IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2301 OF 2018

1. Keda Tanaji Aher,
   Age Adult, Occ Agriculture
   R/o. Deola, Tal. Deola,
   District Nashik.

2. Narendra Bhikaji Darade,
   Age Adult, Occ Agriculture,
   R/o. Babhulgaon, Tal. Yeola,
   District Nashik.

3. Suhas Dwarkanath Kande,
   Age Adult, Occ Agriculture,
   R/o Nashik Silver Plaza,

4. Kishor Bhikaji Darade,
   Age Adult, Occ Agriculture,
   R/o, Old Mali Lane, House No.3426.

5. Dhananjay Motiram Pawar,
   Age Adult, Occ Agriculture,
   R/o. Navi Bej, Tal. Kalwan,
   District Nashik.

6. Jiva Pandu Gavit.
   Age Adult, Occ Agriculture,
   R/o. Alangun, Tal. Surgana,
   District Nashik.

7. Ganpat Gangadhar Patil,
   Age Adult, Occ Agriculture,
   R/o. Jaulake Vani,Tal. Dindori,
   District Nashik.

8. Shivaji Pandurang Chumbale,
   Age Adult, Occ Agriculture,
   R/o. Pandurang Niwas, Agra Road,

Lekha Nagar, Nashik, District Nashik

9. Sachin Shankarrao Savant,
Age Adult, Occ Agriculture,
R/o. 45, Sanmitra Housing Socity,
Nampur Road, Satana, Tal. Baglan,
District Nashik.

10. Parvej Mohamad Yusuf Kokani,
Age Adult, Occ Agriculture,
R/o.500, Indira Gandhi Path,
Teli Galli, Tal. Trembakeshwar,
District Nashik.

11. Dr.Shobha Dinesh B achhav,
Age Adult, Occ Agriculture,
R/o.Dhanvantari Hospital, Peth
Road, Panchavati, Nashik.

12. Shirishkumar Vasantrao Kotwal,
Age Adult, Occ Agriculture,
R/o. Chandwad, Tal. Chandwad,
District Nashik.

13. Namdeo Govind Halkandar,
Age Adult, Occ Agriculture,
R/o.Malegaon, Tal. Peth,
District Nashik.

14. Sandeep Gulve,
Age Adult, Occ Agriculture,
R/at Balegaon Kurhe, Post Aswali,
Tal.Igatpuri, District Nashik.

15. Anil Saheb rao Kadam,
Age Adult, Occ Agriculture,
R/o. Ozarming, Tal. Nifad,
District Nashik.

16. Dilip Shankarrao Bankar,
Age Adult, Occ Agriculture,

R/o. Shivajinagar, District Nashik.

17. Manikrao Shivajirao Kokate,
Age Adult, Occ Agriculture,
R/at Somthane, Taluka Sinnar,
District Nashik.

18. Seema Mahesh Hiray,
Age Adult, Occ Agriculture,
R/o. “Tulaja” Bungalow,Savarkar Nagar,
Gangapur Road, Nashik.

19. Harishchandra Deoram Chavan,
Age Adult, Occ Agriculture,
R/ at Pratapgad, Taluka Surgana,
District Nashik. ... Petitioners

Versus

1. State of Maharashtra
Through the Secretary, Department
of Cooperation having his office at
Mantralaya, Mumbai 400 032.

2. Commissioner for Cooperation &
Registrar of Cooperative Societies,
Maharashtra State, Pune having
his office at Pune.

3. Divisional Joint Registrar,
Cooperative Societies, Nashik Dn.
Nashik.

4. Nashik District Central Cooperative
Bank Ltd. Having its office at
Dwaraka Circle, Mumbai Agra
Road, Nashik 422 011 through its
Chief Executive Officer.

5. Reserve Bank of India
Through its Chief General Manager

Department of Cooperative Banks
Regulations, Central Office C-7
1st Floor, Bandra Kurla Complex
Bandra (East), Mumbai 400 051.

6. Sharad Shelipalan Sanstha
Through Smt.Anjanbai Khemrj Kor
Age 62 years, Occ. Agriculture
R/at : Ambasan,Taluka Baglan
District Nashik.

7. ShirasgaonAdivasi Vividh
Karyakari Sanstha Ltd.
Through Ramdas Kisan Mahalke
Age 60 years, , Occ Agriculture,
R/at Post Shirasagaon
Taluka Trambak, District Nashik.

8. Mastya – Utpadak Sahakari Sanstha,
Through Babanrao Namdeo Salve
Age 47 years, Occ. Agriculture,
R/At Post : Chandgaon, Post Kusur
Taluka – Yeola, District Nashik.

9. Hitesh Sarjerao Pawar,
Age Adult, R/at. Dasane,
Taluka – Malegaon,
District Nashik.

10. Yashwant Majoor Va Bandhkam
Sahakari Sanstha Maryadit, Niwane
Tal : Kalvan, District Nashik
Through Chairman
Sunil Yashwant Deore,
Age47 years, Occ. Agriculture
R/of. Kalvan, District Nashik.

11. Shri Govind Devman Pagar
Age 69 years, Occ. Agriculture
R/of. Kalvan, District Nashik.
President Swabhimani Shetkari

Sanghatana, Nashik. ... Respondents

ALONG WITH
CIVIL APPLICATION NO. 271 OF 2019
IN
WRIT PETITION NO. 2301 OF 2018

1. State of Maharashtra
Through the Secretary, Department
of Cooperation having his office at
Mantralaya, Mumbai 400 032.

2. Commissioner for Cooperation &
Registrar of Cooperative Societies,
Maharashtra State, Pune having
his office at Pune.

3. Divisional Joint Registrar,
Cooperative Societies, Nashik Dn.
Nashik. ... Applicants

Versus

1. Keda Tanaji Aher,
Age Adult, Occ Agriculture
R/o. Deola, Tal. Deola,
District Nashik.

2. Narendra Bhikaji Darade,
Age Adult, Occ Agriculture,
R/o. Babhulgaon, Tal. Yeola,
District Nashik.

3. Suhas Dwarkanath Kande,
Age Adult, Occ Agriculture,
R/o Nashik Silver Plaza,

4. Kishor Bhikaji Darade,
Age Adult, Occ Agriculture,
R/o, Old Mali Lane, House No.3426.

5. Dhananjay Motiram Pawar,
   Age Adult, Occ Agriculture,
   R/o. Navi Bej, Tal. Kalwan,
   District Nashik.

6. Jiva Pandu Gavit.
   Age Adult, Occ Agriculture,
   R/o. Alangun, Tal. Surgana,
   District Nashik.

7. Ganpat Gangadhar Patil,
   Age Adult, Occ Agriculture,
   R/o. Jaulake Vani,Tal. Dindori,
   District Nashik.

8. Shivaji Pandurang Chumbale,
   Age Adult, Occ Agriculture,
   R/o. Pandurang Niwas, Agra Road,
   Lekha Nagar, Nashik, District Nashik

9. Sachin Shankarrao Savant,
   Age Adult, Occ Agriculture,
   R/o. 45, Sanmitra Housing Socity,
   Nampur Road, Satana, Tal. Baglan,
   District Nashik.

10. Parvej Mohamad Yusuf Kokani,
    Age Adult, Occ Agriculture,
    R/o.500, Indira Gandhi Path,
    Teli Galli, Tal. Trembakeshwar,
    District Nashik.

11. Dr.Shobha Dinesh B achhav,
    Age Adult, Occ Agriculture,
    R/o.Dhanvantari Hospital, Peth
    Road, Panchavati, Nashik.

12. Shirishkumar Vasantrao Kotwal,
    Age Adult, Occ Agriculture,
    R/o. Chandwad, Tal. Chandwad,
    District Nashik.

13. Namdeo Govind Halkandar,
Age Adult, Occ Agriculture,
R/o.Malegaon, Tal. Peth,
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14. Sandeep Gulve,
Age Adult, Occ Agriculture,
R/at Balegaon Kurhe, Post Aswali,
Tal.Igatpuri, District Nashik.

15. Anil Saheb rao Kadam,
Age Adult, Occ Agriculture,
R/o. Ozarming, Tal. Nifad,
District Nashik.

16. Dilip Shankarrao Bankar,
Age Adult, Occ Agriculture,
R/o. Shivajinagar, District Nashik.

17. Manikrao Shivajirao Kokate,
Age Adult, Occ Agriculture,
R/at Somthane, Taluka Sinnar,
District Nashik.

18. Seema Mahesh Hiray,
Age Adult, Occ Agriculture,
R/o. “Tulaja” Bungalow,Savarkar Nagar,
Gangapur Road, Nashik.

19. Harishchandra Deoram Chavan,
Age Adult, Occ Agriculture,
R/ at Pratapgad, Taluka Surgana,
District Nashik.

20. Nashik District Central Cooperative
Bank Ltd. Having its office at
Dwaraka Circle, Mumbai Agra
Road, Nashik 422 011 through its
Chief Executive Officer.

21. Reserve Bank of India
Through its Chief General Manager
Department of Cooperative Banks
Regulations, Central Office C-7
1st Floor, Bandra Kurla Complex
Bandra (East), Mumbai 400 051. ... Respondents

ALONG WITH
CIVIL APPLICATION NO. 1275 OF 2018
IN
WRIT PETITION NO. 2301 OF 2018

1. Yashwant Majoor Va Bandhkam
Sahakari Sanstha Maryadit, Niwane
Tal : Kalvan, District Nashik
Through Chairman
Sunil Yashwant Deore,
Age47 years, Occ. Agriculture
R/of. Kalvan, District Nashik.

2. Shri Govind Devman Pagar
Age 69 years, Occ. Agriculture
R/of. Kalvan, District Nashik.
President Swabhimani Shetkari
Sanghatana, Nashik. ... Applicants/
Intervenors

IN THE MATTER OF BETWEEN **:-**

1. Keda Tanaji Aher,
Age Adult, Occ Agriculture
R/o. Deola, Tal. Deola,
District Nashik.

2. Narendra Bhikaji Darade,
Age Adult, Occ Agriculture,
R/o. Babhulgaon, Tal. Yeola,
District Nashik.

3. Suhas Dwarkanath Kande,
Age Adult, Occ Agriculture,

R/o Nashik Silver Plaza,

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5. Dhananjay Motiram Pawar,
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6. Jiva Pandu Gavit.
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R/o. Alangun, Tal. Surgana,
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7. Ganpat Gangadhar Patil,
Age Adult, Occ Agriculture,
R/o. Jaulake Vani,Tal. Dindori,
District Nashik.

8. Shivaji Pandurang Chumbale,
Age Adult, Occ Agriculture,
R/o. Pandurang Niwas, Agra Road,
Lekha Nagar, Nashik, District Nashik

9. Sachin Shankarrao Savant,
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10. Parvej Mohamad Yusuf Kokani,
Age Adult, Occ Agriculture,
R/o.500, Indira Gandhi Path,
Teli Galli, Tal. Trembakeshwar,
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11. Dr.Shobha Dinesh B achhav,
Age Adult, Occ Agriculture,
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Tal.Igatpuri, District Nashik.

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Age Adult, Occ Agriculture,
R/o. Ozarming, Tal. Nifad,
District Nashik.

16. Dilip Shankarrao Bankar,
Age Adult, Occ Agriculture,
R/o. Shivajinagar, District Nashik.

17. Manikrao Shivajirao Kokate,
Age Adult, Occ Agriculture,
R/at Somthane, Taluka Sinnar,
District Nashik.

18. Seema Mahesh Hiray,
Age Adult, Occ Agriculture,
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Gangapur Road, Nashik.

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Age Adult, Occ Agriculture,
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Versus

1. State of Maharashtra
Through the Secretary, Department
of Cooperation having his office at
Mantralaya, Mumbai 400 032.

2. Commissioner for Cooperation &
Registrar of Cooperative Societies,
Maharashtra State, Pune having
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Bank Ltd. Having its office at
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5. Reserve Bank of India
Through its Chief General Manager
Department of Cooperative Banks
Regulations, Central Office C-7
1st Floor, Bandra Kurla Complex
Bandra (East), Mumbai 400 051. ... Respondents

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Mr. Ashutosh A. Kumbhakoni, Advocate General a/w Mr. Akshay Shinde, 'A' Panel a/w Mr. Yuvraj D. Patil, AGP for the Applicants-State in CAW/271/2019 and for Respondent Nos.1 to 3 in WP/2301/2018.
Mr. Anil V. Anturkar, Senior Advocate a/w Mr. Yatin Malvankar i/by Mr.I. M. Khairdi for the Petitioners in WP/2301/2018.
Mr. Ritesh Wagh h/for Mr. Tejpal S. Ingale for the Applicants in CAW/1275/2018.
Mr. Shrinivas S. Patwardhan a/w Mr. Bhooshan R. Mandlik for the Respondent No.4.
Mr. Venkatesh Dhond, Senior Advocate a/w Mr. Prasad Shenoy,

Ms.Aditi Phatak and Ms. Kirti Ojha i/by Udwadia and Co. for the Respondent No.5-Reserve Bank of India.
Mr. Girish S. Godbole i/by Mr. Vishwajeet Mohite and Ms. Pooja Mankoji for the Respondent Nos. 6 and 7 in WP/2301/2018.
Mr. Girish S. Godbole i/by Mr. Ketan Joshi and Ms. Pooja Mankoji for the Respondent Nos. 8 and 9 in WP/2301/2018.

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CORAM : R. D. DHANUKA &
V. G. BISHT, JJ.
RESERVED DATE : 27th FEBRUARY, 2021
PRONOUNCED DATE: 19th MARCH, 2021

JUDGMENT (*Per R. D. Dhanuka, J.*) :-

. Learned Advocate General appearing for the respondent nos.1 to 3 waives service. Learned counsel appearing for respondent no.4 waives service. Learned senior counsel appearing for respondent no.5 waives service. Learned counsel appearing for respondent nos. 6 to 11 waives service. By consent of parties, this Writ Petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the petitioners seek a writ of certiorari or any other appropriate writ, order or direction in the nature of writ of certiorari thereby quashing and setting aside the order dated 29th December, 2017 passed by the Commissioner for Co-operation and Registrar of Co-operative Societies-respondent no.2 herein under Section 110A(1)(iii) of the Maharashtra Co-operative Societies Act, 1960 (for short 'the MCS Act'). Civil Application No. 271 of 2019 is filed by the respondent no.3 *inter-alia* praying for recalling or vacating the *ad-interim* order dated 6th February, 2018 passed by this Court in the writ petition and to permit the administrator to continue the function, in view of charge

taken on 30th December, 2017. Some of the relevant facts for the purpose of deciding the writ petition are as under :-

3. The petitioners claim to be the Board of Directors of the respondent no.4 i.e. Nashik District Central Co-operative Bank Ltd. registered under provisions of the said MCS Act. Section 56 of the Banking Regulation Act, 1949 which was introduced in the year 1966 by way of amendment, made the provisions in the said Banking Regulation Act applicable to the Co-operative Banks with such modification as set out therein.

4. It is the case of the respondents that NABARD had examined the affairs of the respondent no.4 bank under Section 35(6) of the Banking Regulation Act, 1949 which refers to its financial position as on 31st March, 2016 and submitted a detailed report along with issues of supervisory concerns. The NABARD was of the opinion that the Board of Directors of respondent no.4 had affected the financial health of the respondent no.4.

5. On 29th April, 2017, the office of the Divisional Joint Registrar, Co-operative Societies addressed a letter to the Commissioner for Co-operation and Registrar of Co-operative Societies pointing out the financial irregularities and the loss suffered by the respondent no.4 bank and that the respondent no.4 bank was left with no liquidity and was also not in a position to clear the daily transaction. It was stated that in the larger interest of the members of bank particularly farmers, it was necessary to remove the existing inefficient Board of Directors

under Section 110A of the MCS Act and to appoint an Administrator immediately. The Divisional Joint Registrar, Co-operative Societies requested to submit proposal to the Reserve Bank of India (hereinafter referred as 'RBI') under Section 110A of the MCS Act for removal of the present Board of Directors and appoint an administrator/ administrative board to look after the day-to-day affairs of the respondent no.4.

6. On 6th July, 2017, the said NABARD prepared a report and sought opinion of the General Manager of the Additional Chief Secretary, Corporation, Government of Maharashtra requesting the Government to advice the respondent no.4-bank to augment capital funds to achieve 9% CRAR, reduce NPAs, ensure KYC/AML compliance etc to improve the financial position and methods of operation in a time bound manner. The NABARD also requested to nominate NABARD and Maharashtra RO, Pune about the action proposed to be taken in the matter. A copy of the said opinion was also sent to the Reserve Bank of India (for short 'RBI'), the Registrar of Co-operative Societies and the Managing Director, the Maharashtra State Co-operative Bank Ltd. and also to respondent no.4.

7. On 12th July, 2017, the office of the Commissioner for Co-operation and Registrar of Co-operative Societies, Maharashtra State addressed a letter to the RBI pointing out the report submitted by NABARD and stating that in order to secure proper management of the respondent no.4 and to protect the interest of the depositors as well as that of the bank, it was necessary to prevent further deterioration in the

financial position of the bank and that the Board of Directors of the respondent no.4 bank was required to be superseded under Section 110A (iii) of the MCS Act as proposed by the Divisional Joint Registrar, Pune.

8. On 11th October, 2017, the NABARD addressed a letter to the RBI and pointed out the financial irregularities committed by the respondent no.4 and recommended the RBI to consider recommending the Government of Maharashtra for supersession of the Board of Directors of the respondent no.4 under Section 110A(iii) of the MCS Act. The RBI was also requested to consider recommending the Government of Maharashtra for constitution of a ‘Board of Administrators’ to look into the affairs of the respondent no.4.

9. On 19th December, 2017, the RBI passed an order stating that in the public interest and for preventing the affairs of respondent no.4 bank being conducted in a manner detrimental to the interest of the depositors and for securing the proper management of the said bank required the Commissioner for Corporation and Registrar, Co-operative Societies, Maharashtra State to make an order for supersession of the Board of Directors of the respondent no.4 and for appointing ‘Board of Administrators’, in terms of the provisions of sub-section (1)(iii) of Section 110A of the MCS Act.

10. On 27th December, 2017, the RBI passed an order and addressed a letter to the Commissioner for Co-operation informing of Co-operative Societies, Government of Maharashtra informing that having

examined the financial position of the said bank and other relevant factors as pointed out by NABARD in its inspection report pursuant to the financial position as on 31st March, 2016 and unaudited financial position as on 31st March, 2017. The RBI enclosed a requisition dated 19th December, 2017 from its Director for supersession of the Board of Directors of respondent no.4 and for appointment of 'Board of Administrators' and directed the Registrar, Co-operative Societies for necessary action under Section 110A(1)(iii) of the MCS Act.

11. On 29th December, 2017, the Commissioner for Co-operation and Registrar, Co-operative Societies, Maharashtra State, Pune passed an order as per the directives issued by RBI under Section 110A(1)(iii) of the MCS Act thereby superseding the then Board of Directors of the respondent no.4 and appointing Shri Milind Bhalerao, Divisional Joint Registrar, Co-operative Societies, Nashik as Administrator in place of the Board of Directors to manage the affairs of the bank. By the said order, the Administrator was directed to take the charge immediately till further order. It was made it clear that during the said period, Administrator shall take corrective measures in the working of the said bank. The said order dated 29th December, 2017 passed by the Commissioner for Co-operation and Registrar of Co-operative Societies is impugned by the petitioners in this writ petition.

12. Mr. Anturkar, learned senior counsel for the petitioners submits that respondent no.2 i.e. Commissioner for Co-operation and Registrar of Co-operative Societies (hereinafter referred to as 'Registrar') could not have superseded the Board of Directors of respondent no.4 without

applying his mind and without coming to a conclusion whether supersession was necessary or whether suspension of the Board of Directors would be sufficient. He submits that the subject 'co-operation' is to be found in item 32 of the list II (State list), whereas the subject 'banking' is to be found at item 45 of the list I (Central list). He relied upon Article 243 ZL of the Constitution of India and would submit that there is a Constitutional injunction against the supersession of the Board of Directors of Co-operative Society where there is no Government shareholding or loan or financial assistance or any guarantee. He submits that there is no Government shareholding or loan or financial assistance or any guarantee by the Government given on behalf of the respondent no.4 bank. The RBI could not have passed the impugned order under Section 110A of the MCS Act without satisfying itself and recording its satisfaction about existence of circumstances postulated under Section 13D of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (for short 'the said DICGC Act').

13. It is submitted by the learned senior counsel that though the RBI by the said illegal order directed the Registrar to appoint the Board of Administrators for the respondent no.4 bank, the said Registrar, Co-operative Societies, appointed only an Administrator. The Registrar of Co-operative Societies thus even did not comply with the directives issued by the RBI. Learned senior counsel placed reliance on Article 19(1)(c) of the Constitution of India and would submit that w.e.f. 15th February, 2012, right to form a society is enshrined as a fundamental right. The impugned order is in violation of Article 19(1)(c) of the

Constitution of India.

14. Learned senior counsel placed reliance on Article 243 ZL and would submit that even if the RBI could have superseded the Board of Directors, such action could be taken only on those five ground specifically prescribed therein and not beyond those grounds. None of those grounds were satisfied in this case. He submits that even otherwise directives issued by the RBI would not fall under any of those grounds. He invited our attention to the four provisos to Article 243 ZL of the Constitution of India. He submits that since the respondent no.4 is a co-operative society being formed under the provisions of MCS Act, the provisions of Article 243 ZL would apply with full force.

15. It is submitted that the first proviso to Article 243 ZL mandates that the board of any co-operative society shall not be superseded or kept under suspension, where there is no government share holding or loan or financial assistance or any guarantee by the Government in favour of the respondent no.4 has not availed any financial assistance from the Government. There is an express prohibition by a constitutional provision under Article 243 ZL. In spite of such prohibition, the RBI issued directives to the said Registrar, Co-operative Societies to supersede the Board of Directors of the respondent no.4 and appoint a Board of Administrators.

16. It is submitted by the learned senior counsel that Chapter XA of the MCS Act is introduced in the said Act by the amendment in the

form of Maharashtra Act 54 of 1969 and part IX-B of the Constitution of India inserted by the Constitution (97th Amendment, Act), 2011 w.e.f. 15th February, 2012. The constitutional amendment is effected at much later point of time then the Maharashtra Act, 1969. If the said Registrar would have given an opportunity to the petitioners who were the then Board of Directors of respondent no.4, the petitioners could have pointed out these provisions of law for consideration of the said Registrar.

17. The learned senior counsel relied upon the second proviso to Article 243ZL and would submit that the provisions of the Banking Regulation Act shall also apply to the co-operative bank addition to Article 243ZL.

18. Learned senior counsel placed reliance on Article 243ZL of the Constitution of India and would submit that since there is repugnancy in the provisions of Article 243ZL and Section 110A of the MCS Act, the provisions of Article 243ZL of the Constitution of India would prevail. The Registrar, Co-operative Societies cannot act as a rubber stamp of the RBI.

19. Learned senior counsel invited our attention to various judgments and would submit that though all these judgments holding that the Registrar, Co-operative Societies is bound to follow the directives of Reserve Bank of India under Section 110A(1)(iii) of the MCS Act and neither any show cause notice nor any hearing was contemplated, were delivered prior to the amendment to Section 110A

introduced in the year 2013 and are thus not binding on this Court.

20. Learned senior counsel submits that the judgment delivered by learned Single Judge of this Court in case of ***Namdeo s/o Natha Sanap and Anr. v/s. The State of Maharashtra and Ors., 2015(1) Mh.L.J. 838*** was though delivered after amendment to Section 110A of the MCS Act in the year 2013, the effect of the amendment to Section 110A in the year 2013 was not brought to the notice of the learned Single Judge. The said judgment delivered by the learned Single Judge of this Court in the said matter is thus *per incuriam* and would not be binding to this Court.

21. Learned senior counsel placed reliance on the judgment of Supreme Court in case of ***Vipulbhai M.Chaudhary vs. Gujarat Co-operative Milk Marketing Federation Limited & Others, (2015) 8 SCC 1*** and more particularly paragraphs 2, 24, 26, 42, 46, 47, 48 and 53 in support of the submission that in view of the inconsistency between Article 243ZL and other articles in that Chapter and Section 110A of the MCS Act, no reliance could be placed on Section 110A of the MCS Act by the Registrar, Co-operative Societies in the impugned orders.

22. The State Government did not carry out any corresponding amendment in line with the said Article 243ZL in Section 110A or in any other provision of MCS Act which ought to have been carried out within a period of one year from the date the said Article 243 ZL having brought into effect in the Constitution of India. The limited

amendment though carried out in the year 2013 to Section 110A of the MCS Act is not in conformity with the said Article 243 ZL.

23. The next submission of the learned senior counsel for the petitioner is that under Section 110A(1)(iii) of the MCS Act, the Registrar, Co-operative Societies has discretion either to order for suspension or for supersession of the Board of Directors, as the case may be, and to order the appointment of the administrator in its place for the period not exceeding one year. He submits that the words ‘as the case may be’ would clearly indicate that the said power is not discretionary and thus the directive issued by the RBI to the Registrar, Co-operative Societies to suspend or supersede the Board of Directors is not binding upon the Registrar, Co-operative Societies.

24. When this Court enquired whether according to the learned senior counsel, the Registrar could exercise his discretion either to supersede or to suspend though the RBI had issued directives to supersede the power of the Board of Directors, learned senior counsel submitted that if the RBI would have issued the directives to supersede the Board of Directors, the Registrar in that event could have exercised the discretion not to supersede the Board of Directors but to pass an order of suspension of the Board of Directors. He submits that after amendment to Section 110A (iii) of the MCS Act having brought into the effect w.e.f. 14th February, 2013, the directives issued by the RBI to supersede the Board of Directors are not binding upon the Registrar, Co-operative Societies. He submits that the Registrar, the Co-operative Societies was thus bound to follow the principles of natural justice by

issuing a show cause notice first followed by personal hearing to the petitioners before passing any order of suspension or supersession as the case may be.

25. Learned senior counsel placed reliance on the definition of the `banking company’ under Section 5 (c) of which Banking Regulation Act which provides that the banking company means any company which transact the business of banking in India. He also relied upon the definition of the ‘company’ defined under Section 5(d) of the said Banking Regulation Act which provides that the company means a company defined under Section 3 of the Companies Act, 1956 and includes the foreign company within the meaning of Section 591 of that Act. He submits that the Co-operative Bank does not come under the purview of the Banking Regulation Act, 1949. He invited our attention to Section 56(ZAA), Section 36(AAB) and Section 36(AAC) of the Banking Regulation Act. He initially submitted that since there is no provision in the Banking Regulation Act, 1949, empowering the RBI to issue directive to the Registrar, Co-operative Societies to supersede or suspend the Board of Directors, the RBI could not have issued any directives to the Registrar to suspend or supersede the Board of Directors of the respondent no.4 bank under Section 110A of the MCS Act. Learned senior counsel however later urged that since the RBI has power to issue directives to suspend or remove the director of a co-operative bank under the provisions of the Banking Regulation Act, the RBI could not have exercised power under the provisions of State Act, i.e. Section 110A(1)(iii) of the MCS Act.

26. Mr.Dhond, learned senior counsel for the RBI, on the other hand, invited our attention to the prayer clause (a) of the writ petition filed by the petitioners and would submit that the petitioners have only impugned the order dated 29th December, 2017 passed by the Commissioner for Co-operation and Registrar of Co-operative Societies in the writ petition and has not challenged the directives issued by the RBI to the Registrar, Co-operative Societies to supersede the Board of Directors of the respondent no.4 bank. He submits that the petitioners thus cannot be allowed to challenge the powers of the RBI under the provisions of the MCS Act thereby issuing directives to the Registrar, Co-operative Societies to supersede the Board of Directors of the respondent no.4 bank.

27. It is submitted that the arguments of the petitioners that the RBI has no power either under the Banking Regulation Act or under the provisions of the MCS Act are thus academic and cannot be considered by this Court. He submits that the only question which can be considered by this Court in this petition is whether the Registrar, Co-operative Societies could have passed an order superseding the Board of Directors of the respondent no.4 bank under Section 110A(1)(iii) of the MCS Act on the basis of such directives issued by the RBI or not. He submits that though the petitioners have annexed a copy of the directives issued by the RBI in the writ petition, there is no prayer impugning the said order.

28. Learned senior counsel placed reliance on the judgment of the Hon’ble Supreme Court in case of ***Reserve Bank of India vs.***

M.Hanumaiah and others, (2008) 1 SCC 770 and in particular paragraphs 2, 3, 5, 10 and 11 and would submit that the Hon'ble Supreme Court in the said judgment had construed various provisions of the Banking Regulation Act and had also adverted to the prior judgment of the Hon'ble Supreme Court in case of Palaidasa Bank in which the Hon'ble Supreme Court had considered the provisions to Section 110A of the Maharashtra Co-operative Societies Act, 1960 and approved the judgment delivered by this Court in case of ***Mahendra Husanji Gadkari vs. State of Maharashtra, (1992) 2 Mah.L.J. 1442*** and in case of ***Ishwardas Premkumar Choradiya v/s. State of Maharashtra, 2002 (4) BCR 1***.

29. It is submitted that the Hon'ble Supreme Court in the said judgment has categorically held that on receipt of a requisition in writing from the Reserve Bank of India the Registrar Cooperative Societies is statutorily bound to issue the order of supersession of the Board of Directors of the cooperative bank. At that stage the affected bank/its Board of Directors has no right of hearing or to raise any objections. It is held that once the RBI issues the directives to the Registrar, Co-operative Societies to suspend or supersede the Board of Directors of the co-operative bank, the Registrar, Co-operative Society has no discretion to refuse to implement the said directives issued by the RBI.

30. Learned senior counsel invited our attention to the amendment in sub-section 3 of Section 110A inserted w.e.f. 14th February, 2013 and would submit that the words 'suspension' or 'supersession of the Board

of Directors as the case may be' is the discretion given to the RBI while issuing such directives and not to the Registrar, Co-operative Society as sought to be canvassed by the learned senior counsel for the petitioners. The Registrar, Co-operative Societies has no discretion to select either the suspension or supersession. If the RBI directs the Registrar, Co-operative Society either to suspend or supersede the Board of Directors, the directions as issued by the RBI have to be abided by the Registrar, Co-operative Society.

31. Learned senior counsel invited our attention to Section 102 of the MCS Act and would submit that under the said provision the Registrar, Co-operative Societies is empowered to pass an order of winding up of a co-operative bank in the circumstances setout therein. The Registrar, Co-operative Societies while exercise such powers for winding up of the Co-operative bank, has to give an opportunity to the society and to the creditors of the society if any of being heard before passing the final order of winding up or confirming the interim order. The said provision is an independent provision and not in any manner connected with the binding directives of the RBI required to be followed by the Registrar mandatorily and cannot be mixed up with the provisions of Section 110A of the MCS Act. The legislative intent to provide such different provision is clear. He submits that in case of the co-operative society rigors of the provisions of Section 110A of the MCS Act applies.

32. Learned senior counsel invited our attention to Section 38(1)(b) of the Banking Regulation Act and would submit that under the said

provision,if any application for winding up of the banking company is made by the RBI under Sections 37 or 38 of the Banking Regulation Act, 1949 before the High Court, the High Court is bound to pass an order of winding up of such banking company. Even the High Court in that event has no discretion not to pass an order of winding up. Similar power is prescribed under Section 110A(1)(iii) of the MCS Act in the RBI to direct the Registrar to supersede or suspend the Board of Directors of the Co-operative Bank.

33. It is submitted by the learned senior counsel that by inserting the word 'suspension' by amendment to Section 110A(1)(iii) of the MCS Act in the year 2013, the legislature has introduced one more mode of action in addition to the power of supersession of the Board of Directors. The said amendment cannot be construed to mean that the discretionary power is provided to the Registrar, Co-operative Societies either to follow the directives issued by the RBI or not.

34. Learned senior counsel for the RBI invited our attention to the Article 243 ZL of the Constitution of India which provided for suspension or supersession of board of interim management of the Co-operative Societies on various grounds set out therein. He submits that the RBI or the Registrar of the Co-operative Societies has not exercised any power under the said provisions but has exercised the powers under the MCS Act. In the fourth proviso, it was provided that in case of a co-operative society, other than a multi-State co-operative society, carrying on the business of banking, the provisions of that clause shall have the effect as if for the words "six months", the words "one year"

had been substituted. He submits that the embargo under the Article 243 ZL that no power can be exercised for supersession or suspension for a period of 6 months will have to be read with the proviso under the said Article and the said period of six months would not apply if any of the grounds under the first proviso was satisfied.

35. It is submitted that the second proviso in this case would not apply in view of the fact that in this case there was no Government shareholding or loans or financial assistance or any guarantee issued by the Government insofar as the respondent no.4 is concerned. He submits that under third proviso, in case of the co-operative society carrying on the business of the banking, the provisions of the Banking Regulation Act, 1949 shall apply in addition to the provision of the said Article 243 ZL. The provisions of the Banking Regulation Act are preserved by virtue of the said third proviso to Article 243 ZL of the Constitution of India. The said Article 243 ZL does not affect the power of the RBI to take any action under the provisions of the Banking Regulation Act or under Section 110A(1)(iii) of the MCS Act.

36. Learned senior counsel placed reliance on the judgment delivered by the Andhra Pradesh High Court in case of ***Reserve Bank of India, Central Office, Urban Banks Department, Mumbai vs. Pattem Surya Prakash Rao & Others, 2007 SCC OnLine AP 736.*** He submits that the Full Bench of the Andhra Pradesh High Court in the said judgment has considered the similar submissions made by the learned counsel for the petitioners in this case after adverting to various judgments of the Hon’ble Supreme Court. He submits that the State

Government has already carried out amendment in Section 110A(1)(iii) of the MCS Act w.e.f. 14th February, 2013 in line with the Article 243ZL of the Constitution of India by increasing the period to one year. There is no inconsistency in the said Article 243ZL of the Constitution of India and the amendment inserted in Section 110A (1) (iii) of the MCS Act as sought to be canvassed by the learned senior counsel for the petitioners.

37. Mr. Kumbhakoni, learned Advocate General on behalf of the State of Maharashtra on the other hand supported the case of the RBI in this writ petition and would submit that there is no inconsistency in Article 243ZL of the Constitution of India and Section 110A of the MCS Act. The State Government has amended Section 110A(1)(iii) of the MCS Act within one year from the date of the amendment of Article 243ZL and brought Section 110A of the MCS Act at par with Article 243ZL of the Constitution of India. He submits that the option granted under Section 110A(1)(iii) of the MCS Act to suspend or supersede the Board of Directors of an insured co-operative bank vest with the RBI only and not with the Registrar under Section 110A(1)(iii) of the MCS Act. He submits that all the judgments relied upon by Mr. Dhond, learned senior counsel for the RBI declared prior to the said date of the amendment and even thereafter still hold good in law and are not per incuriam as sought to be canvassed by the learned senior counsel for the petitioners.

38. Learned Advocate General strongly placed reliance on the word ‘shall’ in Section 110A(1)(iii) and would submit that the said word

itself would clearly indicate that the directives issued by the RBI in the public interest or for preventing the affairs of the banking conducted in the manner detrimental to the interests of the depositors or for securing the proper management of the bank to the Registrar for suspension or supersession of the Board of Directors and for the appointment of an administrator in its place is binding on the Registrar, Co-operative Societies, mandatory and not discretionary. In this case, the RBI had issued the directives to supersede the Board of Directors of the respondent no.4 bank and to appoint a Board of Administrators.

39. It is submitted that merely because the Registrar, Co-operative Societies appointed only a sole administrator and not the Board of Administrators cannot be a ground for setting aside the order passed by the Registrar, Co-operative Societies. He submits that the Registrar, Co-operative Societies was right in complying with the mandatory directives issued by the RBI by superseding the Board of Directors of respondent no.4 bank and by appointing an administrator.

40. Mr. Godbole, learned counsel for the respondent no.6 to 9 also opposed the submissions made by the learned senior counsel for the petitioners. Learned counsel placed reliance on the judgment delivered by a Division Bench of this Court on 31st January, 2019 in case of ***Shri Bharat Sudam Sutkar and Anr. v/s. The State of Maharashtra, through Department of Cooperation and Ors.*** in Writ Petition No. 7131 of 2018 and other companion matters and in particular paragraphs 2 and 5 to 8 in support of the submission that the directions issued by the RBI under Section 110A(1)(iii) of the MCS Act are binding on the

Registrar, Co-operative Societies and has no discretion in the matter but to supersede and appoint an administrator.

41. Insofar as the reliance placed by the learned senior counsel for the petitioners on Article 243 ZL of the Constitution of India is concerned, it is submitted that the petitioners not having challenged the directives issued by the RBI to the Registrar to supersede the Board of Directors of the respondent no.4, the petitioners cannot be allowed to urge that the exercise of powers by RBI under Article 243 ZL for supersession of board and for appointment an administrator was not justified. He submits that second proviso to the said Article is subject to the third proviso.

42. Learned counsel placed reliance on Article 243 ZL and would submit that the amendment carried out by the State Government to Section 110A(1)(iii) of the MCS Act in the year 2013 is in compliance with the provisions of Article 243 ZL of the Constitution of India. The period of one year prescribed under Section 110A(1)(iii) in place of six months period is in tune with fourth proviso to Article 243 ZL of the Constitution of India and thus there is not inconsistency between those two provisions.

43. It is submitted that if the arguments of the learned senior counsel to the petitioners are accepted, State Legislature will have no power to amend the provisions of MCS Act. He submits that Article 19(c) adding the words ‘or co-operative societies’ would only indicate that right to form a co-operative society is a fundamental right. Learned

counsel placed reliance on Section 36AA of the Banking Regulation Act and would submit that under the said provision the RBI is empowered to remove managerial and other persons from office in the pubic interest or for preventing the affairs of a banking company conducted in the manner detrimental to the interests of the depositors or for securing the proper management of any banking company. It is necessary to do so and to pass an order in writing to remove from office, any chairman, director or chief executive officer or other office or employee of the banking company.

44. Learned counsel relied upon the definition of Co-operative Bank under Section 56(cci) which means State Co-operative Bank, a Central Co-operative Bank and a Primary Co-operative Bank. The respondent no.4 bank is a Central Co-operative Bank and thus can be controlled by the RBI. The RBI in this case had issued such directives to the Registrar, Co-operative Societies to suspend the Board of Directors of the said bank in consultation with the NABARD. He also placed reliance on definition of Director under Section 56(cciii) which states that 'director' in relation to a co-operative societies includes a member of any committee or body for time being vested with the management of the affairs of that society.

45. Learned counsel placed reliance on the judgment of Supreme Court in case of ***Joseph Kuruvilla Vellukunnel v/s. Reserve Bank of India and Ors., AIR 1962 SC 1371*** and in particular paragraphs 12, 18, 20 and 45 and would submit that the principles laid down by the Hon'ble Supreme Court in the said judgment squarely applies to the

facts of this case. The word ‘shall’ denotes that powers of RBI, directives issued by the RBI to the Registrar, Co-operative Societies are mandatory and not directory. He submits that in the said judgment the Hon’ble Supreme Court has held that under Section 38(1)(c) of the Banking Regulation Act, if the RBI recommends on an application made by the RBI on satisfaction of the ground mentioned therein for winding up of a banking company, the Court has no discretion other than to windup the affairs of such co-operative bank. The same principles applies to the powers of RBI exercised under Section 110A(1)(iii) of the MCS Act to the Registrar, Co-operative Societies.

46. Learned counsel placed reliance on Section 152 and 154 of the MCS Act and would submit that any order passed by the Registrar, Co-operative Societies following the directives issued by the RBI and thereby suspending or superseding the committee of Board of Directors of a co-operative bank is neither an appealable order nor can be challenged under Section 154 of the MCS Act. Once the RBI directs the Registrar to supersede or suspend and to appoint an administrator, the Registrar, Co-operative Societies has no discretion but to comply with the directives issued by the RBI. There was thus no question of issuance of any show-cause notice or to render any personal hearing to the petitioners. The order passed by the Registrar, Co-operative Societies is an executive order and was thus rightly made not appealable under Section 152 of the MCS Act.

47. Learned counsel placed reliance on the judgment of Supreme Court in case of ***Ganesh Bank of Kurundwad Ltd. and Ors. v/s.***

Union of India and Ors., (2006) 10 SCC 645 and in particular paragraphs 34 and 36 in support of the submission that since the RBI had though granted sufficient opportunities to the respondent no.4 bank to improve its financial position, the respondent no.4 not having complied with those directions issued by the RBI, this Court cannot substitute its judgment for that of RBI. It is not the case of the petitioners that the said order passed by the Registrar, Co-operative Societies was passed with malafide intention or otherwise. He submits that powers of judicial review of this Court under Article 226 of the Constitution of India with the order passed by the Registrar, Co-operative Societies are very limited. No case is thus made out by the petitioners even for exercising such limited powers to intervene with the order of the Registrar.

48. It is submitted by the learned counsel that the order passed by the learned Registrar, Co-operative Societies thereby appointing the fresh Board of Administrators of respondent no.4 bank is not a *quasi* judicial order but was passed by exercising administrative powers vested in the Registrar and thus no hearing was contemplated under the said provisions of Section 110(1)(iii) of the MCS Act being an administrator order.

49. Mr. Anturkar, learned senior counsel for the petitioners in his rejoinder arguments submits that it is not the case of the petitioners that the RBI has no power to direct the Registrar, Co-operative Societies to supersede or suspend the committee of Board of Directors and to appoint an administrator on the board of the said respondent no.4 bank.

Learned senior counsel made an attempt to distinguish the judgment of Supreme Court in case of ***Reserve Bank of India v/s. M. Hanumaiah and Ors., (2008) 1 SCC 770*** on the ground that in the said judgment the Hon'ble Supreme Court has not held that the High Court cannot refuse to windup a banking company if application for winding up is filed by the RBI. He relied upon paragraph 17 of the said judgment in support of this submission.

50. Learned senior counsel for the petitioners submits that the petitioners have not challenged the directions issued by the RBI to the Registrar, Co-operative Societies to supersede or suspend the committee of Board of Directors or to appoint the Board of Administrators of the respondent no.4 bank. He submits that the directives issued by the RBI could be challenged and could be interfered by this Court under its limited powers. He submits that concession made by the learned Advocate General in favour of the RBI is contrary to the legislative intention of the State Government. He submits that the words "as the case may be' inserted in Section 110A(1)(iii) of the MCS Act would clearly indicate that the directives of the RBI under the said provision are not mandatory. If the RBI would have directed the Registrar, Co-operative Societies to supersede the committee of Board of Directors of respondent no.4 bank, the registrar had discretion not to supersede the committee of Board of Directors but could have exercised his discretion to suspend the said Board of Directors. The Registrar, Co-operative Societies could not have refused to accept either of the two directives.

51. Learned senior counsel placed reliance on Section 36AA of the Banking Regulation Act and would submit that under the said provision, the RBI has power to remove a director, chairman or chief executive officer or other officer or employee of the banking company. Under Section 36 ACA of the Banking Regulation Act, the RBI is empowered to supersede the Board of Directors in certain cases. He submits that since the RBI has powers under Section 36AA to remove chairman, director, chief executive officer or other officer or employee of the banking company, the RBI could not have exercised any powers under Section 110A of the MCS Act. The Register, Co-operative Societies has discretionary powers either to follow or not in toto of such directives received by the Register, Co-operative Societies. If RBI was required to exercise powers under Section 36AA of the Banking Regulation Act, the RBI could not have exercised his powers without following the mandatory procedure prescribed therein.

52. Learned senior counsel once again invited out attention to Section 110A(1)(iii) of the MCS Act and would submit that the words ‘if so required by the Reserve Bank of India’ and ‘as the case may be’ would clearly indicate that the discretionary power to be exercised by the Register, Co-operative Societies was case centric and not order centric.

53. Mr. Dhond, learned senior counsel for the RBI in his sur-rejoinder argument relied upon Section 36AA and 36AAA of the Banking Regulation Act and would submit that those provisions specifically empowered the RBI to remove managerial and other

persons from the management of the banking company in the public interest or in various situations set out in those provisions. He relied upon Section 56(zb) and 56(za) and would submit that in case of Multi State Co-operative Bank, the RBI is empowered to exercise the powers under Section 110A(1)(iii) of the MCS Act. He submits that in case of a Single State Co-operative Society, RBI has no power under the provisions of the MCS Act to supersede the Board of Directors of such a co-operative bank. The RBI has to call upon the Registrar, Co-operative Societies to supersede the Board of Directors of such bank in case of public interest or various other circumstances set out under Section 56 of the Banking Regulation Act having occurred.

54. Learned senior counsel for the RBI submits that the said Section 36ACA of the MCS Act is already omitted as the RBI will have power to direct the Register, Co-operative Societies to supersede or to suspend the committee of Board of Directors only in case of Multi State Co-operative Society Limited.

55. It is submitted by the learned senior counsel for the RBI that the words ‘as the case may be’ and the words ‘if so required by the Reserve Bank of India’ would clearly indicate that the discretion vested only in the RBI either to supersede or to suspend the committee of Board of Directors, which are two separate and distinctive situations. For lifting of suspension order, the Register, Co-operative Societies has to take prior permission of RBI and no discretion is left in the Registrar to lift an order of suspension. The State Government can also legislate which Registrar will have what powers.

56. Learned senior counsel strongly placed reliance on the judgment of Supreme Court in case of ***Reserve Bank of India v/s. M. Hanumaiah and Ors.*** (supra) in particular paragraphs 16, 30 and 37 and would submit that though the Court has power of judicial review against the decision of the RBI exercising writ jurisdiction, in case of any application having been filed by the RBI before the High Court for seeking winding up of a co-operative bank, High Court has no discretion not to windup such banking company.

REASONS AND CONCLUSION :-

57. The questions fell for consideration in this writ petition are :-

(a) Whether the respondent no.2, Commissioner for Cooperation & Registrar of Cooperative Societies was required to issue any show-cause notice and grant personal hearing to the petitioners before passing the impugned order of supersession of the Board of Directors and appointment of an administrator ?

(b) Whether the Commissioner for Cooperation & Registrar of Cooperative Societies has any discretionary power not to follow the directives issued by the RBI or in case of any directives to supersede or suspend the Board of Directors of the Co-operative Bank, the Registrar could only suspend the Board of Directors of the co-operative bank ?

(c) Whether the amendment to Section 110A(1)(iii) of the

Maharashtra Co-operative Societies Act, 1960 substituting the period of 5 years by one year was in conformity and compliance with the Article 243ZL of the Constitution of India ?

(d) If the amendment to Section 110A(1)(iii) of the MCS Act is not in conformity with or in compliance with the amendment to Article 243 ZL, whether the Registrar Co-operative Societies was bound to issue show cause notice followed by the personal hearing to the petitioners ?

(e) Whether there is repugnancy in the provisions of Article 243ZL and Section 110(1)(iii) of the MCS Act and if so, whether Article 243ZL of the Constitution of India would prevail ?

(f) Whether order passed by the Commissioner for Cooperation & Registrar of Cooperative Societies appointing the sole administrator of the respondent no.4 bank is quasi judicial order or the executive/administrative order and thus does not contemplate any show cause notice or personal hearing before passing the order of supersession of Board of Directors and appointment of an administrator?

(g) Whether RBI is empowered to issue directives to the Registrar of Cooperative Societies to superseded the Board of Directors of the Co-operative Bank and to appoint Board of Administrators under the provisions of the Banking Regulation Act, 1949 read with Section 110A of the MCS Act or not?

(h) Whether the Registrar, Co-operative Societies is required to follow the procedure prescribed under Section 102 of the MCS Act while complying with the directives issued by the RBI Section 110A(1)(iii) of the MCS Act and superseding the Board of Directors of the Co-operative Bank or while appointing board of administrators/sole administrator of a co-operative bank or not ?

58. It is an undisputed fact that the RBI vide letter dated 27th December, 2017 to the Commissioner for Co-operation and Registrar of Co-operative Societies, Government of Maharashtra had issued the directives for supersession of the Board of Directors of the respondent no.4 bank and to appoint a Board of Administrators in terms of provisions of Section 110A (1)(iii) of the MCS Act. A perusal of the said directives indicates that the RBI had examined the financial position of the respondent no.4 bank and other relevant facts brought by the NABARD in its inspection report in respect of the financial position of the respondent no.4 as on 31st March, 2016 and unaudited financial position as on 31st March, 2017. Along with the said letter, the RBI had enclosed a requisition dated 19th December, 2017 from the Executive Director of the RBI for supersession of the Board of Directors of respondent no.4 and for appointment of 'Board of Administrators'.

59. It is not in dispute that though the petitioners have impugned the order dated 29th December, 2017 passed by the Commissioner for Co-operation and Registrar of Co-operative Societies, superseding the Board of Directors of the respondent no.4 bank and appointing Shri

Milind Bhalerao, Divisional Joint Registrar, Co-operative Societies, Nashik as Administrator, the petitioners have not impugned the said directives issued by the RBI dated 27th December, 2017. In our view, the petitioners thus cannot be allowed to urge across the bar that the powers of RBI to issue the directives under Section 110A(1)(iii) of the MCS Act were not justified or had no such powers at all. It is also not in dispute that pursuant to the said order dated 29th December, 2017 passed by the Registrar, Co-operative Societies, the administrator appointed by the learned Registrar, Co-operative Societies has already taken charge. However, the said order was stayed by this Court by an order dated 6th February, 2018 until further orders.

60. We shall now decide the issue whether the Registrar, Co-operative Societies was required to issue any show cause notice and grant any personal hearing to the petitioners before passing an order of superseding the Board of Directors of the respondent no.4 bank and appointing an administrator.

61. Learned counsel for the parties on this issue placed reliance on the following judgments :-

(a) Judgment of this Court in case of ***Ishwardas Premkumar Choradiya v/s. State of Maharashtra, 2002 (4) BCR 1***

(b) Judgment of Andhra Pradesh High Court in case of ***Reserve Bank of India v/s. Pattern Surya Prakash Rao and Ors., 2007 SCC OnLine AP 736***

(c) Judgment delivered by a Division Bench of this

Court in case of ***Mahendra Husanji Gadkari v/s. State of Maharashtra and Ors., 1992(2) Mh.L.J. 1442***

(d) Judgment delivered by a Division Bench of this Court in case of ***Shri Bhagwat Munjabhau Shelke v/s. State of Maharashtra*** in Writ Petition No. 7131 of 2018 and other connected mattes delivered on 31st January, 2019

(e) Judgment of Supreme Court in case of ***Reserve Bank of India vs. M. Hanumaiah and Ors., (2008) 1 SCC 770***

(f) Judgment delivered by a Division Bench of this Court in case of ***L.V. Sasmile v/s. State of Maharashtra, 1992 CTJ 729***

(g) Judgment delivered by a learned Single Judge of this Court in case of ***Namdeo s/o Natha Sanap and Anr. v/s. The State of Maharashtra and Ors., 2015(1) Mh.L.J. 838***

(h) Judgment delivered by a Division Bench of this Court on 31st January, 2019 in case of ***Shri Bharat Sudam Sutkar and Anr. v/s. The State of Maharashtra, through Department of Cooperation and Ors.*** in Writ Petition No. 7131 of 2018 and other companion matters and in particular paragraphs 2 and 5 to 8.

62. Mr.Anturkar, learned senior counsel for the petitioners submits that all these judgments referred to and relied upon by the respondents and some of the judgments even brought to the notice of this Court by the petitioners except the judgment delivered by this Court in case of ***Namdeo s/o Natha Sanap and Anr.*** (supra) are delivered prior to the date of the amendment to Section 110A(1)(iii) of the MCS Act in the year 2013 and are thus not binding precedent and cannot be relied upon

by the respondents. The submissions of the learned senior counsel is that though the judgment delivered by a learned Singe Judge of this Court in case of ***Namdeo s/o Natha Sanap and Anr.*** (supra) was after such amendment to Section 110A(1)(iii) in the year 2013, the said judgment does not take note of the said amendment to Section 110A and has reiterated the views taken by this Court as well as the Hon'ble Supreme Court considering the unamended Section 110A(1)(iii) of the MCS Act and thus being *per incuriam* cannot be relied upon as a binding precedent.

63. In this backdrop, it would be apposite to consider whether the amendment to Section 110A(1)(iii) in the year 2013 was in conformity with and in compliance with the provisions of Article 243 ZL of the Constitution of India or not. Under Article 243 ZL of the Constitution of India, it is provided that notwithstanding anything contained in any law for the time in force, no board shall be superseded or kept under suspension for a period exceeding six months subject to various provisos. In the fourth proviso of the said Article, it is provided that in case of a co-operative society, other than a multi-State co-operative society, carrying on the business of banking, the provisions of this clause shall have the effect as if for the words "six months", the words "one year" had been substituted.

64. A perusal of the amended Section 110A(1)(iii) clearly indicates that by amending Act Mah.16 of 2013 dated 13th August, 2013, section 67(a)(i) w.e.f. 14th February, 2013, the then words "for the supersession (removal) of the Board of Directors and the appointment of an

Administrator therefor for such period or periods, not exceeding five years in the aggregate, as may from time to time be specified by the Reserve Bank of India, and the Administrator so appointed shall, after the expiry of his term of office, continue in office until the day immediately preceding the date of the first meeting of the new Board of Directors" are substituted by the words "For suspension or supersession of the Board of Directors, as the case may be, and the appointment of an administrator in its place for such period, not exceeding one year".

65. A conjoint reading of the unamended Section 110A(1)(iii) with the amended Section 110A(1)(iii) referred to aforesaid would clearly indicate that the period of five years originally prescribed under the said provision was substituted by a period of not exceeding one year in conformity with the period of one year period under Article 243 ZL of the Constitution of India. The constitutional validity of the said amendment carried out in the year 2013 in Section 110A(1)(iii) of the MCS Act has been admittedly not challenged by the petitioners on any ground in this petition.

66. We are not inclined to accept the submission of the learned senior counsel for the petitioners that there is repugnancy in Article 243 ZL of the Constitution of India and Section 110A(1)(iii) of the MCS Act. The view thus taken by the Hon'ble Supreme Court and this Court in various judgments referred to aforesaid relied upon by both the parties on the issue whether the RBI having once issued directives under Section 110A(1)(iii) of the MCS Act to the Registrar, Co-

operative Societies are mandatory and are required to be followed by the Registrar, Co-operative Societies are applicable to the facts of this case and are binding on this Court. This Court after adverting to the aforesaid judgment in case of ***Arun T. Dhumale and Ors. v/s. State of Maharashtra and Ors.*** in Writ Petition (Stamp) No. 95405 of 2020 and in other companion matters, has held that the Registrar, Co-operative Societies is bound by the directives issued by the RBI under Section 110A(1)(iii) of the MCS Act and cannot refuse to abide such directives.

67. In our view, there is no substance in the submission of the learned senior counsel for the petitioners that in view of the amendment to Section 110A(1)(iii) of the MCS Act brought into the effect w.e.f. 14th February, 2013. The Registrar, Co-operative Societies was required to issue a show-cause notice followed by personal hearing to the petitioners before passing order of suspension of the Board of the Directors and before appointing the sole administrator in respect of the affairs of respondent no.4 bank. In our view, the principles of law laid down by the Hon'ble Supreme Court and this Court would apply even post amendment to Section 110A(1)(iii) of the MCS Act. In our view, the judgment delivered by a learned Single Judge of this Court in case of ***Namdeo Natha Sanap*** (supra) which is delivered post amendment to Section 110A(1)(iii) of the MCS Act also applies to the facts of this case. We do not propose to take any different view in the matter.

68. In our view, the order passed by the Registrar, Co-operative Societies is an executive and administrator order, which was passed so as to comply with the mandatory directives issued by the RBI and was

thus not a *quasi-judicial* order. The Registrar, Co-operative Societies was thus neither required to issue any show-cause notice nor to grant any personal hearing to the petitioners before passing the impugned order.

69. There is no merit in the contention raised by the learned senior counsel for the petitioners that the Registrar, Co-operative Societies had discretionary power to suspend the Board of Directors of the respondent no.4 bank even if the RBI had directed to supersede the Board of Directors of the respondent no.4 bank, in view of the words 'as the case may be' in Section 110A(1)(iii) of the MCS. A perusal of Section 110A(1)(iii) of the MCS Act clearly indicates that if it is required by the RBI in public interest or for preventing the affairs of the bank being conducted in a manner detrimental to the interest of the depositors or for securing the proper management of the bank, the discretion vests in the RBI to pass an order or directives against the Registrar, Co-operative Societies either for suspension or supersession of the Board of Directors, as the case may be. Such discretion under the said provision does not vest in the Registrar, Co-operative Societies either to suspend or supersede the Board of Directors upon receipt of such directives from the RBI under the said provision. In our view, the submission made by the learned senior counsel is *ex-facie* contrary to the plain reading of the said provision i.e. Section 110A(1)(iii) of the MCS Act and also the principle of law laid down by the Hon'ble Supreme Court and this Court in catena of decisions referred to aforesaid.

70. Insofar as the submission of the learned senior counsel for the petitioners that the amendment to Section 110A(1)(iii) of the MCS Act substituting the period of 5 years by 1 year was not in compliance with or in conformity with Article 243 ZL of the Constitution of India is concerned, in our view there is no merit in this submission. The said amendment is in conformity with and in compliance with the Article 243 ZL of the Constitution of India and not repugnant thereto. The Registrar, Co-operative Societies was thus not bound to issue any show-cause notice followed by the personal hearing to the petitioners. Since, this Court is of the view that there is no repugnancy in the provisions of the Article 243 ZL and Section 110A(1)(iii) of the MCS Act, Article 243 ZL of the Constitution of India does not prevail over the Section 110A(1)(iii) of the MCS Act.

71. In our view, there is no infirmity in order passed by the Registrar, Co-operative Societies in appointing sole administrator. Be that as it may, the appointment of a sole administrator made by the Registrar, Co-operative Societies cannot be set aside on the ground that the RBI had directed the Registrar, Co-operative Societies to appoint Board of Administrators. The learned senior counsel initially urged before this Court that the RBI did not have any power under the provisions of the Banking Regulation Act, 1949 being the parent Act to direct the Registrar, Co-operative Societies to supersede or suspend the Board of Directors and to appoint Board of Administrators. However, in his arguments in rejoinder he urged that the RBI having powers under the provisions of the parent Act i.e. Banking Regulation Act, 1949, could not have exercised powers under Section 110A(1)(iii) of the MCS Act.

Be that as it may, the respondent no.4 bank being a Central Co-operative Bank, Mr. Dhond, learned senior counsel for the RBI is right in his submission that the RBI is empowered to exercise powers under Section 110A(1)(iii) of the MCS Act to issue such directives to the Registrar, Co-operative Societies to supersede the Board of Directors of such bank and to appoint the Board of Administrators or sole administrator in respect of the affairs of such bank.

72. There is no merit in the submission of the learned senior counsel for the petitioners that the Registrar, Co-operative Societies was bound to follow the procedure prescribed under Section 102 of the MCS Act while superseding the Board of Directors of the respondent no.4 bank or while appointing a Board of Administrators. In our view, under Section 110(A)(1)(iii) of the MCS Act the Registrar, Co-operative Societies is bound to comply with the directives issued by the RBI under the said provisions and has no discretion. The order passed by the Registrar, Co-operative Societies to supersede or suspend the Board of Directors in compliance with the directives issued by the RBI is an administrative or executive order.

73. The Registrar, Co-operative Societies is empowered to pass an order of winding up of such co-operative bank, if after an enquiry has been held under Section 83 or inspection made under Section 84 or 89A or on the report of the Auditor auditing the account of such society or on the compliance with the requirements made therein or on happening of contingencies set out therein. The powers of the Registrar under Section 102 of the MCS Act cannot be equated with the duty of

the Registrar, Co-operative Societies to comply with the directives issued by the RBI under Section 110A(1)(iii) of the MCS Act. Both the provisions operate in different fields and in different circumstances and cannot be mixed up with each other. In our view, the Registrar, Co-operative Societies is thus not bound to follow the procedure prescribed under Section 102 of the MCS Act while complying with the duties under Section 110A(1)(iii) of the MCS.

74. The judgment of the Hon'ble Supreme Court in case of ***Vipulbhai M.Chaudhary*** (supra) would not apply to the facts of this case in view of there being no repugnancy between Article 243ZL and section 110A of the MCS Act. The reliance placed by the learned senior counsel on the said judgment is thus misplaced. There is no substance in the submission of the learned senior counsel that the State Government did not carry out any corresponding amendment in line with the Article 243ZL in section 110A or in any other provision of MCS Act.

75. In our view, Mr. Dhond, learned senior counsel for the RBI is right in placing reliance upon Section 56(zb) and 56(za) in support of the submission that in case of Multi State Co-operative Bank, the RBI is empowered to exercise the powers under Section 110A(1)(iii) of the MCS Act in directing the Registrar, Co-operative Societies in superseding or suspending the Board of Directors of such Multi State Co-operative Bank and in case of Single State Co-operative Society, RBI has no power under the provisions of the MCS Act to supersede the Board of Directors of such a co-operative bank. The RBI in such

circumstances has to call upon the Registrar, Co-operative Society to supersede the Board of Directors of such bank in case of public interest or on satisfying various circumstances set out under Section 56 of the Banking Regulation Act.

76. Under section 38(1)(b) read with Section 37 of the Banking Regulation Act, if any application for winding up of the banking company is made by the RBI before the High Court, the High Court is bound to pass an order of winding up of such banking company. Even the High Court in that event has no discretion not to pass an order of winding up. Similar power is prescribed under section 110A(1)(iii) of the MCS Act in the RBI to direct the Registrar, Co-operative Societies to supersede or suspend the Board of Directors of a Co-operative Bank.

77. In this case, since there was no Government shareholding or loan or financial assistance or any guarantee issued by the Government insofar as the respondent no.4 is concerned, the second proviso to Article 243 ZL of the Constitution of India would not apply. In the fourth proviso it is provided that in case of a co-operative society, other than a multi-State co-operative society, carrying on the business of banking, the provisions of that clause shall have the effect as if for the words "six months", the words "one year" had been substituted. The embargo under the Article 243 ZL that no board shall be superseded or superseded for a period exceeding 6 months will have to be read with the proviso under the said Article and the said period of six months would not apply if any of the ground under the first proviso was attracted. The provisions of the Banking Regulation Act are preserved

by virtue of the said third proviso to Article 243 ZL of the Constitution of India and does not affect the power of the RBI to take any action under the provisions of the Banking Regulation Act or under section 110A(1)(iii) of the MCS Act.

78. In our view, the learned Advocate General appearing for the State of Maharashtra is right in his submission that the option granted under Section 110A(1)(iii) of the MCS Act to suspend or supersede the Board of Directors of an insured co-operative bank vest with the RBI only and not with the Registrar under Section 110A(1)(iii) of the MCS Act. In our view, the word ‘shall’ in Section 110A(1)(iii) would clearly indicate that the Registrar, Co-operative Societies is bound to comply with the directives of the RBI and mandatorily.

79. Mr.Godbole, learned counsel for he respondent nos. 6 to 9 is right in his submission that the amendment carried out by the State Government to Section 110A(1)(iii) of the MCS Act in the year 2013 is in conformity with the provisions of Article 243 ZL of the Constitution of India and is in tune with fourth proviso to Article 243 ZL of the Constitution of India. Learned counsel for the respondent nos. 6 to 9 rightly placed reliance on the judgment of Supreme Court in case of ***Joseph Kuruvilla Vellukunnel*** (supra) in support of his submission that the word ‘shall’ denotes that powers of RBI, directives issued by the RBI to the Registrar, Co-operative Societies are mandatory and not directory.

80. Under section 36AA of the Banking Regulation Act, the RBI is

empowered to remove managerial and other persons from office in the pubic interest or for preventing the affairs of a banking company being conducted in the manner detrimental to the interests of the depositors or for securing the proper management of any banking company.

81. In our view, learned counsel for the respondent nos. 6 and 9 is right in placing reliance on sections 152 and 154 of the MCS Act in support of the submission that the order passed by the Registrar, Co-operative Societies following the directives issued by the RBI was not required to be passed without issuing any show cause notice or rendering any personal hearing and thus was rightly not made appealable under section 152 of the MCS Act. Neither any revision application can be filed against the said order under Section 154 of the MCS Act nor any such powers can be exercised by the State Government or any authority mentioned therein.

82. Learned counsel rightly placed reliance on the judgment of the Hon'ble Supreme Court in case of ***Ganesh Bank of Kurundwad Ltd. and Ors.*** (supra) in support of the submission that the RBI having granted sufficient opportunities to the respondent no.4 to improve its financial position and the respondent no.4 not having complied with those directions issued by the RBI, this Court cannot substitute its judgment for that of RBI. Neither it is pleaded by the petitioners that the order passed by the Registrar, Co-operative Societies was passed with malafide intention nor the same has been demonstrated before this Court.

83. In our view, since order passed by the Registrar, Co-operative Societies is in mandatory compliance with the directives issued by the RBI to supersede or suspend the Board of Directors of the respondent no.4 bank by the Co-operative Societies, this Court cannot interfere with such order passed by the Registrar, Co-operative Societies. The Registrar, Co-operative Societies has not acted as a rubber stamp of the RBI. Be that as it may, the petitioners have not made out any case for warranting interference with the order passed by the Registrar, Co-operative Societies. Writ petition is devoid of merit.

84. We, therefore, pass the following order :-

(a) Writ Petition No.2301 of 2018 is dismissed. Rule is discharged.

(b) *Ad-interim* relief granted by this Court stands vacated.

(c) The petitioners are directed to handover charge of the affairs and management of the respondent no.4 bank to the administrator appointed by the respondent no.2 within one week from today without fail.

(d) In view of he dismissal of the Writ Petition No. 2301 of 2018, Civil Application Nos.271 of 2019, 1275 of 2018 and other pending Civil Applications, if any, do not survive and are accordingly disposed of. No order as to costs.

(V.G. BISHT, J.) ***(R.D. DHANUKA, J.)***

85. Learned senior counsel for the petitioners seeks continuation of the *ad-interim* order passed by this Court, which is vehemently opposed by the learned senior counsel for the respondents. The request to continuation of the *ad-interim* order passed by this Court is rejected.

(V.G. BISHT, J.) ***(R.D. DHANUKA, J.)***