

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.1141 of 2018

Order reserved on: 3-8-2018

Order delivered on: 18-9-2018

1. State of Chhattisgarh, Through the Secretary, Co-operative Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, Distt. Raipur (C.G.)
2. The Registrar, Co-operative Societies, Indrawati Bhawan, Naya Raipur, Distt. Raipur (C.G.)
3. The Deputy Registrar, Co-operative Societies, Korba, Distt. Korba (C.G.)

---- Petitioners

Versus

1. Munnaram Rajwade, S/o Shri Dhansai Rajwade, 45 years, R/o Vill. Katbetila, Block Kartala, P.S. Urga, Distt. Korba (C.G.)
2. Mattulal Porte, S/o Shri Gokul Prasad Porte, 50 years. R/o Vill. Juhali, Post Sothi, Block Bilha, Tahsil Masturi, Distt. Bilaspur (C.G.)
3. District Co-operative Central Bank Ltd., Bilaspur, Through its Authorized Officer, Nehru Chowk, Bilaspur, Distt. Bilaspur (C.G.)
4. Ambika Prasad Tiwari, S/o Late Janak Ram Tiwari, 60 Yrs., R/o Vill. Khaira, Post Pandhi, Block Bilha, Distt. Bilaspur (C.G.)
5. Kedi Ram Yadav, S/o Lutanram Yadav, 55 years, R/o Vill. Basantpur, Block & Tahsil Baloda, Distt. Janjgir Champa (C.G.)
6. Smt. Santoshi Bai Dewangan, W/o Shri Dhanji Dewaangan, 40 Yrs., R/o Vill. Sirmi, Block & Tah. Baloda, Distt. Janjgir Champa (C.G.)
7. Jagat Ram Kashyap, S/o Shri Goverdhan, 50 years, R/o Vill. Malda, Block, P.S. & Tah. Jaijaipur, Distt. Janjgir Champa (C.G.)
8. Devraj Singh Rathiya, S/o Shri Mohan Lal Rathiya, 55 years, R/o Vill. Nawapara, Block, P.S. & Tah. Kartala, Distt. Korba (C.G.)
9. Ram Kamal Singh, S/o Shri Chandan Singh, 55 years, R/o Vill. Dhangaon, Post Block, P.S., Tah. & Distt. Mungeli (C.G.)
10. Jatiram Sahu, S/o Shri Bhuwan Lal Sahu, 55 years, R/o Vill. Dhandhan, Block & P.S. Takhatpur, Distt. Bilaspur (C.G.)
11. Balram Patel, S/o Late Kushi Lal Patel, 55 years, R/o Vill. Saleh, P.S. & Tah. Dabhra, Distt. Janjgir Champa (C.G.)

12. Gadarai Dewangan, S/o Shri Laxman Prasad Dewangan, 48 years, R/o Vill. Cheriya, Block & P.S. Bamnidih, Tah. Champa, Distt. Janjgir Champa (C.G.)

---- Respondents

For Petitioners/State: Mr. Prafull N. Bharat, Additional Advocate General.
For Respondents No.1 and 2: -
Dr. N.K. Shukla, Senior Advocate with
Mr. Ramakant Pandey, Advocate.
For Respondent No.3: Mr. Jitendra Shrivastava, Advocate.
For Respondents No.4 to 8 and 10 to 12: -
Mr. Vikas A. Shrivastava and Mrs. M. Asha,
Advocates.
For Respondent No.9: Mr. Pradeep Singh Rathore, Advocate.
For Interveners: Mr. Sourabh Sharma, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Gopal Dugdh Sahakari Samiti Maryadit, Korba, was registered on 3-6-2011 by the Deputy Registrar, Co-operative Societies, Korba, in exercise of power conferred under Section 19(1) of the Chhattisgarh Co-operative Societies Act, 1960, of which respondent No.1 was nominated as President and election was directed to be conducted within a period of three months from the date of incorporation of that society. Thereafter, election of the Board of Directors of Zila Sahakari Kendriya Bank Maryadit, Bilaspur was conducted in which respondent No.1 participated claiming himself to be representative of Gopal Dugdh Sahakari Samiti Maryadit and got elected as one of the Directors of the Board. Eventually, on 7-9-2015, respondent No.1 was also elected as Chairman of Zila Sahakari Kendriya Bank Maryadit, Bilaspur, but the election of Gopal Dugdh Sahakari Samiti Maryadit, Korba could not be conducted within the stipulated period of three months as directed. By order dated 21-9-2015, the Deputy Registrar, Co-operative Societies, Korba passed an order exercising the jurisdiction

conferred under Section 49(8) of the Chhattisgarh Co-operative Societies Act, 1960 (for short, 'the Act of 1960') holding that the Board of Directors of Gopal Dugdh Sahakari Samiti Maryadit, Korba has ceased to function and vested the powers of the Board of Directors of that Society with the Deputy Registrar, Co-operative Societies, Korba, and thereafter, Shri S.K. Kanwar, Co-operative Extension Officer was appointed as authorized officer to look after the affairs of that society. On the same day i.e. 21-9-2015, the Registrar, Co-operative Societies passed an order holding respondent No.1 as ineligible to be elected as representative of Gopal Dugdh Sahakari Samiti Maryadit, Korba. The Registrar further held that on account of the fact that election of that Society could not be conducted and in view of the order dated 21-9-2015 passed by the Deputy Registrar, Co-operative Societies, Korba and also in view of Rule 43(6) of the Chhattisgarh Co-operative Societies Rules, 1962 for want of quorum, the Board of Directors of Zila Sahakari Kendriya Bank Maryadit, Bilaspur is deemed to have been ceased to function by virtue of the provisions contained in Section 49(8) of the Act of 1960 and appointed the Collector as authorized officer to look after the affairs of the said Bank.

2. Questioning the order passed by the Registrar, Co-operative Societies, earlier, a writ petition was preferred by respondent No.1 herein namely W.P.(C)No.2147/2015 (Munna Ram Rajwade v. State of Chhattisgarh and others) before this Court which was withdrawn with liberty to file appeal. Appeal was preferred before the Co-operative Tribunal and the same was dismissed in first round by

order dated 1-2-2017 against which again another writ petition was preferred by respondent No.1 herein which was allowed and this Court remitted the appeal to the Co-operative Tribunal for passing a speaking and reasoned order. This time, the Co-operative Tribunal allowed the appeal filed by respondent No.1.

3. Feeling aggrieved against the impugned order of the Co-operative Tribunal granting appeal and setting aside the order dated 21-9-2015 passed by the Registrar, Co-operative Societies, this writ petition has been preferred stating inter alia that the order passed by the Co-operative Tribunal is unsustainable and bad in law in which respondent No.1 and other parties have filed their return and opposed the writ petition.

4. Mr. Prafull N. Bharat, learned Additional Advocate General appearing for the State/petitioners, would submit as under: -

(1) The order dated 21-9-2015 passed by the Deputy Registrar, Co-operative Societies, Korba exercising the power under Section 49(8) of the Act of 1960 holding that since elections of Gopal Dugdh Sahakari Samiti Maryadit, Korba, were not held before the expiry of the period of three months as directed, therefore, the said Samiti ceased to exist and the Board of Directors of that Society is deemed to have vacated their seats and appeal against that order laid before the Registrar, Co-operative Societies was dismissed by the Registrar on 28-2-2017 and as such the order of the Deputy Registrar has become final on account of non-challenge to that order.

(2) Only there were 11 Directors in Zila Sahakari Kendriya

Bank Maryadit, Bilaspur, elected to the Bank and since one Director – respondent No.1 herein was held to be disqualified / ineligible by the Deputy Registrar, Co-operative Societies, Korba vide order dated 21-9-2015 and that order has become final, total number of the Board of Directors would be only 10 and by virtue of Rule 43(6) of the Chhattisgarh Co-operative Societies Rules, 1962, there is no quorum for the meeting of the committee and, therefore, by virtue of the provisions contained in Section 49(8) of the Act of 1960, they are deemed to have vacated the office and as such, the Registrar has passed the order holding that the Board of Directors of the Bank is ceased to exist under Section 49(8) of the Act of 1960.

(3) The order passed by the Co-operative Tribunal holding that Sections 19-AA and 49-F of the Act of 1960 would be applicable is contrary to record as such, there is a deeming provision in Section 49(8) of the Act of 1960 and co-opted member and Government nominee cannot be included while computing 50% of the total members in view of proviso to Section 48(8) of the Act of 1960.

(4) The writ petition of other members of the Board of Directors has also been dismissed as withdrawn by order dated 15-10-2015 passed in W.P.(C)No.1872/2015, as such, other members of the Board of Directors are not aggrieved and disqualification of respondent No.1 has become final.

5. Dr. N.K. Shukla, learned Senior Advocate appearing for respondents No.1 and 2, would submit as under: -

(1) The learned Co-operative Tribunal is absolutely justified

in granting appeal as respondent No.1 being the elected Director of Zila Sahakari Kendriya Bank Maryadit, Bilaspur, has been disqualified without affording opportunity of hearing to him which has rightly been set aside by the Co-operative Tribunal.

(2) There is no provision in Section 49(8) of the Act of 1960 for vacating the office by the Board of Directors for want of quorum as such, the order passed by the Registrar, Co-operative Societies dated 21-9-2015 holding that the Board of Directors are deemed to have vacated their seats on alleged disqualification of respondent No.1 is without jurisdiction and without authority of law.

6. Mr. Sourabh Sharma, learned counsel appearing for the interveners, would submit that new elections have taken place and therefore the Co-operative Tribunal is absolutely unjustified in granting the appeal without taking into consideration the fact of subsequent election.
7. I have heard learned counsel for the parties and considered their rival submissions made herein-above and went through the record with utmost circumspection.
8. The Deputy Registrar, Co-operative Societies, Korba, by order dated 3-6-2011 registered Gopal Dugdh Sahakari Samiti Maryadit, Korba, in exercise of power conferred under Section 19(1) of the Act of 1960 and respondent No.1 was nominated as President of the Board of Directors of the said Society and a copy of the same was forwarded to respondent No.1 with a direction to conduct elections within three months from the date of registration of the Society. The above-stated society could not conduct the elections

of the said Society as contemplated by the order of the Deputy Registrar leading to passing of order by the Deputy Registrar, Co-operative Societies, Korba on 21-9-2015 holding that the nominated Board of Directors after the tenure of three months has come to an end on 2-9-2011, as the election could not be conducted within the said period, therefore, in exercise of power conferred under Section 49(8) of the Act of 1960, the powers of the Board of Directors of the said Society have vested itself in the Deputy Registrar, Co-operative Societies and further, the said authority appointed Shri S.K. Kanwar, Co-operative Extension Officer, as authorised officer to look after the affairs of the Society. For the sake of convenience, the order dated 21-9-2015 is extracted herein-below: -

कार्यालय-उप पंजीयक, सहकारी संस्थाएं कोरबा, जिला-कोरबा (छ०ग०)

क्रमांक/उपको/निर्वाचन/2015/388

कोरबा, दिनांक 21-09-2015

-: आदेश :-

{अंतर्गत छ.ग. सहकारी सोसायटी अधिनियम 1960 की धारा 49 (8)}

गोपाल दुग्ध सहकारी समिति मर्यादित कोरबा पं.क्र. 142 दिनांक 03.06.2011

के नामांकित बोर्ड का विनिर्दिष्ट कार्यकाल 02.09.2011 को अवसान हो चुका है। विनिर्दिष्ट कार्यकाल का अवसान होने के पश्चात् सोसायटी नवीन बोर्ड का निर्वाचन कराने में असफल रहा है। अतः दिनांक 02.09.2011 के पश्चात् छत्तीसगढ़ सहकारी सोसायटी अधिनियम 1960 की धारा 49 (8) के प्रावधान अनुसार सोसायटी के संचालक मंडल (बोर्ड) की शक्तियां स्वतः ही रजिस्ट्रार में निहित हो गई है।

अतः मैं एम.के. ध्रुव, उप पंजीयक, सहकारी संस्थाएं कोरबा, छत्तीसगढ़ शासन की अधिसूचना 15-19/15-02/03/2012 रायपुर, दिनांक 04.05.2012 के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए गोपाल दुग्ध सहकारी समिति मर्यादित कोरबा पं.क्र. 142 दिनांक 03.06.2011 के क्रियाकलापों के संचालन हेतु आगामी निर्वाचन सम्पन्न होने तक बोर्ड

की शक्तियों का प्रयोग करने के लिए श्री एस.के. कंवर, सहकारिता विस्तार अधिकारी को प्राधिकृत अधिकारी नियुक्त करता हूँ।

यह आदेश आज दिनांक 21.09.2015 को मेरे हस्ताक्षर एवं पदमुद्रा से जारी किया गया।

सही/-
उप पंजीयक
सहकारी संस्थाएं, कोरबा
जिला-कोरबा (छ०ग०)

9. The order of the Deputy Registrar dated 21-9-2015 was earlier assailed in W.P.(C)No.2256/2015, but in that writ petition, appeal was directed to be preferred as such, the appeal was preferred.
10. The above-stated order was questioned by the Board of Directors before the Registrar, Co-operative Societies in Co-operative Case No.78(1)(a)/37/B./2014 (Shri Ramayan Kurre and nine others v. Deputy Registrar, Co-operative Societies, Korba), as such, all the Directors including respondent No.1 preferred appeal under Section 78(1)(a) of the Act of 1960 aggrieved against the said order. The Registrar, Co-operative Societies, by its order dated 28-2-2017, dismissed the appeal finding no merit. The reasons assigned in the said order are as under: -

गोपाल दुग्ध सहकारी समिति मर्यादित कोरबा में दिनांक 02/09/2011 को बोर्ड के कार्यकाल का अवसान हो जाने के पश्चात् दिनांक 07/02/2016 को नवीन संचालक मण्डल का निर्वाचन सम्पन्न हो जाने के कारण अपीलार्थीगण के द्वारा प्रस्तुत अपील का प्रभाव स्वमेव ही शून्यवत (Infructuous) हो जाता है।

उपरोक्तानुसार अपीलार्थीगण के द्वारा अपील अस्वीकार की जाती है तथा उस पंजीयक, सहकारी संस्थाएं, कोरबा के द्वारा अधिनियम की धारा 49 (8) के

अंतर्गत जारी आदेश क्रमांक/उपको/निर्वाचन/2015/388 कोरबा, दिनांक
21/09/2015 को स्थिर रखा जाता है।

11. It is pertinent to mention here that with the dismissal of appeal by the Registrar affirming the order of the Deputy Registrar in exercise of power under Section 49(8) of the Act of 1960, the order of the Deputy Registrar superseding the Society under Section 49(8) has attained finality, as no further challenge was laid successfully either by the Society or by any of its Directors including respondent No.1. It is pertinent to further mention here that respondent No.1 having been elected as President of the Society, election of the Board of Directors of the Zila Sahakari Kendriya Bank Maryadit, Bilaspur, was conducted in which respondent No.1 participated claiming himself to be the representative of Gopal Dugdh Sahakari Samiti Maryadit, Korba, and he was elected as one of the Directors of the Board. Apart from him, ten other persons were also elected as members of the Board of Directors. As per bye-laws of the Society, total number of Directors of the Bank should be 21, however, as elections could not be conducted for some of the Societies and some of the Societies were defaulters, therefore, remaining ten Directors could not be elected. Thereafter, on 7-9-2015, respondent No.1 herein was elected as Chairman of the Zila Sahakari Kendriya Bank Maryadit, Bilaspur. On 21-9-2015 itself, the Joint Registrar, Co-operative Societies, Bilaspur, submitted a report to the Registrar informing the order passed by the Deputy Registrar, Co-operative Societies, Korba, holding that since election could not be conducted by Gopal Dugdh Sahakari Samiti Maryadit,

Korba, within three months, therefore, the Board of Directors of the said Society has ceased to function and all members are deemed to have vacated their seats. The Registrar, Co-operative Societies passed an order on 21-9-2015 stating that on account of the fact that respondent No.1 has vacated his office by the order of the Deputy Registrar dated 21-9-2015, respondent No.1 is not eligible to further hold the post as Director of Zila Sahakari Kendriya Bank Maryadit, Bilaspur and also not eligible to further hold the post of Chairman of the said Bank and, therefore, the Registrar, Co-operative Societies, held that respondent No.1 is not qualified to hold the post of Board of Directors and also not eligible to hold the post of Chairman of the said Bank. It was further held by the Registrar that the total number of Directors in the Bank were only 11 as 11 were elected and ten posts remained vacant and according to Rule 43(6) of the Chhattisgarh Co-operative Societies Rules, 1962, the quorum for the meeting of the committee shall be, as provided in the bye-laws, but in any case it shall be more than 50% of the total number of the members; but in the present case, the quorum has become 10 which is less than 50% of the total number of members, therefore, for want of quorum, under Section 49(8) of the Act of 1960, all the members of the Committee / Zila Sahakari Kendriya Bank Maryadit, Bilaspur, are deemed to have vacated their seats and power is vested with the Registrar, Co-operative Societies, and the Collector, Bilaspur was appointed as authorised officer of the said Bank. Relevant portion of the order dated 21-9-2015 passed by the Registrar, Co-operative Societies, is extracted herein-below: -

संयुक्त पंजीयक, सहकारी संस्थाएं, बिलासपुर द्वारा यह भी प्रतिवेदित किया गया है कि गोपाल दुग्ध सहकारी समिति मर्या० कोरबा के पंजीयन के समय मात्र तीन माह की समयावधि के लिए मनोनीत अस्थाई बोर्ड के अध्यक्ष श्री मुन्नाराम राजवाड़े विधिवत निर्वाचित हुए बिना ही उक्त संस्था से प्रतिनिधि बतौर जिला सहकारी केंद्रीय बैंक मर्या० बिलासपुर के संचालक मण्डल के सदस्य निर्वाचित हुए और बोर्ड की प्रथम बैठक दिनांक 07/09/2015 को अध्यक्ष पद पर निर्वाचित हुए थे ।

उपरोक्त रिपोर्ट तथा उसमें निहित तथ्यों के आधार पर मेरा यह समाधान हो गया है कि गोपाल दुग्ध सहकारी समिति मर्या० कोरबा के बोर्ड का अस्तित्व समाप्त हो गया है और यह भी कि इस संस्था के बोर्ड का तथा संस्था की ओर से जिला सहकारी केंद्रीय बैंक मर्या० बिलासपुर के लिए प्रतिनिधि का निर्वाचन कभी भी नहीं हुआ था । इस कारण उक्त संस्था से प्रतिनिधि के तौर पर जिला सहकारी बैंक में अध्यक्ष के रूप में निर्वाचित श्री मुन्नाराम राजवाड़े जिला सहकारी केंद्रीय बैंक मर्या० बिलासपुर के बोर्ड के सदस्य तथा अध्यक्ष पद पर बने रहने के लिए पात्र नहीं है तथा निरर्हित हैं । अतः श्री मुन्नाराम राजवाड़े द्वारा जिला सहकारी केंद्रीय बैंक मर्या० बिलासपुर में धारित बोर्ड के सदस्य तथा अध्यक्ष पद को एतद्वारा रिक्त घोषित करता हूँ ।

चूंकि जिला सहकारी केंद्रीय बैंक मर्या० बिलासपुर के बोर्ड में निर्धारित कुल संख्या 21 संचालकों में से मात्र 11 संचालक निर्वाचित हुए थे, तथा 10 पद रिक्त रह गए थे और आज भी रिक्त है । छत्तीसगढ़ सहकारी सोसाइटी नियम 1962 के नियम 43 (6) के अनुसार “समिति के सम्मिलित के लिये गणपूर्ति उपविधियों में उपबंधित किये गये अनुसार की जायेगी, किन्तु किसी भी दशा में, सदस्यों की कुल संख्या के पचास प्रतिशत से अधिक होगी” । इस प्रकार वर्तमान में उक्त बैंक के बोर्ड में मात्र 10 सदस्य विद्यमान रह गए हैं । ऐसी स्थिति में छत्तीसगढ़ सहकारी सोसाइटी अधिनियम 1960 की धारा 49 (8) के अनुसार

जिला सहकारी केंद्रीय बैंक मर्या० बिलासपुर का बोर्ड आवश्यक गणपूर्ति के अभाव में कार्य करने से परिविरत हो गया है और बोर्ड के सभी सदस्यों द्वारा अपने पद रिक्त किये गये समझे जाएंगे और बोर्ड की शक्तियां रजिस्ट्रार में निहित समझी जाएंगी ।

अतः मैं जे०पी० पाठक, पंजीयक, सहकारी संस्थाएं, छत्तीसगढ़, छ०ग० सहकारी सोसाइटी अधिनियम 1960 की धारा 49 (8) के तहत रजिस्ट्रार में निहित बोर्ड की शक्तियों का प्रयोग करने के लिए कलेक्टर, बिलासपुर को जिला सहकारी केंद्रीय बैंक मर्या० बिलासपुर का प्राधिकृत अधिकारी नियुक्त करता हूं।

12. This order of the Registrar, Co-operative Societies was challenged in W.P.(C)No.1872/2015 (Kedi Ram Yadav and five others v. State of Chhattisgarh and ten others) and W.P. (C)No.1968/2015 (Ambika Prasad Tiwari and another v. State of Chhattisgarh and sixteen others) preferred by some of the private respondents herein, which were withdrawn, however, W.P. (C)No.2147/2015 (Munna Ram Rajwade v. State of Chhattisgarh and sixteen others) preferred by respondent No.1 herein was withdrawn with liberty to file appeal. Appeal was preferred by respondent No.1 and the same was dismissed by the Chhattisgarh State Co-operative Tribunal, Bilaspur by order dated 1-2-2017. Respondent No.1 preferred a writ petition bearing W.P. (C)No.1503/2017 questioning the order dated 1-2-2017 passed by the Co-operative Tribunal, the High Court allowed the writ petition by order dated 20-7-2017 and remanded the matter to the Tribunal to pass a reasoned order.

13. The question for consideration would be, whether the Co-operative

Tribunal is justified in granting the appeal preferred by respondent No.1 setting aside the order of the Registrar, Co-operative Societies?

14. At this stage, it would be appropriate to notice the provisions contained in Section 49(8) of the Act of 1960 which provides as under: -

“(8) Notwithstanding anything contained in this Act or Rules made thereunder the election of a board shall be conducted before the expiry of the term of the board. If the elections are not held before the expiry of the term, or board of society ceases to function due to the order of any court or otherwise, all the members of the board shall be deemed to have vacated their seats and the powers of the board shall be deemed to have been vested in the Registrar and the State Co-operative Election Commission shall hold elections within six months, or twelve months in case of the Co-operative Banks :

Provided that the Registrar may authorize any officer, or a person who in the opinion of the Registrar has experience in managing a Co-operative Bank or a Co-operative Society, as the case may be, to exercise the powers of the Board vested in him under this sub-section; and the officer or the person so authorized shall exercise such power from the date of such authorization for a period specified by the Registrar or till the elections are held by the State Co-operative Election Commission, whichever is earlier.”

15. The aforesaid provision has overriding effect over the other provisions contained in the Act of 1960 and the Rules made thereunder. It clearly mandates that the election of a Board shall be conducted before the expiry of the term of the Board and if for any reason, the election could not be held before the expiry of the term, or the Board of Society ceases to exist due to the order of any court or otherwise, all the members of the Board shall be deemed to have vacated their seats and the powers of the Board shall be deemed to have been vested in the Registrar, Co-operative

Societies.

16. The word “otherwise” has been considered by the Supreme Court from time to time. The word "otherwise" has been interpreted by the Supreme Court while construing the provisions of Sections 5 and 6 of the Bombay Land Requisition Act, 1948, in the matter of **Smt. Lila Vati Bai v. State of Bombay**¹. The facts of that case show that petitioner Shrimati Lilavatibai was the widow of Dharamdas who was a tenant of the premises in question. Dharamdas died in November, 1953 leaving behind him his widow and daughter. The petitioner alleged that she had been occupying the premises in question as a member of her husband's family since 1938 and that the tenant aforesaid had at no material date ceased to occupy the premises. She also alleged that one Narottamdas Dharamsay Patel was a mere lodger who was occupying a portion of the premises by leave and licence of her husband and in fact Narottamdas had vacated the portion in his occupation some time in the year 1953. On behalf of the State it was alleged that Dharamdas had vacated the premises in October, 1952 and had handed over the possession of the premises to the said Narottamdas Patel. It was denied that petitioner was residing in the premises at the time of her husband's death in November, 1953. On 27th January, 1954, an order was passed under Section 6, sub-section (4), clause (a) of the Bombay Land Requisition Act, 1948, by the Government of Bombay to requisition the said premises for a public purpose, because on enquiry it was found that the premises had become vacant in the month of October, 1952.

1 AIR 1957 SC 521

The petitioner challenged the validity of the order of requisition stated above and the High Court of Bombay dismissed her petition. The petitioner moved the Supreme Court challenging the vires of the Act as also the legal efficacy of the order impugned. The Supreme Court considered the contention raised on behalf of the petitioner how the word "otherwise" used in Explanation (a) to Section 6 should be construed. It was observed as follows:-

"11. It was contended on behalf of the petitioner that Explanation (a) to Section 6 quoted above contemplates a vacancy when a tenant (omitting other words not necessary) ceases to be in occupation upon termination of his tenancy, eviction, or assignment or transfer in any other manner. The argument proceeds further to the effect that in the instant case admittedly there was no termination, eviction, assignment or transfer and that the words "or otherwise" must be construed as ejusdem generis with the words immediately preceding them; and that therefore on the facts as admitted even in the affidavit filed on behalf of the Government there was in law no vacancy. In the first place, as already indicated, we cannot go behind the declaration made by the Government that there was a vacancy. In the second place, the rule of ejusdem generis sought to be pressed in aid of the petitioner can possibly have no application. The Legislature has been cautious and thorough-going enough to bar all a venues of escape by using the words "or otherwise". Those words are not words of limitation but of extension so as to cover all possible ways in which a vacancy may occur. Generally speaking, a tenant's occupation of his premises ceases when his tenancy is terminated by acts of parties or by operation of law or by eviction by the landlord or by assignment or transfer of the tenant's interest. But the Legislature, when it used the words "or otherwise" apparently intended to cover other cases which may not come within the meaning of the preceding clauses, for example, a case where the tenant's occupation has ceased as a result of trespass by a third party. The Legislature, in our opinion, intended to cover all possible cases of vacancy occurring due to any reasons whatsoever. Hence, far from using those words ejusdem generis with the preceding clauses of the explanation, the Legislature used those words in an all inclusive sense."

17. The Constitution Bench of the Supreme Court in the matter of

Kavalappara Kottarathil Kochuni @ Moopil Nayar and others

v. The States of Madras & Kerala and others² has held as under:-

“50. ... The word "otherwise" in the context, it is contended, must be construed by applying the rule of ejusdem generis. The rule is that when general words follow particular and specific words of the same nature, the general words must be confined to the things of the same kind as those specified. But it is clearly laid down by decided cases that the specific words must form a distinct genus or category. It is not an inviolable rule of law, but is only permissible inference in the absence of an indication to the contrary. On the basis of this rule, it is contended, that the right or the custom mentioned in the clause is a distinct genus and the words "or otherwise" must be confined to things analogous to right or contract such as lost grant, immemorial user etc. It appears to us that the word "otherwise" in the context only means "whatever may be the origin of the receipt of maintenance". One of the objects of the legislation is to by-pass the decrees of courts and the Privy Council observed that the receipt of maintenance might even be out of bounty. It is most likely that a word of the widest amplitude was used to cover even acts of charity and bounty. If that be so, under the impugned Act even a payment of maintenance out of charity would destroy the character of an admitted sthanam which ex facie is expropriatory and unreasonable.”

18. In the matter of **M. V. Elisabeth and others v. Harwan Investment and Trading Pvt. Ltd.**³ Their Lordships of the Supreme Court have held as under:-

“99. ... The word ‘otherwise’ literally means in a different way. ...”

19. The nine-Judges Bench of the Supreme Court in the matter of **S. R. Bommai and others v. Union of India and others**⁴ has held as under:-

“35. ... The expression ‘otherwise’ is of very wide import and cannot be restricted to material capable of being

² AIR 1960 SC 1080

³ 1993 Supp(2) SCC 433

⁴ (1994) 3 SCC 1

tested on principles relevant to admissibility of evidence in courts of law. ...”

20. Their Lordships of the Supreme Court in the matter of **Animal Welfare Board of India v. A. Nagaraja and others**⁵ have held as under:-

“39. Section 11(1)(a) uses the expressions “or otherwise”, “unnecessary pain or suffering”, etc. Beating, kicking, etc. go with the event so also torture, if the report submitted by AWBI is accepted. Even otherwise, according to AWBI, the expression “or otherwise” takes in Jallikattu, bullock cart race, etc. but, according to the State of Tamil Nadu, that expression has to be understood applying the doctrine of ejusdem generis. In our view, the expression “or otherwise” is not used as words of limitation and the legislature has intended to cover all situations, where the animals are subjected to unnecessary pain or suffering. Jallikattu, bullock cart races and the events like that, fall in that expression under Section 11(1)(a). The meaning of the expression “or otherwise” came up for consideration in *Lila Vati Bai v. State of Bombay* (AIR 1957 SC 521) and the Court held that the words “or otherwise” when used, apparently intended to cover other cases which may not come within the meaning of the preceding clause. In our view, the said principles also can be safely applied while interpreting Section 11(1)(a).”

21. The Supreme Court in the matter of **R & B Falcon (A) Pty. Limited v. Commissioner of Income Tax**⁶ explained the meaning of term “otherwise” as under:-

“22. A statute, as is well known, must be read in its entirety. What would be the subject matter of tax is contained in sub-sections (1) and (2). Sub-section (3), therefore, provides for an exemption. There cannot be any doubt or dispute that the latter part of the contents of sub-section (3) must be given its logical meaning. What is sought to be excluded must be held to be included first. If the submission of learned Solicitor General is accepted, there would not be any provision for exclusion from payment of tax any amenity in the nature of free or subsidized transport.

5 (2014) 7 SCC 547

6 (2008) 12 SCC 466

23. Thus, when the expenditure incurred by the employer so as to enable the employee to undertake a journey from his place of residence to the place of work or either reimbursement of the amount of journey or free tickets therefor are provided by him, the same, in our opinion, would come within the purview of the term "by way of reimbursement or otherwise".

24. The Advanced Law Lexicon defines "otherwise".

"By other like means; contrarily; different from that to which it relates; in a different manner; in another way; in any other way; differently in other respects in different respects; in some other like capacity."

25. "Otherwise" is defined by the Standard Dictionary as meaning 'in a different manner, in another way; differently in other respects'; by Webster, "in a different manner; in other respects".

26. As a general rule, "otherwise" when following an enumeration, should receive an ejusdem generis interpretation (per *CLEASBY, B. Monck v. Hilton*, 46 LJMC 167, The words 'or otherwise', in law, when used as a general phrase following an enumeration of particulars, are commonly interpreted in a restricted sense, as referring to such other matters as are kindred to the classes before mentioned, (Cent. Dict.)"

22. In the instant case, the Registrar, Co-operative Societies has held that the Board of Directors of Gopal Dugdh Sahakari Samiti Maryadit, Korba, have ceased to function, as the election of the said Society could not be conducted before the expiry of the period of three months as mandated while constituting the said society. Thereafter, the Registrar has further held that since respondent No.1, who was one of the Directors of the Zila Sahakari Kendriya Bank Maryadit, Bilaspur, on the strength of representative of Gopal Dugdh Sahakari Samiti Maryadit, Korba, is also held to be ineligible to further continue as Director and thereby as the Chairman of the Board and consequently, the total number of Directors of the Bank have become less than 50% of the required strength for quorum

which is against Rule 43(6) of the Chhattisgarh Co-operative Societies Rules, 1962, therefore, the Board of Directors of the said Bank will cease to exist.

23. At this stage, it would be appropriate to notice Rule 43(6) of the Chhattisgarh Co-operative Societies Rules, 1962 which states as under: -

“(6) The quorum for the meeting of the committee shall be, as provided in the byelaws, but in any case it shall be more than fifty per cent of the total number of the members.”

24. It is the case of the petitioners / State that it is the total number of members (of Bank) i.e. 21 and 50% of that total number has to be taken for constituting a quorum, and co-opted member and Government nominee has to be excluded while computing 50%, whereas it is the case of respondent No.1 that calculation of minimum members of quorum should be made from the number of members elected and not from the members for which election proposed, as according to him, elected members are eleven and their more than fifty percent comes around six, therefore, there is no violation of Rule 43(6) of the Chhattisgarh Co-operative Societies Rules, 1962.

25. First of all, I shall take-up the plea based on Rule 43(6) of the Chhattisgarh Co-operative Societies Rules, 1962.

26. A careful perusal of the above-quoted Rule 43(6) of the Chhattisgarh Co-operative Societies Rules, 1962 would show that the legislature has intended that quorum for the meeting of the committee should be as provided in the bye-laws, but in any case, it

should be “more than fifty percent of total number of members” as business of committee cannot be transacted on the strength of fifty percent of total number of members. Now, the question for consideration would be “total number of members” is to be calculated on the basis of subsisting strength as on the date of meeting or total number of members as fixed in the Rules for the Board of Directors.

27. In the matter of **Satna Central Cooperative & Land Mortgage Bank Ltd. v. Puranlal Agrawal & others**⁷, a Division Bench of the M.P. High Court considered Rule 37 of the M.P. Co-operative Societies Rules, 1960 with reference to Bye-law No.35 of the Satna Central Co-operative and Land Mortgage Bank Ltd.. Rule 37(1) of the M.P. Co-operative Societies Rules, 1960 states as under: -

“37 (1) Unless otherwise provided in the Byelaws of a society, the quorum for general meeting shall be one-fifth of the total number of members on the date of notice of the meeting.”

28. Their Lordships in **Satna Central Cooperative & Land Mortgage Bank Ltd.** (supra) noticed that the addition of words “total number of” in Rule 37 of the M.P. Co-operative Societies Rules, 1960 and their omission from Bye-law No.35 are somewhat significant and held that effect has to be given to the words “total number of members”, it has no relation with words “total strength fixed”. It was observed as under: -

“11. This construction of mine of Byelaw No. 35 is clearly borne out if we compare its language with that of Rule 37 of the Madhya Pradesh Co-operative Societies Rules, which provides for a quorum for the general meeting of share-holders. That provision reads –

⁷ 1969 J LJ 888

“37 (1) Unless otherwise provided in the Byelaws of a society, the quorum for general meeting shall be one-fifth of the total number of members on the date of notice of the meeting.”

(underlining—here italicised is mine).

Both Byelaw No. 35 and Rule 37 are provisions dealing with the same object, viz., the quorum for a meeting. It would appear that there is a marked difference in language of the Byelaw from what employed in the rule which uses the words “total number of members”, meaning that the quorum for a general meeting must be 1/5th of the whole body of share holders. The addition of these words “total number of” in Rule 37 and their omission from Byelaw No. 35 are somewhat significant. In framing the byelaw, the petitioner Bank appears to have deliberately departed from the words used in the rule, and this “variation of language” raises an inference of a change of intention on their part that the requirements for a quorum at a Board Meeting were intended and to be different. I am of the view that the alteration in the language used was intentional.

It is a cardinal rule in the construction of statutes that assistance in ascertaining the meaning of an enactment may be obtained by comparing its language with that used in earlier statutes relating to the same subject [See, Craies' on Statute Law, 6th Ed., 140-3]. There is no reason why a construction which would render words in the statute *otiose* must be accepted. The Legislature is deemed not to waste its words or to say any-thing in vain [See, Cuebec Railway. Light, Heat and Power Co. Vs. Vandry, [1] and Cargo Ex. 'Argos Gaudet Vs. Brown [2]]. In my view, the same rule of interpretation should be adopted in construing rules and byelaws framed under an enactment.”

29. Their Lordships noticed the clear distinction created by use of words “total number of members” by holding as under: -

“12. I have reason to think that the framers of Byelaw No. 35 had before them, or, were aware of the provision contained in Rule 37, and with this knowledge, altered the language of the Byelaw they framed, by deleting the words 'the total number of'; There is clear a distinction between the two expressions used in Rule 37 and Byelaw No. 35. Now, the normal canon of construction of a statute or a rule or byelaw is, that when different expressions are used, they are intended by the draftsman to connote different things or ideas. In Dickenson Vs. Fletcher [3], Brett, J., Stated the rule

thus:-

“Where two statutes dealing with the same subject matter use different language, it is generally a fair presumption that the alteration in the language used in the subsequent statute was intentional.”

[See Craies' on Statute Law, 6th Ed., pp. 141-2]. The underlying principle upon which this rule is based is, that no part of a statutory provision should be deemed as redundant or unnecessary. I am inclined to think that the addition of the words “the total number of” in Rule 37 which are not there in Bye-law No. 35 was not a superfluity or mere surplusage nor had they been added to make clear a meaning which was already implied. The alteration in the language used in Bye-law No, 35 was intentional, and it bears the meaning that I have indicated.”

30. Thus, the Division Bench has clearly held that 2/5th of the members of Board of Directors appearing in the Bye-laws would mean 2/5th of Directors constituting the Board for the time being.

31. The principle of law laid down in **Satna Central Cooperative & Land Mortgage Bank Ltd.** (supra) was followed by the M.P. High Court again in W.P.No.1306/2004 (Shri Manohar Singh Bundela and others v. Registrar Cooperative Societies Madhya Pradesh and others), decided on 12-7-2004 while considering Rule 43(6) of the M.P. Co-operative Societies Rules, 1962. Rule 43(6) of the M.P. Co-operative Societies Rules, 1962 {*pari materia* to Rule 43(6) of the Chhattisgarh Co-operative Societies Rules, 1962} states as under: -

“43(6) – The quorum for the meeting of the Committee shall be, as provided in the bye-laws, but in any case it shall be more than fifty per cent of the total number of the members.”

Considering the above-stated Rule, it was held as under: -

“13. In view of Division Bench decision of this Court (supra), in my opinion, there is no escape from the conclusion that

“total number of strength” has to be seen as fixed, not the subsisting members for the time being constituting the Board.
...”

32. Reverting to the facts of the present case, Rule 43(6) of the Chhattisgarh Co-operative Societies Rules, 1962 is *pari materia* Rule to Rule 43(6) of the M.P. Co-operative Societies Rules, 1962 considered by the M.P. High Court in Shri Manohar Singh Bundela (supra) following the principle of law laid down in **Satna Central Cooperative & Land Mortgage Bank Ltd.** (supra). Rule 43(6) of the Chhattisgarh Co-operative Societies Rules, 1962 clearly provides that the quorum for the meeting of the committee shall be as provided in the bye-laws and it shall be more than fifty percent of the “total number of members”, this has to be taken as fixed and it would not mean subsisting members for the time being constituting the Board. It is held accordingly.

33. Section 48(8) of the Act of 1960 provides that notwithstanding anything contained in this Act or the rules made thereunder or bye-laws of the societies, total number of members of the Board shall not exceed twenty-one of which two shall be women. The proviso appended to this sub-section provides as under: -

“Provided further that co-opted specialist member appointed under provisions of sub-section (9) of this Section and ex-officio member, and Government nominee appointed under provisions of sub-section (1) of Section 52 and functional director(s) shall be excluded from the maximum number of members for the purpose of this sub-section.”

34. Thus, as per the provisions contained in Section 48(8) of the Act of 1960, the total number of Board of Directors is twenty-one, but only eleven Directors were elected and respondent No.1 was declared

ineligible by the order of the Registrar on 21-9-2015 and thereby, total number of Board of Directors reduced to ten out of total twenty-one members excluding the ex-officio member, Government nominee and functional Directors which are required to be excluded by virtue of the proviso to Section 48(8) of the Act of 1960, then the quorum would be less than fifty percent of the total number of members of the society (Bank). This would be contrary to Rule 43(6) of the Chhattisgarh Co-operative Societies Rules, 1962, rather in teeth of the said Rule, meaning thereby, it would fall within the ambit of the word "otherwise" as contained in Section 49(8) of the Act of 1960 and the learned Registrar is absolutely justified in exercising the power under Section 49(8) of the Act of 1960.

35. However, the learned Co-operative Tribunal has held that co-opted specialist member and Government nominee shall also be included in computing the total number of members of the Society. This clearly runs contrary to the proviso to Section 48(8) of the Act of 1960, which clearly excludes those class of directors from calculating for the purpose of Section 49(8) of the Act of 1960. As such, the finding of the learned Co-operative Tribunal in this regard deserves to be set aside.

36. The learned Co-operative Tribunal has also relied upon the provisions contained in Sections 19-AA and 49-F of the Act of 1960, to grant the appeal by holding that before passing the order, reasonable opportunity of hearing has not been afforded to respondent No.1 before passing the order under Section 49(8) of the Act of 1960. Sections 19-AA and 49-F of the Act of 1960 state

as under: -

“19-AA. Disqualification for membership of Board and for representation – No person shall be eligible for election as a member of the Board of a society and shall cease to hold his office as such if he suffers from such disqualification as may be prescribed. No society shall elect any member as its representative to the Board of any other society or to represent the society in other society, if he suffers from such disqualification, as may be prescribed :

Provided that, if a member suffers from any of the disqualifications prescribed under this section—

(i) it shall be lawful for the Board of the society to disqualify such member where he is elected as a Director being a member of that society, after giving him a reasonable opportunity of being heard, within two months from the, date of coming to the notice of the society from holding the post,

(ii) if, the member incurs a disqualification, in the higher level society, for his actions as a representative, such higher level society shall take action to disqualify him for holding the post in the higher level society,

If the society fails to take action, the Registrar shall disqualify such member from holding such post by an order in writing after giving him reasonable opportunity of being heard.

49-F. Removal of member of Board of Society by General Body in certain circumstances – Notwithstanding anything contained in this Act or rules made thereunder, any member of the Board of the Society who has acted adversely to the interest of the Society may on the basis of a report by the Registrar or otherwise be removed by a resolution of the General Body passed at its meeting by a majority of not less than two-third of the members present and voting, in such a manner as may be prescribed, by the Registrar in this regard :

Provided that, the person concerned shall not be removed unless he/she has been given a reasonable opportunity of making representation in the matter :

Provided further that, such resolution shall not lie within a period of one year from the date on which he/she has taken charge of his respective office or such resolution is rejected or accepted by the General Body,

as the case may be.”

37. In the instant case, the provisions of Section 49(8) of the Act of 1960 has been invoked by the learned Registrar, Co-operative Societies, finding that respondent No.1 has become ineligible to be Director of Gopal Dugdh Sahakari Samiti Maryadit, Korba, as Board of Directors of that Society has ceased to exist by the order of the Deputy Registrar, Co-operative Societies, Korba, dated 21-9-2015; consequently he also ceased to be a Director of Zila Sahakari Kendriya Bank Maryadit, Bilaspur, and quorum of the Board of Directors falling short of less than fifty percent as required by Rule 43(6) of the Chhattisgarh Co-operative Societies Rules, 1962, the Board of Directors of the said Co-operative Bank has ceased exist under Section 49(8) of the Act of 1960, as such, the provisions contained in Sections 19-AA and 49-F of the Act of 1960, are not attracted at all. Therefore, the learned Co-operative Tribunal is absolutely unjustified in holding that Sections 19-AA and 49-F of the Act of 1960 is attracted and opportunity of hearing ought to have been granted to respondent No.1 before passing the order dated 21-9-2015 and further erred in setting aside the order dated 21-9-2015 passed by the Registrar, Co-operative Societies.

38. There is no another reason for not upholding the impugned order passed by the Co-operative Tribunal. It is stated at the Bar that respondents No.2, 8, 10, 4, 5, 7, 11 and 12 have been elected as representatives of the Primary Society and they have been nominated as representatives of the District Co-operative Central Bank, Bilaspur on 27-6-2017, 3-4-2017, 3-7-2017, 26-6-2017, 3-7-

2017, 3-7-2017, 10-7-2017 and 25-6-2017, respectively, and it is the right of newly elected representatives to elect their own President and Vice-President. This fact has not been considered by the learned Co-operative Tribunal while passing the impugned order which had material bearing on the appeal preferred by respondent No.1 and on that count also the order impugned deserves to be set-aside.

39. As a fallout and consequence of the above-stated discussion, the impugned order passed by the learned Co-operative Tribunal cannot be sustained and is hereby quashed.

40. The writ petition is allowed to the extent indicated herein-above leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge