

HIGH COURT OF JUDICATURE AT HYDERABAD  
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

\*THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

+ WRIT PETITION No.14733 of 2017

%15.06.2017

#Between:

1. Janga Raghava Reddy and 17 others ...Petitioners

AND

1. The State of Telangana, Cooperative Department,  
Represented by Secretary, Secretariat,  
Hyderabad and 5 others ... Respondents

!Counsel for the petitioners : Sri D.Prakash Reddy  
Counsel for the respondents: Special Government Pleader from  
Additional Advocate General Office

<Gist :

>Head Note:

? Cases referred:

<sup>1</sup> 2013 (7) SCC 25

<sup>2</sup> 1999(6) ALT 239

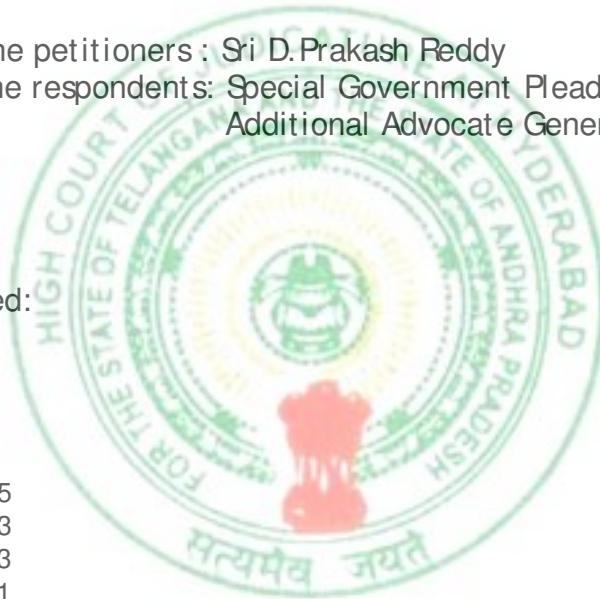
<sup>3</sup> AIR 1955 SC 233(1)

<sup>4</sup> 2014 (6) ALT 525

<sup>5</sup> 2004 (3) SCC 553

<sup>6</sup> 2013 (10) SCC 83

<sup>7</sup> AIR 1978 SC 851



THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.14733 of 2017

ORDER :

The petitioners (18) in number representing the elected Managing Committee of the District Cooperative Central Bank Ltd., Warangal, maintained the writ petition against (6) respondents viz., 1. The State of Telangana, represented by Secretary, Cooperative Department, 2. Principal Secretary to the Chief Minister, Chief Minister's Office, 3. Commissioner for Cooperation and Registrar of Cooperative Societies, 4. Joint Registrar/ District Cooperative Officer, Warangal (Urban) 5. District Collector, Warangal (Rural) and 6. The District Cooperative Central Bank Ltd., Warangal, rep. by its Chief Executive Officer and the prayer in the writ petition reads as follows:

“..to issue an order or direction more particularly one in the nature of Writ of Certiorari calling for the records relating to Rc.No.3126/ 2017/ CR-2, dated 18-04-2017 passed by the 3<sup>rd</sup> respondent under Section 34(1)(c) of TSCS Act suspending the Managing Committee of District Cooperative Central Bank, Warangal for a period of six months and also appointing Collector and District Magistrate, Warangal (Rural) District as Official Administrator to manage the affairs of DCCB, Warangal and quash the same holding it as highly arbitrary, bad and illegal and consequently restore the Managing Committee of the DCCB, Warangal and pass such other order or orders as deem fit and proper.”

2. The affidavit filed in support of the petition running in several pages is in relation to mostly reproduction of the reply given on 17.4.2017 to the Commissioner for Cooperation and Registrar of Cooperative Societies-3<sup>rd</sup> respondent, in meeting the allegations made in the show cause notice issued by him on

15.04.2017 in Rc.No.3126/ 2017/ CR-2. It is ultimately from those writ petition affidavit averments in referring to the show cause notice and the reply supra but for to produce to the extent necessary wherever required not of such necessity now to mention, the impugned order dated 18.04.2017 was passed by the 3<sup>rd</sup> respondent referring to the letter received from the 2<sup>nd</sup> respondent-Principal Secretary to Chief Minister dated 21.03.2017 and the proceedings of the 3<sup>rd</sup> respondent covered by references (2) and (3) and the show cause notice supra as reference (4) and the explanations submitted by the 1<sup>st</sup> petitioner and other petitioners in their capacity as the case may be as reference (5) and the order reads as follows:

“Vide reference 2<sup>nd</sup> read above, the CC and RCS, TS, Hyderabad, who on verification of the records to find out the truth or otherwise of the allegations against the mismanagement of the Managing Committee, had found prima facie material suggesting the violation of the provisions of TSCS Act. 1964, Rules, Banking Regulation Act and guidelines issued by the ANABARD and TSCAB.

Vide reference 3<sup>rd</sup> read above, the CC and RCS, TS, Hyderabad ordered a statutory Inquiry U/ s.51 of the Act into the constitution, working and financial condition of Warangal DCCB, while appointing Sri G.Srinivasa Rao, Additional Registrar/ Chief Auditor as Inquiry Officer.

Vide reference 4<sup>th</sup> read above, notice was issued U/ s.34(1)(c) of the Act calling upon the Chairman of Warangal DCCB and Managing Committee, Warangal DCCB, to explain why the Managing Committee of Warangal, DCCB, cannot be suspended U/ s 34(1)(c), while appointing the Official Administrator for Managing the affairs of Warangal DCCB.

With reference 5<sup>th</sup> read above, the Chainman of Warangal DCCB and members of Managing Committee (Board) of Warangal DCCB, submitted explanations to the notice issued. The Registrar examined in detail the explanations submitted and found them to be not satisfactory.

The Registrar has come to a conclusion that the Board of Warangal DCCB, committed acts prejudicial to the interest of the Cooperative Society and its members and the Board is also negligent in performance of its duties. The Registrar has also come to a conclusion that continuation of the Board is prejudicial for conducting a thorough and fair inquiry into the working of the society. The MD of TSCAB i.e. the financing bank of Warangal DCCB is also duly consulted in this matter as required U/s.34(6) of the Act.

Therefore, by virtue of the powers conferred under Section U/s.34(1)(c) of TSCS Act. 1964, I, the Registrar hereby order suspension of the Board (Managing Committee) of Warangal DCCB for a period of 6 months and I hereby appoint the Collector and District Magistrate, Warangal (Rural), District as Official Administrator U/s.34(1)(c) of the Act to manage the affairs of Warangal DCCB.”

3. The submission of the learned counsel for the petitioners in support of the relief in impugning the proceedings supra dated 18.4.2017 is that there is a statutory violation of the mandatory requirement of the compliance of Section 34(6) of the Cooperative Societies Act, 1964 (for short ‘the Act’) amended by the State of Telangana in G.O.Ms.No.53 dated 20.05.2016 and the impugned proceedings are liable to be set aside but for maintaining writ petition there is no efficacious alternative remedy.

4. The Special Government Pleader from the office of the Additional Advocate General representing respondents filed counter-affidavit on behalf of the 3<sup>rd</sup> respondent in meeting various averments covered by the show cause notice and the reply referred supra and in saying in relation to the compliance of the said statutory requirement of consultation under Section 34(6) of the Act that Registrar has been in constant touch with the MD, TSCAB and GM, NABARD, TSRO Hyderabad right from the day the

CMO directed him to conduct an inquiry. Registrar held a series of meetings in this regard with GM, NABARD as well as MD, TSCAB. Registrar appraised both the authorities about the findings of his Inquiry, while these two authorities also shared the information they have about irregularities in DCCB, Warangal. The Registrar duly shared the details of findings of preliminary Inquiry with MD, TSCAB. The financing Bank i.e. TSCAB, is thus duly consulted, as provided under Section 34(6) before ordering suspension of the MC of Warangal DCCB. The Amendments carried out to the Act, vide G.O.Ms.No.53, while adopting the APCS Act to the State of Telangana are as per the provisions of State Re-organisation Act. The petitioners should have approached the Cooperative Tribunal at Hyderabad which is catering to the whole state of Telangana since the Cooperative Tribunal at Warangal is not functioning. Cooperative Tribunal at Hyderabad is competent to adjudicate this matter U/s.76 of the Act. The allegations to the contra in the affidavit under reply are false, baseless and the same are hereby denied. For the reasons stated above, it is prayed that this Hon'ble Court may be pleased to pass appropriate orders in the above Writ Petition and pass such other or further orders as are deemed fit and proper.

5. Before answering the compliance is made or not, the learned Special Government Pleader submitted that the writ petition is not maintainable, for there is a statutory appeal remedy under Section 76 of the Act, which is even efficacious and cannot be said that not an efficacious alternative remedy. The

submission of the learned counsel for the petitioner in meeting the same is that once there is a compliance of statutory violation of the consultation required, the writ petition despite the alternative remedy, leave about efficacious alternative remedy is maintainable. For that, the learned counsel for the petitioner placed reliance on the expression of the Apex Court in *State of Madhya Pradesh v. Sanjay Nagayach*<sup>1</sup>. The learned counsel for the petitioners also relied in relation to showing of there is no consultation as contemplated by law as laid down in the expression and thereby the writ petition is maintainable, the other decision placed reliance is of this Court in *Appana Suribabu v. Registrar of Cooperative Societies, Peddapuram*<sup>2</sup> who followed the expression of the Apex Court in *Joint Registrar of Cooperative Societies, Madras v. P.S.Rajagopal Naidu* (AIR 1970 SC 992) that was quoted with approval by the Madras High Court in *P.M.V.Cooperative Agricultural Cooperative Society v. Joint Registrar* (AIR 1973 Madras 460), in all saying consultation is mandatory in the absence of which, once there is a statute not followed in the impugned proceedings, writ petition is maintainable. Besides that the Constitution Bench of the Apex Court way back in *Hari Vishnu Kamath v. Ahmad Ishaque*<sup>3</sup>, particularly at para-6 categorically held that Article 226 of the Constitution of India confers on High Court powers to issue appropriate writs to any person or authority within their territorial jurisdiction, in terms of absolute and unqualified. If the High

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<sup>1</sup> 2013 (7) SCC 25

<sup>2</sup> 1999(6) ALT 239

<sup>3</sup> AIR 1955 SC 233(1)

Courts are to recognize or admit any limitation on this power, that must be founded on some provision in the Constitution itself. It is High Court got to say absolute power but for any self-restraint as held by the Constitution Bench of the Apex Court seven Judges Bench. Further, though there is some appearance of the completion of the writ of *Certiorari* with some Mandamus directions required in the prayer, the same can be held maintainable, as same is the conclusion by a Single Judge of this Court in S.Manikya Reddy v. A.P.State Wakf Board, rep. by its Chief Executive Officer, Hyderabad<sup>4</sup> of even a combined relief of writ of *Certiorari* and writ of prohibition etc., is maintainable, as laid down by the Apex Court in Hari Vishnu Kamath (supra). Further even any dispute of question of fact involved, in appropriate case writ Court has jurisdiction to entertain the writ petition involving disputed questions of fact, for there is no absolute rule in this regard is also laid down by the Apex Court in ABL International Ltd. V. Export Credit Guarantee Corporation of India Ltd.<sup>5</sup> Further, the Apex Court in Sri Siddeshwara Coperative Bank Ltd., v. Ikbai<sup>6</sup> at para-27 categorically held that availability of efficacious alternative remedy is not an absolute bar, but for, self-restraint if any, thereby, writ petition is maintainable.

6. Having regard to the above, the writ petition, impugning the non-compliance of the statutory requirement of the

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<sup>4</sup> 2014 (6) ALT 525

<sup>5</sup> 2004 (3) SCC 553

<sup>6</sup> 2013 (10) SCC 83

consultation contemplated by Section 34(6) of the Act, is maintainable.

7. Now coming to the aspects as to whether there is a consultation or not, as one of the core contentions in the writ petition relief, Section 34(6) of the Cooperative Societies Act, 1964, reads as follows:-

“34(6) as per the Cooperative Societies Act, 1964: Where a society is indebted to any financing bank, the Registrar shall, before taking any action under sub-section (1) in respect of that society, consult the financing bank.”

So far as State of Telangana amended by G.O.Ms.No.53, Agricultural & Coop.(co-op.II) Dept., dated 20.05.2016 reads as follows:

“ In Section 34,

(1)(a) Notwithstanding anything contained in any law for the time being in force, no committee shall be superseded or kept under suspension for a period exceeding six months.

(b) The Committee may be superseded or kept under suspension in case –

- (i) of its persistent default; or
- (ii) of negligence in the performance of its duties; or
- (iii) The Board has committed any act prejudicial to the interests of the cooperative society or its members; or
- (iv) There is stalemate in the constitution or functions of the Board; or

(v) The State Co-operative Election Authority specified under Section 31-B has failed to conduct elections in accordance with the provisions of the Act;

(c) by order, supersede or suspend the Committee from a specified date and appoint the official Administrator (The Registrar may after giving the Committee an opportunity of making its representations) to manage the affairs of the society, as per the conditions of service as may be prescribed, for a period of not exceeding six months:

Provided that the Committee of any such co-operative Society shall not be superseded or kept under suspension where there is no Government shareholding or loan or financial assistance/subsidy of any form or any guarantee by the Government:

Provided further that in case of a Co-operative society carrying on the business of banking, the provisions of the Banking Regulation Act, 1949 shall also apply.

Provided also that in case of a Co-operative society, other than a multi-state cooperative society, carrying on the business of banking, the period of supersession or suspension shall be for one year instead of six months.

(d) In case of supersession/suspension of a Board, the Registrar shall appoint the official Administrator(s) to manage the affairs of such co-operative society and the said Administrator(s) shall arrange for conduct of elections by the State Cooperative Election Authority within the period specified in sub-section (1)(a) of this section and hand over the management to the elected board.

(ii) sub-section (2) shall be omitted.

(iii) Sub-sections (3) and (4) shall be substituted with the following, namely:-

(3) The Administrator(S) shall, subject to control of Registrar and to such directions as he may from time to time, give, have power to exercise all or any functions of the committee or of any officer of the society provided that no crucial policy decisions are taken by the Administrator(s).

(4) The Registrar may fix the remuneration payable to the Administrator(s). The amount of remuneration so fixed and such other expenditure incidental to the management of the society during the period of the supersession as may be approved by the Registrar shall be payable from the funds of the society.

(iv) sub-section (5) shall be omitted.

“34(6) as per the Cooperative Societies Act, 1964: Where a society is indebted to any financing bank, the Registrar shall, before taking any action under sub-section (1) in respect of that society, consult the financing bank.”

From a comparison of the same but for sub-section (5) of Section 34 is omitted, there is no change so far as sub-section (6) is concerned.

8. Now coming to sub-section (i), which is running with non-obstante clause for Section 34 even earlier and now by amendment also with no change but for speaking about supersession or kept under suspension for a period exceeding six months or for a period of six months. In this, one thing is clear that to permissible Section 34(1) State amendment by G.O.Ms.No.53 supra no way amended Section 34(6) and not even mentioned as a subsequent amendment saying for suspension or supersession for six months below or above, no consultation is required, much less, to say the same is as pending enquiry and in such cases if at all. Thereby, any contention of the consultation, even contemplated by Section 34(6) of the Act, not required for suspension or supersession for a period of six months or less regular pending enquiry is on its face untenable.

9. Now coming to the core requirement of consultation, the expression of this Apex Court in Appana Suribabu (supra) referred therein of the Apex Court in P.S.Rajagopal Naidu (supra) that was quoted with approval by the Madras High Court in P.M.V.Cooperative Agricultural Cooperative Society (supra) are not the authorities on the requirement of what is meant by the consultation, because, in all these three expressions, practically, there was no consultation however coming to the impugned proceedings, there is a mention about the consultation. The relevant portion necessary to reproduce reads as follows:

“ The Registrar has come to a conclusion that the Board of Warrangal DCCB, committed acts prejudicial to the interest of the Cooperative Society and its members and the Board is also negligent

in performance of its duties. The Registrar has also come to a conclusion that continuation of the Board is prejudicial for conducting a thorough and fair inquiry into the working of the society. The MD of TSCAB i.e. the financing bank of Warangal DCCB is also duly consulted in this matter as required U/s.34(6) of the Act.

Therefore, by virtue of the powers conferred under Section U/s.34(1)(c) of TSCS Act. 1964, I, the Registrar hereby order suspension of the Board (Managing Committee) of Warangal DCCB for a period of 6 months and I hereby appoint the Collector and District Magistrate, Warangal (Rural), District as Official Administrator U/s.34(1)(c) of the Act to manage the affairs of Warangal DCCB.”

10. Thus, in the impugned proceeding last page first para last three lines, there is a mention about the Managing Director of TSCAB i.e. the financing bank of Warangal DCCB is also consulted in this matter as required under Section 34 (6) of the Act. From this also, the 3<sup>rd</sup> respondent in issuing the impugned proceedings is conscious of the requirement of consultation contemplated under Section 34(6) of the Act even for suspension or supersession pending enquiry, as the case may be, nothing more to repeat. Thus whether the said wording supra constitutes consultation or not is the issue.

11. In deciding the same, the learned Special Government Pleader from the office of Additional Advocate General, drawn attention of this Court that there are substantial allegations showing mis-management and mis-demeanour committed by the President and Directors of the Bank and there is abundant material as referred in the show cause notice that is also reproduced in counter-affidavit filed by the 3<sup>rd</sup> respondent and there is also a

sealed cover containing further facts if at all the Court to open and peruse. As referred supra, the prayer in the writ petition is the impugned proceedings is violation of the statutory provision. The core contention raised by the learned counsel for the petitioners is that there is no statutory consultation as contemplated by Section 34(6) of the Act. As answered supra, for suspension or supersession, pending enquiry if any, even for six months, the consultation is contemplated. Now whether the order is otherwise sustainable, if at all there is a consultation can be gone into. In this regard, what is consultation as contemplated by Section 34(6) of the Act, reproduced above of the Registrar has been in constant touch with the Managing director, TSCAB and General Manager, NABARD, TSRO, Hyderabad, right from the day of the CMO directed him to conduct an enquiry. The Registrar held a series of meetings in this regard with G.M., NABARD as well as MD TSCAB and the Registrar appraised both the authorities about the findings of his enquiry, while the 6<sup>th</sup> respondent also shared the information they have about irregularities in the DCCB, Warangal. The Registrar duly shared the details of findings of preliminary enquiry with MD TSCAB. The financing bank that is T.S is thus duly consulted, as provided under Section 34(6) of the Act, before ordering suspension of the Managing Director of Warangal DCCB.

12. Thus, what is referred in the impugned order of consultation to what is stated in the counter-affidavit of consultation, there is a variance, as pointed out by the learned

counsel for the petitioners. For that the learned Special Government Pleader says the impugned order need not detail all these facts as that can be stated in detail later and that what is reproduced in the counter is to be read with the impugned order for proper understanding of the statutory compliance of Section 34(6) of the Act. In this regard, the learned counsel for the petitioners submitted that additional material that is not covered by the impugned order cannot be looked into, as per the Constitution Bench expression of the Apex Court in *Mohinder Singh Gill v. The chief Election Commissioner, New Delhi*<sup>7</sup>, where in para-8 relying upon the earlier Apex Court's expression in *Gordhandas Bhanji* (AIR 1952 SC 16) held that in a writ petition including an order by statutory authority validity to judge is maintainable, that "when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds, later brought out." Thus, what is mentioned in the impugned order alone is to be considered and any development or improvement cannot be considered. Here, one more thing to notice is that there are two finance banks. The consultation is as per the impugned order only TSCAB. In the counter-affidavit of the 3<sup>rd</sup> respondent referred supra, it is mentioned as consultation of G.M.

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<sup>7</sup> AIR 1978 SC 851

NABARD also, the other financing bank but the impugned order, no way refers the consultation of the NABARD, the other financing bank. To that extent, in the absence of a provision of consulting any one of the financing banks is enough, there is practically no consultation, as laid down by the Apex Court in P.S.Rajagopal Naidu that was quoted with approval by the Madras High Court in P.M.V.Cooperative Agricultural Cooperative Society that was quoted with the approval by this Court in Appana Suribabu (supra), suffice to say from that of there is no consultation as contemplated by Section 34(6) of the Act. Apart from it, even there is a proper consultation of TSCAB concerned, without leaving it to answer from several contentions raised on this aspect what is stated in the impugned order and what is detailed in the counter affidavit and what and what cannot be looked into as laid down in the expression of the Constitution Bench in Mohinder Singh Gill (supra), no way requires repetition herein. In fact, what is meant by consultation is well laid down by the other expression of the Apex Court in the recent past in Sanjay Nagayach (supra) where the facts, in detail, brought to the notice of this Court by the learned Special Government Pleader that also even required in asking to be looked into, however not necessary, in deciding the core issue supra. Now coming to the core requirement of what is meant by consultation as a principle that is applicable to all cases irrespective of the factual scenario that relevant portion of the judgment now required to be reproduced from paras-22 to 24 is as follows:

“22. We have already quoted the second proviso to [Section 53\(1\)](#), the meaning of which is clear and unambiguous which, in our view, calls for no interpretation or explanation. In this respect, reference to the often quoted principle laid down by Tindal, C.J. in *Sussex Peerage case* (1844) 11 CIT F.85 is useful, which reads as follows: “If the words of the Statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in the natural and ordinary sense.” Reference may also be made to the judgments of this Court in [Lalu Prasad Yadav and Another v. State of Bihar and Another](#) (2009) 3 SCC 553 and [Ansal Properties and Industries Limited v. State of Haryana and Another](#) (2010) 5 SCC 1.

23. The mere serving a copy of the show-cause-notice on RBI with supporting documents is not what is contemplated under the second proviso to [Section 53\(1\)](#). For a meaningful and effective consultation, the copy of the reply filed by the Bank to the various charges and allegations levelled against them should also be made available to the RBI as well as the action proposed by the Joint Registrar, after examining the reply submitted by the Bank. On the other hand, RBI 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 RBI 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.

24. This Court in [Indian Administrative Services \(SCS\) Association, U.P. v. Union of India](#) 1993 Supp (1) SCC 730, has laid down six propositions while examining the meaning of the expression ‘consultation’. We may add one more proposition 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. Reference may also be made to the judgments of this Court in [Reserve Bank of India v. Peerless Company](#) (1987) 2 SCR 1, [State of Jammu and Kashmir v. A.R. Zakki and Others](#) 1992 Supp (1) SCC 548, Gauhati High Court and [Another v. Kuladhar Phkan](#) and [Another](#) (2002) 4 SCC 524, [Andhra Bank v. Andhra Bank Officers and Another](#) (2008) 7 SCC 203.”

13. Here, from the above principle of law referring to several expressions in several contexts of the issue came before the Apex Court in vividly saying what is meant by consultation that it is not a mere formality. Further more, it is observed that mere sending of copy of show cause notice to the financing bank (therein R.B.I) is not suffice, as what is contemplated by the provision is a meaningful and effective consultation and copy of the reply filed by the financing bank to the various charges and

allegations levelled against the petitioners should also be made available to the financing bank as well as the action proposed by the Registrar concerned and after examining the reply submitted by the financing bank also to look into.

14. Thus, in the case on hand, coming back to the show cause notice, it was dated 15.04.2017, the reply/ explanations of the petitioners was on 17.04.2017, sending a copy to one of the two the financing banks herein if at all is only in between, however, the impugned order passed was on 18.04.2017 and the impugned order itself shows there is no waiting even for reply and no reply received, as had it been, it should have been referred to among the references 1 to 5 but not there. Thus, there is no waiting about the reply received to consider the same also of the finance bank on the show cause notice sent to the petitioners can be marked to one of the two financing banks, leave about not sent copies, even taken counter-affidavit averments to writ as part of the show cause notice with no details accepting such a contention of the learned Special Government Pleader at least for argument sake, that also no way reflects the consultation, as contemplated by the expressions supra of mere consultation or held oral meetings, in the absence of written communication and receiving of written response.

15. Having regard to the above, it is suffice to say as laid down in the expressions supra that there is no consultation as contemplated by Section 34(6) of the Act of NABARD totally and there is no consultation as contemplated and required but for the

propounded consultation from the show cause notice as discussed supra. Thereby, the action of the respondents covered by the impugned proceedings is unsustainable and is liable to be set aside and this Court need not go in detail to answer several factual aspects, though factual aspects also can be gone into as per one of the expressions quoted supra in a writ petition. *Thereby, suffice without prejudice to the contentions of both parties on the factual aspects to agitate if at all such a necessity arises and the writ petition is allowed on that point alone.* Needless to say, this order no way interdict the recourse of the respondents if at all to be taken statutorily.

16. Accordingly, the Writ Petition is allowed. No costs. Consequently, miscellaneous petitions, if any, pending shall stand closed.

Date: 15.06.2017

Note: L.R. copy to be marked.  
Note: issue copy today (23.06.2017)  
b/o.pab/vvr.

Dr. B. SIVA SANKARA RAO J,

