

READINGS ON INQUIRY, INSPECTION & SURCHARGE

under the

Puducherry Co-operative Societies Act, 1972



R.MURALIDHARAN
*Managing Director, PONTEX
&
Deputy Registrar (Legal)*

Published by:

PONDICHERRY STATE CO-OPERATIVE UNION

62, Suffren Street, Puducherry - 605 001.

READINGS ON INQUIRY, INSPECTION & SURCHARGE

under the
Puducherry Co-operative Societies Act, 1972



R.MURALIDHARAN
*Managing Director, PONTEX
&
Deputy Registrar (Legal)*

Published by:

PONDICHERRY STATE CO-OPERATIVE UNION
62, Suffren Street, Puducherry - 605 001.

**GOVERNMENT OF PUDUCHERRY
CO-OPERATIVE DEPARTMENT**
V.V.P. Nagar, Thattanchavady, Puducherry 605 009.
e-mail : rcs.pon@nic.in

B.R. BABU,
Registrar of Co-operative Societies

Date : 29.06.2011

FOREWORD

The “**Readings on Inquiry, Inspection and Surcharge under the Puducherry Co-operative Societies Act**” written by **Thiru R. Muralidharan**, Deputy Registrar of this Department is a value added product for the Department. If an inquiry or inspection, whether under this Act or a disciplinary inquiry, is ordered to an employee his initial reaction would be to avoid it, the reason for such inertia being his inept understanding to the subject. To allay such fear this thoughtful publication has brought out vividly the nuances of inquiry, inspection and surcharge proceedings and it is a made to order on the subject. I have little hesitation to say that this will certainly prompt any one to take the challenge willingly and conduct the proceedings competently.

The form, check list and the procedures will bring an insight into the subject. The flow charts make the understanding of the concepts effective. The case laws will certainly facilitate the readers to be more involved. In short, it is an indispensable publication to those who want to make things happen.

Thiru R. Muralidharan has brought out some useful publications in the past and has quite a good number of articles, published in various law and co-operative journals to his credit. This publication is certainly one more feather in his cap. My warm compliments to him for taking this painstaking effort quite proficiently and his innate interest in disseminating knowledge is awesome. I wish him the very best and look forward more and more from him.

My compliments to the **Pondicherry State Co-operative Union** for publishing this handbook and all the officials of this Department would be the stakeholders. Manuals on audit, arbitration, liquidation etc., are sine qua non and I wish to see such manuals in the days to come. It is an open invitation.

With co-operative greetings.


(B.R. BABU)

BETWEEN YOU AND ME

It is quite some time I have incubated the idea to write a user friendly manual on conduct of inquiry, inspection and surcharge. I am happy that it has seen the light of the day.

When inquiry/inspection reports were referred to me for views I found some of the reports falling short of expectation and even frustrate the purpose of inquiry. For any inquiry officer the million dollar question is how to start. Having started how to proceed, what to report and how to give the findings. This manual, I do hope, has answered the 'what' and 'how'. Remember, knowing the provisions is only gathering information. To transform it into knowledge, one has to attempt the task rather than shy away from it. To start with, it may be a half-hearted or unsuccessful attempt. But it is worth it. There is no instant success, if you get it, it may not be long lasting. 'Rome was not built in a day' is an adage worth recalling.

I warmly thank [Thiru B.R. Babu](#), Registrar of Co-operative Societies for his worthy foreword and encouragement. I shall always strive to live up to the expectation.

I am fortunate to have the assistance of [Thiru R. Rangababu](#), Co-operative Officer in bringing out this publication. He made it tailor made to the end user. Thank you my esteemed friend.

The efforts of [Thiru N. Ganesh](#), Computer Operator of Pontex need special mention. He designed the cover page and the flow charts. I thank [Thiru Allah Baksh](#), Junior Inspector, for his assistance.

The Pondicherry State Co-operative Union has once again come forward to publish my publication. My sincere thanks to [Thiru D. Balakirouchenin](#), Managing Director of the Union.

The printing of this book is taken up by the PIC Press. I compliment and thank [Thiru K. Srinivasan](#), Managing Director of the Press for his efforts and excellent execution.

My wife [M. Vijayalakshmi](#) and my daughter [M. Niveditha](#) are always my source of inspiration. They silently support all my endeavors. I owe them for my growth. This publication is an accolade to them.

While sharing the credit with others for this publication, I take the blame for any shortcoming. I am always open for the constructive criticism. Suggestions for improvement are welcome.

May God bless you and me!

R. MURALIDHARAN

INDEX

S.No.	Particulars	Page No.
	I - INQUIRY under Section 75	
1	Origin of inquiry	1
2	Statutory provision	1
3	Delegation of powers of the Registrar	4
4	Purposes for which an inquiry can be ordered	4
5	Inquiry not to be ordered just to seize the books	5
6	Examination of the proposal for inquiry	5
7	Caution in ordering an inquiry	5
8	Who should be appointed as an inquiry officer?	6
9	Ordering an inquiry - Check list	6
10	Inquiry order	7
11	How to conduct inquiry?	7
12	You the inquiry officer - Guiding principles	9
13	Powers of the inquiry officer	10
14	Important points on summons	14
15	Issue of summons and seizure of books - Some finer points	14
16	Procedure to be followed while recording deposition	15
17	Procedure regarding examination of departmental officials	16
18	Holding of inquiry when majority of the committee members resign	17
19	Interim report	18
20	Examination of the inquiry report - Check list	18
21	Communication of results of an inquiry	19
22	Direction by the Registrar to remedy the defects	19
23	Flow chart - Inquiry	20
24	Inquiry Report	
	I. Contents of inquiry report	21
	II. Report on misappropriation / fraud in a society	23
	III. Report on recommending winding up	25
25	Model Forms	
	Form 1 - Summons for appearance	27
	Form 2 - Summons for production of records	28
	Form 3 - Summons for appearance and production of records	29
	Form 4 - Deposition	30
26	Circular of the Registrar on conduct of inquiry	31
	II - Inspection	
1	Statutory provision	39
2	When inspection is to be ordered?	39
3	Creditor applying for inspection	40
4	Powers of the inspecting officer	41
5	Check list relating to inspection	41

S.No.	Particulars	Page No.
6	Verification to be done during inspection	41
7	Report of the inspection	42
8	Contents of inspection report	42
9	Communicating the result of inspection	44
10	Flow chart - Inspection	45
	III - Surcharge	
1	Surcharge	49
2	Statutory provision	49
3	Three important aspects of surcharge	50
4	How to proceed action?	54
5	Surcharge report	55
6	Limitation	56
7	Check list relating to surcharge	57
8	Flow chart - Surcharge	59-60
9	Model Forms	
	Form 1 - Notice for submission of explanation	61
	Form 2 - Notice for appearance	63
10	Article on "Supply of inquiry report in surcharge proceedings"	64
11	Illustrative case laws	69

INQUIRY

INQUIRY

1. Origin of Inquiry

Section 75 of the Puducherry Co-operative Societies Act, 1972 relates to 'inquiry'. Originally 'inquiry' was introduced under Section 35 of the Co-operative Societies Act, 1912. The 1912 Act is a Central Act. Subsequently 'inquiry' was introduced under Section 38 of the Madras Co-operative Societies Act, 1932. The Tamil Nadu Co-operative Societies Act, 1961 was also having the provision of 'inquiry' under Section 65 of the Act. Section 65 of the Pondicherry Co-operative Societies Act, 1965 deals with 'inquiry' and similar provision is available under Section 75 of the Puducherry Co-operative Societies Act, 1972.

Inquiry Vs. Investigation: The word 'inquiry' must be distinguished from the word 'investigation'. The object of inquiry is to determine the truth or falsity of certain facts in order take further action thereon, while the object of 'investigation' is to collect evidence.

Inquiry Vs. Audit: An inquiry is more comprehensive than an audit. In an inquiry, apart from finding out the financial condition of the society, all matters about the society are looked into. An inquiry is undertaken only when the working of the society is not quite satisfactory. It is a fact finding inquiry and the objective of the inquiry is to set the society on sound lines and place it back on rails.

2. Statutory Provision

Under Section 75 (1), the Registrar or a sub-ordinate officer to whom the powers under Section 75 are delegated, may *on his own motion* order an inquiry into the constitution, working or financial condition of a society. Under Section 75 (1), it is obligatory to conduct an inquiry on the application of

- (i) Majority of the committee, or
- (ii) Not less than one-third of the members of the society, or
- (iii) The request of the Collector, or
- (iv) The financing bank.

Section 75 of the Puducherry Co-operative Societies Act, 1972 is extracted below, to facilitate easy reference:

(1) *The Registrar may, of his own motion and shall, on the application of a majority of the committee or of not less than one-third of the members or on the request of the Collector, or the financing bank, hold an inquiry, or direct some person authorized by him by order in writing in this behalf to hold an inquiry into the constitution, working and financial condition of a registered society.*

(2) *The Registrar or the person authorized by him under sub-section (1) shall have the following powers, namely*

- (a) (i) *He shall at all reasonable times have free access to the books, accounts, documents, securities, cash and other properties belonging to, or in custody of the society and may summon any person in possession of, or responsible for, the custody of any such books, accounts, documents, securities, cash or other properties to produce the same at any place at the headquarters of the society or any branch thereof;*
- (ii) *Where a person summoned under sub-clause (i) fails or refuses to produce any record or property of the society specified in the summons, any magistrate of the first class in whose jurisdiction the person concerned reside, shall, on a complaint from the Registrar or the officer holding the inquiry that the person summoned has been evading or wilfully delaying the production of such records or property, issue a warrant for the production of the records and properties of the society to such Registrar or the officer holding the inquiry:*

Provided that no such complaint shall be made by the officer holding the inquiry without the previous sanction of the Registrar.

- (b) *He may seize the books, accounts, or documents of the society, if he considers that such seizure is necessary to ensure the safety of such books, accounts or documents or to facilitate his inquiry, and shall give the person, from whose custody the books, accounts or documents have been seized a receipt for the same:*

Provided that the books, accounts or documents so seized shall be retained by him only for so long as may be necessary for their examination and for the purpose of inquiry:

Provided further that the books, accounts or documents shall not be retained for more than sixty days at a time except with the permission of the next higher authority.

- (c) *He may summon any person who, he has reason to believe, has knowledge of any of the affairs of the society and may examine such person on oath and may summon*

any person to produce any books, accounts or documents belonging to him or in his custody if the Registrar or the person authorized as aforesaid has reason to believe that such books, accounts or documents contain any entry relating to transactions of the society.

- (d) (i) *He may, notwithstanding any rule or by-law prescribing the period of notice for a general meeting of the society or for a meeting of the committee, require any officer or officers of the society to call a general meeting or a meeting of the committee of such time and place at the headquarters of the society or any branch thereof to consider such matters as may be specified by him and the provisions of sub-clauses (i) and (ii) of clause (b) of sub-section (4) of section 31 shall apply to any meeting called under this sub-clause as if it were a meeting called in pursuance of a requisition under clause (a) of sub-section (3) of that section.*
 - (ii) *If the officer or officers of the society refuses or refuse or fails or fail to call such meeting or if in the opinion of the Registrar there is no committee or officer or officers competent under this Act, the rules or the by-laws to call such meeting, or if there be a dispute regarding the competence of the committee, officer or officers to call such meeting, the Registrar or the person authorized by him under sub-section (1) shall have power to call the meeting himself and the provisions of clause (b) of sub-section (4) of section 31 and sub-section (5) of that section shall apply to such meeting as if it were a meeting called under clause (a) of the said sub-section (4).*
- (3) *When an inquiry is held under this section, the Registrar shall communicate the result of the inquiry*
- (i) *in case the Government have subscribed directly to the share capital of the registered society or in case any moneys are due from the registered society either to the Principal State Partnership Fund or to the Subsidiary State Partnership Fund referred to in Chapter-VI, to the Government or to any officer appointed by the Government in this behalf;*
 - (ii) *to the financing bank, if any, to which the society is affiliated; and*
 - (iii) *to the society concerned.*
- (4) *The Registrar may, by order in writing, direct any officer of the society or its financing bank to take such action as may be specified*

in the order to remedy, within such time as may be specified therein, the defects, if any, disclosed as a result of the inquiry.

3. Delegation of powers of the Registrar

The powers of the Registrar under Section 75 have been delegated to the Joint Registrar, Deputy Registrar, Dairy Development Officer and Co-operative Officer in respect of all types of co-operative societies. The Registrar or the officer, to whom his powers are delegated, can take up the inquiry himself or is competent to direct some person authorized by him to hold an inquiry.

The conjoint reading of Sections 3 and 75 suggests that, under Section 75, there is a power in the Registrar to hold the inquiry into the affairs of the registered societies and the Registrar can also direct some '*other person*', authorized by him, by order in writing, to hold such inquiry. In so far as the powers while conducting the inquiries are concerned, such '*other person*', authorized by Registrar to hold the inquiry, has the same power as Registrar, which includes access to the books of accounts, summoning and examining any person having the knowledge of the affairs of the society, summoning any person for producing such books of accounts, the power of seizure of such books of account, initiating legal proceeding against any person refusing to comply with the summons, calling and holding a general meeting or meeting of the committee, etc.,

4. Purposes for which an inquiry can be ordered

An inquiry is necessary (i) if there are serious defects in the accounts of the society, or (ii) if the committee is working prejudicially, or (iii) if the interest of the minority members is not safe in the hands of the majority. It is a deterrent against mismanagement, restores confidence in the minds of all concerned and helps the employees to set right everything before it is too late.

In addition to the regular supervision and inspection carried out by the Departmental officials, as a part of their normal administrative duties, there may arise occasions when a detailed inquiry in any one or more of the following matters, viz., (a) constitution, (b) working and (c) financial conditions of a society may be necessary, which may not be feasible or expected during audit or ordinary inspection of a society.

The inquiry or inspection assumes greater importance as it becomes a foundation for taking further action to set the matters right in a co-operative society. Removal of disqualification (Section 36), Suspension of officer or servant of the society (Section 80), Surcharge (Section 82), Winding up and cancellation of registration (Section 126) presuppose conduct of, inter alia, inquiry or inspection.

The procedure to be followed in ordering, inter alia, an inquiry is delineated in Registrar's circular No. Ms/CLC/5/97 dated 25.6.1997, at Page No.31

5. Inquiry not to be ordered just to seize the books

An inquiry need not be ordered just to seize the books, records and documents of the society whose committee has been superseded or which is wound up and the persons have not handed over the records to the special officer or liquidator, as the case may be. A remedy is provided under Section 156 [securing possession of records] of the Act.

6. Examination of the proposal for inquiry

For framing issues for ordering inquiry under Section 75, proposals by the field staff, when called for by the authorities so vested with the powers, should contain the defects in the working of the society, infringement of the bye laws noticed either in the audit or during the course of periodical inspection or on complaint received on the working of the society. Non-observance of the provisions of the Act and Rules in the matter of running the society etc., must be brought out clearly item-wise. The proposal should also contain details as to the persons considered responsible for such state of affairs. A detailed examination of the provisions of the bye laws, Act and Rules with reference to the working of the society, the financial condition, etc., have to be examined before such a proposal is submitted to the Registrar.

The officer ordering inquiry has to examine in detail the proposal and frame specific issues on which inquiry is to be conducted by the officer to be appointed for the purpose under the Act. The issues may be classified into

- (i) Arising out of infringement of the bye laws,
- (ii) Deterioration in the financial position of the society;
- (iii) Inaction by the management etc.

The inquiry under the Act should cover these issues in addition to issues touching the constitution, working or financial of the society.

7. Caution in ordering an inquiry

The statutory inquiry may result in publicity of action in the jurisdiction of the society. Therefore, before an inquiry under Section 75 is ordered to be held, great caution is necessary, particularly in case of apex, central and urban credit institutions. Other measures, such as, a warning or a threat of inquiry or supersession of the committee, may often be enough to put matters right. The auditor himself may be asked to investigate more closely into certain points which may have been otherwise referred to an inquiry officer for investigation. A premature or ill-advised statutory inquiry may sometime precipitate

a crisis and bring about a collapse of an institution like a credit society with large deposit liabilities.

8. Who should be appointed as an Inquiry Officer?

The person who is holding the inquiry shall be called as 'inquiry officer'. The inquiry may be held personally by the departmental officer competent to order it or may be entrusted to an officer or person who has intimate knowledge of the working of co-operative societies and is competent to give an unbiased opinion on the points referred to in the inquiry order after careful appraisal of the documentary and other evidences. Generally, an officer of the Department is appointed as an inquiry officer. An auditor, who has conducted the audit of the society, is not to be appointed as an inquiry officer.

Section 75 (1) empowers the Registrar to conduct the inquiry by himself or direct some person authorized by him, by order in writing in this behalf, to hold an inquiry. The person so authorized need not be a subordinate to the Registrar, and hence, there is no embargo to appoint an employee of the financing bank or apex / central society or even a retired Government servant as an inquiry officer.

9. Ordering an inquiry - Check list

Before inquiry under Section 75 is ordered to be held, great care and caution should be exercised to satisfy as regards grounds which warrant the detailed inquiry into the constitution or working or financial condition of the society concerned.

1. Whether the audit report or general inspection report has pointed out the irregularities of the society's constitution or mismanagement, manipulation of stock and accounts, misappropriation of funds and other malpractices suspected or society's condition remaining bad for a long period, etc. YES / NO
2. As the statutory inquiry may result in publicity of action, whether great caution has been taken and whether other measures such as warning or threat has been made and no improvement is found? YES / NO
3. Whether the circumstance which forces the Registrar to order the inquiry has been spelt out? YES / NO
4. Whether the scope of inquiry has been clearly specified in the order? YES / NO
5. Whether time within which inquiry should be completed is specified? YES / NO
6. Whether the order of the inquiry is communicated to the society concerned and to the apex / central society, to which the society is affiliated and to the financing bank of the society? YES / NO

10. Inquiry Order

The order of inquiry shall always be in writing and copies of the order are made to the society, the financing bank and the apex/central society, if any, to which the society is affiliated.

The inquiry order should clearly specify the object and scope of the inquiry, the specific matters or points to which the inquiry should be conducted. It should not be loosely worded say to cover the constitution, working or financial condition of the society. The order should specify the period within which the inquiry report should be submitted. The period of submission of the report may be extended by the appointing authority for valid reasons. Normally, however, extension of time is viewed with disfavor, as delay in these matters often frustrates the very object of holding an inquiry. The inquiry officer should also be asked to make his recommendations as to from whom and in what proportion, if any, the inquiry costs should be recovered with reasons thereon.

11. How to conduct inquiry?

- (1) He shall not take up the inquiry if there is personal interest in the matter, and in such a case, he should be rescued from the inquiry.
- (2) The inquiry is to be confined to the terms of reference and period specified in the order of inquiry.
- (3) He should familiarize with the working of the society, and hence to go through the bye laws of the society.
- (4) He shall study the organization chart, the powers, duties and responsibilities of various employees of the society.
- (5) He shall peruse the minutes book of the society with specific reference to the terms of reference.
- (6) All the points, on which he needs clarification from the officers and officials of the society, should be jotted down and avoid calling them every now and then.
- (7) In relation to the scope of inquiry, he should go through all the entries in the relevant books/accounts/registers/documents.
- (8) He should affix his initial in all entries which will have the bearing in the report and mark them as "Exhibits".

- (9) He should send summons to such persons, whom he believes have knowledge on the issue and their version would have a bearing on the inquiry and shall examine them on oath.
- (10) If the person, to whom summons is issued, appeared and seeks adjournment, such request should be disposed off on merits. He may allow short adjournments. But if the person seeks frequent adjournments and thereby tries to delay the inquiry process, it should be tactfully dealt. He should not fall a prey and delay the submission of the report.
- (11) If the person does not appear, in spite of adjournments, he shall record his findings based on the records. For the points on which he could not get the defence, adverse inference may be drawn. Just because the person does not answer his summons, the issue should not be decided against him.
- (12) Before setting someone as ex-parte, he should ensure that the summons was served on him properly and in time.
- (13) In case of misappropriation or fraud, such offences can be primarily established by documentary evidence. He shall secure that documents / records, which will form the base, in the first instance, lest there is every scope of them being fabricated or reported lost. He should take utmost care in this aspect.
- (14) He need not wait for completion of entire inquiry to start writing his report. He is likely to forget the events and miss the links. At every stage he can draft the report to facilitate finalization without loss of time.
- (15) He shall not give any findings based on his personal knowledge of the event.
- (16) He can fix responsibilities on persons jointly and severally also.
- (17) He should indict a person only with specific imputations, vis-à-vis, the duties and responsibilities attached to him. There should not be any generalization or observations based on surmises and conjectures.
- (18) He shall not suggest punishment or further course of action.
- (19) The inquiry report for taking departmental action against the officials, should be furnished as a separate chapter/unit, so that, it may not be furnished to other delinquents, such as, employees of the society. In such a case he shall indicate how the conduct of the departmental official is violative of CCS Conduct Rules also.

12. You the Inquiry Officer - Guiding Principles

- (1) It is a thankless job. When the job is assigned to you, take it as a challenge and prove your worth.
- (2) Be unbiased, fair, just and judicious.
- (3) You are not a prosecutor. It is not for you to assume that the affairs of the society were not conducted properly.
- (4) Ensure that there is no undue delay in the commencement and conduct of inquiry.
- (5) It is only a fact finding inquiry and hence you need not allow anyone to be represented by an advocate or take someone's assistance.
- (6) You should not disclose your mind to any one and confine your query/communication to the point.
- (7) You should not act with predisposition and prejudicially. You should objectively decide based on the oral and documentary evidence.
- (8) Reliance should be placed only on the facts which have come into evidence and which the person concerned had opportunity to refute, examine or rebut.
- (9) While studying the issue and canvassing the evidence, be judicious and show poise and balance. Do not be satirical or vicious.
- (10) Judge the issue putting yourself in someone's shoes. Decide how a man with ordinary prudence would have acted in similar circumstances.
- (11) Base your conclusion on a report which looks reasonable. Clearly indicate in the report the relation between the imputations, evidence and conclusion.
- (12) The conclusion should be logical and should not appear as if you had already made up your mind and that you are making a one-sided presentation of facts to support it.
- (13) After signing the report, you become *functus officio*. Do not overstep your functions.

13. Powers of the Inquiry Officer

- (1) *Free access*: He shall at all reasonable times have free access to the books, accounts, documents, securities, cash and other properties belonging to or in the custody of the society.
- (2) *Issue of summons for personal appearance and examination on oath*: He may summon any person knowing the affairs of the society and examine him on oath.

Note:

- (i) According to Section 7 of the Oath's Act, 1969, oath has to be administered in the manner determined by the High Court, from time to time.
 - (ii) Section 51 of the Indian Penal Code, 1860, defines "oath" as follows:
The word 'oath' includes a solemn affirmation substituted by law for an oath, and any declaration required or authorized by law to be made before a public servant or to be used for the purpose of proof, whether in a court of justice or not.
 - (iii) Refusing oath or affirmation, when duly required by public servant to make it, is an offence under Section 178 of the Indian Penal Code and is punishable.
 - (iv) Giving false statement on oath or affirmation to a public servant is an offence under Section 181 of the Indian Penal Code and is punishable.
 - (v) *Form of oath*: The witness shall stand up and raise his right hand above his head while repeating the following words:
"I, _____, do swear in the name of Almighty God/solemnly affirm that the evidence I shall give to the inquiry officer, touching the matters in question, shall be truth, the whole truth and nothing but truth."
- (3) *Issue of summons for production of records / properties*:
 - (i) He may summon any person in possession of, or responsible for, the custody of any such books, accounts, documents, securities, cash or other properties to produce the same at any place at the headquarters of the society or any branch thereof.
 - (ii) He may also summon any person to produce any books, accounts or documents belonging to him or in his custody if the inquiry officer has reason to believe that such books, accounts or documents contain

any entry relating to the transactions of the society.

Note: The inquiry officer can summon a person to produce the books, etc., only at the headquarters of the society or any of its branches. He cannot summon a person to produce the books, etc., in a place other than the head quarters of the society or any of its branches.

- (4) Failure/refusal to produce records/properties: Where person summoned by the inquiry officer fails or refuses to produce any record or property of the society as specified in the summon, the inquiry officer may complain to any Magistrate of the First Class in whose jurisdiction the person concerned resides for issue a warrant for the production of records and properties.

Note: The application to the Magistrate shall be made by the Registrar, Joint Registrar, Deputy Registrar, Dairy Development Officer or Co-operative Officer, as the case may be, if the inquiry is conducted by themselves. In some cases, the inquiry may be conducted by other authorized officer or person. In such case, the inquiry officer cannot directly make an application to the Magistrate and shall obtain previous sanction of the Registrar or the appointing authority to make such a complaint. The question of making application to the Magistrate directly by the Co-operative Officer without the sanction of the Registrar or any other officer would arise only if the Co-operative Officer authorizes himself to conduct the inquiry under Section 75.

- (5) Seizure of records: He may seize the books, accounts, or documents of the society, if he considers that such seizure is necessary to ensure the safety of such books, accounts or documents or to facilitate his inquiry. He shall give a receipt to the person from whom the books, accounts or documents have been seized.
- (6) Retaining of seized records: He shall retain the books, accounts or documents seized only so long as may be necessary for their examination and for the purpose of the inquiry. He shall not retain them for more than sixty days at a time without the permission of the next higher authority.

Note: The inquiry officer cannot retain the books with him after completion of the inquiry. He should hand over the books etc., to the next higher authority along with the inquiry report.

- (7) Calling of meetings of the society: He may require any officer of the society to call a general meeting or committee meeting. For such meetings, no period of notice, as required under the Rules or bye laws, shall be necessary. Such meeting should be called at the

head quarters of the society or at any branch thereof. Such notice must state (i) date, time and place of the meeting, and (ii) matter to be determined at such meeting. The provisions of Section 31 (4)(b)(i) and (ii) shall apply to such meeting, as if it were a meeting called in pursuance of a requisition under Section 31 (3)(a), [i.e., committee of the society calling a special general meeting upon request].

Note:

- (i) Though the period of notice has been waived for convening a general meeting or a meeting of the committee, the inquiry officer has to follow the modes prescribed for sending notice for the general meeting or meetings of the committee.
- (ii) Though the committee is competent to call a general meeting and though the Managing Director or the President of the society is competent to call a meeting of the committee, the inquiry officer is empowered to require any officer or officers of the society to call a general meeting or a meeting of the committee. 'Officer' would include a President, Vice-President, Chairman, Vice-Chairman, Secretary, Assistant Secretary, Treasurer, member of committee, and any other person empowered under the rules or the bye laws to give directions in regard to the business of the society, as per Section 2(14) of the Act.
- (iii) The inquiry officer may require any officer of the society to call for a general meeting or a meeting of the committee for the purpose connected with the inquiry being conducted and shall not be convened for conduct of election of committee members or removal of members from the society.
- (iv) If a general meeting or a meeting of the committee is called by an officer of the society upon a requisition by the inquiry officer, the following procedures have to be adopted by the inquiry officer:
 - (a) If at a general meeting or a meeting of the committee, the quorum is not present for holding the meeting, the meeting shall stand dissolved in cases where the meeting was called for by the inquiry officer in pursuance of a requisition from the members of the society. In any other case, the meeting shall stand adjourned to such other day, time and place as the inquiry officer may determine. If at the adjourned meeting also the quorum is not present for holding the meeting, the members present shall be the quorum.

- (b) The inquiry officer cannot preside over the meeting called for by the officer on a requisition made by the inquiry officer.
 - (c) The word 'other day' in Section 31(4)(b)(i) would mean only the next or other day and not the day on which the meeting was adjourned.
- (8) *Failure or refusal to call meetings:* If the officer or officers of the society refuses or refuse or fails or fail to call such a meeting (general meeting or committee meeting) or if in the opinion of the Registrar there is no committee or officer or officers competent under the Act or the Rules or the bye laws to call such meeting, or if there is a dispute regarding the competence of the committee, officer or officers to call such meeting, the Registrar or the inquiry officer, as the case may be, shall have the power to call the meeting (general meeting or committee meeting) himself and the provisions of Section 31(4)(b) & Section 31(5) shall apply to such meeting as if it were a meeting called under Section 32 (4)(a) of the Act.

Note:

- (i) The intention of the legislature, in so far as Section 75 (2)(d)(i) and (ii) is concerned, is that, in the absence of any officer or officers competent under the Act, the Rules and bye law, the Registrar, as well as the inquiry officer, shall have power to call the meeting himself. The Registrar or the inquiry officer can have the power to call the meeting himself if there is no committee. Even if the officer or officers refuses or refuse or fails or fail to call a general meeting or a meeting of the committee, the inquiry officer shall have the power to call the meeting himself.
- (ii) If the inquiry officer calls a general meeting or a meeting of the committee under Section 75(2)(d)(ii), the following procedures have to be adopted by him:
 - (a) If at a general meeting or at a meeting of the committee, the quorum is not present for holding the meeting, the meeting shall stand adjourned to such other day, time and place as the inquiry officer may determine.
 - (b) If at the adjourned meeting also the quorum is not present for holding the meeting, the members present shall be the quorum.

- (c) The inquiry officer shall preside over a general meeting or a meeting of the committee or authorize any person to preside.

14. Important points on summons

- (1) Mode of service of summons should be as prescribed under Rule 65 of the Puducherry Co-operative Societies Rules, 1973.
- (2) Any person may be summoned to produce a document (books etc.) without being summoned to give evidence and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.
- (3) It is well settled that, the expression "reason to believe" means a genuine satisfaction arrived at upon an honest and reasonable evaluation of information coming to the authority. Further, there must be a reasonable nexus between the satisfaction and the situation contemplated. Meaning of the expression "*reasons to believe*" is stronger than "*satisfaction*". There should be reasons to believe and such reasons to believe must be on the basis of the 'information' which is 'in the possession of' the concerned officer. It is further well settled that, there must be live link between the information and the formation of belief. {*Ganga Saran & Sons (P) Ltd., vs. ITO [1981] 130 ITR 1 (SC)*}.
- (4) The summons may be issued even to an ordinary member of the society. The summons issued directing the petitioner to appear for inquiry was challenged, in *K. Muniappan vs. Deputy Registrar of Co-operative Societies*, (2007) 1 MLJ 246, on the ground that, the petitioner, being an ordinary member of society, is in no way connected with the affairs of it and summoning him to appear for inquiry is illegal. Petitioner is a member of the respondent society and has availed loan for agricultural purposes. The law confers power to the Registrar to summon any person who has reason to believe that he has knowledge of any of the affairs of the society. As such, the impugned summons cannot be interfered with.

15. Issue of summons and seizure of books - Some finer points

- (i) The inquiry officer may summon the person concerned to produce the books, etc., belonging to or in the custody of the society, at any place at the headquarters of the society or any branch thereof, and not necessarily at the head office of the society or at the office of its branch.
- (ii) The books, etc., belonging to or in the custody of the society, which are seized by the inquiry officer, can be moved to any place, even outside the headquarters of the society or its branch.

- (iii) The books, accounts or documents which the inquiry officer has reason to believe, contain any entry relating to transactions of the society belonging to a person or in the custody of a person other than the society in respect of which inquiry was ordered, can also be summoned for production at any place even outside the headquarters of the society or its branch.
- (iv) When the summoned person fails to appear or appears before the inquiry officer but fails to produce the books, records, etc., or refuses to give a statement or refuses to sign the statement given, action can be launched under Sections 174, 175, 179 or 180 of the Indian Penal Code against such person instead of launching prosecution under Section 147 of the Puducherry Co-operative Societies Act.
- (v) The inquiry officer has to invariably seize the books, accounts or documents of the society, if he considers that such seizure is necessary to ensure the safety of such books, accounts or documents to facilitate his inquiry lest due to efflux of time, the records which may be required for taking action may not become available or be tampered with.

16. Procedure to be followed while recording deposition

The inquiry officer should record depositions in his own hand. If he is unable to record the deposition in his own hand under any extraordinary circumstances, he may utilize a Government servant to record the deposition in his presence and under his personal direction and superintendence, subject to the condition that, the reasons for not recording the depositions himself and entrusting the work to another person is recorded and signed by him. In any case, he shall not utilize the services of any employee of the society for this purpose.

The deposition is to be recorded after administering the oath before the inquiry officer;

The deposition should contain the following information:

- (i) The name and designation of the inquiry officer before whom the deposition was given.
- (ii) The date, time and place at which the deposition was recorded.
- (iii) While recording deposition from a delinquent, which is of a confessional nature, the mere confessional statement alone is not sufficient. Deposition covering full details, regarding the nature and manner of commission of offences confessed, should be taken which can be used as extra judicial evidence.

- (iv) Pages of the deposition should be serially numbered and corrections, if any, on each page should be attested by the inquiry officer as well as by the deponent and each page of the deposition should be signed by the deponent.
- (v) The person who recorded the deposition has to authenticate that the deposition was recorded by him and signed.
- (vi) The authentication has to be properly worded to the effect that the deposition was read over to the deponent and accepted by him as correct or the deponent himself read the deposition and found to be correct by him.
- (vii) Deposition recorded in different dates from a particular person by the inquiry officer should be in the form of a separate deposition on oath.

17. Procedure regarding examination of Departmental Officials

- (i) The inquiry officer need not issue summons to the departmental official and examine him on oath just for the purpose of eliciting certain information which could be otherwise gathered or obtained from the departmental official. The inquiry officer may contact the departmental official personally or address the departmental official confidentially indicating the points on which he requires information.
- (ii) If the particulars or information furnished by the departmental official throw sufficient light on the offences committed by the delinquents and are considered to be valuable evidence to prove the guilt of the delinquents, the inquiry officer may then proceed to record the deposition of the departmental official on oath.
- (iii) When the inquiry is ordered into alleged commission of offence by a departmental official or in cases during the course of inquiry it appears that a departmental official has committed an offence under IPC or directly involved in the offence, the inquiry officer, as far as possible after obtaining permission from his superior officer, may issue summons for the purpose of examining the departmental official on oath. In any case, where there is need for recording statements from the departmental official on oath, the inquiry officer shall intimate his intention to do so to his superior officer.
- (iv) Issue of summons to the departmental official should be resorted to only in cases where their presence could not be secured without the issue of summons. He shall not issue summons to the departmental official as a matter of routine.

18. Holding of inquiry when majority of the committee members resign

When the majority members of the committee submit their resignation from the committee and address the letters to the President / chief executive of the society a deadlock will arise, because the bye laws invariably provide that the resignation will take effect only from the date of its / their acceptance by the committee. In such a situation, the President will be reluctant to convene the committee meeting. To overcome the impasse situation, the Registrar may request the President to call the meeting of the committee under Section 32(7)(a) of the Act to consider the resignation letters of the committee members. The standoff situation will be tricky if President also submits his resignation and there will be no one to break the deadlock.

In such a situation, Registrar may order an inquiry under Section 75 to inquire the peculiar aspect of the working of the society arising out the resignation of the majority of the members of the committee. As the inquiry officer is competent to convene a meeting of the committee under Section 75(2)(d)(i), notwithstanding any Rule or bye law specifying the period of notice, he can require the Secretary of the society [*Secretary is also an officer as per Section 2(14)*] or the President to call a meeting of the committee at such time and place at the headquarters of the society or any branch thereof to consider the subject of resignation of the members of the committee. The meeting notice should be sent to all members of the committee including the members who have tendered their resignation. It is for the committee to decide whether or not to accept the resignation. The meeting will be a forum when contesting claims are received whether a member has actually submitted the resignation or not. The member can also state that, he has not signed the resignation letter.

If at the committee meeting convened by an officer of the society, as required by the inquiry officer, the quorum is not present for holding the meeting, the meeting shall stand adjourned to such other day, time and place as the inquiry officer may determine. If at the adjourned meeting also the quorum is not present for holding the meeting, the members present shall form the quorum.

If the officer refuses or fails to call such a meeting or under other contingencies enumerated under Section 75(2)(d)(ii), the inquiry officer himself may call for and preside over the meeting.

Based on the report of the inquiry officer, the Registrar may decide further course of action.

19. Interim report

When the scope of inquiry is time consuming and cumbersome, and consequently the submission of report is likely to be delayed, the inquiry officer may submit an interim report which may be warranted by the gravity of the situation. The interim report is necessitated when urgent action is called for, which cannot be postponed or if delayed would defeat the very purpose of inquiry. Interim report is also necessary when finalization of report may take time. Of course, there must be some palpable reason for such delay and submission of interim report should not be a matter of routine.

While submitting the interim report, the inquiry officer should indicate the extent up to which the inquiry is completed and the time required to submit the report in complete shape. The inquiry officer should indicate that after finalization the quantum of misappropriation or fraud may vary. The inquiry officer, however, should not hurriedly indict any one without clinching evidence or base. In other words, there should not be any compromise over the quality, though the quantity of misdemeanor may differ.

On receipt of the interim report, the Registrar may proceed action as warranted. While initiating action like filing complaint, it is to be indicated that, the amount incorporated in the complaint is only provisional. The action contemplated may include suspension of an officer or servant of the society, supersession of the committee, filing of criminal complaint, etc., subject to his satisfaction on the action proposed.

20. Examination of the Inquiry Report - Check list

When once the inquiry report is received, while dealing with the report the following points should be taken care:

1. Whether the connected books, accounts, etc., have been thoroughly studied and verified by the inquiry officer? YES / NO
2. Whether connected persons have been summoned and examined on oath? YES / NO
3. Whether, when required, the officers of the society were asked to call a general meeting to determine the required matters? YES / NO
4. Whether the results of the inquiry have been communicated to the society, to the Government (in case Government have taken shares) and to the financing bank, to which the society is affiliated? YES / NO
5. Whether the findings of the inquiry officer and the reasons therefor are supported by relevant evidences, documents, etc.? YES / NO

6. Whether the inquiry report covers all the points concerning the matter on which the inquiry was ordered? YES / NO
7. Whether acts of misfeasance, breach of trust, misappropriation of funds of the society, committed by any officer or member, YES / NO are brought out, fixing responsibility?
8. If inquiry is ordered for finding out the ways and means of improving the working of the society, whether specific lines of YES / NO which improvement is possible, are given in the report?

21. Communication of results of an inquiry

The Registrar shall communicate the result of the inquiry to

- (i) The Government or any officer appointed by the Government, where the Government have subscribed to the share capital of the society;
- (ii) The financing bank to which the society is affiliated; and
- (iii) To the society concerned.

Note: No time limit is specified to communicate the result of the inquiry. But it should be done expeditiously.

22. Direction by the Registrar to remedy the defects

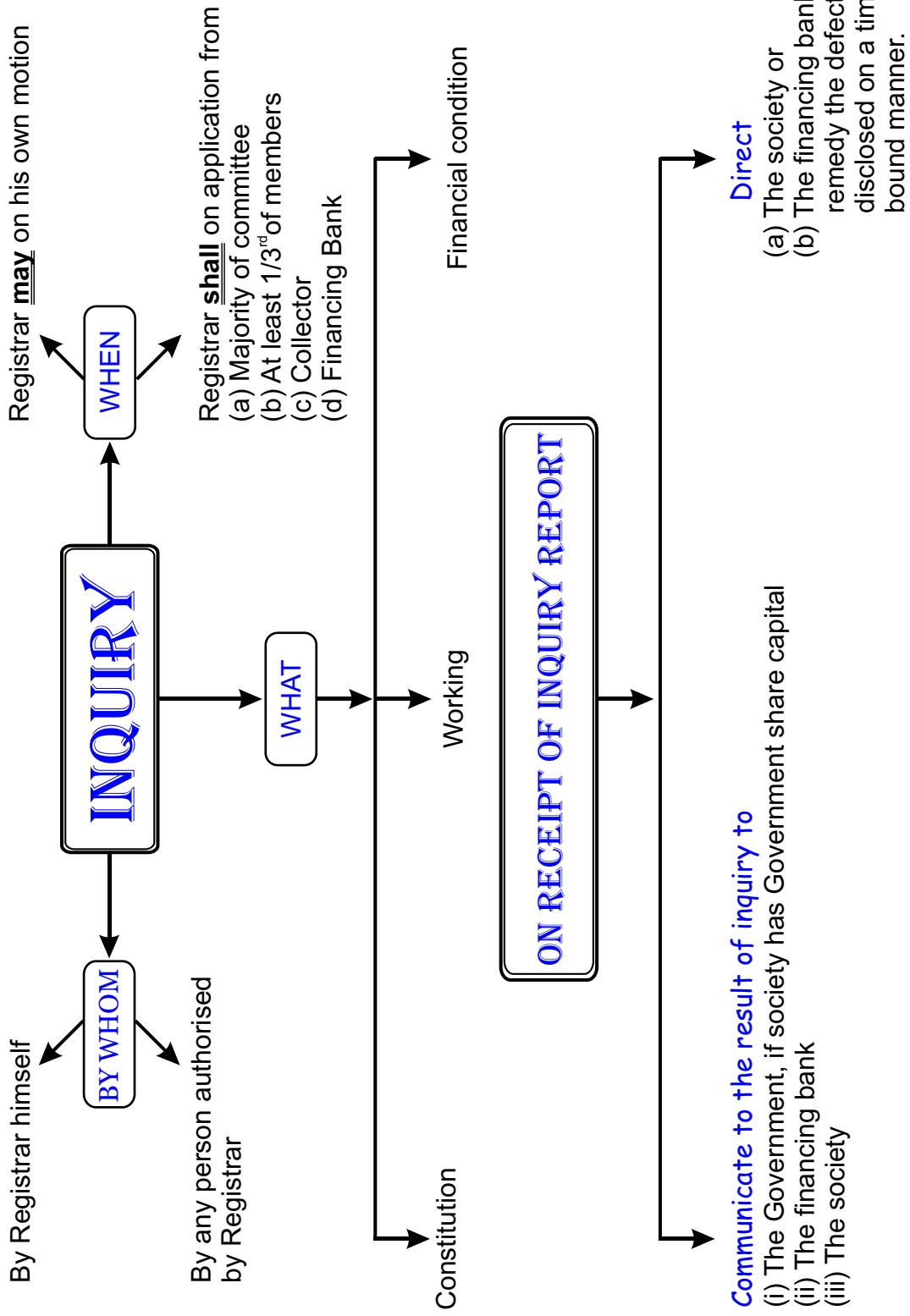
According to Section 75(4), the Registrar may, by order in writing, direct the society or its financing bank to take such action as may be specified in the order to remedy the defects disclosed as a result of the inquiry within the time frame specified by him.

Note:

- (1) The direction under Section 75(4) is a lawful direction. Any person, who willfully or without any reasonable excuse, disobeys any lawful direction issued under the Act shall be punishable with fine which may extent to ₹ 200/-.
- (2) When any follow up action is taken in pursuance of the inquiry report, the aggrieved person normally takes a plea that the results of the inquiry was not communicated to him, and thus, he is deprived from taking corrective action in time. Such a plea appears justified before a Court of law. Therefore, it must be ensured that, the result of the inquiry is communicated invariably and a direction is issued to the society to remedy the defects within the time specified therein. [vide *Aringar Anna Weavers Co-operative Society Ltd., vs. State of Tamil Nadu, AIR 1999 Mad. 254*].

INQUIRY

23. Flow chart - Inquiry



24. INQUIRY REPORT

I. Contents of Inquiry Report

(1) Preliminary

- (i) Date of the order of inquiry.
- (ii) Terms of reference.
- (iii) Brief account on objectives and working of the society.
- (iv) Its branches, show-rooms, sales outlets etc.
- (v) Organization chart.

(2) Points referred for inquiry

- (i) Succinctly state the points referred for inquiry and the period covered under inquiry.
- (ii) List of persons who were summoned for inquiry.
- (iii) List of documents summoned for inquiry.
- (iv) List of persons who did not answer the summons.
- (v) List of documents not available for inquiry.

(3) Process of inquiry

- (i) Your approach to the issue
- (ii) Summary of the deposition.
- (iii) Your findings from the records/documents.
- (iv) The version of the chief executive officer or office-bearers and their defence.
- (v) In case of misappropriation of funds, details of recovery of amount, if any, from whom and when.
- (vi) Action taken by the management, including filing of complaint, arbitration claim or civil/criminal case, etc.,
- (vii) Disciplinary action taken or contemplated against any employee of the society.
- (viii) Whether the deficiency was also noticed and reported during audit, inquiry or inspection (by the Department / financing bank / apex society) that has taken place during the relevant period.

- (ix) How you agree/disagree with the submissions made by various persons connected to the inquiry an analysis of the depositions.

(4) Findings

- (i) With reference to the terms of reference, your findings based on oral and documentary evidence all the documents you rely on to be marked as exhibits, their copies to be enclosed with the report.
- (ii) The person(s) responsible for the commission and omission. This should be substantiated with reference to their duties, responsibilities and powers.
- (iii) If more than one person are found responsible, the extent to which each one is responsible.
- (iv) If the responsibility could not be fixed on anyone or if anyone is to be exonerated, reasons should be adduced.

(5) Recommendations and suggestions

- (i) If you have any suggestion on the systems in place or the procedure adopted, state specifically.
- (ii) Abstain from commenting on the style of functioning of the management in general terms.

II. Report on Misappropriation / Fraud in a society

(1) Preliminary

- (i) Date of the order of inquiry.
- (ii) Terms of reference.
- (iii) Brief account on objectives and working of the society.
- (iv) Its branches, show - rooms, sales outlets etc.
- (v) Organization chart.
- (vi) Circumstances relating to the detection of fraud.
- (vii) Date on which the fraud was noticed, who noticed it and how it was noticed.
- (viii) The date of conclusion of inquiry.

(2) Points referred for inquiry

- (i) Succinctly state the points referred for inquiry and the period covered under inquiry.
- (ii) List of persons who were summoned for inquiry.
- (iii) List of documents summoned for inquiry.
- (iv) List of persons who did not answer the summons.
- (v) List of documents not available for inquiry.

(3) Delinquents

- (i) Name, designation and address (official and residential) of the delinquents, including those who are no more.
- (ii) Name, designation and address (official and residential) of those who abetted the fraud.

(4) Items of fraud

- (i) Date on which the fraud was committed, nature and amount involved;
- (ii) Documents in support of the commission of offence (The inquiry officer must secure the original and attach copies thereof with the report).
- (iii) Quote the relevant Section/Rule/bye law provision.
- (iv) In case of violation of subsidiary regulations, office order, minutes of the meeting, specify such violations clearly.

(5) Investigation

- (i) Persons examined.
- (ii) Whether statement/deposition was obtained; if not, state reasons
- (iii) Salient points of deposition.
- (iv) How the funds were misused / misappropriated or how the fraud was committed.
- (v) In case it is misappropriation of funds or stock, the inquiry officer should sign in the relevant registers and secure them. Attach copies with the report.

(6) Evidence

- (i) Classify evidences as (a) documentary (b) oral and (c) circumstantial and give details separately.
- (ii) If any document could not be secured or perused or where only the secondary evidence was seen, give details.

(7) Recovery

- (i) Whether any amount was recovered, and if so, from whom and when, give details.
- (ii) Action taken by the society for recovery like filing of complaint etc.

(8) Findings

- (i) With reference to the terms of reference, your findings based on oral and documentary evidence all the documents you rely on to be marked as "Exhibits", their copies to be enclosed with the report.
- (ii) The person(s) responsible for the commission and omission. This should be substantiated with reference to their powers, duties and responsibilities.
- (iii) If more than one person are found responsible, the extent to which each one is responsible.
- (iv) If the responsibility could not be fixed on anyone or if anyone is to be exonerated, reasons should be adduced.

(9) Report for follow-up action

- (i) The departmental officials involved like auditors, inspecting officials, who failed to detect the fraud, etc.
- (ii) Action to recover the deficiency to the assets of the society, by way of initiating of surcharge proceedings, etc.
- (iii) Action against the committee of the society.
- (iv) Action against the employees of the society.
- (v) Action on others (specify).

III. Report on recommending winding up

(1) Preliminary

- (i) Date of registration and starting of the society.
- (ii) Area of operation of the society.
- (iii) Objectives of the society.
- (iv) Circumstances leading to the inquiry and terms of reference.

(2) Membership and their participation

- (i) Number of members on roll.
- (ii) Active members as on date.
- (iii) The date on which last general body meeting was held and subjects dealt in there.
- (iv) When election was held last and the present status of management (elected committee / administrator / special officer, etc.).
- (v) Whether the inquiry officer attempted to convene the meeting of the general body to elicit the views of the members on the continuance of the society. If not, state reasons.

(3) Financial position of the society

- (i) Since when the society is incurring loss.
- (ii) Review the working of the society during the last five years (or at least three years).
- (iii) Indicate how the working capital/share capital is eroded.
- (iv) Details of Government assistance received by the society and how it was utilized (give details for the last five years).
- (v) When the society was last audited and what was the result?
- (vi) Reasons for pendency of audit.
- (vii) Statement showing amount due from members and others and the possibilities of their recovery (In your opinion, how much would become bad).
- (viii) Amount due by the society to the financing bank and others (with up-to-date interest).

- (ix) Employees' strength category wise. Whether everyone is in place?
- (x) Amount due to the employees towards their salary, bonus, provident fund, gratuity, etc.,
- (xi) Whether EPF, ESI, etc., were paid update? If not, provide details.
- (xii) Amount deposited towards employees welfare.
- (xiii) Debt Vs. Equity analysis.
- (xiv) Efforts taken by the management for revival of the society.

(4) Findings

- (i) Scope for revival/survival of the society.
- (ii) Your specific recommendation answering the term of reference.

25. MODEL FORMS**FORM 1****SUMMONS FOR APPEARANCE****(Issued under Section 75 of the Puducherry Co-operative Societies Act, 1972)**

WHEREAS, I was authorized to conduct an inquiry under Section 75 of the Puducherry Co-operative Societies Act, 1972 into theof the.....Society Ltd., No. P.....for the period;

AND WHEREAS, I have reason to believe that, you have knowledge on the affairs of the society / *, and hence, your presence and deposition are necessary for the aforesaid inquiry;

NOW, THEREFORE, in pursuance of sub-clause (i) of clause (a) of sub-section (2) of Section 75 of the said Act, I hereby summon you to be present on(specify day and date) at.....(specify time) at(specify place) without fail and shall not depart without my permission;

You are specifically informed that, failure to appear on the specified date, time and place or refusal to give a statement or refusal to sign the statement given is a punishable offence under Sections 174, 175, 179 or 180 of the Indian Penal Code.

Dated at.....(specify the place of issue), the.....(specify the issuing date).

INQUIRY OFFICER

To
Thiru / Tmt.
.....

Note:

* If the inquiry officer believes that, the summoned person has specific knowledge on particular affair of the society, he should specify that aspect.

SUMMONS FOR PRODUCTION OF RECORDS**(Issued under Section 75 of the Puducherry Co-operative Societies Act, 1972)**

WHEREAS, I was authorized to conduct an inquiry under Section 75 of the Puducherry Co-operative Societies Act, 1972 into theof theSociety Ltd., No. P..... for the period

AND WHEREAS I have reason to believe that, an examination of the following records / documents of the society, which are in your control / custody, is essential for the purpose of the aforesaid inquiry:

- (i)
- (ii)
- (iii)

NOW, THEREFORE, in pursuance of clause (c) of sub-section (2) of Section 75 of the said Act, I hereby summon you to produce the aforesaid records / documents on or before.....(specify date) at..... (specify time) at.....(specify place), either in person or through a responsible official, without fail;

You are specifically informed that, failure to produce the aforesaid records / documents is a punishable offence under Sections 174, 175, 179 or 180 of the Indian Penal Code.

Dated at..... (specify the place of issue), the(specify the issuing date).

INQUIRY OFFICER

To

Thiru / Tmt.....

FORM - 3**SUMMONS FOR APPEARANCE AND PRODUCTION OF RECORDS****(Issued under Section 75 of the Puducherry Co-operative Societies Act, 1972)**

WHEREAS, I was authorized to conduct an inquiry under Section 75 of the Puducherry Co-operative Societies Act, 1972 into theof the.....Society Ltd., No. P.....for the period

AND WHEREAS, I have reason to believe that, you have knowledge on the affairs of the society / *, and hence, your presence and deposition are necessary for the aforesaid inquiry with reference to the following records / documents:

- (i)
- (ii)

NOW, THEREFORE, in pursuance of sub-clause (i) of clause (a) of sub-section (2) of Section 75 of the said Act, I hereby summon you to be present on(specify day and date) at.....(specify time) at(specify place) with the above records / documents without fail and shall not depart without my permission;

You are specifically informed that, failure to appear on the specified date, time and place or refusal to give a statement or refusal to sign the statement given is a punishable offence under Sections 174, 175, 179 or 180 of the Indian Penal Code.

Dated at(specify the place of issue), the..... (specify the issuing date).

INQUIRY OFFICER

To

Thiru / Tmt.

Note:

* If the inquiry officer believes that, the summoned person has specific knowledge on particular affair of the society, he should specify that aspect.

DEPOSITION**(Deposition given before the Inquiry Officer in pursuance of inquiry under Section 75 of the Puducherry Co-operative Societies Act, 1972)**

Name of the inquiry officer :

Date of deposition :

Name of the deponent :

Father's / Husband's name :

Profession :

Residential address :

Solemnly affirmed:

Item No.1

Item No.2

At the end of the deposition:

I have been given adequate opportunity to present my case during the course of deposition. I was given opportunity to peruse the records. I have nothing more to adduce from my side.

*Recorded by me, as
deposed by the deponent.
Deponent read over it and
found it correct.*

*Read over and
found correct.*

*Signature of the
Inquiry Officer
(with date)*

*Signature of the
Deponent
(with date)*

26. Circular of the Registrar on conduct of inquiry

No. RCS/CLC/CIR/91/95
 Government of Pondicherry
 Co-operative Department

No. Ms/CLC/5/97

Pondicherry, the 25.6.1997

C I R C U L A R

Sub: Co-operative Law Cell - Conduct of inquiry under Section 75 and Inspection under Section 76 of the Pondicherry Co-operative Societies Act, 1972 - Procedure to be followed Instructions - Issued.

1. INTRODUCTION

- 1.1. Conduct of inquiry and inspection is an administrative function. The statute does not prescribe any particular mode for conducting such inquiry or inspection. However, the expression 'inquiry' or 'inspection' must be construed as a fair, reasonable, just and valid. It should not be an empty formality or an illusory neither one nor it can be taken for granted.
- 1.2. The inquiry or inspection assumes greater importance as it become foundation for taking further action to set the matters right in a co-operative society. Removal of disqualification (Section 36), suspension of Officer or servant of society (Section 80), surcharge (Section 82), winding up and cancellation of registration (Section 126) presuppose conduct of, inter alia, inquiry or inspection.

2. INQUIRY

- 2.1. Section 75 of the Pondicherry Co-operative Societies Act. 1972, empowers the Registrar to hold an inquiry or direct some other person, authorized by him by order in writing in this behalf, to hold an inquiry into the constitution, working and financial condition of a registered society. Further, he shall hold the inquiry or direct some other person authorized by him to hold an inquiry, if an application is received from a majority of the committee, or of not less than 1/3rd of the members of the society or on the request of the Collector, or at the request of the financing bank.
- 2.2. An inquiry may be necessary if there are serious defects in the working of the society; if the committee or any officer / employee is working prejudicially and that the interest of the members are not safe, It is deterrent against mismanagement, restores confidence in the minds of all concerned and helps the management and employees to set right everything before it is too late.

2.3. When inquiry may be held

2.3.1. Constitution:

Under this head, it is to be investigated whether or not the society is properly constituted and the provisions contained in the Act, the rules and the bye-laws have been fully complied with. Infringement, if any, must be noted by the person making the inquiry and explanations of all concerned should be taken.

2.3.2. Working

Inquiry into the working does not mean to investigate in the day-to-day activity of the society. It means the manner in which the business and management of the society are conducted. The inquiry into its working is to see that it has made proper use of powers, privileges and facilities given to it, and has worked on the lines of prudent management yielding profits to its members and resulting in their economic betterment. All lapses on the part of the management, relating to the business of the society, should be noted, and the causes of its failure or partial success should be carefully gone into.

2.3.3. Finance

The financial condition of the society in all its bearings is to be discussed under this head, whether advances are made within the limit fixed by the bye laws or the regulations made therefor, whether proper instalments are fixed and realized on the due dates, whether, the surplus funds are invested in accordance with the provisions of the Act and Rules, whether the profits are allocated according to the statute, whether repayments are made to the financing bank / institution on the due dates, position of recoveries from the members, action taken against the defaulters are all to be inquired under this heading.

The power of ordering an inquiry is delegated to the Joint Registrar / Deputy Registrar and, therefore, whenever inquiry / inspection is ordered the authority should satisfy himself under which category the inquiry is to be ordered. It should not be a mechanical reproduction of the phraseology from the Act, like constitution, working and financial condition of the society. The inquiry provides a check against mismanagement of the society and creates confidence amongst the members and the public. However, before holding and inquiry, the authority should carefully specify the charges leveled against the society and should see whether the same can be remedied by any other measure, because while an inquiry gives itself an insight of the working of the society, it also adversely affects the reputation and that of its committee.

2.4 The authority ordering inquiry shall pass a speaking order

While ordering inquiry, the order shall state the point of pointers of inquiry, the period during which the inquiry has to be conducted and submission of the report to the Registrar. If such points and scope of inquiry are not mentioned, no proper inquiry will be possible and it will not be possible for the office-bearers to meet the points properly. A copy of the order should necessarily be sent to the society, whose affairs are to be inquired into. apex / central society, to which the society is affiliated, and the financing bank to which the society is affiliated, should also get a copy of the order appointing inquiry officer, when and inquiry is ordered into a specific case of alleged irregularity, it would suffice, if the inquiry officer restricts the inquiry to that alleged irregularity only. He need not examine all aspects like constitution, general working and overall financial condition of the society.

2.5 Time limit for inquiry

The authority should specify the time within which the inquiry report may be submitted. The authority should allow reasonable time for completion of the inquiry. If the inquiry officer is unable to complete the inquiry within the time limit, he should submit an interim report, stating the reasons for the delay in completion of inquiry and the authority may grant extension of limit for completion of inquiry. It is also possible to withdraw the inquiry from him and entrust it to some other person as deems fit.

The authority ordering the inquiry should closely monitor and follow-up the receipt of report and a separate register is to be maintained in each sector, furnishing details of the inquiry ordered, receipt of reports, further action taken, etc.

2.6 Report of the inquiry

The inquiry officer should submit a report to the registrar on all the points mentioned in the order. The report should contain his findings and the reasons therefor, supported by such documentary or other evidences, as recorded by him during the course of inquiry.

2.7 Processing the inquiry report

Whenever the report is received, the authority ordering the inquiry should make a detailed and in depth study of the report and wherever the findings are not supported by evidences the additional information may be called for from the inquiry officer. The action should be taken in a time bound manner and delay should be strictly avoided. The inquiry report and the connected records, if any, should be kept in safe custody by a responsible officials/ officer.

2.8 Communication of the results of the inquiry

Section 75(3) makes it obligatory on the part of the Registrar to communicate the results of the inquiry to the Government, if the Government have taken shares of the society, to the financing bank, to which society is affiliated inquiry should ensure that this is done without any deviation as otherwise it gives a handle to the society to complain that the results of the inquiry have not been communicated. It is not necessary to supply a copy of the report to the society and only the results are can be communicated. While communicating the results, the authority should ensure that they are given in a logical sequence, so that the society can initiate action wherever necessary. An outsider is not entitled to a copy of the report.

Communication of the results of the inquiry is a statutory duty and subsequent action on inquiry report would be bad in law, if results are not communicated.

Results of inquiry should be communicated even where the inquiry officer has recommended that revival of the society is not possible and action is contemplated up the affairs of the society under Section 126 of the Act.

2.9 Follow up action on inquiry

Section 75 (4) empowers the Registrar to direct any officer of the society or its financing bank to take such action as may be specified in the order to remedy, within such time as may be specified in the order, the defects disclosed as a result of the inquiry.

3. INSPECTION

3.1. When inspection is to be ordered

The main object of Section 76 is to inspire confidence in the mind of the creditor and to ensure safety of the money lent to or deposited in the society. It may be seen that the purposes for which an inquiry is ordered is different from the purposes of conducting inspection. The authority should carefully note the difference and should see that the inspection is only with regard to the books of the society and even though the inspecting officer has the powers of the Inquiry Officer, the scope of inspection is limited any where an inquiry is to be ordered it should not be substituted by an inspection under Section 76.

3.2. Passing of speaking order, time limit for inspection processing of the inspection report

The points noted under 2.4, 2.5, and 2.7, shall mutatis mutandis apply for inspection.

3.3. Report of the Inspection

Inspection conducted under Section 76 should be distinguished from a casual or periodical inspection of a society, which is one in an administrative capacity. The inspection report should cover all the points and be supported by financial statements in support of the point of reference.

3.4. Communicating of results of inspection

A duty is cast under Section 76(2) to communicate the results of inspection to the society if the inspection is made or ordered by Registrar on his own motion, to the creditor and the financing bank, if the inspection is made on the application of the creditor.

3.5. Follow up action on inspection

Section 76(3) empowers Registrar to direct any officer to remedy the defects pointed out in the course of inspection.

The Branch Officers may take care of the above aspects in the matter of inquiry / inspection and follow instructions for the betterment of the Department.

**G. RAGESH CHANDRA
REGISTRAR OF CO-OPERTIVE SOCIETIES**

INSPECTION

INSPECTION

1. Statutory Provision

Section 76 of the Puducherry Co-operative Societies Act, 1972 provides for inspection. Section 76 of the Act is extracted below, for ready reference:

- (1) *The Registrar may, of his own motion, or on the application of a creditor of a registered society, inspect or direct any person authorized by him in this behalf, by general or special order in writing, to inspect the books of the society and the person so authorized shall have all the powers of the Registrar when holding an inquiry under Section 75:*

Provided that no such inspection shall be made or directed on the application of a creditor, unless the creditor

(a) satisfies the Registrar that the debt is a sum then due and that he has demanded payment thereof and has not received satisfaction within a reasonable time; and

(b) deposits with the Registrar such sum as security for the costs of the proposed inspection as the Registrar may require.

- (2) *Where an inspection is made under sub-section (1), the Registrar shall communicate the results of such inspection*

(a) where the inspection is made on his own motion to the society; and

(b) where the inspection is made on the application of a creditor, to the creditor and to the financing bank, if any, to which the society is affiliated.

- (3) *The Registrar may, by order in writing, direct any officer of the society to take such action, as may be specified in the order, to remedy, within such time as may be specified therein, the defects, if any, disclosed as a result of the inspection.*

2. When inspection is to be ordered?

The main object of Section 76 is to inspire confidence in the mind of the creditors to ensure safety of the money lent to or deposited in the society. It may be seen that, the purposes for which an inquiry is ordered is different from the purposes of conducting inspection. The inspection is only with regard to the books of the society and even though the inspecting officer has the power of the inquiry officer, the scope of inspection is limited.

- (i) The Registrar may inspect on his own motion; or
- (ii) on application of a creditor, inspect or direct any person authorized by him in this behalf, by general or special order in writing, to inspect the books of the society.

Note that, the word '*books*' has been used in this Section as against the words "books, accounts, documents, securities, cash and other properties" in Section 74(Audit), and "book, accounts or documents" in Section 75(Inquiry).

Audit Vs. Inspection: Audit protects the society, while inspection protects the creditors and the power of inquiry is given to the Registrar to protect the interest of the members.

3. Creditor applying for inspection

A creditor possesses the right to have the solvency of a society determined by an inspection of its books. But, it is not every creditor who can apply for inspection of books. The following conditions must be fulfilled in the case of creditor applying for inspection:-

- (i) The creditor must be a person who is entitled to demand immediate payment of money. A depositor holding a fixed deposit, which ripens to maturity at a future date, is not a creditor here.
- (ii) The creditor must have demanded payment.
- (iii) The creditor must not be one, who has received payment of his debt within a reasonable time.
- (iv) The creditor must deposit with the Registrar such sums as may be required by the Registrar as security for costs.

The word 'creditor' in an ordinary sense is a person to whom the debt is owned. However, as defined in the *Regulation of Accounts Act, 1920*, it means "*a person who in regular course of business advances a loan and shall include the legal representatives and successor in interest whether by inheritance, assignment or otherwise of persons who advances the loan*". The term is correlative and implies a right corresponding to an obligation of the debt or which he owes to the creditor.

While under Section 75, the Registrar is bound to hold an inquiry when asked by the persons mentioned in that Section, the Registrar is not bound to hold an inspection on the application of a creditor. The exact points on which the creditor requires information should be stated in the application to the Registrar for action under this Section. Discretion to issue the order vests with the Registrar. The use of the word "**shall**" in Section 75(1) and "**may**" appearing in Section 76(1) is relevant here.

4. Powers of the Inspecting Officer

Though the scope of inspection is limited when compared to inquiry, the inspecting officer has the same powers of the inquiry officer.

5. Check list relating to Inspection

The points to be checked are

GENERAL ASPECTS

- | | |
|---|----------|
| (1) When the inspection is made on the application of a creditor, whether the applicant satisfies the Registrar that the debt is a sum then due and that he has demanded payment therefor and has not received satisfaction within reasonable time and whether he has deposited with the Registrar required sum as security for the costs of the proposed inspection? | Yes / No |
| (2) Whether the programme of visit to the society for inspection has been intimated to the society well in advance? | Yes / No |
| (3) Whether list of records and registers required for examination during inspection has been indicated to the society? | Yes / No |
| (4) Whether all the records and registers and minutes book have been studied thoroughly? | Yes / No |
| (5) Whether information relevant to the points of inspection and true copies of extracts of documents, wherever necessary, are collected for reporting purpose? | Yes / No |
| (6) Whether inspecting officer has met the President and other office bearers and discussed the affairs of the society and offered suggestions for improving the working of the society? | Yes / No |

6. Verification to be done during inspection

The inspecting officer should note whether he has verified the following aspects during the inspection:-

- Receipt of the latest audit report by the society and the action taken thereupon.
- Rectification of defects pointed out in the audit report and previous inspection report;

- (c) Membership position showing the progress in enrollment (category-wise).
- (d) Conduct of meetings of general body, committee and special committees, if any, as per the bye laws of the society in respect of meeting notices, quorum, discussion of the agenda subjects, etc.,
- (e) Members participation in the meetings and attendance of Government nominee in the meetings.
- (f) Preparation of statement of receipts and disbursement and the final accounts for the period of inspection.
- (g) Provisional balance sheet as on the date of inspection.
- (h) Verification of cash balance and securities.
- (i) Verification of details of investment made by the society.
- (j) Verification of bank pass books and reconciliation of balances as per the pass book and cash book.
- (k) Verification of assets of the society such as furniture, fittings, etc.,
- (l) Verification of stock in trade, pricing policy, disposal of old stocks, etc.,
- (m) Proper utilization of State aid received by the society.
- (n) Checking of credit and non-credit business transactions and their correct entries in the books of accounts.
- (o) Progress achieved in respect of specific schemes or projects (e.g., construction of godown).
- (p) Work distribution to the employees;
- (q) Whether circular, instructions and statutory directions, relating to admission of members, advances, recoveries, qualification of committee members, profit distribution, etc., are properly complied with.
- (r) Whether funds of the society are misused and diverted in any way.

7. Report of the inspection

An inspection, conducted under Section 76, should be distinguished from a casual or periodical inspection of a society. The inspection report should cover all the points required under terms of reference and be supported by the financial statements.

8. Contents of Inspection Report

The inspection report should contain full information on the following points and comments should be made wherever necessary.

- (1) General information about the society
 - (a) Name, address, registration number and date of the registration of society as per the registered bye laws of the society.
 - (b) Area of operation of the society.
 - (c) Objects of the society.

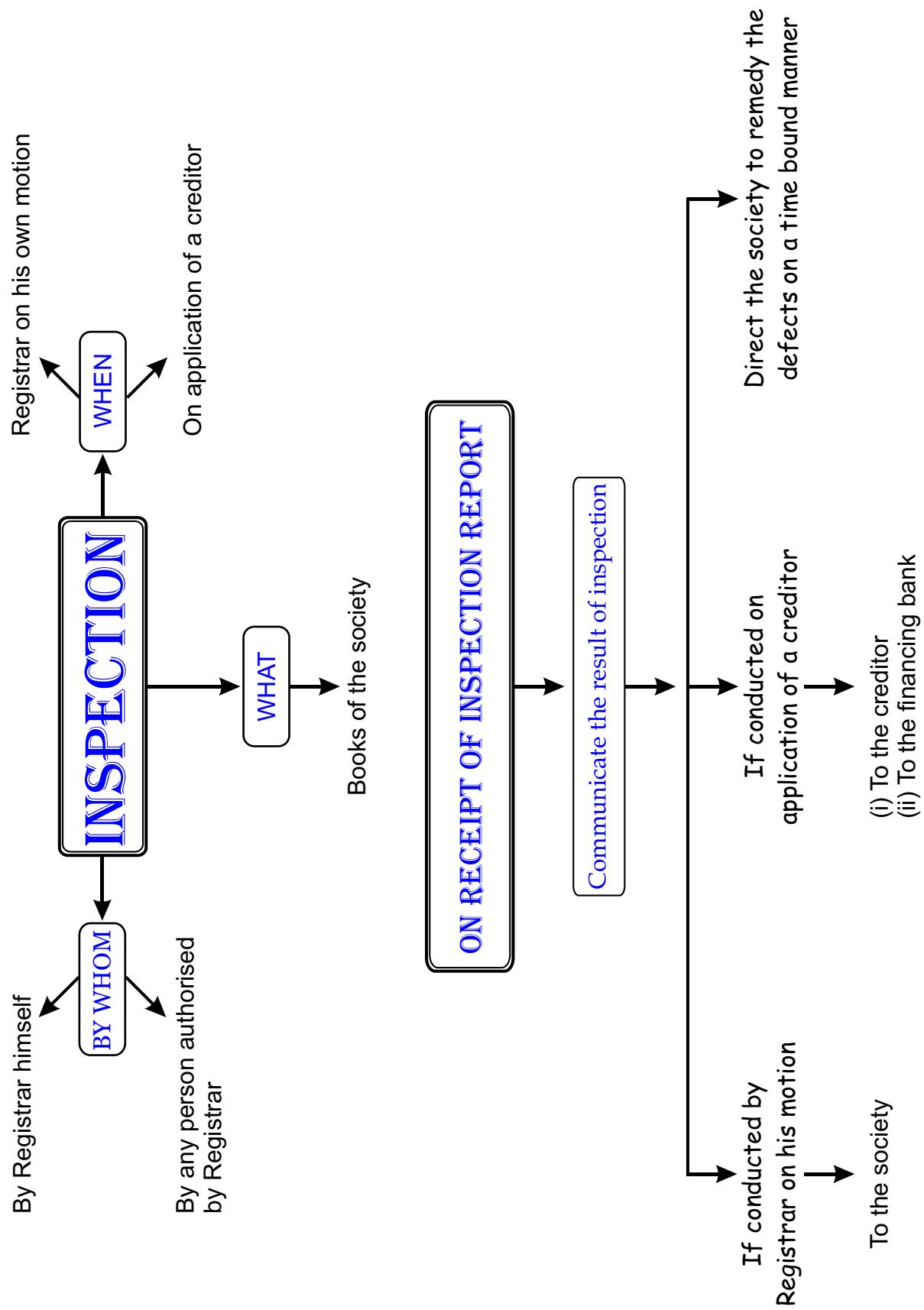
- (d) Amendments to the bye laws, if any, effected during the inspection period, information of any such amendments got registered previously should be furnished.
 - (e) Membership position showing progress in enrollment, category-wise, if any.
 - (f) Management details like committee / administrator / special officer and term of office.
- (2) Audit
- (a) Date of last audit.
 - (b) Period of last audit.
 - (c) Name and designation of the auditor who conducted the latest audit.
 - (d) Audit classification for the last 5 years.
 - (e) Whether the audit report is received by the society.
 - (f) Action taken on the previous audit reports.
 - (g) Rectification of defects pointed out in previous audit and/or inspection reports.
 - (h) Details of un-rectified irregularities / defects.
- (3) Meetings
- (a) Date of conduct of general body, committee and sub-committee meetings
 - (b) Important resolutions passed in the meetings.
 - (c) Extent of member's participation in the meetings and attendance of Government, Registrar's and/or financing bank's nominee.
 - (d) Important resolutions passed in the meetings.
- (4) Accounts
- (a) Cash on hand and securities checked. It should be specifically noted whether the cash checked is an opening balance or the closing balance of a particular day and who produced the cash for verification. The verifying authority should put his signature, designation and date of verification.
 - (b) Correctness of accounts relating to the credit and non-credit business transactions and their genuineness.
 - (c) Maintenance of cash book and other books of accounts and registers.
 - (d) Statement of receipt and disbursement, trading and profit and loss accounts for the period of inspection.
 - (e) Provisional balance sheet as on the date of inspection with comments.
 - (f) Details of verification of investments made and returns on investments.

- (g) Reconciliation of bank accounts.
- (5) General and Financial Management
 - (a) Detailed of State-aid received by the society and its utilization. (It is advisable that a separate register is got written up and checked by the visiting authority).
 - (b) Progress in respect of specific schemes/projects (e.g., construction of godowns, processing units, etc., undertaken by the society).
 - (c) Action taken for recovery of over-dues, stock deficits, etc.
 - (d) Stock position, storage arrangements, shortage of stock, if any, pricing policy, disposal of old stocks, etc.,
 - (e) Proper distribution of work among the employees and obtaining security bonds from them;
- (6) Mismanagement / Misappropriation of assets
 - (a) Details of infringement of bye laws, Act and Rules.
 - (b) Unauthorized payments, advances, expenses, investments, etc.
 - (c) Unauthorized purchases, wrong pricing policy, etc.
 - (d) Management irregularities and lapses in constitution, members qualifications, committee decisions, etc.
- (7) Conclusion
 - (a) Analysis of the working of the society;
 - (b) Analysis of the problems of the society and suggestions for solving them.

9. Communicating the result of inspection

- (i) The Registrar shall communicate the results of the inspection to the society concerned when such inspection is ordered on his own motion. He may direct the society to take such actions as may be specified in the order to remedy the defects within such date as may be specified therein.
- (ii) If the inspection is made on the application of the creditor, it should be communicated to the creditor concerned and the financing bank.

10. Flow chart - Inspection



SURCHARGE

SURCHARGE

1 Surcharge

Section 82 of the Puducherry Co-operative Societies Act, 1972 provides a remedy for recovery of loss or deficiency caused to a society by persons who are or were in the helm of affairs of the society by breach of trust, negligence, etc. It is intended to proceed against such persons responsible for such acts. The provision for surcharging is, thus, a remedy for recovery of loss or deficiency caused by such persons even though they may be criminally liable.

2. Statutory Provision

Section 82 of the Act is extracted below, to facilitate easy reference:

(1) *Where in the course of an audit under Section 74 or an inquiry under Section 75 or an inspection under Section 76 or Section 77 or the winding up of a society, it appears that any person, who is or was entrusted with the organization or management of the society or any past or present officer or servant of the society has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has made any payment which is not in accordance with this Act, the rules or the by-laws, the Registrar himself or any person specially authorized by him in this behalf, of his own motion or on the application of the committee, liquidator or any creditor or contributory, may inquire into the conduct of such person or officer or servant and make an order requiring him to repay or to restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorized as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retainer, breach of trust or wilful negligence or payments which are not in accordance with this Act, the rules or by-laws as the Registrar or the person authorized as aforesaid thinks just:*

Provided that no such inquiry shall be held after the expiry of six years from the date of any act or omission referred to in this sub-section:

Provided further that no order shall be passed against any person referred to in this sub-section unless the person concerned has been given an opportunity of making his representations.

- (2) Any sum ordered under this section to be repaid to a registered society or recovered as a contribution to its assets may be recovered in the same manner as arrears of land revenue.
- (3) This section shall apply notwithstanding that such person or officer or servant may have incurred criminal liability by this Act.

3. Three important aspects of surcharge

The three important aspects of Section 82 are:

- (i) The pre-requisites for initiating surcharge action under Section 82.
- (ii) The persons against whom such surcharge orders under Section 82 can be passed.
- (iii) The circumstances under which action under Section 82 can be instituted.

(i) Pre-requisites

There should be:

- (a) An audit under Section 74; or
- (b) An inquiry under Section 75; or
- (c) An inspection under Section 76 or Section 77;
- (d) Winding up of a society.

The pre-requisites for initiating surcharge action under Section 82 is complied if there was an statutory audit or inquiry or inspection at some time previous to the action taken under that Section, though not immediately preceding such action and the results of the audit or inquiry or inspection, as the case may be, was communicated as required in the relevant Sections. Matters appearing in interim report of audit or inquiry or inspection are not excluded from the provisions of this Section in view of the expression "where in the course of" used at the beginning of sub-section (1).

(ii) The persons against whom the surcharge order may be passed

- (1) Any person who is or was entrusted with the organization of the society.
- (2) Any past or present officer of the society.
- (3) Any past or present servant of the society.

The following conditions should be clearly brought out against the person on whom surcharge action is to be taken:

- (a) There should be delegation to perform certain duties;
- (b) Breach has been committed by the person on whom the delegation was cast; and
- (c) Deficiency or loss has actually resulted as a direct consequence of that breach due to commissions and/or omissions.

(iii) The circumstances under which action under Section 82 can be instituted

(a) Misappropriation of money or property

The word "misappropriation" means setting apart of something valuable for one's own use to the exclusion of the legitimate owner. The offence of criminal misappropriation consists in dishonest misappropriation by a person or conversion to his own use of any movable property.

(b) Fraudulent retention of money or other property

According to Section 25 of the Indian Penal Code, a person is said to do a thing fraudulently, if he does the thing with intent to defraud but not otherwise. Two elements are necessary, viz., firstly, deceit or intention to deceive or in some cases mere secrecy; and secondly, either actual injury or to a risk of possible injury by means of deceit or secrecy.

Fraudulent is the adjectival form of fraud. Fraud has not been defined under criminal law. There is no comprehensive definition for fraud in any other statute. The word "fraud" has been used diversely in relation to human conduct. It means something dishonest or morally wrong. It involves something in the nature of cheating. In civil law, Section 17 of the Contract Act has defined fraud as "Fraud means and includes any of the following acts committed by a party to a contract, or with his connivance or by his agent, with intent to deceive another party on his agent or to induce him to enter into contract".

Fraudulent retention of money or other property implies that, the money or property though still intact has been dishonestly kept back by the person or officer or servant. In *Sundaram Iyer vs. Deputy Registrar of Co-operative Societies* (AIR 1957 Mad. 634) the High Court of Madras said "The misappropriation is where money or property has been absorbed, expended or dissipated on his own account by the wrong doer. Fraudulent retention of money implied that the money or property is still intact though it is dishonestly kept back by wrong doer."

(c) Guilty of breach of trust in relation to the society

According to Section 405 of the I.P.C., "whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits criminal breach of trust".

"Trust" means a firm belief that a person may be relied upon. A person is said to be in position of trust, if he is having duties that can be neglected without immediate detection. Breach of trust is an infringement or neglect or breaking of duty, or an action belying the reliance reposed on the person. An officer or servant of a society has certain duties in relation to the society. If he infringes his duties and is disloyal to the society, he is said to have committed breach of trust. Every act or commission or omission to a breach of duty on the part of office-bearers, who are more or less trustees, would constitute a breach of trust [vide AIR 1947 Madras 634].

For invoking Section 82, breach of trust need not necessarily be criminal breach of trust. Every act of omission or commission, amounting to a breach of duty in the case of an officer [as defined in Section 2(14)] of a co-operative society in a fiduciary relationship to the society, will amount to breach of trust.

(d) Causing any deficiency in the assets of the society by breach of trust or wilful negligence

The word that is used here is "*deficiency*" and not "*loss*". Loss is of speculative nature. Deficiency should be actual deficiency and not apprehended deficiency.

A "breach of trust" is breach of any duty or obligation imposed on a trustee as such by any law for time being in force. It is in a way fraudulent appropriation of another's property by a person to whom it has been entrusted, or in whose hands it has lawfully come. When a trustee commits a breach of trust, he is liable to make good the loss, which the trust property or the beneficiary has thereby suffered.

The “mischief of breach of trust” should have the following ingredients:

- (i) Entrusting any person with property or with any dominion over property.
- (ii) The person entrusted:
 - (1) Dishonestly misappropriating or converting to his own use that property; or
 - (2) Dishonestly using or disposing of that property or wilfully suffering others or any other person so to do in violation;
 - (3) Of any direction of law prescribing the mode in which such trust is to be discharged; or
 - (4) Of any legal contract made touching the discharge of such trust.

Every act of commission or omission amounting to a breach of duty in case of office bearers of a society, who occupy fiduciary relationship to the society would amount to a breach of trust so as to enable the Registrar to make surcharge orders against them [1960 KLT 393].

The expression “wilful negligence” has evidently used by way of description and not as a definition. The idea intended to be conveyed is that, default may be the result of the act or power of making once own choice or decision, or as the result of non-exercise of will due to sluggish indifference, although the defaulter knew, or was in a position to know that loss or harm was likely to result.

“Wilful negligence” means negligence as opposed to inattentive, inadvertent or unintentional negligence. It is deliberate negligence or negligence committed on purpose. If a normal care has been taken by the persons in charge of the society's day-to-day administration, they cannot be proceeded or surcharged.

The general loss sustained in the normal course of business of the society or the loss suffered on account of sale of goods in good faith by reduction in price to avoid further loss may not come under the purview of Section 82. The fact that an institution has incurred business loss by itself cannot form the basis for initiating action under Section 82. Only the deficiency to the assets of the society caused by breach of trust or wilful negligence by the member of the committee, officer or servant of the society will come under the purview of Section 82.

(e) Any payment which is not made in accordance with the provisions of the Act, Rules or the bye laws

This means any unauthorized or irregular payment, not in accordance with the provisions of the Act, the Rules or the bye laws. If the funds are misutilised, it will amount to payment which is not in accordance with the provisions of the Act, the Rules or the bye laws.

4. How to proceed action?

The surcharge action should be initiated by the Registrar or by the person authorized, either of his own motion or on application made by the committee or the liquidator or any creditor or contributory of the society.

In order to levy surcharge, the audit or inquiry or inspection must be made as provided in the Act and it should be conducted according to law. Surcharge proceedings cannot be initiated on the basis of the report of the officer who has conducted only a routine inspection. The liability of the person, against whom surcharge proceedings are proposed to be taken, should be brought out in definite terms in the audit, inquiry or inspection report or found out during the course of liquidation.

Only if the inquiry conducted under Section 75 has brought out the guilt on the persons, surcharge will lie under Section 82. This is well settled by a decision of the Apex Court in *Pentakata Sriramulu vs. Co-operative Marketing Society Ltd., Anakalli and another*, reported in AIR 1965 SC 621, and followed by the High Court of Madras in *Kuppusamy vs. Deputy Registrar, Tirunelveli*, 1967 MLJ 779.

The command of the Kerala High Court in *A.K.Francis vs. Joint Registrar*, 1990 (2) KLT 470 : 1990 (2) KLJ 428 : AIR 1991 Ker. 344 is quite apposite here. It was held that -

"The first requirement of the section, which constitutes the condition precedent for its operation, is that the payment contemplated or the deficiency in the assets of the society should have been found in the course of audit, inquiry, inspection or the winding up of the society. The section can be invoked by the Registrar only if the finding was made in this manner and not otherwise."

(1) Issue of notice

Charges should be framed against the person or persons considered to be liable for surcharge. He or they should be given an opportunity of being heard and to put-forth their case in the interest of natural justice.

For this purpose, it is essential that, such persons are given a notice to show cause why action should not be taken against them as proposed in the notice towards the various acts of omission and commission, etc., noticed against them as per the charges framed against each item. The notice to be issued should be clear regarding the ground on which charges are framed. Reasonable time must be allowed to explain their conduct.

The procedure spelt out in inquiry on issue of summons will *mutatis mutandis* apply to the notice issued under surcharge. The notice shall be issued to those persons who were indicted by the auditor / inquiry officer / inspecting officer / liquidator, etc., for the various acts of omissions and commissions.

(2) Supply of copy of audit / inquiry / inspection report to the delinquent

Section 82 does not specifically state that, the delinquent should be supplied with the copy of the audit / inquiry / inspection report, which was the starting point for initiating surcharge inquiry. But, the second provision to Section 82(1) provides that, no order shall be passed against any person unless the person concerned has been given an opportunity of making his representation. Providing a gist of the findings will always put the delinquent in a disadvantageous position. The delinquents often take a plea in appeal proceedings that, they are not given copies of the audit / inquiry / inspection report, and hence, they could not effectively meet the charges. To overcome this, the entire report be made available to them, if such report was not supplied earlier. When the delinquents demand for a copy, it should invariably be given.

In this connection, my article on "**Supply of inquiry report on surcharge proceedings**" published in "**NCHF Bulletin-January 2010**" and appended in this manual, is worth reading.

(3) Procedure to be followed while recording deposition

The procedure to be followed in recording deposition in case of inquiry under Section 75 may be adopted *mutatis mutandis* here to obtain deposition from the delinquent or from the witness(es).

5. Surcharge report

The success of the surcharge proceedings revolves around the report of the inquiry officer. Mere endorsement of findings of the auditor / inquiry officer / inspecting officer will make the inquiry under Section 82 redundant. The inquiry officer under Section 82 should weigh the findings of the auditor / inquiry officer / inspecting officer, as the case may be, vis-à-vis, the deposition of the delinquent and arrive at his independent conclusion as how the delinquent has committed the mischief enumerated under Section 82.

The mere chanting of causing deficiency in the assets of the society will be incomplete and unsustainable unless the causing deficiency in the assets is visited with breach of trust or wilful negligence.

If the inquiry officer finds that, the delinquent has violated the provisions of the Act, Rules or bye laws of the society or any other regulations, he should quote the relevant provisions and explain how the violation has taken place. An extract of the provisions should be the part of the record.

Even if the delinquent is not present before the inquiry officer, the inquiry officer should undertake this exercise. The inquiry officer should establish a link between the impugned act and the resultant loss to the society. Only in such a case, the inquiry officer has the power to direct such delinquent to contribute to the assets of the society by way of compensation in respect of such misappropriation, fraudulent retention, etc., Once the society's assets have been made good by one or more of the delinquents in charge of the affairs of the society and such contributions made by those have been accepted in lieu of the loss sustained to the society, then, it would be superfluous to undertake an inquiry under Section 82 and surcharge proceedings seems completed on such delinquent persons.

It is a fundamental principle of law that, no person shall be condemned twice on the same cause of action. Once the loss has been secured and contribution has been made and money restored and the society is fully compensated, Section 82 can no more be pressed into service. *Section 82 does not contemplate punitive measure; its intention is purely compensatory in scope.*

On the basis of inquiry, the Registrar or person authorized may order the person at fault to:

- (i) Repay or restore the money or property or any part thereof, with interest, at such rate as he may consider just; or
- (ii) Contribute such sum to the assets of the society by way of compensation in respect of misappropriation, misapplication of funds, fraudulent retention, breach of trust or wilful negligence, or payment which are not in accordance with the Act, the Rules or bye laws.

6. Limitation

According to first proviso to Section 82 (1) no inquiry shall be held after the expiry of six years from the date of any act or omission. The High Court of Madras in *K.Vasudeva Ayyangar vs. Sri Ranganatha Co-operative Stores Ltd., Srirangam*, (1975) 1 MLJ 158 has held that the expression 'no such inquiry shall be held' would only mean that no such inquiry shall be instituted or constituted and not that no such inquiry shall be conducted or completed. If that were the intention of the Legislature, different words would have been used.

An inquiry has several stages commencing from its initiation or institution and ending with the passing of final orders. The period of limitation provided for in the proviso is not intended to cover all these stages, some of which may consume time or involve delay as a result of the dilatory tactics of the parties or because of causes over which neither the Registrar nor the parties before him have any control. Similar view was held in *P.K.R.Sethuraman vs. Pannaikadu Co-operative Stores, (2003) 2 MLJ 30.*

Any sum ordered to be repaid to the society or recovered as contribution of its assets may be recovered in the same manner as arrears of land revenue.

This Section shall apply notwithstanding that such person or officer or servant may have incurred criminal liability by his act. Thus, both civil and criminal proceedings may simultaneously run against the delinquent.

7. Check list relating to Surcharge

The check list relating to action to be taken under Section 82 is given below:

1. Whether the cause of action to be taken under this Section has been found in the course of :

(a) Audit under Section 74;	YES / NO
(b) Inquiry under Section 75;	YES / NO
(c) Inspection under Sections 76 or 77;	YES / NO
(d) Winding up of a co-operative society.	YES / NO
2. Whether the cause of action has been committed by:

(a) The committee of management of the society; or	YES / NO
(b) Its office-bearers, such as, President, Vice-president, Chairman, Vice-Chairman; or	YES / NO
(c) Any other member of the committee of the society; or	YES / NO
(d) Any person, who is or was entrusted with the organization or management of such society; or	YES / NO
(e) Who is or has, at any time, been an Officer or employee of the society.	YES / NO
3. Whether the committee or the person concerned:

(a) Has made any payment contrary to the Act, Rules or bye laws; or	YES / NO
(b) Has caused any deficiency to the assets of the society by breach of trust or negligence; or	YES / NO
(c) Has misappropriated or fraudulently retained any money or other property belonging to such society.	YES / NO

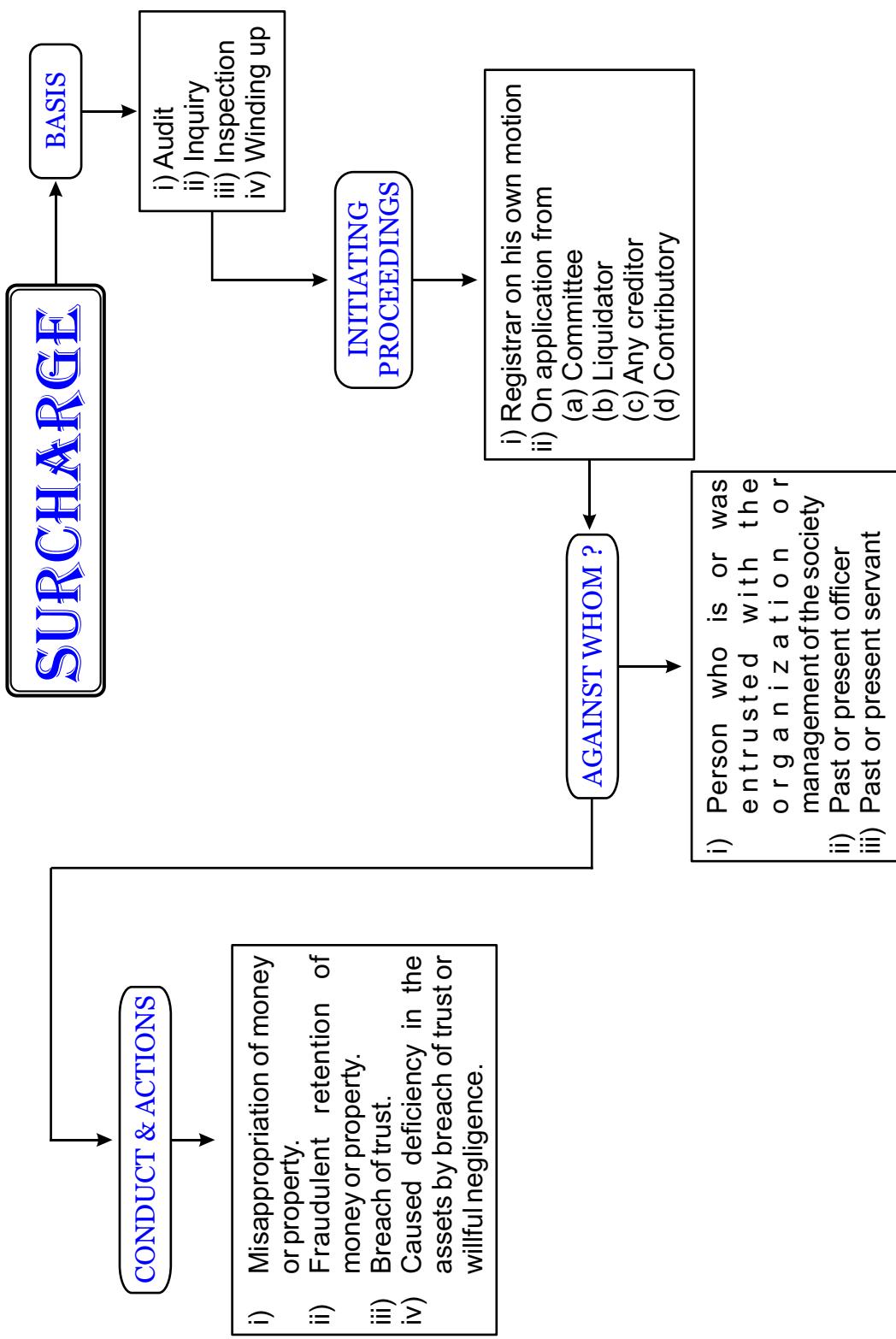
SURCHARGE

- | | |
|--|----------------------------------|
| 4. Whether action under Section 82 is initiated by the Registrar on his own or an application of the committee, liquidator or any creditor of the society? | YES / NO |
| 5. Whether charges against the concerned person have been framed? | YES / NO |
| 6. Whether the following conditions are brought out against a person on whom surcharge action is taken:-

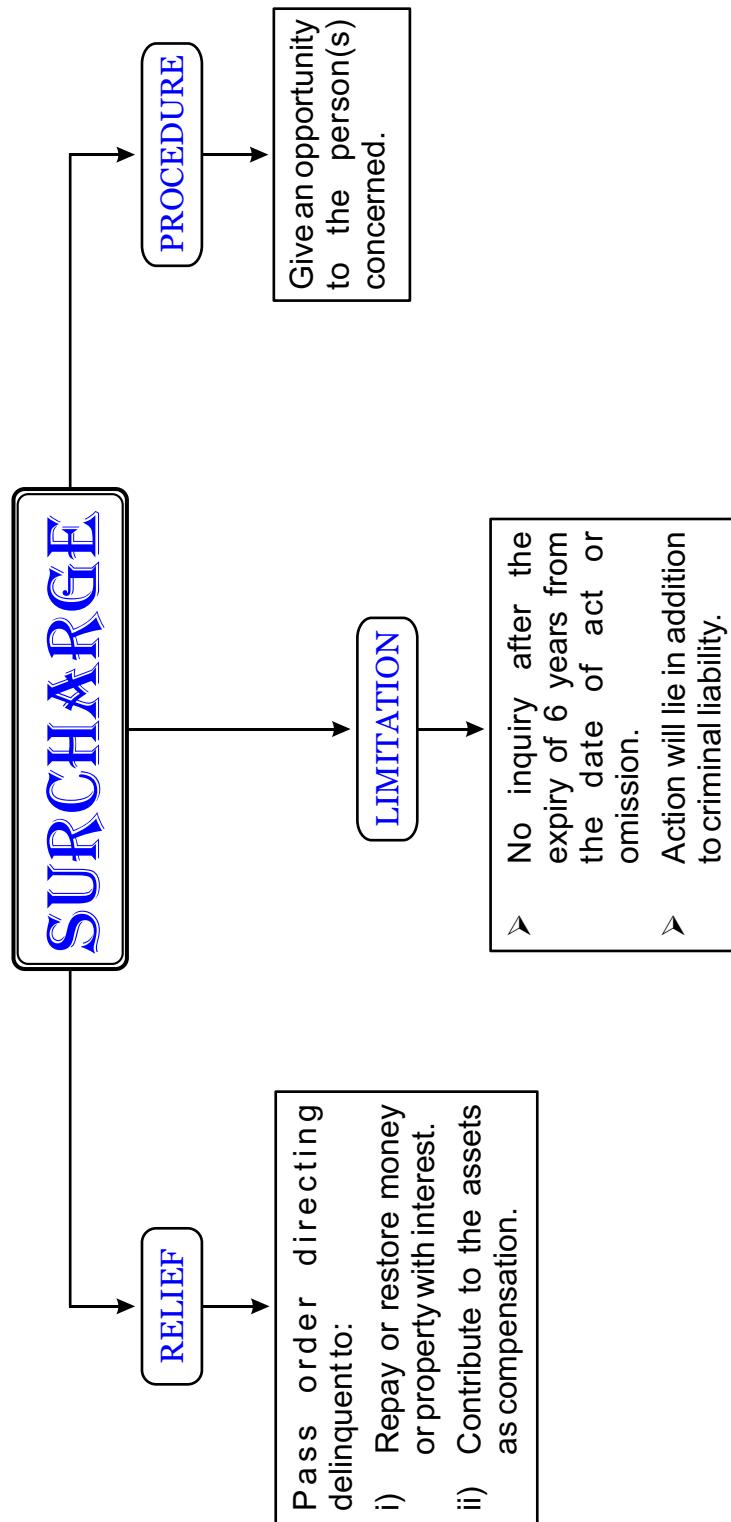
(a) He should have been delegated to perform certain duties in the society;

(b) He has committed breach of trust;

(c) Deficiency or loss has actually arisen as a direct consequence of that breach due to commission or omission. | YES / NO
YES / NO
YES / NO |
| 7. Whether an opportunity is given to the concerned person for making his representation? | YES / NO |
| 8. Whether such person is given a notice to show cause why action should not be taken against him as proposed in the notice towards various acts of omissions and commissions noticed against him as per charges framed against him? | YES / NO |
| 9. Whether the above notice clearly specifies the grounds on which charges are framed, action proposed against each charge and the evidences noticed upon for framing such charges? | YES / NO |
| 10. Whether order has been made requiring him to pay or restore the money or any part thereof with interest at specified rates or to contribute such sum to the assets of the society by way of compensation to such extent as the Registrar or the delegated authority may consider just and equitable? | YES / NO |
| 11. Whether order so made is self-explanatory and clear and the liability of the person is brought out clearly? | YES / NO |



SURCHARGE



9. MODEL FORMS**FORM - 1****NOTICE FOR SUBMISSION OF EXPLANATION**

(Notice issued under Section 82 of the Puducherry Co-operative Societies Act, 1972)

Sub:Society Limited.No.P.....-
 Irregularities disclosed in - Notice
 under Section 82 of the Puducherry Co-operative Societies
 Act, 1972 for submission of explanation - Issued.

Ref: Registrar's surcharge proceedings No.....dated

WHEREAS in the course of *, it was revealed that, there was a deficiency to the assets of the society to the tune of ₹..... and to make good of the loss, surcharge proceedings are to be initiated against..... [specify name of person(s)].

(2) Details of charges

(i)

(ii)

(iii)

(3) Thiru / Tmt. / Thvl.....is / are hereby directed to submit his / her / their explanation as to why surcharge proceedings should not be initiated against him / her / them for the said loss caused to the said society.

SURCHARGE

(4) His / her / their written explanation, along with the evidence in support of his / her / their claim, should be submitted on or before If no explanation is received within the date line, it will be presumed that, he / her / they has / have nothing to say in this matter and it will be processed on merits.

Dated at(specify the place of issue), the.....(specify the issuing date).

INQUIRY OFFICER

To
Thiru / Tmt.
.....

Note:***insert whichever is applicable:**

final audit conducted under Section 74 of the Puducherry Co-operative Societies Act, 1972 to the.....Society Limited. No.P..... for (specify the period) /

or

inquiry conducted under Section 75 of the Puducherry Co-operative Societies Act, 1972 to the.....Society Limited. No.P.....for (specify the period)

or

inspection conducted under Section 76 of the Puducherry Co-operative Societies Act, 1972 to theSociety Limited. No.P..... for (specify the period)

or

inspection conducted under Section 77 of the Puducherry Co-operative Societies Act, 1972 to the Society Limited. No.P..... for (specify the period)

FORM - 2**NOTICE FOR APPEARANCE****(Notice issued under Section 82 of the Puducherry Co-operative Societies Act, 1972)**

Sub:Society Limited.No.P.....-

Irregularities disclosed in.....- Notice under Section 82 of the Puducherry Co-operative Societies Act, 1972 for appearance - Issued.

Ref: Registrar's surcharge proceedings No.
dated.....

Notice is issued to Thiru / Tmt. / Thvl.....to appear before me at.....(specify time) on.....(specify day & date) at.....(specify place) in connection with the aforesaid surcharge proceedings.

(2) You are directed to produce the list of documents, which you intend to rely on, and list of witness(es) in your support, on the said date. The said list should be supplied in duplicate.

(3) Failure to appear before me on the said date and time will entail the proceedings being conducted in your absence and on merits.

Dated at.....(specify the place of issue), the.....(specify the issuing date).

INQUIRY OFFICER

To
Thiru / Tmt.

10. ARTICLE on "Supply of Inquiry Report in Surcharge proceedings" by R.Muralidharan, Deputy Registrar (Legal):**Objective of Surcharge**

The main object of surcharge is to check serious irregularities, including misappropriation and frauds, and to reimburse to the co-operative society to the extent of deficiency that might be caused as a result of maladministration on the part of unscrupulous persons. *This provision is preventive as well as curative.* It will serve as a check on the dishonesty of the members of the committee as well as employees of the society, who will be constantly reminded that, if they go astray, there is a provision in the Act under which their action can be called in question by the Registrar. It is also curative, as a remedy is provided for the recovery of deficiency caused.

The word "surcharge" means overload or overburden or to make an extra charge upon. Anything that may be levied over the above normal rate is termed as "surcharge". Surcharge is defined as "(i) an act of showing an omission in an account and (ii) a charge made by an auditor upon a public official in respect of an amount improperly paid by him". Surcharge is a declaration by an auditor that a person is personally liable to refund public money illegally expended by him.

Ingredients of surcharge

Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, relates to surcharge. The important aspects of Section 87 may be stated as under:

- (a) The pre-requisites for initiating surcharge action;
- (b) The persons against whom such surcharge orders can be passed;
- (c) The circumstances under which action can be initiated.

The above three aspects may be augmented further:

- (a) There should be an audit, or an inquiry, or an inspection or investigation, or an inspection of books by financing bank, or the winding up of a society.
- (b) The persons against whom the surcharge order may be passed:
 - (i) Any person who is or was entrusted with the organization or management of the society;
 - (ii) Any past or present officer of the society;
 - (iii) Any past or present servant of the society.

- (c) The circumstances under which action can be initiated:
- (i) Misappropriation of money or property;
 - (ii) Fraudulent retention of money or other property;
 - (iii) Guilty of breach of trust in relation to the society;
 - (iv) Causing any deficiency in the assets of the society by breach of trust or wilful negligence;
 - (v) Any payment which is not made in accordance with the provisions of the Act, Rules or the bye laws.

Surcharge inquiry

Section 87 pre-supposes two kinds of inquiries into the affairs of the society. Firstly, at the time of audit, inquiry, inspection or winding up, and secondly, when the Registrar starts inquiry under this Section before mulcting the person responsible for causing loss or deficiency to the assets of the society. The liability of the person against whom surcharge proceedings are proposed to be initiated should be brought out in definite terms in audit, inquiry or inspection report or found out during the course of liquidation. Secondly, the Registrar or the person authorized, while acting under this Section should take up each item of default separately, weigh the evidence of it and give a reasonable finding. A reading of Section 87(1) is absolutely necessary, which is extracted below:

"(1) Where is the course of an audit under section 80 or an inquiry under section 81 or an inspection or investigation under section 82 or inspection of books under section 83 or the winding up of a society, it appears that any person who is or was entrusted with the organization or management of the society or any past or present officer or servant of the society has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has made any payment which is not in accordance with this Act, the Rules or the bye laws the Registrar himself or any person specially authorized by him in this behalf, of his own motion or on the application of the board, Liquidator or any creditor or contributory may frame charges against such person or officer or servant and after giving a reasonable opportunity to the person concerned and in the case of a deceased person, to the representative who inherits his estate to answer the charge, make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorized as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retainer, breach of trust or wilful negligence or payments which are in accordance with this Act, the Rules or the bye-laws as the Registrar or the person authorized as aforesaid thinks just:" (underlined by me).

Supply of copy of report - Is it mandatory?

A surcharge proceeding presupposes that, there should be an audit, or an inquiry, or an inspection or investigation, or an inspection of books by financing bank, or the winding up of a society. In this article, an answer may be found to the specific question, whether the charged person is to be supplied with a copy of the report of inquiry or inspection or investigation or inspection of books. It is true that, Section 87 does not lay down that the person charged should be provided with a copy of the inquiry or inspection report which forms the basis of the charges. The underlined portion of Section 87(1) quoted above mandates that the Registrar or person authorized by him to frame charges against such person or officer or servant and after giving a reasonable opportunity to the person concerned and in the case of a deceased person, to the representative who inherits his estate to answer the charge. Whether giving a reasonable opportunity warrants supply of inquiry report which fastened the delinquent with the charges assumes significance when such delinquent challenges the surcharge proceedings on the ground that such report was not given to him and thus he was deprived from meeting the charges effectively.

Lessons from the decisions

The law is well settled on this subject by a catena of decisions of the Hon'ble High Court of Madras and my mind is malodorous of the following decisions:

- (a) "The failure to furnish copies of the report under Section 65 (now Section 81) of the Act and the statements of the witnesses recorded during the inquiry under Section 65 of the Act would definitely tantamount to denial of an opportunity to make representations as contemplated under the second proviso of Section 71(1) [now Section 87(1)] of the Act. When incriminating reports and statements are taken into consideration against persons proceeded against under Section 71 of the Act, the authority concerned is duty bound to furnish copies of the same to the person proceeded against so as to afford him an opportunity to explain the same and make his submissions. This alone would satisfy the requirements of the second proviso of Section 71(1) of the Act. Otherwise the provisions requiring affording of an opportunity for making representations will be illusory." [1982 *TNLJ* 18].
- (b) In *P.N. Chokappan and others vs. Special Tribunal for Co-operative Cases, High Court Campus, Madras and others* [1999 (1) *MLJ* 587] it was held that even though the petitioners have made proper request for supply of certain particulars, it is not clear as to why they were not furnished to them. Unless the parties before the second respondent were given proper and reasonable opportunity of answering the claim made by them, it is not possible for the second respondent to use those documents materials against them. It is clear such recourse has not been followed by the second respondent before passing the impugned order. To creep up to this decision, the Court relied on its earlier decision in *Venkataraman vs. Deputy Registrar of Co-operative Societies*, (1978) 1 *MLJ* 284.

- (c) In the decision *M.Sambandam vs. Deputy Registrar (Credit) of Co-operative Societies, Mylapore, Madras, (1999) 3 MLJ 310 : (1999) 4 LLN 483* the High Court considered the very same issue and in paragraph 9 it was held as follows:

"9..... In this regard it is relevant to mention that if any surcharge proceedings is initiated under Section 71 of the Act the same has to be done in accordance with the said provisions. The second proviso of Section 71(1) makes it clear that :

*"No order shall be passed against any person referred to in this sub-section unless the person concerned has been given an opportunity of making his representations."**

The said provision makes it clear that if any proceeding is initiated under Section 71, before passing final order, the person concerned must be given an opportunity to put forth his claim. In our case, even though an enquiry was conducted under Section 65 of the Act at the instance of the Registrar of Co-operative Societies, the copy of the said enquiry report has not been furnished to the petitioner. The said position is clear even from the order of the third respondent. In the light of the second proviso of Section 71(1) in the absence of proof for furnishing copy of the enquiry report further action taken by the first respondent in pursuance of the enquiry report cannot be sustained on the principle of violation of statutory provision as well as natural justice. Accordingly I sustain the contention made by the learned counsel appearing for the petitioner."

* The second proviso of Section 71 (1) of the Tamil Nadu Co-operative Societies Act, 1961 is incorporated in Section 87(1) itself under Tamil Nadu Co-operative Societies Act, 1983.

- (d) In a recent decision in *A.Janakiraman and another vs. Deputy Registrar of Co-operative Societies, Kumbakonam and another, (2009) 6 MLJ 1051*, it was held that the fact that the first respondent failed to establish the furnishing of copy of Section 81 enquiry report before initiating surcharge proceedings and the wilful dereliction of duty having not been established, the recovery proceedings against the petitioners cannot be sustained.

The decision of the Hon'ble High Court in *N.Sekar vs. The Principal District Judge-cum-Co-operative Tribunal, Thanjavur, 2009 (1) CTC 473* is clearly distinguishable on facts. It was held therein that there is no provision of law making it mandatory for enquiry officer to furnish copy of enquiry report to delinquent employee in surcharge proceedings under Section 87 of the Act.

But in that case the petitioner had not asked for the said report and there was nothing on record to show that the petitioner was not given sufficient opportunity to put forth his case during enquiry proceedings. Though the decision in *(1999) 3 MLJ 310 : (1999) 4 LLN 483* (cited above) was cited on facts the Court held that furnishing of enquiry report to delinquent employee was not mandatory.

Summing up

A survey of the above decisions would disclose that when the delinquent asks for a copy of the report, furnishing a copy of the report will meet the ends of justice. The decision in *2009 (1) CTC 473 (supra)* may not be taken as a ratio decidendi on this subject because the said dictum was on a given set of facts. Giving an opportunity to the delinquent would be complete only on furnishing a copy of the report. Non-furnishing of a report will always be quoted as a defence by the delinquent to get away from the surcharge proceedings and the authorities enforcing the surcharge order would be on back foot when such report was not given.

11. ILLUSTRATIVE CASE LAWS

Wilful negligence is to be established

In *Subbammal alias Rajammal and others vs. The President, The Tenkasi Co-operative Urban Bank Ltd.*, (1976) 2 MLJ 460, it was held that 'wilful negligence' in Section 71 is for the purpose of holding a person in management liable if he has caused loss to the society by his intentional and purposeful omission. Mere negligence, however, gross it may be, may not be sufficient to attract the Section.

'Wilful' used in Section 71(1) of the Act, in order to pass a surcharge order under that Section against a person entrusted with the organization and management of a co-operative society or an officer or servant thereof, such person should have done an actionable wrong, either by commission or omission in a deliberate and reprehensible manner, with reckless callousness and with a supine indifference (but not by accident or inadvertence), without taking due care and precaution ordinarily expected from a reasonable and prudent man under those existing circumstances, that is to say, not caring what the result of his carelessness would be. - *vide Sathyamangalam Co-operative Urban Bank Ltd., vs. The Deputy Registrar of Co-operative Societies and another*, (1980) 2 MLJ 17.

The petitioners failed to discharge the duties enjoined upon them to direct scrutiny of accounts, examination of vouchers and passing of statements before they signed the minutes book. But this failure by itself cannot come with the expression 'wilful negligence' which has been construed as meaning something done either by commission or omission in a deliberate and reprehensible manner. After all the petitioners filled only the posts of directors of the society. The affairs of the society were admittedly managed by the President, Secretary and Manager and if the petitioners reposed confidence in the said officials and they merely affixed the signature in the minutes book, that itself would not constitute 'wilful negligence'. [*Ramachandran vs. Deputy Registrar, Dairying, Trichy*, (1981) 2 MLJ (RC) 9].

The appellant has been mulcted with the liability only on the basis that he has by acts and omissions of wilful negligence caused loss to the bank. For this action, it must be first established that there were duties and obligations specifically cast upon the appellant, of which he committed breach. If there is no clarity as to the specific duties and obligations cast upon the appellant with regard to remittances and withdrawals, then the very basis of the charges must be held to be lacking. That is the position here.

Negligence in this context presupposes existence of specific duties and obligations and breach thereof. If the duties and obligations are not specifically defined and delineated, one could not pin down the culpability of breach thereof on the person concerned. This aspect could not be a matter of presumptions and assumptions but necessarily must be a matter of concrete materials.

We find that the probable nexus between any act of omission on the part of the appellant and the resultant loss to the bank has not been made out at all, for the simple reason there is no material exposed in the case, making out the casting of specific duties and obligations upon the appellant in this behalf. [*P. Karuppiyah vs. The Deputy Registrar of Co-operative Societies, Periyakulam and another, 1989-2-LW-330 : 1989 W.L.R 272*].

Negligence simpliciter is not sufficient to visit the officer of a co-operative society with proceedings under Section 68. His conduct should be wilful, implying culpability with an element of deliberateness or mens rea involved in the conduct or omission, which resulted in the loss. A mere routine, mechanical chanting of the Section or of the acts mentioned, without anything more, is not sufficient in law to sustain an order of surcharge. It should be based on relevant and adequate materials on which court could satisfy itself that the person concerned was guilty of breach of trust, wilful negligence, misappropriation or fraud. *vide A.K. Francis vs. Joint Registrar, 1990 (2) KLT 470 : 1990 (2) KLJ 428 : AIR 1991 Ker. 344*.

In *Jaganathan vs. Deputy Registrar of Co-operative Societies, 1999-2-LW-333*, it was held:

"When the basic requirement of Section 87 which warrants initiation of surcharge proceedings is not satisfied or established on mere assumptions the appellant cannot be fastened with the liability. It has to be pointed out that neither in the show-cause notice, nor in the proceedings of the first or third respondent, it has been held that the appellant has acted willfully or wantonly with premeditation with a view to cause loss to the assets of the society. Mere negligence cannot be a ground of surcharge and it must be a wilful negligence or intentional negligence and no mere carelessness or intention or inadvertence or a single lapse by oversight".

"To make it explicit, it may be stated that he should have acted in breach of legal obligations or in conscious disregard of duty or with an intentional failure to perform the manifest duty, in the performance of which the public have an interest, and that such commission should be proximate cause of the loss of deficiency in question."
[S.Subramanian vs. Deputy Registrar of Co-operative Societies (Housing), Cuddalore, 2002-3-LW-185].

There cannot be any doubt that the impugned order directing recovery from the present petitioner in the absence of any categorical finding that the petitioner was wilfully negligent in the matter relating to payment made on the basis of false vouchers submitted by the salesman-cum-clerk cannot be sustained. There is nothing to indicate that the petitioner was hand in glove with the salesman-cum-clerk. As a matter of fact the petitioner had joined duty only five days earlier to the alleged date of incident. The fact that he has been subsequently acquitted from the criminal case cannot be lost sight of in the peculiar facts and circumstances of the present case. Even though it can be said that he had not supervised properly, it cannot be said that he was wilfully negligence in the matter. - *M.Chella Nadar vs. The Deputy Registrar of Co-operative Societies, Tuckalai and post, K.K.District, 2002 WLR 198.*

For initiating surcharge proceedings under Section 87 of the Co-operative Societies Act, 1983, against an employee of a co-operative society, the condition precedent is that there must be willful negligence or deliberate misconduct on the part of the employee concerned.- vide *S.Marimuthu and another vs. Deputy Registrar of Co-operative Societies (Housing), Madurai Circle and another reported in (2006) 4 MLJ 86.*

The Division Bench in *K.Ajay Kumar Gosh and others v. Tribunal for Co-operative Cases (District Judge of Kanyakumari District) and another, 2009 (4) MLJ 992*, after referring to various decisions on the issue of wilful negligence, which is a requirement under the said provision, including the judgments in *Sathyamangalam Co-operative Urban Bank Ltd. v. Deputy Registrar of Cooperative Society and another, [1980] 2 MLJ 17* and *P.N.Chowkappan and others v. Special Tribunal for Cooperative Cases, High Court, Madras and others [1999] 1 MLJ 587*, has held the nature of callousness which has to be proved as under:

"In the light of the decisions referred to above, it is clear that to pass surcharge order under Section 87 of the Act, appellants should have done an actionable wrong either by commission or omission in a deliberate and reprehensible manner with reckless callousness and with a supine indifference, without taking due care and caution ordinarily expected from a reasonable and prudent man under those existing circumstances. In the absence of such categorical finding by the respondents, it is not possible to mulct the appellants with the loss caused to the society."

In *A.Janakiraman and another v. Deputy Registrar of Co-operative Societies, Kumbakonam and another reported in (2009) 6 MLJ 1051*, it is observed as follows:

"For ordering recovery under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, the first respondent must establish that there is willful dereliction of duty on the part of the petitioners. Mere carelessness or dereliction of duty is not sufficient to initiate surcharge proceedings as per Section 87(1) of the Tamil Nadu Co-operative Societies Act, 1983."

The entire surcharge proceedings go on the basis that there was negligence on the part of petitioners in the discharge of their duties. But from the flow chart and the deposition, no wilful negligence is made out against the petitioners. Fixing of responsibility on the petitioners is neither borne out by evidence nor in tune with the requirements of Section 87. - *vide S.Pitchumani and others vs. The Deputy Registrar of Co-operative Societies/Arbitrator and others, 2010 (4) CTC 13.*

Mere irregularity will not invite surcharge

Whether irregular payment will call for surcharge proceedings was answered in negative by the High Court of Madras in *Gabriel Vs. The Deputy Registrar (Housing), Cuddalore and another (2003) 2 MLJ 624*. It was ruled that, in such a case it is competent to initiate disciplinary action. Held,

"The respondents had not made out that the petitioner had caused any loss to the society. The petitioner has also given reasons for carrying out the work and the same cannot be rejected on the ground that they are not convincing but on the other hand, the explanation offered by the petitioner appears to be that he had acted only pursuant to the resolution passed in the general body and if there

is any further latches in observing certain procedure, it would not amount to misappropriation of the amount. When there is no misappropriation of amount, then it would only amounts to mis-application and when the mis-application not having caused any loss to the society, a surcharge proceeding is not justifiable. If any irregularity committed by the petitioner in failing to secure permission from the authorities concerned, it would not result in being surcharged but may result in any disciplinary action being taken as against him.

It is left open to the authorities, if they consider that it is necessary, to take disciplinary action against the petitioner for failure on his part in not having followed certain procedures, but the order of surcharge is not legal and the same is liable to be set aside, accordingly, it is set aside."

Will surcharge lie in case of settlement between management and employees?

In *K.Arjaykumar Gosh and others vs. Tribunal for Co-operative Cases (District Judge of Kanyakumari District), Nagercoil and another*, (2009) 4 MLJ 992 before the Division Bench of the High Court of Madras, the contention of the appellants is that they have only enforced the settlement arrived at between the management (society) and the employees under Section 12(3) of the Industrial Disputes Act, which cannot be termed as a wilful act of negligence, warranting surcharge proceedings. It was also pointed out by the appellant that as no prior approval is required from the Registrar or the Government under Rule 149 there was no violation of the said provision. Upholding the said averments, the Division Bench has observed that promotions, revision of salaries and appointments were given based on the settlement arrived at under Section 12(3) of the Industrial Disputes Act between the management and the employees and therefore, there was no wilful or deliberate misconduct or negligence on the part of the appellants. The Court went on to hold that to pass a surcharge order under Section 87 the persons against whom surcharge action has been imitated should have done an actionable wrong either by commission or omission in a deliberate and reprehensive manner with reckless callousness and with a supine indifference, without taking due care and caution ordinarily expected from a reasonable and prudent man under the existing circumstances. In the absence of such categorical finding by the authorities, it is not possible to mulct the persons with the loss caused to the bank.

The Division Bench in the above case has referred and relied a catena of dictums and the reference made to *S.Jina Chandran and others vs. The Registrar of Co-operative Societies, Madras and others, (1999)1 MLJ 431*, is quite appropriate here:

"The settlement arrived at between the bank and its employees are not liable to be unilaterally set aside by the respondents nor can they initiate proceedings under Section 153 of the Co-operative Societies Act nor any proceeding under Section 81 of the Act can be initiated for recovering the amount from the persons in management for allegedly paying excess amount to the employees on the basis of the settlement."

When cause of action is established, surcharge will succeed

In *A.Periathamby and another vs. The Pondicherry Public Works Department Staff Co-operative Society Ltd., and others, W.P.No.11466/2006 dated 24.4.2006*, the challenge against the findings of the Tribunal is that unless wilful negligence is made out against the petitioners, proceedings under Section 82(1) of the Puducherry Co-operative Societies Act, 1972, cannot be initiated. It was held that, the Tribunal has elaborately considered the various contentions raised by the petitioners and considered the various acts and omissions committed by the petitioners. The findings recorded by the Tribunal are based on the materials on record and the reasons for arriving at such findings are unassailable. Factual findings, unless perverse or legally untenable, cannot be interfered. The findings of the Tribunal were upheld.

The petitioners, in *E.S.Sundara Mahalinam and S. Ponniah vs. The Special Tribunal for Co-operative Cases, W.P. No.12727 and 12728/2003 dated 8.2.2010*, have contended that insofar as the advancement of jewel loans are concerned, the loans will have to be certified by the jewel appraiser and as per bye law which regulates grant of jewel loans, the appraiser will be responsible for any loss arising out of negligence and therefore, it was wrong to surcharge the petitioners. Held, the contention of the petitioners cannot be accepted, since it is stated in the bye law that the sanctioning authority and the appraiser shall be held responsible for any loss that the bank may sustain in the loans issued out of negligence or errors in valuation.

If the petitioners who are dealing in banking transactions try to pervert any standing instructions that itself is a sufficient proof of wilful negligence, vide *R.Nanjundan vs. the District Judge-cum-Tribunal for Co-operative Cases of Nilgris District and two others, (2010) 4 MLJ 1027*.

In *P.T.Periyasamy and three others vs. The Registrar of Co-operative Societies and five others, W.P.Nos. 5287 etc. of 2006 dated 25.2.2010*, the then President of the society contended that he had only countersigned the transaction along with the then Secretary. A reading of the bye laws show that the President is also responsible for the transaction and it is not as it he had not dealt with the transaction. In fact bye law No.32 states that an overall control over the cash and its safety lies with him. He being the President of the board, he is bound to oversee that the society was free from such illegal transactions. Both in the inquiry report followed by surcharge proceedings his liability has been clearly focused. There was no attempt to exculpate himself from the transaction made along with the then Secretary.

A claim under Section 87 of the Tamil Nadu Co-operative Societies Act is maintainable if ingredients under Section 87 are satisfied namely, wilful negligence in not following the procedure prescribed for running the society. It is more of a recovery of the loss sustained due to the negligence of the officials or the members of the society, as held in *The Special Officer, Krishnagiri Taluk Agricultural Producers' Co-operative Marketing Society Ltd., Vs. The Presiding Officer, District Co-operative Tribunal (Principal District Judge), Krishnagiri and 5 others, (2010) 4 MLJ 707*.