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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.2173 of 2016**

Sunil Kumar Pradhan S/o Shri Khemraj Pradhan, Aged About 33 Years R/o Villlage Dumarपाली Tehsil Pithora, District Mahasamund Chhattisgarh

---- Petitioner**Versus**

1. Registrar Co-operative Society Chhattisgarh, office of HOD Indrawati Bhawan Naya Raipur Chhattisgarh
2. Joint Registrar Co-operative Society, Raipur Division In front of Lal Ganga Shopping Mall, G.E. Road, Raipur Chhattisgarh
3. District Central Co-operative Bank Raipur, Through Its Chairman In Front Of Lal Ganga Shopping Mall G.E. Road, Raipur Chhattisgarh
4. Chief Executive Officer, District Central Co-operative Bank Raipur In Front Of Lal Ganga Shopping Mall G.E. Road, Raipur Chhattisgarh
5. State Of Chhattisgarh Through Secretary, Co-operative Department Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh

---- Respondents**And****Writ Petition (S) No.2186 of 2016**

Vijay Singh Thakur S/o Late Shri Ram Dayal Singh Thakur, aged about 48 years, R/o Village and Post Sivni Block Abhanpur, District Raipur Chhattisgarh

---- Petitioner**Versus**

1. Registrar Co-operative Society Chhattisgarh, office of HOD Indrawati Bhawan Naya Raipur Chhattisgarh
2. Joint Registrar Co-operative Society, Raipur Division In front of Lal Ganga Shopping Mall, G.E. Road, Raipur Chhattisgarh
3. District Central Co Operative Bank Raipur, Through Its Chairman In Front Of Lal Ganga Shopping Mall G.E. Road, Raipur Chhattisgarh

4. Chief Executive Officer, District Central Co-operative Bank Raipur In Front Of Lal Ganga Shopping Mall G.E. Road, Raipur Chhattisgarh
5. State Of Chhattisgarh Through Secretary, Co Operative Department Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh

And

Writ Petition (S) No.2175 of 2016

Ajitram Sinha S/o Shri Mahetru Sinha, aged about 46 years, R/o Village Thakardiyakhurd Post Barekelkhurd Tehsil Pithora District Mahasamund C.G.

---- Petitioner

Versus

1. Registrar Co-operative Society Chhattisgarh, office of HOD Indrawati Bhawan Naya Raipur Chhattisgarh
2. Joint Registrar Co-operative Society, Raipur Division In front of Lal Ganga Shopping Mall, G.E. Road, Raipur Chhattisgarh
3. District Central Co-operative Bank Raipur, Through Its Chairman In Front Of Lal Ganga Shopping Mall G.E. Road, Raipur Chhattisgarh
4. Chief Executive Officer, District Central Co-operative Bank Raipur In Front Of Lal Ganga Shopping Mall G.E. Road, Raipur Chhattisgarh
5. State Of Chhattisgarh Through Secretary, Co-operative Department Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh

And

Writ Petition (S) No.2184 of 2016

Swaroop Pradhan S/o Shri Kaustupmani Pradhan aged about 42 years R/o Post Girna Tehsil Pithora District Mahasamund (CG)

---- Petitioner

Versus

1. Registrar Co-operative Society Chhattisgarh, office of HOD Indrawati Bhawan Naya Raipur Chhattisgarh
2. Joint Registrar Co-operative Society, Raipur Division In front of Lal Ganga Shopping Mall, G.E. Road, Raipur Chhattisgarh

3. District Central Co-operative Bank Raipur, Through Its Chairman In Front Of Lal Ganga Shopping Mall G.E. Road, Raipur Chhattisgarh
4. Chief Executive Officer, District Central Co-operative Bank Raipur In Front Of Lal Ganga Shopping Mall G.E. Road, Raipur Chhattisgarh
5. State Of Chhattisgarh Through Secretary, Co Operative Department Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh

And

Writ Petition (S) No.2183 of 2016

Samil Pradhan S/o Shri Ravishankar Pradhan aged about 38 years, R/o Tikrapara Near Rest House, Basna, District Mahasamund (CG)

---- Petitioner

Versus

1. Registrar Co-operative Society Chhattisgarh, office of HOD Indrawati Bhawan Naya Raipur Chhattisgarh
2. Joint Registrar Co-operative Society, Raipur Division In front of Lal Ganga Shopping Mall, G.E. Road, Raipur Chhattisgarh
3. District Central Co-operative Bank Raipur, Through Its Chairman In Front Of Lal Ganga Shopping Mall G.E. Road, Raipur Chhattisgarh
4. Chief Executive Officer, District Central Co-operative Bank Raipur In Front Of Lal Ganga Shopping Mall G.E. Road, Raipur Chhattisgarh
5. State Of Chhattisgarh Through Secretary, Co-operative Department Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh

And

Writ Petition (S) No.2179 of 2016

Danesh Kumar Sinha S/o Late Shri Jagat Pal Sinha aged about 44 years, R/o Village Pacheda Block Abhanpur, District Raipur (CG)

---- Petitioner

Versus

1. Registrar Co-operative Society Chhattisgarh, office of HOD Indrawati Bhawan Naya Raipur Chhattisgarh

2. Joint Registrar Co-operative Society, Raipur Division In front of Lal Ganga Shopping Mall, G.E. Road, Raipur Chhattisgarh
3. District Central Co-operative Bank Raipur, Through Its Chairman In Front Of Lal Ganga Shopping Mall G.E. Road, Raipur Chhattisgarh
4. Chief Executive Officer, District Central Co-operative Bank Raipur In Front Of Lal Ganga Shopping Mall G.E. Road, Raipur Chhattisgarh
5. State Of Chhattisgarh Through Secretary, Co Operative Department Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh

And

Writ Petition (S) No.2177 of 2016

Dwarika Prasad Sahu S/o Late Shri Kaliram Sahu, aged about 42 years, R/o Village and Post Bemcha, Tehsil and District Mahasamund (CG)

---- Petitioner

Versus

1. Registrar Co-operative Society Chhattisgarh, office of HOD Indrawati Bhawan Naya Raipur Chhattisgarh
2. Joint Registrar Co-operative Society, Raipur Division In front of Lal Ganga Shopping Mall, G.E. Road, Raipur Chhattisgarh
3. District Central Co-operative Bank Raipur, Through Its Chairman In Front Of Lal Ganga Shopping Mall G.E. Road, Raipur Chhattisgarh
4. Chief Executive Officer, District Central Co Operative Bank Raipur In Front Of Lal Ganga Shopping Mall G.E. Road, Raipur Chhattisgarh
5. State Of Chhattisgarh Through Secretary, Co-operative Department Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh

And

Writ Petition (S) No.2174 of 2016

Ashok Kumar Sahu S/o Shri Naresh Ram Sahu, aged about 43 years, R/o Village Sarekel Post Office Turinga, Tehsil and District Mahasamund (CG)

---- Petitioner

Versus

1. Registrar Co-operative Society Chhattisgarh, office of HOD Indrawati Bhawan Naya Raipur Chhattisgarh
2. Joint Registrar Co-operative Society, Raipur Division In front of Lal Ganga Shopping Mall, G.E. Road, Raipur Chhattisgarh
3. District Central Co-operative Bank Raipur, Through Its Chairman In Front Of Lal Ganga Shopping Mall G.E. Road, Raipur Chhattisgarh
4. Chief Executive Officer, District Central Co-operative Bank Raipur In Front Of Lal Ganga Shopping Mall G.E. Road, Raipur Chhattisgarh
5. State Of Chhattisgarh Through Secretary, Co-operative Department Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh

And

Writ Petition (S) No.2182 of 2016

Kalyan Singh Sen S/o Shri Manharan Lal Sen aged about 36 years, R/o Village Khilora Post Office Chhachanpairi, Tehsil Abhanpur, District Raipur (CG)

---- Petitioner

Versus

1. Registrar Co-operative Society Chhattisgarh, office of HOD Indrawati Bhawan Naya Raipur Chhattisgarh
2. Joint Registrar Co-operative Society, Raipur Division In front of Lal Ganga Shopping Mall, G.E. Road, Raipur Chhattisgarh
3. District Central Co-operative Bank Raipur, Through Its Chairman In Front Of Lal Ganga Shopping Mall G.E. Road, Raipur Chhattisgarh
4. Chief Executive Officer, District Central Co-operative Bank Raipur In Front Of Lal Ganga Shopping Mall G.E. Road, Raipur Chhattisgarh
5. State Of Chhattisgarh Through Secretary, Co-operative Department Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh

For Petitioners	:	Mr.Manoj Paranjape, Mr.Amrito Das and Mr.Sourabh Dangi, Advocates
For Res.No.1, 2 and 5	:	Mr.Dhiraj Wankhede, G.A.
For Res.No.3 and 4	:	Mr.S.C. Verma, Advocates

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

06/12/2016

1. Calling in question the legality, validity and correctness of the order dated 23.5.2016 (Annexure P/1) passed by respondent No.1/Registrar, Co-operative Society, by which the orders passed by the Deputy Registrar, Co-operative Societies dated 9.9.2014, 15.9.2014, 27.2.2015, 9.3.2015, 27.3.2015 and 11.5.2015 respectively have been held to be illegal and without jurisdiction and certain directions have been issued to respondent No.2/Joint Registrar, Co-operative Societies to exercise the powers conferred under Section 80-A of the Chhattisgarh Co-operative Societies Act, 1960 (hereinafter called as "Act of 1960").
2. The essential facts which are necessary for just and disposal of these writ petitions are as under:-
 - 2.1 The petitioners who are ten 10 in number, whose services were directed to be regularized by the orders dated 9.9.2014, 15.9.2014, 27.2.2015, 9.3.2015, 27.3.2015 and 11.5.2015 respectively passed by the Deputy Registrar, Co-operative Societies. Thereafter, respondent

No.3/District Central Co-operative Bank Raipur on 15.6.2015 resolved to implement the orders of the Deputy Registrar, Co-operative Societies as it is and by order dated 16.7.2015 actually issued the order regularizing the services of the petitioners on the post of Society Manager (Samiti Prabandhak) and they joined and started working on the said post. Thereafter, all of sudden on 23.5.2016, respondent No.1 passed an order holding that appointment of the petitioners on the post of Society Manager could not have been made and order of the Deputy Registrar, Co-operative Societies directing regularization of the petitioners services is wholly illegal, without jurisdiction and without authority of law and resolution of the respondent-Bank dated 15.6.2015 is ex-facie illegal and directed respondent No.2 to annul the resolution dated 15.6.2015 and also to exercise the powers conferred under Section 80-A of the Act of 1960 with regard to the order passed by the Deputy Registrar, Co-operative Societies regularizing the services of the petitioners and also to proceed further against Shri S.P. Chandrakar, Incharge Chief Executive Officer of the respondent Bank and take disciplinary action against him.

3. The aforesaid orders passed by respondent No.1- Registrar, Co-operative Societies have been challenged by the petitioners by separate petitions. Since common

question of law is involved in these writ petitions, they are tagged and heard together and being disposed of by this common order.

4. These writ petitions have been filed firstly on the ground that order of the Deputy Registrar, Co-operative Societies regularizing the services of the petitioners on the post of Society Manager has become final as it has not been challenged by the party to the order and even respondent No.1 has affirmed that order and secondly that while passing the order dated 23.5.2016 as provided in proviso to Section 80-A of the Act of 1960 no opportunity of hearing was afforded to the writ petitioners though they have suffered great prejudice as the impugned order had the effect of de-regularizing the services of the petitioners and further it is in teeth of the provisions contained in Section 80-A of the Act of 1960 and prayer has been made for quashing the order impugned.
5. Return has been filed by the State and its authorities stating inter-alia that order dated 23.5.2016 passed by respondent No.1 is appealable order as provided under Section 78 of the Act of 1960 and therefore, the petitioners are having efficacious statutory alternative remedy of filing an appeal. It has also been pleaded that in compliance of the order dated 23.5.2016, the Joint Registrar, Co-operative Societies/respondent No.2 has

already passed consequential order on 13.6.2016 (Annexure R/2) in which respondent-Bank was given an opportunity of hearing and thereafter, resolution of the respondent-Bank dated 15.6.2015 has been declared null and void by order of the Joint Registrar, Co-operative Societies, which has not been challenged. Further, it has been submitted that the order passed by the Deputy Registrar, Co-operative Societies is *void-ab-initio* and *that* order is without authority of law and the writ petitions deserve to be dismissed.

6. No rejoinder has been filed on behalf of the petitioners.
7. Leading arguments on behalf of the batch of writ petitioners, Mr.Manoj Paranjape, learned counsel appearing in WP (S) No.2173 of 2016, would submit as under:-

(i) While passing the impugned order, respondent No.2 has held the order of the Deputy Registrar, Co-operative Societies directing regularization of services of the petitioners to be wholly without jurisdiction and without authority of law and resolution of the Bank dated 15.6.2015 directing actual regularization has been held to be illegal, but no opportunity of hearing was afforded to the petitioners as provided under Section 80-A of the Act of 1960.

(ii) The Registrar, Co-operative Societies has already recorded a finding with regard to the order of the Deputy Registrar, Co-operative Societies and resolution of the Bank to be illegal and without authority of law and thereafter issued direction to respondent No.2/Joint Registrar, Co-operative Societies to exercise the powers conferred under Section 80-A of the Act of 1960, but there is no delegation of power under Section 80-A of the Act of 1960 to the Joint Registrar, Co-operative Societies. He would rely upon the judgments of the Supreme Court in the matters of **Joint Action Committee of Air Line Pilots' Association of India (ALPAI) and others vs. Director General of Civil Aviation and others**¹ and **Nisha Devi Vs. State of H.P. and Ors.** and submit that there is clear-cut violation of principle of natural justice in passing the order impugned and therefore, writ petitions are maintainable in the light of the judgment of the Supreme Court in the matter of **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others**² followed in **Committee of Management and another Vs. Vice-Chancellor and others**³.

8. Mr.Dhiraj Wankhede, learned Government Advocate

1 (2011) 5 SCC 435

2 (1998) 8 SCC 1

3 (2009) 2 SCC 630

appearing for respondents No.1, 2 and 5, would submit as under:-

(i) The order passed by respondent No.1 is appealable before the Chhattisgarh Co-operative Tribunal under Section 78 of the Act of 1960 and as such the petitioners have statutory alternative remedy of approaching the Co-operative Tribunal to question the impugned order, the writ petitions as framed and filed are not maintainable in law.

(ii) Respondent No.2/Joint Registrar, Co-operative Societies has given an opportunity of hearing to the respondent-Bank by which 1st proviso to Section 80-A of the Act of 1960 stood complied with and as such, power under Section 80-A of the Act of 1960 has been exercised by respondents No.1 and 2 strictly in accordance with law and therefore, the writ petitions deserve to be dismissed.

9. I have heard learned counsel appearing for the parties, perused the order impugned, considered their rival submissions made herein and also gone through the documents annexed with the writ petition with utmost circumspection.
10. The first question is whether the writ petitions deserve to be dismissed on the question of availability of statutory

alternative remedy to the petitioners to question the impugned order passed by respondent No.1/Registrar, Co-operative Societies.

11. Under Article 226 of the Constitution, the this Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition on the ground of availability of alternative remedy. It is well settled and it has been consistently held by the Supreme Court that alternative remedy is not operate a bar to entertain writ petition in at least in three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged [See Whirlpool (supra)]. The writ Court is not bound to dismiss the writ petition merely on the ground of availability of alternative remedy if the principle of natural justice has not been followed while passing the order. The jurisdiction of this Court in exercising the writ petition under Article 226 of the Constitution in spite of alternative remedy is not barred in the case where the authority against whom the writ petition is filed is shown to have no jurisdiction or had exercised the jurisdiction without giving an opportunity of hearing to the person aggrieved.

12. In view of aforesaid legal position, if the facts of the present cases are examined, it is quite vivid that this is a case where fundamental principle of affording an opportunity of hearing to affected party, which is envisaged in proviso to Section 80-A of the Act of 1960 has been complied with in its complete breach, therefore, the writ petitions cannot be dismissed on the ground of availability of alternative remedy.
13. This would bring me to the next question whether respondent No.1/Registrar, Co-operative Societies is justified in holding that order of Deputy Registrar, Co-operative Societies and resolution passed by respondent-Bank is without jurisdiction and without authority of law.
14. In order to judge the correctness of the plea raised at the Bar, it would be appropriate to notice Section 80-A of the Act of 1960, which states as under:-

“80-A. Power of Registrar to call for proceedings of subordinate Officers and committee of a society and to pass orders thereon.- The Registrar may, at any time on his own motion or on the application made by any party, call for and examine the record of any enquiry or the proceedings by any sub-ordinate officer or a decision of a Committee of a Society for which Government has contributed to its share capital or has given loans or financial assistance or has guaranteed the repayment of

loans granted in any other form for the purpose of satisfying himself as to the legality or propriety of any decision or order passed and as to the regularity of the proceedings of such officer or committee. If in any case, it appears to the Registrar that any decision or order of proceedings so called for should be modified, annulled or reversed, the Registrar, may pass such order thereon as he may deem fit :

Provided that no order under this Section shall be made to the prejudice of any party unless such party has had an opportunity of being heard:

Provided further that the powers conferred on the Registrar under this Section, shall not be delegated to any officer below the rank of Joint Registrar.”

15. A careful perusal of proviso to Section 80-A of the Act of 1960 would show that the legislature has clearly mandated that no order under Section 80-A shall be made to the prejudice of any party unless an opportunity of hearing has been afforded to the person affected.
16. At this stage, it would be appropriate to notice some of the Supreme Court's judgments on the issue profitably and gainfully to make the point clear. In the matter of **Swadeshi Cotton Mills v. Union of India**⁴ while considering the concept, scope and applicability of rule of *audi alteram partem*, the Supreme Court has held that where the statute provides for observance of principles of

4 (1981) 1 SCC 664

natural justice in a particular manner, it has to be observed in that manner only:-

“106. The principles of natural justice have taken deep root in the judicial conscience of our people, nurtured by *Dr Bina Pani*⁵, *Kraipak*⁶, *Mohinder Singh Gill*⁷, *Maneka Gandhi*⁸. They are now considered so fundamental as to be “implicit in the concept of ordered liberty and, therefore, implicit in every decision-making function, call it judicial, quasi-judicial or administrative. Where authority functions under a statute and the statute provides for the observance of the principles of natural justice in a particular manner, natural justice will have to be observed in that manner and in no other. No wider right than that provided by statute can be claimed nor can the right be narrowed. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice. The implication of natural justice being presumptive it may be excluded by express words of statute or by necessary intendment.....”

17. In **Dewan Singh v. State Haryana and another**⁹

the Supreme Court again held that where the statute in unmistakable terms provides that before passing an order of dismissal or removal, a notice has to be given to the employee to show cause against the proposed action, such an opportunity must be provided as the principles of natural justice, ingrained in such a provision, which is mandatory character and held as under:-

5 (1967) 2 SCR 625 : AIR 1967 SC 1269

6 (1969) 2 SCC 262

7 (1978) 1 SCC 405

8 (1978) 1 SCC 248

9 (1976) 3 SCC 638

“9. Unlike as in Article 311 of the Constitution, Section 124(2) does not in terms mention two stages of a departmental enquiry for misconduct against an employee. Even so, the nature of an enquiry with an object to dismiss an employee is such that a full and fair reasonable opportunity must be given to him to meet the charges. The second proviso to Section 124(2) provides in unmistakable terms that before passing any order of dismissal or removal a notice has to be given to the employee to show cause against the proposed action. The action of dismissal or removal cannot be proposed, in all fairness, unless the tribunal had reached a conclusion about the guilt after making a proper enquiry giving the employee a reasonable opportunity to defend.

11. The principles of natural justice are clearly ingrained in the provisions of Section 124(2). It is a clear case where the provisions of Section 124(2), which are of a mandatory character in a departmental enquiry have been violated vitiating the order of dismissal. The High Court, therefore, should have accepted the petition of the appellant under Article 226 of the Constitution and quashed the order of dismissal.”

18. Very recently, the Supreme Court in the matter of **Commissioner of Income Tax, Mumbai v. Amitabh Bachchan**¹⁰ while dealing with principles of natural justice pertinently held as under:-

“10. Reverting to the specific provisions of Section [263](#) of the Act what has to be seen is that a satisfaction that an order passed by the Authority under the Act is erroneous and prejudicial to the interest of the Revenue is the basic precondition for exercise of jurisdiction Under Section [263](#) of the Act. Both are twin conditions that have to be conjointly present. Once such satisfaction is reached, jurisdiction to exercise the power would be available subject to observance of the principles of natural justice which is implicit in the requirement cast by the

10 AIR 2016 SC 2257

Section to give the Assessee an opportunity of being heard. It is in the context of the above position that this Court has repeatedly held that unlike the power of reopening an assessment Under Section [147](#) of the Act, the power of revision Under Section [263](#) is not contingent on the giving of a notice to show cause. In fact, Section [263](#) has been understood not to require any specific show cause notice to be served on the Assessee. Rather, what is required under the said provision is an opportunity of hearing to the Assessee. The two requirements are different; the first would comprehend a prior notice detailing the specific grounds on which revision of the assessment order is tentatively being proposed. Such a notice is not required. What is contemplated by Section [263](#), is an opportunity of hearing to be afforded to the Assessee. Failure to give such an opportunity would render the revisional order legally fragile not on the ground of lack of jurisdiction but on the ground of violation of principles of natural justice....”

19. In the present case, it is not in dispute that respondent No.1 has not afforded any such opportunity of hearing to the petitioners as contained in proviso to Section 80-A of the Act of 1960 holding that orders passed by the Deputy Registrar, Co-operative Societies are illegal and without jurisdiction as respondent No.1-Registrar, Co-operative Societies has exercised the power and jurisdiction under Section 80-A of the Act of 1960 and thereby, the order impugned has caused great prejudice to the petitioners as the orders passed in their favour directing regularization has held to be illegal and without jurisdiction by respondent No.1 and that had the effect of de-regularizing the services of the petitioners on the post of Society Manager, the order passed by respondent No.1 as the

petitioner did not have an opportunity to justify the order passed by the Deputy Registrar, Co-operative Societies in their favour and further failed to defend themselves and consequence of that order is that resolution of the Bank dated 15.6.2015 actually regularizing the services of the petitioners on the post of Society Manager passed by the Bank stood cancelled de-regularizing them. This has caused serious prejudice to interest of the petitioners as the actual effect of this finding is that they stand de-regularized and it amounts to cancellation of regularization. Thus, the order impugned dated 23.5.2016 (Annexure P/1) is in teeth of 1st proviso to Section 80-A of the Act of 1960.

20. Respondent No.1 has not only recorded a finding holding the order of the Deputy Registrar, Co-operative Societies as well as the resolution of the Bank directing regularization of services of the petitioners to be illegal, without jurisdiction and without authority of law, but also directed respondent No.2 to annul the resolution dated 15.6.2015 by initiating proceedings by directing to invoke the powers under Section 80-A of the Act of 1960. This part of order also cannot sustain as respondent No.1 himself has exercised the power under Section 80-A of the Act of 1960 and clearly came to the conclusion that orders passed by the Deputy Registrar, Co-operative Societies in

favour of the petitioners are without authority of law cannot direct the Joint Registrar, Co-operative Societies to exercise the powers under Section 80-A of the Act of 1960 having already made up his mind and recorded a finding to that effect.

21. The Supreme Court in the matter of **Joint Action Committee of Air Line Pilots' Association of India** (Supra) has held as under:-

“26. The contention was raised before the High Court that the Circular dated 29.5.2008 has been issued by the authority having no competence, thus cannot be enforced. It is a settled legal proposition that the authority which has been conferred with the competence under the statute alone can pass the order. No other person, even a superior authority, can interfere with the functioning of the Statutory Authority. In a democratic set up like ours, persons occupying key positions are not supposed to mortgage their discretion, volition and decision making authority and be prepared to give way to carry out commands having no sanctity in law. Thus, if any decision is taken by a statutory authority at the behest or on suggestion of a person who has no statutory role to play, the same would be patently illegal. (Vide: The Purtabpur Co., Ltd. v. Cane Commissioner of Bihar & Ors., AIR 1970 SC 1896; Chandrika Jha v. State of Bihar & Ors., AIR 1984 SC 322; Tarlochan Dev Sharma v. State of Punjab & Ors., AIR 2001 SC 2524; and Manohar Lal (D) by

L.Rs. v. Ugrasen (D) by L.Rs. & Ors., AIR 2010 SC 2210).

28. In view of the above, the legal position emerges that the authority who has been vested with the power to exercise its discretion alone can pass the order. Even senior official cannot provide for any guideline or direction to the authority under the statute to act in a particular manner.”

22. In view of the aforesaid analysis, I am of the considered opinion that order passed by respondent No.1 in exercising the powers conferred under Section 80-A of the Act of 1960 deserves to be and is accordingly set aside for the reasons set out herein-above. The consequential order passed by the Joint Registrar, Co-operative Societies is also hereby quashed. However, this will not bar the respondents to proceed in accordance with law. It is made clear that this Court has not expressed any opinion on merits of the case and the competent authority is free to proceed in accordance with law.
23. The writ petitions are allowed to the extent indicated hereinabove. No order as to cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-