

State Of M.P.& Ors vs Sanjay Nagayach & Ors on 16 May, 2013

Equivalent citations: AIR 2013 SUPREME COURT 1921, 2013 (7) SCC 25, 2013 AIR SCW 2832, (2014) 133 ALLINDCAS 26 (SC), (2014) 103 ALL LR 13, 2013 (3) MPHT 184, 2013 (7) SCALE 354, (2013) 4 ALLMR 429 (SC), (2013) 4 MPLJ 586, AIR 2013 SC (CIVIL) 1874, (2013) 2 KER LT 733, (2013) 4 MAD LJ 590, (2013) 7 SCALE 354, (2013) 2 TAC 569, (2013) 2 CURCC 167

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Bench: Dipak Misra, K.S. Radhakrishnan

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 4691 OF 2013
[Arising out of SLP (C) No. 6860 of 2012]

State of M.P. and Others .. Appellants

Versus

Sanjay Nagayach and Others .. Respondents

WITH

CIVIL APPEAL NO. 4692 OF 2013,
(Arising out of SLP (Civil) No. 13125 of 2012]

J U D G M E N T

K. S. RADHAKRISHNAN, J.

Leave granted.

1. We are, in this case, concerned with the legality of an order passed by the Joint Registrar of the Cooperative Societies, Sagar Division, Sagar, M.P., superseding the Board of Directors of District Cooperative Central Bank Ltd., Panna without previous consultation with the Reserve Bank of India, as provided under the second proviso to Section 53(1) of the Madhya Pradesh Cooperative Societies Act, 1960 [for short 'the Act'].

2. The Board of Directors of the Bank challenged the above mentioned order on various grounds, including the ground of violation of the second proviso to Section 53(1) of the Act that is non-consultation with the Reserve Bank of India [RBI] before taking a decision to supersede the Board of Directors. The order was challenged by the Board of Directors by filing a writ petition before the High Court of Madhya Pradesh, Jabalpur Bench. Learned single Judge of the High Court disposed of the writ petition directing the parties to avail of the alternative remedy provided under

Section 78 of the Act. But on appeal, the Division Bench of the High Court set aside the order of supersession dated 30.9.2011 on the ground of non-compliance of the second proviso to section 53(1) of the Act. Aggrieved by the same, the State of M.P., through its Principal Secretary, Department of Co-operation, the Commissioner Cum Registrar, Co-operative Societies, Bhopal and the Joint Registrar, Co-operative Societies, Sagar, have come up with Civil Appeal No. of 2013 [arising out of SLP No. 6860 of 2012] and a private party filed Civil Appeal No. of 2013 [arising out of SLP No. 13125 of 2012] challenging the judgment of the High Court dated 13.2.2012, followed by lot of intervening applications.

3. As the question of laws involved in both the above mentioned appeals are common, we are disposing of both the appeals by a common judgment.

Facts and Arguments

4. The Board of Directors of the Bank was elected to Office on 16.10.2007 and while in office they were served with a show-cause-notice dated 2.3.2009 issued by the Joint Registrar, Co-operative Societies under Section 53(2) of the Act containing 19 charges. Detailed replies were sent by the Board of Directors on 6.5.2009 and 16.5.2011 stating that most of the charges levelled against them were related to the period of the previous Committee and the rest were based exclusively on an Audit Report dated 25.9.2008. It was pointed out that the Board of Directors on receipt of the Audit report took necessary action and a communication dated 5.12.2008 was sent to the Branch Managers of Primary Societies to take immediate follow-up action on the basis of the Audit report. After filing the detailed reply, nothing was heard from the Joint Registrar but due to political pressure and extraneous reasons after two and half years of the show cause notice, an order of supersession was served on the Board, followed by the appointment of an Administrator in gross violation of the second proviso to Section 53(1) of the Act.

5. Dr. Abhishek M. Singhvi, learned senior advocate appearing for the State, submitted that the High Court was not justified in interfering with the order of supersession passed by the Joint Registrar, while an alternative remedy was available under Section 78 of the Act by way of an appeal before the Co-operative Tribunal. Learned senior counsel placed reliance on the judgments of this Court in *Harbanslal Sahnia and Another v. Indian Oil Corpn. Ltd. and Others* (2003) 2 SCC 107, *United Bank of India v. Satyawati Tondon and Others* (2010) 8 SCC 110 and *Om Prakash Saini v. DCM Ltd. and Others* (2010) 11 SCC 622. Learned senior counsel also submitted that the Division Bench of the High Court has not correctly appreciated the scope of the second proviso to Section 53(1) of the Act. Learned senior counsel also pointed out that the Joint Registrar has forwarded the show-cause notice dated 23.2.2009 along with other materials to RBI seeking its views on the proposed action of supersession and the RBI through its communications dated 17.4.2009, 3.6.2009 and 8.12.2009 had only directed the Joint Registrar to indicate RBI of the action taken against the Board of Directors. Consequently, the Joint Registrar was only required to inform the RBI of the action taken against the Board of Directors. Learned senior counsel also submitted that the charges levelled against the Board of Directors were of serious nature and the order of supersession was passed bona fide and in public interest and the Division Bench of the High Court was not justified in interfering with the order of supersession.

6. Shri V. K. Bali, learned senior counsel appearing for the appellants in Civil Appeal No. of 2013 [arising out of SLP No. 13125 of 2012], also submitted that the charges levelled against the Board of Directors were of serious nature and there was sufficient materials to establish those charges and the Joint Registrar has rightly passed the order of supersession and appointed the Collector, Panna as an Administrator of the Bank. Learned senior counsel also pointed out that the Joint Registrar had forwarded the show-cause-notice as well as the connected materials to RBI and RBI had failed to respond to the show-cause- notice within 30 days of the receipt of the same and, therefore, it would be presumed that RBI had agreed to the proposed action and the Joint Registrar had rightly passed the order of supersession. Shri Mahavir Singh, learned senior counsel appearing for the Interveners also submitted that the High Court has committed an error interfering with the order of supersession and, in any view, if any of the parties were aggrieved, they ought to have availed of the alternate remedy available under the Act.

7. Shri Vivek Tankha, learned senior counsel appearing for the 1st respondent, submitted that the High Court has correctly understood the scope of the second proviso to Section 53(1) of the Act and rightly came to the conclusion that before passing the order of supersession, there should be a meaningful consultation with the RBI, therefore, the consultee could apply its mind and form an independent opinion as to whether the Board be superseded or not. Learned senior counsel submitted that merely forwarding the show cause notice along with other relevant materials is not sufficient compliance of the second proviso to Section 53(1) of the Act, so held by the Madhya Pradesh High Court in several judgments. Learned senior counsel submitted that the order of supersession was passed by the Joint Registrar after a period of two and half years of the issuance of the show-cause- notice and most of charges levelled against the Board of Directors were related to the period when the previous Committee was in office and even the charges based on the Audit Report dated 25.9.2008 were also rectified by the Board of Directors by addressing the primary societies. Learned senior counsel also submitted that the order was passed at the instance of respondents 2 and 3 herein on extraneous considerations and was actuated by mala fide and ulterior motive. Learned counsel submitted that the Joint Registrar had acted under the political pressure and was not exercising his powers in accordance with the provisions of the Act and the order of supersession was passed to disqualify the members of the Board of Directors from contesting the ensuing election. Learned senior counsel prayed that the Board of Directors be put back in office and be allowed to continue for the period they were put out of office illegally.

8. We heard learned counsel on either side at great length. When the matter came up for hearing before us on 17.10.2012, we passed the following order, the operative portion of which reads as under:

“We are informed that the period of the Managing Committee is already over and District Collector is acting as the Administrator of the Cooperative Bank vide this Court’s order dated 23.02.2012. However, the legality of the order has to be tested. Before that we feel it appropriate to place the entire material before the Reserve Bank of India (for short, ‘RBI’) (Respondent NO. 7) for its opinion as per Section 53 of the Act. The RBI will take a final decision on that within a period of two months and forward the opinion to the Secretary General of this Court, who will place it before

the Court.” RBI submitted its detailed report on 18.12.2012, in pursuance to the order passed by this Court. RBI, referring to the second proviso to Section 53(1) of the Act, took the view that the so-called consultation made by the Joint Registrar cannot be treated as previous consultation, as per law. RBI, after examining all the documents made available by the Joint Registrar including the show-cause-notice, reply filed by the Board of Directors opined as follows:

i) The JRCS has alleged that Panna DCCB has not deducted tax on the interest paid to the depositors.

In terms of the CBDT circular No. 9/2002 dated 11-9-2002 tax is deductible at source from any payment of income by way of interest other than income by way of interest on securities. Clause (v) of sub-section (3) of section 194A exempts such income credited or paid by a co-operative society to a member thereof from requirement of TDS. Clause (viia) of sub-section (3) of section 194A exempts from the requirement of TDS such income credited or paid in respect of deposits (other than time deposits made on or after 1-7-1995) with a co-operative society engaged in carrying on the business of banking. It is not clear from observation of JRCS, Panna that the interest accrued and paid was time deposit or saving bank deposit account made after 01.07.1995.

ii) The amount collected as VAT was not remitted to the Government. VAT is not applicable to the banking transactions. Hence collection itself is not correct.

iii) In terms of Audit para 21 of Audit Report for the FY ended 2000- 01, Panna DCCB in the year June 1997, without the approval of PACS’ Committee had stored pesticides. These medicines expired on December 98 and August 99. Despite expiry, stock of medicines worth Rs.16.28 lakh was left over which could not be sold in the market. The amount should have been recovered from the employees of the bank.

As per the reply furnished by the bank, the present Board of Directors had initiated the process of recovery of dues of which the major portion of outstanding dues has already been recovered. The bank is effecting recovery from its 39 employees through monthly deductions of Rs.500 to Rs1000.

iv) In terms of Audit para 32 of Audit Report for the FY ended 2000- 01, an outstanding amount of Rs23200/- to be recovered from cashier Shri D.L. Tiwari is still pending for recovery. It is seen from the records that the bank has initiated disciplinary proceedings against the erring employees besides filing a recovery suit with Civil Court, Powai.

v) In terms of Audit para 16 of Audit Report for the FY ended 2000- 01, Shri Jawaharlal Srivastav, Manager of Laxmipur PACs had committed fraud of Rs.20.93 lacs thereby misappropriated the bank’s funds. He has been removed from services and an amount of Rs.36,637/- has been recovered from his claims. Bank vide its letter dated 15.02.2002 has written to Kotwali Police Panna to register the case. No action has been initiated by the present Board in the matter.

The Bank has already registered a case against Shri Jawaharlal Srivastav. However, it appears from the records and reply furnished by the bank that no effective steps were taken after 15.02.2002 to lodge FIR in the matter. Even the present Board of Directors apparently has not taken any effective steps after it took over during the end of 2007.

vi) In terms of Audit para 23 of Audit Report for the FY ended 2000- 01, reconciliation of entries in the books of accounts of DCCB Panna was pending and it has not been resolved.

Non-reconciliation of books by DCCB Panna is an operational risk which has also been pointed out by NABARD in its inspection reports for the FY 2008-2009 and 2010-2011. Therefore, the compliance submitted by the bank does not appear to be satisfactory.

vii) In terms of Audit para 13 of Audit Report for the FY ended 2003- 04, fraud in respect of 37 Managers to the tune of Rs.43.34 lakh was mentioned and the cases are still pending. 27 Employees have been terminated from the services. Case against only one employee has been registered with police and the bank has not registered the cases against 27 employees.

From the records made available to us, we do not observe any monitoring by JRCS, on the issue during the intervening period. It is evident that this matter was being discussed in the Board meetings of the present Board, some amount was already recovered, disciplinary action against the erring employees have been taken and the legal proceeding initiated against them is also pending.

viii) As mentioned in Audit Report for the FY ended 2006-07, rectification of audit objections is not satisfactory. No action was taken on most of the audit objections and compliance submitted by the management is mere eyewash.

Compliance to Audit Report is an ongoing process which needs to be monitored on a continuous basis.

The table showing the allegations of the JRCS Panna, comments of Panna DCCB and the observation of RBI is enclosed herewith and marked as Exhibit – IX.

RBI, therefore, took the view that the deficiencies pointed out in the show- cause-notice were general in nature and did not warrant the supersession of the Board of Directors. RBI, however, opined that it would be desirable that new election of the Board of Directors be conducted in accordance with the provisions of the Act and the Management of the Bank be handed over to the newly elected body by the present administrator.

Legal Framework

9. The validity of the order of supersession has to be tested under the legal framework in which the Cooperative Bank and its controlling authorities have to function under the Act read with the provisions of the Reserve Bank of India Act, 1934 (for short 'RBI Act'), the Banking Regulation Act, 1949 (for short 'Regulation Act'), the Banking Law (Application to Cooperative Societies) Act, 1965

(23 of 1976), the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (for short 'DICGC Act'), the National Bank for Agricultural and Rural Development Act, 1981 (for short 'NABARD Act') etc. Since the order impugned results in the supersession of a body elected to achieve social and economic democracy with emphasis on weaker sections of the society, as the preamble of the Act depicts, a close look at the powers of the functionaries instrumental in over-turning an elected body is of paramount importance.

10. Co-operative philosophy on society must rest on free universal association, democratically governed and conditioned by equity and personal liberty. First legislation in India relating to cooperative societies was the Co-operative Societies Act, 1904, established for the purpose of credit only, but to extend the privilege of credit societies to other societies also a legislation with wider scope and object, that is Cooperative Societies Act 1912, was passed which was applicable to the whole of British India, which was a Central Act. Later, after independence different States enacted separate Acts of which we are in this case concerned with the 1960 Act in force in the State of Madhya Pradesh.

11. We find, until the year 1965, the Cooperative Banks were not being regulated by the RBI but it was felt necessary to bring the cooperative societies carrying on the business of banking within the purview of the Regulation Act. Since, large number of cooperative societies were carrying on the banking business, and also to ensure the growth of cooperative banking on sound banking principles, the Parliament enacted the Act 23 of 1965, called the Banking Law (Application to Cooperative Societies) Act, 1965 and Part IV was introduced into the Regulation Act w.e.f. 1.3.1966. Section 55 of Part V provides for the application of the Regulation Act to Cooperative Banks. Any existing co- operative bank at the time of the commencement of the Act 23 of 1965 was required to apply grant of license within a period of three months from the date of the commencement of the Act and obtain a license from RBI under Section 22 of RBI Act. Every co-operative bank is also obliged to comply with the provisions of the Regulation Act and directions/guidelines issued by RBI from time to time.

12. We may, in this connection, refer to certain provisions of the DICGC Act which also confers certain powers to the RBI to supersede the committee of the management of the co-operative Bank in public interest. The Act has been enacted to provide for the establishment of a Corporation for the purpose of insurance deposits and guaranteed credit facilities for allied purposes. Section 3 of the Act has empowered the Central Government to establish the Deposit Insurance Corporation, a wholly owned subsidiary of RBI. Section 2(gg)(iii) of DICGC Act states that "eligible co-operative bank" means a co-operative bank, the law for the time being governing, which provides that:

"2(gg)(iii) If so required by the Reserve Bank of India in the 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, an order shall be made for the supersession of the committee of management or other managing body (by whatever name called) of the bank 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." RBI never

thought it necessary to invoke the above mentioned provision as against the first respondent. NABARD Act has been enacted to provide and regulate credit facilities and for other related and individual matters. Section 3 of the Act has empowered the Central Government to establish such a National Bank, i.e. NABARD. Section 35 of the Regulation Act empowers the RBI to conduct inspection of the affairs of a banking company. RBI has also got the power under Sub-section (b) of Section 35 of the Regulation Act to authorise NABARD to conduct inspection of the District Cooperative Bank.

13. Section 2(d) of the NABARD Act defines the term “Central Co-operative Bank”. NABARD in exercise of the powers conferred on it, is also authorised to conduct inspection on the affairs of District Co-operative Banks.

14. We will now examine the scope of Section 53 of the Act, especially the second proviso to Section 53(1) of the Act, in the light of the above discussion. Section 53 relevant to our purpose is given below:

“53. Supersession of Board of Directors- (1) If in the opinion of the Registrar the Board of Directors of any society-(a) is negligent in the performance of the duties imposed on it by or under this Act or byelaws of the society or by any lawful order passed by the Registrar or is unwilling to perform such duties; or

(b) commits acts which are prejudicial to the interests of the society or its members; or

(c) violates the provisions of this Act or the rules made thereunder or byelaws of the society or any order passed by the Registrar. The Registrar may, by order in writing remove the Board of Directors and appoint a person or persons to manage the affairs of the society for a specified period not exceeding two years in the first instance:

Provided that if in opinion of the Registrar, the Board of Directors of any Primary Agriculture Credit Co-operative Society-

i) incurs losses for three consecutive years; or

ii) commits serious financial irregularities or fraud is identified; or

iii) there is perpetual lack of quorum in the meetings of the Board of Directors.

The Registrar may, by order in writing remove the Board of Directors and appoint a person or persons to manage the affairs of the society for two months which may be extended by him for such period not exceeding six months for reasons to be recorded in writing:

Provided further that in case of Co-operative Bank, the order of supersession shall not be passed without previous consultation with the Reserve Bank;

Provided further that if no communication containing the views of the Reserve Bank of India on action proposed is received within thirty days of the receipt by that bank of the request soliciting consultation, it shall be presumed that the Reserve Bank of India agree with the proposed action and the Registrar shall be free to pass such order as he may deem fit.

Provided also that if a non-official is appointed in the Board of Directors of a primary society, he shall be from amongst the members of that society, entitled for such representation and in case of central or Apex society, if a person is appointed in the Board of Directors of such society, he shall be a member of one of its affiliated societies entitled for such representation.

(2) No order under sub-section (1) shall be passed unless a list of allegations, documents and witnesses in support of charges levelled against it has been provided and the Board of Directors has been given a reasonable opportunity of showing cause against the proposed order and representation, if any, made by it, is considered.

xxx	xxx	xxx
xxx	xxx	xxx

(7) Before taking action under sub-section (1) in respect of a financing bank or in respect of a society indebted to a financing bank, the Registrar shall consult, in the former case, the Madhya Pradesh State Co-operative Bank Limited and, in the latter case, the financing bank, countervailed regarding such action. If the Madhya Pradesh State Co-

operative Bank Limited or the financing bank, as the case may be, fails to communicate its views within thirty days of the receipt by such bank of the request soliciting consultation, it shall be presumed that the Madhya Pradesh State Co-operative Bank Limited or the financing bank, as the case may be, agreed with the proposed action.” Section 53 (1) confers powers on the Registrar to pass an order to remove the Board of Directors and to appoint a person to manage the affairs of the society, subject to certain conditions, of which, we are primarily concerned with the applicability of the second proviso to Section 53(1), which specifically states that in the case of a Co-operative Bank, the order of supersession shall not be passed without previous consultation with the RBI. The third proviso to Section 53 states that if no communication containing the views of the RBI on the action proposed is received within thirty days of the receipt by that bank of the request soliciting consultation, it shall be presumed that the RBI agreed with the proposed action and the Registrar shall be free to pass such order, as he may deem fit. Sub-section (2) to Section 53 of the Act specifically states that no order under Sub-section (1) (order of supersession) shall be passed unless a list of allegations, documents and witnesses in support of charges levelled against it has been

provided and the Board of Directors has been given a reasonable opportunity of showing cause against the proposed order and representation, if any, made by it, is considered. The second proviso to Section 53 (1) refers to the expression “order of supersession”, means that the final order of supersession to be passed by the Joint Registrar after complying with sub-section (2) to Section 53. Second and third provisos, read together, would indicate that no order of supersession shall be passed without previous consultation with the RBI. Before passing an order of supersession, the show-cause-notice along with other relevant materials, including the reply received from the bank, has to be made available to the RBI for an effective consultation.

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

16. The mere serving a copy of the show-cause-notice on RBI with supporting documents is not what is contemplated under the second proviso to Section 53(1). For a meaningful and effective consultation, the copy of the reply filed by the Bank to the various charges and allegations levelled against them should also be made available to the RBI as well as the action proposed by the Joint Registrar, after examining the reply submitted by the Bank. On the other hand, RBI should be told of the action the Joint Registrar is intending to take. Only then, there will be an effective consultation and the views expressed by the RBI will be a relevant material for deciding whether the elected Board be superseded or not. In other words, the previous consultation is a condition precedent before forming an opinion by the Joint Registrar to supersede the Board of Directors or not.

17. This Court in *Indian Administrative Services (SCS) Association, U.P. v. Union of India* 1993 Supp (1) SCC 730, has laid down six propositions while examining the meaning of the expression ‘consultation’. We may add one more proposition that when the outcome of the proposed action is to oust a democratically elected body and the expression used is “shall not be passed without previous consultation”, it is to be construed as mandatory. Reference may also be made to the judgments of this Court in *Reserve Bank of India v. Peerless Company* (1987) 2 SCR 1, *State of Jammu and Kashmir v. A.R. Zakki and Others* 1992 Supp (1) SCC 548, *Gauhati High Court and Another v. Kuladhar Phkan and Another* (2002) 4 SCC 524, *Andhra Bank v. Andhra Bank Officers and Another* (2008) 7 SCC 203.

Discussion

18. District Cooperative Bank, Panna (for short ‘Panna DCB’), a Bank registered under the Act, was issued a license to conduct the banking services in India by RBI on 3.6.2010 under Section 22 of the Regulation Act. Panna DCB is a Central Co-operative Bank as defined under Sub-section 2(d) of

NABARD Act. NABARD had conducted an inspection of the Panna DCB under Section 35 of the Regulation Act, with reference to the financial position as on 31.3.2007, when the previous Board was in office and thirty six fraud cases at Primary Agricultural Credit Societies (PACS) involving Rs.37.05 lacs had been reported. Certain deficiencies in the bank's functioning, like non-adherence to the provisions of the Income Tax Act, lack of internal checks and control systems and unsatisfactory compliance to their previous inspection report, had also found a place in their inspection report, the copy of which was forwarded to the RBI vide their communication dated 1.2.2008.

19. The Joint Registrar, Co-operative Societies, as already stated, issued a notice to Panna DCB to show cause as to why the Board of Directors be not superseded and an Administrator be appointed. The show-cause- notice was sent to the RBI, which RBI received on 4.3.2009. RBI vide its letter dated 17.4.2009 requested the Joint Registrar to inform the action being taken on the reply submitted by the Board of Directors of Panna DCB. RBI vide its letter dated 30.3.2009 forwarded the copy of the show-cause- notice to the Chief General Manager, NABARD for their comments. Since, NABARD had conducted inspection of Panna DCB under Section 35 of the Regulation Act, NABARD vide its letter dated 29.6.2009 informed the same to the RBI and also opined as follows:

“..... We are of the view that the deficiencies mostly relating to systems and procedures are of general nature, which do not provide strong ground for supersession of the Board as far as the inspection by NABARD is concerned.”

20. RBI, again, vide its letter dated 3.6.2009 wrote to the Joint Registrar to inform RBI the outcome of the reply submitted by the Bank to the show-cause-notice. RBI, then sent a reminder on 22.7.2009 to the Joint Registrar, since no reply was received. RBI, it is seen has received a reply from the Joint Registrar on 10.8.2009. RBI, then sent a communication to the Joint Registrar vide its letter dated 8.5.2009 to know the action taken on the reply submitted by the Board of Directors. The Joint Registrar then sent a detailed reply dated 19.8.2009 to the RBI stating that in the case of a Co-operative Bank, order of supersession would not be issued without previous consultation with RBI, however, if no communication containing the views of RBI on the action was received within 30 days, it should be presumed that the RBI had agreed to the proposed action and the Registrar would be free to pass orders as might be deemed fit. It was further stated that in the case of District Co-operative Bank, the powers under Section 53(2) of the Act are vested with the Regional Joint Registrar and notice issued by the Joint Registrar was not sent for the opinion of the State Government. Further, it was also pointed out that the Bank had submitted its reply on 8.5.2009 and internal decision would be taken as per the legal provisions and RBI would be informed accordingly. Yet, another letter dated 24.12.2009 was also received by the RBI, wherein it was stated that the hearing was going on and the RBI would be informed of the final decision. Later, without informing the RBI of the proposed action and also without forwarding the reply submitted by Panna DCB to the show-cause-notice to RBI, the order of supersession dated 30.9.2011 was passed by the Joint Registrar.

21. We find seven charges levelled against the Board of Directors were relating to the period of the previous Committee, for which the first respondent Board of Directors could not be held

responsible. Further, even though the Board had taken charge in October 2007, the audit report was submitted before the Board only after nine months and that the Board of Directors took follow up action on the basis of the audit report dated 25.9.2008. The Joint Registrar, it seems, was found to be satisfied with the detailed replies dated 6.5.2009 and 16.5.2011 submitted by the Board of Directors of the Bank, possibly, due to that reason, even though the show- cause-notice was issued on 22.3.2009, it took about two and half years to pass the order of supersession.

22. We are of the view that the order of supersession dated 30.9.2011 is not only in clear violation of the second proviso to Section 53(1) of the Act, but also the allegations raised in the show-cause-notice are deficiencies mostly relating to systems and procedures and are of general nature and not grave enough to overthrow a democratically elected Board of Directors. Both NABARD and RBI have expressed the view that the charges levelled against the Board of Directors do not provide strong ground to supersede the Board.

23. Learned senior counsel Shri Vivek Tankha submitted that since the Board of Directors was superseded illegally, they, be put back in office and allow to continue, for the period they were put out of office. We find force in that contention, especially in view of the views expressed by NABARD as well as RBI and the fact that the Joint Registrar himself had passed the order of supersession only after two and half years of the date of issuance of the show-cause-notice.

24. The legislative intention is clear from the following statutory provisions. The statute has fixed the term of an elected Board of Directors as five years from the date on which first meeting of Board of Directors is held. Once a Board of Directors is illegally superseded, suspended or removed, the legislature in its wisdom ordained that the Board should complete their full term of five years, because electorate has elected the Board for five years. The proviso to Section 49(7A)(i) reads as follows:

“7A(i) The term of the Board of Directors shall be five years from the date on which first meeting of the Board of Directors is held:

Provided that where a Board of Directors superseded, suspended or removed under the Act is reinstated as a result of any order of any Court or authority, the period during which the Board of Directors remained under supersession, suspension out of office, as the case may be, shall be excluded in computing the period of the term aforesaid.”

25. The Board of Directors, in the instant case, took charge on 16.10.2007, therefore, they could continue in office till 15.10.2012. The Board of Directors was, however, superseded illegally on 30.9.2011 and, by virtue of the judgment of the Division Bench of the High Court dated 13.2.2012, the Board should have been put back in office on 13.2.2012, but an Administrator was appointed. Going by the proviso referred to above, the period during which the Board of Directors remained under supersession be excluded in computing the period of five years. In the facts and circumstances of this case, we are of the considered opinion that the duly elected Board of Directors should get the benefit of that proviso, which is statutory in nature.

26. In such circumstances, we direct the Joint Registrar, Co-operative Societies, Sagar to put the Board of Directors back in office so as to complete the period during which they were out of office.

27. The High Court, in our view, has therefore rightly exercised its jurisdiction under Article 226 of the Constitution and the alternative remedy of appeal is not bar in exercising that jurisdiction, since the order passed by the Joint Registrar was arbitrary and in clear violation of the second proviso to Section 53(1) of the Act.

28. We are of the view that this situation has been created by the Joint Registrar and there is sufficient evidence to conclude that he was acting under extraneous influence and under dictation. A legally elected Board of Directors cannot be put out of the office in this manner by an illegal order. If the charges levelled against the Board of Directors, in the instant case, were serious, then the Joint Registrar would not have taken two and half years to pass the order of supersession. State of Madhya Pradesh did not show the grace to accept the judgment of the Division Bench of the High Court and has brought this litigation to this Court spending huge public money, a practice we strongly deprecate.

Registrar/Joint Registrar and External Influence:

29. Statutory functionaries like Registrar/Joint Registrar of Co- operative Societies functioning under the respective Co-operative Act must be above suspicion and function independently without external pressure. When an authority invested with the power purports to act on its own but in substance the power is exercised by external guidance or pressure, it would amount to non-exercise of power, statutorily vested. Large number of cases are coming up before this Court and the High Courts in the country challenging the orders of supersession and many of them are being passed by the statutory functionaries due to external influence ignoring the fact that they are ousting a democratically elected Board, the consequence of which is also grave because the members of the Board of Directors would also stand disqualified in standing for the succeeding election as well.

30. The Registrar/Joint Registrar, while exercising powers of supersession has to form an opinion and that opinion must be based on some objective criteria, which has nexus with the final decision. A statutory authority shall not act with pre-conceived notion and shall not speak his masters' voice, because the formation of opinion must be his own, not somebody else in power, to achieve some ulterior motive. There may be situations where the Registrar/Joint Registrar are expected to act in the best interest of the society and its members, but in such situations, they have to act bona fide and within the four corners of the Statute. In our view, the impugned order will not fall in that category.

Judicial Precedents

31. Registrar/Joint Registrar is bound to follow the Judicial Precedents. Ratio decidendi has the force of law and is binding on all statutory authorities when they deal with similar issues. The Madhya Pradesh High Court in several judgments has explained the scope of the second proviso to Section 53(1) of the Act. Reference may be made to the judgments in Radheshyam Sharma v. Govt.

of M.P. through C.K. Jaiswal and Ors. 1972 MPLJ 796, Board of Directors of Shri Ganesh Sahakari Vipnan (Marketing) Sanstha Maryadit and Another v. Deputy Registrar, Co-operative Societies, Khargone and Others 1982 MPLJ 46 and Sitaram v. Registrar of Co-operative Societies and another 1986 MPLJ 567.

32. We fail to see why the Joint Registrar has overlooked those binding judicial precedents and the ratio decidendi. Judicial rulings and the principles are meant to be followed by the statutory authorities while deciding similar issues based on the legal principles settled by judicial rulings. Joint Registrar, while passing the impugned order, has overlooked those binding judicial precedents.

33 We fail to notice why the State Government, Department of Co- operative Societies has taken so much interest in this litigation. Joint Registrar in his letter dated 19.8.2009 to RBI stated that in the case of District Co-operative Bank, the powers under Section 53(2) of the Act are vested with Regional Joint Registrar and the notice issued by the Joint Registrar is not meant for the opinion of the State Government. Assuming, the State Government has powers under Section 49-C of the Act, no report has been forwarded by the Registrar to the State Government and no direction have been issued by the State Government with regard to the supersession of the Board. Sorry so note that the State Government has spent huge public money by litigating this matter even up to this Court, that too, without following the binding precedents of the Madhya Pradesh High Court on the scope of the second proviso to Section 53(1) of the Act.

34. In such circumstances of the case, we are inclined to dismiss both the appeals with costs directing re-instatement of the first respondent Board of Directors back in office forthwith and be allowed to continue for the period they were put out of office by the impugned order which has been quashed. We also direct the State of Madhya Pradesh to pay an amount of Rs.1,00,000/- to the Madhya Pradesh Legal Services Authority within a period of one month by way of costs and also impose a cost of Rs.10,000/- as against the Joint Registrar, Co-operative Societies, Sagar, the officer who passed the order, which will be deducted from his salary and be deposited in the Panna DCB within a period of two months from today. Ordered accordingly.

35. Further, we are inclined to give the following general directions in view of the mushrooming of cases in various Courts challenging orders of supersession of elected Committees:

- 1) Supersession of an elected managing Committee/Board is an exception and be resorted to only in exceptional circumstances and normally elected body be allowed to complete the term for which it is elected.
- 2) Elected Committee in office be not penalised for the short-comings or illegalities committed by the previous Committee, unless there is any deliberate inaction in rectifying the illegalities committed by the previous committees.
- 3) Elected Committee in Office be given sufficient time, say at least six months, to rectify the defects, if any, pointed out in the audit report with regard to incidents

which originated when the previous committee was in office.

4) Registrar/Joint Registrar are legally obliged to comply with all the statutory formalities, including consultation with the financing banks/Controlling Banks etc. Only after getting their view, an opinion be formed as to whether an elected Committee be ousted or not.

5) Registrar/ Joint Registrar should always bear in mind the consequences of an order of supersession which has the effect of not only ousting the Board out of office, but also disqualify them for standing for election in the succeeding elections. Registrar/Joint Registrar therefore is duty bound to exercise his powers bona fide and not on the dictation or direction of those who are in power.

6) Registrar/Joint Registrar shall not act under political pressure or influence and, if they do, be subjected to disciplinary proceedings and be also held personally liable for the cost of the legal proceedings.

7) Public money not to be spent by the State Government or the Registrar for unnecessary litigation involving disputes between various factions in a co-operative society. Tax payers money is not expected to be spent for settling those disputes. If found necessary, the same be spent from the funds available with the concerned Bank.

.....J. (K.S. Radhakrishnan)J. (Dipak Misra) New Delhi, May 16,
2013