as well as its members, without supervising the day-to-day affairs of the bank, the financial transactions as well as the duties performed by the employees, facilitating misappropriation and misuse of official positions causing very serious financial loss to the bank. While ordering supersession by Ext.P10 order, the Unit Inspector, Office of the Assistant Registrar General, Kottayam, was appointed as part-time Administrator for a period of six months.

Subsequent to this, a newly elected committee took charge.

5. I heard the learned counsel for the petitioners as well as the learned Government Pleader.

6. A counter affidavit is filed on behalf of the respondents, seriously disputing the allegations raised in the Writ Petition. The respondents have stated that all the formalities were complied with before Ext.P10 order of supersession was ordered. According to them, the Assistant Registrar (General), Kottayam had directed the petitioners to realise a sum of Rs.1,27,53,488.46 from the former Secretary of

the Bank who had misappropriated the same from the bank. A sub committee which was appointed to enquire into the allegations against the former secretary found that a sum of Rs.14,65,224.68 was due from the former secretary who was kept under suspension, and when he remitted the amount, they reinstated him. The Assistant Registrar (General) reported that the reinstatement of the Secretary Sri M.G.Vijayakumar was prejudicial to the interests of the bank and thereupon on verification of the audit report the petitioners were directed to realise the sum of Rs.1,27,53,488.46 from the former secretary, which the petitioners did not obey and at the same time reported that he was not liable for the amount due. According to the respondents, it was under those circumstances that enquiry under Section 65 was found necessary for ascertaining the gravity of misappropriation committed by the former secretary. It is further submitted that on completion of the enquiry under Section 65, the enquiry officer in his report furnished on 25.5.2012 explained the misappropriation by the former secretary and the board members of the bank. In the report,

there are findings as against the misappropriation by the 1st petitioner President, to the tune of Rs.83,519/-. Similarly violation of rules were found in appointments to various posts. Apart from that it is stated that non payment of depositors' money are causing loss to the Government, for which the petitioners and other board of directors were found responsible. It is stated that when the Joint Registrar directed the board members to take action against the former secretary who had misappropriated huge amount, the board members revoked his suspension without any proper enquiry and they failed to discharge their duties and responsibilities envisaged under Section 28 of the Act. The order of supersession was issued only after issuing show cause notice to the members of the board as against the proposed supersession. According to the respondents, they were given sufficient time because the impugned order of supersession was issued only on 1.10.12, whereas the show cause notice was issued on 25.07.2012. As the main contention of the petitioners as to the non compliance of the provisions relating to consultation with the financing bank

and the circle co-operative union, to the effect that there was no effective consultation before the supersession, it is necessary to have a look at Section 32 of the Act.

7. Therefore the main question is whether there was any consultation and in case there was consultation, can it be considered as an effective consultation envisaged under the provisions of Section 32. From Ext.P7 show cause notice, it can be seen that copy of the show cause notice is marked to the financing bank which is the District Co-operative Bank as well as to the circle co-operative union. According to the petitioners, mere marking of the notice or forwarding a copy of the notice to them is not sufficient for the purpose of the Act as provided under sub section 2 of Section 32. In this case neither the District Co-operative bank which is the financing bank nor the circle co-operative union responded to the show cause notice Ext.P7. The learned counsel for the petitioners submitted that even if they did not respond to the show cause notice, the Joint Registrar ought to have forwarded the explanations received against the show cause notice from the members of the board

and the copy of the decision taken thereon to the financing bank as well as the circle co-operative union before a final decision was taken for superseding the committee. The mere fact that the circle co-operative union or the financing bank - consultees, did not respond to the notice, will not enable the Joint Registrar to pass orders without further consultation. There is no exemption from complying with the process of consultation when there is no response from the consultees. It is also pointed out that while marking copies to the consultees there is not even a covering letter addressed to them seeking their view. That itself shows that there is no consultation as envisaged in the rules. The requirement of compliance of the provisions preceding supersession becomes more relevant in the context of the consequences of supersession, which are drastic in the sense that the members of the committee will incur disqualification from contesting election, for two consecutive terms or from getting nominated to the committee of any society or for appointment as administrators .

8. It is relevant to note that clause (e) of subsection 1 of

Section 32 of the Act provides that every member of the committee superseded under the section shall from the date of order of such supersession stand disqualified to contest in the election to or to be nominated to the committee of any Society or to be appointed as an administrator in any society for two consecutive terms. Similarly, except in cases where the Registrar finds it not reasonably practicable to consult the union and financing bank, consultation is mandatory. The requirement of consultation with the financing bank and circle co-operative union is mandatory. In other cases the period of supersession is only for 6 months.

9. According to the learned Government Pleader, since the copy of the show cause notice had been forwarded to them and they did not choose to respond to the notice, at any time before final orders were passed after 3 months, there was sufficient compliance with the provisions. When the consultees did not respond to the show cause notice, it cannot be said that the order of supersession is bad for non consultation.

10. The learned counsel for the petitioners referred to the judgments in **Ellakkal Service Co-operative Bank v. State of Kerala** [1997 (2) KLT 85], **State of Kerala v Urukunnu**

S.C.B.Ltd. [2013 (2) KLT 74], **State of M.P v. Sanjay Nagayach** [2013 (2) KLT 733(SC)], **Rajeevan v. Sukumaran** [2013 (3) KLT 253], **Jose Kuttiyani v. Registrar, Co-op. Societies** [AIR 1982 Ker.12], **Sahadevan v. Padmanabhan** [2004 (1) KLT 192] and **2008 (7) SCC 203** in support of his contention that the consultees should be informed of the explanation furnished by the members of the committee as well as the proposed decision of the committee, even if they did not respond to the show cause notice. On the other hand, the learned Government Pleader relied on the Full Bench decision of this Court in **Sudheer v. Susheela** [2009 (4) KLT 29] in order to substantiate his contention that there was no violation of the principles of Natural Justice. Therefore, even assuming that the notice issued was not sufficient, it cannot be said that there was violation of principles of Natural Justice. He also relied on the judgment dated 16.03.2012 in W.A.No.1936/2011 in which a Division Bench of this Court directed restoration of the proceedings initiated pursuant to the notices issued under Section 32, allowing the respondents to issue fresh notices to all

elected members of the managing committee and other persons giving them sufficient opportunity to make effective consultation with the State co-operative union in the matter of supersession of the managing committee notionally and to consider whether supersession was called for.

11. In order to decide the issue it is necessary to have a look at the relevant provisions in Section 32 of the Act reads as follows:

“32. Supersession of Committee:- [(1) If the Registrar, after an inquiry by himself or through his subordinates or on a report of the financing bank, or the Vigilance and Anticorruption Bureau of the Government or the Vigilance Officer or otherwise, is satisfied that the committee of any society,--

(a) persistently makes default or is negligent in the performance of the duties imposed on it by this Act or the rules or bye-laws or does anything which is prejudicial to the interests of the society; or

(b) wilfully disobeys or fails to comply with any lawful order or direction issued under this Act or the rules; or

(c) makes any payment contrary to this Act or the rules or the bye-laws or causes any loss or damage to the assets of the society, by breach of trust or wilful negligence; or

(d) misappropriates or destroys or tampers with the records or causes the destruction of records to cover up any misconduct or malpractice.

he may, after giving the committee an opportunity to state its objections, if any, by order in writing, remove the committee and appoint in its place, one administrator or an administrative committee consisting of not more than three individuals, one among them as convener, who need not be members of the society, to manage the affairs of the society for a period not exceeding six months. [xxx]

[Provided that in the case of Co-operative Society, carrying on the business of banking, the provisions of the Banking Regulation Act, 1949 (Central Act 10 of 1949) shall also apply;

Provided further that in the case of a Co-operative Society, carrying on the business of Banking, appointment of Administrator/administrative committee shall not exceed one year in the aggregate.

Provided also that the Board of Co-operative Society shall not be superseded or kept under suspension where there is no Government share holding or loan or financial assistance of any guarantee by the Government or any Board or institutions constituted by the Government.]

Explanation:-A notice and an order given as per this clause to the President, in his absence to the Vice President or any committee members who is holding charge of President or Vice President or to the Chief

Executive of a society shall be treated as an order given to the committee of the society.

(e) Every member of the committee superseded under this section shall from the date of order of such supersession stand disqualified to contest in the election to or to be nominated to the committee of any Society or to be appointed as an administrator in any society for two consecutive terms]

(2) The Registrar shall consult the financing bank and Circle Co-operative Union or State Co-operative Union as the case may be before passing an order under sub-sec.(1).

(3) Notwithstanding anything contained in sub section (1) or sub-section (2) it shall not be necessary to give an opportunity to the committee to state its objections and to consult the Unions and financing banks, in cases where the Registrar is of the opinion that it is not reasonably practicable to do so, subject however to the condition that in such cases the period of supersession shall generally be for six months and in case a new committee, cannot be constituted or enter upon office in accordance with the bye-laws of the society within the period of supersession the period may be extended for a further period not exceeding six months-

(a) in the case of a co-operative society only after consulting the Circle Co-operative Union concerned; and

(b) in the case of an Apex Society or a Central Society only after consulting the State Co-operative Union.

(4) the committee or administrator or administrators so appointed shall, subject to the control of the Registrar and to such instructions as he may from time to time give, [have power to exercise all or any of the powers and functions] of the committee or of any officer of the society and take such action as may be required in the interests of the society.

(5) The committee or administrator or administrators shall, before the expiry of its or his or their term of office, arrange for the constitution of a new committee in accordance with the bye-laws of the society.

(6) Every order made by the Registrar under sub-section (1) shall be communicated to the Circle Co-operative Union."

(emphasis supplied)

The only circumstance when the consultation can be avoided is as provided in sub section 3, ie., when the Registrar is of the opinion that it is not reasonably practicable to consult the union and financing bank and in such cases the period of supersession is limited to six months. The above provision also indicates the requirement of consultation with the financing bank and circle co-operative union. It is to be seen whether it will be sufficient to

simply forward a copy of the show cause notice to the consultees and whether it will amount to effective consultation are to be examined.

12. In this context, a look at the decision cited by either side, will be profitable. In the judgment in **Jose Kuttiyani v. Registrar, Co-op. Societies** [AIR 1982 Kerala 12], the question considered was as to the condition precedent for supersession of the committee. In paragraph 15, this Court had considered the contention relating to the requirement of consultation. The relevant portion of those paragraphs reads as follows:

“15. xxxx xxxx xxxx Though S.32(2) of the Act requires the Registrar to consult the financing Bank, i.e. the Apex Bank and the State Co-operative Union he sent a copy of the show cause notice alone to them for their remarks before 18.3.1981. When the Apex Bank on 21.3.1981 asked for time stating that they would like to know the reply of the petitioners before they furnish their remarks, the Apex Bank was told by the Registrar by his letter dt.25.3.1981 that “the copy of the petitioners” reply cannot be sent to the Apex Bank and there is no necessity for them to go through the replies which the petitioners may be giving to the show cause notice for conveying their remarks on the action

proposed.” The State Co-operative Union was also informed that they should furnish their remarks before 6.4.1981. From these it is clear that he was not keeping an open mind either to consider the reply of the petitioners or the opinion of the Apex Bank and State Co-operative Union.

The nature of the consultation the Registrar had with the Apex Bank and the State Co-operative Union has already been referred to. The show cause notice was sent to them for remarks only. The extension of time asked for by the State Co-operative Union was not granted and so they did not express anything on the notice. When the Apex Bank asked for time to look into the reply that may be filed by the petitioners, it was informed that it is not necessary. What opinion the Apex Bank can give on seeing the mere allegations in Ext.P3 is not clear. In order that there may be a legal consultation the allegations, the objections, the full materials in support of the allegations and the tentative conclusion of the Registrar should be followed to have a meaningful consultation.”

13. In paragraph 23, the Division Bench found that the word `consult' implies a conference of two or more persons or an impact of two or more minds in respect of a topic in order to enable them to evolve a correct or at least a satisfactory solution.

It was held in paragraph 24 that there had not been a consultation as required by law and that the Registrar never consulted a financing bank after considering the explanation and forming a prima facie conclusion on the matter. So the order of supersession is invalid. From paragraph 15 of the said judgment it is seen that the Registrar merely sent a copy of the notice alone to the financing bank as well as State co-operative bank, even though Section 32(2) of the Act requires him to consult the financing bank. In that case the Financing Bank had addressed the Registrar to furnish the reply of the members of the committee before they furnish their remarks. But the Registrar informed them that reply cannot be given to them and there was no necessity for them to go into those replies. It was therefore found that the Registrar was not keeping an open mind and that when they sought for the reply of the petitioners, the Registrar ought to have furnished the same. In the present case also, the Joint Registrar has only forwarded a copy of the show cause notice, that too without even a covering letter to them to furnish their views.

14. In the judgment in **Ellakkal Service Co-operative Bank v. State of Kerala** [1997(2) KLT 85], a learned Single Judge of this Court considered the very same issue, that is relating to the satisfaction of the Joint Registrar which should precede the orders of supersession. In paragraphs 15 to 18 this Court discussed the issue. It was found therein that when notices were issued for consultation with the financing bank and co-operative union, it was seen that notice under Section 32 alone was forwarded; latest balance sheet of the bank for the reply of the petitioners was not sent. The tentative conclusion of the Registrar after considering the reply was not sent. Hence it was held that there was no effective consultation and therefore even if Section 65 enquiry and findings thereon are correct, the order of supersession got vitiated for non compliance of the mandatory provisions for consultation. In that case the apex bank had requested for time, which was refused. In paragraph 18 this Court held as follows:

“18. It has been held by this Court in the decision reported in *Rajagopalan Nair v. State of Kerala* (1995 (2) KLT 184) that the provision of supersession is to be

considered as an exceptional and rare action. In the decision reported in 1997 (1) KLJ 607 (T.T.James and Ors. v. Joint Registrar & Ors.) it was held by this Court that mere default or disobedience or failure to comply with the provisions assuming to be found to be true cannot be a ground for supersession unless it is shown that there is persistent and wilful negligence and wilful disobedience. A similar view was taken in the decision reported in P.Govindankutty & Ors. v. State & Ors. (1990 (1) KLJ 74). In the decision reported in Pollachi Co-operative Marketing Society v. K.N.Valuswami (1994 Supp. (3) SCC 134) the Supreme Court held that to constitute wilful negligence and wilful disobedience the act done or omitted to be done must involve such reckless disregard of duty as to imply bad faith. The records show that there is no wilful or persistent default by the managing committee members as alleged. In any event, there is no such finding also. The defects pointed out were cured as far as possible and they have taken steps for curing the same and requested for sufficient time. Another six names were shown pointed out that loans were given to ineligible members even after show cause notice was issued. But, those persons were also admitted as members that they were ineligible members. Therefore, even if the enquiry report was correct, there are not enough materials for superseding the committee and in any event, there was no effective consultation."

15. In the judgment in **Sahadevan v. Padmanabhan** [2004 (1) KLT 192], a Division Bench of this Court considered the issue regarding consultation. In paragraph 5 of the judgment, this Court found that a copy of the notice issued under sub section 1 of Section 32 of the Act was sent to the financing bank and Secretary of the Co-operative Union and apart from sending a copy of the notice, no further request or direction was made. It was also found that the final order of supersession revealed that the views of the financing bank and the circle co-operative union were not received in time and therefore, the Joint Registrar proceeded on the assumption that they had nothing to say in the matter. There the learned Single Judge had already found that from the impugned order it can be seen that there was no consultation made. The Joint Registrar also did not have a case that apart from sending a copy of the notice to the financing bank and circle Co-operative union, they had forwarded copies of explanations/objections given by the committee and the tentative findings arrived at by the Joint Registrar after considering the explanations/objections. It was

therefore held that the consultation contemplated under sub section 2 of Section 32 of the Act can be effective and meaningful only if the show cause notice issued under Section 32 (1), the explanations/objections given by the committee to such show cause notice and the tentative findings arrived at by the Joint Registrar after considering such explanations/objections are also forwarded to the consultees requesting them to offer their views on the proposal to supersede the committee. As such a consultation process was not found to have taken place, it was found that there was violation of the provisions of sub section 2 of Section 32 and therefore the order of supersession was set aside. The Division Bench confirmed the finding of the learned Single Judge, giving liberty to the Joint Registrar to pass fresh orders in accordance with law. In **State of Kerala v Urukunnu S.C.B.Ltd.** [2013 (2) KLT 74] also, the question of consultation came up for consideration. There the financing bank which was the District Co-operative Bank was under the management of the Administrator. The Joint Registrar who passed the order of supersession himself was the administrator of the financing

bank. Therefore he felt that it was not logically practicable for him to consult himself and therefore no consultation was made with the financing bank. Regarding the circle co-operative union it was contended that it was not absolutely mandatory and the Joint Registrar can dispense with the same and non consideration with the circle co-operative union will not make the proceedings unsustainable. After considering a series of decisions on the point, this Court, in para.12, held as follows:

“12. xxxx xxxx xxxx xxxx

We are of opinion that insofar as the Co-operative Societies should normally be managed by elected representatives, the very drastic step of superseding the managing committee under S.32 can be resorted to only in exceptional circumstances, that too only after scrupulously following the procedure prescribed in S.32. In fact, if a managing committee is superseded under S.32 that attracts disqualification of every member of the managing committee in the matter of contesting future elections to the managing committee for two consecutive terms. It is in view of the drastic nature of the power that the legislature has incorporated safeguards in the matter of exercise of such powers, so that it will not be arbitrary. Therefore, we are of opinion that sub-s.2 is mandatory unless the Joint Registrar gives very cogent and acceptable reasons for dispensing with

such requirement. The least that is expected of the third appellant is to give some indication in the order itself as to why the Joint Registrar had chosen to dispense with the consultation with a Financing Bank and Circle Co-operative Union. As admitted in Ext.P7 itself that procedure has not been complied with and no reasons worth mentioning has been stated in the order.”

16. The requirement of consultation was found mandatory especially in view of the drastic consequences provided in sub section 2 of Section 32 making the members of the committee ineligible to contest the election or in getting nominated as members of the committee.

17. In **Rajeevan v. Sukumaran** [2013 (3) KLT 253], a Division Bench of this Court again considered the very same issue of consultation. There the Joint Registrar took the view that it was not practicable to consult with the circle co-operative union or financing bank, under Section 32(3) of the Act, which was stated in the order of supersession itself. There consultation was dispensed with stating that an alarming situation prevails. It was held that the consultation is mandatory and serves very important and vital purpose in the context of the action to

supersede an elected managing committee of a society.

18. In the judgment in **State of M.P v. Sanjay Nagayach** [2013 (2) KLT 733(SC)], the Apex Court considered a similar issue with respect to the Madhyapradesh Co-operative Act, 1960. The issue considered was whether mere serving of a copy of the show cause notice on Reserve Bank of India with supporting documents is what is contemplated therein. The Apex Court considered the issue regarding supersession of the Board of Directors of the District Co-operative Bank with due reference to the provisions contained in Section 53(1) of the Act therein which required consultation with Rule 13(1) before taking a decision to supersede the Board of Directors. There the contention was that the Joint Registrar had forwarded the show cause notice as well as the connected materials to the Reserve Bank Of India and the R.B.I had failed to respond to the show cause notice within 30 days of receipt of the same and therefore it had to be presumed that the proposed action was agreed to by the R.B.I. In paragraph 9, the Apex Court found that the validity of the order of supersession has to be tested under the legal

frame work in which the Co-operative Bank has to function under the Act read with the provisions of the R.B.I Act, 1934. As the impugned order results in the supersession of a body elected to achieve social and economic democracy with emphasis on weaker section of the society, as the preamble of the Act itself depicts, a close look at the powers of the functionaries instrumental in over-turning an elected body is of paramount importance. There also under Section 53(7) it was provided that before taking action under sub section 1 in respect of a financing bank or in respect of a society indebted to a financing bank, the Registrar shall consult in the former case, the Madhya Pradesh State Co-operative Bank Ltd. And, in the latter case, the financing bank, regarding such action and if those banks fail to communicate its views within 30 days, it shall be presumed that they agreed with the proposed action. In paragraph 16 of the judgment it was held that for a meaningful and effective consultation, a copy of the reply filed by the bank to the various charges and allegations levelled against them should also be made available to the Reserve Bank of India as well as the action

proposed by the Joint Registrar, after examining the reply submitted by the bank. The Reserve Bank should be told of the action the Joint Registrar is intending to take. Only then, there will be an effective consultation and the views expressed by the R.B.I will be a relevant material for deciding whether the elected Board be superseded or not. In other words, the previous consultation is a condition precedent before forming an opinion by the Joint Registrar to supersede the Board of Directors or not.

19. The Apex Court therefore explained the meaning of expression 'consultation' accordingly. It was also held that when the outcome of the proposed action is to oust a democratically elected body and the expression used is "shall not be passed without previous consultation", it is to be construed as mandatory.

20. Mere serving of a copy of the show cause notice to R.B.I with supporting documents is not what is contemplated under the second proviso to Section 53(1) of the Act. In this case sub section 1 of Section 53 which provides that the order of supersession shall not be passed without previous consultation

with the R.B.I. In the present case the question has to be considered in the background of the drastic consequences also, apart from the immediate consequences of ousting of the democratically elected body. Thus it became all the more mandatory to comply with the requirement of effective consultation. The Apex Court held that the Registrar/Joint Registrar are legally obliged to comply with all the statutory formalities including consultation with the financing banks/controlling banks etc. and an elected committee can be ousted only after getting their views on an opinion to be formed thereafter. It was further held that the Registrar/Joint Registrar should always bear in mind the consequences of an order of supersession which has the effect of not only ousting the Board out of office, but also disqualifying them for standing for election in the succeeding elections and therefore they are duty bound to exercise their powers bonafide and not on the dictation or direction of those who are in power. In yet another judgment **Andhra Bank v. Andhra Bank Officers** [(2008) 7 SCC 203] also, the Apex Court had considered the question regarding

consultation that too with respect to the proceedings against a bank. In paragraph 24 the Apex Court held that where one authority is required to consult another, such consultation must be meaningful. It must mean conscious and effective consultation. There the issue was relating to the consultation required for issuing guidelines under regulation 26(2) regarding service conditions of the employees.

21. In view of the discussions as contained in the above judgments as well as the provisions contained in Section 32 of the Act, it is seen that there was no consultation as envisaged in the provisions of the Act, before ordering supersession. As held by this court in the judgments (supra), it can be seen that in order to have an effective consultation, not only the show cause notice but also the explanation furnished by the bank, the proposed decision to be taken by the Joint Registrar on receipt of such explanation are also to be furnished to the consultees. The fact that the consultees did not respond as pointed out by the learned Government Pleader, will not relax the rigour of the requirement of consultation especially in view of the fact that

outcome of the supersession is drastic in the sense that a democratically elected body is to be ousted with a further disqualification on the members of the committee to contest election for two consecutive terms. In the above circumstances, I find that the order Ext.P10 passed by the Joint Registrar is vitiated by non compliance of the requirement of consultation. Hence Ext.P10 order is set aside. However, this will not prevent the respondents from taking any further action in accordance with law.

This Writ Petition is allowed accordingly.

rtr/

Sd/-
(P.V.ASHA, JUDGE)