

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2017
(Reserved On 22.12.2016)

Coram

The Hon'ble Mr. Justice T.RAJA

W.P. Nos.7648, 16617 and 31309 of 2015

C.Kamaraj ..Petitioner in W.P.No.7648 of 2015
S.Saravanan ..Petitioner in W.P.Nos.16617
& 31309/2015

Vs

- 1.The Registrar of Cooperative Societies,
No.170, EVR Periyar High Road,
Kilpauk, Chennai - 10.
- 2.The Joint Registrar,
Office of the Cuddalore Joint Registrar
of Cooperative Societies,
Cuddalore.
- 3.The Deputy Registrar / District Election Officer,
Office of the Deputy Registrar
of Cooperative Societies,
Virudhachalam, Cuddalore District. .. Respondents 1 to 3 in
all WPs
- 4.The Managing Director,
E.81, Virudhachalam Cooperative Urban Bank,
Virudhachalam,
Cuddalore District. ..4th Respondent in W.P.Nos.7648
& 16617/15
- 5.D.Sivashankar
- 6.Administrator,
E-81, Virudhachalam Cooperative Urban Bank,
Virudhachalam,
Cuddalore District. .. Respondents 4 & 5 in
W.P.No.31309/15

Prayer in W.P.No.7648 of 2015:- Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of certiorari to call for the records of the second respondent in Na.Ka.211/2015, Thu.Va.Tha.1, dated 09.03.2015, and quash the same.

Prayer in W.P.No.16617 of 2015:- Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of certiorari to call for the records of the second respondent in Na.Ka.2275/2015, Thu.Va.Tha.1, dated 30.03.2015 and quash the same.

Prayer in W.P.No.31309 of 2015:- Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of certiorari to call for the records of the third respondent in Election Notification dated 15.09.2015 issued under Section 52 (6) (a) of the Tamil Nadu Cooperative Rules, 1983, which was duly published in the Dinamani Daily newspaper on 18.09.2015 insofar as E-81, Virudhachalam Cooperative Bank, and quash the same.

W.P.No.7648 of 2015

For Petitioner .. Mr.B.Vijay
for Mr.G.Mohammed Aseef

For R1 to R3 .. Ms.T.Girija, GA
For R4 .. Mr.R.Balaramesh

W.P.Nos.16617 & 31309 of 2015

For Petitioner in both WPs .. Mr.B.Vijay
for Mr.G.Mohammed Aseef

For R1 to R3 in W.P.No.16617/15
& for R1 to R4 in W.P.No.31309/15.. Ms.T.Girija, GA

For R4 in W.P.No.16617/15
& for R5 in W.P.No.31309/15 ..Mr.L.P.Shanmugasundaram,
Spl.GP

C O M M O N O R D E R

The petitioner in W.P.Nos.16617 and 31309 of 2015 is one Mr.S.Saravanan, one of the Members of the Virudhachalam Cooperative Urban Bank Limited, Virudhachalam (in short "Society")

2. In W.P.No.16617 of 2015, the petitioner seeks for issuance of a Writ of Certiorari to quash the order 30.03.2015 passed by the second respondent / the Joint Registrar of the Cooperative Societies, Cuddalore, superseding the Society by exercising the power conferred under Section 88 of the Tamil Nadu Cooperative Societies Act, 1983 (in short "the Act").

3. In W.P.No.31309 of 2015, the petitioner seeks to quash the Election Notification dated 15.09.2015 issued by the third respondent / Deputy Registrar of Cooperative Societies

Department, Virudhachalam, Cuddalore District.

4. In W.P.No.7648 of 2015, the petitioner / C.Kamaraj seeks to quash the order dated 09.03.2015 passed by the second respondent / the Joint Registrar of the Cooperative Societies, Cuddalore, in and by which, the second respondent, in exercising his powers conferred under Section 36(1) of the Act, removed the petitioner from the services of the Society.

5. With regard to W.P.No.16617 of 2015 challenging the order passed by the second respondent in superseding the Society, it is submitted by the learned counsel for the petitioner that while the petitioner was functioning as a Member of the Society, the second respondent issued a letter dated 29.01.2015 alleging certain irregular entries made in the Saving Bank A/c No.10671 during Aug/Sept., 2013, pertaining to the President of the Society / petitioner in W.P.No.7648 of 2015. Thereafter, the said President, on his part, had sent a detailed explanation dated 02.03.2015 stating that it is only the staffs, who are handling the day-to-day administration, are responsible and as a President, it is not the practice to manage the bank accounts. While so, the second respondent, all of a sudden, removed the said President vide proceedings dated 09.03.2015, that too without giving an opportunity under Section 81 of the Act to rebut such allegations. The said removal order was also challenged in W.P.No.7648 of 2015.

6. While the matter stood above, he contended, the second respondent, on the same date i.e. on 09.03.2015, issued a show cause notice against the members of the Board including the petitioner/S.Saravanan alleging grant of loans to the relatives and thereafter, on receipt of such show cause notice, the petitioner had sent his explanation dated 20.03.2015 stating that the said loans were sanctioned only after getting approval from the Managing Director of the Society and to substantiate such allegations, he further contended that under Section 66 of the Act, there is no bar in granting loan to the Members of the Society and therefore, loans granted to those relatives, who are Members of the Society, cannot be questioned. Thus, he contended, the order of supersession passed on the ground that the relatives of the Members were granted loans cannot be sustained.

7. It is further stated in the show cause notice that the Members of the Society have desecrated the circular dated 01.07.2011 issued by the Reserve Bank of India which prohibits them to issue any loans to their relatives. Controverting the said Circular, it is submitted that when there is no bar as per Section 66 of the Act for grant of loan to the relatives of the Members and more particularly, when all the loans so granted were recovered fully, the second respondent, without

jurisdiction, had passed an order of supersession on 30.03.2015 terminating the entire Board. Such an act of the second respondent, he contended, is wholly misconceived.

8. Pursuant to the supersession, the Tamil Nadu State Cooperative Election Commissioner had issued a letter dated 10.09.2015 permitting the third respondent to conduct the Election for the said Society. Subsequently, the third respondent, vide his proceedings dated 15.09.2015, issued a notification appointing the fourth respondent / Administrator of the Society as Election Officer to conduct the election. Challenging the said Notification, Writ Petition No.31309 of 2015 was filed and this Court, by taking note of the fact that if the order of supersession is set-aside, then the election would become unnecessary, granted an order of interim stay on 05.10.2015.

9. By narrating the above facts, it is further submitted that the entire proceedings have emanated from a report said to have been submitted by the Enquiry Officer under Section 81 of the Act, however, the said report has not been communicated to the Members of the Society as contemplated under Rule 104(7) of the Tamil Nadu Cooperative Rules, 1983 (in short "the Rules"), which envisages the Registrar to communicate the result of the enquiry to the Society. Thus, he contended, without communicating the said report, taking action based on such report is a clear violation of the principles of natural justice and hence, the same is not sustainable in law and therefore, the order of supersession dated 30.03.2015 is liable to be set aside.

10. Taking support from the decision in Arignar Anna Weavers Coop. Society Ltd. V. State of Tamil Nadu [AIR 1999 MADRAS 254], it is submitted that the non-furnishing of the copy of the enquiry report on the basis of which the order of supersession had been issued would result in violation of principles of natural justice and that while the Board has been elected to manage the Society, the democratic Management can be removed from the office only after fully satisfying the conditions and procedures mentioned under Sections 36, 81 and 88 r/w Rule 104 (7) of the provisions of the statute. On the contrary, he contended, the second respondent, without jurisdiction, while passing the order of supersession, has not followed such mandatory conditions of statute. Thus, on these basis, he prayed for quashing the impugned order of supersession of the Board.

11. It is further submitted that the second respondent / Joint Registrar has no jurisdiction to take a decision in respect of supersession of a Registered Society, for, such power has been vested with the Board of Management.

It is further contended that no reasons have been assigned in the impugned order of supersession as required to be given under Clauses (i) to (iv) of Section 88(1) of the Act, which deals with supersession of the Board and the circumstances under which such power could be exercised. Although Section 88(1) provides sufficient power to the Registrar to supersede the Board, sub-section 6 of Section 88 envisages that the Registrar shall consult, in the manner prescribed, the Board of the Financing Bank to which the Society is indebted, however, if the Financing Bank does not communicate its comments within 15 days of the receipt of a communication from the Registrar, the Board of Financing Bank shall be deemed to have no comments to make on the order proposed to be passed under sub-section (1) of Section 88. However, in the case on hand, he pleaded, the Registrar has not even taken any steps to consult the Board of the Financing Bank as contemplated under Section 88(6) of the Act. Thus, he contended, the impugned order of supersession passed by the second respondent without following the procedures adumbrated in sub-section (6) of Section 88 of the Act cannot be sustained.

12. In support of his contentions, learned counsel for the petitioner has relied upon a decision of this Court in the case of Vallipattu Primary Agricultural Coop. Bank v. Registrar of Coop. Societies, Chennai [1998 (2) CTC 351] for a proposition that the consultation as contemplated under Section 88 of the Act should be effective consultation and not an empty formality while superseding the Elected Body.

13. In respect of W.P.No.7648 of 2015 challenging the order of removal, it is submitted by the learned counsel for the petitioner that the petitioner was elected as President of the Society in the year 2013. While the petitioner was working in that position with utmost sincerity, the second respondent issued a letter dated 29.01.2015 alleging certain irregular entries made in the S.B.A/c No.10671 belonging to him. Thereafter, on receipt of the same, the petitioner had sent his explanation dated 02.03.2015 stating that it is not the practice of the President to look into these entries made in the bank accounts and it is the responsibility of the staffs working in the Society to look into such day-to-day activities. Thereafter, the second respondent, without furnishing a copy of the report, mechanically passed the impugned order of removal, which is void, illegal and arbitrary.

14. It is further submitted that the very notice dated 29.01.2015 was issued by the second respondent / Joint Registrar only based on the enquiry held under Section 81 of the Act, however, the said Authority did not produce a copy of the said enquiry report as adumbrated in Section 36(2) of the Act, wherein it is categorically stated that no person shall be disqualified or removed under sub-section (1) without being given an opportunity of making his representation. Whiles, it

is contended, the second respondent did not provide an opportunity to rebut the report of the enquiry officer, which is the basis for passing the order of removal. Thus, he contended, the impugned order is a flagrant violation of natural justice and on this basis, he prayed for quashing the impugned order of removing the petitioner from the Society.

15. Per contra, learned counsel appearing for the fourth respondent in W.P.No.7648 of 2015 has argued on behalf of all the respondent. In respect of W.P.No.16617 of 2015, it is submitted that the Reserve Bank of India had conducted an inspection of the said Society during November, 2014, for the financial position of the Society as on 31.03.2014, whereby it is revealed that the petitioner / S.Saravanan and other Board of Directors have desecrated the Circular dated 01.07.2011 of the Reserve Bank of India, by way of sanctioning the loan to their relatives for a sum of Rs.8.50 lakhs, for, the said Circular prohibits the Society to make, provide or renew either secured or unsecured loans and advances or extend any other financial accommodation to their directors, or their relatives and the firms/concerns/companies in which they are interested with effect from October 1, 2003. Thereafter, on getting instruction from the Reserve Bank of India, the second respondent had issued a show cause notice dated 09.03.2015 to the petitioner seeking an explanation for the above said desecration. Subsequently, the second respondent, finding that the explanations offered by the Board of Directors are not satisfactory, passed a final order dated 30.03.2015 under Section 88 of the Act superseding the Society.

16. It is further submitted that the petitioner / S.Saravanan had advanced loan to the tune of Rs.10,000/- each to his brother, father, sister and wife on 30.07.2013 and thereafter, on 22.10.2013, he had advanced a sum of Rs.1,00,000/- each to his wife and sister. Therefore, by taking note of such irregularities, the Reserve Bank of India, upon conducting the inspection, vide letter dated 12.12.2014 stated that the Board of Directors of the Society had desecrated its instruction contained in their Master Circular dated 01.07.2011 which prohibits them from issuing loans to their relatives. Therefore, she pleaded, the third respondent / Deputy Registrar, who is the competent authority, had ordered for an enquiry under Section 81 of the Act for the said alleged misappropriation found in Members' Savings Bank Accounts for the period from 01.04.2013 to 31.12.2013 vide proceedings dated 27.01.2014 and thereby, he had appointed one Mr.S.Murugesan, Cooperative Sub-Registrar as Enquiry Officer to investigate the matter. Subsequently, the Enquiry Officer commenced the enquiry on 29.01.2014 and submitted his report on 28.04.2014 to the third respondent.

17. From the said report, he pleaded, it is revealed that the President / petitioner in W.P.No.7648 of 2015 had withdrawn a sum of Rs.3 lakhs from his Savings Bank Account on 17.08.2013 without affixing his signature on the withdrawal slip, which is against the Banking Laws and Practice. It is further stated that on 06.09.2013, the said President had withdrawn a sum of Rs.1,50,000/- from his Savings Bank Account No.10671 without maintaining sufficient balance, by way of issuing a self-serving cheque and thus, he had misused his official position and indulged in this kind of fraudulent Act. The said fraudulent transaction was made good subsequently on 20.09.2013. The Officials of the Reserve Bank of India, who undertook the Statutory Inspection under Section 35 of the Banking Regulation Act, 1949, into the affairs of the Society for the period ended 31.03.2014, had seriously viewed this incident as misappropriation and fraud. Thus, in view of such irregularities, the second respondent, by exercising her power conferred under Section 88 of the Act, superseded the Board by the present impugned order dated 30.03.2015 only to safeguard the interest of the Public and Share Holders of the Society, which is sustainable as per law, therefore, the question of not following the statutes as adumbrated in the Society Bye-laws does not arise.

18. Refuting the contention of the learned counsel for the petitioner that the second respondent / Joint Registrar has no jurisdiction to pass the order of supersession under the statute, learned counsel for the respondents submitted that in view of Government Order No.109, Corporation, Food and Consumer Protection Department, dated 31.08.2005, which empowers the Joint Registrar to exercise his/her power as that of the Registrar, the Joint Registrar of the Society has power to supersede the Board, accordingly, the Joint Registrar has rightly issued the impugned order. Thus, the said contention of the petitioner that the Joint Registrar has no power is per-se wrong and unsustainable in law.

19. In respect of W.P.No.7648 of 2015 filed by one Mr.C.Kamaraj challenging order of removal, it is submitted that the second respondent, by taking note of various allegations, that was proved by the Enquiry Officer, removed the petitioner from the services of the Society vide impugned order dated 09.03.2015 and that the said impugned order of removal has been passed only on the basis of enquiry held under Section 81 of the Act, for, the Enquiry Officer appointed under Section 81 of the Act had filed a separate report recommending to take action against the petitioner as he was held responsible for the misappropriation. It is also further submitted that the petitioner being the President of the Society is well known about his balance in his account, however, misusing his power, by colluding with the bank staffs, he had withdrawn a sum of

Rs.1.5 lakhs from his account and such misappropriation was also accepted by the petitioner in front of the Enquiry Office, hence, the impugned order dated 09.03.2015 removing the petitioner from the Society is justifiable. With these submissions, he prayed for dismissal of all the writ petitions.

20. Learned Government Advocate, who is appearing for the respondents 1 to 3 in W.P.Nos.16617 and 31309 of 2015 and the respondents 1 to 3 in W.P.No.7648 of 2015, has adopted the above said argument of the learned counsel for the fourth respondent in W.P.No.7648 of 2015.

21. Heard the learned counsel appearing on either side and perused the materials available on record.

22. At the outset, it is to be mentioned that when the Board is superseded by the the second respondent / Joint Registrar, it is not known why a detailed counter affidavit has not been filed by the respondents 1 and 2 in spite of several opportunities given to them. Such an approach deserves deprecation and moreover, their attitude indicates callous approach and clear abdication of their duty in not defending the case.

23. It is the contention of the learned counsel for the petitioner that the second respondent / Joint Registrar has no jurisdiction to pass the impugned order of supersession under the provisions of the Act. The said contention, in my view, cannot be sustained in view of Government Order No.109, Corporation, Food and Consumer Protection Department, dated 31.08.2005, which empowers the Joint Registrar to exercise his/her power as that of the Registrar under the Rules. A relevant portion of the G.O. empowering the Joint Registrar is given as under:-

NOTIFICATION

In exercise of the powers conferred by Section 3 of the Tamil Nadu Cooperative Societies Act, 1983 (Tamil Nadu Act 30 of 1983) and in supersession of the orders issued in the Government orders read above, the Governor of Tamil Nadu hereby confers on the officer specified in column (1) of the Table below, the powers of the Registrar specified in the corresponding entries in column (2) thereof, under the Tamil Nadu Coop. Societies Rules, 1988.

THE TABLE

OFFICERS	POWERS
1. Additional Registrar of Coop. Societies	All the powers of a Registrar under the said Rules
2. Joint Registrar of Cooperative Societies	(i) In respect of any primary or central society, all the powers of a Registrar under the said Rules (ii) In respect of any apex society, all the powers of a Registrar under the said Rules, except those referred to in rules, 11, 17, 21(2), 54, 67, 71, 75, 76, 77, 78, 79, 80, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 98, 99, 101, 103, 105, 113, 116(2), 117, 131, 142, 143, 146, 147, 148 and 173

24. Firstly, it is seen in W.P.No.16617 of 2015 filed by one Mr.S.Saravanan challenging the order of supersession passed by the second respondent / Joint Registrar under Section 88 of Act that the petitioner was elected as a Board of Director in the Society on 16.04.2013. It is also seen that he had sanctioned loans to his relatives, who are also Members of the Society. Such factum was also conceded by the fourth respondent / the Administrator of the society in paragraph No.3 of the counter affidavit filed before this Court in W.P.No.16617 of 2017. For better appreciation, the same is extracted below:-

"3. I humbly state that the petitioner Thiru. S.Saravanan was joined as a member in Vriddhachalam Cooperative Urban Bank on 12.09.2012 and his membership no.18021. Subsequently, he was elected as a Board of directors in Vriddhachalam Cooperative Urban Bank on 16.04.2013. Subsequently, his relatives were joined as a member in various dates. Thiru.Prabhakaran, Thiru.Sachithanantham, Thirumathi.Gomathi, Thirumathi.Baby were joined as a member in the 4th respondent cooperative Urban Bank and allotted membership numbers 17998, 19009, 19010 and 19011 respectively. The loans were issued to the above persons who are relatives of the petitioner as detailed below:-

S.No.	Loan No.	Type of Loan	Name of the Loanee	Issued date	Amount issued	Relationship to the petitioner
1	5575	Surety Loan	Prabakaran	30.07.13	10000	Brother
2	5576	Surety Loan	Sachithanantham	30.07.13	10000	Father
3	1934	Women's loan	Gomathy	30.07.13	10000	Sister
4	1935	Women's loan	Baby	30.07.13	10000	Wife
5	26	SHGL	Vallalar WSHG	22.10.13	100000	Wife
6	27	SHGL	Anandayee Amman WSHG	23.10.13	100000	Sister

25. From the above said tabular column, it is clear that the petitioner's brother, father, sister and wife, having Membership Nos.17998, 19009, 19010 and 19011 respectively, were sanctioned a sum of Rs.10,000/- each on 30.07.2013 and thereafter, on 22.10.2013, a sum of Rs.1,00,000/- each was sanctioned to his wife and sister. Thus, it is clear that the loans were sanctioned to the relatives of the petitioner, who are admittedly Members in the Society. In this context, it is appropriate to refer to Section 66 of the Act and the same reads as under:-

"Section 66: Restrictions on loans.--- (1) A registered Society shall not make a loan to any person other than a member:

Provided that, with the general or special sanction of the Registrar, a registered Society may make loans to another registered Society:

Provided further that a registered Society may make such loans as may be specified in the Bylaws to any of its paid employees.

(2) Notwithstanding anything contained in sub-section (1)---

(a) a registered Society may make a loan to a depositor on the security of his deposit;

(b) a Financing Bank may provide overdraft to, or discount bills and cheques of, depositors subject to such limits and conditions as may be prescribed; and

(c) a Financing Bank may make a loan to depositors on the security of gold jewels and silver ware, subject to such limits and conditions as may be prescribed.

(3) The Government may, by general or special order, prohibit or restrict the

lending of money on mortgage of immovable property by any registered Society or class or category of registered Societies."

26. From the above, it is clear that Section 66 imposes restriction on the grant of loan and it cannot give loan to a non-Member and in other words, a Registered Society shall not make a loan to any person other than a Member. Therefore, in the case on hand, though loans were sanctioned to the relatives of the petitioner, they are admittedly having their membership in the Society, which is also conceded by the fourth respondent in his counter affidavit. Hence, as per Section 66 of the Act, there is no bar in granting loans to the relatives of the Members. Therefore, the contention of the petitioner, by relying on the Circular issued by the RBI which prohibits issuance of loan to the relatives, is wholly misconceived, for, all the loanees are Members in the Society, therefore, the very premise on which the second respondent initiated action to supersede the Board is unsustainable, inasmuch as when Section 66 of the Act permits grant of loan to the members of the Society, the Circular issued by the Reserve Bank of India stating that no loan can be provided to its own members cannot override the Statutory Provision. Therefore, the action taken by the respondents on the basis of such Circular is bad in law.

27. Secondly, it is seen that the Enquiry Officer was appointed by the third respondent / the Deputy Registrar of the Societies to enquire into the alleged charge of granting loans to the relatives of the Members. Thereafter, the Enquiry Officer submitted his report dated 28.04.2014, whereby the Members of the Society were found guilty of misappropriation of the funds belonging to the Society. Subsequently, a show cause notice dated 09.03.2015 was issued under Section 88 of the Act asking them to explain why the Board shall not be superseded. However, it is seen that the report dated 28.04.2014 said to have been submitted by the Enquiry Officer, which is the basis for issuance of show cause notice and finally, for passing of the impugned order of supersession under Section 88 of the Act, was not given to the petitioner. Such fact of non-furnishing a copy of the report was also conceded by the learned counsel for the respondents during the course of argument.

28. Section 88 provides for supersession of the board. Under Section 88 (1), if the Registrar is of the opinion that the Board is not functioning properly or wilfully disobeys or wilfully fails to comply with any order or direction issued by the Registrar, after giving the board an opportunity of making its representations, by order in writing, he can supersede the board and appoint a Government servant as the special Officer to manage the affairs of the society for a specified period not exceeding one year. For better appreciation, Section 88(1) is

extracted below:-

"88. Supersession of the Board.

(1) Where the board of any registered Society,

(i) is of persistent default in managing the affairs of the society in accordance with the provisions of this Act, the rules or the bylaws; or

(ii) is of negligence in the performance of its duties; or

(iii) has committed any act prejudicial to the interests of the Society or its members; or

(iv) there is stalemate in the constitution or functions of the board;

the Registrar may, after giving the board of the registered Society an opportunity of making its representations, by order in writing, supersede the Board and appoint a Government servant or an employee of any body corporate owned or controlled by the Government (hereafter referred to as the administrator) to manage the affairs of the society for a specified period not exceeding six months:

Provided that an order under this sub-section shall be passed within a period of two months from the date of issue of notice of supersession:

Provided further that the board of any such registered society shall not be superseded where there is no Government shareholding or loan or financial assistance or any guarantee by the Government:

Provided also that in the case of a registered society carrying on business of banking the provisions of the Banking Regulation Act, 1949, shall also apply:

Provided also that in the case of a registered Society carrying on business of banking, the provisions of this sub-section shall have the effects as if for the words 'six months', the words 'one year' had been substituted."

29. Besides, section 81 envisages holding of an enquiry. As per Section 81(3), if an enquiry is held, the Registrar shall, within such time as may be prescribed, communicate the result of the enquiry to the affected person. Section 81(3) reads as under:-

"Section 81(3):-- When an inquiry is held under this section, the Registrar shall, within such time as may be prescribed, communicate the result of the enquiry ---

(i) in case the Government have subscribed directly to the Share Capital of the registered Society or in case any moneys are due from the registered society either to the Principal State Partnership Fund or to the subsidiary State Partnership Fund referred to in Chapter VI, to the Government or to any officer appointed by the Government in this behalf;

(ii) to the Financing Bank, if any, to which the Society is affiliated; and

(iii) to the Society concerned."

From a careful reading of the above Section, it shows that the Registrar shall communicate the result of the enquiry to the Society concerned, but, in the instant case, the result of the enquiry was not communicated to the fourth respondent Society, because, the petitioner was one of the Members of the Board till the date of supersession. Therefore, there is a clear breach of Section 81(3) of the Act.

30. Thirdly, in addition thereto, under Rule 104(7) of the Rules, the Registrar is required to communicate the result of the inquiry or inspection or investigation, in brief, without going into details and without disclosing matters of confidential nature. Rule 104(7) is extracted below:-

"(7) The Registrar shall communicate the result of the inquiry or inspection or investigation, in brief, without going into details and without disclosing matters of confidential nature within a period of three months from the date of receipt of the report ---

(a) in the case of inquiry, to

(i) the Government or to any officer appointed by the Government, where the Government have subscribed to the Share Capital of the Society;

(ii) the Financing Bank to which the Society is affiliated;

(iii) to the Society concerned;

(iv) to the District Collector in case the inquiry is ordered at his request;

(v) to the Federal Society concerned;"

From a mere perusal of Section 88 and Section 81(3) r/w Rule 104

(7), it is clear that the Registrar has power to supersede the Board under Section 88(1) of the Act, however, at the same time, there is a duty cast on the Registrar to inform the affected person and also the Society about the result of the inquiry, with necessary details. If the authorities do not comply with the provisions of Section 81(3) and the Rules, they cannot initiate action under Section 88(1) of the Act for supersession of Managing Body of a Co-operative Society.

31. While dealing with a similar issue of passing an order of supersession under Section 88 of Act, this Court, in Arignar Anna Weavers' Coop., Society Ltd. (cited supra), pointed out that the very legislation was enacted for an orderly development of the Cooperative movement in accordance with the cooperative principles such as open Membership, democratic Management etc. If this is the purpose of the enactment, and the Board has been duly elected to manage the Society, the democratic Management can be removed from the Office only after fully satisfying the provisions of the Statute. It is to prevent the management in taking such actions and if the Management could be prevented by some other action preserving the democratic principles retaining the Management with the elected body, the same will have to be adopted before proceeding to supersede the Board. For better appreciation, relevant portions of the said judgment are extracted below:-

9. I have already extracted the relevant portions of the various Sections and Rules. In this connection, it is better to state that the very legislation was enacted for an orderly development of the co-operative movement in accordance with the co-operative principles such as open membership, democratic management, etc. If this is the purpose of the enactment, and the Board has been duly elected to manage the Society, the democratic management can be removed from the Office only after fully satisfying the provisions of the Statute. It is to prevent the mismanagement, such actions are taken, and if the management could be prevented by some other action preserving the democratic principles, retaining the management with the elected body, the same will have to be adopted before proceeding to supersede the Board.

10. Why I am stressing on the above point is because, in the instant case, the Board has been superseded only on the basis of an Inspection Report. If some other action could be taken without superseding the Board, that should have been done before

taking action under Section 88 of the Act.

11. I have already extracted Section 82(5) of the Act. The said provision empowers the Registrar to direct the registered society or any officer of the society to take remedial measures after disclosing the result of the inspection or investigation. The rule also provides for the same. If remedial measures are taken, and if the defects, if any pointed out by the Inspection Committee are cured, respondents will not be justified in taking action under Section 88 of the Act. In this case, no notice or direction has been given by the respondents under Section 82(5) of the Act. According to me, the supersession of the Board must be done as a last resort, and that is why Section 88(1)(a)(i) empowers the Registrar to supersede the Board if the society wilfully disobeys or fails to comply with the directions. The action of the respondents in initiating proceedings under Section 88 of the Act is therefore, improper.

12. The further question that arises for consideration is, whether the Order itself is violative of the principles of natural justice. The only reason stated is that the Society is not functioning properly. The basis for such an assumption is the Inspection Report. Even in the counter, respondents have no case that the Report or any portion thereof is confidential in nature, nor are the respondents claiming any privilege under Sections 123, 124, 129 and 131 of the Indian Evidence Act. Rule 173 of the Co-operative Societies Rules enables any person to get certified copy of a document filed in the Registrar's Office, on payment of requisite fees. The word used in that Rule is 'person' and not 'a member of society'. Therefore, even a third party is entitled to get copies of a document, subject to payment of the requisite fees. If a third party is entitled to get a certified copy, naturally, a member of the Board, who is an aggrieved person, will be entitled to get a copy of the Report, which is the basis for issuing show-cause notice. Even Rule 104, portions of which I have extracted supra, says that the

Registrar is duty bound to communicate the result of the inquiry in brief to the concerned Society. Sub-rule (9) of Rule 104 further says that the Registrar has to communicate necessary details available in the report of inquiry or inspection or investigation required for taking action against the officer or servant. From these provisions, it is clear that there is a duty cast on the respondents to inform the affected person and also the society about the result of the inquiry with the necessary details. If the respondents do not comply with the provisions of Section 82 and the Rules, they cannot initiate action under Section 88 (1) (a) (i) of the Act.

13. The argument of learned Additional Government Pleader is that in the show cause notice itself the result of the inquiry has been given. I do not think that the same will specify the statutory requirement. The result of the enquiry in the show cause notice is only an intimation for taking action under Section 88 of the Act. The petitioners are entitled to challenge validity of the enquiry report verifying the data is given therein, and, for that purpose, they are entitled to have a copy of the same. Only if the Report is based on acceptable materials, it can be held to be valid, and then only on the basis of such a Report, proceedings under Section 88 of the Act can be had. In the instant case, petitioners have not been given such an opportunity."

The above judgment categorically ruled that the Registrar is duty bound to communicate the result of the enquiry as per sub-rule (9) of Rule 104 for taking action against the officer or servant. Admittedly, in the present case, the report of the Enquiry Officer, which is taken as a basis for initiating action for superseding the Board, has not been furnished to the affected person / petitioner herein, therefore, the second respondent cannot take action under Section 88(1) of the Act.

32. In yet another decision in Vallipattu Primary Agricultural Cooperative Bank (cited supra), this Court, by observing that the supersession of the elected board is a serious step, held thus at paragraph Nos.19 and 20:-

"19. If the dispute of facts cannot be considered by this Court under Article 226 of the Constitution of India, then what is

the remedy? Section 88(1) of Act says that the power of registration of society should be given an opportunity of making a representation. What is the scope of an opportunity of making a representation? Will it be sufficient by sending a show-cause notice and getting an explanation. I do not think that alone will be sufficient. Under Co-Operative Societies Act and the Rules, it is clear that in a democratic set up unless grounds are made out, the management must be within the elected members. Supersession of the election Board is a serious step and the authorities are not expected to interfere with the management of the society. If that is the intention, I feel that the opportunity of making a representation includes a reasonable opportunity before final orders are passed. When there are disputed questions of fact, a duty is cast on the authorities to verify whether the facts stated by it alone are sufficient to supersede an Election Board.

20. A reading of the entire provisions of the Act makes it clear that the Registrar and the authorities under the Act have to act very cautiously. It is also clear that it is an extra-ordinary power which could resorted to unless there is extra-ordinary situation. If an elected body feels certain acts taken are in the best interests of Society, that is the matter the authority will have to consider very seriously. They are not expected to stick on to their views, all that the society has done is against the provisions of the Act or Rules. Only after reasonable opportunity is given to the Board, the satisfaction has to be entered that supersession is necessary and if the authorities feel that the grounds have been made out for supersession, it shall not look back, except to supersede. May be the satisfaction is subjective, but it cannot be exercised arbitrarily. The principle of natural justice has to be fully applied in such cases. Even though the court cannot act as an appellate authority, when from the file it is clear that there was no real consideration of the explanation and when reasonable opportunity is also not given to the Board, I feel that the action of the

respondent require reconsideration."

If this Court follows the above stated legal principles, then, in my view, the impugned order of supersession is liable to be interfered with, for, the sum and substance of the above said judgments is that non-furnishing of the copy of the enquiry report on the basis of which the order of supersession under Section 88 had been issued would result in violation of the principles of natural justice. In the case on hand, at the risk of repetition, it may be mentioned that the enquiry report dated 28.04.2014 submitted by the Enquiry Officer has not been furnished to the Members of the Society before superseding the Board under Section 88 of the Act and this vital fact was also conceded by the learned counsel for the respondents during the course of argument.

33. Fourthly, in Vallipattu's case (cited supra), this Court held that opportunity of making a representation includes a reasonable opportunity before final orders are passed and it has been further made clear that when there are disputed questions of fact, a duty is cast on the authorities to verify whether the facts stated by it alone are sufficient to supersede an Elected Board. Therefore, in the case on hand, although the learned counsel for the respondents during the course of arguments admitted that an enquiry was held under Section 81 and thereby a report dated 28.04.2014 was also made ready, but that was not admittedly furnished to the petitioner as per Section 81 (3) read with Rule 104(7), which shows that he was not afforded with a reasonable opportunity of being heard as adumbrated in the provisions of the Act as well as the principles laid down by this Court in the above referred judgments.

34. Thus, in the light of the above, I am of the view that the second respondent, before passing of the order of supersession, has neither followed the principles set out in the above referred cases nor Section 88 of the Act nor Section 81(3) read with Rule 104(7) of the Rules, that too without taking note of the fact that the passing of an order of winding up / supersession is analogous to the passing of capital sentence of an individual, therefore, the impugned proceeding is per-se illegal, hence, the same is liable to be set aside.

35. In fine, for the reasons stated above, W.P.No.16617 of 2015 filed by one Mr.S.Saravanan is allowed by quashing the impugned order of supersession. Consequently, the Elected Body is directed to take charge of the Management of the Society forthwith.

36. In view of quashing of the impugned order of supersession, the consequential election notification dated 15.09.2015 is also quashed and W.P.No.31309 of 2015 is allowed.

37. Turning to W.P.No.7648 of 2015 filed by one Mr.C.Kamaraj challenging the order of removal, it is seen that the petitioner had joined as a Member in the Society on 12.09.2012 and thereafter, he was elected as a Board of Director on 16.04.2013 and further, he was elected as President on 06.05.2013. He had opened a Savings Bank Account bearing A/c.No.10671 with a deposit of Rs.50,500/-. While he was functioning as a President of the Society, proceedings under Section 81 of the Act were initiated against him by the third respondent for alleged transaction effected in the Savings Bank Accounts of the Members between 01.04.2013 and 31.12.2013. Thereafter, the third respondent appointed one Mr.S.Murugesan, Cooperative Sub-Registrar as Enquiry officer, who, in turn, submitted his report on 28.04.2014. It is stated in the report that out of 3070 Savings Bank Accounts, misappropriations had taken place in 33 Savings Bank Accounts, which were done by the petitioner in colluding with one Mr.T.Rajavannian, General Manager (in-charge). It is further stated that they have made wrong entries in those 33 Savings Bank Accounts as if the account holder have deposited money with the Bank and permitted to withdraw the money. It is further stated that the petitioner had withdrawn a sum of Rs.3 lakhs on 17.08.2013 without putting his signature on the withdrawal slip, though he had only Rs.500/- in his account.

38. The Enquiry Officer had also filed a separate report recommending the respondents to take action against the petitioner for misappropriating the funds belonging to the Society. Thereafter, the second respondent issued a show cause notice dated 29.01.2015 under Section 36 of the Act asking him to show cause why he should not be removed. Subsequently, the petitioner had also submitted his explanation dated 02.03.2015 denying the charges levelled against him.

39. Therefore, the contention of the learned counsel for the petitioner is that he was not afforded with reasonable opportunity of being heard before passing the impugned order of removal nor produced a copy of the enquiry report dated 28.04.2014. This contention carries much force in his favour, inasmuch as from the show cause notice dated 29.01.2015, it could be seen that a reference was made to a Report dated 28.04.2014 submitted by the Enquiry Officer, which is the basis for issuing show cause notice, however, at the same time, based on such report, the second respondent passed an impugned order of removal, without giving a copy of the report to the affected person. Such an approach of the second respondent is against the provisions of Section 81(3) r/w Rule 104(7). Dealing with a similar issue in W.P.No.16617 of 2015 relating to supersession, I have also held that non-furnishing of enquiry report before

removing the petitioner under Section 36 of the Act is fatal.

40. Section 36 of the Act empowers the Registrar to take action against the delinquent to disqualify him permanently from holding in future any office in any registered Society, but, before taking such action, an enquiry under Section 81 or inspection under Section 82 should be undertaken to find out whether a member of a Board has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the Society. Admittedly, in the present case, enquiry was held by appointing one Mr.S.Murugesan, Cooperative Sub-Registrar, as Enquiry Officer, who, in turn, admittedly submitted his report on 28.04.2014 to the third respondent. But, unfortunately, a copy of the said report has not been furnished to the petitioner. Admitting non-furnishing of the report to the petitioner, learned counsel for the fourth respondent stated that there is no provision under the Act to furnish a copy of the report made under Section 81 of the Act. Such an contention of the learned counsel for the fourth respondent / approach of the second respondent in superseding the Board is erroneous, in the light of sub-section 2 of Section 36, which categorically says that no person shall be disqualified or removed under sub-section (1) of Section 36 without being given an opportunity of making his representation. For, while interpreting sub-section 2 of Section 36, this Court in Vallipattu's case (cited supra) has rightly held that the Registrar is duty bound to communicate necessary details available in the report of enquiry to the delinquent before taking action against the officer or servant. Therefore, when a copy of the report filed under Section 81 of the Act was admittedly not furnished to the petitioner, it is highly impossible for anyone to give explanation to the Registrar requesting not to take action under Section 36 (1) of the Act.

41. Therefore, for the reasons stated above, I am inclined to interfere with the impugned order of removal and accordingly, the same is quashed. However, liberty is given to the second respondent to proceed further in this matter, after furnishing a copy of the enquiry report dated 28.04.2014 submitted by the Enquiry Officer to the petitioner, if they are so advised as per law, as it is a case of alleged misappropriation of public money and shareholders of the Society.

42. In fine, for the reasons stated above, W.P.No.7648 of 2015 filed by one Mr.C.Kamaraj is allowed to the extent mentioned above, by quashing the impugned order of removal.

43. Consequently, all the connected miscellaneous petitions are closed. No Costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rkm

To

- 1.The Registrar of Cooperative Societies,
No.170, EVR Periyar High Road,
Kilpauk, Chennai - 10.
- 2.The Joint Registrar,
Office of the Cuddalore Joint Registrar
of Cooperative Societies,
Cuddalore.
- 3.The Deputy Registrar / District Election Officer,
Office of the Deputy Registrar
of Cooperative Societies,
Virudhachalam, Cuddalore District.
- 4.The Managing Director,
E.81, Virudhachalam Cooperative Urban Bank,
Virudhachalam, Cuddalore District.
- 5.Administrator,
E-81, Virudhachalam Cooperative Urban Bank,
Virudhachalam, Cuddalore District.

+1 cc to Mr.G.Mohammed Aseef Advocate sr 2006
+1 cc to Mr.B.Vijay Advocate sr 2005
+1 cc to Mr.V.Manoharan Advocate sr 2004
+1 cc to Mr.L.P.Shanmugasundaram Advocate sr 1513
+1 cc to Mr.R.Balaramesh Advocate sr 1327
+3 cc to the government Pleader High court sr.nos.2253,2251 &
2250

W.P. Nos.7648, 16617 and 31309 of 2015

nm(co)
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